

**NEWFOUNDLAND AND LABRADOR PROVINCIAL COURT
JUDGES SALARY AND BENEFITS TRIBUNAL REPORT**

June 4th, 2019

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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 of the Province of Newfoundland and Labrador for the four year period from April 1, 2017 to March 31, 2021. 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. On June 26, 2018, the Minister of Justice and Public Safety referred the 2017-2021 period to the Tribunal. The hearings of the Tribunal took place on January 7th and 8th, 2019.

The Tribunal Members

2. 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 Roebothan, 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 Chancellor of and Diocesan Solicitor for the Anglican Diocese of Eastern Newfoundland and Labrador.

3. 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.

4. 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 and an Advanced Education Certificate from Queen's 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 is currently the Executive Director at 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 Labour Relations Board and was on the Board of Directors of the Newfoundland and Labrador Employers' Council.

PART 2:

HISTORICAL CONTEXT

Previous Tribunals

5. 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

- The 2015 Wicks Tribunal (For ease of reference referred to herein as either “Wicks Tribunal #1” or “the previous Wicks Tribunal.”)
6. The previous Wicks Tribunal experienced delays before appointment by the Provincial Government and before hearings could be held. Originally, the Wicks Tribunal #1 was to have reported by September 30, 2014. 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 in May 2015, but the Wicks Tribunal was not able to issue its report to the Minister until December 21, 2015. As a result, its recommendations included a retroactive period of 15 months.
 7. The Wicks Tribunal #1 made recommendations regarding: salary; interest on retroactive salary payments; pensions; compensation for per diem judges; paid sick leave and disability benefits; professional allowance; judicial indemnity; bereavement pay; and costs.
 8. The Wicks Tribunal #1 Report was tabled in the House of Assembly on March 17, 2016. On May 26, 2016, the House of Assembly accepted all recommendations except for those relating to salary.
 9. In July 2016, the Association sought judicial review of the Government’s decision to reject the salary recommendations. In a decision dated June 18, 2018, The Honourable Alphonsus E.

Faour, Justice of the Supreme Court of Newfoundland and Labrador, held that the Government's response did not conform to the constitutional obligations of the executive and legislative branches of Government. Faour J ordered Government to fully implement the recommendations of the Wicks Tribunal and to take measures to ensure that the next Tribunal was appointed in a timely manner so that the effective period of the recommendations bore a greater relationship with the period to be covered by the tribunal than had been the past experience.

10. Despite the 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.

PART 3:

INTRODUCTION TO THE ISSUES

11. The rule of law, including, but not limited to judicial independence, is a cornerstone of our democratic system. While the legislative and executive branches of government may be susceptible to political or private interests, judges must be insulated from such considerations. There must not be actual or apparent political interference or private interests 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 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 previous Wicks Tribunal 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*, recognized as good law by Alphonse E. Faour J in *Newfoundland and Labrador Association of Provincial Court Judges v. Newfoundland and Labrador*, 2018 NLSC 140, 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 Province. Tribunal decisions are non-binding, but they are

not 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 holds that it is inappropriate for the judiciary to engage in any bargain with the Provincial Government. The Tribunal is to act as an institutional sieve to avoid such an inappropriate 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 with adjustments to that of the public service. Given the competing positions of the parties on financial issues such as salaries and disability insurance, it is easy to see how bargaining would occur in the absence of the Tribunal.
17. The third component is that judges' 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, which Faour J relied up in his decision *Newfoundland and Labrador Association of Provincial Court Judges v. Newfoundland and Labrador*, 2018 NLSC 140. At paragraphs 7 and 8 of the *Bodner* decision, the Supreme Court of Canada held:

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 Judiciary 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 the bar should be prepared to consider accepting a judicial appointment. 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 Wicks Tribunal #1 considered the following factors in coming to its decision:

- 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

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
- How the Salary Compares with that of Other Relevant Groups in Society
- 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.

24. 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.

25. 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 2015. As such, we make this Report while considering today's context while carrying forward insights from the Wicks Tribunal #1 where appropriate.

26. The Ontario Superior Court of Justice followed the *Bodner* decision in the *Association of Justices of Ontario/Assoc. des juges de paix de l'Ontario v Ontario*, 2016 ONSC 6001, and held that the government is entitled to reweigh factors if it gives legitimate reasons for doing so.
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. We considered this factor in 2015 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 indicated that there are unique demands upon Provincial Court Judges and that they exercise a broader jurisdiction than that of its counterparts across Canada. The Court exercises jurisdiction over adult and youth criminal matters, regulatory offence matters, civil small claims, family matters, traffic matters, and public inquiries.

30. The Association submitted that the work of a judge is dissimilar to the work of public servants and that the role of Provincial Court Judges is recognized to be uniquely stressful. Indeed, the majority of the cases presided over by Provincial Court Judges involve criminal matters where the liberty of the accused citizen is often at stake. In such matters, judges are exposed to very intense emotional circumstances, while the subject matter of some cases is disturbing and traumatic to the judge.
31. The media and public have an interest in criminal cases. As a result, Provincial Court Judges are subject to considerable scrutiny due to the types of cases they hear, which are reported in the media. This scrutiny can have a significant impact on judges, both professionally and personally. Judges, however, are not in a position to respond publicly to the media.
32. As mentioned, judges are unique in 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*.
33. Circuit courts present a challenge to Provincial Court Judges in Newfoundland and Labrador. As argued by the Association, the travel to circuit can occur 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, even if travel conditions are ideal; which they often are not. Similarly, a Judge in Grand Bank would leave 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, with regard to the second factor, might

not be appealing to the highly qualified members of the bar who are accustomed to working in a larger community.

34. Several of the circuit locations, particularly those in Labrador, do not have dedicated court facilities. The community halls and other buildings where court is conducted lack security, permanent seating, wi-fi connectivity, and other appropriate court technology. In two locations, there is no cell phone service. The inadequate facilities present a challenge and add another level of stress to the proceedings.
35. The Association noted that each of the judges who work in Labrador spend twelve weeks per year on circuit, away from their homes. Being away on circuit is not only challenging from a personal perspective, but also the travel conditions are difficult and the accommodations meagre. On one occasion in the autumn, the hotel furnace was inoperative for three days, resulting in three cold nights for members of the Court party. Judge English, who was a Provincial Court Judge in Labrador, gave evidence that the busy schedule of this position from regular court sittings, circuit court sittings, and weekend and statutory holiday court sittings, leads to a degree of fatigue and stress.
36. 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.

37. The Province acknowledged the critical role the Provincial Court Judges play in the operation of the justice system 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.
38. 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. We take notice that it is a matter of public record that Crown agencies frequently provide compensation above civil service rates to senior employees where they are competing in a national or international market for individuals to fill specialized jobs.
39. 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, 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

40. 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.

41. 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 and 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.

42. As to the first point, the Association points out that a lawyer contemplating placing their name forward for consideration 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 and effective in practice.

43. While the previous Wicks Tribunal #1 doubted the extent to which the history of lethargy has had an impact in attracting or retaining high quality candidates, the Association maintained that the chronic delay in the Tribunal processes continues to pose a risk for the Court's ability to attract highly qualified candidates. They 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.

44. 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.
45. As to the second and third points, the Association argues that there will always be 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 because the identity of those applicants is and must remain confidential according to the Act. They further argue that it is not enough that the pool of applicants consists of merely qualified individuals, but they ought to be highly qualified.
46. 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 indicates that these courts seek applications from the same pool of applicants.

47. 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.

48. The Association relies upon the previous Wicks Tribunal which stated:

“... 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.”

49. 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.

50. In this regard, of the 22 full-time judges, only six (27%) were appointed from private practice with the remaining 16 (73%) having come from a pool of Crown or Legal Aid lawyers. Of the four *per diem* judges, only two (50%) were 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: 63% of all lawyers are in private practice while only 21% are in Government.

51. The Association submits that the Tribunal can play a role in promoting legal diversity on the Court by ensuring that the level of remuneration is attractive to qualified applicants from the private bar. Judge English gave evidence that had the compensation been higher he might have chosen to stay as a Provincial Court Judge in Labrador. He explained that there is a heavy workload there which results in fatigue and affects efficiency. He emphasized the need to attract people with diverse backgrounds to better suit the needs of more rural places like Labrador where there is a higher degree of cooperation with colleagues required, there are indigenous populations, and judges hear a diversity of complex legal issues.
52. The Province recognizes the importance of attracting excellent candidates. While the Province agrees that judicial compensation must be set as not to deter qualified candidates from applying, remuneration is not the sole factor in attracting qualified candidates. Becoming a judge is an act of public service and it provides candidates with a unique opportunity to serve, and perform novel, interesting work of the highest quality and importance to society.
53. The Province points out that the Association did not tender evidence to suggest that there is a lack of qualified candidates for the Provincial Court bench in Newfoundland and Labrador. Provincial Court Judges have seen significant increases in salary and benefits in recent years and attracting qualified candidates is not a notable concern in this province. The Province relies on a statement from the Andrews Tribunal:

The Tribunal acknowledges the desire that the provincial court bench attract excellent candidates. The tribunal does not accept that the difference between the salary of s. 96 Judges and provincially appointed Judges, or any other factors related to salary and benefits of Judges, deters excellent candidates from making application to the provincial court of this province.

54. In the Association's reply, they suggest that evidence recently obtained from the Office of the Chief Judge, through the Judicial Council supports that there may well be a problem in attracting Candidates from the private bar. In the last competition that was conducted to fill two judicial vacancies (one in each of Happy Valley Goose Bay and Grand Falls Winsor) attracted only 23 applicants (26%) were in private practice and the balance were employed by Government.
55. 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 remain hesitant to draw a causal link between that and judicial remuneration absent direct evidence in respect of same.
56. 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 Provincial Court Judges in Other Jurisdictions

57. The Association argues that the best comparators for the salaries of Provincial Court Judges are of the members of the judiciary in this and other jurisdictions. The Association relies on the previous Wicks Tribunal which determined that the salaries of Provincial Court Judges in

other jurisdictions are ‘extremely significant’, and that the most appropriate comparators are judges in the Maritime Provinces. Accordingly, the previous Wicks Tribunal gave ‘significant weight’ to this comparison. Similarly, the Andrews Tribunal determined that a primary consideration for determining salary was the ‘most relevant comparator group’, which it found to be the Provincial Court Judges of the Maritime Provinces. The Steele Tribunal stated that it “... does regard the level of salaries paid to judges in other jurisdictions as relevant to its deliberations,” and that “... it is important to have a meaningful perspective of where this province stands relative to the salaries of judges in other provinces.” The Hoegg Tribunal determined that other judicial compensation is a “weighty factor” to consider in assessing appropriate compensation for Newfoundland and Labrador judges.

58. The Province acknowledged that previous tribunals recognized that the salaries and benefits paid to Provincial Court Judges in other jurisdictions can be a useful comparator in setting compensation for judges in Newfoundland and Labrador.

59. While the Province agrees with the previous Wicks Tribunal that the compensation paid to judges in the Maritime Provinces is the most relevant comparator, it still urges this Tribunal to consider the local economic realities of Newfoundland and Labrador and how they differ from the realities of even our closet neighbors. The Province points out, as discussed later, that the economy of Newfoundland and Labrador has seen a dramatic decline in recent years while both PEI and Nova Scotia have seen surpluses. Accordingly, the salaries set for these judges in these provinces would not have considered the local market data relevant to Newfoundland and Labrador.

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 significant. However, as argued by the Province, we must consider local economic realities as well. This Tribunal is consistent with the position of the previous Wicks Tribunal that the salaries and benefits of Provincial Court Judges of the Maritime Provinces are the most relevant comparator.

Comparison to Federal (s.96) Judges

61. The Association suggests that Federal (s. 96) Court Judges are a relevant comparator because both the Federal and Provincial Courts seek to attract applicants from the same pool of candidates. They are also relevant from a retention perspective given that six of the 28 full-time and supernumerary justices of the Supreme Court were formerly judges of the Provincial Court.
62. The Association is not seeking parity with the salary of federally appointed judges, but instead, consistent with the reasoning in the Wicks Tribunal #1 Report, the Association's proposal is designed to ensure that the gap in the compensation paid to judges of the different courts does not become too large, such that it will become a disincentive to applicants deciding to which court they will apply or for existing judges remaining on the Provincial Court.

63. 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 point 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 area 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).

64. The Province submits that Federal judicial salaries do not reflect the regional economic difference in which federal judges work, yet economics are a crucial consideration in determining provincial judicial salaries as these salaries are paid out of each separate provincial purse. Given that federal judicial salaries are set to attract qualified candidates in major urban centers across the country, their use as a comparator for setting provincial judicial salaries in Newfoundland and Labrador is nominal.

65. However, as stated by the previous Wicks Tribunal, both the Association and the Province recognize that these salaries would be a useful comparator if the differences were so great as to deter qualified individuals from applying to the Provincial Court, but currently that is not the case.

66. Like the previous Wicks Tribunal, we do not believe the remuneration gap as it currently exists between Provincial Court Judges and the Federal (s. 96) Court Judges deters excellent candidates from making an application to the Provincial Court of this province.

Comparison to Private Lawyers

67. The Association submits that it is notoriously difficult to obtain comprehensive and reliable data about the incomes of private lawyers. The previous Wicks Tribunal noted that while a comparison with private lawyers would be a useful factor for consideration, given the lack of reliable data, it is not an overly useful consideration for this Tribunal. The Association indicates that this is still the case today.
68. The Province argues that lawyers engaged in private practice must fund for their own pension, 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.
69. 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, this comparison remains of limited use for this Tribunal.

Increases in the Cost of Living

70. The Association retained an economist and Professor at Memorial University of Newfoundland, Dr. James P. Feehan, who provided a Report dated January 7, 2019 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.

71. Between 2001 and 2016 judges' salaries have risen by 55.6% while the Consumer Price Index has increased by 35.6%. The Consumer Price Index (CPI) tracks changes in the cost of a fixed basket of consumer goods monthly and is a sound measurement of inflation. The Association says that the gains made by judges over increases in the cost of living pale in comparison to the gains made by workers generally, as evidenced by a 72% increase in average weekly earnings over the same period. Dr. Feehan compares the increases in the salaries of Provincial Court Judges with the increases in the annual earnings statistics for Newfoundland and Labrador between 2001 and 2016, noting that ratio of salaries to annual earnings has been declining over this period.

72. On the other hand, the Province argues that from 1996 to 2016 judges' salaries have increased by 116% while CPI only increased by 47%. In this regard, the Province says that judges have made significant real gains in salary and there can be no concern that their salaries are being eroded by inflation.

73. 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.

74. 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.
75. The Association points out that with the Government's proposal of a four-year freeze, the purchasing power of the 2016 salary would fall from \$246,546 on April 1, 2016 to \$221, 257 on March 31, 2021.
76. The evidence, including that of Dr. Feehan, suggests there is concern to be had and as such, this Tribunal is somewhat persuaded by the Association's submissions on this point. In light

of this information, 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

77. With respect to the fiscal capacity of Government, the Association points to the previous Wicks Tribunal which focused on general economic trends as opposed to a snapshot in time.

The previous Wicks Tribunal explained:

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 is necessary to consider general economic trends over time 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 proper to our appointment, the current economic situation, and the prospective evidence [sic] the expectation for future economic conditions before us.

78. 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 concedes that although the province has been impacted by the reduction in global oil prices, its economic strength remains leaps and bounds above the dire economic circumstances of the 1990s as well as the economies of the Maritime Provinces.

79. The Association recognizes the immediate financial difficulties caused by lower oil prices. However, it argues that Newfoundland and Labrador's fiscal capacity will be affected by broader, positive economic trends. These include the transformation of the provincial economy and of the province's fiscal position over the last two decades and the generally positive forecasts moving forward.

80. The Association relies on a number of points from Dr. Feehan's report:

- From 1993 to 2000, per capita GDP was consistently below the national average. By 2017, the real GDP in Newfoundland and Labrador was \$66,000 per capita, compared with the national average of approximately \$55,000.
- Household disposable income levels in Newfoundland and Labrador consistently lagged the national figure until 2012 but is now nearly identical to the national average in every year since and essentially tied with Saskatchewan and Ontario for third place among the provinces.
- Historically, average weekly earnings in Newfoundland and Labrador were less than the Canadian average. However, since 2011 the average weekly earnings of a worker in Newfoundland and Labrador have been higher than the national average and have continued to increase. A comparison of average weekly earnings in 2018 revealed that Newfoundland and Labrador ranked as the second highest among the provinces, exceeded only by Alberta.
- Historically, Newfoundland and Labrador had the highest unemployment rate among the provinces and a rate much higher than the national average. However, there has been considerable improvement since the 1990s and the rate has been generally lower since 2007 than it was in the 1990s and early 2000s.

81. The Association submits that Newfoundland and Labrador's economy is significantly better positioned than the economies of the maritime provinces. They rely on the following evidence from the Feehan Report:

- Per capita GDP for Newfoundland and Labrador was the third highest in the country in 2018, trailing only Alberta and Saskatchewan. That figure was much higher than in New Brunswick, Nova Scotia, or Prince Edward Island whose respective rates fell far below the national average.
- Household disposable income levels in Newfoundland and Labrador was roughly third highest in the country and above each of the other three Atlantic Provinces.
- A comparison of average weekly earnings in 2018 revealed that workers in Newfoundland and Labrador earn over \$1,000 per week, more than workers in New Brunswick, Nova Scotia, and Prince Edward Island, who earn closer to \$800 per week.

82. The Association points out that this Tribunal is mandated to make recommendations for the period of April 1, 2017 to March 31, 2021. Accordingly, to the extent that predictions are available and reliable, it is important to consider not only what has already occurred, but also predictions for subsequent years.

83. Dr. Feehan's report explains that after several years of significant increases and improvements to the economy, improvements in economic indicators weakened in the past few years, including in 2018. However, positive moderate growth is generally expected in 2019 and 2020. For 2019, all forecasts are for growth in real GDP. The Conference Board of Canada's

prediction for that year is 5.2 percent, which the Association submits is very high. The Conference Board Forecasts that Newfoundland and Labrador will lead the country in real GDP in 2019. For 2020, all but one of the forecasts are for growth.

84. The Feehan report shows how natural resource development will be particularly important in 2019 and 2020. Dr. Feehan highlights several projects which will increase economic growth, including a new mine at Voisey's Bay nickel, the Scully iron ore mine, the Grieg NL \$250 million project in Placentia Bay, and the Muskrat Falls hydroelectric and transmission project. Dr. Feehan also explains that offshore oil will be the most important natural resource in the next few years. He highlights some important developments including an exploration project with the Canada Newfoundland and Labrador Offshore Petroleum Board, the Husky oil White Rose development, the Hebron offshore field production, and the potential for the construction of another offshore field in Bay du Nord.
85. Dr. Feehan reports that "this net increase in oil production from 2018 to around 2025 will be recorded in real GDP and serve to increase it." Accordingly, the Association argues that for the next five or six year, rising oil production will tend to push real GDP upward.
86. In this regard, the Association says that this increased production will bring in more oil royalty revenue, although the total royalty revenues are of course affected by oil prices. As such, any improvements in global price of oil would bring in additional revenues as well.

87. While stressing the improvements in the Newfoundland and Labrador economy over the last two decades, the Association acknowledges developments that affected the Provincial government's current financial status.

88. As Dr. Feehan explains:

The development of the offshore oil industry since the 1990s has been the most positive transformative economic phenomenon in decades. That industry has generated jobs and local business opportunities in exploration, in the construction and fabrication of production facilities, and in the production of crude oil. All of which added to provincial GDP. Unlike the other important natural resource industries in the province, the oil industry provides substantial royalty revenues to the provincial government. In the years of high oil prices, 2006-2014, those revenues ranged between \$1.5 and \$2.8 billion annually. Using those new revenues the provincial government engaged in province wide fiscal stimulus, reducing taxes and substantially increasing budgetary and infrastructure expenditures, and supporting the multi-billion dollar Muskrat Falls project, all of which increased GDP. The overall effects led to the province catching up to and exceeding the rest of Canada according to a number of economic indicators. The province GDP per capita and average weekly earnings now exceed their national counterparts and are higher than in most other provinces. Disposable income per capita income now matches the national average. Only the unemployment rate remains higher but it has moved down from historical highs.

89. The Association points out that since the early 2000s, a rise in the oil industry and related capital investments caused a dramatic economic growth in the province. Dr. Feehan explained:

As for the provincial government's current financial position, its net-to-debt-to-GDP ratio is lower than in the 1994 to 2005 period; its debt rating is stronger than in the early 2000's; it is a 'have' province in terms of fiscal capacity; and it has more revenue per capita than any other provincial government. These positive features are all largely due to offshore oil royalties that characterized 2005 to 2014.

90. Dr. Feehan explains that despite the volatility of Provincial government revenues, the revenues remain high. In other words, the Association submits that even though revenues fluctuate they are on average substantial compared to other provinces. Per capita revenue for the Provincial government in Newfoundland and Labrador is substantially higher than in any other province.
91. The Association concedes that despite high fiscal capacity, Newfoundland and Labrador's net debt is significant. Dr. Feehan points out that Newfoundland and Labrador has the highest net debt and the highest net debt to GDP ratio in the country.
92. Nonetheless, the Association argues that while Newfoundland and Labrador's net debt is the highest in the country, it remains lower than in 1995, which it believes reinforced the improvements in Newfoundland and Labrador's economy over that time span.
93. The Association says that while the large net debt to GDP ratio has impacted the Province's credit rating by various credit rating agencies, the debt issued by the Province is of high-quality investment grade and remains substantially stronger than the rankings issued in 1997.
94. The Province paints a bleaker picture than the Association. In relying in large part on the March 2018 Auditor General's Report and the Report of Dennis Bruce, 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.

95. In making this argument, the Province relies principally on the following factors: gross domestic product, gross net Provincial debt (including debt expenses), cost of public services, and the apparent vulnerability of Newfoundland and Labrador's future financial position.
96. The Province argues that while the Province's per capita GDP remains above the national average, which seems like an indication of positive economic performance, several factors must be considered to place the Province's per capita GDP in context. The Province looks at the vulnerability of the oil industry, capital investments, employment, and population.
97. As for the vulnerability of the oil industry, the Province says that since oil productions reached its peak in 2007/8, we have seen a decline in revenues. In 2013, the oil sector was worth \$9.6 billion while in 2016 It was work less than \$4 billion.
98. The Province argues that while the price of oil appears to be trending upwards, it remains difficult to predict exactly what the price will be. Minor changes in the price will have a significant impact on the royalties received by the Province. As outlined by the Auditor General, a \$1.00 decline in oil price would result in a loss of revenue of \$10.4 million while a one cent increase in the CAD/USD exchange rate would result in a loss of revenue of \$9.8 million. Similarly, any shut down in oil production would also have an impact on revenue.
99. As for capital investments, the Province relies on the evidence in the Bruce Report. In that report, Bruce points out that the Province's GDP growth over the last twenty years has been driven by capital investment including projects such as Muskrat Falls, Hebron, and Vale's long

Harbour Nickel Processing Plant. The Province has predicted that in the short term, from 2018 to 2019, capital investment will increase. However, for the overall period 2018 to 2022, capital investment in the Province is expected to have a significant decline, largely due to the completion of projects. The Auditor General has stated that the declines in capital investment will have a corresponding drop in employment and will negatively impact revenue to the treasury.

100. In terms of employment, the Province argues that unemployment has remained a chronic issue. In 2017, the unemployment rate in this Province was 14.8% while the national average was 6.3% meaning that unemployment rates in Newfoundland and Labrador are double the national average. The Province says that employment in Newfoundland and Labrador is expected to drop from 224,100 people in 2017 to 214,800 people in 2022, a decrease of 9,300 people over a five-year period.
101. The Province states that the population in Newfoundland and Labrador has been in a steady decline and since 2013, the natural rate of population growth, the number of births less the number of deaths, has been in the negative mainly due to interprovincial migration with 3,656 people leaving the province for other Canadian provinces in 2017/18. The Province also points to the declining and aging population which Mr. Bruce suggests will lead to potential labour shortages and constrained economic growth.
102. Concerning the net Provincial debt, 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 to reduce its servicing costs. Therefore, says the Province, they must be in a position to run a significant and consistent surplus for decades.

103. The Province says as of March 31, 2018 its net debt was \$14.7 billion dollars; a 1.1 billion dollar increase from the previous year. The Province projects its net debt will increase to \$16.8 billion by 2022/23. The Province also points out that it has experienced six consecutive years of deficits and it is predicted that there will be deficits for the next four years. Newfoundland and Labrador's deficit in relation to GDP is the highest in Canada.
104. Further, the Province argues that Newfoundland and Labrador has the highest net debt per capita in the country and is expected to rise. As noted by the Auditor General, when net debt as a percentage of GDP is high, it could be an indicator that the current level of net debt is not sustainable. By March 31, 2019, the Province's net debt as a percentage of GDP is expected to reach 45%.
105. 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.

106. According to the Auditor General, debt expenses as a percentage of revenue can be used as an indicator of the Province's financial situation. The Province submits that money that is paid towards debt expenses, \$1 billion in the coming years, is money that cannot be used to fund government programs and services.
107. The Province submits that on a per capita basis, Newfoundland and Labrador generates more revenue than any other province. However, the Province also spends more in relation to debt expenses and program expenses than any other province.
108. With respect to the vulnerability of Newfoundland and Labrador's future financial position, Mr. Bruce review reports from three different bond rating agencies and found that Newfoundland and Labrador had the lowest credit rating of any Canadian province. He concluded that Newfoundland and Labrador has the weakest fiscal position of any province in Canada.
109. In response to the above points, the Association argues that the Government's focus on average rates of GDP growth over certain periods is misleading. Volatility is a feature of the Newfoundland and Labrador economy and will remain so long as it is dependent on natural resources.
110. The Association submits that the Province downplays the fact that since 2011 and 2012 both average weekly earnings and disposable household income per capita in Newfoundland and Labrador have been higher than the Canadian average and that of the Maritime provinces.

Instead, the Province focuses on unemployment figures. As Dr. Feehan explains, unemployment rates have always been high in Newfoundland and Labrador but has been “generally lower since 2007 than it was in the 1980s, 1990s, and early 2000s.”

111. While the Province argues that Newfoundland and Labrador has the weakest economic outlook of any province, the Association submits that this statement was contradicted by the Premier. The Premier touted the recent prediction by the Conference Board of Canada which reported that this Province will lead the country in economic growth in 2019 with a forecasted growth of 5.2% in 2019 as outlined in the Feehan Report.
112. As recent history has shown, economic conditions can change rapidly. Accordingly, we feel it necessary to consider general economic trends over time 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.
113. While we recognize the historical trend in Newfoundland and Labrador’s economy as volatile, we cannot ignore the present economic difficulties faced by the Province. Although, the Feehan Report indicates a high fiscal capacity, we still recognize the unusually high debt to GDP ratio in this Province.

Summary of Factors Considered - Analysis

114. 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
115. 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”, as in the previous Wicks Tribunal we believe 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.
116. We recognize that Newfoundland and Labrador presents unique challenges for Provincial Court Judges, but also recognize these challenges manifest themselves for the Province as well with respect to its fiscal capacity (the fifth factor).
117. We also recognize 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.

118. While it is acknowledged that over time 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 based on the evidence before this Tribunal.
119. With respect to the second factor, “The Need to Attract, Motivate and Retain the Most Highly Qualified Candidates from all Areas of Practice”, we believe it was a significant factor in determining the appropriate level of remuneration and take the view that this factor generally supports higher remuneration for Provincial Court Judges in the circumstances, but to a limited extent.
120. However, we accord this factor with less weight than we otherwise might have had there been sufficient evidence of a causal relationship between remuneration (or lack thereof) and the lack of private practitioners appointed to the bench.
121. Regarding the third factor, “Salaries of Other Relevant Groups of Society”, this Tribunal finds 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.

122. With respect to the fourth factor, “Increases in the Cost of Living”, the evidence of Dr. Feehan persuades this Tribunal that inflation will eventually erode Provincial Court Judge salaries. This supports the argument that higher remuneration will be necessary for Provincial Court Judges.
123. Finally, on the fifth and perhaps most controversial factor, “The Fiscal Capacity of Government in Light of Current Economic Conditions.” This Tribunal recognizes the present economic difficulties faced by the Province and weighed that against the expert evidence, in addition to the documentary evidence. Although, the Feehan Report indicates a high fiscal capacity, we still recognize the unusually high debt to GDP ratio in this Province, as well as the high levels of debt and program expenses. The evidence before us at the hearings in January 2019 indicates that the Province only has a limited fiscal capacity to ensure financial security of Provincial Court Judges.
124. These five factors, as explained, are crucial indicators in determining how to maintain financial security and thereby, judicial independence. Our analysis of each factor especially in light of the present uncertain fiscal situation for government, is the basis for our recommendations set out below.

PART 5:

RECOMMENDATIONS

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

- Long Term Disability Benefits
- Per Diem Judges
- Payout of Accrued Severance Pay

Salary

126. 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, 2017 the annual salary shall be increased to \$255,000;
 - Effective April 1, 2018, the salary shall be increased to \$262,650;
 - Effective April 1, 2019, the salary shall be increased to \$270,530;
 - Effective April 1, 2020, the salary shall be increased to \$278,645;
- These recommendations shall apply to all who were *puisne* Judges as of or after April 1, 2017, including those who later retired or otherwise left the Bench prior to the implementation of the recommendations.

127. The Province makes the following recommendation:

- Salaries should not be increased for fiscal years of 2017/18 to 2020/21.

128. The Association proposes a 3% increase in each year to ensure that there is an appropriate relationship with the salaries that can reasonably be expected to be paid to the judges in the Maritimes and ensures that the gap with the compensation paid to s. 96 judges does not widen unduly during this Tribunal's mandate.

129. The Association indicated 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.

130. 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.
131. The Association points out that the previous Wicks Tribunal identified the salaries of judges in the Maritime Provinces as one of the primary considerations. We agree with this approach. The Wicks Tribunal #1 recommended a salary figure in 2015 that was just shy of the Maritime average. The Association submits that the 2017 Maritime Average is either \$250,692 or \$254,982, depending on the result of ongoing litigation in Nova Scotia based upon Figure 1 (taken from page 86 of the Association's submission).

Figure 1

Jurisdiction	2017 Salary
New Brunswick	\$252,240
Prince Edward Island	\$263,685
Nova Scotia	\$236,151 or \$249,021
2017 Maritime Average	\$250,692 or \$254,982

132. The Province recommends a 0% increase in salary for fiscal years 2017/18 to 2020/21. It argues that this submission is reflective of the current fiscal realities the Province is facing. As proof of financial hardship, the Province explained that it has had to contend with this issue

in its collective bargaining with civil service employees. All new agreements reached to date have included wage freezes for civil servants.

133. The Province acknowledges and understands that judges are different from civil servants in that they form an independent branch of government, the judiciary, and are not members of the executive branch. The Province also recognizes that the Supreme Court of Canada has cautioned against treating judges in the same manner as those in the civil service in relation to the process used to determine salaries. However, the Supreme Court of Canada has also cautioned against treating judges differently than civil servants. Accordingly, the Province reiterates the statement from the Supreme Court of Canada and submits that judges must shoulder their share of the burden in difficult economic times.
134. With respect to other judges in the Maritime Provinces, the Province agrees with the Association in saying that the Maritime Judges are the most logical comparator. However, the Province submits that the Maritime average must be viewed as a snapshot of judicial salaries known at this time. The Province submits that the Maritime average for 2017 was \$250,692. However, this figure does not consider the possible increase that could occur in Nova Scotia when the ongoing litigation concludes.
135. It appears that both parties agree that as a matter of principle a 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 either \$250,692.00 or \$254,982.00 depending on results of ongoing litigation.

[See Figure 1 above] In so doing, we do not accept the Province's position of the percentage differential it argued would constitute relative parity based on the Atlantic average and will be primarily guided by reference to the Maritime average.

136. 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.
137. The Province argues that we are not to place too much weight on the national average as those numbers are tied^d economic and labour market data relevant to their jurisdictions and it results into a comparison of salaries exclusively rather than overall compensation. 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.
138. 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 this factor is a significant comparator. Absent a substantial 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.

139. Both the Province and Association made submissions with respect to civil servants as a comparator group. In remaining consistent with our discussion of the principles above, and maintaining consistent with the previous Wicks Tribunal, 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.
140. 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. Accordingly, we accept that the average Maritime region salary is either 250,692 or \$254,982, depending on the result of ongoing litigation in Nova Scotia.
141. While it does not include PEI, Figure 2 (taken from page 85 of the Association's submission) provides a helpful calculation of, inter alia, current projected Nova Scotia and New Brunswick salaries in the Maritime region from 2017 to 2020.

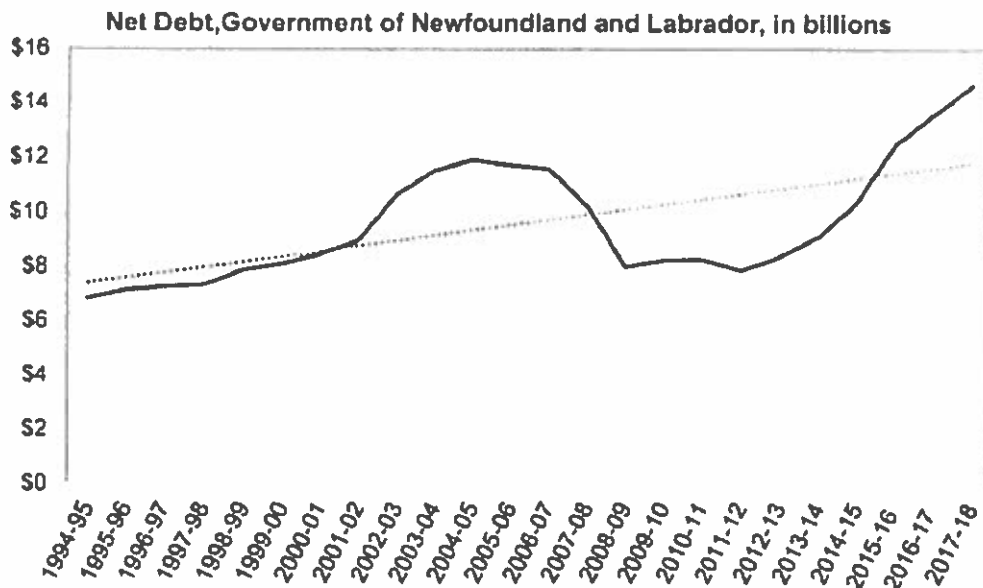
Figure 2

Year	BC	Sask	MB	NS	NB	Que	NL
2017	262,000 273,000	290,848	259,000	236,151 249,021	252,240	251,500	\$255,000 (245,310)
2018	266,000 277,095	295,792	265,449	236,151 251,760	257,280	254,518	262,600 (252,621)
2019	270,000 281,251	Sask CPI + 0.5%	<i>AWE for MB</i>	236,151 256,040	263,970 265,513	2019 JCC	270,530 (260,249)
2020	Next JCC	Sask CPI + 1%	Next JCC	Next Tribunal	268,457 273,213	2019 JCC	278,645 (268,057)

Accordingly, we accept that the average Maritime region salary is either 250,692 or \$254,982, depending on the result of ongoing litigation in Nova Scotia.

142. Regarding the current fiscal capacity and economic conditions in the Province, there was a surprising consistency between the Auditor General's Report, the Bruce Report, and the Feehan Report which has led to the conclusion that there are presently substantial financial difficulties for Newfoundland and Labrador. A portion of the analysis thus far points in the direction of more compensation for Provincial Court Judges, but we must also consider the present difficulties the Province is facing. Given the economic realities of the province especially with the accumulating debt, this Tribunal believes that a salary freeze for Provincial Court Judges for the first two years of this Tribunal's mandate is warranted, as stated above.
143. Figure 3 below shows the annual net debt of the Provincial government since 1994/95. That debt has been generally increasing but with movements around its trend. After 2011/12 the net debt increased each year to 2017/18.

Figure 3

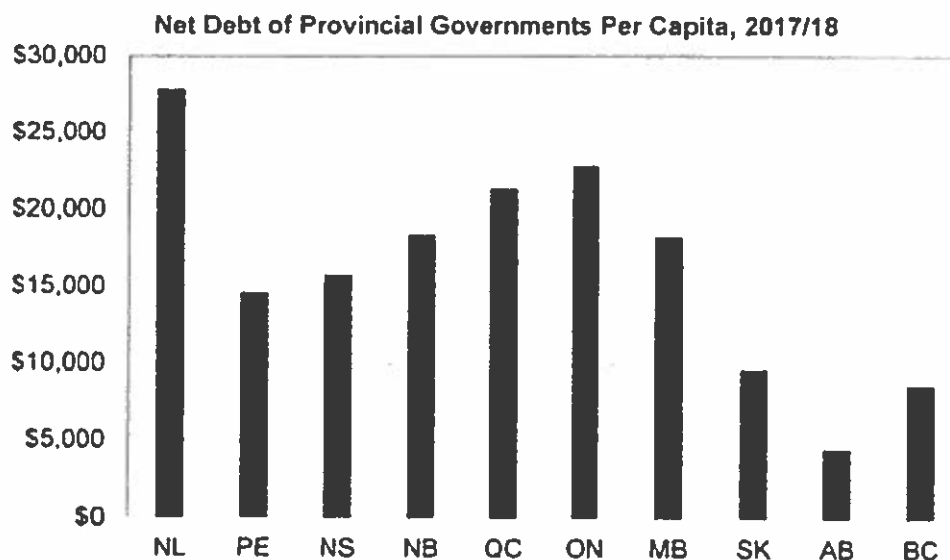


Source: Finance Canada, Fiscal Reference Tables, October 2018.

As stated by Dr. Feehan, the net debt of the Provincial government is a key indicator of its current financial position. Net debt is the difference between what the Provincial government owes and its financial assets. As of March 31, 2018, Provincial government's liabilities were \$22.5 billion, and its financial assets were \$7.9 billion, a difference of over \$14.6 billion.

144. A way to place the Provincial government's net debt in perspective is to compare it to the net debt of other provinces. Figure 4 below shows this comparison on a per capita basis.

Figure 4

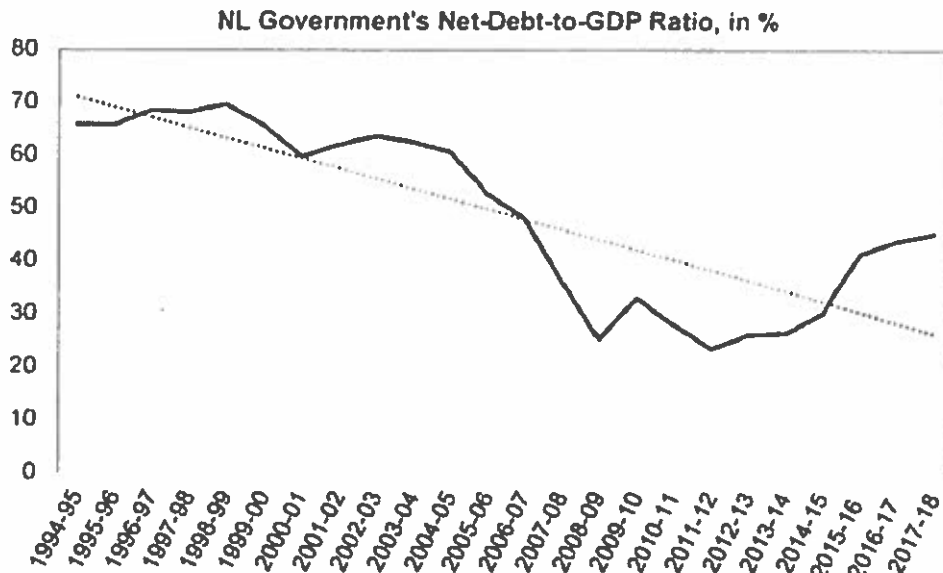


Sources: Finance Canada, Fiscal Reference Tables October 2018 for net debt, and Statistics Canada for population.

By this metric, Newfoundland and Labrador has the highest net debt out of all other Canadian provinces.

145. The net-debt-GDP ratio is one of the most important influences on a Provincial government's credit rating. Figure 5 below shows that the ratio of net debt to GDP declined over during most of the 1994/95 to 2017/18 period. Since 2014/15 the net debt ratio has moved up. That upwards movement is principally the result of large budgetary deficits, which had to be paid for by borrowing. This is the highest ratio across the provincial governments in Canada.

Figure 5



Source: RBC, Canadian Federal and Provincial Fiscal Tables, Nov 2018

146. Because of the difficulties with the Province's financial situation, this Tribunal recognizes the Association's duty to "share the pain." The Supreme Court of Canada in the *PEI Reference* held:

What this debate illustrates is that judicial independence can be threatened by measures which treat judges either differently from, or identically to, other persons paid from the public purse. Since s. 100 clearly permits identical treatment (*Beauregard*), I am driven to the conclusion that it is illogical for it to prohibit differential treatment as well. That is not to say, however, that the distinction between differential and identical treatment is a distinction without a difference. In my opinion, the risk of political interference through economic manipulation is clearly greater when judges are treated differently from other persons paid from the public purse. This is why we focussed on discriminatory measures in *Beauregard*. As Professor Renke, *supra*, has stated in the context of current appeals (at p. 19):

... if judges were spared compensation decreases affecting other public sector groups, a reasonable person might well conclude that the judges had engaged in some behind-the-scenes lobbying. The judges' exemption could be thought to be the result of secret deals, or secret commitments to favour the government. An exemption of judges

from across-the-board pay cuts is as likely to generate suspicions concerning judicial independence as the reduction of judicial compensation in the context of general public sector reductions.

The Association recommended a 3% increase each of the years mandated. We do not feel, in accordance with the principles and analysis above, that it is appropriate. We would have been inclined to recommend increases in keeping with the CPI applicable for each of these years, which would keep salaries generally in line with the other Maritime provinces. However, we find that the fiscal capacity for the Province to compensate Provincial Court Judges is not in line with the Maritime counterparts with high debt and expenditures. To not deter highly qualified candidates and to account for increased costs of living, the Tribunal recommends increases for the remaining two years of the mandated tribunal, in accordance with the analysis above, which increases will provide a catch-up at the start of the 2020-2021 fiscal year.

147. In keeping with the above analysis and relying in large part on the economic difficulties faced by the Province, while also considering likely erosion of the purchasing power of salaries by inflation, the Tribunal makes the salary recommendation which follows.

148. This Tribunal recommends the salary of Provincial Court Judges remain the same for the first two years of this Tribunal's mandate (April 1, 2017 to March 31, 2019). For the April 1st, 2019 to March 31st, 2020 period of our mandate, we recommend an inflationary increase only of 1.6% (commensurate with the 2018 increase in CPI for all items in the Province of Newfoundland and Labrador as calculated by Statistics Canada and reported annually by the Newfoundland Statistics Agency - See column #1 of the table attached at Appendix B, published in 2019, inclusive of 2018. For the period April 1st, 2020 to March 31st, 2021 we

recommend an increase based on the balance of the total annual increase in CPI between 2017 and 2020 inclusive, as reported in Column #1 of the version that will be published in 2020, inclusive of 2019, ; but subtracting the 2018 CPI increase amount of 1.6% recommended for the April 1st, 2019- March 31st, 2020 period.

149. By this means judges will “share the pain” for a period by losing relative purchasing power for three years (not an inconsiderable period of time), but ultimately by “catching up” in 2020 so as not to lose substantial ground with Maritime Judges and other comparators.
150. If the salary increase recommendations made in this report for April 1st, 2019 and April 1st 2020, respectively, are not implemented by the Provincial Government within six months of the date of this report, we recommend that the Provincial Government pay interest from the date of the respective unpaid amount of any increase recommended in this report to the date of payment at the prime rate of the Canadian Imperial Bank of Commerce from time to time.
151. While we recognize the Association’s position that a much higher increase is appropriate, this is not a reasonable increase based upon the fiscal capacity of government, a factor we are required to consider. However, a complete freeze of the Provincial Court Judges for the four-year period mandated to this Tribunal also is not a reasonable proposition given the concern of erosion by inflation and decreased purchasing power. In our view the Tribunal’s salary recommendation balances the challenging economic situation in the first two years of our mandate, with the brighter predictions of the Provincial economy’s future.

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

- 2017: \$247,546.00 (0%)
- 2018: \$247,546.00(0%)
- 2019: \$251,506.74 (1.6%)
- 2020: To be determined on April 1, 2020 as per calculation methodology set out above.

Per Diem Judges

153. The Association requests a recommendation with respect to *per diem* judges as follows:

- *per diem* judges should be compensated for travel time to and from the circuit courts to which they are assigned, based on the following:
 - One-way travel over 150 kms and up to 400 kms – ½ day compensation at the *per diem* rate of 1/248th of the salary of full-time judge (“*per diem* rate”)
 - Over 400 kms – full day compensation at the *per diem* rate
 - One way – air travel to destination – ½ day compensation at the *per diem* rate

154. As the Association points out, currently *per diem* judges are paid the *per diem* rate (a full or half day) for sitting days and are also compensated for expenses they incur in the course of travel to circuit courts (e.g. mileage, expenses, airplane tickets, accommodation costs). However, despite that travel to circuit court destinations can often take a full extra day, *per diem* judges receive no compensation for the time they spend in transit.

155. The Association submits that its recommendation would provide the same payments in respect of travel time for *per diem* judges in Nova Scotia and Saskatchewan. The Association

argues that the adoption of a system like those in Nova Scotia and Saskatchewan would ensure fair and appropriate compensation for these judges who play an important role in the Provincial Court.

156. The Province does not object to compensating *per diem* judges for their travel time as it is in accordance with s. 5.2 of the *Provincial Court Act, 1991* which states that:

(4) A person selected under subsection (3) shall be paid a daily rate of 1/248 of a judge's, other than the chief judge's or the associate chief judge's, salary and shall be paid one half the daily rate for one half of a day's work or less.

(5) A person who is selected under subsection (3) it is not entitled to benefits or remuneration in addition to that provided for in subsection (4) but he or she may be paid his or her travel and other expenses associated with his or her work as a judge.

157. However, the Province clarifies that it believes that a judge should not be paid for more than one day's work in a single day. If a judge sits for a full day and travels the same day, the judge should be compensated for only one day.

158. As stated by the Previous Wicks Tribunal:

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.

159. 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 Association's position; namely:

- *per diem* judges should be compensated for travel time to and from the circuit courts to which they are assigned, based on the following:
 - One-way travel over 150 kms and up to 400 kms – ½ day compensation at the *per diem* rate of 1/248th of the salary of full-time judge (“*per diem* rate”)
 - Over 400 kms – full day compensation at the *per diem* rate
 - One way – air travel to destination – ½ day compensation at the *per diem* rate

Severance

160. The Association seeks the following recommendations with respect to severance payouts:

- Any judge who accrued severance pay prior to April 1, 2002, shall have the option to have it paid out upon their request and at any time up to the date of their retirement;

161. The Hoegg Tribunal recommended that the accrual of severance pay, which was payable to judges at the time of their voluntary retirement or resignation, should cease effect on the date of implementation of the Report. Since the Provincial government accepted this recommendation, the practice has been that accrued amounts are paid out only at retirement.

162. The Province does not object to this request but would prefer to see the severance paid out immediately. The Province submits that it had recently paid out severance to members of the civil service and would prefer to immediately clear any remaining severance from its books.

163. Although some judges may prefer to defer payout of their severance, a balance of convenience prefers that the Provincial government pay out severance immediately to clear its books. Accordingly, this Tribunal recommends that severance be paid out immediately to Provincial Court Judges who are entitled to this benefit.

Long Term Disability

164. Currently, the long-term disability (LTD) benefit is available to judges up to the age of 65 years. However, the Association seeks the following recommendations with respect to paid long term disability:

- Effective upon implementation of the recommendation, judges should continue to be eligible for long term disability coverage up until the date of mandatory retirement at age 70. This recommendation should apply to all judges as at the date of implementation, including those who have accessed LTD benefits since April 1, 2017 but before the date of implementation.

165. The Association notes that while there are no judges currently in receipt of LTD benefits, its proposal is designed to capture any who commence receipt of LTD benefits prior to implementation of the recommendation.

166. The Hoegg Tribunal recommended that LTD benefits be paid to judges until the age of retirement in the amount of 2/3 of the judge's salary paid at the time of the disability. At the time the Hoegg Tribunal made this recommendation section 12 of the *Provincial Court Act, 1991* provided that the age of mandatory retirement for Provincial Court Judges was age 65.
167. On December 12, 2006 the *Provincial Court Act, 1991* was amended to increase the retirement to the age of 70. The Association's proposal to extend long term disability coverage to age 70 would coordinate the LTD coverage with the current retirement age.
168. The Association argues that this recommendation is fair and reasonable and should be considered as a housekeeping change to reflect the increased age of mandatory retirement.
169. The Province recognizes the change in the mandatory retirement age of Provincial Court Judges from 65 to 70, but also makes the point that there was similarly a change in the mandatory retirement age for civil servants who no longer have a mandatory retirement age. Notwithstanding this change, long term disability for civil servants is still capped at the age of 65.
170. The Province submits that due to the Province's fiscal position as outlined above and because civil servants' LTD benefits expire at the age of 65, long term disability benefits should not be expanded past the age of 65 for Provincial Court Judges.

171. The Association, in their closing submissions to the Tribunal, argued that there is no evidence that the LTD benefit cut off at the age of 65 is the industry standard. Furthermore, unlike LTD benefits for Provincial Court Judges, the Association pointed out the fact that civil servants fund their own benefits through contributions paid via premiums.
172. The Tribunal is of the view that long term disability benefits is not an earned benefit, but is part of a system of income protection for the judiciary that is necessary to facilitate judicial independence. A judge should not be forced into retirement because he or she is without income after the age of 65 when that judge could have had several productive years on the bench. Not granting LTD benefits to judges until the mandatory age of retirement is contrary to the public interest in retaining excellent, experienced judges.
173. With the foregoing in mind and in keeping with the recommendations set out in the Hoegg Tribunal, this Tribunal recommends that long term disability benefits should be extended to Provincial Court Judges until the age of mandatory retirement as it may be established by statute from time to time ; currently until the age of 70.

PART 6:

COSTS

174. 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 not 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.

175. 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 Province pay half of the disbursements related to provision of expert evidence.

176. The Association argues that it is inappropriate for the members of one branch of Government to fund the costs of their participation personally, while the other two branches have the costs of their participation paid for by the public purse.

177. The Association points out that four 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 four Tribunals have recommended that the fees reasonably incurred by the Association for economic and actuarial experts be 100% reimbursed.

178. 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.

179. Similarly, as noted in its 2013-2017 Report, the Wicks Tribunal made the very same recommendation that the Association requests here. The Association points out that this recommendation was accepted by the Provincial government.

180. 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 to pay them. In this regard, the Province says it is important that the Association be responsible for both legal costs and disbursements to some degree.

181. From the submissions of counsel, 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.

182. 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.

183. In the circumstances of this Tribunal, the expert evidence was crucial. 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 established as following:
 - 0% increase effective April 1, 2016;
 - 0% increase effective April 1, 2017;
 - 1.6% increase effective April 1, 2019;
 - Increase of the balance of CPI (excepting 2010) between 2017 and April 1st, 2020 as per the calculation methodology set out in paragraph 149 above.

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

- 2017: \$247,546.00
- 2018: \$247,546.00
- 2019: \$251,506.74
- 2020: To be determined on April 1, 2020 as per the calculation methodology set out in paragraph 149 above.

2. Per Diem Judges

- The Tribunal recommend that the Association's position be adopted; namely:

per diem judges should be compensated for travel time to and from the circuit courts to which they are assigned, based on the following:

- o One-way travel over 150 kms and up to 400 kms – ½ day compensation at the *per diem* rate of 1/248th of the salary of full-time judge (“*per diem* rate”)
- o Over 400 kms – full day compensation at the *per diem* rate
- o One way – air travel to destination – ½ day compensation at the *per diem* rate

3. Severance

- The Tribunal recommends that severance be paid out immediately.

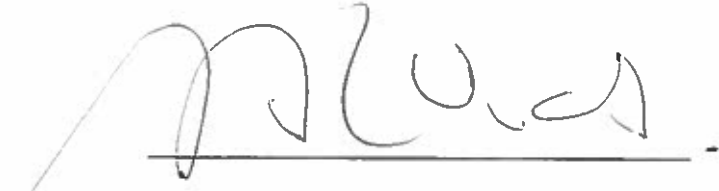
4. Long Term Disability

- The Tribunal recommends that Long Term Disability coverage should be extended to Provincial Court Judges up to the age of mandatory retirement as set by statute, currently 70 years of age.

5. 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.

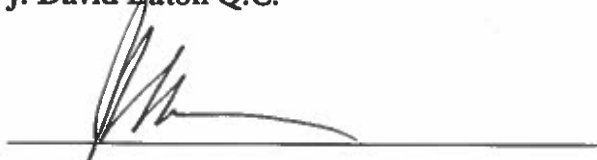
DATED AT St. John's in the Province of Newfoundland and Labrador this ^{4th} day of June, 2019.



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



J. David Eaton Q.C.



John Whelan

APPENDIX A

Filings and Exhibits of the Association and the Province

a) Joint Submissions of the Association and the Province dated January 9, 2019:

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. Newfoundland and Labrador Provincial Court Judges Salaries and Benefits Tribunal Report, December 2015 (“Wicks 2013-2017 Report”)
13. *Newfoundland and Labrador Association of Provincial Court Judges Salaries v Newfoundland and Labrador*, 2018 NLSC 140

14. *Newfoundland and Labrador Association of Provincial Court Judges Salaries v Newfoundland and Labrador*, 2018 NLSC 224
15. *Manitoba Provincial Judges' Assn. v. Manitoba*, [2012] M.J. No. 105 (Q.B.)
16. *Manitoba Provincial Judges' Assn. v. Manitoba*, [2013] M.J. No. 279 (C.A.)
17. *Prisne Judges' Salaries Across Canada*, as of January 2019
18. Annual Report 2017-2018: Provincial Court of Newfoundland and Labrador

b) Documents of the Government of Newfoundland and Labrador, dated January 9, 2019

1. *Beauregard v Canada*, [1986] 2 SCR 56
2. Departmental Salary Details 2018/19, Human Resource Secretariat, Government of Newfoundland and Labrador
3. *Provincial Court Judges' Assn. (New Brunswick) v. New Brunswick (Minister of Justice)*, 2003 NBCA 54
4. *Input to the Newfoundland and Labrador Provincial Court Judges Salary and Benefits Tribunal: Economic and Fiscal Performance of Newfoundland and Labrador*, Evidence of Dennis Bruce HDR Corporation
5. Auditor General of Newfoundland and Labrador, *Report of the Auditor General to the House of Assembly on the Audit of the Financial Statements of the Province of Newfoundland and Labrador, for the Year ended 31 March 2018*
6. Europe Brent Spot Price FOB, U.S. Energy Information Administration, accessed December 19, 2018
7. *Collective Bargaining*, Government of Newfoundland and Labrador, January 2019
8. Budget Address 2018-19, Nova Scotia
9. Economic Update 2018, Prince Edward Island
10. Budget 2018 Highlights, Prince Edward Island
11. Budget Fact Sheet 2018-19, New Brunswick
12. Report of the Judicial Remuneration review Commission (Prince Edward Island) (March 31, 2005)
13. British Columbia Judges Compensation Commission, *Final Report of the 2007 British Columbia Judges Compensation Commission* (1 April 2007 – 31 March 2011)
14. Solicitors Pay Plan, Department of Justice and Public Safety, Government of Newfoundland and Labrador

15. *Newfoundland Association of Provincial Court Judges v Newfoundland*, 2000 NFCA 46

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

1. Jurisdiction of each Provincial and Territorial Court
2. Rule 7.7 of the Code of Conduct, Law Society of Newfoundland and Labrador
3. Practice background of Current Judges; Email from Law Society of NL, dated November 29, 2018
4. 2003 Report of Second Quadrennial Judicial Compensation & Benefits Commission (“McLennan Report”)
5. The Newfoundland and Labrador Economy and the financial Position of its Provincial Government (“Feehan Report”), dated January 7, 2019
6. Curriculum vitae of James P. Feehan
7. Economic Outlook: Budget 2018 (Excerpt), Newfoundland and Labrador
8. Economic Outlook: Nova Scotia Government
9. 2019 Actuarial Report on the Employment Insurance Premium Rate
10. 2011 Manitoba JCC Report (excerpt)
11. *Newfoundland Provincial Court Judges v Newfoundland*, [2000] N.J. No. 258 (excerpt)
12. Government’s Response to the Hoegg Tribunal Report
13. NAPE Public Sector Agreements update, and excerpt of General Services collective agreement and related Letter of Understanding
14. Letter from Deputy Minister to the Honourable Colin J. Flynn, dated July 12, 2018
15. Excerpt of Hansard of House of Assembly Proceedings, April 12, 2011 re Implementation of Andrews Report

16. 2016 BC JCC Report (excerpt)

17. 2017 Manitoba JCC Report (excerpt)

d) Post-Hearing Correspondence

1. Retirement Data from Susan Dawes, February 15, 2019

APPENDIX B

Consumer Price Index Table

Consumer Price Index (2011 Basket Content) by Major Component
Percent Change (Rate of Inflation)
Newfoundland and Labrador
(2003=100)
1980-2018

Year	Component												
	All-Items	Food	Shelter	Household operations, furnishings and equipment	Clothing and footwear	Transportation	Health and personal care	Recreation, education and reading	Alcoholic beverages and tobacco products	All-Items excluding food and energy	Energy	Goods	Services
1980	11.7%	12.7%	11.1%	7.4%	10.8%	13.7%	11.4%	8.4%	14.1%	10.3%	17.2%	12.8%	8.7%
1981	13.2%	10.4%	17.7%	9.8%	7.4%	17.2%	9.1%	9.8%	14.8%	10.8%	21.5%	13.8%	12.2%
1982	10.2%	5.4%	13.2%	10.9%	5.4%	11.8%	7.4%	7.4%	16.6%	9.8%	19.0%	9.4%	11.3%
1983	6.7%	1.1%	7.4%	4.4%	11.8%	6.5%	9.2%	6.2%	19.7%	8.2%	9.5%	6.7%	7.1%
1984	4.5%	3.7%	8.1%	2.5%	2.5%	4.1%	3.8%	4.2%	7.7%	4.5%	6.0%	4.3%	4.5%
1985	4.1%	1.9%	5.5%	3.5%	2.5%	5.3%	3.5%	4.0%	6.7%	3.8%	9.7%	4.4%	3.6%
1986	2.9%	4.8%	-0.9%	2.8%	2.0%	3.4%	3.9%	4.2%	8.8%	4.3%	-7.1%	2.5%	3.8%
1987	2.9%	4.1%	1.2%	2.2%	3.7%	1.1%	6.0%	5.6%	3.5%	3.4%	-3.1%	2.4%	3.7%
1988	2.2%	1.0%	2.3%	3.8%	3.6%	0.8%	3.2%	4.9%	4.1%	3.3%	-1.3%	2.0%	2.9%
1989	3.7%	3.1%	1.9%	2.2%	4.1%	4.8%	3.5%	4.3%	7.3%	4.3%	-0.1%	3.7%	3.4%
1990	4.3%	3.8%	6.2%	0.7%	3.6%	5.6%	3.6%	3.8%	5.3%	3.7%	12.0%	4.2%	4.8%
1991	6.2%	8.4%	6.6%	2.8%	8.6%	2.7%	7.8%	6.0%	13.1%	6.2%	7.8%	5.8%	6.5%
1992	1.1%	-2.3%	0.7%	-0.1%	2.4%	2.1%	1.4%	2.4%	5.1%	2.2%	-1.2%	0.7%	1.8%
1993	1.6%	1.9%	0.2%	0.5%	1.8%	2.2%	1.4%	1.6%	5.8%	2.2%	-1.9%	1.8%	1.9%
1994	1.3%	1.8%	-1.0%	1.0%	0.8%	6.8%	-0.6%	3.9%	-3.4%	1.3%	-0.7%	0.7%	2.3%
1995	1.4%	1.4%	0.9%	0.9%	-1.9%	4.8%	-1.8%	2.5%	0.1%	1.4%	2.6%	0.8%	2.3%
1996	1.8%	2.0%	0.8%	2.8%	-0.8%	3.0%	-0.8%	2.4%	0.5%	1.4%	1.1%	1.4%	2.0%
1997	2.1%	1.3%	2.7%	0.1%	1.4%	3.9%	0.7%	3.5%	0.1%	1.3%	8.5%	1.7%	2.8%
1998	0.2%	1.2%	-1.8%	1.2%	0.8%	-0.7%	1.8%	2.1%	1.1%	0.9%	-5.1%	-0.8%	2.3%
1999	1.4%	0.9%	1.9%	0.8%	2.0%	1.7%	1.4%	1.8%	0.5%	1.4%	2.6%	1.3%	1.7%
2000	3.0%	0.3%	8.1%	0.8%	-0.8%	6.5%	1.7%	1.2%	1.5%	1.2%	18.4%	3.7%	2.1%
2001	1.1%	2.8%	1.0%	1.5%	2.5%	-1.4%	1.8%	0.8%	3.2%	1.5%	-3.1%	0.5%	2.3%
2002	2.4%	2.2%	0.6%	1.2%	-3.5%	6.3%	0.8%	0.8%	11.1%	3.3%	-2.3%	0.8%	5.0%
2003	2.9%	0.8%	3.3%	-0.2%	-0.7%	7.8%	1.2%	-0.1%	10.8%	3.0%	6.0%	1.8%	4.7%
2004	1.8%	1.7%	3.4%	-0.1%	-0.3%	2.8%	0.4%	-0.1%	5.3%	0.7%	9.2%	2.2%	1.4%
2005	2.7%	2.4%	5.2%	1.0%	1.1%	3.3%	0.5%	-0.2%	3.3%	1.1%	11.8%	3.4%	1.6%
2006	1.8%	2.1%	3.4%	0.2%	-0.3%	2.2%	0.9%	-0.4%	4.1%	1.0%	8.6%	2.1%	1.8%
2007	1.5%	2.3%	2.3%	-0.1%	-0.8%	1.1%	0.7%	0.8%	3.4%	1.0%	2.2%	0.9%	2.1%
2008	2.9%	4.5%	8.2%	0.7%	-1.7%	0.7%	2.1%	0.4%	0.7%	1.0%	10.9%	2.1%	4.9%
2009	0.3%	5.9%	-0.4%	3.4%	-4.0%	-6.0%	4.8%	1.2%	1.5%	1.5%	-13.5%	-1.7%	3.2%
2010	2.4%	2.0%	3.1%	1.9%	0.3%	3.7%	1.5%	1.8%	1.8%	1.8%	6.7%	2.2%	2.7%
2011	3.4%	3.6%	5.8%	0.7%	1.0%	8.5%	1.7%	0.2%	2.3%	1.5%	13.2%	3.7%	3.0%
2012	2.1%	3.5%	3.5%	2.0%	-3.4%	2.4%	1.0%	0.5%	0.9%	1.3%	4.6%	1.6%	2.8%
2013	1.7%	1.4%	2.6%	2.5%	3.6%	1.8%	-1.8%	-0.5%	2.7%	2.0%	0.2%	0.6%	2.8%
2014	1.9%	2.4%	1.8%	2.0%	0.5%	1.8%	-0.3%	1.2%	7.2%	2.0%	0.7%	1.6%	2.3%
2015	0.5%	3.8%	0.1%	1.8%	1.7%	-3.8%	1.0%	0.6%	3.7%	1.5%	-10.5%	-0.5%	1.8%
2016	2.7%	2.4%	1.4%	4.8%	-1.3%	4.4%	2.2%	2.3%	4.7%	3.1%	0.9%	2.1%	3.5%
2017	2.4%	-1.0%	2.3%	1.3%	1.5%	5.6%	2.2%	3.2%	3.5%	2.4%	7.2%	2.0%	3.0%
2018	1.6%	0.3%	3.4%	0.0%	1.0%	3.4%	0.5%	-0.7%	3.5%	1.2%	6.5%	1.7%	1.3%

Source: Statistics Canada, Consumer Price Index
 Prepared by: Newfoundland & Labrador Statistics Agency