

REPLY SUBMISSION OF
THE PROVINCIAL COURT JUDGES
ASSOCIATION OF BRITISH COLUMBIA

to the

2022 JUDICIAL COMPENSATION COMMISSION

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Overview

1. There is no dispute that the statutory factors, when applied globally to *current circumstances*, support increases to the salaries of Provincial Court Judges over the 2022 JCC cycle.¹
2. There is also no dispute that a correction is needed in Year 1 to account for the fact that judicial salaries were unintentionally eroded by inflation over the 2019 JCC cycle.²
3. Such a correction, of course, is not an increase in real terms to account for *current circumstances*.
4. Nor does it go far enough to restore BC Judges' salaries to where they should have been following the 2019 JCC recommendations had it not been for the erroneous assumptions made by Government in its response to the 2019 JCC recommendations ("2019 Response"), including that the 2019 JCC recommendations should be rejected "in light of the worsening of the province's economic position" and that Government's substituted salary would put BC Judges' salary "fifth amongst provinces".³
5. In reality, the Province experienced a brief economic downturn followed by rapid economic growth—above the Canadian average.⁴ The decline in BC's GDP was less than Canada's and BC's subsequent recovery was larger.⁵ The Province's unemployment remained below the national average and dropped back to lower levels more rapidly than did the national unemployment rate.⁶ BC experienced a deficit but rapidly restored its finances with a substantial surplus realized in 2021/2022.⁷ Meanwhile, Government chose to increase capital spending in each fiscal year covered

¹ Government Submission, para. 6

² Government Submission, para. 9(a)

³ Government Response to 2019 JCC Report re PCJs, Joint Book of Documents, **Tab 19**, pages 8 and 14

⁴ McKinnon Report, Judges' Book of Documents, **Tab 1**, page 33

⁵ McKinnon Report, Judges' Book of Documents, **Tab 1**, page 10

⁶ McKinnon Report, Judges' Book of Documents, **Tab 1**, page 11

⁷ McKinnon Report, Judges' Book of Documents, **Tab 1**, page 17

by the 2019 JCC.⁸ And BC nevertheless had the lowest debt as a percentage of the province's GDP.⁹ Despite BC's comparatively advantageous economic and fiscal position, and despite the Government's projection about the impact the substituted salaries would have on the Judges' ordinal rank, BC Judges have fallen to ninth or tenth place in each year covered by the 2019 JCC's mandate.¹⁰

6. Nor does Government's proposal represent a sufficient increase to ensure reasonable compensation having regard to *current circumstances* and in particular:

- a. the decline in applicants to the Court;
- b. BC's comparative position in respect of compensation provided in respect of similar judicial positions in Canada, in light of the breadth and scope of BC Judges' jurisdiction and the strength of BC's economy and fiscal position;
- c. BC's willingness to provide general wage increases to the public sector and its willingness to provide additional corrective wage increases to others paid from the public purse when those wages have fallen to unreasonably low levels;
- d. BC's current and expected economic and fiscal position.

7. Nor does Government's proposal sufficiently protect against ongoing threat of unintended erosion of judicial salaries due to inflation.¹¹ As the experience following the 2019 JCC has demonstrated, an increase to address anticipated inflation should not be expressed as a fixed percentage or salary in dollar terms. Rather, salaries should be expressed as a guaranteed base of reasonable compensation for each year plus the greater of 0 or CPI.

⁸ McKinnon Report, Judges' Book of Documents, **Tab 1**, page 23

⁹ McKinnon Report, Judges' Book of Documents, **Tab 1**, page 28

¹⁰ Government Submission, para. 139 (seventh or eighth if only provinces are included).

¹¹ Government Submission, para. 9(b)

The Need to Maintain a Strong Court by Attracting Highly Qualified Applicants

8. An important concession has been made by Government which is that compensation may be one factor influencing a person's decision to apply to the Provincial Court (and thus, by logical inference, at least a factor in the decline in number of applicants in 2021).¹²

9. Government argues, however, that the lower number of applications received by the Judicial Council in 2021 is not having an impact on the Provincial Court's pool of qualified candidates.¹³

10. By contrast, the Judicial Council of British Columbia and the Chief Judge have demonstrated that the data for 2022 shows a continuing pattern of a lower number of applications received and applicants recommended than the 10 year average.¹⁴ Both the Judicial Council of British Columbia and the Chief Judge have argued that judicial appointments will be a challenge if the number of applicants remains low.¹⁵ And also that the raw number reflected in the pool of qualified candidates does not tell the whole story. For example, it is already a challenge to fill vacancies in less populous areas and the Court already has significant difficulties attracting judicial candidates resident in the Interior and the Northern regions.¹⁶

11. The Judges agree with the observations of those involved in making the appointments, that "[w]ithout increasing compensation the number of applicants for the position of judge who have all the required competencies to be a Provincial Court Judge will likely remain low."¹⁷ This is particularly significant given Government chose to unilaterally extend the mandate period between JCC's so that there will be no opportunity to correct course for the next four (rather than three) years. And during this four year period, the data indicates the Court will need to appoint approximately 40 judges (10 per year on average).

¹² Government Submission, para. 100

¹³ Government Submission, para. 87

¹⁴ Judicial Council Submission, para. 12; Chief Judge's Submission, para. 121

¹⁵ Judicial Council Submission, para. 13; Chief Judge's Submission, para. 122

¹⁶ Judicial Council Submission, para. 14; Chief Judge's Submission, para. 122

¹⁷ Judicial Council Submission, para. 22

12. Finally, while the Government acknowledges that in 2019, 2020 and 2021 the percentage of applicants who were Crown Counsel was 38%, 40% and 37%, respectively, it fails to put these percentages into perspective in terms of the general population of lawyers in BC. The Law Society has confirmed that currently prosecutors comprise approximately 4.3% of practicing BC lawyers.¹⁸ Even accounting for the fact that applicants may have practiced in different settings over the course of their career,¹⁹ this discrepancy suggests that compensation paid to BC Judges is not sufficiently competitive to attract applicants from the private bar. The disproportionate number of Crown counsel applications confirms the importance of judicial salaries for those considering applying to the Court. As a result of the long-standing linkage of Crown counsel salaries to Provincial Court salaries (with the highest paid Crown receiving 85% of the salary of a Provincial Court Judge),²⁰ all Crown counsel appointed to the Court will receive a minimum of a 15% salary increase. Many qualified members of the private bar would incur a loss in salary upon their appointment and thus may choose not to apply.

Compensation Provided in respect of Similar Judicial Positions in Canada, Having Regard to the Differences Between those Jurisdictions and British Columbia

A. Section 96 Court Judges

13. Government argues that federally-appointed superior court judges are not useful comparators for this Commission to consider for purpose of consideration of “compensation provided in respect of similar judicial positions in Canada.”²¹

14. The 2019 JCC dismissed this argument for the following reasons:

We looked at the markers of similarity: the qualifications for the positions, the core qualities required for them and the nature of the judicial work, including jurisdiction. When we look at these markers, we see that there is clearly some similarity between these two positions. Candidates who are highly qualified for appointment to the Provincial Court would also be eligible for appointment to the Supreme Court. While the jurisdictions of the two courts are significantly different, many of the same core qualities are necessary in both positions and there are some areas of concurrent jurisdiction.

¹⁸ Appendix A, Letter from Mr. McPherson, KC

¹⁹ Government Submission, para. 94

²⁰ Joint Book of Documents, **Tab 46**, pages 4 and Appendix B

²¹ Government Submission, para. 128

We conclude that there is sufficient resemblance between the positions to find that they are “similar” and so we consider the remuneration of Supreme Court of British Columbia judges under this factor. That said, we agree with the PCJABC and the Government that there should be no fixed correlation between the remuneration of these two positions.²²

15. The Judges say this Government argument should be rejected at this current JCC for the same reasons.

16. Case law does not undermine the validity of considering Provincial Court Judges’ salaries in light of Superior Court Judges’ salaries.

17. The New Brunswick case cited by Government was one in which the provincial court judges sought salary parity with those of the Court of Queen’s Bench.²³ The JCC in turn narrowed the field of comparator groups to one group only: judges of the Court of Queen’s Bench.²⁴ It then recommended salary at 85% of federal judicial salaries. It made that recommendation in a context where New Brunswick’s per capita personal income was also 85% of the Canadian average.²⁵ The government rejected the recommendation on the basis that the Commission should not have regarded the salaries of federally appointed judges as “the controlling factor”.²⁶

18. The Court of Appeal explained:

[157] I agree with the Government’s stance that it was inappropriate for the 2001 Commission to focus on the salary level of federally appointed judges to the exclusion of other equally relevant comparator groups, in particular the salaries paid to other Provincial Court judges. Recall that s. 22.03(6)(a.1) makes it mandatory for commissions to consider judicial salaries paid elsewhere in Canada and, as well, to consider any factors which would justify the existence of salary differences.

...

[163] In these circumstances, the Government of New Brunswick is justified in its

²² 2019 JCC Report, Joint Book of Documents, **Tab 18**, pages 19-20

²³ *Provincial Court Judges' Assn. of New Brunswick v. New Brunswick (Minister of Justice)*, 2003 NBCA 54 [*New Brunswick Case*], para. [2](#)

²⁴ *New Brunswick Case*, para. [3](#)

²⁵ *New Brunswick Case*, para. [3](#)

²⁶ *New Brunswick Case*, para. [155](#)

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

[164] One other point must be addressed. Elsewhere, it has been held that a salary recommendation based on a percentage or ratio of the salary level of another court differs from a recommendation embracing full parity. The latter type of recommendation is said to depend on notions of equality, while the former does not: see *Bodner v. Alberta* at paragraph 46. With respect, I cannot accept the distinction. The reality is that a salary recommendation based on full or partial parity with judges of another court means that other comparator groups are being ignored. Partial parity is based on the concept of equality with differences; differences that are reflected in the degree of parity recommended. The problem, of course, is that the remuneration commission is faced with the most difficult task of justifying the amount of the salary differential. Unless the commission gives compelling reasons for its recommendation, the government will simply reject it on the basis that it is purely arbitrary. (Emphasis Added)²⁷

19. Of course, in the proceeding before this JCC, the BC Judges have not sought parity with federally appointed judges. They have also not sought partial parity. They have also not asked that their salaries be considered in light of federally appointed judges to the exclusion of other relevant comparator groups.²⁸

20. Rather, they have asserted that federally appointed judges are *one* similar judicial position in Canada that should be considered. Others include, of course, provincial court judges in other provinces and territorial court judges. The *Act* mandates that this Commission consider “compensation provided in respect of *similar judicial positions*”. The statutory language is not limited, as the Government’s submission wishes it was, to *provincially appointed judicial positions*. Comparison with federally appointed judges, alongside other relevant comparators, has been found

²⁷ *New Brunswick Case*, paras. [157](#), [163-164](#)

²⁸ The concern about relevant regional differences, no doubt of great significance in a province like New Brunswick, is also of attenuated concern in British Columbia – a province with significant metropolitan areas and high costs of living.

to be useful by previous JCC's as noted above and has also been specifically upheld by the BC Court of Appeal.²⁹

21. As well, the submission that there should be no fixed-percentage relationship between the remuneration for Provincial Court Judges in British Columbia and that for Superior Court judges, is a strawman. As noted, the BC Judges have not sought any such fixed-percentage relationship.³⁰

B. Other Provincial Courts

22. Building on its submission that despite years of precedent for considering federally appointed judicial salaries, this JCC should refuse to do so, Government also argues that because Ontario and Saskatchewan have set their Provincial Court Judges' salaries at a fixed percentage of Superior Court Judges' salaries, these provinces are no longer useful comparators for this JCC.³¹

23. By extension, presumably Government would say that Provincial Court Judges' salaries in New Brunswick and PEI are also no longer useful comparators for this JCC given their salaries are indirectly linked to federally appointed judicial salaries – effectively eliminating five useful comparators from the purview of this JCC.³²

24. This argument should be also rejected.

25. Each province in question has its own scheme for the determination of provincial court judges' remuneration the aim of which is to comply with the constitutional standard set in *Bodner* which is to identify “*the appropriate level of remuneration* for the judicial office in question” (emphasis added).³³ There is simply no basis to suggest, as Government has,³⁴ that the parties or JCCs in each of these other jurisdictions have somehow foregone this constitutional responsibility.

²⁹ *Provincial Court Judges' Association of British Columbia v. British Columbia (Attorney General)*, 2015 BCCA 136, paras. [55-59](#)

³⁰ Government Submission, para. 135

³¹ Government Submission, paras. 145-146

³² Government Submission, para. 144

³³ *Bodner*, [para 14](#)

³⁴ Government Submission, para. 132

Rather, what must be presumed, is that a determination has been made that “the appropriate level of remuneration for the judicial office in question” can conveniently be expressed as a percentage of, or average of, some comparator(s).

26. The *Act* that this Commission is bound to apply, requires that this Commission take into account “compensation provided in respect of *similar judicial positions* in Canada, having regard to the *differences between those jurisdictions* and British Columbia”.

27. The relevant similarities *in positions* and differences *between jurisdictions* for the purpose of analyzing this factor are those identified by the 2019 JCC: “the qualifications for the positions, the core qualities required for them, and the nature of the judicial work, including jurisdiction”, as well as “the performance of their respective economies and relative debt levels, populations, budgets and jurisdiction.”³⁵ From a statutory interpretation perspective, these similarities and differences also resonate with the other factors that the *Legislature* has required this Commission to consider in discharging its responsibilities under s. 5 of the *Act*. There is no principled, statutory or other basis to suggest that *manner of calculation* is a relevant *difference between those jurisdictions*.

28. Each of the relevant markers of similarity and difference identified by the 2019 JCC demonstrates the unreasonableness of Government’s salary proposal.

29. Dealing first with the nature of the judicial work, including jurisdiction, although Government acknowledges, in a general way, the “very broad statutory jurisdiction” of the Court, it also asserts, without authority, that “[a]ny differences between the actual work performed by provincial and territorial courts are immaterial for purposes of this Commission’s analysis.”³⁶ Notably, this submission is at odds with the position Government takes in respect of BC Judicial Justices where it emphasizes the difference between the jurisdiction exercised by BC Judicial Justices and that exercised by similar officers of the court in other provinces.³⁷

³⁵ 2019 JCC Report, Joint Book of Documents, **Tab 18**, pages 19, 20

³⁶ Government Submission, paras. 31, 137

³⁷ Government Submission, paras. 154, 156

30. Previous JCC's have repeatedly emphasized that "[t]he Provincial Court of British Columbia has one of the broadest and most comprehensive jurisdictions of any Provincial Court in Canada."³⁸ The comparative breadth and scope of jurisdiction exercised by BC Judges should not be ignored by this JCC as it considers the relative levels of remuneration offered to BC Judges.

31. Turning next to economic considerations, and as we explain in greater detail below, there is nothing about the relative performance of BC's economy, debt levels, populations, or budgets which supports that BC judicial salaries should be held to such a comparatively low level. Although the Government now eschews reliance on ordinal rank,³⁹ the 2007 JCC determined that the remuneration of BC judges "should keep pace with that of other provinces" in keeping with BC's "relative economic position within the country". The 2007 JCC described the Government's argument about the relevance of Ontario and Alberta as comparators:

The Government argues that the effect of the increases recommended by the 2004 Commission was to place British Columbia Provincial Court salaries precisely where they should be in comparison to the other provinces. The Government, relying on the economic indicators cited earlier, maintains that British Columbia's economy ranks third behind that of Ontario and Alberta, as do its wages. As such, it is entirely fitting that British Columbia's judges should receive the third highest salaries, behind their counterparts in Ontario and Alberta. It would not be appropriate, the Government argues, to pay one isolated segment of this province disproportionately higher than the rest (emphasis added).⁴⁰

32. The 2013 JCC considered it appropriate that judges be in the range of 3rd to 4th place among salaries of provincial court judges in Canada.⁴¹

33. As the 2016 JCC noted, the Government's Executive Compensation policy at the time stated that "the province's target position for executive compensation in the public sector market is to be from 3rd to 5th nationally amongst provincial and federal governments. A determination is made

³⁸ See e.g. 2019 JCC Report, Joint Book of Documents, **Tab 18**, page 10

³⁹ Government Submission, para. 136

⁴⁰ 2007 JCC Report (Excerpt), Appendix B, page 17

⁴¹ 2016 JCC Report, Joint Book of Documents, **Tab 21**, p. 50

respecting appropriate ranking based on demographic and labour market trends, and economic variables”.⁴²

34. In the 2019 Response, Government stated its intention that BC Judges be placed fifth amongst provinces.⁴³ Government’s proposal to this JCC does not catch Judges up to that stated goal. It does not ensure BC Judges’ keep pace with their relevant comparators. Instead, even on the Province’s projections,⁴⁴ it leaves BC Judges in ninth position ahead of only Manitoba, New Brunswick, Newfoundland and Nova Scotia.⁴⁵ Government’s assertion that British Columbia ranked ahead of Prince Edward Island in 2020/2021 and 2021/2022 is also incorrect, as their own table demonstrates.⁴⁶ Even PEI Judges are paid more than BC Judges. There is no economic or other explanation for this disparity.

35. The figure offered by the Government, at paragraph 73 of their Submissions in Chief, as the “Total Compensation” paid to BC Judges is of no assistance in this analysis. Government has not provided any information on which that figure could be compared to “Total Compensation” provided in respect of similar judicial positions in Canada. As Mr. Sauvé’s Report makes clear, simply comparing employer contribution rates in other provinces would not be useful. Differences in contribution rates from one province to another could be attributable to differences in actuarial assumptions and in demographics. Everything else being equal, the contribution rates would be greater for judges in one province if they are older on average than judges in another provinces. Comparative analysis (like the one provided by Mr. Sauvé) are prepared using a common set of assumptions and identical profiles so that differences in values can be attributed to differences in benefits and not to differences in assumptions or demographics.

⁴² 2016 JCC Report, Joint Book of Documents, **Tab 21**, page 50

⁴³ Government Response to 2019 JCC Report re PCJs, Joint Book of Documents, **Tab 19**, page 14

⁴⁴ Government Submission, para. 216

⁴⁵ Sixth if federally appointed judges and territories are excluded.

⁴⁶ Government Submission, paras. 138-139

36. There is no evidentiary support for the submission that BC judicial salaries are “not an outlier”.⁴⁷ British Columbia has a strong and stable economy and solid financial position, yet BC Judges are not even near the national average.⁴⁸ They are *substantially* behind their most relevant comparators – whether those are Ontario, Saskatchewan and Alberta as the Judges argue and the 2019 JCC found, or even if they are only Alberta and Québec as the Government now asserts. Instead of being proximate to their appropriate comparators, BC judicial salaries are closer aligned to the maritime provinces all of which have substantially weaker economic and fiscal positions than BC.

37. Government’s assertion that Québec is one of the most salient comparable does not withstand scrutiny. The data referred to at paragraph 148 of Government’s submission relates to total provincial GDP, not GDP per capita. That is not logical data for comparison against individual salaries. By the logic used in paragraph 148, for example, a salary in India should be higher than the same job in Canada. While it is correct that British Columbia’s population lies between those of Québec and Alberta, Québec’s is still 63% larger than British Columbia’s.⁴⁹

38. If the objective is to use jurisdictions that are broadly similar to British Columbia, then there is little reason to use provincial GDP and population to choose only two comparators. If one were to choose the six largest provinces, the GDP per capita for each would be broadly similar, although some aspects of living expenses do vary broadly. If we use the price of the “typical” home⁵⁰ across the provinces, we can see substantial differences:

⁴⁷ Government Submission, para. 140

⁴⁸ Judicial Compensation by Jurisdiction Chart 2022, Appendix C. We note this is the same chart we attempted to include in our submissions in chief at paragraph 302, however a technical problem displaced the figures so we reprint it here.

⁴⁹ Statistics Canada, *The Daily*, Dec 21, 2022, “Quarterly Population Estimates”.

⁵⁰ Canadian Real Estate Association, [*MLS Home Price Index*](#), Dec. 2022. The data are drawn from current sales and are based on a “typical home” to ensure comparability across cities and regions.

CREA House Prices by Province

Province	“Typical” Home Price
British Columbia.	\$907,456
Ontario	\$812,338
Québec	\$458,792
Alberta	\$429,496
Manitoba	\$336,485
Saskatchewan	\$316,100

39. This table is an example of substantial differences across provinces which may be obscured by looking only at two general variables like provincial GDP or population to choose comparators.

40. The argument that Québec is the best comparator for British Columbia was advanced by Government before the 2019 JCC and rightly rejected. The 2019 JCC explained:

The Government’s perspective is that British Columbian judges’ salaries are not out of step with other jurisdictions. Most jurisdictions have salaries within plus or minus 10%. Also, if economy is determinative of the best comparators, then Québec is a better comparator than Ontario. Québec’s economy is outperforming Ontario’s, Québec has a balanced budget and similar economic growth to British Columbia and Québec has low unemployment with general wage rates ranking in the middle of the provinces.

...

The salary of judges in Québec appears to be an outlier when considered against the compensation provided in respect of similar judicial positions in Canada, particularly when considered in relation to provinces that have a comparable economic situation to British Columbia and are similar in other respects.⁵¹

41. The Judges say this JCC should reject this comparison for the same reason. Québec continues to appear to be an outlier, particularly when considered in relation to provinces that have a comparable economic situation to British Columbia.

Changes in the Compensation of Others Paid by Provincial Public Funds in British Columbia

42. Government asserts that this is one of the “most reliable markers of reasonableness in determining judicial compensation”.⁵² Although it also acknowledges that “a strict application of its

⁵¹ 2019 JCC Report, Joint Book of Documents, **Tab 18**, page 20

⁵² Government Submission, para. 161

public sector bargaining mandate by the Commission to determine changes in compensation for the judiciary is not appropriate”.⁵³

43. This Commission should approach the Government’s submission at paragraph 162 with caution and push the Government to clearly identify how it says this factor should be weighed. Although Government here highlights the unique constitutional status and job function of Provincial Court Judges, it was highly critical of the 2019 JCC for saying exactly this. In responding to the 2019 JCC recommendations, Government stated:

The unique constitutional status and job function of judges, and the fact that they are not equivalent to civil servants, was well-established legal context when the Legislature amended the Act in 2015 to require the Commission to consider “changes in the compensation of others paid by provincial public funds”.

The unique constitutional status of judges is what requires a unique process for the setting of judicial remuneration, involving an independent commission which makes recommendations to Government: *PEI Reference*. The unique constitutional status and job function of judges are factors which militate in favour of judges having high salaries relative to most others paid from provincial public funds but they do not militate in favour of treating them differently from others paid from provincial public funds when it comes to the magnitude of salary increases. Judges need not receive identical raises to those received by others paid from provincial public funds, but if others paid from public funds are being held to raises of a certain level on account of government expenditure management policies, salary increases for judges should account for this context.⁵⁴

44. Government has so far offered little assistance to this Commission in *how* this factor should be weighed – something it has repeatedly criticized past JCC’s for doing incorrectly. Given that this factor has featured so centrally in Government’s rejection of both the 2016 and 2019 JCC recommendations, it should provide clearer guidance on how this factor should be considered in the event the JCC departs from a strict application of its public sector bargaining mandate.

Generally Accepted Current and Expected Economic Conditions in British Columbia

45. Government warns that current and expected economic conditions in British Columbia necessitate a degree of fiscal restraint, highlighting threats like inflation, supply chain disruptions,

⁵³ Government Submission, para. 162

⁵⁴ 2019 Response, Joint Book of Documents, **Tab 19**, page 11

and lower commodity prices.⁵⁵ But Government's focus on the recent past and immediate future risks distorting the true trend lines of the economy.

46. Over the past three years, economies around the world have faced unique economic challenges. In response to the global pandemic, various countries adopted measures that dramatically changed patterns of consumer behaviour, disrupted some economic activity and led, in our ever-more globalized production processes, to widely publicized supply-chain issues. More recently, the invasion of Ukraine has disrupted energy markets and the flow of grains to many parts of the world. The economic impact was rapid and large, unlike anything seen for many decades.

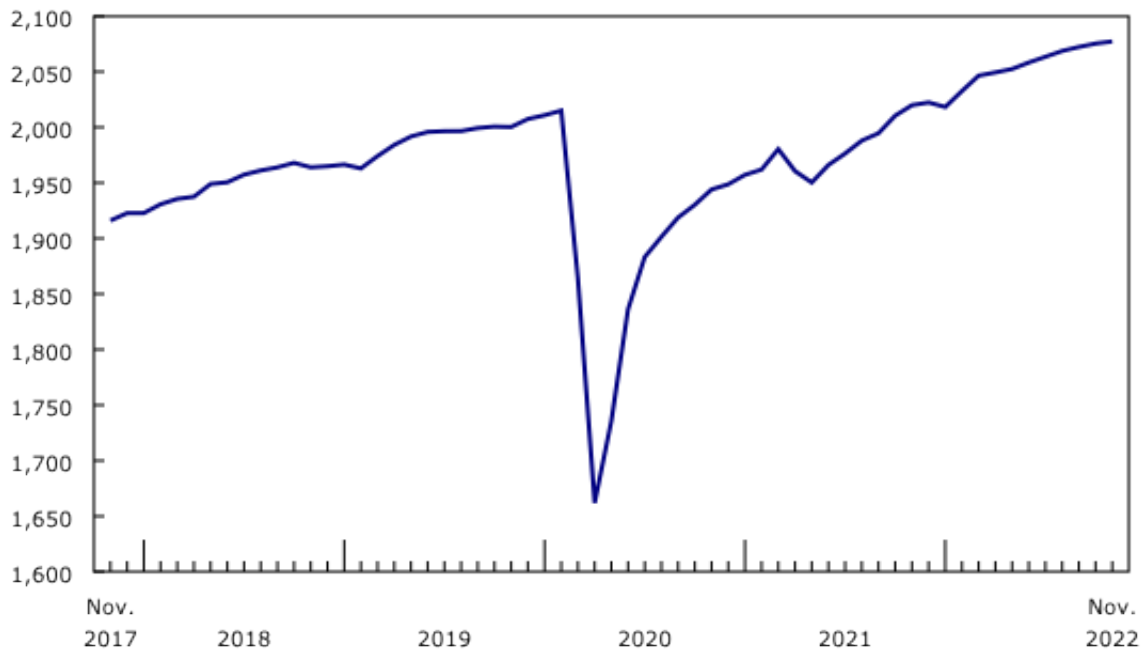
47. Equally unexpected has been the size and speed of the economic recovery in Canada and British Columbia. The current recovery has restored real GDP and employment levels to their pre-COVID levels with remarkable speed.

48. The following chart from the Statistics Canada shows the remarkable drop and recovery for the national economy.

⁵⁵ Government Submission, para. 188-189

Canadian Real GDP⁵⁶ November 2017 to Nov 2022

billions of chained (2012) dollars — all industries



49. By November 2020, only nine months after the peak, the GDP had returned to within 3.5% of the peak – in other words 16 percentage points of GDP had been recovered. Since then, recovery has continued until the latest figures show a 3.1% increase in GDP from the pre-recession peak.

50. A similar pattern can be observed in the labour market. The pre-recession low was 5.6% unemployment in January 2020, which then rose to 13.4% by May 2020. The unemployment rate improved in a manner similar to the GDP and was at 6.0% by December 2021. Improvement continued and reached an all-time low of 4.9% in June and July of 2022.⁵⁷

51. A secondary point from these data sets is a caution to look at longer data trends. Looking over a one- or two-year period, it is quite possible to reach misleading conclusions when events have been as volatile as those of the last three years. Taken from the trough of the recession, it may look like phenomenal growth. Looking at the scale of the miss in pre-pandemic growth forecasts, the times

⁵⁶ Statistics Canada, [The Daily](#), Jan. 31, 2022.

⁵⁷ Statistics Canada, *The Daily*, [Labour Force Survey](#) and [here](#).

may look very bad. Only by taking a longer and more nuanced look at the data do we see a downturn unprecedented for its speed, followed by an equally sharp upturn. Over the whole timeframe, we see growth that is similar to the average growth rates of the past few decades.

52. As another example, if we look at British Columbia's total government debt, we see a very large increase from fiscal year 2018/19 when it was 22.3% of GDP to 2020/21 when it rose to 29.5%. This was followed, however, by an equally sharp decline to 23.5% on 2022/23. Again, we see the importance of looking over a longer period to understand better what has happened.

53. This look at the trends in the economy and GDP show the resiliency of the Canadian economy and labour market over the past three years. Despite a drastic COVID-related reduction in many customer-facing forms of business and curtailment of travel, as well as substantial disruption to trade and supply chains, growth has returned to our trend line and unemployment has touched record lows.

54. One source of economic uncertainty Government points to is the increase in inflation and interest rates as the economy recovered from the depths of the recession. While inflation rates in Canada have not been as high as in many other advanced economies, the Bank of Canada has raised interest rates to reduce demand and hence inflation. The Bank's recent analyses and statements have been encouraging as they signal a probable pause to their increasing interest rates further, and signs that both consumer and firm behaviour is changing.⁵⁸

55. Noting that inflation has fallen from 8.1% in June to 6.3% in December, this is the most recent summary statement of the Bank's expectations.

In Canada, recent economic growth has been stronger than expected and the economy remains in excess demand. Labour markets are still tight: the unemployment rate is near historic lows and businesses are reporting ongoing difficulty finding workers. However, there is growing evidence that restrictive monetary policy is slowing activity, especially household spending. Consumption growth has moderated from the first half of 2022 and housing market activity has declined substantially. As the effects of interest rate increases continue to work through the economy, spending on consumer services and business investment are expected to slow. Meanwhile, weaker foreign demand will likely weigh on exports. This overall slowdown in activity will allow supply to catch up with demand.

The Bank estimates Canada's economy grew by 3.6% in 2022, slightly stronger than was

⁵⁸ The encouraging results from the Bank's Third Quarter Business Outlook Survey are detailed in our earlier submission.

projected in October. Growth is expected to stall through the middle of 2023, picking up later in the year. The Bank expects GDP growth of about 1% in 2023 and about 2% in 2024, little changed from the October outlook.⁵⁹

56. Having moved earlier than many central banks, the Bank of Canada now sees a high likelihood of lowered inflation, bringing with it lowered interest rates.

57. In each of paragraphs 187, 191, 196, the Government refers explicitly or inferentially to growth rates falling from the 2021 increase in real GDP of 6.1%. The implication is that this rate is somehow normal and should be used as a basis for comparison or expectations. As explained above, that is incorrect. In fact, it is the unparalleled growth as the economy snapped back after an equally unparalleled decline. Longer term provincial growth rates in real GDP have tended to run in the 1% - 3% range. A more accurate way of expressing the point in paragraph 191 of the Government's submission would be: "However, the government forecast this growth to *return to more normal levels.*" (rewording italicized.)

58. In paragraph 188 of Government's Submission, Government notes the risks to growth from three paragraphs in the Point In Time Report. However, Government omits the factors in those paragraphs that led to the forecast of "strong real GDP growth."

59. At paragraph 192 of Government's Submission, it is important to note that the CPI had stayed in a range around 2% through several years before 2020. It then dropped to near-zero in 2020. From early 2021, however, it began a fairly steady rise reaching 8% by May/June of 2022. By that point, it was expected that the Bank of Canada would start to raise rates to prevent an inflationary spiral. It is not accurate to maintain that higher interest rates were "rapid and unanticipated increases."

60. At paragraph 206 of Government's Submission, the Government implies that "high infrastructure spending" is not the recent norm or perhaps that it is beyond Government's control. Government chose to increase capital expenditures – for example, taxpayer-supported capital spending went from \$3,459 million in 2015/16 to \$6,837 million in 2020/21 (pre-pandemic) and they plan to increase it further to \$9,333 million in 2023/24. This is an increase of 98% in the first five years, and of 270% over eight years. Capital infrastructure investment is a classic economic means of stimulation for governments.

⁵⁹ Bank of Canada, [*Monetary Policy Report – Opening Statement*](#), Jan 25, 2023.

Long Term Disability Plan

61. The Judges support the Chief Judge's submission in respect to the Long Term Disability Plan.

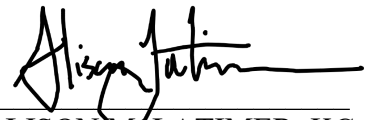
Costs

62. Government's Submission seems to imply to this JCC that it is an open question as to whether Chief Justice Hinkson's decision should be read as precluding a commission from recommending a change to the costs formula by regulation. That is inconsistent with the position it took before the Court at the hearing of the judicial review in respect of the 2019 Response. At the judicial review, Government's counsel stated that such an interpretation would be a *mis-reading* of Chief Justice Hinkson's judgment.

63. The BC Judges agreed and it is therefore the position of the BC Judges that it is open to this JCC to make such a recommendation for all the reasons articulated in the Judges' Submissions in chief.

64. The Judges say further that taking such conflicting positions and refusing to make submissions on an issue before this Commission does not demonstrate respect for this process.

All of which is respectfully submitted this February 3, 2023.



ALISON M. LATIMER, KC
Counsel for the Judges' Association



January 25, 2023

Sent via email

Alison M. Latimer, KC
Barrister & Solicitor
1200-1111 Melville Street
Vancouver BC V6E 3V6

**Christopher A.
McPherson, KC**
President

Dear Ms. Latimer:

Re: 2022 Judicial Compensation Commission

Thank you for your email. In response to your question, as of today there are 14,010 practicing Law Society of BC members. The Criminal Justice Branch, BC Ministry of Attorney General has 535 practicing lawyers and the Public Prosecution Service of Canada has 73 practising members. As a result, I can say that currently prosecutors comprise approximately 4.3% of practising BC lawyers.

I hope that answers your question. Please don't hesitate to reach out if you require anything further.

Yours truly,

A handwritten signature in blue ink, appearing to read "C. McPherson", followed by a horizontal line.

Christopher A. McPherson, KC
President, Law Society of BC

**FINAL REPORT OF THE
2007 BRITISH COLUMBIA
JUDGES COMPENSATION COMMISSION**

Report to the Attorney General of British Columbia
and the Chief Judge of the Provincial Court of British Columbia
Pursuant to Section 5 of the Judicial Compensation Act

Need to Provide Reasonable Compensation to Judges

The work of the courts is increasingly subject to public scrutiny. The public expects judges to stay abreast of the law, to make difficult decisions on a routine basis, and to remain even tempered and impartial throughout. The Report of the 1998 Judicial Compensation Committee captured the difficulty in arriving at a figure to compensate this sort of work in the following passage:

We entrust to judges a unique and weighty responsibility. We ask them to sit in judgment on any one of us – from the highest to the lowest rank – and fairly and impartially apply the law to our deeds.

But what would be reasonable compensation for the burden of deciding which of two loving parents, now separated, will have the privilege of putting their children to bed each night and seeing them at breakfast in the morning?

What would be reasonable compensation for the judge who must face a man who was brutalized as a boy and has now injured another, and decide how long he will spend behind bars, potentially to be victimized again?

There is no simple definition of ‘reasonable compensation’ just as there is no easy answer to the questions judges face every day. (pgs. 13-14)

The Commission is mindful that sitting judges are not permitted to engage in any other form of occupation, profession or business. They must eschew political affiliations and distance themselves from certain personal relationships.

With respect to the British Columbia Provincial Court, the Commission recognizes that the Court has a broad jurisdiction. The monetary limit to the civil jurisdiction of the Provincial Court in this Province has increased since the time of the last Commission – a trend that seems likely to continue. Our judges must be proficient in criminal law, family law and, in increasing measure, civil law.

It is with all of these factors in mind that the Commission approaches the task of determining a reasonable level of compensation. It was the view of the 2004 Commission that a useful comparator for this purpose is the salaries of other judges within Canada. We agree that this is a relevant starting point.

Comparison with Supreme Court Salaries

The current annual salary for a justice of the Supreme Court of British Columbia as of April 1, 2007, was \$252,000. This salary will be adjusted on an annual basis by the percentage change to the Industrial Aggregate as determined by Statistics Canada. For this reason, it is impossible to determine with precision how the salaries for Supreme Court Justices will change over the next several years. Mr. McKinnon notes a positive correlation between changes to the Aggregate Index and changes to the Core Consumer Price Index of the Bank of Canada. Mr. McKinnon calculates that if the Core Consumer Price Index were to increase at 2% per year,

which he believes is a conservative estimate, the corresponding change in the Aggregate Index would be approximately 1.0213% per year. On this basis, he forecasts the following salary increases for Supreme Court Justices:

Year	Salary
2007	\$252,000
2008	\$257,370
2009	\$262,845
2010	\$268,436
2011	\$274,133

For ease of reference, we reproduce here the competing salary proposals of the Government and the Association before this Commission:

Fiscal Year	Government Proposal	Association Proposal
2008 – 2009	\$206,403	\$235,000
2009 – 2010	\$210,531	\$242,050
2010 – 2011	\$214,742	\$249,312

Assuming that Supreme Court salaries increase as predicted by Mr. McKinnon, the gap between Provincial Court salaries and Supreme Court salaries by 2011 would be \$59,391 under the Government's proposal and \$24,821 under the Association's.

Previous commissions have recognized that salary is but one component of the total compensation package. Provincial Court Judges receive a pension and benefits equivalent to \$67,379 per year, bringing their total annual compensation to \$269,735. The Government points to this total figure as further reason to conclude that the compensation currently provided to Provincial Court Judges is sufficient to attract judicial candidates from amongst the top echelons of the private bar and the public sector. The Chief Judge, on the other hand, submits that when pension accumulation is factored in, the gap between Provincial Court compensation and Supreme Court compensation increases to over \$100,000 per year for a 15 year judicial career.

The Association stresses the importance of reducing this spread. The recommended increases of the 2004 Commission were driven, in part, by a concern that the disparity between Supreme Court salaries and Provincial Court salaries should be narrowed. The Commission expressed these concerns in the following passage from page 19 of their report:

It may be that candidates for judicial office will prefer a Provincial rather than a Supreme Court appointment for reasons unrelated to pay. The two Courts are different in some ways, after all, and an aspirant to judicial office may be better suited temperamentally to one than the other. In the main, however, the Provincial and Supreme Courts are competing for the same pool of lawyers who possess the rare combination of personal and intellectual traits required for a successful career on the bench. The members of this Commission are concerned that many of the

best candidates will opt for positions on the Court that presently offers in excess of \$50,000.00 more per annum in remuneration.

On the basis of the broad and growing jurisdiction of the Provincial Court, which appears increasingly to parallel the jurisdiction of the Supreme Court, we can see no reason why Provincial Court salaries should lag so far behind. The substantial disparity between the salaries of Provincial and Supreme Court Judges contributes to a perception of second-class status for the Court that is most likely to be involved with a larger section of the public. We acknowledge, however, that Victoria does not have Ottawa's spending power, and the financial obligations of the provincial government should not be determined by the spending decisions of the federal or any other government. Our belief is simply that this large gap in salaries should be narrowed to the greatest extent possible.

The Association advised us that its proposed increase to \$235,000 for the 2008-09 fiscal year is designed to bring Provincial Court salaries up to approximately 90% of Supreme Court salaries. The 2001 Commission acknowledged that its two predecessors had suggested a goal of 90% of Supreme Court salaries but had declined to make such recommendations because of fiscal constraints. During the 2001 Commission process, the Association took the position that full parity with the federally appointed courts was the appropriate goal. In its report, the Commission expressly declined to take a position on that issue and relied predominantly on comparisons with the provincial courts of Alberta and Ontario in making its recommendations.

The idea of parity was advocated in the hearings before this Commission by the Chief Judge, who submitted that there was no reason in principle why the two courts should receive different levels of remuneration. The Government rejects the suggestion that Provincial Court salaries should be tied to those of the Supreme Court.

Comparison with Provincial Court Salaries

The Commission was provided with the following figures representing the 2007 salary levels for Provincial Court Judges across the country:

Province	Salary
Ontario	\$227,735
Alberta	\$220,000
Quebec	\$213,500 (recommended but not implemented)
British Columbia	\$202,356
Saskatchewan	\$198,900
Prince Edward Island	\$186,349
Nova Scotia	\$180,708
Manitoba	\$178,230
New Brunswick	\$174,600
Newfoundland and Labrador	\$173,591

The Commission was provided with figures for the salaries of judges in the Territorial Courts as follows:

Territory	Salary
Northwest Territories	\$209,246
Yukon	\$199,901

Some observations concerning the above figures are necessary. We are advised that Ontario's Sixth Triennial Commission, charged with making salary recommendations for the period 2004 to 2007, has yet to complete this process. As such, the present figure represents the 2003 salary level adjusted annually by the increase in the Industrial Aggregate Index. The legislation in Ontario differs from that in British Columbia in that the recommendations of Ontario's commission will be binding upon that government. The Association makes the point that the present level of remuneration in Ontario could increase retroactively.

The situation in Quebec is complicated by litigation over the implementation of two different commission reports. The Province has recently announced that it will not appeal the decision of the Quebec Superior Court ordering the government to implement the recommendations of the O'Donnell Commission for the years 2001 to 2004. The effect of implementing those recommendations will be that the judges' annual salary would be set at \$180,000 beginning on July 1, 2001, with a 2.5% increase in the second year and a 2% increase in the third year. Recommendations for the period from July 1, 2004 to June 30, 2007 were made by the Cimon Commission. The refusal of the government to give effect to these recommendations has led to litigation, which is presently unresolved. If implemented, the recommendations of the Cimon Commission would see the salaries of Quebec judges rise to \$213,500 for the year 2007.

Provincial Court judges in P.E.I. receive a salary equal to the average of the salaries paid to judges across the country. This calculation has not yet been performed for 2007. The above figure represents the present salary based on the 2006 national average.

Lastly, we are advised that the figure for Yukon represents the 2006 salary, as the process to determine the 2007 level of remuneration has not yet completed.

As noted above, the Association places its greatest emphasis on comparisons with the salaries of Supreme Court Justices. With respect to other provincial courts, the Association submits that Ontario and Alberta are the best comparators. The Association urges consideration of the proposed salary for Quebec judges rather than their actual present salary.

The Government argues that the effect of the increases recommended by the 2004 Commission was to place British Columbia Provincial Court salaries precisely where they should be in comparison to the other provinces. The Government, relying on the economic indicators cited earlier, maintains that British Columbia's economy ranks third behind that of Ontario and Alberta, as do its wages. As such, it is entirely fitting that British Columbia's judges should receive the third highest salaries, behind their counterparts in Ontario and Alberta. It would not be appropriate, the Government argues, to pay one isolated segment of this province disproportionately higher than the rest.

The Government argues that the salary of \$213,500 recommended for Quebec judges should not be factored into the equation, as implementation of that recommendation is on hold pending the outcome of litigation.

The Government takes the position that Territorial Court salaries ought not to be included for comparison purposes. The Government argues that the territorial salaries reflect the remoteness of those locations and the need to recruit from outside the territories. The Commission has been provided with excerpts from the 2004 Yukon Judicial Compensation Commission Report and the 2004 N.W.T. Judicial Remuneration Commission Report. In the view of the Commission, these reports do confirm the significance of the remoteness and recruiting factors in the setting of territorial salaries.

Comparison with Public Sector Salaries

The Commission was provided with data comparing the earnings of various senior public servants, as set out in Exhibit 6 from the public hearings. The Government says that these comparisons are appropriate indicators of how British Columbia compensates its “best and brightest” in public service. It argues that these comparisons show that Provincial Court Judges are already at the top of the list in terms of overall compensation for those paid out of the public purse in British Columbia. Unlike civil servants, judges have the additional advantage of tenure as a condition of employment.

The Association argues that the salaries of civil servants provide little guidance in determining appropriate judicial salaries, since the role and terms of appointment of a judge are fundamentally different from those of a Deputy Minister or a Crown corporation executive. Mr. Pearlman submits that security of tenure is an irrelevant consideration, as it is a necessary component of judicial independence. The Association references the decision of the 2003 Alberta Judicial Compensation Commission, which held that the principal of judicial independence militated against placing any significant weight on the salaries of other government employees.

One inference that can be drawn from those salaries, says the Association, is that the Government is increasingly willing and able to pay competitive salaries. The Association points to the increase in Deputy Minister salaries from a range of \$134,300.08 - \$203,500.08 in 2004 to a range of \$221,760.09 - \$243,936.00 as of August 1, 2006.

Need to Maintain a Strong Court by Attracting Qualified Applicants

The Commission recognizes the need to set salaries and benefits at a level sufficient to attract to the Provincial Court lawyers from the top ranks of the British Columbia bar. The calibre of the Court, as well as the public’s confidence in it, depends upon the Court’s ability to attract those lawyers who have distinguished themselves during their years of practice.

Appendix C

