

**REPLY SUBMISSION OF**  
**THE PROVINCIAL COURT**  
**JUDGES ASSOCIATION OF**  
**BRITISH COLUMBIA**

**to the**

**2016 JUDICIAL COMPENSATION**  
**COMMISSION**

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**Reply Submission of**  
**The Provincial Court Judges Association of**  
**British Columbia**  
**to the**  
**2016 Judicial Compensation Commission**

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1. Set out below is the Association's written reply to the Government's initial submission, filed June 15, 2016. For ease of reference, we refer below to the page and paragraph numbers in the Government's brief. We reserve the right to respond further in oral argument.

2. From an overall perspective, the Government's Submission fails to consider judicial compensation on its own merits in light of the unique considerations which are relevant to the setting of judicial compensation. The Government's position is rooted in adherence to its overall fiscal plan, which has called for restrained levels of compensation for those paid by the public purse, and not in the considerations relevant to judicial compensation as they have been interpreted by past JCCs.

3. The Government's proposals would leave BC judges among the lowest paid judges in Canada, a position that cannot be justified based on all of the factors, including BC's strong and diversified economy and healthy fiscal position. Further, while the Government purports to favour a salary increase in each of the years, its proposal would result in a decrease for 2017 if the recommendations of the 2013 JCC are eventually implemented. The difficulties of the Government's proposed approach are discussed below.

#### **Overview (page 2 f)**

4. The Government acknowledges at paragraph 6 that past compensation reports and related court decisions "are relatively consistent with and provide guidance for these proceedings". The Association agrees and has relied on the reasoning of past Commissions in setting out the rationale for its proposals.

5. At paragraph 10-11, the Government argues that the six factors identified in the *Judicial Compensation Act* ("the Act") "are relatively neutral, resulting in it being appropriate to weigh them in a relatively equal manner". Not only is this argument inconsistent with the position advanced by the Government on salary, but it is inconsistent with the reasoning of past Commissions. The Government's salary

proposal is driven entirely by what it contends are the “average” increases it negotiated with public sector employees. It justifies this by focusing on downside risks in what its economist, Mr. Peacock, states is an economy that is “on a stable footing” and on a “reasonably solid growth path”.

Peacock Report, Government’s Documents, Tab 10, pages 8 and 2

6. At paragraph 17, the Government admits that ability to pay is not an issue. The Association agrees that the focus must be on what is reasonable compensation for judges in light of all the relevant considerations.

#### **The British Columbia Provincial Court (page 8 f)**

7. At paragraph 29 and following, the Government provides statistics relating to the number of new cases in each year since 2010/11. It need hardly be observed that the time associated with a given number of cases varies considerably, from less than half a day to multiple weeks of court time. Any trends that can be gleaned from the number of new cases may well be useful in discussions about the number of judges that should make up the Court’s judicial complement at a given time. In fact, the data provided at page 11 demonstrates that the judicial complement has been reduced over the same period.

8. However, as the changes in the number of new cases each year are not something which has a discernible impact on the work of individual judges, it is not a factor to consider in assessing appropriate compensation.

#### **Provincial Court Judges (page 11 f)**

9. The Government correctly states at paragraph 35 that, as of April 1, 2016, the Court had 108 full-time judges and 36 senior judges. The reference to 47 part-time judges in paragraph 10 of the Association’s Submission was a transcription error.

10. At paragraph 38, the Government lists the number of published written reasons for judgment in a year, noting that Provincial Court judges generally sit four days a week with the fifth reserved for judgment writing. While judges of the Provincial Court do publish written reasons from time to time, they routinely (and more often) prepare lengthy and complex reasons which are delivered orally in the presence of the accused. While this is the preference for some judges of the Court, it is also a practical necessity for many because of the limited administrative support that is available to judges of the Provincial Court. Unlike for judges of the BC Supreme Court, it is not a requirement that Provincial Court judges publish written reasons for their decisions.

### **British Columbia Supreme Court (page 14 f)**

11. At paragraph 50, the Government states that there were six vacancies on the Supreme Court as of December 31, 2015. The website of the Office of Federal Judicial Affairs states that as of June 1, 2016, there were 8 vacancies on the BC Supreme Court and 1 on the Court of Appeal. As of June 17, 2016, the number of Supreme Court vacancies was reduced to six, as there were two appointments to the BC Supreme Court that day (including one former Provincial Court Judge, as discussed below). It is widely expected that more appointments will soon follow.

The website for the Office of Federal Judicial Affairs is:

<http://www.fja-cmf.gc.ca/appointments-nominations/judges-juges-eng.aspx#bc>

### **The Judicial Compensation Process in British Columbia (page 18 f)**

12. At pages 18 to 22, the Government describes the JCC process generally. The process is discussed in detail in the Association's Submission, beginning at page 19.

13. Some of the findings in respect of each of the cases before the Supreme Court of Canada in *Bodner* are discussed at paragraph 73 of the Government's Submission. Of particular note for this JCC is that the Court determined that the New Brunswick government had misconstrued the purpose of the Judicial Remuneration Commission.

The Commission's mandate is not properly viewed as being to protect against a reduction of judges' salaries below the adequate minimum required to guarantee judicial independence. The Court stated:

"The Commission's aim is neither to determine the minimum remuneration nor to achieve maximal conditions. Its role is to determine appropriate compensation."

*PEI Reference, supra*, Judges' Association Documents, Tab 10, para 67

### **Previous Commissions (page 23 f)**

14. At paragraph 75, the Government argues that because the legislature changed the factors identified in the Act for consideration by the JCC, this JCC is not "bound" by the decision of prior commissions.

15. Whether or not there was any change to the list of factors identified in the legislation for consideration by a JCC, past JCC reports are not "binding" on this Commission. As the Supreme Court of Canada explained in *Bodner*:

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

*Bodner, supra*, Judges' Association Documents, Tab 11, para 15

16. Past Commission reports are not “binding” on subsequent Commissions because each Commission makes recommendations for a unique period. However, the analysis of past Commissions is important context for subsequent Commissions and should inform their analyses.

17. This fundamental principle is not affected by the Government’s decision to amend the list of factors identified for consideration in the Act. Indeed, as noted, the Government acknowledged at paragraph 6 that the past JCC reports and court decisions are “relatively consistent and provide guidance for these proceedings”.

18. In response to the summary of the 2010 and 2013 JCCs set out by the Government at pages 24-29, the Association relies on the detailed discussion of the past JCCs in British Columbia that begins at page 33 in its Submission.

### **The Government’s Submission Regarding the Legislated Criteria (page 32 f)**

19. The Government again refers to the change in the legislated criteria. While the criteria have changed, the factors that are now identified were all considered by past Commissions despite that they were not specifically articulated in the earlier legislation. As such, the analyses of past Commissions remain of great significance to the manner in which this Commission should approach the relevant factors.

### **The Need to Maintain a Strong Court**

20. The Government’s argument at paragraph 112 supports that the Commission should defer to the views of the Court, in assessing whether “the Court is experiencing any unmet need in the number of applicants approved and recommended by the Judicial Council”.

21. The Association will not repeat the concerns expressed by the Chief Judge in his Submissions to the 2013 JCC and by the Judicial Council in its Annual Reports that were discussed in its main Submission, beginning at page 50. The Association also

adopts and supports the concerns expressed by the Judicial Council in its Submission to this 2016 JCC.

22. While it is clear that there is an unmet need, this ought not to be the only measure of whether the compensation is sufficient. Indeed, particularly as the recommendations of this 2016 JCC are prospective in nature, it is important to ensure that the compensation does not *become* a disincentive to potential applicants over the period of this JCC's mandate. As detailed in the Association's Submission, it is for that reason that the disparity with the level of compensation paid to federally appointed judges must be considered.

23. The statistics in the Government's paragraph 118 reveal that more than three quarters of applicants are persons whom the Judicial Council does not consider to be fit for an appointment. As discussed in the Association's Submission, the numbers of applicants tell us little about whether the Court is attracting the most highly qualified candidates. The concerns expressed by the Chief Judge and by the Judicial Council to the 2013 JCC were that the Court was losing the most highly qualified candidates from the private bar, not to mention Provincial Court judges, to the BC Supreme Court. Both expressed the view that lower remuneration was one of the reasons (see Association's Submission, paragraphs 162-165 on pages 50-51), a point reiterated by the Judicial Council in its Submission to this 2016 JCC (see pages 13-14).

24. At pages 36-37, the Government referred to the "stability" of the judicial complement. Tab 47 in the Judges' Association Documents provides a lengthier history and the Chief Judge notes in his Submission that the Court has lost 20 judges to the Supreme Court over the past 35 years. That there were no appointments of Provincial Court judges to the Supreme Court in 2014 or 2015 may simply reflect a delay pending the election of the Liberal Government in October 2015 and its establishment in office.

25. At page 35 of his Submission, the Chief Judge states that he is aware of "a number of Provincial Court judges" who have applied to the Supreme Court. Since the

date of the Government's Submission, The Honourable Judge Marguerite H. Church was appointed a judge of the Supreme Court of British Columbia on June 17, 2006, along with a lawyer from the private bar. As six vacancies remain on the BC Supreme Court (and one in the Court of Appeal), it may well be that more judges are appointed in the coming months.

26. The Government asserts at paragraph 124 that "... there appears to be at the present time a sufficient legal diversity on the Bench". It fails to address the shift from the legal diversity that existed at the time of the 2001 JCC (see paragraph 177 of the Association's Submission). It also ignores the concerns expressed by the Chief Judge and the Judicial Council. Rather than accept the assertions of Government, it is appropriate to defer to the views of the Chief Judge and Judicial Council on the needs of the Court.

### **Compensation in Respect of Similar Judicial Positions in Canada**

27. The Government asserts that the third factor demands consideration of which judicial positions are "most similar" to the positions of a Provincial Court judge. To be clear, the factor demands consideration of "similar judicial positions, having regard to the differences between those jurisdictions and British Columbia". Accordingly, while other provincial and territorial court judges are the "most similar" judicial positions, it is also important to consider federally appointed judges, who also occupy "similar judicial positions".

28. At paragraph 136, the Government lists the areas of jurisdiction that it suggests are "generally" dealt with by provincial and territorial court judges. As discussed in Part I of the Association's Submission, it is not "generally" the case that judges across the country exercise jurisdiction over family law matters or civil claims. To quote the 2004 JCC, Provincial Court judges in British Columbia "exercise one of the broadest and most comprehensive jurisdictions of any Provincial Court in Canada." (Judges' Association Documents, Tab 9, page 19)

**“Median Salary” is not a useful consideration (page 42 f)**

29. There are a multitude of problems with the analysis presented on the Government’s page 42. The factors that are relevant to determining appropriate judicial compensation for BC judges do not support that “the median” is a useful consideration; the Government does not even attempt to explain why it should be considered. Moreover, there are errors in the salary figures presented and it is difficult to verify the calculation of the specific figures, as the table does not provide the number of judges in each jurisdiction.

30. A “median” is the middle score in a set of data that is arranged in order of magnitude. BC is not a jurisdiction which operates at the median of the other jurisdictions in terms of its economic conditions or its fiscal capacity or position. Indeed, the Government itself argued to the 2007 JCC that because BC’s economy “ranks third behind that of Ontario and Alberta, as do its wages”, “it is entirely fitting that British Columbia’s judges should receive the third highest salaries, behind their counterparts in Ontario and Alberta.”

2007 JCC Report, Judges’ Association Documents, Tab 8, page 17

31. As noted above, BC’s Provincial Court judges exercise broader jurisdiction than judges in many other Courts. The factor concerning the need to attract highly qualified candidates certainly does not support consideration of a “median” salary of provincial court judges, but rather calls for consideration of disparity with the compensation paid to federally appointed judges.

32. Two of the 2015 salaries in the Government’s table on page 42 are incorrect. Federally appointed judges were paid \$308,600 in 2015, not \$306,600 as stated. Nova Scotia judges were paid \$234,509 in 2015, not the \$240,297 that is stated.

33. The 2015 salaries for judges in Newfoundland & Labrador may rise significantly if the recommendations of the 2014 Salary and Benefits Tribunal are implemented

following a court challenge of the Government's reasons for rejecting the salary recommendations, which is expected to be filed this week. If the Tribunal's recommendations are eventually implemented, the salary for NL judges would rise to \$238,025 for 2015 and \$247,546 for 2016. Finally, if the recommendations of the 2013 BC JCC are eventually implemented, the 2015 salary for BC judges could rise as well.

34. The calculation of the median salary for provincial court judges in Canada is driven by the number of judges in each jurisdiction, which varies dramatically from as few as 3 judges in Prince Edward Island to as many as 290 in Quebec. The search for the median salary fails to take into account the differences between each of those jurisdictions and BC, as s.5(5)(c) directs.

35. The Government concludes that its salary proposal would put judges' salaries "generally in line with" the median salary for provincial court judges in other jurisdictions. To the contrary, the Government's proposed salary of \$247,774 for 2017 is lower than what it asserts is the median salary for 2015, and more than \$10,000 lower than what it asserts is the average 2015 salary. Not only is the salary it proposes not in line with the median judicial salary (even if the Government's median figure is correct), the Government fails to justify this comparison based on the factors set out in the Act.

**A Formulaic Relationship with federally-appointed judges is inappropriate (page 43 f)**

36. The Association does not take issue with the Government's position that there ought not to be a formulaic relationship with federally-appointed judges and did not propose any formulaic relationship. The Association maintains that it is important to ensure that the compensation paid to Provincial Court judges does not become a disincentive to highly qualified applicants who would otherwise consider applying to the Bench. This is consistent with the analysis of past JCCs, including the 2013 JCC which determined that:

“The disparity in compensation between justices of the BC Supreme Court and judges of the BC Provincial Court is an important factor in determining reasonable compensation for Provincial Court judges, but it is not an overriding one.” (underlining added)

2013 JCC Report, Judges’ Association Documents, Tab 20, page 38

37. The Government suggests at paragraph 142 that the 2013 JCC considered it “inappropriate” to compare Judges of the Provincial Court with federally appointed judges. As quoted above, while noting the differences between the two courts, the 2013 JCC nonetheless considered the compensation paid to federally appointed judges to be an “important factor”. This is consistent with the reasoning of past JCCs and the Association respectfully submits that this is the approach that should be adopted by this 2016 JCC.

2013 JCC Report, Judges’ Association Documents, Tab 20, page \_\_\_

38. At paragraph 143, the Government argues that the legislative mandate has changed since 2013 and the legislated factors do not expressly provide for a comparison with federally-appointed judges. To be clear, the factors that were identified in the Act at the time the previous JCCs issued their reports similarly did not expressly identify federally appointed judges as a comparator. (The old factors are listed at paragraph 133 of the Association’s Main Submission). Nonetheless, successive past JCCs have considered their compensation to be an important factor for consideration, particularly in relation to the need to attract (and retain) highly qualified candidates to the Provincial Court.

**Differences with other jurisdictions (page 45 f)**

39. At paragraph 151, the Government refers to the differences between the fiscal plans implemented in Alberta and Ontario as compared with in British Columbia. It further notes that certain jurisdictions have suffered “significant deteriorations” in their economies, and goes on to state that “it therefore can be assumed that the higher level

of provincial court salaries in other jurisdictions is threatened”. There are a number of difficulties with this paragraph, which are discussed below in turn.

40. As noted above, the Government itself argued to the 2007 JCC that the salaries of BC judges should rank third “given our Province’s relative economic position within the country”. (2007 JCC Report, Judges’ Association Documents, Tab 8, page 8). This was despite that fact that the provinces had different fiscal plans at that time as well, which reflect differences in their respective economies and in the politics in each province. For the reasons detailed in the Association’s Submission, it remains the case that BC is in the top tier of the other jurisdictions from an economic perspective.

41. British Columbia’s relative economic ranking has risen even further in recent years, in large part because of the diversification of its economy as compared with that of some jurisdictions, such as Alberta, which are heavily dependent on the oil sector. While government revenues did decline dramatically in Alberta in recent years, it cannot be concluded that “therefore” the higher level of salaries in that (or other) jurisdiction(s) is “threatened”. To the contrary, the most recent JCC in Alberta wrote in March 2015:

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

2013 Alberta JCC Report (excerpt), Judges’ Association Reply Documents, **Tab 50**, page 42

42. Despite the oil price dropping even further after issuance of the JCC’s Report, the Government of Alberta accepted all of the recommendations of the 2013 JCC in July 2015. This demonstrates recognition that in jurisdictions where the economy is prone to volatility, judges’ salaries should neither surge during the good times, nor be “threatened” during the bad. Rather, compensation is set based on all of the relevant

factors, including the strong fiscal *capacity* of the jurisdiction, not simply the immediate fiscal *position* of the Government.

43. As the McKinnon Report explained, one way to objectively consider the financial position of the various governments is to consider the ratings given to each by the independent bond rating agencies. The following table (which reflects the recent downgrade for Alberta that post-dated the McKinnon Report) compares the credit ratings of each of the provinces:

**Judges' Salaries and Provincial Credit Ratings<sup>1</sup>**

	S & P's	DBRS	Moody's	2015 Judicial Salaries
BC	AAA	AA (high)	Aaa	\$240,504
SK	AAA	AA	Aaa	\$272,295
AB	AA	AA (high)	Aa1	\$286,821
MB	AA	A (high)	Aa2	\$249,277
ON	A+	AA (low)	Aa2	\$287,345
QC	A+	A (high)	Aa2	\$241,955
NB	A+	A (high)	Aa2	\$246,880
NS	A+	A (high)	Aa2	\$234,509
PEI	A	A (low)	Aa2	\$250,050
NFLD	A	A (low)	Aa2	\$215,723 <sup>2</sup>

44. BC stands ahead of all other provinces in receiving the highest credit rating; the credit rating agencies give it the highest fiscal capacity and best financial condition. In contrast, BC judges' salaries are among the lowest. If we compare BC with the next

<sup>1</sup> Gov't of Alberta, Treasury and Finance, <http://www.finance.alberta.ca/business/borrowing/index.html> , June 27, 2016.

<sup>2</sup>This is the salary substituted by the Government of NL for the recommendation of the 2014 Salary and Benefits Tribunal, which was for a 2015 salary of \$238,025. A court challenge is expected to be filed this week, challenging the legitimacy of the Government's reasons for rejection.

four most highly rated provinces, its judges receive by far the lowest salaries, even lower than the salary for Manitoba judges. BC judges' salaries are also lower than even the salaries of Québec judges – a province in the second lowest band of provinces in terms of its credit rating.

45. At paragraph 152, the Government refers to its “overall fiscal plan” which has called for restrained levels of compensation for those paid by the public purse. The differences between the jurisdictions referred to in s.5(5)(c) cannot be properly interpreted as referring to differences in the fiscal strategies in each jurisdiction. The fiscal plans of governments are inherently political. Unless it were convinced that the objective factors that are relevant to the setting of judicial compensation demanded such an approach, a JCC which considered itself governed by the Government’s fiscal plan would fail to achieve its purpose of depoliticizing the setting of judicial compensation.

46. It is submitted that the differences referred to in s.5(5)(c) of the Act must be understood to be objective differences, such as in the overall strength of the economies, the fiscal capacity of each province, or the breadth of jurisdiction exercised by the Courts in each jurisdiction.

47. Also at paragraph 152, the Government has cherry-picked for consideration the comparative position of nurses, teachers and what it called “directors and executive directors” in the Public Service. No sources are cited for the rankings, making it very difficult to test the assertions. We presume that the twelfth place ranking for “directors and executive directors” is taken from the “BC Public Sector Compensation Review” (the “Review”) prepared for the Government in October 2014 by Ernst & Young. The Review raises concerns about “talent management issues” that have arisen from the existing compensation for those positions, noting that “there is a growing concern amongst key stakeholders that the Province is at risk of losing highly talented strategic leaders to opportunities outside of the Core Government.”

Ernst & Young, “BC Public Sector Compensation Review”, October 2014, Judges’ Association Reply Documents, **Tab 51**, page 27

48. The Review also contains information about the pay received by Deputy and Assistant Deputy Ministers. It states:

Comparisons of maximum achievable executive salary ranges to those in other jurisdictions indicate that the Core is close to meeting its philosophy of maximum achievable compensation being ranked 3<sup>rd</sup> to 5<sup>th</sup> highest. BC is currently ranked 2<sup>nd</sup> for maximum achievable DM compensation. However, it is important to note that while the ranges exist, they are not being fully used. BC is also currently ranked 3<sup>rd</sup> for maximum ADM compensation bands.

Ernst & Young, "BC Public Sector Compensation Review", October 2014, Judges' Association Reply Documents, **Tab 51**, page 26

49. The Review explains that while the Government's compensation philosophy is being successfully applied with respect to ADMs, at the DM level, the lack of actual use of the salary ranges "puts BC in 6<sup>th</sup> place in terms of actual average base salary paid – well short of the philosophy objective." Ernst & Young go on to cite stakeholders reporting retention problems noting that "the incidence of individuals moving is not surprising". The section concludes with an observation that "[i]t may...be appropriate to examine how the ranges could be better utilized, as the flexibility exists to do so."

Ernst & Young, "BC Public Sector Compensation Review", October 2014, Judges' Association Reply Documents, **Tab 51**, page 26

50. As argued at length in the Judges' Association's Submission, because of the uniqueness of the judicial position, it is not useful to compare judge's salaries with the actual salaries paid to particular public servants (or to the "average salary" of particular classification(s) of public servants as the Government does by its paragraph 166-167 in its Submission). Most useful is consideration of the Government's policy about how its salaries should compare with those of similar employees in other jurisdictions. As noted, the 2013 JCC relied on that policy to reject the Government's proposals, noting, among other things, that:

It would also contradict the Government's policy of setting itself "3<sup>rd</sup> to 5<sup>th</sup> nationally amongst the provincial and federal governments" in relation to executive compensation.

2013 JCC Report, Judges' Association Documents, Tab 20, page 46

### **Changes in the Compensation of Others Paid by Public Funds (page 46 f)**

51. At paragraph 154, the Government argues that "the compensation of others is a marker of reasonableness". This is true only if the comparator performs a similar role and function. This is precisely why the compensation paid to other judges has been such a significant factor in the analyses of previous commissions. By contrast, and for the reasons discussed at length in the Judges' Association's Submission, the compensation paid to public servants must be considered with caution given the differences in the role and in the manner in which their compensation is determined. Indeed, after citing federally appointed judges, provincial court judges of other provinces, BC public sector executives (deputy ministers and assistant deputy ministers) and private sector wages within British Columbia as "relevant" comparators, the 2013 JCC stated:

All of these comparator groups are relevant, but none should be determinative of Provincial Court judges' salaries. It is not appropriately to specifically link Provincial Court judges' compensation to any one of these groups. While each say something about what is reasonable compensation for Provincial Court judges, each of these comparators have had salaries set in the unique circumstances of its job, workplace, and respective economy.

2013 JCC, Judges' Association Documents, Tab 20, page 36

52. All things considered, the 2013 JCC went on to determine that:

...while the salary of BC Provincial Court judges should not be rigidly pegged to any comparator, given BC's cautious but positive economic outlook, the salary of

BC judges ought to be in the range of 3<sup>rd</sup> to 4<sup>th</sup> place amongst the salaries of provincial court judges.

2013 JCC Report, Judges' Association Documents, Tab 20, page 47

53. At paragraph 156, the Government cites the analysis in *PEI Reference* as support for its position that similar treatment to others would help sustain the perception of judicial independence. To be clear, the situations before the Court in *PEI Reference* involved unilateral reductions in pay for judges, which occurred as part of legislated pay reductions for the entire public service, without the reduction being first considered by a JCC. The majority in *PEI Reference* determined that appropriate judicial compensation must be determined based on consideration of “objective factors, not political expediencies”. The majority was clear that a proposal by government that judges should participate in an “across the board measure” must be put before a JCC and justified in light of those objective factors.

54. A negotiating position (or a fiscal strategy that calls for restrained compensation for public servants) is not an “across the board measure” like the legislated roll backs in salaries for public sector employees and judges that were before the Court in *PEI Reference*. Neither is reliance on the “average” general wage increase received by public sector employees (relied upon by the Government at pages 48-49). Even if there was a consistent pattern of general wage increases achieved by the Government in its public sector bargaining, which there is not, the application of that same general wage increase for judges would result in judges receiving less than those employees. This is because public servants may also receive step increases within their classifications or promotions to higher classifications. Moreover, the general wage increase is only one component of the compensation package that is negotiated into a given collective agreement, meaning that public servants may well have negotiated increases to their overall through items other than general wage increases.

55. At paragraph 161, the Government refers to only one of the several “major principles” identified by the majority at paragraph 287 of its decision. The others include

that provinces are under a constitutional obligation to establish independent, objective and effective commissions which will review any proposed increase, decrease or freeze to compensation, and that such commissions must be conducted periodically in order to “guard against the possibility that government inaction could be used as a means of economic manipulation”. Another principle is that the recommendations were non-binding but that a decision to depart from the recommendations must be justified, if necessary, in a court of law. Finally, Lamer C.J.C. determined that “under no circumstances is it permissible for the judiciary to engage in negotiations over remuneration with the executive or representatives of the legislation.”

*PEI Reference, supra*, Judges’ Association Documents, Tab 10, para 287

### **Increases Received by Public Sector Employees**

56. At paragraph 163, the Government asserts that excluded employees in the “broader provincial public sector” received no increases to their salary ranges. Senior managers in the “core public service” were reported to have received a 3% pay hike effective March 23, 2014. Presumably the 4,200 full-time employees who received this increase are not included among the “broader provincial public sector” that the Government opted to reference.

See the article at : <https://www.biv.com/article/2014/4/bc-government-senior-managers-get-3-pay-hike-worth/>

57. At paragraphs 162 and 164, the Government lists the general wage increases that have been or will be received “on average” by unionized public sector employees. The reference to “on average” makes it clear that there is no consistent pattern. No mention is made of the Economic Stability Dividend, whereby many employees are eligible in 2016, 2018 and 2019 for general wage increases equal to one-half of any percentage gain in the Gross Domestic Product above the forecast of the Economic Forecast Council for the relevant calendar year. No mention is made of the other monetary aspects of the relevant collective agreements, the details of which are largely

unknown to the Judges' Association. Some details were provided with respect to the nurses' collective agreement at paragraph 315 of the Association's main Submission.

### **Deputy Ministers/ADMs (page 49 f)**

58. The 2013 JCC stated that its recommendation for 2014 "situates the salaries of BC judges at the top end of the current pay for BC deputy ministers". The Government does not provide information about the pay range for the Deputy Minister classification so that the top end can be considered. Rather, it focuses on the *average* (not the top end) of Deputy Minister and Associate Deputy Minister salaries combined, thereby moving the salary figures downward. It does not provide an average for Deputy Minister salaries themselves.

59. The Government offers no explanation as to why it is appropriate to compare the salary of judges to the "average" of salaries paid to Deputy Ministers and Associate Deputy Ministers, or the average salary for Assistant Deputy Ministers.

60. Further, the Government does not provide the underlying data. It may well be that the average is calculated based on amounts actually paid to Deputy Ministers and Associate Deputy Ministers in the year in question. If an individual works for only a short time in a given year, before leaving for another position, the amount paid can be very low, skewing the average down.

61. The Government elected to include the average salary of the Deputy Ministers with the "five largest portfolios" for the Province at paragraph 167, not necessarily those who are the highest paid. Again, no source is provided for this information. The BC Public Service website provides a Summary Compensation Table at Fiscal 2015, for certain Deputy Ministers, a copy of which is attached as **Tab 52**. As set out therein, the salary, together with the bonus or Incentive Plan Compensation of the Deputy Attorney General in 2014/15 fiscal year appears to have been \$253,626, well above the averages provided in the Government's chart (with or without "holdback").

Summary Compensation Table, Judges' Association Reply Documents, **Tab 52**

62. The Vancouver Sun reported that highest paid public servant for three years running was the Deputy Minister to the Premier. According to the Government's Compensation Disclosure websites referenced below, his salary alone in 2013/14 was \$279,114, although he was also eligible for a bonus of \$30,070. In 2014/15, his salary was \$286,897, plus a bonus of \$30,380. No information appears to be available yet for 2015/16. The Association's proposal of \$285,000 for 2017/18 is "generally in line" with the top end of the 2014/15 pay for Deputy Ministers.

<http://www.vancouversun.com/news/metro/Public+sector+salary+database+Premier+deputy+John+Dyble+tops/10803289/story.html>

<http://www.fin.gov.bc.ca/psec/disclosedocs/execcompdisclosure13-14/2013-14%20Public%20Service%20Agency%20Executive%20Compensation.pdf>

Summary Compensation Table, Judges' Association Reply Documents, **Tab 52**

### **Current and Expected Economic Conditions in BC**

63. Beginning at page 51, the Government emphasizes the downside risks for BC, all of which it acknowledges were taken into account in its economic forecasting. Indeed, given its particularly prudent approach of using forecasts that are several points below those of the Economic Forecast Council, another "risk" is that the Government will do better than expected. The Government's position incorporates, in effect, a "double discount" in assessing the economic conditions: it builds significant prudence into its forecasts to account for downside risks, but then asks the Commission to take into account the risks a second time.

64. At paragraph 176 on page 53, the Government refers to research about demographic trends over the years 2015-2035. Demographic trends do not materialize over the course of three years and will not affect in any significant way the period of this Tribunal's mandate. It can also be presumed that the Economic Forecast Council is

aware of these long-term trends and takes them into account in their forecasting models.

### **Current and Expected Financial Position of Government (56 f)**

65. The section beginning at page 56 of the Government's brief focuses on the impact of the events of 2008/09 and the impact of that on the years 2009/10 and following. That impact was taken into account by the 2010 and 2013 JCCs. Ken Peacock, whose paper is at Tab 10 in the Government's Documents, expresses the view that an external shock similar to this "very unusual event" is unlikely to happen in the foreseeable future (see page 10).

66. The graph at page 57 illustrates two things:

- the strength and resilience of BC's diversified economy in returning to sizeable surpluses following the unprecedented shock of 2008-2009; and
- that the Government has exceeded its prudent forecasts in each of 2014 and 2015.

67. At paragraph 196, the Government explains its current negotiating position, which it terms the "Economic Stability mandate". This has replaced the Government's "Net Zero" and "Cooperative Gains" mandates, which were referenced in the Government's Submissions to previous JCCs. Again, a bargaining mandate is not an "across the board measure" like those before the Court in *PEI Reference*. As noted in the Association's main Submission, the 2013 JCC rejected the Government's position that called for an increase for judges in the third year of the JCC's mandate based on the percentage by which the province exceeds the current real Gross Domestic Product forecast for the previous year. This is similar to the Government's current Economic Stability mandate. The 2013 JCC wrote:

A measure like real GDP, which effectively ties a judge's salary to the success of government's economic policies, is potentially improper in that it may lead to the perception that judges have an interest in supporting

government economic initiatives that have the potential to boost GDP, which may affect the way cases are decided. The perception that judges have any influence over the success of economic policies that could affect their compensation should be avoided to better preserve judicial independence.

2013 JCC Report, Judges' Association Documents, Tab 20, page 47

68. Instead of proposing application of the Economic Stability mandate to judges, Government this time bases its position on what it says public sector employees negotiated "on average", leaving aside mention that those employees are also eligible for those GDP-linked increases. The approach is inconsistent with the Government's obligation to base its position in the unique factors which apply to the setting of judicial compensation.

69. Given just how far the salaries of BC judges have fallen behind those of their traditional comparators, it is readily apparent that BC judges have been subject to the restraint referred to by the Government. It is fair and appropriate to restore their salaries to a reasonable level in light of all the relevant objective factors.

#### **Current Fiscal Plan (page 60 f)**

70. The Government outlines its fiscal plan beginning at page 60. The JCC is bound to make recommendations in light of the objective factors identified in the Act. It is the Association's position that, given the healthy financial position of the Government, the focus should be on objective considerations like fiscal capacity rather than the Government's fiscal strategy.

71. The McKinnon Report at Tab 36 in the Judges' Association Documents provides this more objective view, particularly at pages 20-21.

## **Provincial Debt (page 62 f)**

72. The Government refers to capital investment at paragraph 205. As the McKinnon Report explains, the Government “has chosen to and clearly feels it has the fiscal room to carry on high levels of government investment”. McKinnon found that an examination of the trends in capital investment “confirms the healthy position of the government’s finances”.

McKinnon Report, Judges’ Association Documents, Tab 36, pages 18-19

73. The Government acknowledges that it enjoys one of the lowest tax-payer supported debt-to-GDP ratios in Canada. The full picture is provided at Figure 6 in the McKinnon Report at page 24. BC’s 2015 ratio is just more than half of Manitoba’s, the next highest, and less than half of the ratios of both Ontario and Quebec.

McKinnon Report, Judges’ Association Documents, Tab 36, page 24

## **Peacock Report – Government’s Tab 10**

74. The Government filed a paper authored by Ken Peacock (the “Peacock Paper”) as Tab 10 in its Book of Documents. The Peacock Paper confirms much of the information set out in the Report of Ian McKinnon and in the Association’s Submission. Nonetheless, Mr. McKinnon has prepared a brief document in reply to certain of the points raised, a copy of which is at **Tab 53** in the Judges’ Association Reply Documents.

75. Among other things, Mr. Peacock states:

- British Columbia is on a reasonably solid growth path (page 2);
- BC’s economy is comparatively healthy (page 2);

- Most economic indicators in BC are positive and the province's economic output (real GDP) is forecast to grow in the 2.5-2.8 percent range over the next three years (page 2);
- In historic context, BC's recent and projected growth performance is in line with average economic growth recorded over the past two decades (page 2);
- In 2015, BC led all provinces in economic growth (page 8); and
- BC's economy is on a stable footing and the province's economic performance has been stronger than that of other Canadian jurisdictions. This pattern is likely to continue in 2017. After that the outlook becomes more uncertain, but BC should still be well-positioned for reasonably healthy growth. (page 8)

Peacock Paper, Government's Documents, Tab 10

76. Referring to what he calls the 2009 Great Recession, Mr. Peacock explains at page 10 that “[a]n external shock that impacts BC to the same degree is not likely to happen in the foreseeable future.” He goes on to state that, “[w]hen this unusual and extreme reduction in economic activity is excluded, BC's average real GDP growth rate between 1994 and 2014 is 2.9 percent.” He explains that BC's expected growth rates have been and are forecast to be “very close to what is typical for the province”.

77. It is submitted that this 2016 JCC ought to reach the same conclusion as the 2007 JCC: there is “no reason why the judges of this Province should not receive salaries in keeping with our economic position within the country”.

2007 JCC Report, Judges' Association Documents, Tab 8, page 23

### **The Government's Submission to the Commission regarding Judges**

78. The Government argues that the salary currently paid to judges should be used by this Commission as the base for calculations. It proposes a salary increase equal to 1.5% per annum, calculated from the current 2016 salary. The Government's proposed

approach is problematic for a myriad of reasons, many of which were alluded to in the Association's Submission.

79. First and foremost, the starting point could change. As discussed in the Association's main Submission, the 2013 JCC dealt with the same situation in that the outcome of the 2010 JCC was not yet finalized. While the 2013 JCC recommended what it considered to amount to a 2.9% increase from the salary that was then being paid, once the starting point changed, the result was a reduction in judicial salaries for 2014. The Government rejected even that recommendation and implemented a salary that was lower still, with increases on top of that lower salary in the later years. Rather than cumulative increases of 2.9%, 1.5% and 2% totalling 6.5% over three years, judges actually received an increase of 0.68% over the three years. Again, that may change if the 2013 JCC's recommendations are eventually implemented. (See pages 87-89 of the Judges' Association's Main Submission for a more detailed discussion.)

80. The experience in recent years tells us that if Government rejects the salary recommendations of one Commission, the outcome of that Commission is unlikely to be resolved before the next Commission conducts its assessment. That was the situation with the 2010 JCC. The 2013 JCC accepted the Government's argument that it should base its recommendations on the existing starting point. By the 2013 JCC adopting that position and recommending percentage increases from the substituted salaries, the Government benefitted twice from the improper reasons it -twice- gave in response to the 2010 JCC's recommendations. The Government delayed implementation of the 2010 JCC Report by a number of years, saving money in the interim, and limited the recommendation of the 2013 JCC by pointing it toward what turned out to be an invalid starting point.

81. The Association argued in its main Submission that this debate is largely beside the point for two reasons:

- the task of the JCC is *not* to determine what percentage increase should be applied to the salary currently being paid; and, most importantly,

- the objective factors set out in the Act support a salary that is higher than any of the alternatives that could result once the final outcome of the 2013 JCC is known.

82. To avoid the pitfalls which befell the 2013 JCC process, the Association urges this JCC to focus on determining the appropriate salary figure for the years 2017 and following, not appropriate percentage increases. The Association proposes that this 2016 JCC should consider the potential outcomes of the 2013 JCC process as part of the background to its Report, but make its own assessment of appropriate compensation for the period of its mandate. While this 2016 JCC cannot revisit the past years, it is open to this 2016 JCC to consider that the 2013 JCC may have recommended higher salary amounts had it based its recommendations on the proper starting point.

83. Over the course of the last two JCCs, judges' salaries have fallen so far behind those of their most appropriate comparators that a significant adjustment is justified in light of all the relevant factors.

84. The Government provides no support for its proposal of a 1.5% salary increase in each of the relevant years. The only basis for the position appears to be that it equates to the "average" general wage increase negotiated by unionized public servants. Indeed, 1.5% per annum is less than the Government's forecasts for 2% per annum increases in the cost of living. Even if the Government's proposed starting point turned out to be correct, the purchasing power of judges' salaries would erode over the course of this 2016 JCC's mandate under the Government's proposal, which amounts to an effective decrease in salary once inflation is taken into account. (See the discussion at paragraph 327 of the Association's Submission and the Government's CPI predictions at Tab 32, page 84 in the Judges' Association Documents.)

85. Quite apart from the fact that the 1.5% per annum is not justified in light of the relevant factors, there is an arbitrariness inherent in a proposal for a percentage increase. If such a recommendation were to be applied fairly in light of the uncertainty

over the outcome of the 2013 JCC process, the recommendation would need to contemplate that the percentage would be applied from whatever the 2016 starting point is eventually determined to be. When one considers the potential outcomes of the 2013 JCC process, it is apparent that each potential outcome would produce quite different results over the course of this JCC’s mandate. The following chart illustrates the point:

<b>2016 Salary</b>	<b>2017 Salary</b>	<b>2018 Salary</b>	<b>2019 Salary</b>
\$244,112 <sup>3</sup>	\$247,774	\$251,490	\$255,263
\$250,024 <sup>4</sup>	\$253,774	\$257,581	\$261,445
\$258,303 <sup>5</sup>	\$262,178	\$266,110	\$270,102

86. Referring back to the chart at page 93(a) of the Association’s Submission, it is apparent that even if the Government’s proposal of 1.5% increases each year were applied to the highest possible starting point, the salaries for BC judges would continue to rank very poorly as compared with their most appropriate comparators. Indeed, the 2019 salary would still be significantly lower than the 2016 salaries in Ontario, Alberta and Saskatchewan.

87. In summary, the Association maintains that the best approach is for this 2016 JCC to refer to the uncertainty about the starting point but make its own recommendation of salary figures, not percentage increases. Again, each JCC needs to make its own assessment in its own context. To the extent there was any basis in the past to “restrain” judicial salaries (such as in 2010, when the Association itself proposed a 2 year freeze), it no longer exists today.

88. The Government argues that the Association’s salary proposal is “unsupportable” and that “absent factors heavily favouring a significant salary increase, judicial

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<sup>3</sup> This is the current 2016 salary that was substituted by Government in place of the 2013 JCC recommendations.

<sup>4</sup> This is the 2016 salary figure identified by the 2013 JCC in its Report.

<sup>5</sup> This figure is the result of applying the percentage increases of 2.9%, 1.5% and 2.0%, recommended by the 2013 JCC, to the proper starting point of \$242,464 (i.e. the final salary for 2013 following implementation of the 2010 JCC Report).

independence favours similar treatment with others paid by public funds”. The Association has provided a thorough analysis of how the relevant objective factors support its position and will not repeat that here. A review of the salary chart that forms pages 93(a) and (b) of the Association’s Submission makes it clear that salaries for BC judges have fallen significantly behind those of their counterparts in other jurisdictions in recent years and particularly as compared with their key comparators of Alberta and Ontario. It is reasonable and fair to restore the salary to a level that reflects BC’s economic strength and its fiscal standing as compared with the other jurisdictions.

89. The Government’s proposal for 2017 would almost certainly leave BC judges with the third lowest salary of judges in Canada, with only the salaries of judges in Nova Scotia and Newfoundland and Labrador being lower. The basis for the dramatic change from the 3<sup>rd</sup> to 4<sup>th</sup> highest ranking considered appropriate by past Commissions and the Government itself is not explained. Nor is the reason why judges’ salaries should compare so poorly with their counterparts when BC targets 3<sup>rd</sup> to 5<sup>th</sup> highest for its executive compensation.

90. Moreover, contrary to the Government’s assertions, judicial independence does not favour “similar treatment with others paid by public funds” in the circumstances before this JCC. Judicial independence demands that judicial compensation be considered on its own merits in light of the relevant factors, something which the Government’s proposal fails to do. The relevant factors do not support the Government’s proposal.

### **Pensions (page 67 f)**

91. The reasons offered by the Government to oppose the Association’s request have been fully addressed in the Association’s main Submission and that analysis will not be repeated here.

## Normal Cost and Supplemental Liability for Existing Judges

92. Further to paragraph 341 of the Association's main Submission, attached as **Tab 54** is a report prepared by actuary Donald Smith, of Smith Pension & Actuarial Consultants Inc., concerning the cost of implementing the proposed increase in the accrual rate ("Smith Report"). The Smith Report was provided to Government counsel on June 20, 2016.

93. As noted at page 4, Smith carried out the actuarial costing as at April 1, 2016, using the salary rates of judges as at that date and the data for judges as at March 31, 2016, and assuming future salary increases averaging 3.75% per year (consistent with the assumptions used in the most recent actuarial valuation of the BC Public Service Pension Plan). Smith also explains:

If the Commission adopts the Association's salary proposal of \$285,000 for puisne judges effective April 1, 2017 with further 2% cumulative increases on each of April 1, 2018 and April 1, 2019, the effect on the results of the actuarial costing of the proposed change in the judges' pension accrual rate can be expected to be as follows:

- The actuarial costs and increases in contribution rates, expressed as a percentage of salaries, are not expected to change materially from those shown in Tables 3.1 and 3.2.
- The corresponding dollar costs, expressed in 2016 dollars, can be expected to be about 9% higher than those shown in Tables 3.1 and 3.2.

Smith Report, Judges' Association Reply Documents, **Tab 54**, pages 8-9

94. As set out on page 4, the costing employs the "Entry Age Actuarial Cost Method", which is the same method used to establish contribution rates under the BC Public Service Pension Plan. Smith goes on to explain that, with some necessary adjustments specific to judges, he chose actuarial assumptions which match as closely as possible those used in the most recent Actuarial Report on BC Public Service Pension Plan.

Smith Report, Judges' Association Reply Documents, **Tab 54**

95. There are two types of costs that are referred to in the report: “normal actuarial costs” and “supplemental liability for existing judges”. The normal actuarial costs represent the costs of providing the benefit to a new judge. Under the Entry Age Actuarial Cost Method, the normal costs will be sufficient to finance the benefits expected to be earned by that judge from age at entry into the plan until the earlier of retirement or the date that maximum pension is reached. However, as Smith goes on to explain, the cost is an average rate over a full career. The cost would be lower for younger judges, who have a longer period until expected pension commencement, and higher for older judges who have a shorter period of contributions until they begin their pension. The difference from the normal actuarial cost is reflected in the “supplemental liability for existing judges”. When using this method of cost calculation, one must of course consider the total cost.

Smith Report, Judges’ Association Reply Documents, **Tab 54**, pages 4-5

96. Table 3.1 on page 7 of the Smith Report (Judges’ Association Reply Documents, **Tab 54**), considers the cost of an increase in the accrual rate of 3.25% to 3.5%. This would be the cost of the Association’s proposed increase to 3.5% assuming that the recommendation of the 2013 JCC is eventually implemented. In that event, the total additional cost to Government would be 2.49% of payroll for the first 15 years, followed by 2.16% of payroll thereafter. Judges would contribute an additional 0.79% of payroll for the first 15 years, and 0.68% thereafter.

97. Table 3.2 on page 8 sets out the cost assuming the increase is from 3% to 3.5%. This would apply if the courts uphold the Government’s reasons for rejecting the recommendations of the 2013 JCC and substituting a 3.0% accrual rate effective April 1, 2014. In that instance, the total additional cost to Government would be 4.89% of payroll for the first 15 years, and 4.31% thereafter. Judges would pay an additional 1.55% of payroll for the first 15 years, and 1.36% thereafter.

98. As argued in the Association's Submission at page 109, to the extent the reduction to a 3% accrual for the years 2014, 2015 and 2016 is upheld, the Government will have, in effect, enjoyed a cost saving for those years.

99. The third possibility is that the final outcome of the 2013 JCC is that the accrual rate of 3.5%, that was effective April 1, 2013, remains in place through the years 2014, 2015, and 2016. In that event, there is no additional cost as there is no further increase proposed.

100. Whatever the starting point, it is submitted that the cost of a 3.5% accrual rate is reasonable, particularly when considered in the context of the entire judicial payroll, and the cost of the existing pension as a proportion thereof. It should be noted that judges will pay a proportion (24%) of the cost in accordance with the statutory cost sharing arrangements.

*Judicial Compensation Act, Judges' Association Documents, Tab 2, s. 18*

101. The Association undertakes to obtain a more detailed analysis of the costs based on the Association's proposed salary level upon request of the Government or the Commission.

### **Pension Facts & Context (Government's Tab 11)**

102. Attached as Tab 11 in the Government's Documents is a powerpoint presentation which the Government has advised was prepared by Ms. Angie Sorrell. Ms. Sorrell is the Executive Director Pensions for the BC Public Sector Employers' Council, which supports Government in setting and coordinating strategic directions in human resource management and labour relations for the broad public sector. According to its website, the PSEC is also active in the area of public sector pension plan management.

103. The Association notes the following about Ms. Sorrell's presentation:

- On page 7, the “56% of salary” pension accrual referenced for Ontario judges applies to a judge appointed at age 50 and retiring after 15 years of judicial service. This equates to an average pension accrual rate of 3.73% per year of service. More particularly, the pension accrual rate for an Ontario judge:
  - appointed at age 50, averages 3.73% per year for the first 15 years of service and 1% per year thereafter,
  - appointed at age 55, averages 4.54% per year for the first 13 years of service and 1% per year thereafter, and
  - appointed at age 60, averages 5.60% per year for the first 10 years of service and 1% per year thereafter.
  
- Also on page 7, the BC judges’ pension accrual rate is shown as 3%. As previously discussed, this may change, given the final outcome of the 2010 JCC and the pending judicial review of the Government’s response to the 2013 JCC.
  
- On page 8, there is a discrepancy in the sub-bullets under “With the 3% accrual rate” -- the figures “16.66%” and “13.33%” are incorrectly reversed. (16.66 yrs applies to a judge with 10 years prior accrual in the PSPP, and 13.33 yrs applies to a judge with 15 years prior accrual in the PSPP.) Also, all the periods shown on this slide for judges with prior accrual (i.e. non-judicial pensionable service) in the PSPP are understated, as they have been calculated based on a flat 2% pension accrual rate. In fact, the pension accrual rate under the PSPP for non-judicial service is 1.35% per year for earnings up to the YMPE (\$54,900 in 2016) and 2% per year for earnings above the YMPE.

### **Costs (page 67 f)**

104. At paragraph 233, the Government argues that the Commission may not make a recommendation on costs, despite that successive Commissions have done so. The Government relies on section 7.1, which was added as part of the recent amendments to empower the government to pay out of the Consolidated Revenue Fund the Association's reasonable costs. It purports to limit the maximum amount payable.

105. By extension, the Government's position suggests that it could amend the Act to state that judicial salaries shall not exceed a certain amount and thereby remove the matter from the JCC's jurisdiction. That would be obviously unconstitutional. Quite clearly, based on the reasoning of successive JCCs (where full payment of costs was not simply agreed upon by the parties), the JCC has the power to make a recommendation about costs.

106. Section 7.1 of the Act does not remove costs from within the JCC's jurisdiction but rather specifically empowers the Government to pay the costs resulting from any recommendation. While the Government has this time elected to put its proposal into legislation rather than arguing it before this JCC, section 7.1(3) specifically contemplates that the Lieutenant Governor in Council may set a higher amount as the maximum payable. This provides an obvious mechanism whereby the Government can accept the recommendation of this 2016 JCC that the entirety of the Association's costs should be paid, consistent with the past practice.

### **General Response to the Judges' Association Submission (page 69 f)**

107. The Association does not propose to provide a counterpoint to each point raised about its main Submission, as many of the points are dealt with above or will be addressed in oral argument.

108. Since filing its Submission, the Association discovered errors and/or inconsistencies in the timeframes for the data set out in the last two sentences of

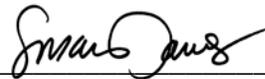
paragraph 9, regarding the average age at appointment and a breakdown of the gender of recent appointees. The necessary revisions are set out in **bold** below:

9. Since its creation, the Provincial Court has experienced immense and transformative change in both its jurisdiction and in the skills required of the judiciary. Section 6(2) of the *Provincial Court Act* requires prospective judges to have been a member of the Law Society of British Columbia for at least 5 years, but in practice the requirement is for many more years of experience. The Judicial Council requires applicants to have at least 10 years at the Bar, and most newly appointed judges have practiced law for approximately 20 years prior to their appointment. The average age at appointment for judges appointed **between July 2013 and April 1, 2016** was **54**. The average age of the judicial complement is approximately **58.9** for female judges and **58.8** for male judges. Of the 25 judges appointed **between July 1, 2013 and April 2016**, 12 were female, including seven of the **13** judges who were appointed in **2015**.

#### **Per Diem Travel Reimbursement**

109. The Association supports the Chief Judge's proposal that the per diem travel reimbursement rates be increased to the same rate as may exist from time to time for MLAs. That proposal is found at pages 37-38 of the Chief Judge's Submission.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 29<sup>TH</sup> DAY OF JUNE, 2016**



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Susan Dawes  
Counsel for the Judges' Association