



**Report and Recommendations
of the 2023 Provincial Court
Commission of Saskatchewan**

**Presented to the Minister of Justice and
Attorney General and the Saskatchewan
Provincial Court Judges' Association**

December, 2023

TABLE OF CONTENTS

Contents

I.	THE COMMISSION AND ITS MANDATE	1
II.	THE COMMISSION PROCESS AND PROCEEDINGS	2
III.	PREVIOUS COMMISSIONS.....	4
IV.	THE PROVINCIAL COURT OF SASKATCHEWAN	4
V.	THE CURRENT COMPENSATION/BENEFITS PACKAGE.....	8
VI.	PRINCIPLES GOVERNING THE COMMISSION’S WORK.....	9
VII.	THE ISSUES TO BE DETERMINED and THE POSITIONS TAKEN BY THE PARTIES.....	12
a.	Judicial Salaries	13
b.	Professional Allowance	15
c.	Vacation Leave	17
d.	Additional items under consideration	18
VIII.	RECOMMENDATIONS	19
a.	Judicial Salaries	19
b.	Professional Allowance	21
c.	Vacation Leave	23
d.	Other matters	25
IX.	SUMMARY OF RECOMMENDATIONS.....	25
X.	CLOSING REMARKS.....	26

I. THE COMMISSION AND ITS MANDATE

1. The 2023 Provincial Court Commission (the “Commission”) was appointed pursuant to section 36 of *The Provincial Court Act, 1998*, S.S. 1998, c P-30.11 as amended (the “Act”). Section 36(2) specifies the composition of the Commission and in accordance with the legislative requirements, the Commission is composed of the following members:
 - i) Andrea V. Argue, K.C. – Appointee of the Minister of Justice (the “Minister”);
 - ii) Brian R. Pfefferle, K.C. – Appointee of the Saskatchewan Provincial Court Judges’ Association (the “Association”); and
 - iii) Michelle J. Ouellette, K.C. – Chairperson, appointed by the other two members of the Commission.¹
2. The Commission is the eleventh Provincial Court Commission, the first one being established in 1991. The current Commission process follows the 1997 decision of the Supreme Court of Canada in *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*.²
3. Since the Bundon Commission, which reported in 1998 and 1999, there has been a Provincial Court Commission appointed every three years.
4. The mandate of the Commission is set out in s. 38 of the Act and is divided into compulsory and discretionary, or advisory, components:

38(1) A commission **shall** inquire into and make recommendations
with respect to the following:

- (a) the salaries to be paid to:
 - i) the chief judge;
 - ii) an associate chief judge;

¹ The original Appointee of the Minister was appointed to the Provincial Court following selection of the Chair by that member and the Appointee of the Association. Ms. Argue’s appointment followed.

² *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 SCR 3 (“PEI Reference”)

- iii) subject to section 38.1, judges other than the chief judge, associate chief judges and temporary judges; and
 - iv) temporary judges;
 - (b) the remuneration to be paid to judges who perform administrative duties assigned to them pursuant to clause 8(f);
 - (c) the allowances to be paid to judges who reside in the Northern Saskatchewan Administration District;
 - (d) professional allowances
 - (e) vacation leave;
 - (f) pension benefits and additional retirement benefits.
- (2) A commission **may** inquire into and make recommendations with respect to the following:
 - (a) the support staff, facilities, equipment and security of the court;
 - (b) the benefits to be provided to judges pursuant to regulations made pursuant to clause 65(d).
[emphasis added]

- 5. Pursuant to s. 38(3), the salary recommended by a commission cannot be less than the salary being received by the judges on the day on which the report containing the recommendation is submitted to the minister.
- 6. Section 37 of the Act provides that the Commission may determine its own procedures.

II. THE COMMISSION PROCESS AND PROCEEDINGS

- 7. The Commission followed a process generally established by previous Commissions.
- 8. Advertisements calling for submissions to this Commission were placed in the Regina Leader

Post and the Saskatoon Star Phoenix on Wednesday, October 11, 2023. The advertisements indicated that the Commission would be receiving submissions from interested parties and that a hearing would be held in Saskatoon at the location and date indicated. Notice of the hearing dates was also posted on the Commission's website at:

<https://www.saskatchewan.ca/government/government-structure/boards-commissions-and-agencies/saskatchewan-provincial-court-commission>

9. The Commission was greatly assisted by written and oral submissions from the parties through their legal counsel. The Commission received both written and oral submissions from the following:
 - i) the Association;
 - ii) the Deputy Minister of Justice on behalf of the Government of Saskatchewan (the "Government");
 - iii) the Canadian Bar Association – Saskatchewan Branch (the "CBA"); and
 - iv) the Saskatoon Criminal Defence Lawyers Association Inc. (the "SCDLA").
10. The Commission also received Reply Submissions from the Association and the Government as well as supplementary materials by way of correspondence. The submissions and other materials submitted by the parties can be found on the Commission website at: <http://www.saskatchewan.ca/government/government-structure/boards-commissions-and-agencies/saskatchewan-provincial-court-commission#submissions-and-replies>.
11. The Commission conducted a single public hearing in Saskatoon on November 15, 2023. With the agreement of the Association and the Government, the Commission elected not to hold an additional public hearing in Regina.
12. The Commission is required to prepare a report with its recommendations on the s. 38(1) matters for the four year period commencing April 1, 2024, and to submit it to the Minister and the Association by December 31, 2023 (s. 41 of the Act).³
13. A significant change in the long-standing Commission process will be implemented with this Commission. The Act was recently amended to provide that the Commission process will take

³ The parties are agreed that given that December 31, 2023 falls on a Sunday, and the following Monday, January 1, 2024, is a statutory holiday, the Commission's report will be submitted on or before January 2, 2024.

place every four years, rather than every three years as was the case with previous Commissions. (See s. 36(1)(e): “A Provincial Court Commission must be established... on or before July 1 of every fourth year after 2023.”)

III. PREVIOUS COMMISSIONS

14. There have been ten previous Provincial Court Commissions in Saskatchewan:
 - i) The Schmeiser Commission reported in 1991;
 - ii) The Irwin Commission reported in 1993;
 - iii) The Bundon Commission reported in 1998 and 1999;
 - iv) The Vicq Commission reported in 2002;
 - v) The Barnard Commission reported in 2005;
 - vi) The Zakreski Commission reported in 2008;
 - vii) The Hood Commission reported in 2011;
 - viii) The Hodson Commission reported in 2014;
 - ix) The Prosser Commission reported in 2017; and
 - x) The Jaspar Commission reported in 2020.
15. All previous reports and recommendations are available on the Commission’s website and will not be summarized in this report, although comments from some earlier reports are reproduced herein.
16. It is noteworthy to observe that the Commission process in Saskatchewan has worked extremely well despite differences in the positions of the parties on issues brought before successive Commissions. As the Government points out, there has never been any litigation in this province over the implementation of any previous Commission’s recommendations. This is a laudable history that contrasts with the experience in some other jurisdictions.

IV. THE PROVINCIAL COURT OF SASKATCHEWAN

17. The Provincial Court of Saskatchewan currently consists of a Chief Judge and, as a general

rule, 48 additional judges sitting in 13 permanent judicial centers and 59 additional circuit points, for a total of 72 locations throughout the Province.

18. The parties agree that the number of judges has remained relatively stable since 1979, following the establishment of the Provincial Court in 1978, and has ranged between 41 and 50 judges on the Provincial Court Bench.
19. The Association's description of the Provincial Court at paragraph 82 of its submission is one with which the Commission agrees:

The Provincial Court is the face of justice in Saskatchewan. It is a front-line Court designed to provide judicial resolutions in a timely fashion to the legal issues brought to it by members of Saskatchewan's public and law enforcement agencies. It is the first and only court with which most litigants – both civil and criminal – in Saskatchewan will ever have contact.

20. As reaffirmed in the Hood Commission Report (2011) (paras 217 -218):

[...] [T]he Provincial Court plays a vital role in our society.

Traditionally, this Court is the point of entry into the criminal justice system and the data provided to us shows their role is ever-increasing. They preside over the vast majority of criminal matters and they have wide reaching powers that require them to balance the rights of persons charged with offenses against the need to ensure our communities are protected and well served. Two of their most onerous duties are, as defined by the Association, to determine guilt and impose sentences, where necessary, that balance the protection of the public and the needs of the offender. In these and all of their duties, it is a delicate balance as it requires they must be independent and unbiased, and be perceived as such at all times.

The role and duty of the Judge is not confined to the courtroom and it is not limited to the normal work hours that many citizens enjoy. Judges can be called upon at any time, day or night, to deal with emergency situations, to authorize search warrants and urgent mental health warrants. Judges in the

North and those who attend the many circuit points throughout the Province often have work days that are long in duration and work environments that require special skills to maintain public confidence in the administration of justice.

21. This vital role is not disputed by the Government.
22. As described at paragraphs 93 - 96 of the Association's submission, the Provincial Court exercises jurisdiction in five main areas of law: adult criminal, youth criminal, regulatory offences (including traffic, consumer protection, and occupational health and safety prosecutions), civil, and family (particularly child protection hearings).
23. In his oral submissions, Mr. Kuski, for the Association, described the Provincial Court as "the people's court" and this characterization has also been attributed to the Provincial Court in other jurisdictions.⁴
24. With respect to the criminal jurisdiction exercised by the Provincial Court, the Commission acknowledges that the majority of criminal prosecutions in Saskatchewan take place in Provincial Court. Most citizens of Saskatchewan facing criminal charges will have them resolved in Provincial Court. This is also acknowledged by the Government.
25. The Provincial Court has absolute jurisdiction over Summary Conviction offences and concurrent jurisdiction with the Court of King's Bench over almost all indictable offences.
26. Likewise, the Commission accepts that both the volume and complexity of cases coming before the Court have increased significantly over the past number of years. In terms of the increase in the volume of criminal appearances before the Provincial Court, the statistics are striking:

2014: 826,564

2019: 1,013,112

2022: 1,090,408

(See the Association's Submission at paragraphs 126 and 127.)

⁴ See for example the Final Report of the 2022 British Columbia Judicial Compensation Commission at 3.

Again, these numbers are not disputed by the Government.

27. The complexity of the matters coming before the Provincial Court has similarly increased. The reasons for the rise in both volume and complexity have been noted by previous Commissions and have not abated. As the SCDLA asserted at page 10 of its submission: “[f]ollowing the amendments in 2019 to the Criminal Code which limited the availability of preliminary inquiries, Provincial Court became predominantly a trial court...”. The impact of the rising substance abuse and mental health crises alone has been significant, as noted at page 5 of the CBA submission. The increased awareness of the need for consideration of “Gladue” factors with respect to Indigenous offenders adds another level of complexity.
28. The evolution of the Provincial Court’s procedural parameters is another factor that impacts the workload of the court. The Association points out the impact of the elimination of many Preliminary Hearings and the effect of the Supreme Court of Canada decision in *R v Jordan*.⁵ In that decision, the Supreme Court acknowledged at para 42: “the increased complexity of pre-trial and trial processes”, and observed that: “New offences, procedures, obligations on the Crown and police, and legal tests have emerged”, while also creating presumptive delay ceilings, further increasing the demands on the Provincial Court.
29. Regarding the Provincial Court’s civil jurisdiction, the monetary value of Small Claims matters brought before the Provincial Court has grown from the original limit of \$5,000 in 1988 to \$30,000, in the most recent increase in 2016.
30. There was no dispute between the parties with respect to the pending increase to the Small Claims limit to \$50,000 by way of changes to the regulations to *The Small Claims Act, 2016*, S-50.
31. A Small Claims limit of \$30,000 has expanded the scope of the Small Claims matters that Provincial Court judges are required to adjudicate, and that scope can reasonably be expected to expand further when the Small Claims limit increases to \$50,000. Whereas at one point in time, the Provincial Court’s civil jurisdiction may have related primarily to the recovery of small debts, that is unlikely to continue to be the case. The Provincial Court can be expected to hear the full panoply of civil matters, albeit with a \$50,000 monetary limit.

⁵ *R v Jordan* [2016] 1 SCR 631

32. Moreover, there is no dispute that many of the parties who come before the Provincial Court, particularly in the civil or family law context, are self-represented. Again, as noted in the Association's submission at paragraphs 136 – 143, this further complicates the work of Provincial Court judges in dealing with litigants who have no legal knowledge and no legal advisor to assist them.
33. Lastly, the Commission notes the work implemented by the Provincial Court with respect to a number of "Special Initiatives". These include the Therapeutic Courts dealing with domestic violence, mental illness and substance addictions, as well as the Cree Court.

V. THE CURRENT COMPENSATION/BENEFITS PACKAGE

34. The Provincial Court has a compensation package that, overall, the Commission considers to be fair and reasonable. It consists of a number of different components.
35. In addition to salary to be determined in accordance with the formula set out in s.38.1 of the Act, the judges of the Provincial Court are entitled to the following pension and retirement benefits:
- i) Pension and Additional Retirement Benefit of 3% per year of service, multiplied by average salary over best 3 years;
 - ii) Survivor Pension - Surviving spouse is entitled to defined benefits pension for life;
 - iii) Surviving Child Benefits - The benefit is paid to a surviving child of a Judge, if the Judge dies without a spouse or if the spouse later dies, payable up to age 18;
 - iv) Early Retirement Pensions - Full pensions of 70% of average salary over best 3 years, when a judge's age and years of service equal 80;
 - v) Indexing of Pension - Pensions are indexed to 75% of CPI up to a CPI of 5% and indexed at 50% of CPI for portion of CPI over 5%;
 - vi) Judges Contributions - judges contribute 5% of salary;

- vii) Government Contributions - Government contributes the amount necessary to make up the difference between the judges' contributions and the amounts necessary to pay the pension and additional retirement benefits.
36. The Provincial Court pension/retirement benefit plan, in particular, has been described as “very generous”. (Hodson Commission, para. 148; Hood Commission, paras. 214, 230)
37. Judges are also eligible for a number of additional benefits, including:
- i) Disability Benefits - 100% of salary for temporary disability (up to 1 year); 70% for permanent disability, on the recommendation of the Judicial Council, with no premiums;
 - ii) Annual Vacation - 30 days (up to 30 days can be accumulated with prior approval from the Chief Judge);
 - iii) Annual Professional Allowance - \$4,000;
 - iv) Annual sick leave – 1.5 days per month, which can be accumulated year to year;
 - v) Group Life Insurance - Minimum 2 times salary with optional coverage up to \$500,000, the first \$25,000 of coverage being paid for by the province;
 - vi) Dental Plan - Same dental plan as public service employees; premiums are paid by the Government.
 - vii) Extended Health Plan - Premiums are paid by the Government.
38. The pension, additional retirement benefits, and other benefits to which Provincial Court judges are entitled are more fully described in Tables 2 and 3 of the Government’s written submission (pages 35-38).

VI. PRINCIPLES GOVERNING THE COMMISSION’S WORK

39. This Commission’s work, as with previous Commissions, is based on the foundational principle of judicial independence. The Supreme Court of Canada has identified the principle of judicial independence and the importance of the application of, and adherence to, that

principle by Provincial Court Compensation Commissions in two seminal cases, namely:

- i) The *PEI Reference*; and
- ii) *Provincial Court Judges' Association of New Brunswick v. New Brunswick* [2005] 2 SCR 286 ("*New Brunswick Reference*").

40. Judicial independence is recognized to have three essential characteristics:

- (i) security of tenure;
- (ii) financial security; and
- (iii) administrative independence.

41. The Commission process was established to address the *financial security* component of judicial independence, following the Supreme Court's direction that there must be no negotiations between the judiciary and the government over compensation.

42. This Commission is required to be independent, effective and objective. Our recommendations must be based on objective factors, not political expediency. Our general approach should consider the description set out at paragraph 14 of the New Brunswick Reference:

The Commission process is an "institutional sieve" (Reference at paras 170,185,189) – a structural separation between the government and the judiciary. [...] Its focus is on identifying the appropriate level of remuneration for the judicial office in question. All relevant issues may be addressed. The process is flexible and its purpose is not simply to "update" the previous Commission's Report. However, in the absence of reasons to the contrary, the starting point should be the date of the previous Commission's Report.

43. It is common ground between the parties that judicial independence:

...is the cornerstone of the Canadian court system. Judicial independence is essential to ensure fair and reasoned decisions from the courts, decided solely on the merits of each case. Judicial independence also ensures that the public has confidence in the court system and in court decisions, as well as confidence that the courts make their decisions without any external pressures or influences. Judicial independence is a crucial guarantee of the rule of law in a free and democratic society.

(See the Government's Submission at paragraph 1.)

44. As summarized by the Jaspas Commission in 2020:

The work of this and all previous commissions is founded on the principle of judicial independence. The Supreme Court of Canada has endorsed the following principles in relation to the role of the Commission:

- (a) It is a constitutional requirement that the Commission is independent, objective and effective.*
- (b) The Commission's recommendations must result from a fair and objective hearing, and its report must explain and justify its position.*
- (c) The role of the Commission is not simply to update the previous commission's report, and each commission must make its assessment in its own context. That said, the Commission does not operate in a void, and the reports of previous commissions and their outcomes are part of the background and context that the Commission must consider. Absent reasons to the contrary, the starting point for analysis should be the date of the previous commission's report; and*
- (d) The Commission must objectively consider the submissions of all parties and any relevant factors identified in the enabling statute and regulations (if any).*

45. While in some jurisdictions, the relevant legislation sets out a specific, non-exhaustive list of factors that Provincial Court Commissions are to consider, in Saskatchewan the Act does not contain a list of such relevant factors to be considered by this Commission. The Vicq Commission (2002), however, at pp. 8 and 9 of its report did identify a list of relevant factors which have been followed by subsequent commissions, as follows:

The Commission was keenly aware throughout its deliberations of the foundation principle of judicial independence. The Commission's task – as Chief Justice Lamer made very clear – is to make recommendations based on objective factors, and it should be "fully informed" before doing so. (para.172, Provincial Judges Reference) In our view, the interpretation of The Provincial Court Act, 1998 which best meets these objectives is that the

Commission has the jurisdiction to and should consider a broad range of "objective" factors. This approach is also consistent with Chief Justice Lamer's recommendation that legislation contain a "non-exhaustive" list of relevant factors, and that the list might include the need for "adequate" salaries. The notion of "adequacy" is inherently flexible, and invites the Commission to consider all factors it considers relevant in the course of discharging its constitutionally mandated task.

[...]

To summarize, it is the Commission's view that while all of its deliberations must be framed by and fully respect the principle of judicial independence; it is, within that framework, entitled to take account of a wide variety of "objective" factors. Those factors include the history of judicial remuneration, changes in cost of living, prevailing economic and fiscal conditions in Saskatchewan, public and private sector salary comparators both within and outside Saskatchewan, recruitment and retention issues and the unique responsibilities and work environment of Provincial Court Judges.

VII. THE ISSUES TO BE DETERMINED and THE POSITIONS TAKEN BY THE PARTIES

46. As identified previously, the Act sets out a number of issues that the Commission must consider:

38(1) A commission shall inquire into and make recommendations with respect to the following:

(a) the salaries to be paid to:

- (i) the chief judge;
- (ii) an associate chief judge;
- (iii) subject to s.38.1, judges other than the chief judge, associate chief judges and temporary judges; and

- (iv) temporary judges;
- (b) the remuneration to be paid to judges who perform administrative duties assigned to them pursuant to clause 8(f);
- (c) the allowances to be paid to judges who reside in the Northern Saskatchewan Administration District;
- (d) professional allowances;
- (e) vacation leave;
- (f) pension benefits and additional retirement benefits.

47. The Commission heard from the parties on some, but not all of these matters.

a. Judicial Salaries

48. The Commission received written and oral submissions with respect to s.38(1)(a)(iii) of the Act, regarding the salaries to be paid to Provincial Court judges.

49. The salaries paid to Provincial Court judges since 2020 have been set pursuant to a formula arrived at during the Jaspar Commission. This formula was implemented by the enactment of s.38.1 of the Act.

50. The salaries currently paid to Provincial Court judges pursuant to the legislative enactment of the Jaspar Commission formula, are set out in Table 1 of the Government's submission (page 27):

SALARIES AND ADDITIONAL AMOUNTS AS OF APRIL 1, 2023

POSITION	SALARY
Judge - Base Salary	\$ 353,590
Chief Judge - Base Salary + 7.5%	\$ 380,109
Associate Chief Judge - Base Salary + 5%	\$ 371,270
Judges performing Administrative Duties – Base Salary + 2.5%	\$ 362,430
Judges receiving Northern Allowance – Base Salary + 5%	\$ 371,270

51. Section 38.1(2)(a) legislates a presumption that a Provincial Court judge's salary will be based on 95% of the salary set for the justices of the King's Bench Court in the previous year. (As a result, it is somewhat inaccurate to simply describe the salary of Provincial Court judges as "95%" of the salaries for King's Bench justices.)
52. By way of example, the protocol provides that for the annual period of April 1, 2024 to March 31, 2025, the base salary for Provincial Court judges will be adjusted to 95% of the salary paid to Justices of the Court of King's Bench on March 31, 2024, and so on for the subsequent three years.
53. The Act allows either the Association or the Government to request a Commission to review the 95% rate in "extraordinary circumstances".
54. No such extraordinary circumstances were raised by any party.
55. Although there initially appeared to be some dispute between the Association and the Government as to whether the Commission should affirm the adjustments to salaries for the coming four years, or only for the next year, to allow for the possibility of "extraordinary circumstances" arising (see the Government's Reply Submission at paragraphs 23 - 25), the Commission understands that there is in fact no dispute over that issue.
56. As the Commission now understands, both the Association and the Government are advocating for the Commission to recommend an adjustment to the salaries of Provincial Court judges consistent with the statutory presumption set out in s.38.1(2) of the Act.
57. The CBA's submissions supported the application of the formula set out in the Act.
58. The SCDLA, a body whose members practice much of their time in the Provincial Court, submitted that there should be no discrepancy between the salaries of Provincial Court judges and those of King's Bench Justices.
59. No submissions were made by any party respecting other aspects of judicial salaries and the Commission understands that no changes are sought by either the Association or the Government, to those other matters set out in s.38(1) of the Act, save for the matters set out below.

b. Professional Allowance

60. The Commission received written and oral submissions with respect to the professional allowance to which Provincial Court judges are entitled pursuant to s.38(1)(d) of the Act.
61. The members of the Provincial Court are entitled to an annual Professional Allowance, currently set at \$4,000. The Professional Allowance is intended to allow Provincial Court judges to acquire the resources they need to carry out their judicial duties. These might include such things as textbooks, journals, personal technology upgrades, replacement court clothing, and a home security system.
62. As the Government noted in its written submission, since the Hood Commission in 2011, the Professional Allowance may also be used to pay for additional eligible expenses such as those related to the promotion of physical fitness.
63. The Professional Allowance is also the source of funds available to Provincial Court judges to allow them to register for and travel to attend educational programs or conferences, to engage in other professional development such as membership in various organizations, or to access French language training.
64. This allowance for judicial education is provided for by various means in other jurisdictions; that may be by way of a separate Education Allowance (Manitoba, for example), or by way of “in-house” judicial education (Alberta, for example).
65. If unused, the Professional Allowance cannot be carried over to the following year. If an amount in excess of \$4,000 is spent in a given year, however, the surplus can be drawn from the following year’s allowance.
66. The Professional Allowance is administered by the Office of the Chief Judge pursuant to the “Protocol and Administrative Direction on Professional Allowance for Judges of the Court” (the “Protocol”). The Protocol was provided to the Commission at Appendix 22 of the Association’s written submission.
67. The Commission accepts that this Professional Allowance is, as noted by the Association, at para. 188 of its submissions, “administered judiciously...to ensure that amounts available

under them are used only for items necessary for judges to perform their judicial functions”.

68. The Association is seeking a staged increase to the Professional Allowance of \$875 per year, per judge, eventually bringing the Professional Allowance on par with the Incidental Allowance currently allowed to Justices of the Superior Court, at \$7,500.
69. The Association points out that the Professional Allowance has not been increased since 2014, during which time inflation has increased by approximately 26%, significantly eroding the purchasing power of the Professional Allowance.
70. The Association points to such factors as the increasing complexity of the matters coming before the Provincial Court, the dramatically increased costs in all sectors of the economy, and the increased use of technology by courts, as justification for the proposed increase in the Professional Allowance.
71. The Government submits that no increase in the Professional Allowance is required to support judicial independence and points out that Saskatchewan Provincial Court judges currently enjoy the third highest Professional Allowance in Canada.
72. The Government also points out that for 2022 – 2023, the average amount of the Professional Allowance utilized by Provincial Court judges was \$3,727 – less than the full \$4,000.
73. The Government suggests that since the entire amount of the current Professional Allowance is not being spent, there is no basis to consider an increase without more specific evidence to support the increase.
74. The CBA’s submissions supported the Association’s position in favour of a staged increase to the Professional Allowance, emphasizing the importance of Provincial Court judges staying up-to-date on a wide variety of legal issues.
75. The SCDLA made no specific written submissions on the Professional Allowance, but in its oral presentation pointed out the escalating costs of attendance at conferences, as well as the value of such conferences in combatting the isolation that is a recognized consequence of a judicial appointment. It submits that, overall, there should be no distinction between the benefits received by federally appointed justices and the Provincial Court judges.

c. Vacation Leave

76. The Commission received written and oral submissions with respect to the vacation leave to which Provincial Court judges are entitled pursuant to s.38(1)(e) of the Act.
77. Provincial Court judges are currently entitled to vacation leave equivalent to 30 working days annually. This equates to six weeks of vacation time per year.
78. The vacation entitlement has been set at 30 days per annum since the first Provincial Court Commission in 1998. It was arrived at by agreement between the parties at that time.
79. The issue of whether the vacation entitlement should be increased has been before at least four previous iterations of the Commission: the Vicq Commission (2002), the Zakreski Commission (2008), the Hodson Commission (2014) and the Prosser Commission (2017).
80. None of those Commissions determined that an increase in the vacation entitlement was warranted, finding generally that the 30 day leave entitlement was fair and reasonable.
81. The Prosser Commission, in particular, pointed out the significant cost of adding the requested 10 day additional entitlement (the request at that time) and noted that it would be comparable to the cost of adding two full-time Provincial Court judges' salaries.
82. The Association's current request is for a staged increase of one day per year over the next four years. The Association submits that this modest increase will ensure that Provincial Court judges have adequate time to rest and replenish the physical and mental reserves required to manage a steadily increasing workload.
83. The Association points out that the (eventual) 4 additional days of vacation would obviously pose a significantly lower cost to the Government than the requests of 10 additional days made to previous Commissions.
84. It was noted during the Hearing that 30 days/6 weeks of vacation leave is fairly consistent with most Provincial Courts across Canada (Ontario, Yukon and the Northwest Territories are the main exceptions), and with a number of other legal environments (other than private practice).
85. It was further noted during the Hearing, by Associate Chief Judge Anand, and in response to questions by the Commission, that it is "not rare for judges to come in on vacation and work

on reserves and do admin work”: See page 61 of the Transcript. The Commission accepts this as true, demonstrating the demanding nature of the work Provincial Court judges do.

86. In a supplementary submission, the Association also responded to a query from the Commission about the entitlement of government lawyers to “SDO”s (Scheduled Days Off) in addition to their 30 day vacation entitlement.
87. The Association pointed out that while Crown Prosecutors (a frequent source of appointments to the Provincial Court) are entitled to the same 30 day vacation leave as Provincial Court judges, they are also entitled to 12 SDO’s per year. The Association noted that a Crown Prosecutor considering an application to the Provincial Court is therefore facing the prospect of losing 12 days of paid leave annually.
88. The Government opposes the Association’s request and submits that the current vacation entitlement is sufficient to maintain the mental and physical well-being of the Provincial Court judges. It points out that most jurisdictions have a similar entitlement.
89. The Government does not agree that the cost of four additional vacation days is insignificant. It estimates the additional cost of the Association’s request, taking into account the cost of maintaining service levels by increased utilization of Temporary Judges and therefore increased travel and lodging costs, to approximate the cost of two additional full-time judicial salaries.
90. The SCDLA, as noted previously, is supportive of bringing the Provincial Court judges’ salaries and benefits, overall, in line with their federally appointed counterparts.
91. The CBA is supportive of the Association’s position with respect to increasing the vacation entitlement, pointing out the importance of making sure that Provincial Court judges are able to maintain a high level of productivity in the face of a steadily increasing workload, by allowing sufficient time for them to be refreshed by adequate vacation time.

d. Additional items under consideration

92. No submissions were made regarding the other matters set out in s. 38(1) and the Commission does not understand either the Government or the Association to be requesting any changes to

those other components of the Act that fall under the compulsory aspect of the Commission's mandate. The Commission was nevertheless mindful of that mandate, and the fact that it is required to consider all issues set out in s.38(1).

93. As noted previously, the Act also sets out, in s. 38(2), several advisory matters that the Commission may, but is not obliged to, consider. The Commission understands that no changes are sought by either the Government or the Association with respect to those advisory matters.

VIII. RECOMMENDATIONS

94. In coming to its recommendations, the Commission was very appreciative of the assistance provided by the submissions of both the Association and the Government, as well as those of the CBA and the SCDLA. The Commission reviewed and carefully considered all submissions. Reviewing reports of previous Commissions and the relevant case law provided guidance on the approach we took to our task.
95. The Commission considered each of the factors raised and discussed by the parties in their submissions, both oral and written. Chief among those factors, of course, was the need to preserve judicial independence, as already discussed. The Commission is confident that all parties recognize the fundamentally important nature of that principle.
96. Other important factors discussed by the parties and considered by the Commission in coming to its recommendations include: the critically important role played by the Provincial Court in this province; the need to attract and retain the best candidates to the Provincial Court in order to sustain that role; the economic conditions and other fiscal obligations facing the Government; and the positions of comparator groups. Again, the parties' thoughtful submissions were of great assistance.
97. After careful consideration and discussion, the Commission is pleased to set out its recommendations:

a. Judicial Salaries

98. As noted earlier, the Commission initially understood that there was some discrepancy between

the positions of the Association and the Government on the implementation of the formula established by the presumption in s.38.1.

99. The Commission understood the Government to be suggesting that the Commission ought not to recommend a salary adjustment in accordance with the presumption in the Act for each of the next four years because of the potential for “extraordinary circumstances”, as the term is used in the Act, to arise over a four year period.
100. The Commission now understands that there is no such discrepancy between the Association and the Government on this issue.
101. Accordingly, the Commission is pleased to recommend that, in accordance with the statutory presumption contained in s.38.1(2) of the Act, the salaries of Saskatchewan’s Provincial Court judges be adjusted as follows:
- i) For the annual period of April 1, 2024 to March 31, 2025, the base salary be adjusted to the product of .95 and the salary paid to the Justices of the Court of King’s Bench at March 31, 2024;
 - ii) For the annual period of April 1, 2025 to March 31, 2026, the base salary be adjusted to the product of .95 and the salary paid to the Justices of the Court of King’s Bench at March 31, 2025;
 - iii) For the annual period of April 1, 2026 to March 31, 2027, the base salary be adjusted to the product of .95 and the salary paid to the Justices of the Court of King’s Bench at March 31, 2026;
 - iv) For the annual period of April 1, 2027 to March 31, 2028, the base salary be adjusted to the product of .95 and the salary paid to the Justices of the Court of King’s Bench at March 31, 2027;
102. As set out in s.38.1(3), if, in any of the four years referred to above, the calculation required would result in a reduction to a judge’s salary, the salary to be paid that year will be the annual salary paid in the previous annual period.
103. Given the impact of the formula on salaries for other judges, including the Chief Judge, Associate Chief Judges, Administrative Judges, and Northern Judges, and the fact that neither

the Association nor the Government is seeking changes with respect to those salaries, the Commission makes no specific recommendations regarding those salaries. Likewise, no change regarding salaries for Temporary Judges was sought by either party and no such change is recommended.

104. The Commission observes that setting out the annual salary for each year in the period of time until the next Commission is established is consistent with the practice of previous Commissions. We feel this remains an appropriately consistent approach despite the fact that the interval between Commissions has been extended to four years.
105. The Commission would have recommended this approach in the event of a disagreement between the parties, seeing no reason to depart from the practice of previous Commissions.

b. Professional Allowance

106. The Commission understands and agrees that the Professional Allowance must cover a broad range of expenses incurred by Provincial Court judges in acquiring the various resources they may need in order to perform their judicial function. The array of potential items included in the Professional Allowance is extensive and diverse. It includes, but is not limited to: textbooks, journals, personal technology upgrades, replacement court clothing, a home security system, fitness programs, eye-glasses, hearing aids, memberships in organizations, registration and travel to attend educational programs, including French language training.
107. All of these various items can be important resources to a given judge. The Commission was particularly cognizant, however, of the importance of ensuring that Saskatchewan's Provincial Court judges are able to reasonably access adequate educational resources and programs to allow them to keep up to date with developments in the law related to their five main areas of jurisdiction, which are themselves wide-ranging, and also with the rapidly changing social, economic and cultural factors that have a direct impact on the matters coming before the Court.
108. The increase in the Small Claims monetary limit, the impact of the crisis in mental health and addictions, the increasing volume of self-represented litigants and the evolving landscape of reconciliation with Indigenous peoples are but a few such significant developments.

109. The Commission acknowledges the Government's point of view on the availability of online educational programs. In our view, these programs are useful adjuncts, but cannot and do not offer the same advantages as attendance at in-person educational programs where the exchange of ideas and sharing of experiences are invaluable beyond the formal components of the program.
110. The Commission believes that all Provincial Court judges should have better access to educational programs than is currently available through the Professional Allowance, given the myriad of other items that may be needed by a judge at any point in time and the finite fund available through the Professional Allowance.
111. Provincial Court judges should not have to choose between installation and monitoring of a home security system, an expensive endeavor the need for which may be significant in some locations, and attendance at a week-long educational program. Both may well be essential to the judges' sense of comfort and safety and their ability to fulfill their judicial role for the benefit of the citizens who appear before them.
112. The Commission noted the relatively minor increases that have been made to the Professional Allowance since its inception and, in particular, the fact that the Professional Allowance has remained static since the small increase in 2014 that took it to \$4,000. The value of that \$4,000 today is much different than it was in 2014. Most of the items currently included under the Professional Allowance will have increased significantly in cost.
113. The Commission heard oral submissions, particularly from the CBA and the SCDLA, regarding the cost of quality in-person continuing legal education programs; it is significant and can be expected to continue to increase. Certainly, it is commonly recognized that the costs of travel, meals, and accommodation alone have risen dramatically since 2014.
114. Accordingly, the Commission is pleased to recommend that the Professional Allowance be immediately increased by \$2,000, bringing the annual Professional Allowance to \$6,000 in the aggregate. The additional \$2,000 should be designated to provide specifically for judicial education. The original \$4,000 should continue to be available to be used for any of the items currently included in the Protocol, including, among other things, judicial education and professional development.

115. The Commission acknowledges that this increase to the Professional Allowance is less than that requested by the Association and more restricted in its use than the existing \$4,000 generally administered under the Protocol. It is, however, an immediate and significant increase that should allow Provincial Court judges better access to the judicial education they need in order to perform their judicial role well, while still allowing access to the other resources that individual judges may require.
116. The Commission also acknowledges that this change ostensibly results in an increased financial burden for the Government. Nonetheless, the Commission sees the proposed approach as a reasonable compromise between the Government's need to mind the public "purse-strings", and the need to ensure that Provincial Court judges have all of the resources needed to ensure they can perform their critically important role in our judicial system.
117. Dedicating the increase to the Professional Allowance for use in judicial education provides a degree of accountability, transparency, and reassurance to the public that the additional expenditure of provincial funds is well founded, without derogating from the independence of a judge to use the current Professional Allowance in accordance with the Protocol.
118. Furthermore, if the Government is correct in its assertion that an increase in the Professional Allowance is not indicated because even the current \$4,000 Professional Allowance is not being fully utilized, then adding to that "unused" amount should not constitute a significant financial burden.
119. If, on the other hand, the additional amount allows Provincial Court judges to access more high-quality continuing judicial education, the additional monies will be well-spent in the Commission's view. That is so even if not all Provincial Court judges choose to use the Professional Allowance available to them.

c. Vacation Leave

120. The Commission has considerable regard for the need for Provincial Court judges to have adequate time to rest, relax and refresh themselves, however they choose to do so, by ensuring they have sufficient vacation time.

121. The Commission gave careful consideration to the various factors that weighed in favour of and against the notion of increasing the number of vacation days. In the Commission's view, however, 30 days (or six weeks) is a reasonable length of vacation leave. It is fairly consistent with vacation leave available to judges in many other jurisdictions, although the Commission acknowledges that there are some with longer periods of vacation leave available. Judges are also allowed the possibility of "carrying over" or accumulating some of the 30 days in order to facilitate a longer vacation period on occasion.
122. The Commission does not accept that the undisputed challenging workload of Provincial Court judges is best addressed by increasing their vacation leave. In our view, having access to sufficient judicial resources is a better means of managing the demands of a significant workload than adding to the vacation leave by 1, 2, 3 or 4 days.
123. In a supplemental submission, the Association referred to the 12 SDO's available to Crown Prosecutors, in addition to their 30 days of vacation, and suggested that giving up "12 days of vacation" would be a disincentive to Crown Prosecutors considering an application to the Provincial Court. The Commission does not accept that loss of the SDO's would be a significant disincentive. Crown Prosecutors' compensation package is arrived at through an entirely different process. It is the subject of negotiation in which some elements are inevitably given up in exchange for others.
124. While Crown Prosecutors applying to the Provincial Court will face a loss of their SDO's, they will have a significantly higher salary and other benefits available to them. The Commission does not see this as a disincentive.
125. Nor does the Commission accept that the current 30 days of vacation leave would be a significant disincentive for lawyers to apply to the Provincial Court from the private practice of law. Although lawyers in private practice do technically have the flexibility to schedule as much vacation time as they wish, many, if not most, would never see themselves taking six weeks of vacation leave in one year.
126. Those practitioners considering an application to the Provincial Court, whether from the Crown, Legal Aid, or private practice, are unlikely to be deterred by a 30 day vacation leave.
127. The Commission was influenced by the fact that a request to increase the number of vacation

days to which Provincial Court judges are entitled has been made to several previous Commissions and in none of those cases was the request granted. That is a factor that we took into account in our deliberations.

128. Put simply, the Commission was not persuaded that increasing the number of vacation days available to Provincial Court judges addresses the problems asserted by the Association in relation to the noted increase in workload. In fact, as noted at the Hearing and as stated above, it is “not rare for judges to come in on vacation and work on reserves and do admin work”: See page 61 of the Transcript. It appears other mechanisms outside the scope and authority of the Commission, such as adding to the number of Provincial Court judges, would be better suited to address this concern.
129. Accordingly, the Commission is pleased to recommend that no change be made to the current thirty day period of vacation leave.

d. Other matters

130. As to the advisory matters set out in s.38(2) of the Act, having received no submissions from any party with respect to those issues, the Commission declined to consider them.

IX. SUMMARY OF RECOMMENDATIONS

131. In summary, this Commission makes the following recommendations:
- i) For the annual period of April 1, 2024 to March 31, 2025, the base salary be adjusted to the product of .95 and the salary paid to the Justices of the Court of King’s Bench at March 31, 2024.
 - ii) For the annual period of April 1, 2025 to March 31, 2026, the base salary be adjusted to the product of .95 and the salary paid to the Justices of the Court of King’s Bench at March 31, 2025.
 - iii) For the annual period of April 1, 2026 to March 31, 2027, the base salary be adjusted to the product of .95 and the salary paid to the Justices of the Court of

King's Bench at March 31, 2026.

- iv) For the annual period of April 1, 2027 to March 31, 2028, the base salary be adjusted to the product of .95 and the salary paid to the Justices of the Court of King's Bench at March 31, 2027.
- v) There be no change to the manner in which salaries are calculated for the Chief Judge, the Associate Chief Judges, Administrative Judges, and Northern Judges.
- vi) There be no change to the salaries of Temporary Judges.
- vii) The Professional Allowance be increased to \$6,000 in the aggregate, \$2,000 of which should be designated for use in obtaining continuing judicial education, and \$4,000 of which should continue to be available to be used in accordance with the Court's Protocol and Administrative Direction on Professional Allowance for Judges of the Court, including, *inter alia*, continuing judicial education.
- viii) There be no change to the current Vacation Allowance.
- ix) There be no changes to the pension or other benefits provided to judges.

X. CLOSING REMARKS

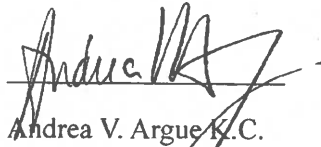
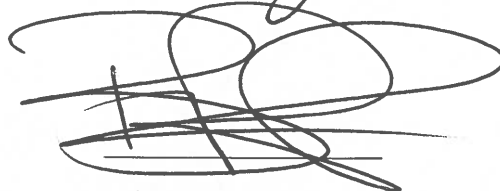
- 132. This Commission wishes to express its sincere appreciation and gratitude to all parties who made submissions to the Commission. In particular, we wish to acknowledge the exemplary work of legal counsel on behalf of the Association and the Government in relation to the quality and comprehensiveness of both their written submissions and oral presentations at the Commission Hearing.
- 133. It was a privilege for the members of the Commission to be able to play a role in safeguarding the independence of the judiciary, "for the benefit of the judged, and not the judges", and in maintaining public confidence in the administration of justice.

134. The recommendations contained in this report are the unanimous recommendations of this Commission.

DATED at Saskatoon, Saskatchewan effective this 2nd day of January, 2024.



Michelle J. Ouellette K.C.,
Chairperson


Andrea V. Argue K.C.

Brian R. Pfefferle K.C.

DRAFT

SCHEDULE

Title

1 These regulations may be cited as *The Provincial Court Compensation Amendment Regulations, 2024*.

RRS c P-30.11 Reg 2, new section 6

2 *The Provincial Court Compensation Regulations* are amended by repealing section 6 and substituting the following:

“Professional allowance

6(1) In this section, ‘**judicial education**’ includes a judge’s registration to attend judicial and legal conferences or seminars, travel, accommodation, meals and other reasonable incidental expenses arising from the judge’s attendance.

(2) For each annual period commencing on or after April 1, 2015 and ending on March 31, 2024, a judge is entitled to be paid an accountable professional allowance of \$4,000.

(3) Subject to subsection (4), for each annual period commencing on or after April 1, 2024, a judge is entitled to be paid an accountable professional allowance of \$6,000.

(4) The accountable professional allowance mentioned in subsection (3) includes an amount of \$2,000 to be used specifically for judicial education”.

Coming into force

3 These regulations come into force on the day determined in accordance with Part IV of the Act.