

NEWFOUNDLAND AND LABRADOR  
PROVINCIAL COURT JUDGES SALARY AND  
BENEFITS TRIBUNAL REPORT

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December 21 , 2015

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## PART 1:

### MANDATE OF THE TRIBUNAL AND THE TRIBUNAL MEMBERS

#### Mandate of the Tribunal

1. The mandate of the Provincial Court Judges Salary and Benefits Tribunal (hereinafter referred to as the Tribunal) is established under Section 28 of the *Provincial Court Act, 1991*, S.N.L. 1991, c. 15, as amended (hereinafter referred to as the Act) to make recommendations to Government for the four year period from April 1, 2013 to March 31, 2017. Before legislative change, section 28.2(1) of the Act required the Tribunal to present its report to the Minister no later than September 30, 2014. In December of 2014 the Lieutenant Governor in Council appointed D. Bradford L. Wicks Q.C. as chairperson; David Eaton Q.C. on behalf of the Judge's Association and John Whelan on behalf of the province as members of this Tribunal under the authority of the Act.
2. The unfortunate delay in the appointment of the Tribunal necessitated that the Provincial Government amend the Act as the deadline of September 30, 2014 for the Tribunal's Report had already passed. Accordingly, the Provincial Government passed Bill 43, *An Amendment to the Provincial Court Act*, through the House of Assembly and it received Royal Assent on April 1, 2015. The hearings of the Tribunal took place on May 25, 26 and 27, 2015.

#### The Tribunal Members

3. D. Bradford L. Wicks Q.C. was admitted to the bar of Newfoundland and Labrador in December of 1982. He graduated from Memorial University of Newfoundland with a Bachelor of Arts degree in 1979 and from Dalhousie University with a Bachelor of Laws



degree in 1982. In 1989, he was awarded a Masters of Business Administration degree from Memorial University of Newfoundland. After admission to the bar, he worked as an associate with the firm of O'Reilly, Noseworthy until joining the Crown Attorney's office in November 1983. In December of 1989 he joined the firm of Williams, Roebathan, McKay and Marshall where he was admitted to the partnership in 1992. He is currently the managing partner of the successor firm of Roebathan, McKay and Marshall where his practice includes personal injury litigation, corporate commercial work, administrative and employment law matters. He has served as a bencher of the Law Society of Newfoundland and its Chair of Discipline; member and Vice-Chair of the Board of Regents of Memorial University; Director and Chair of Corporate Governance of Ronald McDonald House of Newfoundland and Labrador; Chair of the Public Accountants Licensing Board, and member of the Terra Nova Reference Price Committee. Currently he is a member of the Education Committee of the Law Society; Chancellor of the Anglican Diocese of Eastern Newfoundland and Labrador and a member of the Advisory Board of a St. John's based business.

4. David Eaton Q.C. was admitted to the bar of Newfoundland and Labrador in December of 1980 after graduating from Queen's University in May 1980 with a Bachelor of Laws degree. He joined the firm of Lewis Day Cook et al where he was a partner from 1982 to 1991. In 1992 he became a partner at the firm of Chalker, Green & Rowe which became McInnes Cooper in 2000. His practice includes: civil litigation in a variety of areas including corporate-commercial matters, media and defamation, professional regulatory and liability, employment and class actions; criminal and quasi-criminal defence including, occupational health and safety and environmental offences. He has long been involved with the Law

Society of Newfoundland in various capacities including: past bencher with the Law Society of Newfoundland; Past Treasurer (President) in 1998-1999; Chair of the Law Society Bar Admission Program and member of Education Committee since approximately 1989; and, is currently the Vice-Chair of the Complaints Authorization Committee. He has served as the Honourary Solicitor of the Newfoundland and Labrador Command of the Royal Canadian Legion since 1983.

5. John Whelan was admitted to the bar in 2009 after graduating from the University of New Brunswick. He also has an Honours Bachelor of Commerce degree with Memorial University. He articulated and spent time as an associate at the firm of Stewart McKelvey until he moved on to an in house counsel position with SeaFair Capital Inc. and a Director position with Blue Sky Family Care. Further, Mr. Whelan worked as an Instructor at the Memorial University of Newfoundland in Business Law from May 2012 to August 2013. He also served on the Board of Directors of the Newfoundland and Labrador Employers' Council in 2011. In 2012 Mr. Whelan obtained an Advanced Executive Certificate from Queen's University.

## **PART 2:**

### **HISTORICAL CONTEXT**

#### **Previous Tribunals**

6. Since 1991, the following Tribunals have adjudicated the appropriate level of financial security for Provincial Court Judges:
  - The 1992 Whalen Tribunal

- The 1997 Roberts Tribunal
  - The 2001 Hoegg Tribunal
  - The 2006 Steele Tribunal
  - The 2010 Andrews Tribunal
7. The Andrews Tribunal, like this one, experienced delays before appointment by the Provincial Government and before hearings could be held. Originally, the Andrews Tribunal was to have reported by April 1, 2010. Due to these delays, the Andrews Tribunal was not able to issue its report until September 30, 2010. As a result, its recommendations included an 18 month period of retroactivity.
  8. The Andrews Tribunal made recommendations regarding: salary; interest on retroactive salary payments; pensions; vacation; salary differential for Chief Judge and associate Chief Judge; maternity and parental leave for Judges; judicial indemnity; sick leave; and costs.
  9. The Andrews Tribunal correctly described the Tribunal process as turbulent, characterized by delays in appointment of tribunals and the resort to litigation to determine whether certain of the recommendations were appropriate and should be implemented. The Andrews Tribunal recommendations were fully accepted by the Provincial Government on May 19, 2011. Retroactive increases to compensation were received by Provincial Court Judges in July 2011.
  10. Despite the unfortunate history of late appointments of this and past Tribunals, we take this role with the seriousness and respect it deserves. The Tribunal hopes that its

recommendations will be considered, accepted, and implemented on a timely basis. The Tribunal also urges the Provincial Government to adopt a more diligent approach to appointments of future Tribunals such that they are able to report in a timely manner prior to the expiry of the legislated date. In this way, the evidence before and considerations of the Tribunal will relate wholly to prospective, rather than retroactive, recommendations.

### **PART 3:**

#### **INTRODUCTION TO THE ISSUES**

11. The rule of law is a cornerstone of our democratic system and part of maintaining that is ensuring judicial independence. While the legislative and executive branches of government may be susceptible to political winds, partisan interests, or private interests; Judges cannot be. There must not be political interference or private interests, or the appearance of same, which would place the independence of the judiciary into question. This is guaranteed in large part by ensuring the financial security of the judiciary.
  
12. Judicial independence was initially guaranteed to Superior Courts in the *Constitution Act, 1867* and it has since been constitutionally confirmed to inferior courts, such as Provincial Courts. These courts specialize in criminal law, by virtue of section 11 of the *Constitution Act, 1982*, more particularly, section 11(d) of the *Canadian Charter of Rights and Freedoms* which states: “Any person charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.”

13. As the Andrews Tribunal correctly canvassed, the issues of judicial independence and judicial remuneration in the context of section 11(d) of the *Charter* were considered by the Supreme Court of Canada in the *PEI Reference*, [1997] 3 S.C.R. 3. This case built upon *Valente v. R.*, [1985] 2 SCR 673, wherein the Supreme Court of Canada listed three essential conditions of judicial independence: (1) security of tenure; (2) financial security; and (3) institutional independence on matters of administration bearing directly on the exercise of its judicial function.
  
14. While to some extent this Tribunal has an impact on all three of those essential conditions, financial security is what Tribunals such as this one are tasked to protect. In the *PEI Reference*, Chief Justice Antonio Lamer indicated that the institutional dimension of financial security has three components. They are described in paragraphs 133 to 135 of that decision:

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

134 Second, under no circumstances is it permissible for the judiciary — not only collectively through representative organizations, but also as individuals — to engage in negotiations over remuneration with the executive or representatives of the legislature. Any such negotiations would be fundamentally at odds with judicial independence. As I explain below, salary negotiations are indelibly political, because remuneration from the public purse is an inherently political issue. Moreover, negotiations would undermine the appearance of judicial independence, because the Crown is almost always a party to criminal prosecutions before Provincial Courts, and because salary negotiations engender a set of expectations about the behaviour of parties to those negotiations which are inimical to judicial independence. When I refer to negotiations, I utilize that term as it is traditionally understood in the labour relations context. Negotiations over remuneration and benefits, in colloquial terms, are a form of “horse-trading”. The prohibition on negotiations therefore does not preclude expressions of concern or representations by Chief justices and Chief Judges, and organizations that represent Judges, to governments regarding the adequacy of judicial remuneration.

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

15. To summarize the first component, the Tribunal members must balance judicial independence with the economic realities of the Provincial Government. Tribunal decisions are non-binding yet are not to be set aside lightly. The burden of justification in departing from the recommendations of a Tribunal is squarely on the Provincial Government.
16. The second component is that it is inappropriate for the judiciary to engage in any bargaining process with the Provincial Government. The jurisprudence with respect to Tribunals such as this is that the Tribunal is to act as an institutional sieve to avoid such an unseemly negotiation. The Tribunal is to present an objective and fair set of

recommendations dictated by the public interest. This issue is particularly important in the context of this decision, as the Province is asking the Tribunal to align Judges' remuneration, in particular their pension, with those of the public service. Given the competing positions of the parties on issues such as bringing pensions in line with those of the provincial public service as argued by the Province and the competing compensation recommendations of the parties, it is easy to see how bargaining would have to occur in the absence of the Tribunal.

17. The third component is that Judge's salaries must stay above a basic minimum level such that the public confidence in the independence of the judiciary remains intact. We must not let judicial remuneration sink to a point where Judges could be *perceived* to be susceptible to political pressure; and, *a fortiori*, the level to which Judges might actually be susceptible to pressure.
  
18. The Supreme Court of Canada further acknowledged these principles in the *Bodner* decision, *Provincial Court Judges Association of New Brunswick v. New Brunswick (Minister of Justice) et al.*, [2005] S.C.J. No. 47 at paragraphs 7 and 8:

The components of judicial independence are: security of tenure, administrative independence and financial security; see *Valente*, at pp. 694, 704 and 708; the *Reference*, at para. 115; *Ell*, at para. 28.

The *Reference*, at paras. 131-35, states that financial security embodies three requirements. First, judicial salaries can be maintained or changed only by recourse to an independent commission. Second, no negotiations are permitted between the judiciary and the government. Third, salaries may not fall below a minimum level.

19. Judicial independence is reflected by the relationship the Judge has with the executive. The executive cannot, or cannot be seen to be able to, manipulate Judges. Ideally, to attract the

best candidates, every member of a particular bar should be prepared to consider accepting a judicial appointment in the jurisdiction in which he or she practices. While financial security plays a large role in that preference, we must note that lawyers give up very significant aspects of their lives to become members of the judiciary. This forms the basis of the factors the Tribunal ought to consider in applying the above principles.

## PART 4

### FACTORS CONSIDERED

#### Introduction

20. This Tribunal's enabling statute, the *Provincial Court Act*, S.N.L. 1991, c. 15, does not delineate the factors upon which a Tribunal is to base its decision. In the absence of a set of factors, the Tribunal is free to consider what it deems appropriate so long as it considers the objective criteria in making its recommendations. The Tribunal considers its primary task is to make recommendations that ensure judicial independence to the extent possible through maintenance of financial security of Provincial Court Judges; the second of the three essential conditions of judicial independence according to the *Valente*. It will do this in principle of the three components of financial security as set out originally in the *PEI Reference* as described above. Various factors, however, have been proposed to inform the Tribunal's decision.

21. The Andrews Tribunal considered the following factors in coming to its decision:

- The Protection of Judicial Independence and Public Interest in the Administration of Justice



- The Nature and Importance of the Work Performed by Judges and their Unique role and Responsibility in our Society
- The Need to Attract, Motivate and Retain the Most Highly Qualified Candidates from all Areas of Practice
- Increases in the Cost of Living
- How the Salary Compares with that of other Relevant Groups in Society
- The Fiscal Capacity of Government in Light of Current Economic Conditions
- The Precedential Value of the Recommendations of Previous Salary and Benefits Tribunals

22. The Association asks this Tribunal to consider the following factors in making its determinations:

- The Protection of Judicial Independence and the Public Interest in the Administration of Justice
- The Nature and Importance of the Work Performed by Provincial Court Judges and Their Unique Role and Responsibility in our Society
- The Need to Attract, Motivate and Retain the Most Highly Qualified Candidates from all Areas of Practice
- Increases in the Cost of Living
- The Fiscal Capacity of Government in light of Current Economic Conditions

23. The Province put forth the following factors for the Tribunal to consider:

- The Precedential Value of the Recommendations of Previous Salary and Benefits Tribunals
- The Important and Unique Role of Provincial Court Judges
- Salaries of Other Relevant Groups in Society
- Need to Attract Excellent Candidates
- Increases in the Cost of Living
- The Fiscal Capacity of the Provincial Government in Light of Current Economic Conditions.
- Judicial Independence.

24. In view of the above factors, we feel it important to distinguish between factors and the bedrock principles. In particular, some notion of judicial independence is included in each of the lists above. To what extent is it a factor? We suggest it is not a factor. Instead, as explained above, it is the absolute guiding principle of which there are essential conditions. One of the essential conditions is financial security of which there are three components. The analysis of those components hinges on the factors affecting the issues. Therefore, we are not to place the notion of judicial independence on the scales of justice as a mere factor. Rather, in this context, it *is* the scale and we weigh the factors thereupon. By weighing the relevant factors, we determine how to best ensure financial security and thereby, judicial independence.
25. With respect to the precedential value of previous Tribunal decisions as a determinative factor, while we indeed look to previous Tribunal decisions for the guiding principles, previous decisions are not binding. As stated by the Supreme Court of Canada in *Bodner*, while we are to keep in mind the starting point of the previous commission's report, the Tribunal process is flexible and its purpose is not simply to 'update' the previous commission's report. The court also stated in *Bodner* the following at paragraph 15:

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

26. While we do not take issue with the Andrews Tribunal Report, the general context of each Tribunal is unique and it is the evidence that informs analysis of the factors to be considered. Circumstances are different today than they were in 2010. As such, we make this Report while taking into account today's context while carrying forward insights from the Andrews Tribunal where appropriate.
27. This Tribunal will weigh the following factors while remaining continuously guided by the overarching principles described above:
- The Nature and Importance of the Work Performed by Provincial Court Judges and Their Unique Role and Responsibility in our Society
  - The Need to Attract, Motivate and Retain the Most Highly Qualified Candidates from all Areas of Practice
  - Salaries of Other Relevant Groups of Society
  - Increases in the Cost of Living
  - The Fiscal Capacity of Government in light of Current Economic Conditions

**The Nature and Importance of the Work Performed by Provincial Court Judges and Their Unique Role and Responsibility in our Society**

28. The Andrews Tribunal considered this factor in 2010 and recognized the importance of the work performed by, and the unique role of, Judges in our society. It seemed to have, and perhaps appropriately so, given more weight to the other factors. Nonetheless, we do think it important to consider the unique role played by Newfoundland and Labrador Judges in detail.

29. The Association pointed out various unique demands upon Provincial Court Judges. It notes that all Judges who assume jurisdiction of criminal matters face significant challenges that their more highly paid federal counterparts perhaps do not see to the same degree. Indeed, the work of a Provincial Court Judge involves high stakes as they predominantly involve criminal matters where the very liberty of the accused citizen is at stake. As such, Provincial Court Judges are frequently exposed to very tense and emotional circumstances. Not only is the subject matter of some criminal cases very disturbing, but also, outside of locations where there is a Unified Family Court, Provincial Court Judges regularly preside over difficult family matters. Further, since the expansion of the Provincial Court's civil jurisdiction to include claims of up to \$25,000.00, Provincial Court Judges must now contemplate not only a higher quantity of cases, but more diverse and potentially complex cases.
30. As mentioned, Judges are unique in this society as it is inappropriate for them to bargain individually or collectively for their own compensation. As stated by Lamer CJC in the *PEI Reference*, such a practice would frustrate a major purpose of s. 11(d) of the *Charter*.
31. Circuit courts present a challenge to Provincial Court Judges in Newfoundland and Labrador. As argued by the Association, the travel to circuit courts often occurs in less than ideal conditions and adds a high level of stress to the work. As an example, a Judge in Happy Valley-Goose Bay is required to attend court on the coast of Labrador and may leave home Sunday afternoon and not return until the following Saturday, provided travel conditions are ideal; which they often are not. Similarly, a Judge in Grand Bank would leave his or her home and drive five hours on the highway on Sunday afternoon to convene court on

Monday morning in Bonavista. The demands on a Judge's personal time are obvious and, linking in to the second factor, might not be appealing to the highly qualified members of the bar who are accustomed to work life centered in a larger community.

32. Effective January 1, 2013, the number of circuit courts was reduced from 22 to 15, which compounds the issue by requiring judges to travel farther and more often.
33. Several of the circuit points, particularly those in Labrador, do not have dedicated court facilities. The community halls and other buildings where court is conducted lack security, permanent seating and appropriate court technology. The inadequate facilities present a challenge and add another level of stress to the proceedings.
34. As the Association pointed out, this undesirable situation came to a head on May 29, 2014 when the Legal Aid Commission indicated that it would stop sending staff to the Innu community of Natuashish due to safety concerns. This issue arose when the only hotel in the community was unable to retain kitchen staff and legal aid lawyers were unable to find anywhere to eat. Further, it was reported that the only hotel in the community had no fire escape, had only one real entrance, and that all the windows were nailed shut with steel mesh covers over them. There were also concerns about a roaming pack of dogs in the community which posed a danger to community residents and court participants.
35. The Association also pointed out that Newfoundland and Labrador Judges exercise significantly broader jurisdiction than those in other provinces as Provincial Court Judges here perform after-hours duties that in other provinces are performed by Justices of the

Peace. Newfoundland and Labrador Judges received a 3.8% adjustment to their salary to reflect these extra duties after the Steele Tribunal.

36. For their part, the Province acknowledged the importance of Provincial Court Judges and stated this was already reflected in their compensation as they are paid outside the range of the highest paid civil servants and even beyond the amounts paid to the other branches of government, such as Members of the legislature and Ministers of the Crown.
37. While we appreciate that Judges are compensated at a level higher than those in other branches of government, including members of the legislature, in accordance with the principles above, as is discussed in more detail later, the Tribunal is of the view that this is not a meaningful comparator.
38. While this factor is illuminating in the analysis to a certain degree, the challenges faced by Judges given our provincial geography are the same as those the Province faces with respect to providing other services. There are indeed unique challenges for Provincial Court Judges in this province, but the Provincial Government also faces those unique challenges. We discuss these in detail in our analysis of the Province's fiscal capacity. In light of the foregoing, and given the Steele Tribunal's recommendation of a 3.8% adjustment for the extra duties Provincial Court Judges took on in lieu of Justices of the Peace (which was implemented by the Province), this factor is low on the scale of importance in respect of its determinative value for this Tribunal's decision-making.

**The Need to Attract, Motivate, and Retain the Most Highly Qualified Candidates from all Areas of Practice**

39. Both the Association and the Province agree that this is an important factor in determining judicial remuneration but differ on how we are to apply it and what weight we are to accord it.
40. The Association argues that in considering this factor, we should turn our minds to the following five points: the relevance of the Tribunal process itself; the significance, if any, to be drawn from the number of applicants, to the limited extent that any information is available in that regard; the need to attract highly qualified candidates (with an emphasis on highly); the competition for applicants from federal (s. 96) courts; and the need to promote legal diversity on the Bench.
41. As to the first point, the Association points out that a lawyer considering allowing himself or herself to be considered for appointment does not simply look at the level of remuneration; rather, he or she considers what is in place to adjust the level of judicial remuneration and whether that process has been meaningful. They further argue that the history of lethargy on the part of Government in handling this process undermines its ability to attract high quality candidates and even negatively affects the ability to retain Judges currently on the bench.
42. While this Tribunal recognizes the history of lethargy (and deals with it in more detail in other parts of this Report), we doubt the extent to which the history of lethargy has had an

impact in attracting or retaining high quality candidates. In this regard, the Association did not single out any Judges who left the bench or any applicants who did not apply for this reason. Accordingly, it is our view that this issue has not escalated to the point that it would dissuade high quality candidates from applying, or existing Judges continuing in office, to any more than a minimal degree.

43. As to the second and third points, the Association argues that there will always applicants for judicial positions. For some lawyers, it may be the only prospect they realistically have of an increase in remuneration and these lawyers will always remain in the pool of applicants. They say for us to rely on the number of applicants is to assume those applicants are qualified. They further argue that it is not enough that the pool of applicants consist of merely qualified individuals, but they ought to be highly qualified.
44. With respect to the Association's argument regarding the fourth point (the competition for Applicants), we address this in our discussion of next factor; that is, Salaries of Other Relevant Groups in Society. The Association points to the gap between remuneration for Provincial Court Judges and that of federally appointed or federal (s. 96) Judges. The Association points out that all of these courts seek applications from the same pool of applicants.
45. The Association argues that successive Judicial Compensation Commissions (JCCs) in other jurisdictions have acknowledged that the greater the gap in remuneration between provincially and federally appointed Judges, the greater the likelihood highly qualified applicants will refrain from applying for a provincial appointment.



46. With respect to the fifth point, legal diversity, the Association relies upon the Steele Tribunal who stated:

... a Bench comprised of highly qualified professionals from varied practice backgrounds, in both the public and private sectors, would serve to reinforce a favourable public perception of the court.

47. In this regard, of the 22 full-time Judges, only eight (36%) were appointed from private practice with the remaining 64% having come from a pool of Crown lawyers or Legal Aid lawyers. Of the seven *per diem* Judges, only one was appointed from private practice. The Association points out that when this breakdown is compared with the Bar as a whole, the results are almost precisely the opposite: 65% of all lawyers are in private practice while only 20% are in Government.

48. The Province recognizes the importance of attracting excellent candidates, but urges the Tribunal to take care in considering this factor. In a novel argument, the Province says that if judicial remuneration is set too high, it may attract candidates who are simply interested in the salary or the pension rather than individuals who wish to serve society on the bench. In support of this, they cite the following from the *Report of the Canadian Bar Association Committee on the Independence of the Judiciary in Canada* (20 August 1984):

It is neither necessary nor desirable to establish judicial salaries at such a level as to match the Judges' earnings before appointment to the bench. The most obvious reason for this is that such a policy would tend to attract people to the bench for purely financial reasons. The sort of person who would accept a position on the bench because it paid well is not the sort of person who would make the best Judge.

49. While we appreciate the Province's position and agree with the passage quoted from the Canadian Bar Association to some degree, we are not concerned that an increase in Provincial Court Judges' remuneration in these circumstances will initiate a slippery slope of purely wealth seeking individuals to the bench. It may well cause such an increase in the number of such applicants; though, as the Association points out, such applicants will always be there. We are more confident that high quality candidates will have a much better chance of scoring highly through the application process than those individuals about whom the Province is concerned. We agree with the Association that there are too few members of the Bar from private practice comprising as members of the judiciary, but we are hesitant to draw a causal link between that and judicial remuneration absent direct evidence in respect of same.

50. Weighing the arguments of the Association and the Province on the points above, and bearing in mind the unique position of Provincial Court Judges in Newfoundland and Labrador described above, we take the view that in the present context this factor supports higher remuneration for Provincial Court Judges, but only to a limited extent.

### **Salaries of Other Relevant Groups of Society**

#### Comparison to Federal (s.96) Judges

51. The Association points to the gap between remuneration for Provincial Court Judges and that of federal (s. 96) Judges. They point out that all of these courts seek applications from the same pool of applicants.

52. The Association further argues that successive Judicial Compensation Commissions in other jurisdictions have acknowledged that the greater the gap in remuneration between provincially and federally appointed Judges, the greater the likelihood highly qualified applicants will refrain from applying for a provincial appointment.

53. The Province argues that there is little merit in using federal judicial salaries as a comparator as they are specifically designed to address the problem of attracting top candidates in Canada's largest cities where legal salaries are particularly high. They cite the Supreme Court of Canada in *Bodner* who they say recognized this in affirming the following passage from the New Brunswick Court of Appeal decision appealed from at paragraph 163:

...the Government of New Brunswick is justified in its contention that the Association's claim to salary parity with federally appointed puisne Judges is misguided. The federal salary is fixed by reference to factors that have no application in the provincial context. Specifically, the fact that the federal salary is uniform, so as not to reflect regional differences, and that it is set at a level that is capable of attracting qualified candidates in a major metropolitan areas throughout Canada, where salary levels are much higher than in the small urban centres, are factors that need not concern provincial remuneration commissions. Thus, the Government has identified a "factor" that justifies the existence of a salary differential between provincially and federally appointed Judges as contemplated by s. 22.03(6)(a.1).

54. Like the Andrews Tribunal before us, we do not believe the remuneration gap as it currently exists between Provincial Court Judges and federal (s.96) Judges deters excellent candidates from making an application to the Provincial Court of this province. We would not go as far as the Province does to say that the comparator is meaningless, as we believe it is possible for the gap to get so large as to actually deter highly qualified candidates from applying to be a Provincial Court Judge, but we do not accept that is the case now.

### Comparison to Deputy Ministers

55. The Province argues that the judiciary and the senior most levels of government are drawn from the same pool of highly qualified professionals, thereby making Deputy Ministers' compensation a highly relevant comparator group.
56. We do not agree. While candidates may be drawn from a similar pool, Deputy Ministers are not a good comparator group. Unlike Judges, their independence is not constitutionally enshrined. While their salaries may be one of the many factors to be considered in respect of Judges' compensation, they are not appropriate as direct comparators. As such, we are of a similar mind to that of the Andrews Tribunal, which stated the following at paragraph 44:

Like the Hoegg and Steele Tribunals, this Tribunal rejects the notion that compensation paid to Deputy Ministers is a highly appropriate or useful comparator when determining the compensation for Judges. While the compensation for Deputy Ministers is one of the many factors to consider in arriving at an appropriate salary recommendation, the Tribunal is of the view that this factor would be very low on the scale of importance.

### Comparison to Provincial Court Judges in Other Jurisdictions

57. The Province argues that the compensation level of Provincial Court Judges in other jurisdictions is a comparator frequently used by judicial compensation commissions in Canada. They say that while this is an important comparator, the level of compensation for Judges in this province must ultimately be determined by reviewing and weighing local economic realities.

58. The Province further argues that the Tribunal ought not to rely too heavily on the national average. In reaching their recommendations, tribunals in other jurisdictions would have utilized economic and labour market data relevant to their particular jurisdictions, but not to Newfoundland and Labrador.
59. Meanwhile, the Association argues the salary paid to Judges in Newfoundland and Labrador pale in comparison to those in other jurisdictions and that this is a significant factor. The Andrews Tribunal determined that the most relevant comparator group was Provincial Court Judges in the Maritime Provinces.
60. The Tribunal acknowledges the Province's argument; however, we note that in PEI the remuneration is set by, essentially, the national average of their provincial counterparts' salaries. In this regard, we say that the salary of Provincial Court Judges in other jurisdictions is extremely significant. However, as argued by the Province, we must take into account local realities as well. The Tribunal endeavours to balance these elements as appropriate in making its recommendations. The Tribunal has evidence before it of jurisdictions outside the Maritimes. However, unless there is insufficient evidence from the Maritime jurisdictions and/or an inappropriate distortion between the Maritime Provinces and the rest of Canada, the salaries of Provincial Court Judges jurisdictions across Canada are not in our view as relevant a comparator as the Maritime Provinces. In that regard, this Tribunal is consistent with the position of the Andrews Tribunal that the salaries and benefits of Provincial Court Judges of the Maritime Provinces are the most relevant comparator.

### Comparison to Private Lawyers

61. The Association submits that data obtained from sources such as Morneau Sobeco and the Canada Revenue Agency is clearly useful for comparison purposes but concedes it is notoriously difficult to obtain comprehensive and reliable data about the incomes of private lawyers.
62. However, as the Steele Tribunal stated, data such as this is at best to be looked upon as a general indicator of salary relationships.
63. The Province however argues that lawyers engaged in private practice must fund for their own pension, their own sick leave benefits, and long-term disability benefits whereas Judges do not. The Province further argues that in the case of pension, a private practitioner must set aside a considerable portion of their income for retirement purposes. Not only must members of the private bar pay 100% of their retirement, they must also bear the risks associated with self-directed retirement plans. This contrasts to Judges who are insulated from market fluctuations by virtue of their defined benefit pension plans.
64. A comparison to private lawyers would be a useful factor for consideration, taking into account the fact that they must invest a significant portion of their income to fund retirement savings while at the same time paying premiums for Long Term Disability Insurance policies. However, given the lack of reliable data available, it is not an overly useful consideration for this Tribunal.

## **Increases in the Cost of Living**

65. The Association retained an economist and Professor at Memorial University of Newfoundland, Dr. James P. Feehan, who provided a Report dated April 8, 2015 entitled “The Newfoundland and Labrador Economy and the Financial Position of its Provincial Government”. Dr. Feehan testified to this report’s findings before the Tribunal.
  
66. Between 2001 and 2012 Judges’ salaries have risen by 41% while the Consumer Price Index has increased by 27%. The Consumer Price Index (CPI) tracks changes in the cost of a fixed basket of consumer goods on a monthly basis and is a sound measurement of inflation. The Association says that the gains made by Judges over increases in the cost of living pales in comparison to the gains made by workers generally, as evidenced by a 56.2% increase in average weekly earnings over the same period. As explained by Dr. Feehan, weekly earnings have moved higher than the national average and become the second highest among the provinces.
  
67. On the other hand, the Province argues that from 1996 to 2012 Judges’ salaries have increased by 88.4% while CPI increased by 37%. In this regard, the Province says there can be no concern that their salaries are being eroded by inflation.
  
68. The Association replies that that those figures are misleading. They say they are misleading firstly because they include a 3.8% adjustment recommended by the Steele Tribunal in recognition of extra duties Judges undertook at that time. The Andrews Tribunal

appropriately disregarded this 3.8% adjustment in comparing the general increase in salary to increases in CPI at paragraph 39:

The Tribunal notes that in making this calculation, the Province included in the salary increases the 3.8% adjustment in 2006 [sic] for assuming the duties formerly performed by Justices of the Peace. The Tribunal does not accept that this 3.8% increase, which reflected an increase in duties, should be considered when comparing the general increase in salary to the increases in CPI.

69. The second problem with the Province's figures, according to the Association, is that 1996 is not a fair starting point when comparing judicial salaries. They say that the increases over the period of 1996 to 1999 were enlarged and distorted by the fact that the Hoegg Tribunal implemented a substantial catch up to make up for the fact that compensation had not been adjusted since the Court of Appeal ordered implementation of the Whalen Tribunal's recommendations for the period 1992 to 1995.
70. The Association says that with their proposed increases, effective April 1, 2015, Provincial Court Judges' salaries would increase 60.0% over the 2000 salary, which is less than the 66.8% increase in average weekly earnings between 2000 and 2014.
71. In fact, the evidence, including that of Dr. Feehan, suggests there is concern to be had and as such, this Tribunal is persuaded by the Association's submissions on this point. In light of this, the Tribunal does not accept the Province's position that there can be no concern that Provincial Court Judge salaries are being eroded by inflation.



## **Fiscal Capacity of Government in Light of Current Economic Conditions**

72. Like the cost of living factor, the Association relies in large part on expert evidence from Dr. Feehan in respect of the Province's fiscal capacity. In relying on this evidence, the Association argues that since the early 2000s, Newfoundland and Labrador has undergone a financial transformation that has resulted in improvements to the strength and provincial economy along with the financial position of government.
73. The Association concedes that Newfoundland and Labrador had been impacted by the reduction in global oil prices but maintains its economy is strong and will continue to be so. However, the Association spent much time arguing that Newfoundland and Labrador's fiscal capacity is much greater than it was in the early 2000s. In our view, this is not a controversial point.
74. The Association points out that this Tribunal is mandated to make recommendations for the period of April 1, 2013 to March 31, 2017 and that it must consider what has already occurred (about which evidence readily exists) in addition to what is expected to occur in the upcoming years, to the extent that data allows us to predict the future.
75. According to Dr. Feehan's evidence, after a number of years of significant increases and improvements to the economy, the near to medium term forecasts predict a decline in the provincial economy. The evidence suggests that real GDP growth is expected to have plateaued in 2014 and that there will be a decline in real GDP over the three year period of

2014-2016. The Association argues that while the GDP is expected to decline, the significant gains realized in previous years will offset those declines to some degree.

76. Dr. Feehan commented that the recent decline in the global price of crude oil has been dramatic, but also noted that such swings in prices are common. Further, in his testimony, Dr. Feehan explained that the decline in the price of oil will have little impact on oil production in the province, which matters in the context of oil royalty revenues to the Province:

Oil production will increase and continue to do so with the addition of Hebron. The result will be an increase in oil production from about 80 million barrels in 2014 to more than 100 million by 2018. Thereafter, production will peak at almost 120 barrels and stay at more than 100 million until around 2023. As technology for recovery of oil improves, it is reasonable to expect that production may be even higher. This increased production will add to real GDP.

77. In this regard, the Association says that while oil prices are lower, the increased production will mitigate the damage while the possibility also remains that improvements in the global price of oil could bring in additional revenues as well.
78. While stressing the improvements in the Newfoundland and Labrador economy over the last 10-15 years, the Association concedes there are two recent developments that affected the provincial government's current and medium term financial status.
79. The first is the loss of the Atlantic Accord payments that ended at the conclusion of the 2011/2012 fiscal year. Those payments accounted for a large part of past provincial budget surpluses and the end of those payments has resulted in the Province running budgetary

deficits in subsequent years. The Association concedes this trend is expected to continue in the medium term.

80. The second development is the drop in the price of oil. Dr. Feehan stated that the Province will have to take “some short term measures to avoid a serious deterioration in its financial position”.

81. Despite these developments, as alluded to earlier, Dr. Feehan explains there are two main reasons to believe the Province can maintain a solid financial position in the medium term: first, offshore oil revenues will remain substantial; second, increased production will bring in more oil royalty revenues.

82. The Province paints a bleaker picture than the Association. In relying in large part on the March 2014 Auditor General’s Report and the Province’s Economic Review 2014 released in December 2014, the Province says it has recently experienced an economic downturn. The Province argues this has a direct impact on the salaries and benefits of those paid from the public purse, whether they are civil servants, members of the Legislature or Judges of the Provincial Court.

83. In making this argument, the Province relies principally on the following factors: net provincial debt (including debt expenses), cost of public services, and the apparent vulnerability of Newfoundland and Labrador’s future financial position.

84. The Province argues that debt is an important consideration as it has two repercussions: the first being the annual cost of servicing the debt and the second being the need for debt reduction. With respect to these points, the Province argues that it must reduce debt in order to reduce its servicing costs. Therefore, says the Province, they must be in a position to run a significant and consistent surplus for decades.
85. The Province says its net debt presently stands at \$9.1 billion dollars; a 1.2 billion dollar increase from its low point in 2011-2012. Further, the Province argues its debt will exceed \$10 billion in 2015.
86. Regarding the cost of public services, the Province argues they are in a more difficult position than other provinces to provide these services adequately. Indeed, the Province must deliver public services to a relatively small population dispersed over a large geographical area. The Province points out that Newfoundland and Labrador has a longstanding history of program delivery costs that exceed the national average; currently approximately 45% higher than the average of other provinces.
87. With respect to the vulnerability of Newfoundland and Labrador's future financial position, the Province points out it relies less on federal money and that offshore oil revenues are declining as well.
88. In response to the above points, the Association argues that the Province ignores the distinction between fiscal capacity and the fiscal position of government. The Association

says its goal is to depoliticize the setting of judicial compensation and thus fiscal capacity is the key consideration.

89. The Association stressed that this Tribunal is not to make its recommendations based on the current snapshot in time. We agree to an extent. While we are not to make our recommendations solely on the current circumstances, we cannot ignore them in assessing government's overall fiscal capacity.

90. Indeed, if this Tribunal had been convened when it was supposed to have been, the snapshot approach would support larger gains for Provincial Court Judges in this province as the economic data at that time would paint a much more optimistic picture than it does today.

91. Given the nature of the Tribunal's mandate, it is not appropriate to rely on economic evidence representing only a snapshot in time. In recognizing, as recent history has shown, that economic conditions can change rapidly, we feel it necessary to consider general economic trends over time in order to avoid prejudice to either party. Included in our consideration of general economic trends is what we retrospectively know about the period of our mandate prior to our appointment, the current economic situation, and the prospective evidence the expectations for future economic conditions before us.

92. We also cannot ignore the Province's most recent budget documents, entitled Budget 2015 – Balancing Choices for a Promising Future. Despite the submissions of the Province that it is experiencing severe financial strain, the narrative contained in this budget document

contradicts this position and instead indicates that the Province anticipates having significant fiscal capacity in the future. In effect, the Province is richer than it thinks. An example of this phenomenon is contained in the Minister's statements within the Budget document:

The situation we find ourselves in now is a temporary one – caused by a global downturn in oil. We are managing our way through, but prudent fiscal management demands gradual change to avoid harming the province's economic system. Newfoundland and Labrador will make a full recovery from the fiscal challenges now being faced.

93. In addition, the Province noted the following economic highlights in its budget (all emphasis in the original document):

Newfoundland and Labrador will maintain a competitive overall tax regime with the lowest personal income tax rates in Atlantic Canada and the third lowest top marginal rate in Canada, behind Alberta and Saskatchewan.

After 10 years of significant growth, economic conditions in Newfoundland and Labrador have weakened but are expected to rebound by 2019.

The tremendous potential of Newfoundland and Labrador's offshore oil resources also bodes well for the economic future of the province.

...

The **future prospects of Newfoundland and Labrador are strong**, based in large part on the strength of our oil and gas industry.

After **10 years of significant growth**, economic conditions in Newfoundland and Labrador have slowed due to weaker commodity markets but are expected to rebound by 2019.

Nonetheless, major economic indicators continue to show strong results when compared to 2015 and this provinces continues to **boast the highest income levels** in its history and comparatively high employment levels.

The **tremendous potential** of Newfoundland and Labrador's offshore oil resources also bodes well for the economic future of the province

94. In concluding the analysis of this final factor, the Tribunal acknowledges the political context of the above statements, yet we cannot ignore how strikingly similar they are to the expert evidence of Dr. Feehan. While this Tribunal takes into account the current difficulties in not recommending what we in all likelihood would have recommended had the Tribunal been appointed and reported in 2013, we must balance this by also taking into account the apparent temporary nature of the present economic difficulties based upon the evidence presented by both the Province and the Association at the hearings held in late May of this year. We feel compelled, however, to note (though we have no evidence before us about it given the fact that hearings were held in May) recent media reports indicating that the provincial deficit for the 2015-2016 fiscal year is now projected to markedly increase to \$1.8 billion dollars.

#### **Summary of Factors Considered Analysis**

95. In setting the context of the coming recommendations, we have analyzed five key factors which varied in respective determinative weight:

- The Nature and Importance of the Work Performed by Provincial Court Judges and Their Unique Role and Responsibility in our Society
- The Need to Attract, Motivate and Retain the Most Highly Qualified Candidates from all Areas of Practice
- Salaries of Other Relevant Groups of Society
- Increases in the Cost of Living
- The Fiscal Capacity of Government in light of Current Economic Conditions

96. As to the first factor, “The Nature and Importance of the Work Performed by Provincial Court Judges and Their Unique Role and Responsibility in our Society”, we determined that this factor was illuminating and important to remember, but low on the scale of importance

in respect of its determinative value for this Tribunal's decision making in the present circumstances.

97. We recognized that Newfoundland and Labrador presents unique challenges for Provincial Court Judges, but also recognized these challenges manifest themselves for the Province as well with respect to its fiscal capacity (the fifth factor).
98. We also recognized that Provincial Court Judges in Newfoundland and Labrador have more responsibilities than Judges in comparator Provinces but note that the Province implemented the Steele Tribunal recommendation for a 3.8% salary adjustment for Provincial Court Judges to account for this.
99. While the Provincial Court has seen the breadth of its civil jurisdiction increase and the travel requirements for its judges become more arduous, we take the view that the other four factors should be given greater weight in our recommendations.
100. With respect to the second factor, "The Need to Attract, Motivate and Retain the Most Highly Qualified Candidates from all Areas of Practice", we determined it was a significant factor in determining the appropriate level of remuneration and took the view that this factor generally supports higher remuneration for Provincial Court Judges in the circumstances, but to a limited extent.



101. However, we accorded this factor with less weight than what we would have done had there been sufficient evidence of a causal relationship between remuneration (or lack thereof) and the lack of private practitioners appointed to the bench.
102. Regarding the third factor, “Salaries of Other Relevant Groups of Society”, this Tribunal found that the salary and benefits of Provincial Court Judges of the Maritime Provinces are the most relevant comparator and, to that end, accord significant weight to this comparison in our determinations below. This supports the determination that higher remuneration is necessary for Provincial Court Judges.
103. With respect to the fourth factor, “Increases in the Cost of Living”, the evidence of Dr. Feehan persuaded this Tribunal that inflation is eroding Provincial Court Judge salaries. This too supports the argument that higher remuneration is necessary for Provincial Court Judges.
104. Finally, on the fifth and perhaps most controversial factor, “The Fiscal Capacity of Government in light of Current Economic Conditions”, this Tribunal recognized the present economic difficulties faced by the Province but weighed that against the expert evidence, in addition to the documentary evidence, which suggested these difficulties were temporary in nature. In that light, this Tribunal is not recommending what it in all likelihood would have had it been reporting in 2013 as was originally intended, but the evidence before us at the hearings in May nonetheless indicates that the Province has the fiscal capacity to ensure financial security of Provincial Court Judges.

105. These five factors, as explained, are crucial indicators in determining how to maintain financial security and thereby, judicial independence. Our analysis of each factor supported higher remuneration for Provincial Court Judges. The foregoing informs the analysis of the evidence flowing into each of the below recommendations.

## PART 5:

### RECOMMENDATIONS

106. The Association and the Province made submissions to this Tribunal to make recommendations on the following areas respecting judicial financial security:

- Salary
- Per Diem Judges
- Interest
- Pension
- Paid Sick Leave and Disability Benefits
- Professional Allowance
- Judicial Indemnity Policy
- Bereavement Leave

#### Salary

107. The Association makes the following recommendations from this Tribunal with respect to salary:

- That the following salary increases shall apply to *puisne* Judges:
  - Effective April 1, 2013 until March 31, 2015, the salary of a *puisne* Judge shall remain at the current salary of \$215,732;
  - Effective April 1, 2015, the salary shall be increased to \$240,000 per annum (an 11.2% increase);
  - Effective April 1, 2016, the salary shall be increased to \$247,200 (a further 3.1% increase).

- These recommendations shall apply to all who were *puisne* Judges as at or after April 1, 2013, including those who later retired or otherwise left the Bench prior to the implementation of the recommendations.

108. The Province makes the following recommendation:

- Salaries should not be increased for fiscal years of 2013/14 and 2014/15. Salaries should be increased by 2% to \$220,047 effective April 1, 2015 with a further 3% increase on April 1, 2016 to \$226,648.

109. The Association's proposal involves an initial two-year salary freeze to share the Province's temporary financial pain, at a level that is the lowest of all Judges across the country except for those in New Brunswick. It then proposes an 11.2% increase to a level which they say is at relative parity with the salaries paid to Judges in the Maritime Provinces (the best comparator group) with a further 3.1% increase on April 1<sup>st</sup> 2016 (for the last year of this Tribunal's mandate) to ensure that this relationship with the Maritime Provinces continues.

110. The Association supported this with a position already endorsed by this Tribunal above, in that in comparing the salaries of Judges here to those in Maritime Provinces, we cannot include the 3.8% adjustment the Provincial Court Judges received from the Steele Tribunal in recognition of the increased duties and responsibilities unique to Judges in this jurisdiction.

111. The Association argues that even without discounting the salary to reflect that other Judges do not perform the weekend, holiday and on-call duties of Newfoundland and Labrador Provincial Court Judges, it is apparent that judicial salaries in Newfoundland and Labrador

lag substantially behind the salaries of Judges in all other jurisdictions except New Brunswick.

112. The Association points out that the Andrews Tribunal identified the salaries of Judges in the Maritime Provinces as one of the primary considerations and as stated above, we agree with this approach. The Andrews tribunal recommended a salary figure in 2009 that was just shy of the Maritime average. The Association submits that the 2015 Maritime Average is approximately \$242,000.

113. With respect to other Judges in the Atlantic region, the Province submits the 2014 Atlantic Average as \$222,851. This figure is incorrect for a number of reasons. The first is that it includes Newfoundland and Labrador judicial salaries. We are of the same mind as the Andrews Tribunal was at paragraph 82 in saying that it is inappropriate to include the salaries of Newfoundland Provincial Court Judges to create an Atlantic Average:

With respect to the crucial consideration of salary comparisons, the Tribunal accepts that it would not be appropriate to include the dated salary of Judges in this province as part of an Atlantic Provinces' average. The Tribunal accepts the most relevant comparator group is the Provincial Court Judges of the Atlantic Provinces, absent the Province of Newfoundland and Labrador, ie. The Maritime Provinces

114. That figure is also incorrect as it only considers the year 2014. It also fails to take into account the pay increase recently given to Judges in New Brunswick in light of that province's 2012 JRC Report (which, in fairness to the Province, was not available at the time of submission to this Tribunal), dated June 4, 2015. In that report, the Commission recommended New Brunswick Judges receive salary increases of 5% in 2012, 4% in 2013,

4% in 2014 and 4% in 2015 resulting in a 2015 salary of \$241,800.00. However, the Government of New Brunswick instead proceeded by setting provincial judicial salaries at 80% of the salary of their federally appointed counterparts for the year beginning April 1, 2015 with no retroactivity. This results in a current salary for New Brunswick Provincial Court Judges of \$246,400.00.

115. The Province agrees with the Association in saying that the Maritime Judges are the most logical comparator. However, the Province argues that its position would put our Provincial Court Judges in relative parity with those in the Atlantic region (which, in our view, incorrectly includes Newfoundland Provincial Court Judges within the calculation to create an Atlantic Average as opposed to a Maritime Average).
  
116. It appears that both parties agree that as a matter of principle, at the very least, relative parity ought to exist between our Provincial Court Judges and the Maritime Average. In light of the foregoing, this Tribunal accepts the Association's calculation that the Maritime average for the purposes of this analysis is \$242,220.00. In so doing, we recalculate the Province's position of the percentage differential it argued would constitute relative parity based on the Atlantic Average by reference instead to the Maritime Average.
  
117. The Province recommended an increase for 2015 to \$220,047.00 in their calculation to arrive at relative parity based on the Atlantic Average at \$222,851.00; a differential of 1.3%. Therefore, if the Province's own 1.3% estimation of relative parity was applied instead to the Maritime Average (which the Tribunal finds to be the most appropriate comparator), we

have an appropriate figure for the Province's position. This Tribunal says that the Province's relative parity position would result in a salary of 1.3% less than \$242,220 (the Maritime Average) for the year beginning April 1, 2015. This calculates to approximately \$239,071.14. This is within \$1000 of the Association's position.

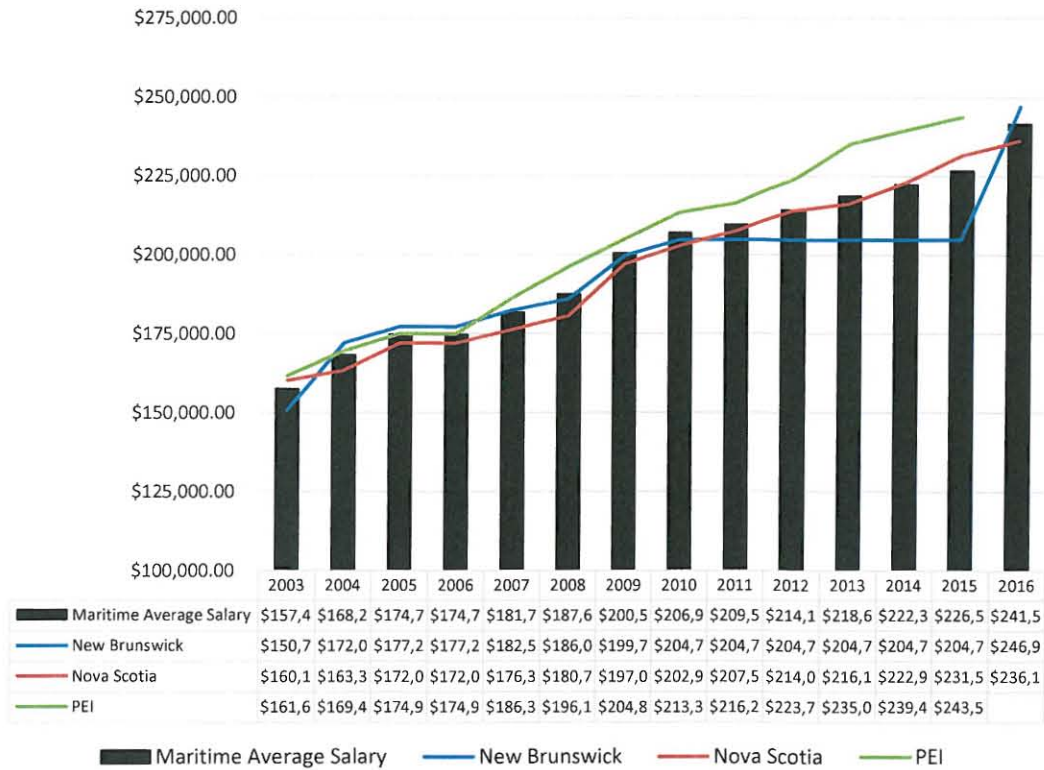
118. The Association also relies on comparison to the salaries of federal (s.96) Judges in its argument. As we determined above, this Tribunal does not consider this a significant factor at the present time.
119. With respect to other jurisdictions (including the provinces outside the Maritimes), the Association argues that its recommendation would place salaries of Newfoundland and Labrador Provincial Court Judges generally in line with the salaries in six sample jurisdictions including British Columbia, Saskatchewan, Manitoba, Nova Scotia, New Brunswick, and Quebec.
120. The Province argues that we are not to place too much weight on the national average as those numbers are tied to economic and labour market data relevant to their particular jurisdictions. While this Tribunal agrees that is the case, provincial economic and labour conditions are taken into account in realizing the fiscal capacity of the Province. Other jurisdictions are but one factor considered among a multitude of others; including the fiscal capacity of the Province.
121. While the Tribunal acknowledges the Association's submission that its recommendations are in line with the national average, as stated above, we do not feel that a lot hinges on this.

Absent a significant departure from the national average, such that it might give rise to consideration of the judicial compensation principle which says salaries cannot fall below a minimum level of financial security (an essential condition of Judicial Independence), this is not a determinative factor in the present context.

122. Both the Association and the Province made submissions with respect to Deputy Ministers or other senior servants as a comparator group. In remaining consistent with our discussion of the principles above, and in agreeance with the Andrews Report, we do not feel that is a useful comparator group in that context. Indeed, it is part of the principle of judicial independence that Judges' salaries cannot be determined based on bargaining power. To use civil servant salaries, absent exceptional circumstances such as Judges' salaries being *far* below that of civil servants, would be to render Tribunals such as these as mere mediators. Our role is to make recommendations based on objective criteria and as such, we do not place significant weight on this point.

123. In light of the above, the Tribunal concluded that it would be appropriate to consider the salary of Provincial Court Judges in the Maritime region as the most relevant comparator. Figure 1 provides an analysis of the Maritime region salary from 2003-2016, based on data provided to the Tribunal. Annualized growth rates for the Maritime region between 2003-2015, as presented to the Tribunal are: NB – 4.05%, NS – 3.05%, PEI – 3.49%, and NL – 3.13%. Taking the Maritime Provinces separately, the average annualized growth rate in the region was 3.53%.

Figure 1 - Salary Figures by Jurisdiction (2003-2016)



124. In accordance with the analysis above, the data with respect to salaries of the private bar is unreliable therefore we do not place significant weight on the comparison with private lawyers. While it could potentially be a useful comparator, the data involved is simply not reliable. Further, even if it were reliable, we would also have to take into account the fact that private lawyers, for the most part, bear the responsibilities and risks of managing their own pensions and benefits.

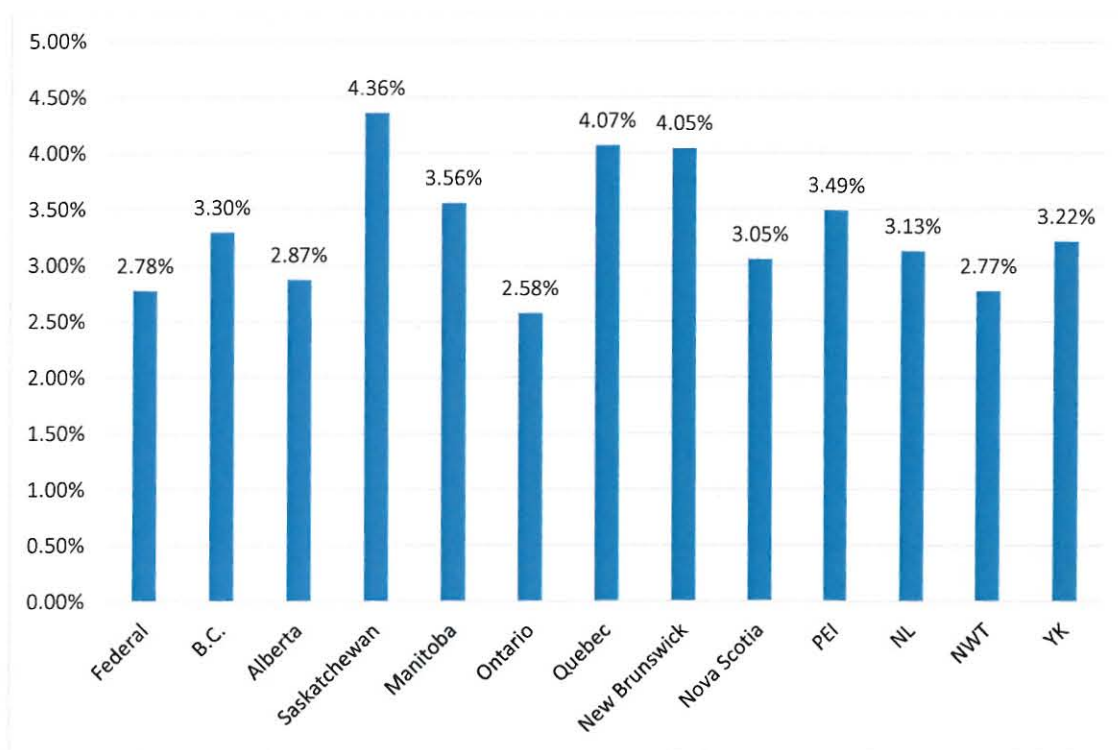
125. Regarding the current fiscal capacity and economic conditions in the Province, we have concluded that there are presently difficulties but also that the evidence suggests they are temporary. The majority of the analysis thus far points in the direction of more



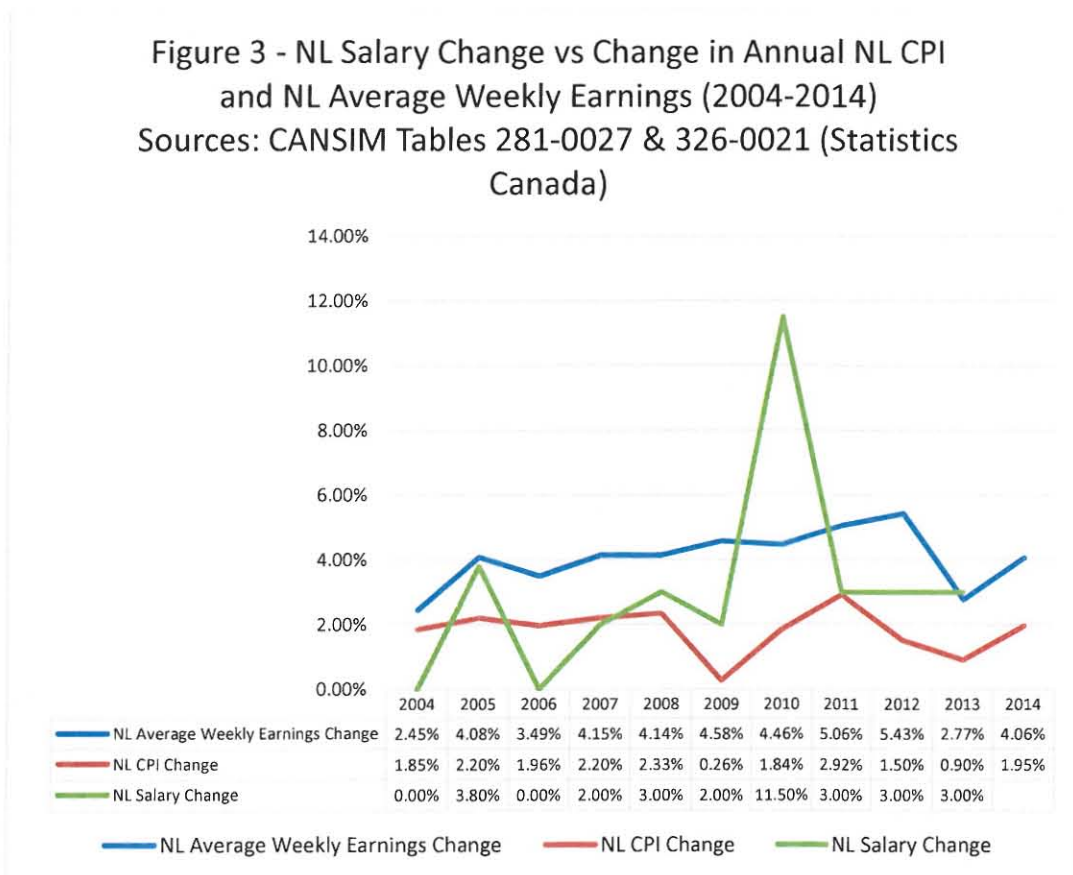
compensation for Provincial Court Judges, but we must also take into account the present difficulties the Province is facing. Given the economic realities of the province and the success of its oil industry, had the Tribunal been appointed and reported in 2013 as scheduled, we may well have made recommendations *beyond* the Maritime average.

126. The Tribunal also examined average salary growth rates across all Canadian jurisdictions between 2004-2016, again, based on information provided to the Tribunal. Figure 2 provides the average growth rate for each jurisdiction for the period. The Tribunal notes that while some jurisdictions experienced significant increases in particular years, examining the average growth rate over a medium time horizon provides a reasonable estimate of average growth rate across jurisdictions. The Tribunal notes that the average growth rate across all jurisdictions between 2004 – 2016 is 3.3%.

**Figure 2: Jurisdictional Growth Rate**



127. Figure 3, below, provides the annual change in CIP and Average Weekly Earnings as compared to the percentage change in Provincial Court Judges' salaries. Between 2004 and 2014, Weekly Earnings had an annualized growth rate of 3.87%; CPI had an annualized growth rate of 1.82%; and, salaries increased at an annualized growth rate of 3.13%. Weekly Earnings have increased dramatically during this period; however, the Tribunal concludes that the accelerated growth rate for Weekly Salaries can be causally linked to the resource development boom in the Province and that decision makers should tread cautiously when drawing parallels between the inherent risky resource extraction sector and the judiciary.



128. In recognizing the apparent short-term difficulties, the Association itself recognizes a duty to share the pain. The Association recommended a freeze for the period of 2013 and 2014. We

do not feel, in accordance with the principles and analysis above, that it is appropriate, as in light of the Maritime average, Provincial Court Judges' salaries have been lagging for some time. We do not see the justification for that. In addition, we find that there is fiscal capacity for the Province to compensate Provincial Court Judges in line with Maritime counterparts and that salary increases are necessary to continue attracting highly qualified candidates and to account for increased costs of living.

129. In keeping with the above analysis, and relying in large part on the Maritime average while discounting for the present economic difficulties (which have only recently arisen part way through the 2013-2017 timeframe for this Tribunal), the Tribunal makes the salary recommendation which follows. In our view, we cannot ignore the fact that we now know: prior to the recent and unexpected decline in the price of oil, which has adversely affected the economic situation of the province, the fiscal capacity of the province was very large. Based upon that (and notwithstanding the positions of the parties that there ought to be no increase for those two years of our mandate), the Tribunal recommends the salary of Provincial Court Judges be increased by 3% effective April 1, 2013 and a further 3% by April, 1 2014. For the 2015 and 2016 years of our mandate, we recommend further increases of 4% in each year. Past increases would be paid to Provincial Court Judges retroactively.

130. These recommendations represent a collective increase of 14% over this Tribunal's mandate. We recognize that this comes close to accepting the Associations position though, for the reasons stated above, we prefer periodic increases throughout our mandate to arrive at relative parity with maritime Provincial Court Judges.

131. While we recognize the Province's position that a much lower increase is appropriate, we cannot help but note that their position reflects exactly the increase afforded to provincial civil servants over this timeframe. This is not an appropriate comparator based upon the principles we are required to follow. Nor do the economic circumstance of the Province (viewed in their totality as referred to above) through our mandate justify an increase limited to 5% over four years. In our view the Tribunal's salary recommendation balances the brighter economic situation in the first two years of our mandate, with the more challenging (but according to the evidence presented to us, a relatively brief downturn in our provincial economic circumstances before returning to previous levels) with the need for relative parity with Maritime Provincial Court Judges.

132. In monetary terms, this would provide for the following salaries in each year of the Tribunal's mandate:

- 2013: \$222,203.96
- 2014: \$228,870.09
- 2015: \$238,024.88
- 2016: \$247,545.88

### **Per Diem Judges**

133. The Association requests a recommendation with respect to *per diem* Judges as follows:

- Effective April 1, 2013, the *per diem* rate shall be increased to 1/223 from the current 1/248. This recommendation shall apply to all who were *per diem* Judges as at or after that date regardless of whether they later retired or otherwise left the bench.
- *Per diem* Judges shall receive the full *per diem* rate when a court day is cancelled within one business day prior to commencement.

134. The Province recommends no modification to the current *per diem* rate.

135. The Association argues that the Province, without the recommendations of a Tribunal, unilaterally determined the current level of compensation for *per diem* Judges.
136. *Per diem* Judges are an important part of the judiciary as they may need to step in to compensate for annual vacations for other Judges, departure from the Bench due to appointment to a federal (s.96) bench, prolonged illness, or death of an existing Provincial Court Judge, Provincial Court Judges who must take sick leave, among other things.
137. The Association argues that *per diem* Judges allow the Provincial Court much needed flexibility while simultaneously representing a cost saving for government as *per diem* Judges do not accrue pension.
138. The Association says that the current rate of 1/248 of the salary of a full-time Judge is derived from the following calculation: 365 days in a year minus 104 weekend days in a year minus 13 statutory holidays equaling 248 days.
139. The Association argues that this fails to account for the 30 days of vacation to which full time Judges are entitled as part of their salary. They also argue that it fails to take into account the time full-time Judges spend working in the Weekend and Statutory Holiday Court plus after-hours on-call duties. This results in a *per diem* Judge being paid less than his or her full-time counterparts.

140. The Association therefore recommends a rate of 1/223, calculated as follows: 365 days in a year minus 104 weekend days in a year minus 13 statutory holidays minus 30 vacation days plus 5 after hours/ WASH days equaling 223 days. The Association argues this more accurately reflects what a day of judging is worth. This is also in line with other Maritime jurisdictions such as Nova Scotia who pays on the basis of 1/219 or Prince Edward Island who pay on the basis of 1/220.

141. As pointed out by the Association, a 2002 JCC in Nova Scotia explained at page 29:

[t]he starting principle must be that per diem Judges are entitled to be compensated at a level which reflects the current worth of a day's judging, and to be paid in relation to the work which they actually do, balanced by some appreciation of the opportunity cost notion.

142. A 2011 JCC in Manitoba reasoned similarly at page 100, saying:

This method of calculating the value of a day's work is logical, fair and reasonable. It properly takes into account the number of working days by properly excluding weekends, statutory holidays and vacations.

Further, it is consistent with the method used to calculate per diems in at least six other jurisdictions who have considered the issue and determined it to be the appropriate method of calculation.

143. On the other hand, the Province argues that *per diem* Judges are not entitled to vacation leave and have the benefit of choosing when and if they will sit on the bench. Thus, in their view, vacation leave should not be factored into their rate of pay. The Province argues that vacation leave is not factored into the *per diem* rate in either Quebec or New Brunswick.

144. The Association replies that under the 2012 salary of \$215,732, a full-time Judge receives approximately \$967 per day in salary based on the notion that full-time Judges work approximately 223 days per year. *Per diem* Judges make \$870 per day. The Association argues this is an inequity that requires rectification. However, the Association failed to take into account that *per diem* Judges are not subject to deductions for pensions and other benefits.
145. The Association further argues that there ought to be a 24-hour notice period before a *per diem* Judge before a court day is cancelled. The Association points out that it is common for trials or hearings to be cancelled just before a scheduled sitting, meaning that *per diem* Judges who have already spent time preparing to hear the matter or have arranged their affairs to hear the matter are left uncompensated for cancelled sittings. The Association points out those similar recommendations were accepted in Nova Scotia, Saskatchewan, and Alberta.
146. In light of the above arguments, and taking into account the over-arching principles and factors that go into our determinations, we as a Tribunal recommend the following: (i) that there be no change from the current 1/248 formula; and (ii) that Per Diem Judges be paid for any sitting cancelled within 24 hours of the scheduled sitting date and time.

### **Interest on Retroactive Payments**

147. The Association seeks the following recommendations with respect to interest on retroactive payments:
- Simple interest shall be paid, from April 1, 2013, to the date of retroactive payment of salary increase(s) including the differentials for the administrative Judges and related per diems for part-time Judges. The interest should be paid based on the interest rate established by s. 4(2) of the *Judgment Interest Act*, RSNL

1990, c. J-2 and the Regulations thereunder. This recommendation should apply to all who were Judges as at April 1, 2013 or thereafter, regardless of whether they subsequently left the Bench due to retirement or otherwise.

- Prejudgment interest shall be payable from April 1, 2013 to the date the salary and per diem recommendations are implemented, and post-judgment interest should be payable from that date to the date that Judges are paid the retroactive adjustments.

148. The Province argues that there ought to be no interest on any retroactive payments.

149. The Association supports this request with an undeniable fact, which was stated eloquently by the Steele Tribunal: “there is a history of lethargy on the part of the Province – including the legislature – in dealing with Tribunal matters.”

150. Previous Tribunals have outlined this history of lethargy and, while significant and noted in other areas of this report, we need not repeat it here.

151. Despite this history of lethargy, the Andrews Tribunal rejected the request that interest be paid but recognized very important needs that we echo: timeliness; earlier appointments of Tribunal members; earlier commencement of the Tribunal process; readiness of the parties to proceed in a timely fashion; and, the need to adhere to agreed upon timelines. After recognizing these important needs, the Andrews Tribunal recommended at paragraph 101:

...that the timeframes stipulated in the Provincial Court Act related to the appointment of a tribunal should be reassessed to provide for the appointment of subsequent tribunals six months in advance of the commencement of the respective mandate period.

152. The Province did not implement this recommendation. The Association argues the Province ignored it and the evidence supports this. In fact, the Province willfully delayed the process



as evidenced in part by the following statement made by the Minister of Justice in the legislature on March 30, 2015:

Subsequent to that, Mr. Speaker, the next report on salaries and benefits was required to have been presented to the minister by September 3, 2014. Throughout the fall of 2014, however, government was engaged in ongoing negotiations related to reform of the Public Service Pension Plan. As we all know, government and unions negotiated a pension agreement at that time that addressed a huge financial problem that we had with the unfunded pension plans. It took a lot of work, a lot of negotiation, and was heralded when it was announced.

Mr. Speaker, given that Judges' pensions are also part of the tribunal's considerations, it was prudent to have those pension discussions and agreements out of the way before we commenced the review of the Judges' benefits because pensions will be a part of the review as well (emphasis added).

153. The Province argued that, in accordance with its Compensation Policy and Procedures Manual, there is no payment of interest on retroactive salary adjustments. The Province suggests that this Manual has application to Judges but we note that it explicitly refers to employees. To suggest this Manual's application is so broad as to include Judges would imply that they are employees of the government. Such a proposition is *prima facie* untenable in light of judicial independence, in particular the second component of financial security as described by the Supreme Court of Canada in the *PEI Reference*. Judges are not employees of government; rather, they are an independent branch of government. Neither the Province nor the Association clarified the applicability of the Manual and we therefore place little weight on it.
154. The Association stressed that they do not seek interest as a punitive measure; rather, they are seeking a "symbolic measure... as a make whole remedy that recognizes that the governments have the use of the money and that it controls the process".

155. Both the Association and the Province agreed that recommending interest is not without precedent. The 2008 Manitoba JCC Report made such a recommendation and it was upheld by the Manitoba Court of Queen's Bench in *Provincial Judges Assn. of Manitoba v. Manitoba*, 2012 MBQB 79, 2012 CarswellMan 122 and again in the Manitoba Court of Appeal in *Provincial Judges Assn. of Manitoba v. Manitoba*, 2013 MBCA 74, 2013 CarswellMan 440. We note that these precedents were not available to the Andrews Tribunal. However, Tribunals do not have carte blanche to award interest whenever they wish. As stated in paragraph 145 of the Court of Appeal's decision, a Tribunal's authorization to award interest is implied from the wording of the statute along with the structure and purpose of the statutory body. To award interest must be done in accordance with the Tribunal's statutory grant of authority.

156. The chronic and willful delays are policy problems, and while they may also be financial security problems which falls within this Tribunal's mandate, the Association asks this Tribunal to award interest for policy reasons. To award interest on those payments in the name of symbolism is unjustifiable. While the Association otherwise doggedly implores us to look only at the objective factors discussed above, here they ask us to look beyond those factors to make a policy statement with financial ramifications. While interest may be appropriate for *bona fide* compensation or benefits reasons, it is inappropriate as a symbolic mechanism to change or enforce policy and/or legislation.

157. Just as the Andrews Tribunal and the Steele Tribunal were aware, we are aware of the lengthy delays that have plagued this process. However, section 28 of the Act empowers this Tribunal to prepare a report containing recommendations on the salaries and benefits of

Judges and the Chief Judge. Making symbolic statements with financial repercussions, however small, does not fall within that mandate.

158. Thus, we are of a similar mind, in these circumstances, as the Andrews Tribunal in repeating the federal Block Commission, which stated at page 39 paragraph 124:

We do not support the payment of interest on retroactive salary adjustments. It is our view that such payments are unnecessary to the maintenance of an adequate judicial salary; that they would not materially contribute to the financial security of the judiciary in ensuring judicial independence or to the attraction of outstanding candidates to the judiciary. We do however encourage the parties to pursue the development of policy options that might expedite the implementation of Commission recommendations.

159. The Tribunal therefore does not recommend interest on retroactive payments in these circumstances. Had we not recommended a series of regular increases over the four years of our mandate (as opposed to a larger increases beginning in the third year of the mandate), we may have come to a different conclusion on this issue.

## **Pension**

160. The Association initially made no submissions with respect to pension. However, the Province proposed significant changes. The Province requested as follows:

- Pension benefits at retirement should be calculated on best six years
- The contribution rate should be increased to 11.85%
- No indexing on new accruals

161. Presently, as the Province points out, there are two distinct regimes for judicial pensions: five Judges participate in the Public Service Pension Plan (PSPP) and 17 Judges participate in the Provincial Court Judges Pension Plan (PCJPP).
162. Under the PCJPP, pension benefits are calculated on final salary, Judges contribute 9% to their pension, and pension benefits are stacked on top of the Canada Pension Plan (CPP). Under the PSPP, pension benefits are calculated on the best five years and Judges contribute 8.6% on the first \$3500; 6.8% on income between \$3500 and \$53,600; and 8.6% on income over \$53,600. Under both the PSPP and the PCJPP pensions are indexed at 60% of the CIP to a maximum of 1.2%.
163. The Province argues that in light of its economic difficulties, including the deteriorating ratio of net debt to GDP along with the high cost of debt servicing and public services, it recently had to make changes in the Public Service Pension Plan for civil servants. These changes included:
- No indexing on accruals starting January 1, 2015
  - Contributions increased to: 10.75% of that portion of salary which is the basic exemption under the Canada Pension Plan; 8.95% of that portion of salary in excess of the basic exemption up to and including the YMPE; 11.85% of the portion of his or her salary which is in excess of the YMPE.
  - Rate of benefit based on average of best six years as opposed to best five years.
164. The Province essentially argues that it must bring judicial pension plans in line with the civil service plan. The Province argues it is fiscally irresponsible to maintain the current judicial

plans as the unfunded liability of the PCJPP totaled \$5,341,800.00 as of December 2007 and it increased to \$9,582,400.00 as of December 2010.

165. In the same breath, the Province concedes that a good pension is an important factor in inducing lawyers to become Judges and that the PSPP and PCJPP have successfully filled this role to date. The Province says they are defined benefit plans, meaning that benefits are not dependent on the return of the invested funds. The Province argues that in times of economic downturn, such as those we face today, the value of defined benefit plans is even more marked in light of the fact that lawyers in private practice are subject to the whims of the economy in their self-directed pension schemes. The Province further argues that judicial pensions do not suffer from the same income tax limitations as self-directed pension plans.
166. The Association argued that the Province's requests are premature and that they amount to a cherry-picking of certain changes that the government negotiated with unions whose members are covered by the Public Service Pension Plan.
167. The Association points out that bringing judicial pensions in line with those of the public service ignores the unique considerations that apply to judicial pensions and judicial compensation generally, and the very different financial structure of the judicial plans.
168. The Association argues that if the Province's submissions were to be accepted, Newfoundland and Labrador Judges would have a pension by far the least valuable among those available to Judges in Nova Scotia, New Brunswick, Manitoba and Saskatchewan.

169. The Association relies on the Hoegg Tribunal who stated, “pensions are an integral part of judicial security, which is an aspect of judicial independence”.
170. The Association further argues that an adoption of a separate and more advantageous pension plan for Judges in Newfoundland and Labrador dates back to 1973 with a recommendation by the Steele Tribunal. It was not until 1992 that the Whalen Tribunal recommended the creation of a separate pension plan, noting that the “lengthy period required under the Public Service Pension Plan to acquire the maximum pension benefit may act as a deterrent to potential applicants outside Government”.
171. The Association relied on evidence provided by an expert witness in making its submissions: Andre Suave, a Consulting Actuary, who prepared a report dated April 29, 2015 (the Suave Report). Mr. Suave considered four different scenarios, including Judges appointed at ages 40, 45, 50 and 55 and in calculating an average value of the PCJPP.
172. In doing so, Mr. Suave determined that the value of the current PCJPP is 41.2% of salary. The Province’s proposals would, in the view of Mr. Suave and the Association, amount to a 12.2% reduction in this value, down to 29% of salary. At a current value of 42.4% of salary, the current value of the PCJPP is very close to the values in New Brunswick and Nova Scotia, 41.2% and 42.2% respectively.
173. The Province argues for a drastic reduction in pension with the same argument it used with respect to salaries: that current economic realities require this action. As we decided in the analysis of the current fiscal capacity, the evidence and the Province’s own documents

suggest this downturn is temporary. The changes in pension which the Province requests would result in dramatic, long-term, reductions for judicial compensation.

174. As a Tribunal, we must remain consistent in our application of the principles and we find that the Maritime Provinces are the most significant comparator group. The current pension framework represents a very similar value as those in New Brunswick and Nova Scotia.

175. Most of all though, we reject the Province's submissions on this issue as their primary justification is that judicial pensions ought to be in line with those of the public service. To accept that rationale would be to make Judges' pensions contingent upon negotiations government has with the public service unions. This, by extension, would mean that judicial pensions are determined by a bargaining process whereby Judges would be, in effect, reliant on unions to negotiate their pension. Such a proposition flies in the face of the principles laid out above, especially the second component of financial security as described in the *PEI Reference*, which dictates that it is inappropriate for the judiciary to engage in any bargaining process with the Provincial Government.

176. For these reasons, this Tribunal recommends there be no changes to the current judicial pension scheme in Newfoundland and Labrador.

### **Paid Sick Leave and Disability Benefits**

177. The Association seeks the following recommendations with respect to paid sick leave and disability benefits:

- Effective April 1, 2013, every Judge shall be granted 130 sick days upon their appointment to the Bench. The sick days accrued each month thereafter shall be accrued on top of the 130 days. This recommendation shall apply to all Judges appointed on or after April 1, 2013, regardless of whether they have retired or otherwise left the Bench prior to implementation.
- Effective immediately upon implementation of the recommendations, the elimination period for long-term disability should be amended to be any period up to but not more than six months, at the discretion of the Judge.

178. The Province seeks a recommendation that no change to sick leave benefits occurs and to maintain the plan introduced by the Andrews Tribunal.

179. The Association argues that for Provincial Court Judges, protection against the risk of loss of income due to illness or disability is an integral part of their financial security. In that sense, judicial sick leave is not an earned benefit, but is part of a system of income protection for the judiciary that is necessary to facilitate judicial independence.

180. The Association argues that a number of issues arose since the implementation of the Andrews Tribunal. The first concern was what would happen if a Judge appointed prior to the implementation of the Andrews Report used more sick leave than he or she could have under the new regime. According to the Association, the Province took the position that a Judge who had already used more than his or her newly calculated entitlement would be considered to have a zero balance as of May 19, 2011 meaning that the Judge would only accumulate sick leave days on a go-forward basis.

181. The following questions remained unanswered in the Association's view:



- Would a Judge with a zero balance be permitted to borrow sick time that is earned at a later date? In other words, if they suffered a further illness, would they be left without income?
- Would Judges who received the 130 day advance be able to use days as needed and earn them at a later date?
- Would the Province seek to recover wages paid as sick time from a Judge who used more than she or he had accrued?

182. In addition to these questions, the most significant issue in the eyes of the Association related to the coordination of sick leave and LTD benefits. The Association's main concern is to avoid a situation in which a Judge becomes disabled but has insufficient sick leave to provide an income during the six month waiting period for LTD benefits. One of the ways this could arise is where a newly appointed Judge receives 130 day sick leave advance, which approximates as 6 months. This advance is gradually earned at 15 days per year over 8.7 years as the Judge accrues sick leave. Once the advance has been earned, the Judge accrues additional sick leave to the maximum of 240 days. A newly appointed Judge who becomes disabled before using any sick leave could use the 130 day bank before receiving LTD benefits. However, should a new Judge use any significant period of sick leave before going off on the period of disability, the Judge may have substantially less than 130 days to access pending LTD benefits. If they do not have sufficient sick leave credits available, they are without income. This is an obvious threat to Judges' financial security.

183. In the Association's view, their recommendations would reduce the likelihood that Judges would face a period without income while also ensuring that Judges with fewer than six months of sick leave available would be eligible for LTD benefits when their sick leave expires.

184. In support of these proposals, the Association points to precedent in other jurisdictions who ensure coordination and minimize the potential for a period of time without income for Judges. These jurisdictions are: British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, and Nova Scotia.
185. The Province rejects the above proposals as they characterize them as essentially a return to a system of unlimited sick leave. They say, “nowhere in the working world is a sick leave a limitless benefit”.
186. The Tribunal is of the view that, while there ought not to be a limitless benefit, there also ought not be a period of time where Judges are totally without income while waiting for LTD. We reject the Province’s insinuation that there is a limitless benefit as sick leave can only be used for a maximum of six months. We take the Association’s point that there ought to be a coordination of sick leave and LTD.
187. The Tribunal considered that both the current combination of sick leave and disability benefits, and *a fortiori*, the Association’s position that 130 days of sick leave should be granted upon appointment of a Provincial Court Judge (to then be earned over time), thereby creating a bridge to Long Term Disability benefits, is an artificial way of ensuring the unbroken stream of income required to achieve financial security for Provincial Court Judges.

188. The Tribunal felt that rather than using the current sick leave/long term disability model, it would be useful to consider redesigning the system to provide for a period of short-term disability benefits, which would lead to long term disability benefits if necessary and medically warranted. Further, the Tribunal considered whether it might be appropriate to assign some amount as a premium to be paid personally by Judges for long-term disability benefits which can have the impact, if properly structured, of making long term disability benefits non-taxable. After the conclusion of the hearing in this matter, the Tribunal wrote to the parties asking for submissions on a redesign of the system considering these points. As the responses of both parties indicated they did not wish the Tribunal to engage in this process, the Tribunal will not pursue this further (though it continues to take the view that it would be appropriate to consider this possibility).

189. Accordingly, the Tribunal has determined that the principle that a Provincial Court Judge should be entitled to an unbroken stream of income while ill can be accommodated within the existing system; assuming that long term disability benefits can be engaged at the time the Provincial Court Judge's sick leave benefits expire (as opposed to after six months have lapsed). The elimination period for the Long Term Disability program, found at Appendix 19 to the Association's documents, is defined as follows: "6 months leave, or at the Judge's option, the expiry of accumulated leave entitlements". The Tribunal takes the view that this definition can be read only in such a way that if a Judge's sick leave expires any time before six months of illness a Judge is entitled to immediately apply for long term disability benefits. The Tribunal recommends that this definition of Elimination Period in the Long Term Disability program continue.

## Professional Allowance

190. The Association requests the following recommendations regarding Professional Allowance:
- Effective April 1, 2013, each Provincial Court Judge, including *per diem* Judges, shall be provided with a professional allowance in the amount of \$3,600 per year.
  - This recommendation shall apply to all who were Provincial Court Judges, including *per diem* Judges, as at April 1, 2013 and any who were appointed thereafter.
  - Because the 2013 and 2014 fiscal years have already passed, and because it is likely that the 2015 fiscal year will have passed before this Tribunal's recommendations are implemented, each Judge shall have available during the mandate of this Tribunal the portion of the allowance from the fiscal years 2013, 2014 and 2015 that represents the increase over what was actually available to Judges in those years. Expenses incurred in any of 2013, 2014, 2015, and 2016 would be eligible for reimbursement any time before March 31, 2017.
191. The Province seeks a recommendation that Provincial Court Judges' professional allowance be increased to \$3150 for fiscal years 2015/16 and 2015/17.
192. The Association argues that professional allowances are used to fund the cost of items required by Judges in the course of their professional duties. This would fund things such as books, judicial attire, memberships in professional organizations and continuing education sources, among other things.
193. The Association argues that individual Judges should not be expected to personally fund the purchase of reasonable and necessary equipment appropriate for the office of a Judge and point out that judicial attire can cost between \$1,500 and \$1,800 alone (though, this is a purchase a Judge makes few times in his or her tenure).

194. By way of example, the Association points out that the 2015 National Criminal Law Conference to be held in Edmonton would conservatively cost Provincial Court Judges in Newfoundland \$2632 to attend, including registration, accommodation, and travel without taking into account meals or ground transportation. Thus, attendance at such a conference would exhaust most if not all of the professional allowance.
195. Exacerbating matters further in the view of the Association is that professional allowances have been eroded by inflation. Using the Newfoundland and Labrador CPI to illustrate impact, the Association argues a basket of goods that costed \$3000 in 2006 would cost \$3521 by 2014.
196. In comparison to other jurisdictions, Newfoundland and Labrador's professional allowance for Judges is among the lowest in the country despite the higher costs of travel in and out of the Province. Further, the Steele Tribunal considered \$3000 the predominant level of Judges' professional allowances in Canada in 2006, which is nearly a decade ago. In New Brunswick, the allowance is \$2,500. There, judicial attire is available to the Judge without having to use his or her allowance. Further, in New Brunswick, books and attendance at educational meetings are provided as approved by the Chief Judge without these costs coming from Judges' professional allowance.
197. In Nova Scotia, the professional allowance available to Judges was increased from \$3000 to \$3,300 in 2014. In that province, judicial attire is provided upon appointment and a copy of the *Criminal Code* is provided annually, with no funding for judicial education beyond regularly scheduled seminars.

198. The Province argues that the average provincial allowance is \$3120, slightly less than their proposed \$3150. They say a 5% increase is appropriate. As the Association points out, the Province's figures are slightly flawed given, as described in the paragraphs preceding, different provinces force Judges to purchase differing things out of their professional allowance.
199. The Association further argues that *per diem* Judges ought to have access to a professional allowance in the same manner as full-time Judges do as they should be provided with the same basic and necessary supports as full-time Judges in order to allow them to perform their work. The Association argues that both full and part-time Judges have the same need for the *Criminal Code* and its updates, education, along with the legal texts or computer equipment. Further, the use of the allowance would be subject to oversight through the Office of the Chief Judge just as it is for full-time Judges.
200. The Association argue that *per diem* Judges in particular have *more* of a need for access to continuing legal education given the intermittency of their schedules. The Association relies on precedent in Manitoba, Alberta and British Columbia where tribunals such as this one extended professional allowances to part-time Judges.
201. In considering the above, this Tribunal is conscious of the need for periodic replacement of judicial attire; the necessity for continuing judicial education for both full time and per diem Judges and of the high cost of attending even a single out of province judicial education event annually.

202. Accordingly, we recommend that each full time Provincial Court Judge be provided with an annual professional allowance of \$4000.00 and each per diem Judge an annual professional allowance of \$1000.00 retroactive to April 1, 2013.
203. The sum of \$1000.00 for each full time Judge and \$500.00 for each per diem Judge from each professional allowance will be reserved in a pool, retroactive to April 1, 2013, exclusively to fund the costs of an annual mandatory judicial education event (including the costs of educational resources, travel, and/or electronic attendance). This event would be for a minimum of one day for all full time and per diem Judges. The judicial education event shall be planned in consultation between the Chief Judge and the Association. For greater certainty, whether or not entirely expended for the judicial education event, the amounts annually assigned to the pool from each professional allowance, shall not be available to the individual Judge, but rather shall be used only for the cost of the annual judicial education event.
204. The balance of the professional allowance (\$3000.00 for full time Judges and \$500.00 for per diem Judges) may be utilized for any items needed by the Judge in his or her discretion to fulfil his or her duties, including books, subscriptions, memberships in professional organizations, continuing legal education, and judicial attire.

## Judicial Indemnity

205. The Association seeks the following recommendations with respect to the Judicial Indemnity Policy (hereinafter referred to as the Policy):

- That the Judicial Indemnity Policy should be amended to require that a Judge seeking coverage under the Policy must make the request directly to the Minister, with a copy to the Chief Judge.
- In particular, the paragraph under the heading “Responsibilities” shall be replaced with the following:
  - It is the responsibility of a Judge, upon becoming aware of any potential or actual complaint, action or claim against him or her to immediately notify the Minister of Justice in writing of the existence and nature of the potential or actual complaint, action or claim and make a request for coverage under this policy. The Judge shall provide the Chief Judge with a copy of the notification and request.

206. For their part, the Province requests the following recommendations respecting judicial indemnity:

- That the policy be amended so that a Judge directly notify the Minister of Justice when seeking coverage, with a copy to the Chief Judge.
- The judicial indemnity policy be amended to disallow indemnification for Judges appearing on applications for prerogative relief.

207. Judicial indemnity was a significant issue for the Steele and Andrews Tribunals and the Association and the Province did much work to come to a workable solution. The result was a broad and wide-ranging policy; however, the Andrews Tribunal did say that the Policy should not be without limits.



208. The Association says their recommendations are minor and straightforward and do not create an additional cost for the Province and that it is an attempt to improve the administration of the Policy. The Province, in their oral submissions, raised no objection to the Association's recommendations.
209. The Association, however, did vigorously oppose the Province's recommendations respecting prerogative writs.
210. The Association argues that an essential feature of the policy is that there is an independent dispute resolution procedure in place in order to protect judicial independence. The Policy contemplates that the Minister could be the complainant against a Judge or that the Judge could be unpopular with the Chief Judge, the Minister, or others in government generally. The Andrews Tribunal recommended that a retired Supreme Court Judge act as an independent third party should a Judge seek a review of a Minister's decision regarding the Policy.
211. The Province's request comes on the heels of an extremely unusual and rare circumstance where a Judge requested coverage under the Policy for three different legal proceedings, described by the Association as follows:
- an application for mandamus, wherein the Judge was named as a second respondent;
  - legal proceedings initiated by the Judge in relation to a directive by the Chief Judge;
  - legal proceedings initiated by the Judge in relation to a referral to the Judicial Council.

212. The Minister of Justice denied coverage under the Policy for all three proceedings and the Judge triggered the dispute resolution procedure whereby the matter of whether the Policy should apply was determined by a retired Supreme Court Judge. Former Justice Riche was appointed to hear the matter and he decided that the Judge was eligible for coverage for one of the proceedings; that being the proceeding defending against the application for mandamus.

213. The Province, essentially, wishes to make a narrow exception in the Policy to exclude the exact circumstances in which Mr. Riche decided the policy did apply. As stated in oral submissions:

MR. CHAIRMAN: The language which, you know, is attached to the Andrews Decision, I mean, is very inclusive and the three categories are simply categories of things that are included. So it seems to be intended to be very broad as in item 4 of the personal indemnity policy, so, which I'm finding, actually, in the decision of Judge Riche, as he reprinted his decision.

PRITCHARD, Q.C.: I agree that it's very broad and whether or not it, I guess, requires any fine-tuning, at least in this type of instance, I mean.

MR. CHAIRMAN: Right. So, the fine-tuning you're suggesting, and I know we don't have the language, is that there be one exception to the broad language and that exception would be in the mandamus application, which the Judge was named?

PRITCHARD, Q.C.: Sure.

214. The Province even goes so far in their submissions to suggest that the decision of Mr. Riche is incorrect. They further argue that as a matter of principle, it is inappropriate for Provincial Court Judges to appear on applications for prerogative relief and defend their decisions. They say these applications are merely appeals within the normal practice of criminal law and thus Judges should not be indemnified for them.

215. This Tribunal is of the view that the circumstances that give rise to the Province's request are extremely rare and unlikely to manifest again. We are also hesitant to enter into a realm where the Tribunal process is perceived as a mechanism for collateral attacks on the future precedential value of considered decisions emanating from the existing, and apparently functioning, dispute resolution process. Significant effort and thought has gone into the current Policy and it is deliberately broad. We should only alter it where it is clearly necessary. We do not believe that is the case here.

216. This Tribunal therefore recommends no change with respect to the Judicial Indemnity Policy.

### **Bereavement**

217. The Association requests the following recommendation with respect to bereavement leave:

- Effective immediately upon implementation of the recommendations, Judges shall be entitled to request up to three consecutive days of paid bereavement leave in the event of the death of one of the following family members: mother or stepmother; father or stepfather; legal guardian; brother or stepbrother; sister or stepsister; child or stepchild; spouse, grandmother; grandfather; grandchild; mother-in-law; father-in-law; or near relative living in the same household.
- Judges should receive one day of paid bereavement leave in the event of the death of one of the following family members: son-in-law; daughter-in-law; brother-in-law; or sister-in-law.
- That Judges may be provided with additional paid bereavement leave in extraordinary circumstances.

218. The Province in its submissions took no issue with respect to the above recommendations except that additional paid bereavement leave in extraordinary circumstances should be

limited to only two days. This would result in a maximum of three to five days for bereavement leave for Provincial Court Judges.

219. This Tribunal accepts the position of the Province (which was not objected to by the Association) and therefore recommends a period of three days bereavement leave for the deaths of enumerated close family members and one day for the deaths of other enumerated extended family members.

## **PART 6:**

### **COSTS**

220. The Association seeks the following recommendations with respect to costs:
- The Province shall pay 2/3 of the Association's reasonable legal fees and 100% of its reasonable disbursements including but limited to expert witness fees.
  - There shall be no cap on the costs payable, apart from the requirement that they be reasonable. The reasonableness of fees shall be taxable by the Tribunal, at the Province's request.
221. The Province seeks the following recommendations with respect to costs:
- That the Tribunal recommend that the Province pay half of legal fees and related disbursements subject to assessment by the Tribunal for reasonableness, based on single counsel representation at the hearing (including the payment of disbursements by second counsel in preparation for the hearing).
  - That the Tribunal further recommend that the Province pay half of the disbursements related to provision of expert evidence.
222. The Association points out that three successive Tribunals before this one have recommended that all, or a substantial proportion of the Association's legal fees and

disbursements should be paid by Government. Moreover, all three Tribunals have recommended that the fees reasonably incurred by the Association for economic and actuarial experts be 100% reimbursed.

223. The Association further argues that the payment of reasonable fees of experts is of the utmost importance in the context of this Tribunal given the arguments put forth on pension and the necessity of actuarial evidence.
224. The Andrews Tribunal recommended that the Province pay 2/3 of the legal fees and travel expenses of counsel for the Association, as well as 100% of the fees and expenses for the expert witness, subject to a \$75,000 total maximum exclusive of HST. It also recommended taxation by the Tribunal as to reasonableness, if so requested by the Province. Government implemented this recommendation.
225. Nonetheless, the Province argues that the award of costs by the Andrews Tribunal was extremely generous. The Province further argues that the Association controls its costs yet the Province is required for paying them. In this regard, the Province says it is important that the Association be responsible for both legal costs and disbursements to some degree.
226. From the submissions of counsel, it would appear that the reasonableness of costs has never been an issue in the past. In the unlikely event there were unreasonable disbursements, the Association has suggested that the Tribunal could tax the Association's costs and disbursements at the Province's request.

227. In the *PEI Reference*, at paragraph 173 Lamer J. spoke to the necessity of the Tribunal being fully informed:

Although s. 11(d) does not require it, the commission's objectivity can be promoted by ensuring that it is fully informed before deliberating and making its recommendations. This can be best achieved by requiring that the commission receive and consider submissions from the judiciary, the executive and the legislature.

228. In the circumstances of this particular Tribunal, the expert evidence was crucial, especially in light of the Province's requests to make significant changes to a complex pension system. The request created many unanswered questions thereby creating a black hole of information which the Association remedied with its actuarial evidence.

229. Therefore, the Tribunal recommends that the Province shall pay 2/3 of the Association's reasonable legal fees and 100% of its reasonable disbursements including, but not limited to, expert witness fees. The reasonableness of fees shall be taxable by the Tribunal at the Province's request.

## PART 7:

### SUMMARY OF RECOMMENDATIONS

#### 1. Salary

- The Tribunal recommends the salary of Provincial Court Judges be increased by
  - 3% effective April 1, 2013 (paid retroactively);
  - A further 3% by April 1, 2014 (paid retroactively);
  - A further 4% by April 1, 2015 (paid retroactively);
  - A further 4% by April 1, 2016.
- In monetary terms, this would provide for the following salaries in each year of the Tribunal's mandate:
  - 2013: \$222,203.96
  - 2014: \$228,870.09
  - 2015: \$238,024.88
  - 2016: \$247,545.88

#### 2. Per Diem Judges

- The Tribunal recommend that:
  - There be no change from the current 1/248 formula;
  - Per Diem Judges be paid for any sitting cancelled within 24 hours of the scheduled sitting date and time.

#### 3. Interest on Retroactive Payments

- The Tribunal recommends no interest on retroactive payments.

#### 4. **Pension**

- The Tribunal recommends no changes to the current judicial pension scheme in Newfoundland and Labrador.

#### 5. **Paid Sick Leave and Disability Benefits**

- The Tribunal has determined that the principle that a Provincial Court Judge should be entitled to an unbroken stream of income while ill can be accommodated within the existing system; assuming that long term disability benefits can be engaged at the time the Provincial Court Judge's sick leave benefits expire (as opposed to after six months have lapsed). The elimination period for the Long Term Disability program found at Appendix 19 to the Association's documents is defined as follows: "6 months leave, or at the Judge's option, the expiry of accumulated leave entitlements". The Tribunal takes the view that this definition can be read only in such a way that if a Judge's sick leave expires any time before six months of illness a Judge is entitled to immediately apply for long term disability benefits. The Tribunal recommends that this definition of Elimination Period in the Long Term Disability program continue.

#### 6. **Professional Allowance**

- This Tribunal recommends that:
  - That each full time Provincial Court Judge be provided with an annual professional allowance of \$4000.00 and each per diem Judge an annual professional allowance of \$1000.00 retroactive to April 1, 2013.
  - The sum of \$1000.00 for each full time Judge and \$500.00 for each per diem Judge from each professional allowance will be reserved in a pool, retroactive to April 1, 2013, exclusively to fund the costs of an annual mandatory judicial education event (including the costs of educational resources, travel, and/or electronic attendance). This event would be for a minimum of one day for all full time and per diem Judges. The judicial education event shall be planned in consultation between the Chief Judge and the



Association. For greater certainty, whether or not entirely expended for the judicial education event, the amounts annually assigned to the pool from each professional allowance, shall not be available to the individual Judge, but rather shall be used only for the cost of the annual judicial education event.

- The balance of the professional allowance (\$3000.00 for full time Judges and \$500.00 for per diem Judges) may be utilized for any items needed by the Judge in his or her discretion to fulfil his or her duties, including books, subscriptions, memberships in professional organizations, continuing legal education, and judicial attire.

**7. Judicial Indemnity**

- This Tribunal recommends no change with respect to the Judicial Indemnity Policy.

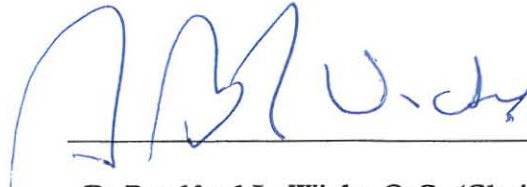
**8. Bereavement**

- This Tribunal recommends a period of three days bereavement leave for the deaths of enumerated close family members and one day for the deaths of other enumerated extended family members.

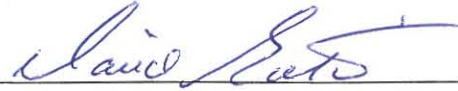
**9. Costs**

- The Tribunal recommends that the Province shall pay 2/3 of the Association's reasonable legal fees and 100% of its reasonable disbursements including, but not limited to, expert witness fees. The reasonableness of fees shall be taxable by the Tribunal at the Province's request.

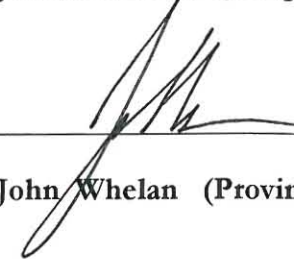
DATED AT St. John's in the Province of Newfoundland and Labrador this 21<sup>st</sup> day of December, 2015.

  
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D. Bradford L. Wicks Q.C. (Chair)

  
\_\_\_\_\_

J. David Eaton Q.C. (Judges' Representative)

  
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John Whelan (Province's Representative)

## **APPENDIX A**

### **Filings and Exhibits of the Association and the Province**

**a) Joint Submissions of the Association and the Province dated April 13, 2015:**

1. *Provincial Court Act, 1991*
2. *Reference re Remuneration of Judges of The Provincial Court of Prince Edward Island; Reference re Independence and Impartiality of the Province Court Justices of Prince Edward Island*, [1997] 3 S.C.R. 3 (“PEI Reference”)
3. *Provincial Court Judges Association of New Brunswick v. New Brunswick (Minister of Justice); Ontario Judges’ Association v. Ontario (Management Board); Bodner v. Alberta; Conference des Juges du Quebec v. Quebec (Attorney General); Minc v. Quebec (Attorney General)*, [2005] S.C.J. No. 47 (“Bodner”)
4. Report of the Newfoundland Provincial Court Judges Salary and Benefits Tribunal dated April 14, 1992 (“Whalen Report”)
5. Report of the Newfoundland Provincial Court Judges Salary and Benefits Tribunal dated September 14, 2001, (“Hoegg Report”)
6. *Newfoundland Association of Provincial Court Judges v. Newfoundland and Labrador*, [2003] N.J. No. 196 (S.C.)
7. “Tribunal Ruling”, Steele Tribunal, April 30, 2007
8. Report of the Newfoundland Provincial Court Judges Salary and Benefits Tribunal dated May 2006 (“Steele Report”)
9. Newfoundland and Labrador Provincial Court Judges Salaries and Benefits Tribunal Report, April 2007.
10. Newfoundland and Labrador Provincial Court Judges Salaries and Benefits Tribunal Report Addendum of David Day, Q.C., dated April 2007
11. Newfoundland and Labrador Provincial Court Judges Salaries and Benefits Tribunal Report, September 2010 (“Andrews Report”)
12. *Manitoba Provincial Judges’ Assn. v. Manitoba*, [2012] M.J. No. 105 (Q.B.)
13. *Manitoba Provincial Judges’ Assn. v. Manitoba*, [2013] M.J. No. 279 (C.A.)
14. *Puisne Judges’ Salaries Across Canada*, as of April 10, 2015
15. Annual Report 2013-2014: Provincial Court of Newfoundland and Labrador
16. *Provincial Court Judges’ Pension Plan Act*, SNL 2004, P-29.1

**b) Documents of the Government of Newfoundland and Labrador, dated April 13, 2015**

1. Departmental Salary Details 2014/15, Budget 2014, Government of Newfoundland and Labrador
2. *Provincial Court Judges' Assn. (New Brunswick) v. New Brunswick (Minister of Justice)*, 2003 NBCA 54
3. Judicial Compensation and Benefits Tribunal, *Report of the Judicial Compensation and Benefits Commission*, submitted to the Minister of Justice of Canada (15 May 2012)
4. Canadian Bar Association, *Report of the Canadian Bar Association Committee on the Independence of the Judiciary in Canada* (20 August 1984)
5. Auditor General of Newfoundland and Labrador, *Report of the Auditor General to the House of Assembly, Audit of the Financial Statements of the Province of Newfoundland and Labrador, for the Year Ended 31 March 2014*
6. *2014/15 Fall Update*, The Honourable Ross Wiseman, Minister of Finance and President of the Treasury Board
7. Royal Commission on Renewing and Strengthening our Place in Canada, *Our Place in Canada, Main Report* (2003)
8. *Economic Review 2014*, Economic Research and Analysis Division, Department of Finance, Government of Newfoundland and Labrador
9. *Beauregard v. Canada*, [1986] 2 SCR 56
10. Report of the Judicial Remuneration Review Commission (Prince Edward Island) (March 31, 2005)
11. British Columbia Judges Compensation Commission, *Final Report of the 2007 British Columbia Judges Compensation Commission* (1 April 2007 – 31 March 2011)
12. Solicitor's Pay Plan, Department of Justice, Government of Newfoundland and Labrador
13. Compensation Policy and Procedures Manual, Government of Newfoundland and Labrador
14. Judicial Compensation and Benefits Tribunal, *Report of the Judicial Compensation and Benefits Commission*, submitted to the Minister of Justice of Canada (30 May 2008)
15. Newfoundland and Labrador Provincial Court Judges' Pension Plan, Actuarial Valuation for Accounting Proposes as at December 31, 2014, Report prepared October 2013

16. *Labour Standards Act*, RSNL 1990, c. L-2
17. Dispute Resolution Decision, the Honourable Judge David G. Riche, April 2, 2013
18. *Rules of the Supreme Court, 1986*, SNL 1986 c42 Schedule D, Rule 54.03
19. *Canada (Minister of Employment and Immigration) v. Kwan*, 38 ACWS (2d) 1
20. *R v. Newfoundland Association of Provincial Court Judges*, 2000 NFCA 46

**c) Documents of the Association (Including its Reply Submission)**

1. Jurisdiction of each Provincial and Territorial Court
2. Statistical Review – Recidivism; Family Violence Court – Retention Analysis
3. Correspondence between counsel for the Association and Government re: the appointing of the Wicks Tribunal
4. Letters from Susan Dawes to Rolf Pritchard, dated March 23, 2015 and April 6, 2015
5. Excerpt of Hansard of House of Assembly Proceedings, April 12, 2011, re Implementation of Andrews Report
6. Practice backgrounds of Current Judges; Email from Law Society of NL, dated March 27, 2015
7. Report of the Second (2003) Quadrennial Judicial Compensation & Benefits Commission (the “McLennan Report”) (excerpt)
8. “The Newfoundland and Labrador Economy and the Financial Position of its Provincial Government”, James P. Feehan, Economics Consultant, April 8, 2015 (“Feehan Report”)
9. Curriculum vitae of James P. Feehan
10. 2014 Nova Scotia JCC Report
11. *Newfoundland Provincial Court Judges v. Newfoundland*, [2000] N.J. No. 258 (excerpt)
12. Net Professional Income for Self-Employed Lawyers, Tax Year 2010, compiled by the Canada Revenue Agency for the 2011 Quadrennial Judicial Compensation and Benefits Commission
13. 2014 Saskatchewan JCC Report (excerpt)
14. 2013 Alberta JCC Report (excerpt)
15. 2008 Nova Scotia JCC Report (excerpt)
16. 2002 Nova Scotia JCC Report (excerpt)
17. 2011 Manitoba JCC Report (excerpt)
18. 2008 Manitoba JCC Report (excerpt)

19. Government Resolution, adopted December 13, 2001 re: recommendations of Hoegg Tribunal (Schedules A and A.1 only) and excerpt of Hansard, December 13, 2001.
20. Letter from S. Dawes to Hon. Felix Collins, November 15, 2011; Letter from S. Dawes to Assistant Deputy Minister Ballard, January 31, 2012
21. 2002 Supplementary Nova Scotia JCC Report on Income Protection (Appendix only)
22. CAPCJ: National Education Guidelines for Provincial and Territorial Judges
23. 2012-2014 Strategic Plan, Provincial Court of Newfoundland and Labrador
24. Judicial Indemnity Policy – Newfoundland and Labrador
25. 2013 British Columbia JCC Report (excerpt)
26. Orsborn Commission of Enquiry into Salaries and Benefits of Provincial Court Judges, 1985 (excerpt)
27. Tables from the Newfoundland Statistics Agency and from Statistics Canada regarding CPI, AWE and Primary Household Income (“Statistics Tables”)
28. *New Brunswick Provincial Court Judges’ Association v. New Brunswick*, [2003] N.B.J. No. 321 (excerpt)
29. Friedland, *A Place Apart: Judicial Independence and Accountability in Canada*, Ottawa: Canadian Judicial Council, 1995 (excerpt)
30. 1995 Federal Triennial Commission Report (excerpt)
31. Report of the 1993 Provincial Court Commission (Saskatchewan) (excerpt)
32. Email of Todd Stanley to S. Dawes, dated December 10, 2014
33. Public Service Pension Plan Reform Agreement, September 2, 2014
34. Frequently Asked Questions – Pension Reform Agreement
35. Ensuring Stability of the Public Service Pension Plan, Technical Briefing, September 2014 (Government of Newfoundland and Labrador)
36. 2010 Nova Scotia JCC Report (excerpt)
37. Letter from A. Sauve to S. Dawes, dated April 29, 2015 (Suave Report)



38. Curriculum Vitae of Andre Suave
39. Decision of Mr. Justice Riche in the matter of the Judicial Indemnity Policy, April 2, 2013

**d) Exhibits Tendered During Hearings**

1. Commissions in Canada Established Since *PEI Reference Case, 1997*
2. Payment of Judicial Costs in Commissions in Canada Since *PEI Reference Case, 1997*
3. *Puisne* Judges Salaries Across Canada (all Salaries run from April 1 to March 31 in each fiscal year except as noted)
4. 2014 Manitoba JCC Report
5. Budget 2015: Balancing Choices for a Promising Future. Newfoundland and Labrador, April 30, 2015.

**e) Post-Hearing Correspondence**

1. Letter dated June 2, 2015 from Tribunal concerning sick leave and long term disability
2. Reply of Association dated June 25, 2015
3. Reply of Province dated August 17, 2015
4. Correspondence of Association dated December 2, 2015 enclosing New Brunswick 2012 Tribunal Report and Response of Government