



**Submission of the
Judicial Justices Association of British Columbia
Compensation Commission 2022**

January 12, 2023

Overview and Introduction

1. Judicial justices play a critical role in the administration of justice in British Columbia (“BC”). As the first (and often only) “face” of the justice system for most members of the public who interact with the Provincial courts, judicial justices must be highly qualified and capable of ensuring that these interactions instill confidence in the public that the rule of law is being upheld. Judicial justices must act with the highest standards of ethics, integrity and professionalism and apply a broad range of legal knowledge in challenging and pressured circumstances. Their decisions apply the *Criminal Code* and other statutes, and impact individual freedoms and privacy rights. They may impose financial sanctions and their decisions affect the lives, relationships and businesses of people appearing before them. Judicial justices must also be alive to *Charter* issues in all matters which come before them. Judicial justices in BC must be lawyers and have at least five (5) years of legal experience. Despite the significant role they play, BC’s judicial justices are substantially underpaid. This is a fact that has been recognized by past Commissions and goes continuously unaddressed by Government. In fact, BC’s judicial justices are amongst the lowest paid of similar positions throughout Canada, despite being some of the highest qualified. On any given day in court, despite being the decision maker, judicial justices are the lowest publicly paid officer of the court for that day. The Government’s repeated rejections of Compensation Commission salary recommendations has significantly impacted morale amongst the judicial justice division, detrimentally affected efforts at recruiting, and ultimately undermined the effectiveness of this Commission process.
2. The following submissions are made on behalf of the Judicial Justice Association of British Columbia (JJABC or the “Association”) in support of remedying this untenable situation and bringing the compensation for judicial justices to reasonable levels.

3. The JJABC thanks the members of the Judicial Compensation Commission (the “Commission”) for performing this important role in the determination of the reasonable compensation of the judicial justices in BC.
4. The JJABC appreciates the commitment of the commissioners and acknowledges in advance the time and effort expended by this Commission throughout this process.
5. Within these submissions are references to several books of documents. For ease of reference, these will be referred to as follows:
 - Joint Book of Documents of the Parties, Volumes 1 and 2 (“JBOD, Vol. 1” and “JBOD, Vol. 2”, respectively);
 - JJABC Book of Documents (“JJABC BOD”).
6. The JJABC is a registered society and has participated in the judicial compensation process since 2003. The JJABC is the recognized representative of judicial justices in BC, as contemplated in Section 2 of the *Judicial Compensation Act*, SBC 2003, c. 59 (the “*Judicial Compensation Act*”).

The Need for an Effective Process and Ensuring “Reasonable Compensation”

7. Before turning to our discussion of the role of judicial justices and the legislative scheme in which this compensation commission takes place, we will set out some comments that are intended to frame the context of the submissions that follow.
8. The Government has consistently rejected salary recommendations of the past commissions for both judges and judicial justices. In fact, the Government has rejected every Commission’s salary recommendations from 2010 onwards.¹ This has resulted in significant and ongoing litigation, predominately between the judges and the Government. The Association engaged in litigation with the Government in relation to the Government’s responses to the 2010 and 2013

¹ Summary Chart of Salary Outcomes from Past JCCs 2010 to 2019, JBOD, Vol. 1, Tab 17.

commissions but generally does not have the economic resources to litigate these matters.

9. Litigation is antithetical to a process which is designed to respect and guarantee judicial independence in a de-politicized forum that encourages solutions as opposed to adversarial stances. The Association's members have expressed significant frustration in participating in a time-consuming and costly compensation commission process when there is a sense of inevitability that this recent history will simply repeat itself.
10. The Association's strongly held view is that the failure of the Government to adopt the recommendations of the 2019 Commission resulted in judicial justices receiving unreasonably low salaries for the years 2020, 2021 and 2022. Thus the Association comes before this Commission seeking recommendations for necessarily significant salary adjustments.
11. The 2019 Commission provided a comprehensive and fully considered report which clearly set out the governing principles of compensation commissions as follows:

“The first bedrock principle is well known and easy to understand. The legislature must authorize all public spending. Our elected representatives, not judges or commissioners, must decide how to spend public money. The legislature is accountable to the people for these decisions.

The second bedrock principle is also well known. But it is not as easy to understand. Judges and judicial justices must be and be seen by the parties and the public to be independent. By independent, we mean free of any inappropriate influence from any source, including the government. This is important not only because the judiciary makes vital decisions that impact our lives ... It is also important because the government is often one of the parties to matters before the court.

British Columbians need and want highly competent people to fill this unique and important role. They also need and want those people to be as impartial and independent as it is possible to be. Our judiciary must decide cases based only on the law and the evidence, not on any outside influence, politics or personal bias. They must be free of any pressure or influence from any source. Independent and impartial judges and judicial justices are the foundation of our court systems and the rule of law.”²

12. Despite these established principles, the 2019 Commission highlighted that so far the commission process in BC has not been fully able to restore the proper constitutional relationship:

“The history of rejected recommendations and litigation in the courts makes clear that the process has not been functioning as the Supreme Court envisioned that it should. Having judges and/or judicial justices and the Government as opponents in court is not desirable. ***All participants at our hearings recognized this.***

Our role as a judicial compensation commission is rooted in the Constitution. Our process is meant to help maintain the proper constitutional balance between judicial independence and the role of the legislature in deciding judicial remuneration. In carrying out our role, we must be independent and objective. Most importantly, we must also be effective. This means that our report must have a meaningful effect on the determination of judicial salaries.”³ (Our emphasis)

13. The 2019 Commission’s salary recommendations were as follows:

- Full-time salary effective April 1, 2020: \$138,000
- Full-time salary effective April 1, 2021: \$142,000

² 2019 Report, JBOD, Vol 1, Tab 18, at p. 4.

³ 2019 Report, JBOD, Vol 1, Tab 18, at p. 6.

- Full-time salary effective April 1, 2022: \$146,000
14. The 2019 Commission recognized that “[w]hile the recommended salary increase is significant and would close the interprovincial gap somewhat, we think ***it will be necessary to assess over the next three years whether these increases, if made, are in fact sufficient to attract highly qualified applicants***. We note that even the substantial increases that we recommend still leave judicial justices near the bottom of salaries for similar judicial positions in Canada.”⁴ (our emphasis)
 15. At the 2019 Commission, the Government recognized that judicial justices are amongst the lowest paid in the country, and that there is a significant problem with recruitment⁵.
 16. Despite this recognition, the Government rejected the salary recommendations of the 2019 Commission, relying heavily on the anticipated impact of the COVID-19 pandemic (the “Pandemic”) that had since developed.⁶ Of course, parties at the Commission process and any Commission itself can only rely on information available at the time of the hearings. Further, while delayed responses to commission reports by Government may give it access to more up-to-date information following the completed commission hearings, it bears noting that the Government has never *increased* commission salary recommendations in light of favourable conditions developing between the time of the report and the Government response.
 17. As a result of the Government’s decision to reject salary recommendations of the 2019 JCC, judicial justices received the following:
 - Full-time salary effective April 1, 2020: \$125,750
 - Full-time salary effective April 1, 2021: \$129,500

⁴ 2019 Report, JBOD, Vol. 1, Tab 18, at p. 31 (our emphasis).

⁵ 2019 Report, JBOD, Vol. 1, Tab 18, at pp. 18, 22

⁶ July 6, 2020 Government Response, JBOD, Vol. 1, Tab 20.

- Full-time salary effective April 1, 2022: \$133,500 (current)
- 18. The current full-time judicial justice salary is below the level recommended by the 2019 Commission for 2020 and substantially below where it should be for 2022.
- 19. The BC Court of Appeal in *Provincial Court Judges' Assn. of British Columbia v. British Columbia (Attorney General)*, 2015 BCCA 136, has recognized that, due to the nature of the timing of submissions, the commission report, and the ever-fluctuating nature of economic circumstances, a commission's recommendations are based on the economic circumstances at the time of the submission, hearing and report process, and not the economic conditions which actually come to pass. This can result in under- or over-compensation which can and should be remedied by future commissions:

35 The 2013 JCC process began with the Legislature's position on the 2010 recommendations, which had accepted a small salary increase. It was appropriate to do so. The process is ongoing (*Bodner* at paras. 14 and 15). Sometimes, the result may be to over-compensate judges based on unforeseen financial circumstances that subsequently develop, as, arguably, was the case in 2007. Because the accepted 2007 salary levels were based on an optimistic financial forecast that changed, no increase was sought or recommended for 2010. On other occasions the compensation may fall short.

36 *Subsequent commissions can and do address these situations.* Although commissions may be informed by previous recommendations, each commission inquiry is a discrete event. The process followed in this case frustrates the scheme. The interjection of judicial review should not alter the basic framework and self-regulation of the process. (our emphasis)

20. The Government's July 6, 2020 Response to the 2019 Commission's recommendations identified the Pandemic as a major reason why the Legislature determined not to accept those recommendations.⁷
21. The economic situation arising out of the Pandemic was unknown in 2020 and it was anticipated to have a significant negative effect on BC's economy. However, as early as 2021 the economy in general began recovering, and by 2023 BC's economy is strong with the Province in a budget surplus position. The economic data suggests a strong and resilient economy. With the benefit of hindsight we can see that some of the forecast negative effects of the Pandemic did not play out as anticipated. Accordingly, the JJABC's position is that this Commission can, and should, take into account the fact that the current salary levels are significantly below what the 2019 Commission determined would be reasonable compensation and consider the JJABC's salary proposals in light of the fact that there is a pressing need to "catch up" to the present-day appropriate compensation, particularly given the current economic and fiscal environment.
22. It is against this backdrop that the JJABC makes its submissions for recommendations for immediate significant salary adjustments.

Executive Summary – Reasonable Compensation for Judicial Justices

23. The Association proposes the following as reasonable compensation for judicial justices in BC, for the four years of this Commission cycle:
- (a) Salary and Benefits
- Full-time salary effective April 1, 2023: \$175,000
 - Full-time salary effective April 1, 2024: \$180,000
 - Full-time salary effective April 1, 2025: \$185,000

⁷ July 6, 2020 Government Response, JBOD Vol. 1, Tab 20, at p. 10.

- Full-time salary effective April 1, 2026: \$190,000;
- Once reasonable compensation is determined, a linkage to salaries of BC provincial court judges (as a percentage) so as to foreclose any further gap between the two groups and to simplify future compensation processes. The Association submits there are significant benefits from defining a linkage between the two groups but accepts that there should be tri-partite support for this and will withdraw this proposal if it is not supported by the PCJABC and the Government;
- An amendment to the part-time *per diem* formula to include an amount set at 25.4% for benefits and an amount of \$100 for overhead; in particular, that the formula be set as follows: *Full-time salary/207 + 25.4 % in lieu of benefits + \$100 for overhead*; and
- Shift premiums as follows:

Definitions:

“Premium” is an amount added to the *per diem* amount.

“Weekday” includes any shift that begins and ends on any day Monday through Friday, that is not a holiday.

“Weekend” includes any shift where any portion of the shift falls on a Saturday or Sunday, but does not include holidays.

“Holidays” include:

- a. New Year’s Day, Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, British Columbia Day, Labour Day, National Day for Truth and Reconciliation, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day;

- b. Any Monday through Friday on which court closure days are granted generally to full time Provincial Court judges in BC; or
- c. Any shift where any portion of the shift falls on a holiday.

Weekend premium:

- a. \$75

Holiday premium:

- a. \$245 (with an additional \$75 for any Christmas Day holiday shift).

(b) Professional Development Allowance

- \$4500 per year

(c) Travel policy

- To the extent that changes are made, the JJABC seeks the same policy as Provincial Court Judges

(d) Costs

- Full indemnity for reasonable costs, or a significant increase to the ceiling of reimbursed costs by way of regulation pursuant to the *Judicial Compensation Act*, or pursuant to an amendment to that *Act*.

(e) Interest

- If the Commission recommends a salary increase that gives rise to a retroactive payment, the amount of that retroactive payment should bear interest at the prejudgment interest rate from April 1, 2023 until the date on which the increased remuneration is established, and at the post-judgment rate from that date until the date of the retroactive payment.

Judicial Justices – An Overview

A Brief History of Judicial Justices

24. Judicial justices (formerly, justices of the peace) have existed in BC since 1975. They have evolved from one justice of the peace sitting in Traffic Court in Vancouver. Initially, the justices of the peace were previous full-time employees of court services. In 1993, as a result of recommendations of the Judicial Council,⁸ others were appointed from outside this resource.
25. Significant changes to the Justices of the Peace role began in the late 1990s. First, the Supreme Court of Canada's judgment in *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 SCR 3 set out the minimum standards of judicial independence from the executive branch, in particular with respect to the remuneration of the judiciary.
26. Then in 2000, the BC Supreme Court in *Re Independence of the Provincial Court of BC Justices of the Peace*, 2000 BCSC 1470 declared that as a result of the method of determining judicial justices' remuneration, they lacked the required degree of judicial independence. As a result, the *Provincial Court Act*, RSBC 1996, c. 379, was amended and the *Judicial Compensation Act* was enacted, establishing the Judicial Justices Compensation Commission. In 2015, the *Judicial Compensation Act* was amended to combine both provincial court judges' and judicial justices' compensation processes into one.
27. Next, in this trilogy of judicial authority, the BC Supreme Court, in *R. v. Do*, 2001 BCSC 1088, ruled in a voir dire that the Court Services Justice of the Peace who authorized a search warrant under the *Controlled Drugs and Substances Act* had insufficient judicial independence for such a task. This led to changes in who had authority to exercise this crucial judicial function, removing judicial authorization from Court Services Justices of the Peace.

⁸ The role of the Judicial Council of British Columbia is to improve the quality of service provided by the judicial officers of the Provincial Court, including judicial justices: Judicial Council 2021 Annual Report, JBOD, Vol. 1, Tab 2, p. 1

28. Finally, about this time, the Provincial Court centralized bail hearings and warrant authorizations and assigned this task to judicial justices.
29. The Office of the Chief Judge (the “OCJ”) then commenced a review of the role of judicial justices and their qualifications. One consideration in that review was the significant role the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) played in bail hearings and in the issuance of warrants and other judicial authorizations. In 2007, the Judicial Council changed the qualifications of a judicial justice to require that they have a law degree and to have been practicing law for a minimum of 5 years.
30. At that time, incumbent full-time judicial justices who did not have law degrees were given the option of a voluntary severance package or to continue working. Thirteen of them accepted this offer in March 2007. Several others remained with tenure and continued as judicial justices. However, given the workload assigned to judicial justices and the inability to find lawyers who wished to become judicial justices, five full-time judicial justices who had accepted voluntary severance packages were appointed again as part-time judicial justices later that year.
31. In 2008, the Legislature amended the *Provincial Court Act* to change the term of appointment of part-time judicial justices. Those appointed after April 1, 2008 had their appointments limited to 10 years and were prohibited from being reappointed at the end of that term. Those appointed before April 1, 2008 retained the term of appointment until the age of 75.
32. As the end of the 10-year terms approached, the term was increased to 12 years, thereby extending the term of those already appointed by two years.
33. All judicial justices appointed since 2007 are part-time and remunerated on a *per-diem* basis, calculated by a formula based on the annual remuneration of a full-time judicial justice.
34. Currently, pursuant to section 30.2 of the *Provincial Court Act*, judicial justices are appointed by the Lieutenant Governor in Council to hold office on a full or part-time

basis for a term of 10 years. In practice, all new appointments are part-time appointments. Recommendations for appointments are made by BC's Judicial Council.⁹

35. The Lieutenant Governor in Council may only appoint a person once as a judicial justice, although the Chief Judge may re-appoint a judicial justice on a part-time basis for a further period of 10 years. The Chief Judge may only re-appoint a person once as a judicial justice. The Chief Judge has re-appointed a number of current judicial justices.
36. Pursuant to section 33 of the *Provincial Court Act*, a judicial justice ceases to hold office at the expiry of the end of their appointment or reappointment, the end of the month when they reach age 75, or the effective date of resignation submitted by the judicial justice.
37. Currently, the Provincial Court of BC has seven full-time judicial justices (two of whom are on long-term disability) and 28 part-time judicial justices (a total of 33 working judicial justices). As will be set out below, this contingent is not sufficient to meet the needs of the Provincial court, and a significant number of judicial justices will be retiring within the term of this Commission cycle making the situation even more serious.
38. Of the 28 part-time judicial justices, 23 are lawyers and five are non-lawyers. Of the seven full-time judicial justices, three are lawyers. Together, the 26 lawyer judicial justices all have significant legal experience: 23 of the lawyer judicial justices each have over 30 years of call to the bar; one has 25 years of call, and two have 17 years of call each.
39. Of the 35 judicial justices, 25 are members of the JJABC.
40. Judicial justices derive their authority from the statute pursuant to which they act, and from their Assignment of Duties from the Chief Judge.¹⁰ The Chief Judge has

⁹ 2020/2021 Judicial Council Annual Report, JBOD Vol. 1 Tab 2, at p. 24.

¹⁰ Assignment of Duties from the Chief Judge, JBOD, Vol. 1, Tab 6.

assigned judicial justices to bail hearings, judicial authorizations, small claims payment hearings, hearings in respect of almost all provincial offences commenced by violation ticket including the *Federal Contraventions Act*, and municipal bylaw offences.

41. Judicial justices preside at or through the Justice Centre in Burnaby, BC and/or in traffic court locations throughout the province. At the Justice Centre, applications for judicial authorization are judicially considered and bail hearings are conducted by video and/or phone. One administrative judicial justice (part time) oversees traffic court and another administrative judicial justice (full time) oversees the Justice Centre.

Qualifications of Judicial Justices

42. Judicial justices are members of the judiciary. As such, they are expected to have similar professional qualifications and personal characteristics as a judge.
43. Judicial justice appointees are expected to have legal expertise, including sound knowledge of procedure, excellence within their chosen area of the law, and experience in mediation or alternative dispute resolution. They must also demonstrate the highest levels of personal and professional integrity, inspire respect and confidence in the courtroom and work at speed and under pressure to deliver judicial excellence.¹¹
44. The application process is rigorous and applicants must provide references from five judges and up to ten lawyers, along with five non-lawyers and any articling students or others they may have mentored.¹² They also undergo a professional record review from the Law Society of BC.

¹¹ Criteria and Competencies for Appointment as a Judicial Justice, JBOD, Vol. 1, Tab 13; 2021 Judicial Council 2021 Annual Report, JBOD, Vol. 1, Tab 2 at p. 20.

¹² Judicial Justice Candidate Application worksheet, JBOD, Vol. 1, Tab 15.

45. Judicial justice appointees are often senior members of the legal profession, although the minimum eligibility requirement for a judicial justice appointment is five years of active practice as a member of the Law Society of BC.¹³
46. The Final Report of the 2013 Judicial Justices Compensation Commission (“Final 2013 Commission Report”) highlighted that the current qualification standards for applicants for appointment as judicial justices were, in practice, the same as those for PCJs.¹⁴ The 2013 Commission found this highly relevant in determining the “reasonable compensation” of the judicial justices:

What is a reasonable salary and what considerations influence its determination? As a starting point, we recognize the importance Judicial Justices play in the administration of justice in our province. Secondly, from our direct observation, and from the representations to the Commission from the Province and the Chief Judge and from reading previous reports, it is clear that the JJs, as a group, demonstrate an exemplary professional dedication to and a pride in the performance of their duties under often stressful and emergent circumstances. These considerations must be weighed, together with the fact that the Judicial Justices perform their responsibilities working closely with members of the Provincial Court Bench, as well as with members of the bar, representing the Crown or individuals engaged in the juridical process. ***Reasonable remuneration should reflect the similarities to comparators such as Provincial Court judges and Crown Counsel qualifications. Any perceived difference in the importance and complexity of the work performed by and the qualifications of Judicial Justices does not justify all of the current gap in remuneration, particularly as compared to the Provincial Court Judges. A reasonable salary should reflect the common qualifications and hard work of the individuals and the common importance of their endeavours.*** A reasonable compensation requires some closing of these financial gaps in recognition of the importance of the work done by the JJs¹⁵.

(our emphasis)

The Work of Judicial Justices

47. An overview of the work performed by judicial justices is set out below.

¹³ Judicial Candidate Process Summary (Judicial Justices), JBOD, Vol. 1, Tab 14; Judicial Council of BC Notice to the Profession Regarding Call for JJ Applications, November 2022, JBOD, Vol. 1, Tab 16.

¹⁴ Final 2013 Commission Report, JBOD, Vol. 1, Tab 27 at p.2.

¹⁵ Final 2013 Commission Report, JBOD, Vol. 1, Tab 27 at pp. 28-29.

Bail Hearings

48. In 2021/2022, the Justice Centre conducted 18,068 bail hearings, either by video or phone.¹⁶
49. Under the *Criminal Code*, RSC 1985, c-46, arrested persons who have not been released by police must be brought before an available justice without unreasonable delay and in any event within 24 hours. The *Charter* provides that persons charged with an offence are presumed innocent and have the right to reasonable bail. The availability of judicial justices through the Justice Centre ensures that persons can be brought before a justice in accordance with *Criminal Code* and *Charter* requirements. Typically, provincial court judges are available during daytime court hours, although this is not always the case. The Justice Centre provides access to bail hearings from 7:00 a.m. to 10:00 p.m. 365 days per year. Currently most hearings at the Justice Centre take place during evenings, on weekends and holidays.
50. The Justice Centre has always operated on a virtual bail model. Originally and for many years, judicial justices conducted hearings by telephone, with police officers acting as Crown (“police-led bail”) and accused persons generally being unrepresented. Judicial justices presided (and, in some cases, continue to preside) without the assistance of a court clerk, and were required to manage the recording equipment, complete the written record of proceedings, and document the results of the hearing including any conditions of release. Most hearings were police-led bail hearings, although Vancouver and Surrey lists included Crown and duty counsel representation (“Crown-led bail”) and video technology was introduced in a limited fashion.
51. Over time, Justice Centre Crown-led bail virtual hub courts began to replace police-led bail hearings.

¹⁶ 2021/2022 Annual Report, JJABC BOD, Tab 1.

52. Those virtual bail hub courts were already in place across the province on weekends and holidays during the last Commission process, with Vancouver also having a prosecutor and duty counsel appearing on weekday evenings. Accordingly, when the Pandemic occurred, the Justice Centre could rely on its existing model for such virtual hearings, and judicial justices were experienced with regularly presiding in a virtual manner.
53. At the same time, the Justice Centre provided the ideal model for virtual bail hearings across the province. Judges began presiding by telephone in their locations in order to conduct bail hearings. Judicial justices continued under the existing Justice Centre model.
54. The Pandemic appears to have accelerated the development of additional virtual courts for provincial court judges across the province during their sitting hours.
55. The advantages associated with a virtual bail system continue today,¹⁷ and expansion of the system continues. However, judicial justices must still be able to handle some police-led bails on their own because the transition is not yet complete. We understand that there are currently, at minimum, over a hundred police-led bails occurring every month.
56. Currently, all areas of the province are serviced by Crown-led bail on weekends and holidays (assuming the file makes the cut-off time). On weekday evenings, Vancouver and the North are serviced by one Crown-led bail hub, and the Interior is serviced by a second Crown-led bail hub. Those jurisdictions that do not yet have Crown-led bail in the evenings are serviced by police-led bail.
57. Judicial justices must constantly adapt to changes and be able to work within a system that is serviced in varying ways in order to ensure access to justice. They must familiarize themselves with the MS Teams videoconference platform yet also be able to conduct a hearing using alternate video and/or audio platforms. While judicial justices often have the assistance of a court clerk and submissions from

¹⁷ 2020/2021 Annual Report, JBOD Vol. 1, Tab 1 at p. 20.

Crown counsel and duty counsel, they must still be able to proceed without such assistance. On evenings when there is only one judicial justice on shift at the Justice Centre for the whole province, they manage bail hearings as well as judicial authorizations. Most importantly, despite these realities and challenges, judicial justices, like judges, must ensure a fair hearing that complies with constitutional expectations, *Charter* rights, and the *Criminal Code*.

Judicial Authorizations

58. The Justice Centre operates in a centralized location where the majority of applications for judicial authorization throughout the province are considered, currently in-person and by way of telecommunication. In 2021/2022, the Justice Centre considered 18,711 applications for warrants and production orders.¹⁸
59. The Justice Centre provides service in relation to judicial authorizations 24 hours a day, seven days per week. From 7:00 a.m. to 11:00 p.m., the Justice Centre is staffed in-person by support personnel who receive applications for consideration by in-person judicial justices. During those hours, the majority of judicial justices preside in-person at the Justice Centre. However, some judicial justices consider applications while at courthouses when they are assigned to traffic court (applications which currently must be made locally in-person) or at home when the need arises.
60. From 11:00 p.m. to 7:00 a.m., one night-shift judicial justice presides over the entire province from their home, dealing with applications for judicial authorization in the absence of support staff. Occasionally police officers attend at the judicial justice's home for in-person applications. Night judicial justices must have considerable experience as they must work on their own and assess what are often urgent matters. Currently there are only three judicial justices who do these night shifts, two of whom are scheduled to retire during the term of this Commission cycle.

¹⁸ 2021/2022 Annual Report, JJABC BOD, Tab 1, at p. 33.

61. Judicial justices consider a wide range of applications for judicial authorization under both federal and provincial legislation, including but not limited to search warrants, production orders, tracking warrants (for vehicles or other things that which may track the location of a person, such as cell phones), transmission data recorder warrants, *Feeney* warrants (to provide for entry to arrest a person), impression warrants (for fingerprints or impressions of other bodily parts), sealing orders, and orders under the *Missing Persons Act*, SBC 2014, c. 2 as well as the *Prevention of Cruelty to Animals Act*, RSBC 1996, c. 372.
62. The matters which give rise to such applications regularly include the most serious offences, such as murder and attempted murder, firearms offences including shootings, aggravated assault, sexual assault, domestic violence offences, drug offences, prison escapes, child pornography and other child predator offences, and breach of trust. Other applications involve complex investigations such as fraud, income tax evasion and bankruptcy offences. On a typical day, matters range from routine to very high-profile and sensitive. Applications are made on an *ex parte* basis and the judicial justice must have a full understanding of the applicable law. Some applications may arrive on an urgent basis and judicial justices must be able to pivot and prioritize matters accordingly. The complexity of judicial authorizations continues to expand, especially in light of technological advancements in investigations and the presence of digital evidence in the commission of criminal and other offences.
63. Judicial justices, necessarily cloaked with a high degree of judicial independence, occupy a critical gatekeeper role in the constitutional process of consideration of judicial authorizations. Privacy interests are constitutionally protected in Canada and requests by law enforcement must be brought before independent judicial officers for consideration. Judicial justices may grant the application (with or without modifications) or they may deny it. When judicial justices deny an application, they generally provide formal written reasons set out on a professional template developed by judicial justices, a version of which was more recently adopted by provincial court judges.

The Introduction of Bill S-4

64. *Bill S-4, An Act to amend the Criminal Code and the Identification of Criminals Act and to make related amendments to other Acts (COVID-19 response and other measures)* (“Bill S-4”)¹⁹ received Royal Assent on December 15, 2022, and will come into force on January 14, 2023. Bill S-4 will result in significant changes to the ways in which judicial authorizations are received and considered. By the time these compensation hearings take place, judicial justices will have already implemented many of these important changes. This is a good example of the front-line nature of the work of judicial justices and the need for them to adapt rapidly to changes in the law.
65. Currently, judicial justices have jurisdiction to consider most types of judicial authorizations, but there are some judicial authorizations for which the *Criminal Code* does not allow application by telecommunication: for example, production orders, tracking warrants, and transmission data recorder warrants. Those types of applications are considered locally across all areas of the province, either by judicial justices who are locally available, or by provincial court judges. Additionally, for those types of applications that can be applied for by telecommunication, the applicant must first satisfy the justice that it is impracticable to apply personally: for example, because a local justice is not available.
66. When Bill S-4 comes into force, almost all types of judicial authorizations will be able to be applied for and issued by telecommunication. As the Bill’s title indicates, this is a response to the challenges created by the Pandemic.
67. During the Pandemic, the courts were forced to immediately adapt to the reality that in-person exchanges were not feasible. Alternate solutions to ensure access to justice were required and the administration and judicial justices worked long hours (in some situations on their own unpaid time) to develop, implement and communicate alternate protocols. During the early days of the Pandemic, personal

¹⁹ This bill is accessible online at: <https://www.parl.ca/legisinfo/en/bill/44-1/s-4>.

protective equipment such as masks, cleaning supplies and hand sanitizer were either unavailable or in short supply. Initial adaptations at the Justice Centre included identifying applications as urgent/non-urgent, having some judicial justices work from home with police officers dropping off and picking up documents at their doors, setting up fax machines at their homes, and accepting those applications that could be applied for by telecommunication in that manner.

68. On April 14, 2020, Chief Judge Gillespie issued a memorandum directing that all applications be applied for by fax.²⁰ This resulted in a deluge of applications by fax to or through the Justice Centre. Judicial justices worked long hours dealing with these applications, often without breaks and sometimes working overtime without additional compensation.
69. Judicial justices were resilient in handling judicial authorizations for the entire province through the Justice Centre and demonstrated that such a system could work. Bill S-4 will result in the implementation of a version of that system.

Traffic Court

70. Many judicial justices sit in traffic courts throughout the province where traffic, ticket and bylaw matters are heard. The 2021/22 Annual Report indicates there were 69,346 such matters that year.²¹ A daily court traffic list typically consists of 40 - 50 cases, all of which are set for hearing. While the vast majority of disputants are self-represented, increasingly more are represented by legal counsel. Self-represented disputants generally arrive at court with no experience, no preparation and no understanding of the judicial process. They are completely unfamiliar with the rules of evidence or the concept of reasonable doubt. For many disputants English is a second language and court interpreters are a daily occurrence in the traffic courtroom.

²⁰ April 14, 2020 Memorandum, JJABC BOD, Tab 2.

²¹ 2021/2022 Annual Report, JJABC BOD, Tab 1 at p. 8

71. Traffic court hearings are not staffed or clerked. A judicial justice must explain the trial process and the concept of proof beyond a reasonable doubt, take a plea, conduct a trial, explain relevant defenses, make a decision, give reasons, and impose sentence if a conviction results. They must be alert to legal issues such as *Charter* concerns, ensure the disputant gives an informed plea, exclude witnesses, control the entire courtroom, ensure the recording system is operating, and enter exhibits. It is not uncommon to have multiple trials a day as well as appearances from many disputants wanting to plead guilty and receive a fine. Appearances are divided into two lists in the morning and two in the afternoon. If the attendees are not dealt with in the time frame allotted for that list they are often sent home for “lack of court time” and rescheduled to return again, or the judicial justice may juggle the remaining files/lists with the possibility of time opening later in the day.
72. In BC, the ticketing police officer acts as the prosecutor, without assistance or oversight from Crown counsel and sometimes without any prior court exposure with a mentor. This stands in contrast to the practice in Alberta, where a provincial prosecutor with the oversight of the Crown prosecutor’s office represents the Attorney General in traffic court matters. In BC, judicial justices are generally not assisted to any significant degree by legal argument of the police prosecutor or self-represented disputant. As a result, the traffic court process involves considerable educational and guiding efforts by the judicial justice in order to ensure fairness for all parties. Judicial justices must remain up to date with changes in legislation and the jurisprudence, and be able to communicate and apply that legal knowledge during the course of a hearing. At the same time, judicial justices must always remain judicially independent.
73. Moreover, the presence of counsel for represented disputants, now a common occurrence in BC, adds to the complexity of the proceedings, and legal arguments that are advanced must be fairly considered despite the challenges associated with the absence of Crown counsel. The potential consequences of a traffic ticket are significant: effects on employment, the ability to earn a living, the cost of insurance, even access to family if one’s mode of transportation is in jeopardy.

Consequently, there is an increase in both legal representation and the length of trials. It is now more common for the judicial justice to reserve and write a decision on their own time.

74. Traffic Court also includes Bylaw Hearings and Small Claims Payment Hearings. Bylaw hearings are complex matters involving many issues such as zoning, licensing, pollution and health. While the municipality is represented by counsel, many defendants are unrepresented, resulting in the same challenges described above. One example of a bylaw trial arose from a 15-count information charging zoning offences involving three unrepresented accused and two different language interpreters. The trial was continued on three different days and took a year to complete.
75. Regarding payment hearings, Rule 12 of the Small Claims Rules, BC Reg. 161/2022 under the *Court Rules Act and Small Claims Act*, provides that:
 - (1) The purpose of a payment hearing is to allow a judge or justice to
 - (a) assess the debtor's ability to pay, and
 - (b) consider whether a payment schedule should be ordered.
76. As such, the judicial justice (or judge) will typically hear evidence about the income and assets of the debtor, any debts owed to or by the debtor, any assets the debtor has disposed of, and the ability of the debtor to pay.
77. Many participants are unfamiliar with Small Claims Court and expect that the system will act on their behalf. Participants often attend with little or no preparation, and the judicial justice must lead them through the process while being fair and informative to both sides. A judicial justice must enquire about personal financial circumstances that many are reluctant to share in open court. The goal is a reasonable order that will serve both parties fairly. As in traffic court, there is an increasing use of counsel as the figures are high and the consequences are serious.

78. In addition to their court duties, traffic judicial justices are expected to conduct chambers reviews of applications for adjournments, attendance by telephone, and accept written guilty pleas. Although the Violation Ticket Centre deals with the bulk of these applications, once the file is sent to the adjudicating courthouse the application is put before the judicial justice. Applications for review of deemed convictions are then dealt with on a local basis. Some applications are sent to alternate locations where the judicial justice is presiding, and some are dealt with on the judicial justice's days off.
79. With respect to the effect of the Pandemic on Traffic Court, the provincial courts were closed in March 2020. By mid-July 2020, access to justice in traffic court was restored by setting up courtrooms in schools, universities or community buildings. Sheriffs provided court security and directed the movement of people. The threat of illness for all attendees was a serious governor of the processes and decisions needed to be made on a daily basis. These satellite courts remained in effect until the spring of 2021.
80. Each daily list was broken into 10 - 30 minute segments with five files set on each list. Attendees were organized with social distancing and high levels of cleaning were conducted between each party's attendance. At that time there were no Plexiglas partitions to protect individuals from each other. The expectation of the judicial justice was to conduct a normal courtroom in a non-traditional venue often with no telephones, photocopiers or court staff for support. The decision to admit or restrict persons fell to the judicial justice aided by provincial guidelines. The pressure and isolation were extreme.
81. The effect of these long days and short lists was stressful. There was no opportunity for disputants to observe other trials and learn from the explanations offered in the courtroom, and therefore trials took longer.

The Judicial Compensation Act

82. The *Judicial Compensation Act* provides this Commission with the authority and obligation to “report on all matters respecting the remuneration, allowances and benefits of ... judicial justices” and to make recommendations regarding the same, for the next four fiscal years.
83. Section 5 of the *Judicial Compensation Act* requires that, in preparing its report, the Commission must be “guided by the need to provide reasonable compensation for judges and judicial justices in British Columbia over the 4 fiscal years that are the subject of the report”, taking into account all of the following:
- (a) the need to maintain a strong court by attracting highly qualified applicants;
 - (b) changes, if any, to the jurisdiction of judges or judicial justices;
 - (c) compensation provided in respect of similar judicial positions in Canada, having regard to the differences between those jurisdictions and British Columbia;
 - (d) changes in the compensation of others paid by provincial public funds in British Columbia;
 - (e) the generally accepted current and expected economic conditions in British Columbia; and
 - (f) the current and expected financial position of the government over the four fiscal years that are the subject of the report.
84. As noted by the 2016 Commission at page 5 of its Report:

All of the [statutory] criteria considered are ultimately in service of the need to provide reasonable compensation for judges and judicial justices over the three fiscal years of the Commission's mandate. The question for each commission is always what is fair and reasonable in the present circumstances.²²

²² 2016 Judicial Compensation Commission Report (“2016 Report”), JBOD Vol. 1, Tab 21, at p. 5.

The need to maintain a strong court by attracting highly qualified applicants

85. The Provincial Court continues to face significant challenges in attracting highly qualified applicants to the position of judicial justice. There are also ongoing issues with staffing all judicial justice shifts, such that provincial court judges are called on to do so, at significant cost to the Province.
86. The 2016 Judicial Compensation Commission (the “2016 Commission”), identified that there was a problem with attracting highly qualified judicial justice candidates, stating: “[s]omething must be done. Ensuring a reasonable salary that is sufficient to attract exceptional candidates who meet the needs of the Court is crucial.”²³
87. The 2019 Commission went even further and remarked:

The evidence indicates that ***there is a recruitment problem for highly qualified applicants for judicial justice positions***, which the Government acknowledged at the hearings. From 2010 through to the hearings, there were only 11 applicants and 5 judicial justices appointed. Provincial Court judges are increasingly needed to cover shifts at the Justice Centre. In 2018, judges were called in to work 10% of weekend shifts and 3% of midnight shifts. The Chief Judge herself worked on Christmas Day because of unfilled shifts. This situation is not sustainable and is a very inefficient use of judicial resources. The cost of a Provincial Court judge filling a Justice Centre shift greatly exceeds the cost of a judicial justice filling that shift.

...

We agree that there is a pressing problem in recruitment and that this factor shows a need for salary increases. Current remuneration is not sufficient to attract enough highly qualified applicants to maintain a strong contingent of judicial justices who are, in turn, a key element of a strong Provincial Court.

We conclude that this factor supports a significant increase in remuneration for judicial justices because the current level of remuneration is not sufficient to maintain an essential element of a strong Provincial Court.²⁴ (our emphasis)

²³ 2016 Report, JBOD Vol. 1, Tab 21, at p. 46.

²⁴ 2019 Judicial Compensation Commission Report (“2019 Report”), JBOD, Vol. 1, Tab 18 at p. 18.

88. The 2019 Commission also noted that it would be necessary to assess over the three years subsequent to its report, whether the salary recommendations they made were sufficient to attract highly qualified candidates.
89. The following table is compiled from data taken from the Judicial Council's annual reports from 2016 – 2021 and sets out the number of applicants for judicial justice positions each year, the number interviewed and the number appointed. As can be seen, since 2016 only 16 interviews have been conducted from a pool of 40 applications, resulting in only 10 appointments.

| Year | Applications Received | Applicants Interviewed | Applicants Appointed |
|------|-----------------------|------------------------|----------------------|
| 2021 | 8 | 6 | 3 |
| 2020 | 5 | 3 | 3 |
| 2019 | 15 | 4 | 3 |
| 2018 | 9 | 2 | 0 |
| 2017 | 2 | 0 | 0 |
| 2016 | 1 | 1 | 1 |

90. Over the upcoming four-year Commission cycle, 11 judicial justices will reach mandatory retirement age of 75. Alarming, this means that the court will lose one-third of its highly experienced judicial justices. Given the serious and often complex nature of matters that judicial justices must consider, new appointees will require time to learn their new judicial roles, and the overlapping mentorship of experienced judicial justices will be critical.
91. When the number of appointments over the past six years is contrasted against the retirements expected over the next four years, the picture is clear – there is not

sufficient interest in the judicial justice position to maintain a sufficient number of judicial justices to service the court. This should be of significant concern to the Government.

92. Having a sufficient contingent of judicial justices is essential to servicing the needs of the Provincial Court and providing access to justice. In relation to Traffic Court, both the law and the public expect traffic disputes to be resolved in a timely fashion by competent independent members of the judiciary. Sufficient coverage at the Justice Centre is also critical. Persons in custody are constitutionally entitled to reasonable bail and that includes bail at the earliest reasonable opportunity. Police officers faced with urgent investigations need timely access to judicial justices to consider their applications for judicial authorization. Currently, when the Justice Centre cannot provide enough judicial justices to meet the demand, alternate more costly solutions are required, such as bringing in provincial court judges.
93. A provincial court judge who works at the Justice Centre on a scheduled judgment day, an evening, a holiday or a weekend, receives two vacation days in compensation, which can be paid out in due course. As per the following table, in 2022, provincial court judges filled 42 judicial justice shifts at the Justice Centre:

| Day when PCJ worked in lieu of JJ | # of Shifts |
|-----------------------------------|-------------|
| Jan-22 | 0 |
| Feb-22 | 0 |
| Mar-22 | 0 |
| Wednesday - April 20, 2022* | 2 |
| Thursday - April 21, 2022* | 4 |
| Friday - April 22, 2022* | 4 |

| | |
|-----------------------------|---|
| Saturday - April 23, 2022 | 5 |
| May-22 | 0 |
| Jun-22 | 0 |
| Sunday - July 17, 2022 | 1 |
| Saturday, July 23, 2022 | 1 |
| Saturday, July 30, 2022 | 1 |
| Sunday - August 14, 2022 | 2 |
| Wednesday, August 17, 2022 | 1 |
| Saturday, August 20, 2022 | 1 |
| Sunday, August 21, 2022 | 1 |
| Sunday, September 18, 2022 | 1 |
| Sunday, September 25, 2022 | 1 |
| Thursday, October 20, 2022* | 4 |
| Friday, October 21, 2022* | 4 |
| Saturday, October 22, 2022* | 5 |
| Nov-22 | 0 |
| Sunday, December 25, 2022 | 1 |
| Monday, December 26, 2022 | 2 |
| Saturday, December 31, 2022 | 1 |
| Sunday, January 1, 2023 | 1 |

94. Note that the dates of April 20 – 23 and October 20 – 22 correspond to Judicial Justice educational conferences. As can be seen from this table, excluding these conference dates, all but one of the shifts filled by provincial court judges were on weekends or holidays.
95. Given the need for recruiting new judicial justices, the Judicial Council of BC has issued a Notice to the Profession and Public calling for applicants for position of part time judicial justice.²⁵
96. The words “highly qualified applicants” in section 5(5)(a) of the *Judicial Compensation Act* are particularly instructive. The judicial justice position is one in which extremely important judicial determinations are made - such as decisions that affect the liberty of individuals and decisions that affect privacy interests including in very serious criminal matters. Additionally, for most ordinary citizens, traffic court may be their only personal experience with the justice system, and to them, the judicial justice is quite literally “the face of justice”. Applicants must not only be intelligent and capable; they must also be committed and care about the matters they deal with. Judicial decisions are reviewable, and “getting it right” or “getting it wrong” at the judicial authorization stage may ultimately affect the outcome of serious matters. Attracting highly qualified candidates enhances competent, diligent, dedicated and fair decision-making. Part of attracting highly qualified candidates involves a compensation system that actually works as it was intended – by respecting recommendations that are developed by commissions following consideration of submissions of all parties.

Changes, if any, to the jurisdiction of judges or judicial justices

97. We have set out above an explanation of Bill S-4. This will result in changes to the jurisdiction of judicial justices (and judges) because the *Criminal Code* will now give justices the jurisdiction to consider almost all applications for judicial authorization by telecommunication. Furthermore, officers who apply by

²⁵ Notice to the Profession and the Public, JBOD Vol. 1, Tab 16.

telecommunication will not be required to demonstrate that it is impracticable to appear personally. As a result of these changes:

- Almost all applications for judicial authorization that previously needed to be applied for in-person before judges (or, if available, local judicial justices) across the province will now be able to be applied for by telecommunication, likely to judicial justices at or through the Justice Centre;
- Applications in the Lower Mainland for judicial authorization that were previously applied for in-person due to the inability of the applicant to meet the impracticability threshold will now be able to be applied for by telecommunication, likely to or through the Justice Centre;
- The court as a whole will need to adapt to the larger centralized volume and the nature of applications by telecommunication and ensure there are sufficient numbers of judicial justices on shift;
- Judicial justices are preparing for receipt/issuance of documents in the new format;
- Judicial justices may be called upon to work from home in various parts of the province to deal with the volume and the new ways in which applications are submitted and processed; and
- Judicial justices will receive further training in light of the new legislation and the ways in which it will be implemented.

98. Although the Pandemic did not necessarily change the jurisdiction of judicial justices, it did significantly disrupt and change the way in which judicial justices operate. Judicial justices had to act quickly and definitively to ensure the continued access to the courts and were at the front line of developing new models and systems for operations. Thanks in part to the dedication of the judicial justices, BC's provincial court continued operations during the Pandemic, has found new methods for providing access to justice and has improved many services.

99. These changes to the jurisdiction of judicial justices support increases in compensation, recognizing the increased complexity and difficulty of the role.

Compensation provided in respect of similar judicial positions in Canada, having regard to the differences between those jurisdictions and British Columbia

100. The JJABC refers to the Cross Jurisdictional Excel Table of Judicial Justice Salaries (“the cross-jurisdictional scan”) at JBOD, Vol. 2, Tab 35, which was prepared by government and agreed to by the JJABC.
101. The cross-jurisdictional scan dates back to 2016/17 and covers the provinces of Alberta, BC, Saskatchewan, Manitoba, Ontario and Quebec. The preamble contains the following remark: “Across jurisdictions, JJs/JPs receive a range of employment benefits and have different educational requirements that make direct comparison challenging. For example, in BC and Alberta a JJ/JP is required to have a law degree and have practiced for 5 years, and in Ontario they are not required to have any legal training.”
102. Generally speaking, as noted by the 2019 Commission, BC judicial justices have at least as broad jurisdiction as their counterparts in other jurisdictions. The 2019 Commission found that the “best comparators” are justices of the peace in Alberta and Ontario.²⁶
103. The cross-jurisdictional scan demonstrates that BC’s judicial justices have consistently ranked at the bottom levels of judicial compensation across Canada, with only Manitoba ranking lower. The remuneration of Manitoba JJPs is set by regulation (Justices of the Peace Regulation, Man. Reg. 117/2006)²⁷ in accordance with section 48(1) of *The Provincial Court Act*, CCSM c. C275 (the “PCA Manitoba”),²⁸ to be a percentage of the PCJ salary (43%). Significantly, while judges in Manitoba have access to a compensation commission established

²⁶ 2019 Report, JBOD Vol. 1, Tab 18, at p. 22.

²⁷ Available online at: <https://www.canlii.org/en/mb/laws/regu/man-reg-117-2006/latest/man-reg-117-2006.html>

²⁸ Available online at: <https://web2.gov.mb.ca/laws/statutes/ccsm/c275e.php>

under PCA Manitoba, Manitoba judicial justices of the peace (“JJPs”) do not appear to have the same access, which is of concern and makes Manitoba JJPs less appropriate comparators.

104. Compared to the other jurisdictions where the guarantee of judicial independence is achieved through the use of independent commissions for justices of the peace (“JPs”) or JJPs, the salary for judicial justices in BC has consistently ranked at the bottom, significantly lower than in other jurisdictions. The current BC salary of \$133,500 is \$28,155 lower than in Saskatchewan (\$161,655), \$38,510 lower than in Ontario (\$172,010), and \$83,500 lower than in Quebec (\$217,000).
105. In 2020/2021, the BC salary of \$125,750 was \$26,063 lower than in Alberta (\$151,813 for 2020/2021). The figure of \$151,813 for Alberta 2021/2022 is unconfirmed because that year’s salary is yet to be determined via their 2021 Justice of the Peace Compensation Commission. The JJABC predicts that Alberta JPs will receive a significant increase for 2021/2022 through to 2024/25, further aggravating the current and longstanding interprovincial gap. (Alberta judges recently succeeded on judicial review and the Alberta government implemented the past recommendations;²⁹ Alberta JPs did not sue.)
106. The JJABC submits that the necessary response is to establish BC judicial justice salaries at the proposed levels to eliminate the disparity between BC salaries and those of appropriate comparator jurisdictions. Further, the response must provide for continued increases so that BC does not simply fall behind again after those jurisdictions establish their remuneration for the years ahead.

²⁹ *Alberta Provincial Judges’ Assn. v. Alberta*, 2022 ABQB 415.

107. This factor also requires an assessment of the differences between the comparator jurisdictions and BC. Our research indicates the following:
- The highest average house price in Canada is in BC, followed by Ontario and Quebec. Alberta, Manitoba and Saskatchewan have average house prices that are a fraction of BC's average house price.³⁰
 - Alberta, Ontario, BC and Quebec are all in situations of surplus budgets.³¹
108. The 2019 Commission determined that, in terms of appropriate comparators in the economic and financial aspect, BC was most appropriately compared to the “three other provinces with the soundest economies and government finances and which are most similar to British Columbia in their populations, budgets and jurisdiction: Alberta, Saskatchewan and Ontario”.³²
109. The McKinnon Report considered BC's relative economic status to the rest of Canada and determined that BC was in a strong position economically relative to the rest of Canada. In particular, the McKinnon Report identified that BC typically outperformed or compared favourably to the rest of the country with respect to important economic performance measures and metrics, including:
- (a) Growth in GDP (less decline during the Pandemic and larger subsequent recovery) (pp. 10-11);
 - (b) Labour market performance, which demonstrated that BC had consistently grown more rapidly and maintained lower unemployment rates than the country as a whole (p. 13);
 - (c) Debt levels (pp. 27-28); and
 - (d) Credit ratings (pp. 30-31).
110. The McKinnon Report also compared BC's debt levels to other provinces, noting that “this is a useful metric as it gives comparative information on the core task of the Commission – to assess ‘the current and expected financial position of the

³⁰ JJABC BOD, Tab 3.

³¹ JJABC BOD, Tab 4.

³² 2019 Report, JBOD Vol. 1, Tab 18, at p. 26.

government” (p. 27). It concluded that BC was in a comparatively good position with respect to debt levels compared to other provinces (p. 28).

111. The McKinnon Report also highlighted that BC was uniquely positioned to maintain more economic stability despite international disruptions, such as the Pandemic, supply-chain issues and the invasion of Ukraine, due to its diverse economy which “reduces volatility” within the economy (pp. 13-14). In comparison, provinces like Alberta and Saskatchewan (which currently pay their judicial officers significantly more than BC and were identified as appropriate comparators in the 2019 Commission Report) have an economy dominated by the energy sector and are thus more sensitive to “boom and bust” cycles which affect those provinces’ finances. Similarly, the Ontario economy is dominated by the manufacturing industry. The McKinnon Report concluded that:

British Columbia has a balanced and resilient economy.

In considering the current and expected economic conditions in BC, this means that there is lower risk to forecasts than would be the case in a less diversified economy. Similarly, the current and expected financial position of the province is not as likely to be as volatile and uncertain as that of provinces more dependent on a narrower range of basic economic drivers.

112. Given the strong position of BC with respect to the rest of the country and particularly the provinces of Ontario and Alberta, there is also no economic justification for BC’s judicial justices to be paid significantly less than the equivalent judicial officers in those provinces.

113. This factor supports the Association’s submission for substantial salary increases.

Changes to the compensation of others paid by provincial public funds in British Columbia

114. As has been noted by various previous commissions and courts, judicial justices are not public sector employees and cannot negotiate directly with Government. This distinguishes them from other groups paid by provincial funds, most of whom are unionized and negotiate compensation directly with the Government.

115. However, the Association recognizes that this is a statutory criterion that this Commission must consider. To that end, the Association submits that recent increases to compensation of others paid by provincial funds, supports the Association's submission for significant increases in salary.

Legal Aid

116. For example, legal aid lawyers' compensation was increased by 35% in 2019³³, which followed 13 years without any increase. No increases were made in 2020 or 2021. The significant increase was clearly in response to compensation that had been unreasonably low as a starting point. The judicial justices' situation should be viewed in a similar vein.

117. In December 2022 an additional agreement was reached with legal aid lawyers which provided increases consistent with the *Shared Recovery Mandate* for public sector bargaining in BC.³⁴ As a result of those increases,

- (a) the tariff rate will increase between 11.34% and 13.76%; and
- (b) lawyers with over 10 years of call will see hourly rate increases from the current \$124.74 to \$133.88.

118. The current effective hourly rate for a part-time judicial justice working an eight-hour shift is \$106.11 (\$848.91/8), well below the current and future legal aid rates. For an eight-hour day and a ten-year plus call lawyer, the total legal aid billable will be \$1,071.04. This is well above the current \$848.91 *per diem* paid to judicial justices for an eight-hour day.

Crown Counsel

119. As noted by the 2019 JCC, the Government is often one of the parties before the court. Prosecutions are conducted on behalf of the Crown by Crown counsel.

³³ See JBOD, Vol. 2, Tab 45.

³⁴ See JBOD, Vol. 2, Tabs 42-46.

120. From 2007 to 2019 Crown counsel received increases equivalent to provincial court judges plus 1.27 per cent in order to close the gap between the two groups. Effective 2019 the 1.27 per cent was discontinued but Crown counsel continue to receive increases equivalent to provincial court judges.
121. As of April 2022, a Level 2 Crown counsel with 10 years call makes \$162,304. A Level 3 Crown counsel can make up to \$201,000³⁵.
122. Based on the above data, the JJABC notes that a judicial justice with a relatively experienced Crown counsel and relatively experienced duty counsel before them (a common occurrence) is currently the lowest paid legally trained person in the courtroom. Commonly, the highest paid person will be the Government's Crown counsel.
123. If a provincial court judge happens to be presiding over a bail hearing with Crown and duty counsel, the provincial court judge appropriately remains the highest paid person. There is no principled reason that the hierarchy of remuneration should be upended when a judicial justice is presiding. Judicial justices and provincial court judges have the same jurisdiction in bail hearings, they each bring similar qualifications to the role, and they each are held to the same judicial standards. An accused person who is brought before the court for a bail hearing must receive, and does receive, the same judicial consideration for bail whether a provincial court judge or judicial justice is presiding.
124. Under this factor, the changes in compensation to duty counsel and Crown counsel (including future increases) exacerbate the problem with judicial justice remuneration. Significant increases to judicial justice compensation are necessary to restore the appropriate balance.

³⁵ Summary of Changes to Compensation for Excluded Employees and Others, JBOD, Vol. 2, Tab 46.

The generally accepted current and expected economic conditions in British Columbia;
and,

The current and expected financial position of the government over the 4 fiscal years that
are the subject of the report.

125. The JJABC sincerely appreciates the sharing of the McKinnon and Wood Reports in advance of the hearings. We have reviewed both reports and have identified some common observations:

- By 2021, BC rebounded from the economic effects of the Pandemic more rapidly than expected.
- Projected deficits turned into surpluses.
- There was a \$1.3 billion surplus in 2021/22.
- The second quarterly report projects a surplus of \$5.7 billion for this fiscal year with debt-GDP ratios returning to pre-pandemic levels.
- Debt levels have returned to the pre-Pandemic range.
- BC's credit rating is high which contributes to debt affordability.
- Government will increase capital spending.
- BC's unemployment numbers are at or below the national rate.
- Rising inflation challenges developed and in response banks have raised rates.

126. The McKinnon Report demonstrates that BC's financial position is solid, based on historical and cross-jurisdictional comparisons and the ratings of neutral observers. The report explains that BC's diversity and resiliency mean that it can weather economic challenges better than provinces that are less diversified. Regarding caution in forecasting, Mr. McKinnon explains that government will forecast below the Economic Forecast Council's projections and also rely on contingency accounts with billions of dollars. He sees the way in which the province recovered from COVID as a prime example of the financial resiliency of

the province and notes that the government's increase in capital spending demonstrates that government has confidence in its finances. BC's extremely strong credit rating translates to manageable debt even in the face of rising interest rates.

127. The Wood Report also reveals optimism, predicting that BC should be able to weather higher interest rates and inflationary pressures. Ms. Wood notes higher than expected revenues and lower than expected debt. She points to anticipated increases in the debt as government moves forward with its commitments to infrastructure developments, and she acknowledges that the province's high credit rating contributes to debt affordability. She views the present state of affairs as positive.
128. The Wood Report maintains a consistent theme of fiscal prudence. Ms. Wood identifies many risks that the government must consider when building prudence into the fiscal plan. She also explains that in building prudence, projections that are lower than private sector forecasts are used, and that contingencies are built in to account for unanticipated spending.
129. When the economy rebounded in 2021, and deficits became billion dollar surpluses, judicial justices' salaries remained mired in the decision of July 6, 2020. Salaries of judicial justices were not readjusted in response to the financial rebound. We oppose the view that our proposal amounts to an increase of 31%. Our salary proposal today of \$175,000 is based on the 2019 Commission's recommendation for 2022/23 of \$146,000 and represents a 20% increase. To suggest otherwise provides the Government with an unfair advantage given their previous rationale for rejection that did not ultimately play out. Further, it renders the prior commission hearings completely ineffective.
130. The JJABC submits that the positive economic outlook for BC supports its position that now is the time for BC to "catch up" and provide judicial justices with real increases that bring salaries into line with "reasonable compensation".

The Association's Recommendations

Salary Proposals

131. The Association proposes the following salaries for the term of this Commission cycle:
- (a) Full-time salary effective April 1, 2023: \$175,000
 - (b) Full-time salary effective April 1, 2024: \$180,000
 - (c) Full-time salary effective April 1, 2025: \$185,000
 - (d) Full-time salary effective April 1, 2026: \$190,000
132. The 2023 salary figure of \$175,000 takes into account the need to provide a significant “catch up” to bring salary to a reasonable level. The figures proposed for years two, three and four are reasonable in light of expected inflationary and cost of living increases.
133. These figures will resolve what has been unreasonably low compensation for BC judicial justices, place judicial justices in a reasonable position nationally, and reasonably establish a modest but fair position for the upcoming four years. It bears repeating that the 2019 Commission proposed significant increases and cautioned that they may not have gone far enough, the Government recognized that increases were required to address recruitment and disparity with national comparators, but then the Pandemic put an end to any substantial increases.
134. Based on the current salaries in other provinces and their anticipated future increases, the initial \$175,000 will not place BC at the front of the pack for 2023/24: Quebec Justices of the Peace already earn \$217,000, Ontario Justices of the Peace already earn \$172,010, and Saskatchewan Justices of the Peace already earn \$161,655. Given the fact that Ontario and Saskatchewan Justices of the Peace salaries are fairly linked to their provincial court judges and that those judges are linked to the federal judges, Ontario and Saskatchewan salaries stand

to move steadily upwards over the coming years. Therefore a move to \$175,000 will properly align BC's judicial justices with their counterparts in Alberta, Ontario and across the country.

135. There is no principled basis for BC's judicial justices to be at the lowest levels of compensation nationally. It is simply not reasonable.
136. There is also no principled basis to place BC judicial justices at the lowest level of compensation vis-a-vis legal aid lawyers and Crown counsel who represent the Crown in matters before them. The changes in the compensation to others paid by provincial funds is not a sufficient basis to justify placing judicial justices in an unreasonable position. That said, we point to the significant rate increase for Legal Aid lawyers in 2019, and then further increases with the Shared Recovery Mandate, as precedent for addressing recognized compensation issues.
137. BC's current financial position is sound and current and future economic conditions can be characterized as reasonably optimistic. BC compares very favorably to other provinces, including those identified as most similar to BC in prior commissions, such as Alberta, Saskatchewan and Ontario.
138. The Government responses to the past several Commissions has resulted in unreasonable compensation to judicial justices. Any increases currently sought should at least be assessed from the salary recommended by the 2019 JCC for 2021/2022. BC recovered from the initial economic downturn due to the Pandemic more quickly than expected, but judicial justice salaries were not readjusted accordingly. This Commission (and the Government, in its response to the Commission's recommendations) now has the opportunity to redress this past error in compensating judicial justices and properly compensate them for the challenging and important role they play in the BC justice system.
139. The requested levels of remuneration are necessary to immediately address the current difficulties in attracting highly qualified candidates and the looming crisis as a large segment of the division reaches mandatory retirement.

140. It is also instructive to consider judicial justices' salaries in relation to provincial court judges' salaries. As noted above, the qualification criteria for both positions is very similar, with judges requiring more years of legal experience. The application process is the same and both are rigorously vetted by Judicial Council. Provincial court judges often fill in for judicial justices at the Justice Centre and judicial justices provide coverage in bail court for provincial court judges who are away at semi-annual conferences. To the public, there is generally no discernable difference between a judicial justice and provincial court judge. Judicial justices and provincial court judges preside in judicial robes in actual or virtual courtrooms, and make judicial decisions on the evidence and submissions before them, in accordance with the law. Both judicial justices and provincial court judges preside over matters with counsel present, and both deal with matters where litigants are self-represented.

141. The 2013 Commission recognized provincial court judges as appropriate comparators for judicial justices:

“[I]t is clear that the JJs, as a group, demonstrate an exemplary professional dedication to and a pride in the performance of their duties under often stressful and emergent circumstances. These considerations must be weighed, together with the fact that Judicial Justices perform their responsibilities working closely with members of the Provincial Court Bench, as well as with members of the Bar, representing the Crown or individuals engaged in the juridical process. ***Reasonable remuneration should reflect the similarities to comparators such as Provincial Court judges and Crown Counsel qualifications.***”³⁶
(our emphasis)

142. Despite this close relation with provincial court judges, judicial justices are currently paid less than half the annual salary of a provincial court judges. The following table³⁷ demonstrates the historical discrepancy between judicial justice and

³⁶ 2013 Report, JBOD Vol. 1, Tab 27, at pp. 28-29.

³⁷ The Association has compiled this information to the best of its ability but has not been able to verify some of the historical data.

provincial court judge annual salary, which the Association submits is not reasonable or justifiable:

| EFFECTIVE DATE | JJ SALARY | PCJ SALARY | % |
|----------------|-----------|------------|------|
| 01-APR-2022 | 133,500 | 288,500 | 46.3 |
| 01-APR-2021 | 129,500 | 282,250 | 45.9 |
| 01-APR-2020 | 125,750 | 276,000 | 45.6 |
| 01-APR-2019 | 122,000 | 270,000 | 45.2 |
| 01-APR-2018 | 120,000 | 266,000 | 45.1 |
| 01-APR-2017 | 118,000 | 262,000 | 45.0 |
| 01-APR-2016 | 110,249 | 252,290 | 43.7 |
| 01-APR-2015 | 108,087 | 248,562 | 43.5 |
| 01-APR-2014 | 105,968 | 244,889 | 43.3 |
| 01-APR-2013 | 104,402 | 242,464 | 43.1 |
| 2012 | * | | |
| 2011 | * | | |
| 2010 | 99,525 | 231,500 | 43.0 |
| 2009 | 97,100 | 225,500 | 43.1 |
| 2008 | 94,730 | 204,552 | 46.3 |
| 2007 | 78,654 | 202,356 | 38.9 |
| 2006 | 75,760 | 198,000 | 38.3 |
| 2005 | * | | |
| 2004 | * | | |
| 2003 | * | 161,250 | 45.8 |
| 2002 | * | 158,000 | 46.8 |
| 2001 | 73,872 | 155,000 | 47.7 |

| | | | |
|------|--------|---------|-------------|
| 2000 | 68,597 | 144,000 | 47.6 |
| 1999 | * | 139,000 | 48.4 |
| 1998 | * | 134,000 | 50.2 |
| 1997 | 67,251 | 118,402 | 56.8 |
| 1995 | 66,586 | 118,402 | 56.2 |
| 1992 | 65,602 | 107,000 | 61.3 |
| 1991 | 64,135 | 103,000 | 62.3 |
| 1990 | 60,898 | 98,000 | 62.1 |
| 1989 | 57,525 | 94,000 | 61.2 |
| 1988 | 54,937 | 87,826 | 62.6 |
| 1987 | 45,080 | 83,644 | 53.9 |
| 1986 | 39,560 | 73,659 | 53.7 |
| 1985 | 38,200 | 73,659 | 51.9 |
| 1984 | 37,800 | 66,300 | 57.0 |
| 1981 | 37,100 | 65,000 | 57.1 |
| 1980 | 31,488 | 56,000 | 56.2 |
| 1979 | 29,160 | 50,000 | 58.3 |
| 1978 | 27,000 | 41,762 | 64.7 |

143. The JJABC notes, as did the 2013 Commission, that since 1999 judicial justice salaries have consistently been below 50 per cent of provincial court judge salaries. This stands in contrast to earlier decades where the percentage was consistently above that figure and at one point ranged as high as 64.7 per cent. (In fairness we note that the 2013 Commission suggested that the 65 per cent in 1978 was reflective of PCJs being underpaid³⁸). We further note that while since 2010 the gap between JJ salary and PCJ salary has been steadily closing, it has been

³⁸ 2013 Report, JBOD, Vol. 1, Tab 27 at para. 39.

doing so in minute increments. The current ratio of 46.3% remains unreasonably low given the comparative relationship between judicial justices and provincial court judges.

144. Even in provinces where judicial justices do not need to be lawyers, the comparison between their roles and those of their provincial court judges is recognized by way of a salary linkage:
- (a) In Saskatchewan the current JP salary of \$161,655 is linked to 51% of the previous year's PCJ salary³⁹.
 - (b) In Ontario, the current JP salary of \$172,010 is linked to 50% of the previous year's PCJ salary⁴⁰.
145. The JJABC submits that a linkage to provincial court judges will provide predictability as to what future salaries will be, will provide judicial justices with some measure of protection should provincial court judges realize future increases, and would simplify future commission processes. Importantly, this certainty would be beneficial in attracting potential candidates. Unfortunately, the consistent failure of Government to implement commissions' recommendations, along with the practice of government delaying its response, has undermined judicial justices' confidence in the commission process. If reasonable compensation was determined and a linkage was established to provincial court judges salaries, much of the uncertainty in the process could be resolved.
146. Furthermore, the full-time judicial justice position is gradually being phased out, so that as full-time judicial justices retire they are being replaced by part time judicial justices. Already the vast majority of the judicial justice complement consists of part time judicial justices. While the process will not necessarily complete during the upcoming cycle, the reality is that in due course a different method of

³⁹ *The Justices of the Peace (Commission) Regulations*, RRS c J-5.1 Reg 2, at section 3. This regulation is available online at <https://canlii.ca/t/8sn8>.

⁴⁰ *Salaries and Benefits of Justices of the Peace*, Ontario Regulation 247/94 at section 2(3), available online at : <https://www.ontario.ca/laws/regulation/940247>.

calculating the *per diem* rate will be necessary. Were a reasonable percentage established now, it would lay the groundwork for a future formula based on a percentage of the provincial court judges salary leading perhaps to a “notional” full-time judicial justice salary from which an actual *per diem* rate could similarly be derived.

147. Ultimately the Association accepts that there should be tri-partite support for this and will withdraw this proposal if it is not supported by the PCJABC and the Government.
148. Even in the absence of a linkage, this Commission ought to consider and identify a reasonable ratio between judicial justice and provincial court judge salaries and formulate a salary recommendation that significantly closes the unreasonable gap between the two.

The *per diem* Formula

149. The current *per diem* rate of \$848.91 is calculated in accordance with the following formula: full-time salary (133,500)/207 + 20% in lieu of benefits + \$75 overhead = $644.93 + 128.98 + 75 = \$848.91$
150. The JJABC seeks an increase to the amount in lieu of benefits to 25.4% and an increase to the overhead to \$100.

Benefits

151. As can be seen, part-time judicial justices do not receive benefits. The payment in lieu of benefits recognizes this.
152. The valuation of benefits is not a straightforward calculation. This was recognized by the 2007 Commission that first dealt with the newly appointed part-time judicial justices. On page 19 of their report, the 2007 JCC explained that while government valued benefits at 19.81 per cent, the Chief Judge offered the then equally reasonable measure of 23.83 per cent, reflecting the average cost of benefits paid

to all government employees at the time. The 2007 JCC adopted the 20% amount, recognizing that it was a “necessarily somewhat arbitrary” figure.⁴¹

153. The JJABC has reached out to the OCJ and was informed that the OCJ uses the JCC formula, which includes 20% in lieu of benefits, to calculate the *per diem* rate for part time judicial justices. The standard percentage used by the OCJ to budget for the cost of benefits for full-time employees (including full time judicial justices), is set by government at 25.4% for fiscal 2022/23 and is subject to change from fiscal year to fiscal year.

154. The following chart illustrates the rates of benefits for budgeting purposes, set by Government over a number of years:

| Fiscal Year | 2018/19 | 2019/20 | 2020/21 | 2021/22 | 2022/23 |
|-------------|---------|---------|---------|---------|---------|
| Percentage | 24.8% | 25.4% | 25.4% | 25.4% | 25.4% |

155. It is reasonable that judicial justices receive the same percentage used by Government and the OCJ for budgeting purposes, and not an arbitrarily lower rate.

156. Further, the current rate has not changed since 2007 which is not appropriate given cost of living and inflationary increases over that same period of time.

Overhead

157. The 2007 Commission recommended \$75 to account for overhead of part time judicial justices.⁴² We note that this amount has not been increased in over 15 years.

158. According to the Bank of Canada’s interest rate calculator (accessible at <https://www.bankofcanada.ca/rates/related/inflation-calculator/>), a basket of goods that cost \$75 in 2007 would cost \$103 in 2022. Therefore this aspect of

⁴¹ 2007 Report, JJABC BOD, Tab 5.

⁴² 2007 Report, JJABC BOD, Tab 5.

part-time judicial justices' compensation has been considerably eroded over this period of time. The Supreme Court of Canada in *PEI Reference* noted that compensation must at least keep pace with inflation so as to not interfere with judicial independence.

159. This alone should be a sufficient basis for increasing the overhead amount to \$100, so that purchasing power remains on par with levels set in 2007.
160. The amount attributed to overhead is tied to the issue of attracting highly qualified applicants to the judicial justice position. Applicants must be actively practicing lawyers. Lawyer appointees may continue to practice law other than criminal law or matters that will place them in a position of conflict. Improving the *per-diem* by increasing overhead will help attract lawyers to the position that may have existing practices with associated overhead costs.
161. Assuming a new full-time salary of \$175,000 and the increases attributed to benefits/overhead, the resultant *per diem* rate would be as follows:
 - $175,000/207 (845.41) + 25.4\% (214.73) + \$100 = \$1,160.14$
162. We note that comparable Alberta JPs (lawyers) who are paid a daily rate, received a daily rate of \$962 (plus shift differentials) for the period of April 1, 2017 to March 31, 2021.⁴³ Given that Alberta's compensation process operates behind ours chronologically and partially retroactively on a four year cycle (the next one to cover April 1, 2021 to March 31, 2025), we expect Alberta's daily rate of \$962 (plus shift differentials) to be significantly higher following March 31, 2021. The Association's proposed improvements to the *per diem* formula are therefore comparatively reasonable.
163. Finally, a *per diem* of \$1,160.14 is appropriately and reasonably situated above what we have calculated as an eight-hour billable day for legal aid counsel (\$1,071.04).

⁴³ *Justice of the Peace Regulation*, Alta Reg. 6/1999, available online at: <https://canlii.ca/t/55mcw>.

Shift Premiums

164. BC judicial justices have tried for years to obtain reasonable compensation for working outside of regular court hours.
165. Following the recommendation of the 2019 Commission, judicial justices were granted a shift premium of \$245 for working the following holidays:
- New Years Day
 - Family Day
 - Good Friday
 - Victoria Day
 - Canada Day
 - BC Day
 - Labour Day
 - Thanksgiving Day
 - Remembrance Day
 - Christmas Day
166. By way of comparison, Alberta JPs receive shift differentials for evenings, weekends, and holidays which also include Easter Monday, Boxing Day, and Christmas closure and Christmas floater days⁴⁴.
167. The Association proposes adding Easter Monday, National Day for Truth and Reconciliation and Boxing Day as days which attract the \$245 shift premium and to provide a modest shift premium for weekends.
168. More specifically, the Association proposes the following with respect to shift premiums:
- (a) Definitions:

⁴⁴ *Justice of the Peace* Regulation, Alberta Reg. 6/99, section 8.1, accessible online at: <https://canlii.ca/t/55mcw>.

- (i) “Premium” is an amount added to the *per diem* amount.
- (ii) “Weekday” includes any shift that begins and ends on any day Monday through Friday that is not a holiday.
- (iii) “Weekend” includes any shift where any portion of the shift falls on a Saturday or Sunday, but does not include holidays.
- (iv) “Holidays” include:
 - (A) New Year’s Day, Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, British Columbia Day, Labour Day, National Day for Truth and Reconciliation, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day;
 - (B) Any Monday through Friday on which court closure days are granted generally to full time Provincial Court judges in BC (for example, in 2022 the Queen’s Funeral, or when a holiday occurs on Sunday and the following Monday is a court closure day); or
 - (C) Any shift where any portion of the shift falls on a holiday.
- (b) Weekend premium:
 - (i) \$75
- (c) Holiday premium:
 - (i) Remain at \$245 but with an additional \$75 for any Christmas Day shift.

169. Ensuring proper compensation for working holidays and weekends, will assist the Provincial Court with filling these shifts and not having to use provincial court judges (at additional cost). As noted by the 2019 Commission, the evidence before it was that the OCJ was having difficulty filling shifts on holidays, hence its

recommendation for the introduction of a holiday shift premium of \$245. Since that time, less holiday shifts are being filled by provincial court judges. The below table shows shifts filled by provincial court judges on statutory holidays between 2019 and 2022. In 2019, prior to the premium coming into effect, there were 10 shifts filled. This number was only one in 2022.

| Statutory Holiday | 2019 | 2020 | 2021 | 2022 |
|--------------------------|-------------|-------------|-------------|-------------|
| New Years Day | 0 | 3 PCJs | 0 | 0 |
| Family Day | 0 | 0 | 0 | 0 |
| Good Friday | 1 PCJ | 0 | 0 | 0 |
| Victoria day | 0 | 0 | 0 | 0 |
| Canada Day | 3 PCJs | 0 | 0 | 0 |
| BC Day | 2 PCJs | 0 | 0 | 0 |
| Labour day | 1 PCJ | 0 | 0 | 0 |
| Thanksgiving | 1 PCJ | 0 | 0 | 0 |
| Remembrance day | 0 | 0 | 0 | 0 |
| Christmas day | 2 PCJs | 1 PCJ | 3 PCJs | 1 PCJ |

170. However, the table also indicates continued challenges in filling the Christmas Day shift, hence the proposal to add an additional \$75 for Christmas Day to assist in meeting that coverage challenge in the future.

171. The following table relates to shift coverage on those days that do not currently attract a premium but which the Association proposed should do so.

| Holiday | 2019 | 2020 | 2021 | 2022 |
|----------------|-------------|-------------|-------------|-------------|
|----------------|-------------|-------------|-------------|-------------|

| | | | | |
|--------------------|--------|-----|---|--------|
| Easter Monday | 1 PCJ | 0 | 0 | 0 |
| Boxing day | 3 PCJs | 0 | 0 | 2 PCJs |
| Reconciliation day | N/A | N/A | 0 | 0 |

172. In 2022, Boxing Day required coverage by two PCJs. We submit that including Boxing Day and the other requested holidays in the \$245 premium will assist in meeting that challenge in the future.
173. In addition to holidays, weekend shifts are often difficult to fill. As per the table at paragraph 93 above, in 2022 provincial court judges filled many weekend judicial justice shifts. For example, in July 2022, three provincial court judges worked on various non-statutory weekends, along with five in August 2022 and two in September 2022.
174. A shift premium of \$75 for weekend shifts will assist in meeting similar challenges in the future.
175. A shift premium will fulfill the dual purpose of attracting more qualified applicants, thereby increasing the potential number of judicial justices for each available shift, as well as alleviating the current pressure of working a shift because there is simply no one available. The judicial justice bench is professional, responsible and dedicated; however, burn-out is a real risk without more judicial justices to share the load.
176. The Association notes that there is precedent for shift premiums based on the current practice of a provincial court judge receiving two additional vacation days in exchange for filling a shift at the Justice Centre.
177. Equally importantly, the proposed premiums are an appropriate and necessary recognition of the sacrifices that are made by judicial justices when working holidays and weekends, making personal sacrifices, as well doing the “heavy lifting” of bail court lists across the entire province.

Professional Development Allowance (“PDA”)

178. The current PDA, as recommended by the 2019 Commission, is \$3,250 per fiscal year, of which \$1,500 may be used towards general expenses reasonably incurred in the execution of the office of judicial justice.
179. The JJABC seeks a recommendation for an increase to the PDA for judicial justices to \$4,500 for the following reasons:
- (a) Provincial court judges currently receive a PDA of \$4,500.
 - (b) Judicial education is important. Judicial justices preside in areas of the law where statutory and jurisprudential changes are quickly evolving.
 - (c) In-person, collaborative interaction between judicial justices, other judicial officers and conference attendees is highly beneficial. Judicial justices, like judges, are necessarily isolated in their daily roles which include presiding in adversarial forums. In-person conferences provide for a refreshing environment that recognizes everyone as individuals learning together. That in turn leads to further understanding and respect for one another.
 - (d) Judicial justices have shared topics learned at conferences with their colleagues, and have established relationships with participants who have later presented at judicial justices’ conferences.
 - (e) Judicial justices have access to some, but not all, of the same judicial education within Canada as provincial court judges. For example, both provincial court judges and judicial justices can and do attend the week-long National Criminal Law Program which takes place annually in different cities across Canada. However, judicial justices are not permitted to take any courses offered by the National Judicial Institute. Courses in the United States and abroad, such as the Cambridge Lectures, are available to judicial justices.

- (f) Increases in course fees, accommodation and transportation are a reality, particularly given the pressures of inflation. Therefore the PDA must increase at least at the rate of inflation to avoid depreciating in value over time.
180. Of the \$4,500, the Association proposes that \$2,100 be able to be used towards general expenses reasonably incurred in the execution of office (i.e. maintaining a similar ratio as is currently in place).
181. There should be no change to the ability to carry over any unused portion of the PDA to the following year.

Costs

182. Section 7.1 of the *Judicial Compensation Act* provides that Government may pay the reasonable costs of the JJABC participating in the commission to a maximum amount of the first \$30,000 and 2/3 of the costs over \$30,000 but under \$150,000. These values were introduced in 2015.
183. The *Judicial Compensation Act* also provides that the Lieutenant Governor in Council may increase these amounts by regulation.
184. The \$30,000 ceiling is insufficient to meet the reasonable costs of the Association to fully participate in this commission process.
185. According to the Bank of Canada's inflation calculator, available at <https://www.bankofcanada.ca/rates/related/inflation-calculator/>, the cost of \$30,000 in 2015 is now over \$36,000. Legal fees are not immune to inflation. Therefore the Association is now able to access less legal resources than it was in 2015.
186. Over the past several commission processes, there has been a steady increase in the amount of work performed by all parties pre-hearing. In particular, the parties are spending more time in pre-hearing consultations to determine points of agreement/joint submissions, to prepare joint books of documents, and to ensure

a streamlined hearing. These are very worthwhile endeavours and are time-consuming. All parties involved their counsel to some extent in these pre-hearing process. Therefore, the Association's legal costs have increased since the legal fee limits were set in in 2015.

187. Leading up to this Commission hearing, considerable legal fees were incurred by the Association in the preparation of a joint book of documents to assist the Commission; in developing and exchanging Animating Principles in an effort to lay the groundwork for discussing potential joint submissions; in attending pre-hearing meetings and conferences between the parties and/or their counsel and/or the Commission; and in formulating and exchanging salary positions in an effort to move forward on potential joint submissions.
188. Judicial justices are a small group and the JJABC has limited resources. In accordance with section 7.1 of the *Judicial Compensation Act*, unless a regulation sets higher amounts, the JJABC will be responsible for one third of their legal costs over \$30,000. In essence, the JJABC will be partially funding the opportunity to have counsel make representations on their behalf at the hearings. While the Association hopes to continue the exploration of joint solutions during the course of the hearings, especially with the guidance of the Commission, it must remain prudent in its assessment of the costs in engaging counsel beyond its means. This is not only stressful but unfortunate.
189. As this is a constitutionally mandated process, the Association maintains that all reasonable costs should be covered by Government. Failing that, the Association seeks either an amendment to the *Judicial Compensation Act* significantly increasing the ceiling (such as doubling it) or a regulation setting significantly higher amounts.

Interest

190. If the Commission recommends a salary increase that gives rise to a retroactive payment, the amount of that retroactive payment should bear interest at the

prejudgment interest rate from April 1, 2023 until the date on which the increased remuneration is established, and at the post-judgment rate from that date until the date of the retroactive payment.

All of which is respectfully submitted this 12th day of January, 2023.



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