

**NEWFOUNDLAND AND LABRADOR PROVINCIAL COURT JUDGES
SALARY AND BENEFITS TRIBUNAL REPORT
SEPTEMBER, 2010**

**LEWIS B. ANDREWS, Q.C.
Chairperson**

W. JOHN CLARKE, Member

DAVID G. NORRIS, Member

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CHAPTER 1:

MANDATE OF THE TRIBUNAL AND BIOGRAPHIES OF THE TRIBUNAL MEMBERS

Mandate of the Tribunal

1. The mandate of this Tribunal is established under Section 28 of the *Provincial Court Act, 1991*, S.N.L. 1991, c. 15, as amended (the “Act”) and also by a letter from the Honourable Felix Collins, Minister of Justice and Attorney General, addressed to the Chair of the Tribunal dated December 3, 2009. In that letter, the Honourable Felix Collins advised that the Lieutenant Governor in Council under the authority of Section 28 of the Act appointed Lewis B. Andrews, Q.C. as Chairperson of the Provincial Court Judges Salary and Benefits Tribunal (the “Tribunal”), which appointment was effective December 1, 2009 and continued for four years. The letter indicated that the other members appointed were Mr. W. John Clarke and Mr. David G. Norris. The letter also indicated that pursuant to Section 28.2(1.2) of the Act, the Tribunal report shall be presented not later than April 1, 2010.
2. It became apparent very early in the process that the Tribunal would not be in a position to present a report not later than April 1, 2010. In fact, the Submission of the Newfoundland and Labrador Provincial Court Judges Association (the “Association”) was not submitted to the Tribunal until February 1, 2010, the Submission of the Government of Newfoundland and Labrador (the “Province”) was not submitted to the Tribunal until March 19, 2010, and the Reply Submission of the Association was not submitted to the Tribunal until April 6, 2010. The hearings of the Tribunal took place on April 11, 12 and 13, 2010. Legislation entitled *An Act to Amend the Provincial Court*

Act, 1991, S.N.L. 2010, c. 4, was subsequently passed providing that the report of the Tribunal shall be presented to the Minister of Justice not later than September 30, 2010.

Biographies of the Tribunal Members

3. Lewis B. Andrews, Q.C. was called to the Bar of Newfoundland and Labrador in December 1974 and has practiced law with the law firm of Stewart McKelvey and its predecessor firm throughout his professional career. He was a Bencher of the Law Society of Newfoundland and Labrador from 1983 to 1989 and served as Treasurer (now known as President) of the Law Society for the term 1988/1989.
4. W. John Clarke has been a member of the Law Society of Newfoundland since 1979. He holds a Bachelor of Commerce Degree from Memorial University of Newfoundland and a Bachelor of Laws Degree from the University of Saskatchewan. He now practices as an arbitrator and mediator with the Centre for Innovative Dispute Resolution of which he is a founding principal.
5. David G. Norris is currently a financial and management consultant, as well as a Corporate Director of Fortis Inc., and Fortis Properties Corporation. He was appointed to the Board of Directors of Newfoundland Power Inc. in 2003 and served as Chair from 2006 until his retirement from that Board in April 2010. For the period from 1984 to 2001 he was Executive-Vice President of Finance of Fishery Products International Ltd., and from 1969 to 1984 he was employed in the Provincial Public Service of Newfoundland and Labrador, where he served in a number of positions, including Deputy Minister of Finance and Secretary of Treasury Board.

CHAPTER 2:

HISTORICAL CONTEXT

Evolution of the Tribunal Process

6. A review of the historical development of the judicial compensation arrangements in this province is set forth in some detail in Chapter 2 of the Steele Tribunal. This Tribunal will not repeat that historical review in this report (the "Report"). This Tribunal does, however, note that since the Tribunal process was implemented in 1991, there were three salary and benefits tribunals appointed in the province prior to the Steele Tribunal, namely: (1) the Whelan Tribunal appointed in 1991 (reported in April 1992), (2) the Roberts Tribunal appointed in 1996 (reported in February 1997), and (3) the Hoegg Tribunal appointed in 2001 (reported in September 2001).
7. The Steele Tribunal was appointed in 2005 and initially reported in May 2006. A supplementary report dealing with the issue of judicial indemnity was filed in April 2007.
8. One of the key issues dealt with by the Steele Tribunal was that of salary. With respect to that issue, the Steele Tribunal recommended the base salary of judges of the Provincial Court of Newfoundland and Labrador, including the Chief Provincial Court Judge (the "Judges"), be increased by 3.8% effective April 1, 2005 in recognition of the increased duties and responsibilities and, in particular, the regularly scheduled, mandatory judicial services to be provided after hours to ensure judicial coverage under revised legislative requirements.

9. With respect to the general salary increase, the Steele Tribunal recommended 0% increases in general salary for Judges for April 1, 2004 and April 1, 2005, a 2% increase for April 1, 2006, a 3% increase for April 1, 2007 and a 2% increase for April 1, 2008, the final year of the mandate of the Steele Tribunal. The Tribunal at paragraph 188 of its report indicated “the recommendations are made in the context that for the most part, during the Tribunal’s mandate, there clearly exists a broad-based uniform Government policy with respect to the salaries and salary increases applicable to ‘persons paid from the public purse’ in the provincial public sector. In many respects, this reality presents a compelling consideration for the Tribunal.”

10. Notwithstanding the turbulent history of the tribunal process over the years, including delays in appointment of tribunals, and the resort to litigation to determine whether certain of the recommendations were appropriate and should be implemented, this Tribunal approaches its mandate for the period from April 1, 2009 to March 31, 2013 with the sincere hope that its recommendations will be considered, accepted and implemented on a timely basis.

CHAPTER 3:

GENERAL PRINCIPLES

11. The issues of judicial independence and judicial remuneration in the context of section 11(d) of the *Canadian Charter of Rights and Freedoms* were considered by the Supreme Court of Canada in the leading decision known as the *PEI Reference* [1998] 1 S.C.R. 3.
12. The four appeals before the Supreme Court of Canada in the *PEI Reference* case were united by a single issue, namely, whether and how the guarantee of judicial independence in section 11(d) of the *Canadian Charter of Rights and Freedoms* restricts the manner by and the extent to which provincial governments and legislatures can reduce the salaries of provincial court judges.
13. Chief Justice Antonio Lamer, writing for the majority in the *PEI Reference* case, stated that the guarantee of financial security provided by section 11(d) to provincial court judges has both an individual and an institutional dimension. Chief Justice Lamer further indicated that the institutional dimension of financial security has three components.
14. 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, to avoid the possibility, or the appearance of, political interference through economic manipulation, a body, such as a commission, must be interposed between the judiciary and the other branches of Government. The constitutional function of this body would be to de-

politicize the process of determining changes to or freezes in judicial remuneration. This Tribunal serves that constitutional function.

15. The *PEI Reference* case also determined that the commission or tribunal established must be independent, effective and objective. Any changes to or freezes in judicial remuneration made without prior recourse to such a commission or tribunal is unconstitutional. Although the recommendations of the commission or tribunal are non binding, they should not be set aside lightly.
16. The second institutional dimension of financial security is that 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.
17. Thirdly, and finally, the Supreme Court of Canada determined that any reductions to judicial remuneration cannot take those salaries below a basic minimum level of remuneration which is required for the office of a judge. The Supreme Court of Canada stated that 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.
18. The Supreme Court of Canada in the *PEI Reference* also stated that section 11(d) of the *Canadian Charter of Rights and Freedoms* does not grant judges a level of independence to which they feel they are entitled. Rather, it guarantees only that degree of independence necessary to ensure that tribunals exercising criminal jurisdiction act, and

are perceived to act, in an impartial manner. Judicial independence must include protection against interference with the financial security of the Court as an institution.

19. In a subsequent decision in *Provincial Court Judges Association of New Brunswick v. New Brunswick (Minister of Justice) et al.*, [2005] S.C.J. No. 47 (known as the *Bodner* decision), the Supreme Court of Canada again stated as a matter of general principle that judicial salaries can be maintained or changed only by recourse to a commission that is independent, objective and effective. The Supreme Court of Canada further indicated that unless the legislature provided otherwise, a commission's report is consultative, not binding. Its recommendations must be given weight, but the Government retains the power to depart from the recommendations as long as it justifies its decision with rational reasons in its response to the recommendations. Reasons that are complete and deal with the commission's recommendations in a meaningful way will meet the standard of rationality. The reasons must also rely upon a reasonable factual foundation; if different weights are given to relevant factors, this difference must be justified.

20. In this context, this Tribunal presents its Report and recommendations concerning salary and benefits for Judges in the Province of Newfoundland and Labrador for the period from April 1, 2009 to March 31, 2013.

CHAPTER 4:

FACTORS CONSIDERED

21. As was pointed out by counsel for the Association at the outset of the Tribunal hearings, there are no factors listed in the *Provincial Court Act*, S.N.L. 1991, c. 15, for consideration by this Tribunal when making its recommendations on salary and benefits. Nevertheless, the Tribunal is required to consider “objective criteria” in making its recommendations and to clearly identify the criteria that it considers to be important.
22. In paragraph 101 of the Submission filed by counsel on behalf of the Association, counsel identified those factors which the Association maintained were presented to and accepted by the Hoegg and Steele Tribunals. These factors include:
- The protection of judicial independence and the public interest in the administration of justice;
 - The nature and importance of the work performed by Judges and their unique role and responsibility in our society;
 - The need to attract, motivate and retain the most highly qualified candidates from all areas of practice;
 - Increases in the cost of living;
 - How the salary of Judges compares with those of other relevant groups in society; and
 - The fiscal capacity of government in light of current economic conditions.
23. While acknowledging the legislation in this province does not set out specific factors that a Tribunal must consider in making its recommendations, the Province in paragraph 18 of its Submission suggested the following factors should be considered by this Tribunal:

- The precedential value of the recommendations of previous salary and benefits tribunals;
- The important and unique role of Judges;
- The salaries of other relevant groups in society;
- The need to attract excellent candidates;
- Increases in the cost of living;
- The fiscal capacity of government and current economic conditions; and
- The need to maintain judicial independence.

24. This Report will deal with each of the factors suggested by counsel on behalf of the parties and will then provide recommendations as to what this Tribunal believes to be appropriate salary and benefits for the Judges for the four year period covered by this Report.

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

25. The Tribunal accepts without reservation that judicial independence is a concept central to our form of democracy. The Tribunal further accepts that judicial independence includes the liberty of individual judges to hear and decide cases based on facts and law, free from external pressure or interference.

26. The Association submits that one aspect of judicial independence invites particular comparison with other judges within Newfoundland and Labrador, all of whom are appointed by the Federal Government (“s.96 judges”). The Association suggests that some effort ought to be made to ensure that the gap between the salaries of s.96 judges

and Judges is not so great as to give an appearance that a poorer standard of justice can be expected in provincial courts. The Association suggests that the present gap in salary is too large a distinction to be fair.

27. In response, the Province submits that there is little merit in using federal judicial salaries as a comparator because they are specifically designed to address the problem of attracting top candidates in Canada's largest cities where legal salaries are particularly high. The Province refers to the *Bodner* decision which it states affirmed the finding of the New Brunswick Court of Appeal that "The federal salary is fixed by reference to factors that have no application in the provincial context".
28. While the Tribunal accepts that the salaries of s.96 judges is one of the factors to be considered in determining the appropriate salary of Judges in this province, the Tribunal does not accept that s.96 judges are a particularly relevant or compelling comparator as is suggested by the Association. The Tribunal does not accept that the present gap in salary gives an appearance that a poorer standard of justice can be expected in provincial courts in this province.

The Nature and Importance of the Work Performed by Judges and their Unique Role and Responsibility in our Society

29. Both the Association and the Province in their Submissions to the Tribunal acknowledge and accept the importance of the Provincial Court and the role the Judges play in this province. However, there is a difference of opinion as to how that importance is, or should be, reflected in the salary paid to the Judges.

30. The Association argues that the uniqueness of the role of judges in our society underscores the importance and ultimately the fairness of comparisons with the compensation paid to judges in other jurisdictions. In response, the Province indicates that while the job of a judge is important and unique, it is not so unique as to be incommensurable. The Province maintains it is important that compensation for Judges not be set solely by reference to other judicial salaries.
31. This Tribunal recognizes the importance of the work performed by and the unique role of Judges in our society. The Tribunal is also of the view that comparison with the compensation paid to provincial court judges in other jurisdictions is a very important and relevant factor in assessing the appropriate salary for Judges in this province. However, this Tribunal also believes that other factors, including wage increases granted to public sector employees, the magnitude of the salary increase overall, and the state of the economy in this province, are also relevant factors for consideration.

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

32. The Association has consistently maintained that the attracting and maintaining of the best candidates for the bench is an important factor when considering the appropriate judicial compensation. The Association takes the position that the focus in considering this factor ought to be on excellence, rather than statistics about numbers of applicants. The Association also suggests that the need to attract excellent candidates from all areas of practice underscores the importance of this Tribunal considering the compensation

paid to s.96 judges as a factor in its deliberations. The Association points out that both courts attract applicants from the same pool of candidates.

33. The Province in its Submission states there is no empirical evidence before this Tribunal to support the proposition that there is a lack of excellent candidates willing to fill vacancies on the provincial court bench. The Province argues that in light of significant increases in judicial compensation in the last decade, attracting excellent candidates is not the concern it once was. The Province also argues that compensation should not be the sole, or even the primary, feature that attracts individuals to judicial service. Rather, being a judge is, and should be considered, a public service of the highest order.
34. The Province also maintains that there are a large number of applicants for the provincial court bench, a number of whom are highly recommended. The Province also argues that if judicial remuneration is set too high, it may have a paradoxical effect. Rather than attracting individuals who wish to serve society on the bench and appreciate the honour of being a judge, it may instead attract candidates who are simply interested in the salary or the pension.
35. 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.

Increases in the Cost of Living

36. The Association retained an economist, Dr. James P. Feehan, to prepare a report entitled "Report on the Present State and Medium-Term Outlook for the Economy of Newfoundland and Labrador and the Financial Position of the Provincial Government". Dr. Feehan appeared before the Tribunal and expanded upon the contents of his report.
37. Based on the report prepared by Dr. Feehan, the Association maintains that the salary of Judges in this province was eroded by inflation during the period 2004-2008. The Association maintains that this amounts to an effective reduction in pay despite the fact that the work and role of the bench is continually expanding.
38. On the other hand, the Province presented a chart which the Province argues indicates that the Judges have made significant real gains in salary over the 12 year period from 1996 to 2008. The Province also maintains that even when considering the four year judicial period of the Steele Tribunal, the percentage change in annual salary for Judges exceeded the increase in CPI over the same period.
39. The Tribunal notes that in making this calculation, the Province included in the salary increases the 3.8% adjustment in 2006 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. As a result, the Tribunal accepts that salary increases over the five year period covered by the Steele Tribunal was approximately 2% behind increases in CPI during the same time frame. The Tribunal also notes that this outcome

was influenced by two years of no general salary increase reflecting similar treatment to others paid from the public purse pursuant to a broad based salary freeze at the time.

How the Salary Compares with that of other Relevant Groups in Society

40. The Association again asserts that given the unique role of judges, if one looks within the province for comparators for the Judges, the best and most obvious comparators are the s.96 judges. However, the Association acknowledges that in most jurisdictions it appears that the comparison with the s.96 judges is considered to be less relevant than comparison with other provincial and territorial judicial compensation and the real question has become establishing the appropriate weight to be given to federal compensation.
41. The Association suggests that one way of considering federal compensation as one factor among many is to include it in the establishment of the Canadian average of judicial salaries with which the Newfoundland and Labrador Judges salary can be compared.
42. The Association rejects any suggestion that the level of compensation paid to the Deputy Attorney General or other Deputy Ministers ought to be a consideration when determining appropriate compensation for Judges.
43. The Province rejects the argument that the nature of Judges' work is so unique that their compensation levels can only be compared with those of other judges. The Province argues that s.96 judges have no utility as a comparator. The Province submits as well, that while the compensation paid to provincial court judges in other provinces is an important comparator, compensation for Judges in this province must ultimately be

determined by reviewing and weighing local economic realities. The Province suggests that compensation of Deputy Ministers is a highly appropriate comparator because frequently the judiciary and most senior levels of government are drawn from the same highly qualified professionals.

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

The Fiscal Capacity of Government in Light of Current Economic Conditions

45. There was much discussion at the Tribunal hearings concerning the state of the provincial economy and its prospects for the future.
46. Dr. Feehan in his report at page 17 stated “in 2008/09, for the first time, Newfoundland’s fiscal capacity was among the strongest of the provinces and it ceased to qualify for equalization. It did not qualify for equalization in 2009/10 either”. In response to questions during the Tribunal hearings, while Dr. Feehan acknowledged that this province still has a very high per capita debt and that there has been a downturn in certain areas of the economy, including oil and gas production which will further decline in the future, Dr. Feehan nevertheless maintained that in comparative terms the provincial economy would be considered robust.

47. The Province acknowledges that the fiscal and economic circumstances of Newfoundland and Labrador have indeed improved. However, the Province emphasises that the province's debt is an important factor for consideration by the Tribunal because it is starkly out of line with other provinces. The Province indicates that as a result of the high provincial debt, there is a high annual cost of servicing that debt and also an ongoing need for debt reduction.
48. The Province indicates as well that the fiscal improvement is largely attributable to oil revenues which can be quite volatile as a result of fluctuations in price, production and foreign exchange. For these reasons, along with other demographic considerations, the Province argues that the future financial position of Newfoundland and Labrador is vulnerable.
49. Nonetheless, both the Association and the Province point out that the improved economic circumstances in this province have provided the basis for a recent round of salary increases to public sector employees of 8% in 2008 followed by 4% in each of 2009, 2010 and 2011. The Tribunal notes that the current improved economic environment and level of salary escalation stands in stark contrast to the era of financial restraint and the associated public sector salary freeze which confronted the Steele Tribunal. While acknowledging the high debt and the associated issues, the Tribunal accepts Dr. Feehan's assertion that the fiscal position of the province has improved vis-à-vis the other provinces of Canada, in particular the Maritime Provinces.

The Precedential Value of the Recommendations of Previous Salary and Benefits Tribunals

50. The Province, in paragraph 20 of its Submission, points out that this Tribunal is the fifth tribunal appointed to consider Judges' salary and benefits, and, as such, has the benefit of the analysis undertaken by past tribunals.
51. The Province goes further in paragraph 21 to suggest that although it is within the jurisdiction of this Tribunal to reconsider issues, it should not do so absent a material change in facts, a change in law, or proof that the previous tribunal somehow failed to thoroughly consider a matter. The Province suggests that imposing such a requirement adds stability to the judicial compensation process.
52. The Association in its Reply Submission, agrees that the reports of the Hoegg and Steele Tribunals are relevant for this Tribunal to consider in reaching its own decision about what is appropriate compensation. However, the Association refers to the *Bodner* decision as support for the proposition that "each commission must make its assessment in its own context".
53. The Tribunal accepts that it is important for the Tribunal to carefully consider the findings and recommendations of previous tribunals as part of this process. However, the Tribunal is also of the view that in making recommendations concerning salary and benefits for the Judges, in particular its recommendation concerning salary, the Tribunal must do so in the context of circumstances that exist at the time of the hearings before the Tribunal.

CHAPTER 5:

ISSUES AND RECOMMENDATIONS

54. The Tribunal was requested by the Association and the Province to make recommendations on nine areas pertaining to the compensation of Judges in this province with respect to the four year period from April 1, 2009 to March 31, 2013, as follows:

- I. Salary;
- II. Interest on Retroactive Salary Payments;
- III. Pension;
- IV. Vacation;
- V. Salary Differential for Chief Judge and Associate Chief Judge;
- VI. Maternity Leave and Parental Leave;
- VII. Judicial Indemnity;
- VIII. Sick Leave; and
- IX. Costs.

I. Salary

55. The base salary of Judges at the commencement of the Tribunal's mandate is \$177,063.00.

56. The Association proposes that effective April 1, 2009, the general or base salary for Judges should be \$203,622.00, an increase of 15%. The Association further proposes that cumulative adjustments of 3% per annum should be applied to this salary figure such that:

- (a) effective April 1, 2010 the salary for Judges should be \$209,731.00;
 - (b) effective April 1, 2011 the salary for Judges should be \$216,023.00; and
 - (c) effective April 1, 2012 the salary for Judges should be \$222,503.00;
57. The Association also proposes that interest should be paid on the retroactive salary adjustments and that each of these separate recommendations regarding salary and interest should be applicable to all who are Judges as at April 1, 2009 regardless of whether they subsequently left the office or the bench due to retirement or otherwise.
58. In proposing a salary effective April 1, 2009 of \$203,622.00, which represents a 15% increase from the current salary for Judges, the Association outlines the basis for a salary increase of this amount.
59. As justification for this increase, the Association points out that the increases in salary negotiated by public sector employees within the province provides some indication of the Province's own view of its overall ability to pay in the context of the economy and its fiscal position. As well, the Association states that another consideration by which the Association justifies the increase for April 1, 2009 is the extent of the additional workload that has materialized for Judges since they assumed the after-hours, quasi judicial duties that, until late 2004, were performed by Justices of the Peace.
60. In response to the requested salary increase by the Association, the Province proposes that salary for Judges should be increased by 8% effective April 1, 2009 with a 3% increase in each of the following three years of the Tribunal's mandate. The Province does not propose that the salary for Judges be increased in line with the salary increases negotiated by public sector employees, even though, apart from the adjustment related to

the realignment of duties, the Judges salary was frozen in line with the public sector employees, as a result of the recommendation by the Steele Tribunal. The Province also requests that no interest be paid on retroactive salary adjustments.

61. Both the Association and the Province identify various comparator groups which should be considered in any recommendation as to the appropriate salary for Judges effective April 1, 2009. The Association considers the “national average” which includes all jurisdictions, including s.96 judges, except Newfoundland and Labrador and Nunavut, the “provincial average” which includes all provinces except Newfoundland and Labrador and the “selected provincial average” which includes all provinces except Alberta, Ontario, PEI and Newfoundland and Labrador.
62. The Association points out that the salary recommended by the Association effective April 1, 2009 in the amount of \$203,622.00 is significantly below the 2009 national average of judicial salaries which is \$221,091.00.
63. The Association advises that it is not seeking parity with federally appointed judges at this time, despite the fact that the Association maintains that the s.96 judges represent the appropriate comparator group within the province itself since they perform the most similar duties to Judges. The Association points out that even with the Association’s suggested salary of \$203,622.00 for 2009, Newfoundland and Labrador Judges would be paid only 76% of their federal counter-parts’ salary of \$267,200.00.
64. With respect to the “provincial average”, that is all provinces except Newfoundland and Labrador; the Association states that the salary proposed for Judges in this province for 2009 would still place Judges in this province \$11,462.00 behind the average of their

provincial counter-parts, well behind the Saskatchewan judges, slightly ahead of the salary implemented by government for Manitoba judges and roughly on par with Nova Scotia judges.

65. The Association indicates that the “selected provincial average” is based only on the average salaries of provincial court judges of British Columbia, Saskatchewan, Manitoba, Quebec, Nova Scotia and New Brunswick (i.e. all provinces except Ontario, Alberta, PEI and Newfoundland and Labrador). It appears the “selected provincial average” arose as a result of comments in the Steele Tribunal Report. The Association indicates that while it does not accept that a rationale exists for excluding Ontario, Alberta and PEI from consideration, comparing the 2007 salary to the “selected provincial average” reveals just how far Judges in Newfoundland and Labrador have fallen behind their counter-parts in recent years.
66. The Association also proposes a “peer group average” which is calculated using the average of judicial salaries in Saskatchewan, Manitoba, PEI, New Brunswick and Nova Scotia. The Association points out that the “peer group average” grouping of provinces includes the jurisdictions which were considered to be most relevant by the Honourable Chief Justice J. Derek Green in the Review Commission on Constituency Allowances and Related Matters of Members of the House of Assembly (the “Green Report”). The Association notes that the “peer group average” for 2009 is \$204,185.00.
67. The Association also identifies other factors which it says justify the salary increase sought in 2009. These include the increases negotiated by the Province with the public service, the perceived steady rise in the income of lawyers in the private practice in this province, and in particular St. John’s, and also the increasing workload for Judges,

including rotation to conduct weekend and statutory holiday court, after hours on-call duties and dealing with emergency protection orders and tele-warrants.

68. The Association also indicates it is seeking 3% increases in each of the fiscal years 2010, 2011 and 2012. The Association indicates it has done so on the basis that the 3% is reasonably reflective of expected increases in cost of living as well as a continuing need to ensure that Newfoundland and Labrador Judges do not lag unreasonably behind their counter-parts in other jurisdictions.
69. The Province, in its Submission, proposes an 8% increase effective April 1, 2009 which would result in a salary commencing April 1, 2009 of \$191,228.00. The Province requests that there be a 3% increase in each of the subsequent three years which would result in salary levels as follows:
- (a) effective April 1, 2010 the salary should be \$196,964.00;
 - (b) effective April 1, 2011 the salary should be \$202,873.00; and
 - (c) effective April 1, 2012 the salary should be \$209,960.00;

The Province submits that such increases enable Newfoundland and Labrador's Judges to maintain a salary in the same general range as their counterparts in Atlantic Canada.

70. The Province also indicates that its proposal echoes the benefits of the province's improving economic circumstances, which have allowed it to provide increases to public sector employees. The Province suggests that since many of the public sector groups had previously been subject to wage freezes with only minimal costs of living increases when

the Judges were not, it would be inappropriate to provide Judges with vastly more generous increases.

71. With respect to comparison to other judges, while the Province agrees that it is appropriate to compare judicial salaries among various jurisdictions, it suggests this comparison must be done with a great degree of care. The Province suggests that the comparative provinces must have similar circumstances to those found in Newfoundland and Labrador and also that in doing such comparisons, all aspects of compensation, not just salaries, must be compared. The Province suggests this includes pensions and other benefits. (The Tribunal was not provided with data to enable it to compare the relevant value of the total compensation for judges in the various provincial jurisdictions.)
72. Having said that, the Province indicates that its salary proposal would create relative parity for the Judges in this province with judges in the Atlantic Region. In making this comparison, the Province includes Newfoundland and Labrador in the Atlantic Provinces Judges average salary as of April 1, 2009. In computing the Atlantic average at \$192,701.75, the Province includes the salary of Judges in Newfoundland and Labrador at \$177,063.00, the rate effective April 1, 2008.
73. The Province suggests that a national average salary is an inappropriate comparator. The Province suggests that complete reliance on a national average would amount to an abdication of the Tribunal's constitutional and statutory responsibilities. Also, the Province suggests that relying on a national average results in comparison of salaries rather than overall compensation and distorts the true picture of the financial situation of Judges. Finally, the Province suggests that if each province's judicial compensation is

continually set at or above the national average, then the national average salary will perpetually increase.

74. The Province rejects federal salaries of s.96 judges as an appropriate comparator and also rejects the “selected provincial average” as problematic since it fails to examine the entire compensation package, does not account for different economic situations and has no acknowledgement of different rates of pay for lawyers in various bars.
75. The Province also rejects the “peer group average” as an appropriate comparator. The Province indicates that Chief Justice Green, in the Green Report, did not actually endorse the particular grouping, but rather endorsed the “method”. The Province further suggests that Chief Justice Green’s comments were made in the context of determining an appropriate compensation for members of the legislature, not for setting judicial salaries and also that the Green Report contained no detailed analysis as to why the Western Provinces should be grouped with the Atlantic Provinces.
76. The Province also suggests that just as salaries of judges in other provinces are a relevant factor, so too is executive compensation in the public service. The Province indicates that by comparison, judicial salaries are substantially higher than those of Deputy Ministers.
77. The Province also provides financial information indicating that the highest paid lawyers in the provincial civil service were paid substantially less than the salary presently paid to Judges in this province. The Province suggests that public service salaries in this regard are reflective of market realities as the public service must compete with the private firms in order to attract legal talent.

78. With respect to incomes for lawyers in private practice, the Province indicates that there is little reliable information as to incomes or income trends in private practice. Regardless, the Province asserts that lawyers in private practice must set aside a considerable portion of their income for retirement purposes. The Province indicates that not only must members of the private bar pay 100% of their retirement but they must also bare the risk associated with self-directed retirement plans. The Province indicates this contrasts with Judges who are insulated from market fluctuations by virtue of their defined benefit pension plans.
79. In the course of its presentation, the Province tabled economic data on Personal Income prepared by Statistics Canada, the Conference Board of Canada, and the Department of Finance (Consent 3), which compares personal per capita income in Newfoundland and Labrador with other regions of Canada, from 2008 to 2014. The Tribunal notes that while this data clearly indicates that personal per capita income generally in Newfoundland and Labrador continues to lag behind the Canadian average, the gap is narrowing and the improving trend is generally projected to continue out to 2014. More significantly perhaps, the data in Consent #3 indicates that the relative ranking of personal income per capita levels generally in Newfoundland and Labrador is improving relative to the “Maritimes” – personal income per capita in Newfoundland and Labrador is shown as 98.0% of the Maritimes’ average in 2008, and is projected at 99.8% in 2010, and by 2013, is projected to have advanced to 103.3% of the Maritimes’ average. While not determinative in itself, this analysis helped the Tribunal gain a perspective on the broad trends in the ranking of incomes generally in this province, relative to the neighbouring provinces. In some respects, it reinforced the significance and usefulness of comparisons with the other three Atlantic Provinces (the “Maritime Provinces”).

80. The Tribunal has fully considered the Submissions presented by the Association and the Province with respect to the relative significance of the various factors to be taken into account in addressing the issue of salary. The need to protect judicial independence, the importance of the work and the unique role of the Judges, the ongoing need to attract excellent candidates, and recent increases in the cost of living, are all recognized and acknowledged by the Tribunal. In addition, the Tribunal acknowledges that there may be, and will likely continue to be, fluctuations in the judicial work load over time. However, the Tribunal concludes that full analysis of these factors does not present any cause for concern or any compelling considerations in the determination of its salary recommendation for this mandate period.
81. In the view of the Tribunal, the primary considerations in relation to its salary recommendation are: 1) salary comparisons with the most relevant comparator group, that being the provincial court judges of the Maritime Provinces; 2) the current fiscal capacity and economic conditions confronting the province; and 3) fair and equitable treatment of Judges in relation to compensation changes for others paid from the provincial treasury.
82. With respect to the crucial consideration of salary comparisons, the Tribunal accepts that it would not be appropriate to include the dated salary of Judges in this province as part of an Atlantic Provinces' average. The Tribunal accepts the most relevant comparator group is the provincial court judges of the Atlantic Provinces, absent the Province of Newfoundland and Labrador, i.e. the Maritime Provinces.

83. When the 2009 salaries for the three Maritime Provinces are considered, the Maritime Provinces average amounts to \$200,757.00. This Maritime Provinces average is calculated as follows:

Jurisdiction	Salary
Nova Scotia	\$202,910.00
New Brunswick	\$186,000.00
Prince Edward Island	<u>\$213,360.00</u>
Maritime Provinces Average:	\$200,757.00

84. The Tribunal acknowledges deficiencies in this calculation, given that New Brunswick has not yet set its judicial salary for 2009 and the salary for PEI is based on a national average. However, the Tribunal ultimately concludes that the Maritime Provinces average remains one of the most relevant and useful comparators.

85. With respect to the second of these considerations, namely the current fiscal capacity and economic conditions confronting the province, it is clear to this Tribunal that fiscal capacity and the overall economic condition of the province during its mandate period reflect a pronounced improvement from the “dire” fiscal circumstances, and the resultant severe restraint, salary freeze environment that was predominant at the time of the Steele Tribunal.

86. With respect to the issue of fair and equitable treatment of Judges in relation to compensation changes for others paid from the provincial treasury, the Tribunal notes that the era of salary freezes has ended. Most categories of persons employed in the provincial public sector have been granted increases totalling 21.5% compounded over a

four year period, which for most employees commenced in 2008, the year before this Tribunal's mandate (representing annual increases of 8%, 4%, 4% and 4%).

87. The Tribunal ultimately concludes that an increase in salary of 11.5% effective April 1, 2009, followed by increases of 3% in each of the following three years produces an appropriate salary for the Judges for the period of the Tribunal's mandate. This represents a significant salary increase, appropriately reflective of the improved fiscal circumstances. It amounts to 21.8% compounded over the four years, which generally provides equitable treatment for Judges in the context of increases granted to others in the public service, albeit with a one year lag.

88. Finally, it provides a salary which, while it is slightly below the Maritime Provinces average as of April 1, 2009, provides for continuing progress as it escalates at a rate beyond the projected increase in the CPI for the subsequent years. The Tribunal believes its salary recommendation appropriately addresses the Associations' concern that "Newfoundland and Labrador judges do not lag unreasonably behind their counterparts in other jurisdictions", and at the same time addresses the Province's concern that "Compensation must not only be fair and reasonable, but it must also conform with the economic realities of this Province". The Tribunal believes that its recommendation on salary fairly addresses both of these positions.

Recommendation

89. *The Tribunal recommends that the salary of Judges be increased by 11.5% effective April 1, 2009 and increased by 3% on April 1st in each of the following three years. In monetary terms, this would provide for the following salary:*

<i>Effective</i>	<i>April 1, 2009</i>	<i>\$197,425.00</i>
<i>"</i>	<i>April 1, 2010</i>	<i>\$203,348.00</i>
<i>"</i>	<i>April 1, 2011</i>	<i>\$209,448.00</i>
<i>"</i>	<i>April 1, 2012</i>	<i>\$215,732.00</i>

II. Interest on Retroactive Salary Payments

90. The Association is seeking a recommendation that interest be paid to Judges as at April 1, 2009, in respect of retroactive salary adjustments, at a rate based on the interest rate established by s.4(2) of the Judgement Interest Act, R.S.N.L. 1990, c. J-2 and the Regulations thereunder.
91. In support of its request, the Association reviews the history of successive delays in initiating and completing the Tribunal process through to implementation. The Association notes the implementation of the Steele Tribunal recommendations did not occur until some 30 months after the commencement of its mandate period, which necessitated retroactive salary adjustments encompassing two and one half years.
92. The Association notes the late appointment of this Tribunal in the Fall of 2009, after the commencement of its mandate period on April 1, 2009, with the resulting likelihood that "judges could again work almost a year and a half at the outdated salary". The Association indicates the request for interest was not made "in a punitive sense" but as a "make whole remedy", "purely on the basis of fairness", noting that Judges have no alternative but to participate in the Tribunal process as it unfolds, and have very limited recourse to address delays attributable to the Province. The Association maintains that government derived an interest benefit from control and use of those funds through the

several months of the period of retroactivity; while conversely, the Judges were denied access to incremental salary entitlements for this prolonged period.

93. In support of its position, the Association cites the majority report of the 2008 MacArthur Judicial Compensation Committee in Manitoba, which recommended the payment of interest. During the Tribunal's Hearings, counsel for the Association advised that the government of Manitoba has not accepted this recommendation and that it is one of the issues that "will be before the Court in the court challenge".
94. In stating its position to the Tribunal on this issue, the Province indicates that it is opposed to the payment of interest on retroactive salary increases. Counsel for the Province notes that the Province's Compensation Policy and Procedures Manual, which has broad application to other persons paid by the public purse, makes no provision for the payment of such interest. Furthermore, the Province contends that the Manitoba recommendation is not representative of the general practice (noting that the Province was unaware of, nor had the Association provided, evidence that any other judicial compensation commission has provided for the payment of interest). The Province also cites the Report of the Third Quadrennial Federal Judicial Compensation and Benefits Commission (the Brock Commission) which recommended against the payment of interest.
95. In assessing the respective positions of the parties on this matter, the Tribunal again considered the history of the tribunal process in this province, dating back to its inception with the *Provincial Court Act* in 1991. This was reviewed in some detail in Chapter 2 of the Steele Tribunal Report and does not require repetition other than to note the tone of Steele's overall assessment in this regard as follows:

The current Tribunal is very cognizant of the difficult pattern of delays, legal issues, and court challenges, ... which have plagued this process in the past. Whatever else, it cannot be seen as promoting the level of harmony that the public might reasonably expect to exist between the judiciary, the executive and the Legislature. Neither can it be seen as healthy or constructive in terms of the morale of the members of the bench.

96. The pattern of delays and the lack of timely attention to the tribunal process on the part of the Province was again evident, from the outset of this Tribunal process. The appointment of the current Tribunal did not take place until eight months following the end of the mandate period of the previous tribunal. Changes in legal counsel for the Province, and the Province's failure to meet agreed upon timeframes for the submission of materials also resulted in further delays and contributed to what the Tribunal observed to be ongoing discord between the judiciary and the executive.
97. While these are important matters which require attention in the interest of establishing the appropriate level of respect, understanding and harmony between the parties, it is far from clear that the solution lies in the payment of interest. Indeed it does not in the view of this Tribunal. While delays in the various stages of the judicial compensation process are not uncommon in this country (as evidenced by the dates and related notes on the comparative salary schedule provided by the Association), the payment of interest is. In fact, based on information tabled before this Tribunal, and pending the outcome of the Manitoba court proceedings, it is unprecedented. Also, the Province's contention that no other persons paid from the public purse in Newfoundland and Labrador receive interest on retroactive salary adjustments, was not disputed.

98. The Association argues the payment of interest is not meant to be punitive, but rather symbolic and an incentive to the Province to address judicial salary matters in a timely fashion. In the larger financial picture, it is indeed questionable as to whether or not there would be any material significance to either the symbolism, or the incentive to the Province of such a payment. Also, while there was no data provided on this point, the Tribunal suspects the Province's borrowing cost in the current economic environment, i.e. the implicit benefit to the Province, is substantially below the interest rate suggested by the Association as being appropriate.

99. In the end, this Tribunal's ultimate conclusion on this issue is very much in line with that of the federal Brock Commission, which at page 39 paragraph 124, stated as follows:

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

100. This reference was cited, in part, by the Province in its submission to the Tribunal. We have included the last sentence (underlined for emphasis) because it is important to note that in recommending against the payment of interest, the Brock Commission also recognised the need for focused attention to the timeliness of implementation. This Tribunal's concern extends beyond the timeliness of implementation, it also encompasses the need for earlier appointments to the Tribunal, an earlier commencement of the Tribunal process, the readiness of the parties to proceed in a timely fashion and the need to adhere to agreed upon timeframes.

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

Recommendation

102. *The Tribunal recommends that interest should not be paid on retroactive salary payments to Judges.*

III. Pensions

103. The Association requests that, effective April 1, 2009, Judges' pension plans be amended to provide annual indexation of benefits at the rate of 100% of the Consumer Price Index (CPI) for Canada – an improvement from the current partial indexing based on 60% of the CPI to a maximum of 1.2% in a year.
104. Prior to 2002, all Judges were covered by the Public Service Pension Plan, (PSPP) along with almost all of the employees of the provincial government, and there was no indexing of benefits. The Judges' Pension Plan (PCJPP), enacted effective April 1, 2002, provided enhanced benefits for Judges, largely based on the recommendations of the Hoegg Tribunal dated September 2001. Transitional arrangements for this new plan included the option for then serving Judges to make a one-time election to join the new plan or to remain covered by the PSPP.

105. As a result, there are today two pension plans pertaining to Judges: i) the PCJPP, in respect of Judges appointed on or after April 1, 2002, as well as Judges appointed before April 1, 2002 who opted to join the plan; and ii) the PSPP, applicable to Judges appointed prior to April 1, 2002 who elected to remain with the PSPP. While the PCJPP provided superior pension benefits for new judicial appointments, the Tribunal understands that previous service credits made continuation under the PSPP more attractive for some longer standing members of the bench. (The Tribunal was told that approximately one third of the Judges remain under the PSPP and two thirds are under the PPCJPP). Implementation of the Association's proposal therefore would require amendments to both plans.
106. While the Hoegg Tribunal had recommended a distinctive and substantially enhanced pension structure for Judges, well beyond the benefits of the PSPP, such was not the case in relation to indexing. The Hoegg Tribunal supported the introduction of indexing, but it recommended that the benefit commence coincident with and on the same basis as indexing for the PSPP. This recommendation was accepted by the Province. The same partial indexing provision was introduced, almost simultaneously, in both pension plans, and it remains unchanged to date.
107. In support of its request for full indexation, the Association outlines the importance of adequate, secure pensions in maintaining judicial independence. More specifically, it emphasizes the potential inflation erosion on the purchasing power of a Judge's pension under the present formula. The Association also suggests that fears of such pension erosion could be a disincentive to retirement - a deterrent to the ongoing renewal of the bench. In addition, the Association presented an inter-provincial comparison of pension

indexing provisions which indicated that, apart from BC, the indexing benefit for Judge's pensions in Newfoundland and Labrador is the lowest in Canada.

108. The Province opposes the Association's indexing proposal and requests that the Tribunal recommend no modification to the judicial pension plans under the PSPP and the PCJPP.
109. The Province submits that, while a good secure pension plan is important to the maintenance of judicial independence, the difference between full and partial indexing does not threaten judicial independence. The Province also states that there is no evidence to suggest that Judges delay retirement due to concerns related to indexing. In addition, the Province contends that the existing benefit structure is sufficient to attract "excellent candidates" to the bench and cited what it regarded as a very positive experience in the recent filling of judicial vacancies. The Province also outlines its perspective on the relative attractions of the Judges' defined benefit pension plan, compared to the retirement arrangements generally available to lawyers in private practice.
110. The Province contends that when comparing pension plan benefits, it is most appropriate to consider the pension benefit package as a whole -- rather than individual components in isolation. The Province does not dispute the Association's contention that judges' pension indexing provisions per se in the other Atlantic Provinces, and most of the country, are more beneficial than Newfoundland and Labrador. However, it argues that this province has the most generous overall pension package of judges in the Atlantic Provinces. In this regard it highlighted two features it considered to be significant advantages in this province: i) pension benefits are calculated based on "final salary" under the PCJPP, which it submitted is more generous than a three year average formula applicable in most other provinces, and ii) pension benefits under the PCJPP are

“stacked” with CPP benefits, whereas it contends they are integrated in Nova Scotia and partially integrated in PEI. (These contentions were challenged by the Association. The Tribunal was presented with conflicting information in respect of the various comparisons and it notes that the presence of two plans - “old” and “new” in Nova Scotia, PEI and Newfoundland and Labrador - clouded the analysis somewhat).

111. In the course of its deliberations the Tribunal noted that the pension package which appeared to be most generous in some situations, ranked less beneficial in other circumstances. For example, in times of modest or no salary increases, the Tribunal found that the “final salary” formula with a 66.7% pension, can yield a lesser pension than a “three year average formula” with a 70% entitlement. On the other hand, in periods immediately following significant salary increases the final salary formula can yield a substantially more generous pension than the three year average.
112. The Tribunal concluded that differences in the individual benefit components and formulae of various pension plans, the existence of more than one pension plan in a number of jurisdictions, differences in the timing and amount of salary progression in the years immediately prior to retirement, variations in the level of contribution required of participants - all quite apart from differences in the ages and service circumstances of individual judges - make a definitive ranking as to which pension plan is most generous overall a difficult, if not impossible task.
113. From a financial perspective, the Association contends that the cost of full indexing for judges is relatively insignificant. It rejects the notion of long term costing and contends that indexing should be considered on its merits for Judges alone. The Association contends the financial implications should be limited to the cost related to the “handful of

judges” who retire during the Tribunal’s mandate (April 1, 2009 to March 31, 2013). It notes that such costs would be insignificant relative to the size of the Department of Justice budget. The Association also argues that the potential cost of extending full indexing to the broader provincial public service and teachers, the “ripple effect”, is not within the Tribunal’s mandate. Furthermore, it submits that such concerns are unfounded and irrelevant and should be rejected by the Tribunal.

114. The Province disagrees with the Association’s narrow, short term perspective on costing. It argues that such pension improvements must be evaluated in the context of the increase in actuarially determined current service cost, as well as the impact on long-term pension liabilities. The Province indicates that by its actuarial analyses the cost implications are quite significant - full indexing would increase the current service cost of the PCJPP by 7.5% to 10.3% of payroll, depending on the inflation assumption used. Also, it indicates by the same analysis, full indexing would increase the plan’s unfunded liability by a further \$1.2 million to \$1.6 million (again depending on the inflation assumption).
115. The Association argues that the Province had presented conflicting information in that it was alleging significant cost implications, while in one of its documents it acknowledges that the cost of the indexing proposal is “insignificant” (a reference to Tab 39 of the Province’s submission which states “*Granting this to judges would not be a major cost issue, however, extending this benefit to other public sector groups would be quite significant from a cost perspective*”). The Tribunal notes the apparent discrepancy but recognizes the differing contexts of the two statements. It appears that the former refers to the significant proportionate impact on the Judge’s plan in and of itself (significant for a group of 20 or so active Judges). The latter referred to the far more substantial

implications, an increase in pension liabilities of over \$1 billion, if unlimited indexing were to be extended to provincial civil servants and teachers - by which measure, the cost of the Judges' benefit enhancement alone would be of a lesser significance.

116. On balance, the Tribunal found that the Judges' pension plan in this province is not uniformly the best in all circumstances. However, apart from indexing which is below the norm for Judges elsewhere in Canada, the overall pension benefit structure in this province ranks highly among judicial pension arrangements in Atlantic Canada. There is certainly no basis to conclude that the current overall benefit structure impinges on judicial independence or has been a deterrent to those who might seek to join the bench.
117. Notwithstanding the favourable aspects of the pension plan, the Tribunal has struggled with the troublesome reality that the limited indexing of pensions in this province results in the diminution of the purchasing power of a Judges' pension over time, to a greater extent than judges in the other Atlantic Provinces. The Tribunal recognizes the Judges' argument in this regard. However, the Tribunal is equally cognizant of the perplexing reality that the pensions for virtually all categories of employees paid from the public treasury in this province are subject to exactly the same degree of erosion by inflation as are judges.
118. As noted above, the linkage of the indexing component of the PCJPP to the PSPP dates back to both the initial enactment of the PCJPP itself and the introduction of pension indexation in the broader public sector in the province. The Tribunal finds it significant that when the Hoegg Tribunal designed the new framework for judicial pensions in this province in 2001, and recommended a number of significant enhancements beyond the

PSPP, it recognized the relationship between judges and the rest of the public service on the issue of indexing in its recommendation:

The Tribunal recommends that indexing of pension benefits should commence at the same time, and at the same rate, as it will for the Public Service Pension Plan....

119. In relation to other jurisdictions, this Tribunal notes that in virtually all provinces, the overall pension package available to judges today is superior to the general public service pensions plans. However, in a number of cases the indexing provision is identical for both plans, as it is in Newfoundland and Labrador. In particular, two of the three other Atlantic Provinces, namely New Brunswick and PEI, have the same indexing provision for public servants as is applicable to judges.

120. From the outset in this province, Judges and public servants have been subject to the same pension indexing provisions. Such is also the case in many other provinces. While the Tribunal is fully cognizant of the scope and limitations of its mandate, it is equally aware of its responsibility to ascertain and weigh the practical consequences of its recommendations in so far as possible. Clearly, thousands of others in the public service of Newfoundland and Labrador face exactly the same potential erosion of pension income from inflation as Judges do today. While the Tribunal is not enamoured to the “ripple effect” concept per se, it cannot ignore reality. In a practical sense, amending the PSPP and the PCJPP, to single out judges for a preferential indexing arrangement vis-a-vis all other provincial pension plans, when the PCJPP is already superior, would likely not go unnoticed – nor should it. The argument for change, based on inflation erosion is the same for all.

121. In reaching its conclusion, the Tribunal is of the view that the current indexing arrangement is not an impairment to judicial independence, nor a constraint on the ability to attract excellent candidates to the bench. The inter-provincial comparison of overall pension packages is complex and not conclusive as to the incremental generosity of this Province's plan, as the Province suggests. Nonetheless, it is clear that judges in most other provinces have more favourable pension indexing arrangements. From a cost perspective the Tribunal concludes that the Association's narrow and short term approach to costing is not appropriate for pension matters. Rather, the Tribunal accepts that long-term actuarial analysis, as presented by the Province, is the more relevant financial consideration.
122. None of these considerations alone was the ultimate determining factor for the Tribunal. The Tribunal concluded that the broad implications of acceding to the full indexing request, within the context of the public service of Newfoundland and Labrador, must be the pivotal consideration on pension indexing. The Tribunal does not accept that the full indexing of Judges' pensions should be introduced in isolation to the provision applicable to the rest of the public service in this Province. The linkage is real and longstanding. The arguments in support of change are the same for all. The implications of making the change across the public service are significant and far reaching. The Tribunal could not justify how the Province could extend full indexing to retired Judges, if it is not in a position to extend this full indexing in the same manner to other public sector employees.
123. Accordingly, on pension indexing, the Tribunal finds the internal relationship of Judges to others in the provincial public sector to be the most compelling consideration.

Recommendation

124. *The Tribunal recommends that there be no modification to the pension indexing provision.*

IV. Vacation

125. In its Submission on vacation, the Association seeks 30 days of paid leave per annum with the right to accumulate unused vacation days to a maximum of 60 days. The Province, on the other hand, suggests that the 25 days per annum which the Judges presently receive is sufficient and appropriate. The Province agrees that the maximum accumulation of vacation should be 60 days.

126. The Association points out that the Judges in this province receive the fewest number of annual leave days of any provincial court judges in the country. In particular, it emphasises that “judges in every other Canadian jurisdiction receive at least 5 days more of vacation than do provincial court judges in Newfoundland and Labrador and some receive as much as 15 days more”. The Association notes as well that the paid leave policy for Crown attorneys, legal aid lawyers, and executives in the provincial public service of this province provides 30 days vacation after 10 years and 35 days after 25 years. The Province points out that this leave arrangement for other public servants, encompasses sick leave as well as vacation.

127. The Province contends that this province enjoys more government paid holidays than any other province. The Association points out that while there may be more of such holidays, Judges are frequently required to work in off hours. The Province also argues that the issue of vacation, as well as compensation for work in off hours, has been dealt with by prior tribunals and accordingly these policies should not now be reopened for amendment by this Tribunal. In particular, the Province argues “the Association has failed to demonstrate a change in circumstances warranting increased vacation leave”.
128. This Tribunal finds the level of the current vacation entitlement for Judges in Newfoundland and Labrador to be an anomaly when compared to the benefit for all other judges in Canada. It acknowledges the submissions with respect to the more generous paid holiday entitlements in this province (while the specifics were not provided). However, it does not accept as compelling, the argument that incremental paid holidays are a direct trade off for a lesser vacation entitlement. In this Tribunals’ view, there is a distinct difference between time off, one day at a time according to a government schedule, and vacation time which can be planned to enable the Judge to be away from the court environment for several days.
129. This Tribunal acknowledges that other tribunals have considered the vacation issue, most recently the Steele Tribunal, and no change was recommended. The Steele Tribunal stated:

The Tribunal weighed the respective positions of the parties on this benefit in the context of: the existing benefit arrangements, comparisons with other jurisdictions, comparisons with other compensation arrangements in the public service, potential cost and service implications, as well as its general conclusions with respect to recommended compensation arrangements for the period of its mandate.

In this regard, the Province contends that nothing has changed since in the other jurisdictions and, therefore, there is no basis to change in Newfoundland and Labrador.

130. This Tribunal notes however, that throughout the Steele Report there was repeated reference to the “dire” financial circumstances confronting the Province at the time. The Tribunal notes that circumstances have changed and that the compelling financial consideration is not present before this Tribunal. There is no longer a broad-based salary freeze in effect and it has been acknowledged by both parties that the Province’s financial and economic circumstances have improved.

131. Accordingly, in this Tribunal’s view, it is not a valid argument to say that this issue has been dealt with by previous tribunals, nothing has changed, and therefore Judges’ vacation benefits in this province should remain below all others in Canada. The purpose of tribunals such as this one is to periodically review the compensation and benefits packages of Judges in Newfoundland and Labrador to determine whether those compensation and benefits packages are in accord with current economic and financial circumstances and prevailing benefit arrangements and trends for the judiciary. It is then the responsibility of the Tribunal to make recommendations based upon the various factors set out in this Report giving due consideration to the historical, as well as, the most up to date information as tabled by the parties.

132. The Province argues that if the annual entitlement to vacation was to increase, then the increase should be implemented on a graduated basis such that the period of entitlement would increase with the length of service of each of the Judges. In the view of the Tribunal, such a concept runs contrary to the principle that all Judges are equal, with equal pay, and perform the same duties. The Judges have identical powers, and the full

weight of judicial responsibility, upon appointment. In this Tribunal's view, there is no justification for a graduated system of vacation entitlement – just as there is no justification for a graduated salary scale.

133. With respect to the maximum level of unused vacation which may be accumulated, both parties propose that the current maximum accumulation of 60 days remain unchanged. The Province notes that this is a higher level of accumulation than permitted in some other provinces and suggests this supports their position of holding the annual entitlement at 25 days. The Tribunal does not accept that the level of maximum accumulation provides an offset or a rationale to hold the annual vacation entitlement below the widely accepted practice for judges across the country.

Recommendation

134. *The Tribunal recommends that the annual vacation entitlement for Judges be set at 30 days with Judges being able to accumulate unused vacation days to a maximum of 60 days. This benefit is to take effect on April 1, 2010 for persons who were Judges within the Province of Newfoundland and Labrador at that date.*

V. Salary Differential for Chief Judge and Associate Chief Judge

135. The Association is seeking an increase in the differential between the Chief Judge of the Provincial Court and a Puisne Judge as well as an increase in the differential in the Associate Chief Judge and a Puisne Judge. The Association also requests that the Senior Coordinating Judge be paid a differential above the salary paid to a Puisne Judge.

136. The Association maintains that these three positions are responsible for the administrative aspects of the Provincial Court on a province wide basis. The Association outlines the various duties of the Chief Judge as set out in Section 8 of the *Provincial Court Act, 1991*, noting that the position has charge at all times of the general policy of the court in judicial matters, the assignment of duties, requests for exchange of duties among judges, the coordination and appointment of the work of Judges, as well as the transfer of Judges throughout the province. According to the Association, various specialized courts have evolved which places additional pressure on the Chief Judge.
137. In addition to these duties, there is also the representational function of the position of Chief Judge with various interest groups within the province, various governmental departments, as well as the requirement that the Chief Judge attend at meetings of various judicial groups, including sitting as chair of the Judicial Council.
138. In the absence of the Chief Judge, the Associate Chief Judge, is required to perform the duties of the office of Chief Judge.
139. The position of the Associate Chief Judge, as with the position of Chief Judge, is created by statute. However, there is no statutory basis for the position of Senior Coordinating Judge. This is a position which it appears evolved over time and which the Province now argues has been subsumed within the duties of the Associate Chief Judge. The Province does not recognize the position or accept that there should be a difference in the salary paid for the Senior Coordinating Judge appointed by the Chief Judge.

140. Historically, the differential for the Chief Judge was a fixed salary amount. This was changed with the Whelan Tribunal which recommended the differential be 6%. Later Tribunals have maintained the 6% differential for the Chief Judge while providing a 3% differential for the Senior Coordinating Judge. However, this Tribunal notes that the position of Associate Chief Judge was created by statute in 2008.

141. The evidence before this Tribunal leads to the conclusion that the position of Senior Coordinating Judge is now contained within the position of Associate Chief Judge. This Tribunal accepts that there is sound reasoning for a differential in the pay between the Chief Judge and Associate Chief Judge and that of a Puisne Judge. The Associate Chief Judge appears to have certain distinct coordinating functions within the court itself on an ongoing basis, and also that person fills in for the Chief Judge when the Chief Judge is absent. Given that the bulk of the administrative and liaison responsibilities rests with the Chief Judge, it is the view of the Tribunal that the differential for these two positions should be different.

142. The level of difference between these two positions in all the provinces and territories was provided by the Association in its Submission. It is interesting to note that many other provinces have a fixed differential expressed in dollars rather than percentages. The other provinces with percentage differentials include Quebec, which has a differential of 12% for the Chief Judge and 11% for the Associate Chief Judge, and British Columbia, which has a differential of 12% for the Chief Judge and 6% for the Associate Chief Judge. The Province of Quebec also recognizes three other administrative levels.

143. As noted elsewhere in this Report, it is the opinion of this Tribunal that the most relevant comparators for the Judges of this province are judges of the other Atlantic Provinces. The chart submitted by the Association shows that the differentials for this province are 6% for the Chief Judge and 3% for the Associate Chief Judge. PEI has a fixed differential of \$5,000 for the Chief Judge and no differential for the Associate Chief Judge. The Tribunal notes that there are only three Provincial Court Judges in PEI. The Province of New Brunswick has an 8% differential for the Chief Judge and a 4% differential for the Associate Chief Judge, while the Province of Nova Scotia has a differential of 8% for the Chief Judge and 5% for the Associate Chief Judge.
144. While it is not unanimous within Maritime Provinces, an 8% differential for the Chief Judge is recognized by two of these three provinces. Given the level of responsibility of the Chief Judge, this Tribunal sees no reason why the differential in this province should be less. The Tribunal is also of the view that there should be a differential paid to the Associate Chief Judge and that the differential should be 4%.

Recommendation

145. *The Tribunal recommends the differential between the Chief Judge and the Puisne Judges be set at 8% of the base salary of the Puisne Judges. The Tribunal also recommends that there be a differential for the Associate Chief Judge and that the differential be set at 4% of the base salary of the Puisne Judges. The Tribunal recommends that there be no differential paid to the Senior Coordinating Judge.*

VI. Maternity Leave and Parental Leave

146. Both the Association and the Province presented to the Tribunal draft policies concerning maternity leave and parental leave. The draft policy prepared on behalf of the Association is attached to its Submission as Tab 35. The draft policy of the Province is attached as Tab 41 of its Submission to the Tribunal.

147. The main features of the Association's proposal include the following:

- Maternity leave of 17 weeks during which a Judge would receive her regular salary, provided the Judge agrees in writing to return to active service for at least 6 months following the leave. Judges who receive maternity leave would also be eligible for 35 weeks of unpaid parental leave in addition to the maternity leave, provided that the parental leave is taken immediately after the maternity leave.
- Parental leave of 35 weeks, during which a Judge would receive his or her regular salary for 17 weeks, provided the Judge agrees in writing to return to active service for at least six months following the leave. Judges who received maternity leave would not be eligible for the 17 weeks of paid parental leave but would be eligible for the 35 weeks of unpaid parental leave in addition to the maternity leave. Parental leave would include time off to care for an adopted child.
- For the duration of the maternity and parental leaves, a Judge would continue to receive benefits to which she or he is entitled as an active Judge, provided that the Judge continues to make any contributions normally made by that Judge.

148. The Province's proposal, on the other hand, includes the following:

- Judges would be granted unpaid parental leave consisting of a period not exceeding 52 weeks. The parental leave would be granted to either parent following the birth or adoption of a child.
- A pregnant judge who has not commenced parental leave could, subject to the approval of the Chief Judge, elect to use earned paid vacation leave beyond the date that the pregnancy terminates.

- A Judge who takes parental leave would have up to 52 weeks recognized for the purpose of paid vacation leave and sick leave. The Province would continue to pay the cost of long-term disability insurance during the Judge's parental leave.
- Upon return to work, a Judge could have the period of leave credited for pension purposes. A Judge who elects, within 90 days, could purchase the period of leave by paying contributions that would have been paid had the Judge not gone on leave. The Province would match this amount. A Judge who elects to purchase after 90 days would be required to pay the full actuarial cost of the service.

149. As is evident from the above, while the Association and the Province agree that this Tribunal should recommend a maternity leave and parental leave policy, there is no agreement as to the contents of the policy. Specifically, there is no agreement as to the nature and duration of the leave or whether any, all or a portion of the leave should be with pay.

150. As to the duration of the leave, the Tribunal notes that, for the most part, the maternity leave and parental leave policy proposed by the Association conforms with the provisions of the *Labour Standards Act*, R.S.N.L. 1990, c. L-2. This includes 17 weeks of maternity (pregnancy) leave followed by 35 weeks of parental leave. However, the *Labour Standards Act* provides that a pregnant employee is entitled to this leave of absence without pay.

151. The Tribunal is of the view that Judges should be entitled to maternity leave and parental leave that is equivalent to the maternity leave and parental leave generally available to others in our society. However, there is the second issue of whether a Judge should be entitled to her or his regular salary, or a portion of the regular salary, during the period of maternity leave and/or parental leave.

152. The Tribunal notes that most all employees in this province are covered by the provisions of the *Employment Insurance Act*, S.C. 1996, c. 23. These persons, as well as their employers, pay premiums to the Employment Insurance fund established under that legislation. Judges are not covered by that legislation and are not entitled to Employment Insurance benefits since neither they nor the Province on their behalf make contributions to that fund.
153. The Tribunal further notes that persons covered by the Employment Insurance program who pay into the fund are entitled to a portion of their annual income by way of maternity leave benefits. The eligible persons are entitled to payment of a percentage of their regular salary during the maternity leave and parental leave for a period of up to 52 weeks, subject to a cap on maximum entitlement. While a Judge is not entitled to Employment Insurance benefits since she has not paid premiums into that fund, it is nevertheless the view of the Tribunal that a Judge on maternity leave should receive some level of compensation for some period of time.
154. The various jurisdictions in the country appear divided on the issues of the extent of leave for provincial court judges and whether the leave should be fully paid, partially paid, or unpaid. Manitoba, British Columbia, Saskatchewan and Ontario have full pay for varying periods of time for both maternity leave and parental leave. In Nova Scotia, judges are eligible for 52 weeks of parental leave with partial salary for 17 weeks. Alberta, Yukon and Northwest Territories have varying periods of maternity leave, parental leave and adoptive leave without pay.

155. Taking all of the foregoing into consideration, the Tribunal is of the view that a Judge who becomes pregnant while in office should be entitled to 17 weeks of maternity leave during which period she would receive salary, but at a reduced rate of pay equal to $\frac{2}{3}$ of her regular salary. The Tribunal is also of the view that upon completion of the maternity leave, the Judge should be entitled to unpaid parental leave for a period not exceeding 35 continuous weeks. A similar unpaid parental leave should also be available to a Judge who adopts a child or children or becomes a parent of a child.

Recommendation

156. *The Tribunal recommends the establishment of a Maternity Leave and Parental Leave Policy which is attached to this Report as Schedule A.*

VII. Judicial Indemnity

157. The issue of Judicial Indemnity was considered by the Steele Tribunal, which, after much deliberation, deferred making a recommendation in its Report and requested further submissions from the parties. Even after further submissions, the Steele Tribunal was not able to reach a consensus as to whether a Judicial Indemnity Policy should be put in place and, if it did, what that Policy would look like.
158. In their Submissions to this Tribunal, both the Association and the Province requested that a Judicial Indemnity Policy be implemented and in fact each party presented a draft Judicial Indemnity Policy for consideration by the Tribunal.

159. The Tribunal notes there is presently confusion and uncertainty concerning immunity and potential liability of Judges in this province in light of the provisions of the *Justices and Public Authorities Protection Act*, R.S.N.L. 1990, c. J-7. While section 32 of the *Provincial Court Act*, 1991 provides that “every judge has the same immunity from liability as a judge of the Supreme Court”, sections 4 and 5 of the *Justices and Public Authorities Protection Act* provides exceptions to immunity in certain cases.
160. While this Tribunal is prepared to recommend a Judicial Indemnity Policy in this Report, the Tribunal also recommends that the Province make necessary amendments to the *Justices and Public Authorities Protection Act* so as to avoid continuing confusion and apparent contradictions which exist between that legislation and the *Provincial Court Act*, 1991.
161. Further, while the Tribunal is prepared to recommend a draft Judicial Indemnity Policy as requested by both parties, as part of this Report, the Tribunal also wishes to set forth the principles upon which the Policy has been prepared.
162. The Tribunal rejects the notion that Judges should be provided indemnity with respect to their actions prior to being appointed to the Provincial Court. The Tribunal notes that such actions which occurred prior to appointment are likely covered by a separate policy of insurance. Regardless, the Tribunal sees no basis for actions of Judges prior to appointment being covered by a Judicial Indemnity Policy for Judges while in office.

163. The Tribunal also rejects the broad scope of full indemnity proposed in sub-clause 3(c) of the draft Judicial Indemnity Policy attached at Tab 42 of the Submission on behalf of the Association. The Tribunal believes that the Judicial Indemnity Policy should not be without limits.
164. The Tribunal further rejects the proposal put forth on behalf of the Province which proposes that the Minister of Justice will determine if and when the Judicial Indemnity Policy is engaged. The Tribunal believes that it would be inappropriate for the Minister of Justice, or any other person, to make a determination of the issue in dispute prior to a hearing being held and the Judge having an opportunity to present his or her defence. To require the Judge to disclose to a third party, including the Minister of Justice, the substance of the defence as a preliminary matter would be contrary to natural justice.
165. The Tribunal also is of the view that, provided the action complained of was committed while a sitting judge, the Judge should initially be entitled to payment of defence costs. The Tribunal is further of the view that, in appropriate circumstances, the Province should be entitled to reimbursement of the costs paid where it is found, that in relation to the action complained of, the Judge acted in bad faith or acted wrongly in a manner that is fundamentally inconsistent with his or her judicial capacity or function or in a manner inconsistent with the requirement for good behaviour contemplated by section 10 of the *Provincial Court Act*, 1991.

Recommendation

166. *The Tribunal recommends the adoption of the Judicial Indemnity Policy which is attached to this Report as Schedule B.*

The Tribunal also recommends that the Justices and Public Authorities Act be amended to remove the contradictions and inconsistencies relating to Judges.

VIII. Sick Leave

167. While all other issues considered by this Tribunal were raised by the Association and responded to by the Province, the issue of sick leave was first raised before this Tribunal by the Province which sought changes in the existing sick leave provisions. The Association maintains that the present sick leave should remain unaltered.
168. The Province contends that at present there are virtually no limitations in relation to sick leave benefits available to Judges. It takes the position that limitations should be introduced and in this regard, it proposes “that judges accrue 1 day sick leave per month and that there be a cap on usage of 240 days in a 20 year period”.
169. The Province indicates that Judges have a generous long term disability policy, with costs fully funded by government. It contends that its proposal would still provide Judges with sufficient sick leave to cover illnesses short of disability. It submits that its proposal exceeds the requirements of the Labour Standards Act, R.S.N.L. 1990, c. L-2 as well as the sick leave policy for new provincial government employees. Furthermore, the Province contends that the overall sick leave benefit structure available to Judges is quite generous and that the introduction of “reasonable limits” on sick leave would not deter candidates from applying to the bench. The Province contends that unlimited sick leave is not required to maintain judicial independence. In addition, the Province states that a majority of other provinces have limitations on sick leave accrual and usage.

170. The Association argues that the current policy is not “unlimited”. It contends the arrangement provides for sick leave for up to 6 months at which point a long-term disability policy becomes operative. The Association notes as well that sick leave is subject to the approval of the Chief Judge of the Provincial Court. The Association contends the Province’s proposal is inconsistent with the principles of judicial independence in that “if a judge suffered a serious illness in the first few years of employment, his or her financial security would be put at risk”.
171. The Association underlines the significance of the Hoegg Tribunal’s recommendation which led to the current, distinct, leave policy for Judges and the discontinuation of the previous, civil service based, sick leave accrual policy. The Association contends the sick leave policy should not be viewed as a potential attraction for new candidates to the bench, but as a crucial element in the protection of the financial security of existing Judges. The Association requests that the Tribunal reject the Province’s proposal and recommend the retention of the existing policy.
172. The Association disputes the validity of much of the data contained in the inter-provincial comparison of judicial sick leave policies submitted by the Province. (In that regard, the Tribunal requested both parties provide additional information to clarify the nature of the policies and limitations on sick leave in other provincial jurisdictions).
173. Unfortunately, the data submitted by the parties still contained some inconsistencies. Nonetheless, it is clear that in other provinces there generally are limitations on sick leave entitlements. It is equally clear that there is a wide variation in the prevailing practices amongst the other provinces, including: i) total discretion of the Chief Judge in Quebec; ii) an unwritten arrangement in Alberta, (with different interpretations by the parties to

this Tribunal process); iii) 7 months' salary protection in BC and, similarly, protection for 130 days in Ontario; iv) up to 100 days per incident of short term disability in Nova Scotia; and v) a monthly/annual accrual structure in most other provinces (generally 15 to 18 days a year), some with a prescribed maximum, ranging up to 240 days and others with no maximum.

174. The Tribunal notes that New Brunswick and PEI have accrual rates of 18 and 15 days respectively, to prescribed maximums of 240 and 210 days respectively. The Association also explains that while Manitoba has a monthly accrual system to a prescribed maximum, it also has a provision whereby newly appointed Judges have an advance of 85 days sick leave on their appointment.

175. The Tribunal accepts the Province's position that, over time, sick leave benefits can be quite costly and that such benefits should not be unlimited. Therefore, it supports the introduction of a sick leave accrual arrangement with benefits building to a maximum. However, this Tribunal finds the Province's proposal for a cap on usage, as opposed to a maximum accumulation, lacking in rationale and, unprecedented amongst judicial sick leave plans in Canada.

176. While cognizant of the evolution of sick leave regulations for the broader public service in Newfoundland and Labrador, the Tribunal understands that Judges have had different sick leave arrangements for a number of years. Accordingly, the Tribunal does not regard the general provincial public sector trend as the pivotal factor when considering appropriate sick leave for Judges. The Tribunal regards Judges' circumstances as being different than those generally prevalent throughout the public service. Judges, of necessity, join the bench, at an advanced stage in their careers. In doing so, they must

sever previous employment arrangements, client relationships and business affiliations – a potentially significant change of life style, with little prospect of turning back.

177. The Tribunal is of the view that it is unreasonable to expect an individual to make a fundamental change in career direction and lifestyle, and then face the possibility that an unforeseen illness, shortly after joining the bench, could leave him or her seriously exposed financially. Indeed such potential exposure might deter some from choosing to join the bench. It appears the up-front availability of benefits in Manitoba and possibly BC, Ontario, Nova Scotia, and even the discretionary arrangement in Quebec adequately addressed this concern for newly appointed judges. This Tribunal is further of the view that such an up-front accommodation is imperative.

178. Accordingly, the Tribunal concludes the sick leave policy should be revised to specify limitations on the rate of benefit accrual, establish a maximum entitlement but also provide a reasonable advance on benefits for a new judge who might become ill, early in his or her tenure.

Recommendation

179. *It is recommended that:*

- (a) *The sick leave policy be amended to provide that Judges accumulate sick leave at the rate of 1.25 days per month (15 days a year) to a maximum accumulation of 240 days;*

- (b) *Upon appointment to the bench, a Judge would have access to an advance of up to 130 days sick leave. This advance would be reduced, and eventually eliminated, with the accumulation of service credits by the Judge; and*
- (c) *The Province determine the sick leave entitlement of each Judge based upon sick leave usage and accumulation of sick leave at the rate of fifteen (15) days a year from the date of appointment as a Judge to the date of implementation of this Report.*

IX. Costs

- 180. The Association, in its Submission to the Tribunal, requests that the Province be required to pay to the Association its costs incurred for legal fees and disbursements, including the costs of experts, on a solicitor and client basis subject to taxation by the Tribunal as to reasonableness.
- 181. The Province requests that the Tribunal recommend that the Province pay one-half of legal fees and related disbursements subject to assessment by the Tribunal as to reasonableness, based on single counsel representation at the hearing (including the payment of disbursements by second counsel in preparation for the hearing). As well, the Province requests that the Tribunal further recommend that the Province pay one-half of disbursements related to the provision of expert evidence.

182. The Association points out that the Hoegg Tribunal recognized the importance of Judges being represented by counsel in this process and, after finding that the legal bill submitted was reasonable, recommended that the Judges' representational costs be 100% paid by the Province. In explaining why it recommended that the Province pay 100% of the representational costs, the Hoegg Tribunal noted that the Tribunal process is constitutionally mandated for the benefit of all; it is not an elective process. Also, the issues covered an extended period, ie twice the usual four year jurisdictional period, and included complex pension and other benefits. The Hoegg Tribunal did, however, also state that historical circumstances made the work for all involved in that hearing voluminous, complex and time consuming and further indicated those circumstances were unique, and unlikely to recur. The Hoegg Tribunal also indicated that future tribunals would be well served by a frame work for managing representational costs.
183. The Association also points out that the legal costs involved in this process can be substantial as there is significant effort involved in the preparation of materials and briefs. The Association also indicates that costs of obtaining economic and actuarial advice are a burden that would have to be shared among a small group of Judges.
184. The Province, in its Submission, while accepting that the Judges should not be expected to bear all costs involved in participating in this Tribunal process, does not agree that the Province should bear 100% of Judges' representational costs. The Province also submits that while it does not question that the Association's Submissions on behalf of the Judges are "reasonably necessary" for the Tribunal to discharge its mandate, it does not believe that the circumstances surrounding the appointment of this Tribunal warrants the awarding of 100% costs.

185. The Tribunal notes that pursuant to the agreement of the parties, the Steele Tribunal recommended that the Province pay two-thirds of legal fees and related disbursements submitted on behalf of the Association subject to assessment by the Tribunal for reasonableness and based on single counsel representation at the hearing. The Province also agreed to pay 100% of costs related to the provision of expert evidence before the Steele Tribunal.
186. The Province submits that if this Tribunal recommends that the Province should pay more than one-half of legal fees and one-half of disbursements for expert evidence, then the total amount should be capped in the amount of \$75,000.
187. Both the Association and the Province provided material demonstrating that the issue of costs is dealt with differently by tribunals in different provinces.
188. The Tribunal recognizes that costs would be onerous for the Judges, given the small number in the group, and accepts that the costs should be borne principally by the Province.

Recommendation

189. *The Tribunal recommends:*
- (a) *subject to paragraph (b) below, the Province pay two-thirds 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 taxation by this Tribunal as to reasonableness, if so requested by the Province; and*

- (b) *the total costs of the Association to be paid by the Province, inclusive of legal fees and travel expenses as well as fees and expenses for the expert witness, be capped at the amount of \$75,000, exclusive of HST.*

CHAPTER 6

SUMMARY OF RECOMMENDATIONS

I. Salary

The Tribunal recommends that the salary of Judges be increased by 11.5% effective April 1, 2009 and increased by 3% on April 1st in each of the following three years. In monetary terms, this would provide for the following salary:

<i>Effective</i>	<i>April 1, 2009</i>	<i>\$197,425.00</i>
<i>"</i>	<i>April 1, 2010</i>	<i>\$203,348.00</i>
<i>"</i>	<i>April 1, 2011</i>	<i>\$209,448.00</i>
<i>"</i>	<i>April 1, 2012</i>	<i>\$215,732.00</i>

II. Interest on Retroactive Salary Payments

The Tribunal recommends that interest should not be paid on retroactive salary payments to Judges.

III. Pensions

The Tribunal recommends that there be no modification to the pension indexing provision.

IV. Vacation

The Tribunal recommends that the annual vacation entitlement for Judges be set at 30 days with Judges being able to accumulate unused vacation days to a maximum of 60 days. This benefit is to take effect on April 1, 2010 for persons who were Judges in the Province of Newfoundland and Labrador at that date.

V. Salary Differential for Chief Judge and Associate Chief Judge

The Tribunal recommends the differential between the Chief Judge and the Puisne Judges be set at 8% of the base salary of the Puisne Judges. The Tribunal also recommends that there be a differential for the Associate Chief Judge and that the differential be set at 4% of the base salary of the Puisne Judges. The Tribunal recommends that there be no differential paid to the Senior Coordinating Judge.

VI. Maternity Leave and Parental Leave

The Tribunal recommends the establishment of a Maternity Leave and Parental Leave Policy which is attached to this Report as Schedule A.

VII. Judicial Indemnity

Tribunal recommends the adoption of the Judicial Indemnity Policy which is attached to this Report as Schedule B.

The Tribunal also recommends that the Justices and Public Authorities Act be amended to remove the contradictions and inconsistencies relating to Judges.

VIII. Sick Leave

The Tribunal recommends that:

- (c) The sick leave policy be amended to provide that Judges accumulate sick leave at the rate of 1.25 days per month (15 days a year) to a maximum accumulation of 240 days;*
- (d) Upon appointment to the bench, a Judge would have access to an advance of up to 130 days sick leave. This advance would be reduced and eventually eliminated with the accumulation of service credits by the Judge; and*
- (e) The Province determine the sick leave entitlement of each Judge based upon sick leave usage and accumulation of sick leave at the rate of fifteen (15) days a year from the date of appointment as a Judge to the date of implementation of this Report.*

IX. Costs

The Tribunal recommends:

- (f) *subject to paragraph (b) below, the Province pay two-thirds 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 taxation by this Tribunal as to reasonableness, if so requested by the Province; and*
- (g) *the total costs of the Association to be paid by the Province, inclusive of legal fees and travel expenses as well as fees and expenses for the expert witness, be capped at the amount of \$75,000, exclusive of HST.*

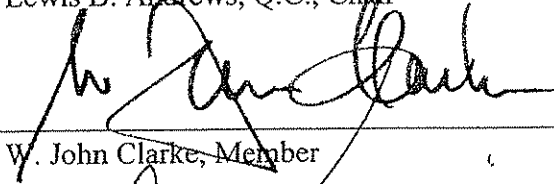
Conclusion

190. In concluding this Report, the Tribunal takes this opportunity to thank counsel, Susan Dawes for the Judges, and Rolf Pritchard, with the assistance of Justin Mellor, for the Province, for their significant contribution to the process. The Submissions by counsel were comprehensive and the presentations at the hearings were succinct, yet complete. Counsel were courteous to the Tribunal and to each other and were extremely helpful throughout the hearings. Sincere thank you from the members of the Tribunal.

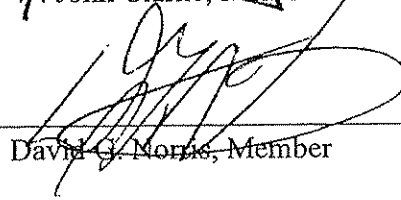
Respectfully submitted,



Lewis B. Andrews, Q.C., Chair



W. John Clarke, Member



David G. Norris, Member

SCHEDULE A

Maternity Leave and Parental Leave Policy

Maternity Leave

1. In order to qualify for a maternity leave, a pregnant judge must:
 - (a) have been appointed a judge for not less than seven (7) continuous months before the commencement of her leave;
 - (b) submit to the Chief Judge an application in writing for leave at least four weeks before the date specified by her in the application as the day on which she intends to commence such leave; and
 - (c) provide the Chief Judge with a certificate of a duly qualified medical practitioner certifying that she is pregnant and specifying the estimated date of her delivery.
2. A judge who qualifies under section 1 is entitled to and shall be granted maternity leave consisting of:
 - (a) a period not exceeding seventeen (17) weeks if delivery occurs on or before the date of delivery specified in the certificate mentioned in section 1(c);
 - (b) a period of seventeen (17) weeks plus an additional period equal to the period between the date of delivery specified in the certificate mentioned in section 1 (c) and the actual date of delivery, if delivery occurs after the date mentioned in that certificate; or
 - (c) the additional length of maternity leave as varied by the Chief Judge upon proper certification by the attending physician.
3. During the seventeen (17) week period of maternity leave, a judge is entitled to receive $\frac{2}{3}$ her regular salary provided the judge agrees in writing to return to active service for at least six (6) months following the maternity leave. If the judge takes parental leave following maternity leave, she must agree to return to active service for at least six (6) months following the parental leave.
4. All other maternity leave which may be taken pursuant to sections 2(b) and 2(c) above shall be unpaid leave.
5. A judge who does not return to work following maternity leave, except to take parental leave as set forth below, is required to pay back the full amount of salary received as maternity leave. Should a judge not complete the full six (6) months as required under section 3, she is required to pay back the amount of salary received as maternity leave on a pro rata basis.

Parental Leave

6. The purpose of parental leave is to provide time for childcare which is necessitated by the birth or adoption of a child.
7. In order to qualify for parental leave, a judge who adopts a child or children or becomes a parent of a child or children must:
 - (a) have been appointed a judge not less than seven (7) continuous months before the commencement of his or her leave;
 - (b) submit to the Chief Judge an application in writing for leave at least four weeks prior to the date specified by him or her in the application as the day on which the judge intends to commence such leave. If it is not possible to provide four weeks' notice in the case of adoption, the application must be made as soon as the judge is notified of the date on which the child will come into his or her care as a new adoptive parent.
8. A judge who qualifies under this section is entitled to and shall be granted unpaid parental leave consisting of a period not exceeding thirty-five (35) continuous weeks.
9. Subject to paragraph 10 below, parental leave must commence not later than the first anniversary of the due date on which the child is born or adopted or comes into the care and custody of the judge.
10. Where a judge takes parental leave in addition to maternity leave, the judge must commence the parental leave immediately on expiry of the maternity leave, unless otherwise authorized by the Chief Judge.
11. A judge who takes parental leave in addition to maternity leave and who does not return to work following the parental leave, is required to pay back the full amount of pay received as maternity leave. Should a judge not complete the full six (6) months as required under this section, she is required to pay back amounts received as maternity leave on a pro rata basis.

Benefits

12. For the duration of the maternity and parental leaves set out above, a judge shall continue to receive the benefits to which she or he is entitled as an active judge, provided that the judge continues to make any contributions normally made by that judge.

SCHEDULE B

JUDICIAL INDEMNITY POLICY

Application

This Policy shall apply to all sitting and former judges of the Provincial Court of Newfoundland and Labrador

POLICY STATEMENT

The Province of Newfoundland and Labrador will defend, negotiate or settle all actions arising out of acts performed by judges in the course of their duties, including:

- civil claims and suits;
- criminal prosecution;
- complaints made to the Complaints Review Committee pursuant to section 22 of the *Provincial Court Act*, 1991

The Province will also provide legal representation for judges to appear before inquiries, in respect of their duties as a judge, including the costs involved in seeking standing at the inquiry and participating at the inquiry.

RESPONSIBILITIES

It is the responsibility of a judge, upon becoming aware of any potential or actual complaint, action or claim against him or her to immediately notify the Chief Judge of the Provincial Court. The Chief Judge shall then immediately notify the Minister of Justice of the existence and nature of the potential or actual complaint, action or claim and make a request for coverage under this policy on behalf of the judge.

Excepting circumstances where the complaint, action or claim arose before the judge was appointed a judge of the Provincial Court, or where the claim arises as a result of alleged actions of the judge as a private citizen and not in his or her capacity as a judge of the Provincial Court, the Province shall, within seven (7) days of being notified of the complaint, action, or claim, authorize the appointment of legal counsel to provide legal services on behalf of the judge. The judge shall have the right to choose the counsel who will represent him or her in relation to the complaint, action or claim.

The Province shall pay all reasonable legal fees and legal costs incurred, including travel expenses, subject to taxation by a retired justice of the Supreme Court of Newfoundland and Labrador.

DISPUTE RESOLUTION

A retired justice of the Supreme Court, who is not otherwise in the employ of the Province, shall be appointed on an ad hoc basis to resolve any dispute under this policy, and in particular the following:

1. Whether the policy should apply in the particular circumstances; and
2. The reasonableness of the hourly fee or other expenses set forth in the statement of account of the legal counsel retained by a judge who is entitled to coverage under this policy.

The retired justice of the Supreme Court appointed pursuant to this policy shall be one mutually agreeable to the Minister of Justice and the Chief Judge of the Provincial Court. All decisions made by the retired justice of the Supreme Court shall be final and not subject to appeal or judicial review.

RECOVERY OF COSTS

If the proceedings determine that the judge has acted in bad faith or acted wrongly in a manner that is fundamentally inconsistent with his or her judicial capacity or function or in a manner inconsistent with the requirement for good behaviour contemplated by section 10 of the *Provincial Court Act*, 1991, then the province may recover from the judge any monies paid under the policy and/or cease to provide any further coverage for the judge under this policy.

MISCELLANEOUS

Any costs recovered by a judge as a result of the successful defence of a complaint, action or claim who receives coverage under this policy, shall be paid to the Province, up to the full amount of the legal fees and legal costs paid by the Province on behalf of the judge.

Table of Materials

Appendix A:	Letter from the Honourable Felix Collins, Minister of Justice and Attorney General, dated December 3, 2009 appointing the members of the Tribunal
Appendix B:	Public Notice of Tribunal Hearings
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Appendix F	Table of Exhibits and Documents filed by Consent

Appendix A

**Letter from the Honourable Felix Collins, Minister of Justice
and Attorney General, dated December 3, 2009
appointing the members of the Tribunal**



Government of Newfoundland and Labrador
Department of Justice
Office of the Minister and Attorney General

December 3, 2009

Mr. Lewis B. Andrews, Q.C.
Stewart, McKelvey Law Office
11th Floor, Cabot Place
100 New Gower Street
P.O. Box 5038
St. John's, NL A1C 5V3

Dear Mr. Andrews:

Re: Provincial Court Judges' Salary & Benefits Tribunal

I am pleased to advise that the Lieutenant-Governor in Council, under the authority of section 28 of the *Provincial Court Act, 1991*, has appointed you as Chairperson of the Provincial Court Judges' Salary & Benefits Tribunal. Your appointment is effective December 1st, 2009 and continues for 4 years.

The other members appointed are Mr. W. John Clarke and Mr. David Norris. Pursuant to section 28.2(1.2) of the *Provincial Court Act, 1991*, the Tribunal report shall be presented not later than April 1st, 2010.

Counsel for the Province is Mr. Tom Mills who can be reached at 709-729-2862 or tmills@gov.nl.ca. Counsel for the Chief Judge and the Newfoundland & Labrador Association of Provincial Court Judges is Ms. Susan Dawes. Ms. Dawes can be reached at 204-942-0501 or at sdawes@myersfirm.com.

Thank you for undertaking this important task. Your work is greatly appreciated.

Kindest regards,

A handwritten signature in black ink, appearing to read "Felix Collins", written over a horizontal line.

Felix Collins
Minister of Justice and
Attorney General

Appendix B

Public Notice of Tribunal Hearings

PUBLIC NOTICE OF TRIBUNAL HEARINGS

NOTICE

TAKE NOTICE that the Salary and Benefits Tribunal of the Provincial Court of Newfoundland and Labrador will be reviewing the salary and benefits of the Provincial Court Judges and reporting them to the Minister of Justice, the Honourable Felix Collins, pursuant to section 28 of the *Provincial Court Act, 1991*.

Anyone interested in being heard or wishing to make a written representation on these matters may indicate such interest by appearing in person before the Tribunal at Suite 213, Tara Place, 31 Peet Street, St. John's, NL at 9:00 a.m. on April 11, 12, 13 or 14, 2010, or by communicating with the Tribunal in writing to the attention of Lewis B. Andrews Q.C., Tribunal Chair, at Suite 1100 Cabot Place, 100 New Gower Street, P.O. Box 5038, St. John's, NL A1C 5V3, on or before April 14, 2010.

Tribunal
Lewis B. Andrews, Q.C., Chair
W. John Clarke, Member
David G. Norris, Member

Appendix C

Table of Filings by Interested Parties

Table of Filings by Interested Parties

Submission	Source	Description
1	The Canadian Bar Association Newfoundland and Labrador Branch	Letter dated April 9, 2010 from Sheri H. Wicks, President of the Canadian Bar Association Newfoundland and Labrador Branch, with attached Submission to the Tribunal on Judicial Compensation
2	Association	Letter dated February 2, 2010 from Judge Gerard (Gerry) Meagher, President of the Canadian Association of Provincial Court Judges (CAPCJ) requesting that Judge John Maher be given the opportunity to make oral submissions to the Tribunal on behalf of CAPCJ.
3	Association	Oral presentation by the Chair of the National Judicial Independence and Compensation Committee of the Canadian Association of Provincial Court Judges, Judge John Maher, together with exhibits

Appendix D

Table of Filings of the Association and the Province

TABLE OF FILINGS OF THE ASSOCIATION AND THE PROVINCE

- a) Submission of the Association dated February 1, 2010, including the following attachments:

VOLUME I

1. *Provincial Court Act*, 1991
2. Annual Report of the Provincial Court of Newfoundland and Labrador, 2008-09
3. Circuit court information for the Provincial Court of Newfoundland and Labrador
4. *Reference re Remuneration of Judges of The Provincial Court of Prince Edward Island; Reference re Independence and Impartiality of the Province Court Judges of Prince Edward Island*, [1997] 3 S.C.R. 3 ("Reference")
5. *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")
6. Report of the Newfoundland Provincial Court Judges Salary and Benefits Tribunal dated September 14, 2001, ("Hoegg Report")
7. *Newfoundland Association of Provincial Court Judges v. Newfoundland & Labrador*, [2003] N.J. No. 196 (S.C.)
8. "Tribunal Ruling", Steele Tribunal, April 30, 2007
9. Report of the Newfoundland Provincial Court Judges Salary and Benefits Tribunal dated May 2006 ("Steele Report")
10. Newfoundland and Labrador Provincial Court Judges Salaries and Benefits Tribunal Report, April 2007
11. Newfoundland and Labrador Provincial Court Judges Salaries and Benefits Tribunal Report Addendum of David Day, Q.C., dated April 2007
12. *Manitoba Provincial Court Act*, s. 11.1(16)
13. *Alberta Provincial Judges Compensation Commission Regulation*, Alta. Reg. 202/2003, s. 14
14. *Friedland: A Place Apart: Judicial Independence and Accountability in Canada*, Ottawa: Canadian Judicial Council, 1995 (excerpt)
15. 1995 British Columbia Judicial Compensation Committee Report (Chair D. J. Connaghan), dated April 28, 1995 (excerpt only)

16. Report and Recommendations of the 1998 Judicial Remuneration Commission (Chair O'Sullivan), New Brunswick, July 30, 1998 (excerpt only)
17. Dr. Jim Feehan, "Report on the Present State and Medium-Term Outlook for the Economy of Newfoundland and Labrador and the Financial Position of the Provincial Government", January 27, 2010
18. Report of the Honourable Justice Derek Green entitled: "Rebuilding Confidence: Report of the Review Commission on Constituency Allowances and Related Matters, May 2007", Chapter 9 – Compensation

VOLUME II

19. *Provincial Court Judges' Association of New Brunswick v. New Brunswick (Minister of Justice)*, [2003] N.B.J. No. 321 (C.A.) (excerpt only)
20. *Conférence des juges du Québec v. Québec (Procureure Générale)* (2000), 196 D.L.R. (4th) 533 (Que. CA) (excerpt only)
21. Curriculum Vitae of Dr. Jim Feehan
22. Chart of salaries actually paid as at April 1, 2004 (excerpt from Association's brief to Steele Tribunal)
23. Donnalee Moulton "St. John's Where legal tradition and changing practices meet", *Canadian Lawyer*, July 2009
24. Annual Report of the Provincial Court of Newfoundland and Labrador 2005/06
25. Dave Bartlett, "Police display drugs, money and weapons seized during Operation Razorback", *The Telegram*, January 15, 2010
26. 2008 Manitoba Judicial Compensation Committee Report (Chair Colin MacArthur, Q.C.), June 9, 2009 (excerpt only)
27. 2003 Manitoba Judicial Compensation Committee Report (Chair Michael Werier), March 12, 2003 (excerpt only)
28. 1995 Federal Triennial Judicial Compensation Commission Report (excerpt only)
29. Report of the 1993 Saskatchewan Judicial Compensation Commission (excerpt only)
30. Statistics Canada Table of CPI for Canada
31. "Study: Is inflation higher for seniors?", Statistics Canada, May 17, 2005
32. List of Judges on the Provincial Court

33. Province's Paid Leave Policy
34. Chart of Salary Differentials for Chief Judges and Associate Chief Judges
35. Association's Proposed Maternity and Parental Leave Policy
36. Maternity/parental leave provisions for judges by jurisdiction
37. *Labour Standards Act*, RSNL 1990, c. L-2
38. Province's Parental Leave Policy
39. Service Canada: Maternity and Parental Leave Benefits
40. *Louis Riel Teachers Association v. Louis Riel School Division* (unreported, December 2005)
41. *Reference re Employment Insurance Act (Can.)*, ss. 22 and 23, [2005] S.C.J. No. 57
42. Association's Proposed Judicial Indemnity Policy
43. *Justices and Public Authorities Protection Act*, RSNL 1990 c. J-7
44. *Reilly v. Alberta (Provincial Court, Chief Judge)* [1999] A.J. No. 958 (Q.B.)
45. *Alberta v. Ell*, [2000] A.J. No. 1101
46. *Mackin v. New Brunswick*, [2002] 1 S.C.R. 405
47. Indemnity provisions by jurisdiction (2006)
48. *Gonzalez v. British Columbia (Attorney General)*, [2009] B.C.J. No. 955
49. *Newfoundland Provincial Court Judges v. Newfoundland*, [2000] N.J. No. 258
50. Alberta Provincial Judges Compensation Commission Regulation
51. Report and Recommendations of the 2003 Alberta Judicial Compensation Commission
52. Saskatchewan Provincial Court Commission Report, December 31, 2005
53. 2007 Yukon Judicial Compensation Commission Report dated March 31, 2008
54. 2008 Report of the Judicial Compensation and Benefits Commission for Federally Appointed Judges dated May 30, 2008
55. Report of the [Federal] Judicial Compensation and Benefits Commission, May 31, 2004

b) Submission on behalf of the Province dated March 19, 2010, including the following attachments:

VOLUME 1

1. *Provincial Court Act*, 1991 S.N.L. c.15.
2. *Provincial Court Judges Assn. (Manitoba) v. Manitoba (Minister of Justice)*, (sub nom. *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*), [1997] 3 S.C.R. 3.
3. Newfoundland and Labrador Court Judges Salary and Benefits Tribunal, *Tribunal Report* (May 2006) [*Steele Report*].
4. Newfoundland and Labrador Provincial Court Judges Salaries and Benefits Tribunal, *Tribunal Report* (April 2007) [*Steele Report II*].
5. *Provincial Court Judges' Assn. (New Brunswick) v. New Brunswick (Minister of Justice)*, 2005 SCC 44, [2005] 2 S.C.R. 286.
6. Newfoundland Provincial Court Judges Salary and Benefits Tribunal, *Tribunal Report* (14 September 2001) [*Hoegg Report*].
7. *Provincial Court Judges' Assn. (New Brunswick) v. New Brunswick (Minister of Justice)*, 2003 NBCA 54.
8. Judicial Compensation and Benefits Tribunal, *Report of the Judicial Compensation and Benefits Commission*, submitted to the Minister of Justice of Canada (30 May 2008) [*Block Report*].
9. Canadian Bar Association, *Report of the Canadian Bar Association Committee on the Independence of the Judiciary in Canada* (20 August 1985) (excerpt).
10. Graphs: Judges Wage Gains vs. Av. Weekly Wage; Judges Wage Gains v. CPI; Judges Wage Gains vs. Av. Weekly Wage and CPI (1994 – 2009).
11. Economic Research and Analysis Division, Economics and Statistics Branch, Department of Finance, *Review of Dr. James Feehan's Report "Report on the Present State and Medium-Term Outlook for the Economy of Newfoundland and Labrador and the Financial Position of the Provincial Government"* (February 2010).
12. Auditor General of Newfoundland and Labrador, *Report of the Auditor General to the House of Assembly, On Reviews of Departments and Crown Agencies, for the Year Ended 31 March 2009* (excerpt).

VOLUME 2

13. Royal Commission on Renewing and Strengthening our Place in Canada, *Our Place in Canada, Main Report* (2003) (excerpt).
14. DBRS, *Restoring Fiscal Balance — Easier Said than Done, 2009 Canadian Federal and Provincial Governments Overview* (December 2009) (excerpt).
15. Compensation Policy and Procedures Manual, Government of Newfoundland and Labrador, section 3.13 (excerpt).
16. Jane Wardell, "Oil Industry Cautious on Future", *The Globe and Mail* (15 February 2010).
17. *Beauregard v. Canada*, [1986] 2 S.C.R. 56.
18. Canadian Lawyer, "Atlantic Canada Law Firm Ranking: Turf wars" (November —December 2006), online: <http://www.canadianlawyermag.com/Atlantic-Canada-Law-Firm-Rankings.html>.
19. Nova Scotia Provincial Court Judges' Salaries and Benefits Tribunal (2008 —2011), *Report and Recommendations for the Period April 1, 2008 to March 31, 2011* (11 December 2008).
20. Report of the Judicial Remuneration Review Commission (Prince Edward Island) (March 31, 2005) (excerpt).
21. Newfoundland and Labrador Provincial Court Judges' Association, *Submission of the Newfoundland and Labrador Provincial Court Judges' Association to the 2006 Salary and Benefits Tribunal*.
22. British Columbia Judges Compensation Commission, *Final Report of the 2007 British Columbia Judges Compensation Commission* (1 April 2007 — 31 March 2011).
23. Saskatchewan Provincial Court Commission, *Saskatchewan Provincial Court Commission Report* (November 2008).
24. Review Commission of Constituency Allowances and Related Matters, *Rebuilding Confidence Report* (May 2007) [*Green Report*].
25. Solicitor's Pay Plan.
26. The Law Courts of Newfoundland and Labrador, *Annual Report 2008-2009* at 25.

27. *Report of the Task Force on Criminal Justice Efficiencies* (February 2008).
28. Peter J. McCormick, *Judicial Independence and Judicial Governance in the Provincial Courts: A Report prepared for the Canadian Association of Provincial Court Judges* (April 2004) (excerpt).
29. *Public Service Pensions Act*, SNL 1991 c. 12 (excerpt).
30. *Provincial Court Judges' Pension Plan Act*, S.N.L. 2004 Ch. P-29.1 (excerpt).
31. Government of Newfoundland and Labrador, "Glossary", *Province of Newfoundland and Labrador Pooled Pension Fund 2007 Plan Update (2007)* (excerpt).
32. Nova Scotia Pensions Agency, *Survey of Provincial and Family Court Judges' Benefits* (2009).
33. Department of Justice Canada, *Report and Recommendations of the 1995 Commission on Judges' Salaries and Benefits* (30 September 1996) (excerpt).
34. Martin Friedland, *A Place Apart: Judicial Independence and Accountability in Canada* (May 1995), Report for the Canadian Judicial Council (excerpt).
35. Letter from Stephen Kelloway to Maureen McCarthy, RE: Provincial Court Judges' Pension Plan – Compensation (13 February 2006).
36. Letter from Stephen Kelloway to Maureen McCarthy, RE: Costing – Full CPI Indexing under the Provincial Court Judges Pension Plan (18 February 2010).
37. Mercer, *Newfoundland and Labrador Provincial Court Judges' Pension Plan, Report on the Actuarial Valuation for Accounting Purposes as at December 31, 2007* (August 2008).
38. Letter from Stephen Kelloway to Maureen McCarthy, RE: PCJPP – Pension Plan (13 February 2006).
39. Pensions Division, Department of Finance, "Judicial Compensation Review" (18 Feb 2010).
40. *Labour Standards Act*, R.S.N.L. 1990, c. L-2.

VOLUME 3

41. Province's Proposed Parental Leave Policy.
42. Manitoba Judicial Compensation Committee, *Report and Recommendations of the Judicial Compensation Committee* (9 June 2009) (excerpt).
43. Average Monthly Oil Price – January, 1997 to December, 2009.
44. Province's Proposed Judicial Indemnity Policy.
45. *Morier v. Rivard*, [1985] S.C.R. 716.
46. *Provincial Court Act*, R.S.A. 2000, c. P-31 (excerpt).
47. *Provincial Court Act*, R.S.P.E.I. 1988, c. P-25.
48. *Justices and Other Public Authorities Protection Act*, R.S.N.L. 1990, c. J-7.
49. *Newfoundland Provincial Court Judges v. Newfoundland* [2000] N.J. No. 258 (excerpt).
50. Economic Research and Analysis Division, Economics and Statistics Branch, Department of Finance, *A Brief Review of Gross Domestic Product and Personal Income Per Capita in Newfoundland and Labrador versus the Maritime Average*.
51. *Newfoundland Assn. of Provincial Court Judges v. Newfoundland & Labrador*, 2003 NLSCTD 117, 229 Nfld. & P.E.I.R. 109.
52. The Law Courts of Newfoundland and Labrador, *Annual Report 2007-2008*.
53. Alberta Provincial Judges Compensation Commission Regulation, Alta. Reg. 111/2006.

c) **Reply Submission of the Association dated April 6, 2010**

Appendix E

Table of Tribunal Hearings and Witnesses

Table of Tribunal Hearings and Witnesses

April 11, 2010

Dr. James Feehan, Professor of Economics at Memorial University of Newfoundland on behalf of the Association

Keith O'Brien, Job Evaluation and Research Analyst, Classification and Compensation Division, Public Service Secretariat of the Province

Rodney Forsey, Director, Economic Research and Analysis Division, Department of Finance of the Province

April 12, 2010

Presentation by Susan Dawes, counsel on behalf of the Association

April 13, 2010

Presentation by Alberta Provincial Court Judge John Maher, Chair of the National Judicial Independence and Compensation Committee of the Canadian Association of Provincial Court Judges, on behalf of the Association

Presentation by Rolf Pritchard, counsel on behalf of the Province

Appendix F

Table of Exhibits and Documents filed by Consent

Table of Exhibits and Documents filed by Consent

Exhibit #	Source	Description
JJM #1	Association	Chart dated March 31, 2010 outlining the Commissions in Canada established Since <i>PEI Reference Case, 1997</i>
JJM #2	Association	Chart dated March 31, 2010 showing the Payment of Judicial Costs and Commissions in Canada Since <i>PEI Reference Case, 1997</i> .

Consent #	Source	Description
1	Association	Color Article from The Telegram of April 10, 2010 entitled "A Short-range mountain of oil production"
2	Province	Newfoundland and Labrador Consolidated Provincial and Federal Revenues
3	Province	Chart showing personal income, Canada and Provinces
4	Association	Page 23 from Report of the Whelan Tribunal outlining the salary differential paid to the Chief Judge
5	Association	Resolution of the House of Assembly concerning the recommendations of the Hoegg Tribunal
6	Province	Chart showing indexing of Public Service Pension Benefits in other jurisdictions