



**Submission of the
Judicial Justices Association of British Columbia
Judicial Compensation Commission 2016**

June 1, 2016

Judicial Justices Association of British Columbia

Submission to the 2016 Judicial Compensation Commission.

INTRODUCTION

The Judicial Justices Association of British Columbia (the "Association") expresses its appreciation to the members of the Compensation Commission for accepting this important role in the determination of the remuneration of Judicial Justices in British Columbia.

The Association acknowledges the responsibility taken on by the Compensation Commission and thanks the members for their time and efforts.

THE ASSOCIATION

The Association is a registered society and has participated in the Judicial Justice compensation process since the enactment of the *Judicial Compensation Act*, 2003. The Association is recognized in section 2 of the *Judicial Compensation Act* as the representative of Judicial Justices.

JUDICIAL JUSTICES

Overview of Jurisdiction of Judicial Justices

Judicial Justices¹ are appointed under Section 30.2 and 30.3 of the *Provincial Court Act*. There are two types of Judicial Justice appointment: full time and part time. The Chief Judge has designated part time Judicial Justices as either per diem or ad hoc, the latter being retired full time Judicial Justices. As will be addressed below, compensation for ad hoc Judicial Justices is significantly lower than per diem Judicial Justices, even though they do the same work.

Currently there are 31 working Judicial Justices – and 2 on Long Term Disability, one of whom works one day per week. One full time Judicial Justice is not working while on leave to complete her doctorate degree.

The breakdown of the group of Judicial Justices is as follows:

- 10 full time; and
- 21 part time, including:
 - 18 per diem; and
 - 3 ad hoc

The *Provincial Court Act*, section 11(1), authorizes the Chief Judge of the Provincial Court (the "Chief Judge") to prescribe the jurisdiction of a Judicial Justice. This is done through an 'Assignment of Duties'².

¹ The title "Judicial Justice" has had prior iterations, including most recently Judicial Justice of the Peace. For ease of reference in these submissions we will use only the term Judicial Justice, except where the distinction in title is relevant, in which case a prior title will be expressly noted.

² Assignment of duties Chief Judge of the Provincial Court 2013. (JJA – BOD Tab 1)

An Associate Chief Judge oversees the Judicial Justices with one of the full-time Judicial Justices acting as an Administrator. All Judicial Justices, regardless of status, work collaboratively, side by side performing the same judicial functions at both the Justice Center and in the Provincial Court. The jurisdiction of all Judicial Justices is identical, as is their constitutional protection of judicial independence and financial security.

Judicial Justices consider primarily search warrant and production order applications, judicial interim release (bail) hearings, traffic court, bylaw matters and Small Claims payment hearings throughout the province. Each of these areas is explained in detail below. In court, Judicial Justices deal with large numbers of cases each day independently, without administrative support, acting as Judge, assisting (Police-prosecutors and unrepresented disputants), court clerk and recording operator. The standard court list is between 50 and 60 cases per day, often with interpreters for non-English speaking participants. Occasionally written reasons of judgments are filed³. It has been recognized by past Compensation Commissions, that the duties of a Judicial Justice could otherwise only be done by Provincial Court Judges, and therefore Judicial Justices provide a great service to the efficient and effective functioning of the Provincial Court⁴.

Without requiring legislative amendment, the potential exists for Judicial Justices to be assigned to other duties thus expanding their jurisdiction and contribution to the Provincial Court. An expansion of the duties of Judicial Justices could reduce the current backlog in Provincial Court by making Judges available for more trials.

The role of Judicial Justice is significant and indeed crucial to the justice system of British Columbia. As noted by the 2007 Judicial Justice Compensation Commission, chaired by former B.C. Court of Appeal Justice, Martin Taylor, Q.C., at page 7 of its 2007 Report and Recommendations:

When presiding in court, [Judicial Justices] are attired and conduct themselves as judges in the ordinary sense, and are seen as such by thousands of people who appear before them each year. To such persons there is no more important judge than the one before whom they appear. Judicial justices are expected to demonstrate care and patience, courteous consideration and impartial judicial deportment that is required of judges. They do not impose sentences of imprisonment but their decisions on interim release can result in incarceration of persons not in the end convicted, or who are ultimately given non-custodial sentence, and in the granting or refusal of search warrants they must weigh important privacy rights with often urgent requirements of police.⁵

In a very real sense, Judicial Justices are the face of the justice system in British Columbia, and often are the only judicial officers that the majority of people who come before the justice system, interact with.

The Justice Center

Judicial Justices sit 24 hours a day, 365 days a year to deal with bail applications, search warrants and production orders. The majority of this work is done through the Justice Center in

³ See for example the decision of Judicial Justice H. W. Gordon in *R. v. Al Anazi*, 2015 BCPC 0253 (JJA – BOD – Tab 2)

⁴ Report and Recommendations of the 2013 Judicial Justice Compensation Commission (the “2013 JJCC Report”), para. 2; (JJA BOD – Tab 3) Report and Recommendations of the 2007 Judicial Justice Compensation Commission (the “2007 JJCC Report”), page 1 (JJA BOD – Tab 4).

⁵ 2007 JJCC Report, page 7 (JJA BOD – Tab 4).

Burnaby, British Columbia. The Justice Centre is operational 16 hours a day from 8:00 a.m. to midnight, 365 days per year. From midnight to 8:00 a.m., the Justice Centre operates remotely from the home of a Judicial Justice who has been assigned to that shift.

The Judicial Justices at the Justice Centre conduct face-to-face or faxed applications by law enforcement agencies for Search Warrants or Production Orders, and video and telephone conference appearances for Judicial Interim Release (bail) Hearings. At times disputants at a court location will appear by video conference before a Judicial Justice at the Justice Center for Traffic Court hearings.

Search Warrants and Production Orders

Search Warrant and Production Order applications are governed by the requirements of the *Criminal Code* in Part XV – Special Procedure and Powers and Part XVI - Compel Appearance of Accused. Recent amendments to the *Criminal Code* to ensure attention to Victims Safety and Security, the *Police Act*, the *Missing Persons Act* and the proclamation of Bill C-13 *Protecting Canadians from Online Crime Act*, have drastically changed (i.e. complicated) the consideration of judicial authorizations.

Applications for Search Warrants and Production Orders are dealt with in person, by facsimile or telephone. Applications can be a straightforward search and seizure request or a complex matter dealing with extensive police investigations spanning several years for serious criminal offences. Applications can take less than an hour or more than a day to read, research, consider and decide. Each application is considered on the basis of the Information to Obtain a Search Warrant. The application is either issued as requested, amended or denied. Informations to obtain a Search Warrant can be lengthy and complex. New developments in technology have created areas of law that are evolving with great complexities; often a Judicial Justice is considering issues on the front line that have not yet been considered and clearly decided by the courts.

When considering an application for a Search Warrant, there is often the pressure of an ongoing complex commercial fraud case or lengthy murder investigation that is awaiting the Search Warrant for evidence to be obtained and secured. The Judicial Justice must weigh and balance the *Charter* rights of the person whose privacy will be invaded by a search of a personal residence (one of the greatest violations of privacy) against the *Criminal Code* requirements for Search Warrants to further police investigations.

All Judicial Justices have authority to deal with Search Warrant applications. The majority are dealt with through the Justice Center. Since 2013, Judicial Justices have considered over 24,500 Search Warrants and Production Orders⁶.

Bail Hearings

When Provincial Courts throughout the province are closed or a local Provincial Court Judge is not available, the Justice Centre holds Judicial Interim Release (bail) Hearings. The Justice Center also regularly conducts bail hearings for locations that do not have a Provincial Court within a reasonable distance. These hearings determine the accused's right to be at liberty under section 7 of the *Charter* and the right not to be denied bail without just cause under section 11(d) of the *Charter*. The result of these hearings is the accused being released with or

⁶ Justice Center statistics – SW and Production Orders (JJA BOD – Tab 5)

without conditions or held in custody on detention until the completion of the criminal trial. The decision to detain a person can impact the accused's future, employment and family life with serious consequences. The decision to release a person erroneously can also have serious consequences.

Often at a bail hearing, the accused and a police officer participate in the hearing by speakerphone or video unit at the police station. The police will have submitted the documentation to the Justice Center by fax and the hearing will be recorded by the Judicial Justice. Rarely is the accused represented and the officer may have little in the way of legal training. Bail hearings conducted by video are far superior in dealing with in-custody persons. Face to face communication is beneficial to all parties involved. Video hearings are available only for several locations. The fact remains bail hearings are done by telephone in cells in many locations. The task of determining a person's right to be at liberty and on what conditions is made more difficult by the Judicial Justices' inability to see the unrepresented accused. The appropriate application of the *Criminal Code* is crucial.

Defense counsel and/or Crown counsel may participate by conference call from any location. This faceless process is especially challenging to the Judicial Justice if the police officer is inexperienced and the accused is unrepresented, which is often the case. Often English is the second language of the accused which adds to the challenge.

Bail Hearings are conducted for various locations across the province every day of the year between 8am and midnight. Bail hearings for Vancouver and Surrey that are conducted outside of regular court hours are done by video. The high volume of in-custody matters dealt with in Vancouver and Surrey Provincial Courts dictates that bail hearings be conducted on weekends through the Justice Center. Crown counsel and duty counsel are situated in a courtroom at the provincial courthouse, the accused is in cells at the police station and the Judicial Justice is at the Justice Center. All attend by conference call or video.

Each evening in Surrey and Delta the accused, police officer and Judicial Justice participate in bail hearings conducted via video conferencing.

Vancouver conducts weekday evening bail hearings by telephone with Crown counsel, duty counsel and the accused.

Since the last Compensation Commission held in 2013, the Justice Center has conducted over 20,000⁷ bail hearings each year.

Traffic Court

Judicial Justices have the jurisdiction to deal with trials of provincial offences commenced by means of a violation ticket. Judicial Justices must administer and apply *The Violation Ticket Administration and Fines Regulation*⁸, which contains a list of over 77 provincial statutes.

⁷ Justice Center statistics – Bail 2010 to 2015 (JJA BOD – Tab 6)

⁸ *Offence Act, The Violation Ticket Administration and Fines Regulation*, B.C. Reg. 89/97 (JJA BOD – Tab 7)

Municipal Law

Judicial Justices hear all kinds of cases from minor parking infractions to the complex and potentially life threatening aspects of building codes, health bylaws and fire safety bylaws. Building and fire safety bylaws prescribe the minimum standards a municipality applies in permitting dwellings to be open to the public; serious infractions can affect the living conditions of citizens from the privileged to the mentally ill. Substantial fines can be assessed and orders for compliance made.

In *City of Vancouver v. Piccadilly Investments Inc.*⁹, during a 3 day trial the offender faced 36 counts of bylaw infractions regarding an old four-storey building that had a pub on the main floor and 45 single room occupancy units (SROs) on the three remaining floors. The tenants of these units were very "inner-city poor, many of whom struggle with issues related to substance abuse and/or mental health difficulties." The Judicial Justice considered issues such as fire separation, nonworking fire doors, alarm functionality and basic human health needs such as useable, functioning bathrooms. This case is a good example of the complex and significant issues addressed by Judicial Justices on a regular basis.

HISTORY OF JUDICIAL JUSTICES

Judicial Justices have existed in British Columbia for 25 years. The role of the Judicial Justice in British Columbia has increased in significance and standing over time. From a single Judicial Justice sitting in Traffic Court, the role now includes duties involving significant *Criminal Code* matters and *Charter* issues.

Significant changes to the Judicial Justice role began in the late 1990s. The Supreme Court of Canada's judgment in *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*¹⁰ set out the minimum standards of judicial independence from the executive branch, in particular with respect of the remuneration of the judiciary.

In 2000, the British Columbia Supreme Court released its decision in *Re: The Independence of the Provincial Court of British Columbia Justices of the Peace*¹¹. The Court required the provincial legislature to provide Judicial Justices with the basic parameters of judicial independence, as set out in *PEI Reference*. The result was an amendment to the *Provincial Court Act* and subsequently the enactment of the *Judicial Compensation Act*¹², establishing the Judicial Justices Compensation Commission. Through these legislative changes, the judicial officer known as a Sitting Justice of the Peace was formalized in statute as a Judicial Justice.

Next, in this trinity of judicial authority, the BC Supreme Court, in *R. v. Do*¹³ 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 independence for such a task. This led to changes in who had authority to exercise this crucial judicial function, removing

⁹ *City of Vancouver v. Piccadilly Investments Inc.*, (2010, unreported); upheld in part on appeal, 2010 BCSC 245 (JJA BOD – Tab 8).

¹⁰ *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island* [1997] 3 SCR 3 ("PEI Reference") (Judges BOD – Tab 10)

¹¹ *Re Independence of the Provincial Court of British Columbia Justices of the Peace*, 2000 BCSC 1470 (JJA BOD – Tab 9)

¹² *Judicial Compensation Act*, SBC 2003, Ch. 59 (Judges BOD – Tab 1)

¹³ *R. v. Do*, 2001 BCSC 1088 (JJA BOD – Tab 10)

judicial authorization from Court Services Justices of the Peace and assigning it to Judicial Justices.

In 2007, the Chief Judge conducted a review of the role of Judicial Justices and their qualifications. One consideration in that review was the significant role the *Charter* played in bail hearings and in the issuance of warrants and other judicial authorizations. The Judicial Justice appointment criteria were changed to match the appointment criteria for a Provincial Court judge. The intention was that the Judicial Justice component of the Provincial Court bench would be comprised of persons holding law degrees, working on a per diem basis for a fixed term. A buy-out was offered to the existing Judicial Justices to create vacancies and 13 of the Judicial Justices accepted the buyout and retired. As a result, in July 2007, seven 7 lawyers were appointed as part-time Judicial Justices. Subsequently, 10 more lawyers were appointed as part-time Judicial Justices. However, due to the workload assigned to Judicial Justices and the inability to find interested lawyers, 5 retired full time Judicial Justices without law degrees were also appointed as part-time Judicial Justices and became "ad hoc" Judicial Justices.

At page 10 of the 2007 JJCC Report, the Commission made the following comments regarding the distinction between Judicial Justices and Provincial Court Judges, for purposes of compensation:

In locating the proper place of [Judicial Justices] for compensation purposes within the "vertical structure" of the court system to which the Chief Judge referred, it must be appreciated that the differences of consequence between judicial justices and Provincial Court judges now lies neither in qualification for appointment nor appointment process, nor in the importance of the duties performed by each or the manner in which these duties are discharged, but only in the breadth of their respective jurisdictions. This is the relevant distinguishing factor for judicial compensation purposes.¹⁴

According to the British Columbia Judicial Council ("Judicial Council"), the legal experience criteria for appointment as a Provincial Court Judge is 10 years although those with less legal experience may be considered if they have related experience. The legal experience criteria for appointment as a Judicial Justice is 5 years.

JUDICIAL JUSTICE COMPENSATION

The *Judicial Compensation Act* provides this Compensation 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 same, for the next 3 fiscal years¹⁵.

In making its report and recommendations, the Commission must:

be guided by the need to provide reasonable compensation for ... Judicial Justices in British Columbia over the 3 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;

¹⁴ 2007 JJCC Report, page 10 (JJC BOD – Tab 4)

¹⁵ *Judicial Compensation Act*, s. 5(1) (Judges BOA – Tab 1)

- 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;
- f) the current and expected financial position of the government over the 3 fiscal years that are the subject of the report.¹⁶

Each of these factors will be considered in detail below.

A) The Need To Maintain A Strong Court By Attracting Highly Qualified Applicants

The Judicial Council has reported that in 2014 there were 3 Judicial Justice appointments¹⁷. The Association understands through discussions with the Chief Judge that there was only one Judicial Justice candidate interviewed in 2015 and one candidate is under consideration in 2016. In the Association's submission, these low numbers indicate an alarming lack of interest in the Judicial Justice role.

In 2007, when the first call for part time Judicial Justice applicants was made, over 11,000 Notices to the Profession went out. There were only 28 applicants, of which only seven were appointed.

In 2008 one Judicial Justice left the bench for alternative employment. In 2016 one Judicial Justice has retired and two are in a position to retire.

In 2018, there will be 9 part time Judicial Justices with ten year appointments that expire. It is not known if legislative amendments will be in place to extend their appointments.

Therefore, there is a very real need for this Commission to consider recommending that Judicial Justice compensation be improved as set out below, such that it is sufficient to attract qualified candidates to the Judicial Justice role.

B - Changes To The Jurisdiction Of Judicial Justices.

The jurisdiction of judicial justices is not expanding notably, however legislation and the case law are evolving and complex. Judicial Justices must take into account and balance the fundamentally important concepts of the freedom of the subject and the safety of the community. When applying the principles of liberty of the subject or in ensuring the proper protection of those who are subject to investigation, Judicial Justices must be constantly vigilant and up-to-date.

It is worth recalling that the authority of the Judicial Justices is established by the Chief Judge. According to Geoffrey Cowper, Q.C., Chair of the Justice Reform Initiative, there is tremendous potential for the Chief Judge to assign Judicial Justices more duties and responsibility:

¹⁶ *Judicial Compensation Act*, s. 5(5) (Judges BOD – Tab 1)

¹⁷ Judicial Council 2014 Annual Report, p.24 (JJA BOD – Tab 11)

Recommendation: Broader use of judicial justices should be considered by the Provincial Court for the hearing of all preliminary inquiries and expansion of their use for bail applications¹⁸.

The Association notes that *Bill 52 - Motor Vehicle Amendment Act (No. 2) 2012*, contains the process for removing most traffic violations out of Provincial Court. Although this was slated to commence in 2017, to date there has been no indication this will proceed. Furthermore, even with such changes, there will remain a role for the Judicial Justice in traffic court, particularly considering there is a backlog of Provincial Court motor vehicle violation tickets.

C - Compensation Provided In Respect Of Similar Judicial Positions in Canada

The Association submits that the role of Justice of the Peace / Judicial Justice is similar in many provinces across Canada. Although no two roles are identical due to variations in jurisdiction, the Association submits that the role of Justice of the Peace in Alberta and Ontario is particularly relevant as a comparator.

In the 2007 JJCC Report, the Commission recognized the many common duties shared by Judicial Justices in British Columbia and Justices of the Peace in Alberta and Ontario¹⁹. In particular, the two roles share many important aspects, such as the application of *Charter* considerations in search warrant applications, and balancing individual freedom against community safety in bail applications.

Compensation Commissions in other provinces have also concluded that there are more similarities than differences between Justices of the Peace / Judicial Justices across Canada. In 2013 the Saskatchewan Justice of the Peace Association ("SJPA") prepared a table setting out the roles and responsibilities of Justices of the Peace in jurisdictions where compensation is recommended by independent commissions. The SJPA concluded that, despite some variances between jurisdictions, overall the duties, functions, authority and/or responsibilities of Justices of the Peace / Judicial Justices across Canada are substantially similar and therefore should be the best comparison available for compensation commissions to consider²⁰.

The recent salaries for other similar Justice of the Peace / Judicial Justices is set out below:

Alberta	\$139,900	2013 (2016 being a commission year)
Quebec	\$124,118	2013
Ontario	\$128,426	2015
Saskatchewan	\$133,426	2016

¹⁸ BC Justice Initiative, 2012 Final Report to the Minister of Justice and Attorney General, at para 11.3.1 (JJC BOD – Tab 12)

¹⁹ 2007 JJCC Report, p. 39 (JJC BOD – Tab 4)

²⁰ 2013 Saskatchewan Justice of the Peace Association Submissions, p.39 and Table 1 (JJC BOD – Tab 13).

D - Changes In The Compensation Of Others Paid By BC Provincial Public Funds

Compensation for public servants is established through a collective bargaining process between unions and the government, with oversight by the Public Sector Employers' Council. The Association submits that the public service is not an appropriate comparator, and indeed it has been expressly acknowledged by the Supreme Court of Canada²¹ that independence from the executive is a hallmark of Canada's justice system. Furthermore, the British Columbia Supreme Court has sternly rebuked the Provincial Government for applying its public sector bargaining mandate to the Judicial Compensation process.²²

The Judicial Justices Association submits the following comparators should also assist the Commission in its decision:

In many of the courtrooms and bail hearings presided over by Judicial Justices, provincial crown counsel appears before the Judicial Justice. Crown counsel are paid by public funds. As of April 2014, Crown Counsel Salary ranges were²³:

Grid Level	Experience	Salary Range
1	This Level is applicable to lawyers commencing their career as Crown Counsel with five (5) years or less admission to practice and related practice of law	\$74,308.33 - \$96,246.56
2	This Level is applicable to lawyers with six (6) or more years of admission to practice and related practice of law	\$102,646.79 - \$133,119.87
3	Entry into this level requires a minimum of eight (8) years of call.	\$137,076.83 - \$157,412.66
4	This Level is reserved for select Crown Counsel who have distinguished themselves in the practice of their profession as exceptional senior counsel	\$158,475.02 - \$191,491.81

In 2007, Crown Counsel salary was resolved and adjusted by an amount equal to the increases provided to Provincial Court Judges plus a 1.27% increase²⁴.

In addition to Crown Counsel, duty counsel may appear at bail hearings to represent the accused. Duty counsel is paid by government funds. The legal aid tariff for duty counsel effective April 2015²⁵ pays from \$83.90 to \$92.29 per hour. The mid-range for a duty counsel with 4 to 10 years of call is \$88.10. In comparison, the hourly rate for full time and per diem Judicial Justices would be \$57.55, and \$46.04 for part time (approximately). Therefore, in a bail hearing, if defence counsel is funded by legal aid, each of the three participants are paid from

²¹ *PEI Reference* (Judges BOD – Tab 10)

²² *Provincial Court Judges Association of British Columbia v British Columbia (Attorney General)* 2012 BCSC 1022 (Judges BOD – Tab 16)

²³ 2007 – 2019 Agreement between the Government of the Province of British Columbia and British Columbia Crown Counsel Association, Sch. A. (the "Crown Counsel Agreement"); Crown Counsel Salary Schedule effective April 1, 2014 (JJA BOD – Tab 14)

²⁴ Crown Counsel Agreement, p.30 (JJA BOD – Tab 15)

²⁵ Legal Services Society Tariff effective April 27, 2015 (JJA BOD – Tab 16)

the same government purse, and the Judicial Justice hearing the matter is currently the lowest paid of the three.

E and F: Generally Accepted Current And Expected Economic Conditions and Financial Position Of The Government

In all but one (2007) of the past five Commissions, the government has urged fiscal restraint due to poor economic conditions. The Association recognizes that economic conditions may be of concern to the government and the Commission. The Association submits that current and expected economic conditions in British Columbia favour a positive outlook and do not necessitate restraint.

British Columbia's economy is currently in a position of strength relative to other provinces. The following quote from a February 2016 Globe and Mail article supports the positive state of British Columbia's economy:

British Columbia expects to lead the provinces with economic growth of 2.4 per cent this year as it weathers the resource sector's slump and posts a fourth consecutive balanced budget.

Low prices for commodities such as coal, copper, lumber, pulp and natural gas have hurt the province's mining, forestry and energy industries.

But the B.C. government said Tuesday that strength in manufacturing, retailing, technology, trade and film will help propel a diverse economy.

Population growth and a tourism boom will also contribute to the outlook for prosperous times, said B.C. Finance Minister Mike de Jong, who forecast a \$264-million surplus on \$48-billion in revenue for the 2016-17 fiscal year.

"Our economy continues to grow, and along with it, the revenues that flow into government," he said in Victoria.

The B.C. government is predicting 2.4-per-cent growth in real gross domestic product in 2016 while the B.C. Economic Forecast Council is envisaging 2.7-per-cent growth.

"That positions us as the lead of the pack in terms of Canada," Mr. de Jong said²⁶.
[emphasis added]

In his Budget Speech in February 2016, British Columbia's Finance Minister Mike de Jong quoted from several economic sources to support his message of a strong British Columbia economy. Below is an excerpt from page 2 of Minister de Jong's speech:

Here's what the Conference Board of Canada said in their January report card:

British Columbia's economy is forecast to maintain the momentum gained over the last year and continue to make impressive gains. ...B.C.'s fiscal balance sheet is the envy of the other provinces...After leading the provinces in growth this year, British Columbia will be the top performer again in 2016.

At the same time, CIBC World Markets issued their November report card and predicted that:

B.C. is "likely to top the charts on GDP and employment growth" in 2016.

And from the senior economist at BMO the following commentary:

²⁶ The Globe and Mail, 'B.C. expected to lead provinces in growth as it leans on non-resource industries' Feb. 16, 2016, Jang, B.(JJA BOD – Tab 17)

...B.C. is on track to cruise into year-end as the envy of the Canadian provinces. The budget is balanced; net debt is low and stabilizing at around 16.5% of GDP; economic growth is atop the leader board, and the province's relative tax competitiveness is steadily improving (especially versus its neighbour to the east).²⁷

In April, 2016, the internationally renowned credit rating agency Moody's affirmed British Columbia's "Aaa" debt rating, which is the strongest rating provided by Moody's. Bond rating agencies such as Moody's provide regular assessments of a province's debt and are an impartial summary of a province's capacity to carry and service its respective debt loads. The Ministry of Finance trumpeted Moody's Aaa rating affirmation as follows:

In affirming the Aaa-stable rating – the highest possible – Moody's writes: "The Aaa issuer and debt ratings assigned to British Columbia reflect the diverse and relatively strong provincial economy, track record of prudent fiscal management and a high degree of flexibility to accommodate revenue and expenditure pressures. These positive elements helped the province return to balanced budgets faster than most other Canadian provinces following the 2009 recession and the province has posted a plan of continued balanced budgets across its rating horizon"²⁸.

The Association notes that the Provincial Court Judges Association ("PCJA") has retained economist Ian McKinnon of Pacific Issues Partners to provide expert evidence on PCJA's behalf. Mr. McKinnon's report, entitled "The Current and Expected Economic Conditions in British Columbia and the Financial Position of the Government of British Columbia", dated May 2016 ("the McKinnon Report"), is attached as Tab 36 in the PCJA's Documents. The Association equally relies upon the findings and conclusions of the McKinnon Report.

The McKinnon Report supports the Association's submission that British Columbia's economy is strong and that forecasted budget surpluses are reliable. Set out below are a series of comments and conclusions from the McKinnon Report that the Association wishes to bring to the attention of this Commission:

(page 17) The effective responses of the government in restoring strong budget balances even following downturns gives us confidence that the projections of surpluses for the coming three fiscal years will be realized.

(page 18) The government of BC has chosen to and clearly feels it has the fiscal room to carry on high levels of government investment.

(page 19) Looking at the trends in capital investment confirms the healthy position of the government's finances

(page 21) Turning to the "current and expected financial position of the government," having comparative fiscal capacity ... gives additional assurance that the government will be able to deal better with unexpected economic events, confirming the solid financial position of the government.

(page 23) Overall, this again clearly demonstrates the strong fiscal position of the province

(page 26) First, while public pension obligations may cause serious future financial problems elsewhere, the situation in Canada generally and in BC in particular should not be a source of concern for the government's future financial position.

²⁷ Budget Speech 2016, at p.2 (JJA BOD – Tab 18)

²⁸ BC Ministry of Finance Press Release, Moody's affirms British Columbia's Aaa rating and stable outlook, April 7, 2016. (JJA BOD – Tab 19)

(page 28) If [the government's] forecasts have a consistent bias, it is to under-estimating economic growth

(page 29) When BC forecasts surpluses, as it has for each of the three years that are the subject of the Commission's report, we can be very confident that those forecasts are the result of a prudent, sophisticated and cautious process undertaken by the Ministry of Finance.

(pages 34 and 35) Overall, the government's own forecasts of surpluses and steady economic growth, especially when one considers the government's record of caution in forecasting, can give the Commission confidence that their recommendations should not be hindered by concern for risks posed by the economy's prospects or the government's likely financial position. Whether using historical comparisons, cross-jurisdictional comparisons or the ratings of neutral, expert observers, BC's financial position is solid.

The Association submits that British Columbia's economy is strong and growing and that now is an appropriate time to make lasting and necessary improvements to the compensation of Judicial Justices.

SALARY AND BENEFITS SUBMISSIONS

The Association notes that it has applied for judicial review of the government's responses to the 2010 and 2013 Commission reports and recommendations. The Association is *inter alia* seeking a declaration that the government's response was constitutionally invalid and an order that the government implement the recommendations of the 2010 and 2013 Commissions. This would have a significant impact on the salary and benefits of Judicial Justices. For purposes of these submissions, the following salary and benefits proposals are made on the basis of current salary and benefits for Judicial Justices and do not assume any particular outcome of the judicial review process. However, as set out below, the Association makes submissions regarding the appropriate salary level for Judicial Justices and therefore the fact of the outstanding judicial review application should not impact upon this Commission's recommendations.

As noted above, the Association makes these submissions on behalf of all Judicial Justices in accordance with section 2 of the *Judicial Compensation Act*.

Parity for "Ad Hoc" Judicial Justices

It is the Association's fundamental belief and submission that per diem and ad hoc Judicial Justices should be paid the same. Indeed, the Association submits that there was no basis at law for the creation of two categories of part time Judicial Justices, nor to pay a subgroup of part time Judicial Justices differently than other part time Judicial Justices.

A brief history of the designations of "ad hoc" Judicial Justices is as follows.

When a part time Judicial Justice is appointed, he or she enters into a Memorandum of Understanding ("MOU") with the Chief Judge, setting out their agreed upon working conditions including salary and hours of work. As part of the Chief Judge's 2007 review of the provincial court bench, wherein it was determined that new Judicial Justice appointees must be lawyers, five recently retired full time Judicial Justices were reappointed as part time. The Orders in Council designated them as a Part Time Judicial Justices. The MOUs for these five reappointed Judicial Justices referred to them as "ad hoc" Judicial Justices and indicated a per diem rate

that was 20% less than the other newly appointed part time Judicial Justices²⁹. These ad hoc Judicial Justices were also not given the \$75 office overhead awarded to the other part time Judicial Justices although their headquarters and office are their homes. This distinction between ad hoc and per diem Judicial Justices was based on an antiquated historical policy whereby retired Provincial Court Judges who became Senior Judges brought with them a government pension and therefore it was determined to pay them less. However, in the submission of the Association this had no application to the Judicial Justices, and the distinction was arbitrary and unfair.

The Association notes that one ad hoc Judicial Justice assigned to traffic court is further penalized one hour's pay each day because their work day for court is considered one hour shorter (7 hours) than the work day for the Justice Center, notwithstanding that their part time colleague in the next courtroom on the same day is paid for 8 hours.

Since the appointment of the ad hoc Judicial Justices, Association has consistently opposed this distinction as all Judicial Justices have the same Assignment of Duties and all perform the same functions.

It is the antithesis of fair and reasonable remuneration to penalize a retired Judicial Justice for receiving a government pension. It is even more egregious when currently at least three of the "per diem" Judicial Justices have retired from previous careers in the government and receive a government pension without penalty.

Indeed, there is no legislative support for appointment of a category of "ad hoc" Judicial Justices, nor any legislative ability to pay "ad hoc" Judicial Justices less than other "part time" Judicial Justices. The *Provincial Court Act* grants the Lieutenant Governor in Council the authority to appoint part time or full time Judicial Justices. Pursuant to the *Act* the Chief Judge does not have the authority to appoint temporary or ad hoc Judicial Justices. Therefore there is no lawful authority to appoint, designate or create a separate office or status of ad hoc Judicial Justice and compensate that office differently than part time or "per diem" Judicial Justices.

The *Judicial Compensation Act* authorizes the Commission to make recommendations for salary and benefits for "full time judicial justices" and "part time judicial justices". There is no authority to make a different salary recommendation for a subset of part time Judicial Justices or so-called "ad hoc" Judicial Justices.

The Association submits that the distinction between ad hoc and per diem Judicial Justices should be extinguished and all part time Judicial Justices should be paid the same per diem rate and receive equal compensation, including all non-salary benefits. The Association notes that the 2010 Commission agreed with this submission and recommended that as a matter of equity the compensation formula for per diem Judicial Justices should be applied equally to the ad hoc Judicial Justices. However the government rejected this recommendation and as such it has not been implemented.

Salary Submissions

Full Time Annual Salary

²⁹ For example see Memorandum of Understanding for Candice Leslie Rogers (JJC BOD – Tab 20)

For the following reasons, the Association submits that full time Judicial Justices should as of April 1, 2017, receive a minimum annual salary of \$125,000 with an increase of 2 - 3% in each of 2018 and 2019.

The following table sets out the history of salary recommendations since the initial 2002 Commission, the government response and the ultimate salary increases received by the Judicial Justices:

Commission Year	Commission Recommendation	Government Response	Implemented
2002 ³⁰	2.5%	2.5%	2.5%
	2.5%	2.5%	2.5%
	5.5%	0%	0%
	9%	0%	0%
2004 ³¹	Salary to be set at \$75,600 effective Jan 1, 2005	~6.5% over the term implemented in 2007	~6.5% over the term implemented in 2007
	2%		
	2%		
2007 ³²	20%	20%	20%
	2.5%	2.5%	2.5%
	2.5%	2.5%	2.5%
2010 ³³	0%	0%	0%
	0%	0%	0%
	8%	0%	0%
2013 ³⁴	1.5%	1.5%	1.5%
	1.5%	1.5%	1.5%
	2%	2%	2%

It is immediately clear from this table is that the government has on all but one occasion, rejected the recommendations of the Commission, and that the legislature always votes in accordance with the government's response.

Another important consideration when determining the appropriate annual salary for Judicial Justices, is the salary of a Provincial Court Judge. As noted above, previous Commissions

³⁰ 2002 JJCC Report (JJC BOD – Tab 21)

³¹ 2004 JJCC Report (JJC BOD – Tab 22)

³² 2007 JJCC Report (JJC BOD – Tab 4)

³³ 2010 JJCC Report (JJC BOD – Tab 23)

³⁴ 2013 JJCC Report (JJC BOD – Tab 3)

have recognized that the only real distinguishing feature between a Provincial Court Judge and a Judicial Justice, is the scope of their jurisdiction. However, as the table at **Exhibit "A"** demonstrates, the gap between Judicial Justices' salaries and Provincial Court Judges' salaries has been on average increasing since the first Judicial Justice of the Peace sat in Traffic Court in 1978. Judicial Justices currently earn approximately 42% of the salary of a Provincial Court Judge, although at one time this was as high as 65%. The Association submits that this gap is disproportionate and should be addressed by this Commission. Indeed, previous Commissions have recognized this very issue³⁵ and made recommendations to address the gap, however it is clear that the gap remains.

To this end, the Association refers this Commission to the report of the *Sixth Ontario Justices of the Peace Remuneration Commission*, 2015, chaired by the Honourable Patrick J LeSage. Specifically, the comments of the Ontario Commission at paragraphs 43 and 53, set out below, are particularly pertinent:

[43] When we consider the significant and important role that justices of the peace fulfil in the administration of justice, we conclude that their compensation is disproportionately low in comparison to others with not dissimilar roles and functions. A recognizable increase in their salary would reflect their evermore demanding work, their schedule, and their fundamental responsibility as the first line in the criminal/quasi-criminal regulatory area of the administration of justice in Ontario. Their current salaries when compared to other judicial officers, is neither fair nor reasonable.

[...]

[53] Although we did not accept that justice of the peace salaries should be set as a percentage of those of Ontario Court justices, and although we specifically recognize the difference in qualifications and experience for those two different positions, there is an immense disparity between the 2013 justice of the peace salary of \$123,804 and the Ontario Court salary of \$274,574. The extent of that disparity is neither fair nor reasonable. (emphasis added).

The SJPA in 2013 prepared a comparison of salaries between Justices of the Peace / Judicial Justices and Provincial Court Judges in various jurisdictions across Canada. The gap between the two groups ranged from 43% (British Columbia) to 58% (Alberta). Of the six jurisdictions reviewed, only British Columbia and Ontario were below 50%, and as noted above, the Ontario's 2015 Commission identified this as problematic.

The Association submits that Judicial Justices have been denied the appropriate remuneration over the past 8 to 10 years, with the government regularly rejecting salary increases on the basis of the Province's poor economic health. The Association submits that now is the appropriate time to address and correct the disproportionately low remuneration. The economy is healthy and the forecast is for continued healthy growth. A onetime substantial increase in the salary of Judicial Justices in conjunction with the current and projected health of British Columbia's economy is justified.

Per Diem Rate

The Association submits that all part time Judicial Justice should receive the same per diem rate.

³⁵ See for example the comments at page 38 of the 2007 JJCC Report. (JJA BOD – Tab 4)

The 2007 Commission established a process to award compensation to full time and part time Judicial Justices. That Commission created a formula (set out below) for a per diem rate based on the full time salary of a Judicial Justice. This formula remains in place today, with adjustments to the value of the inputs having been made by 2013 Commission. The Association submits that this formula, as it stands today, is fair and reasonable:

- Full time Judicial Justice salary / 209 (days of work) + 24.5% (in lieu of benefits) + \$80 (office overhead).

Shift Premium

Judicial Justices sit at the Justice Centre 24 hours a day, 365 days of the year, unlike provincial courthouses where judicial matters are only heard during business hours on week days. Judicial Justices perform those work assignments without additional remuneration. Except during the Judicial Justices' semi-annual conferences when Provincial Court Judges sit at the Justice Centre, all of the judicial duties at the Justice Centre for these 365 days are performed by a Judicial Justice.

In recognition of being required to work outside of regular working hours, the Association submits that it is appropriate for Judicial Justices who work these shifts to be given additional remuneration. The impact of shift work physically, emotionally and socially is well known. The weekends and evenings worked at the Justice Center are the busiest work assignments for all Judicial Justices. These shifts take their toll. Often they are the most difficult to cover.

The precedent for shift reimbursement exists. As of 2008 Shift Differential is part of the *Alberta Justice of the Peace Regulation*, Alta Reg. 6/1999.

The Association submits that Judicial Justices should in addition to the minimum salary, receive the following shift premiums:

- Weekday afternoon shift: \$50
- Weekend day shift: \$50
- Weekend afternoon/overnight shift: \$75
- Statutory holiday day shift: \$75
- Statutory afternoon/overnight shift: \$100.

Professional Development Allowance

Currently Judicial Justices receive an annual Professional Development Allowance ("PDA") of \$1,500 as expenditure based reimbursement. As a comparator, Provincial Court Judges receive \$4,500. Guidelines of acceptable expenditure are covered by Chief Judge Policy³⁶, and allowable items include books, educational material and training courses.

As with all judges, it is very important for Judicial Justices to remain current on developments in the law and in practice management. They do so by attending at conferences. Often there is very little room in the PDA for conference attendance, or the PDA does not even cover the cost

³⁶ Professional Development Allowance for Judicial Justices (JJC BOD – Tab 24)

of attending. For example, a rough calculation of attendance at the July 2016 Annual National Criminal Law Program in Charlottetown, P.E.I. would be \$2,800.

The Association is seeking an increase in PDA to \$2,500. This is fair and reasonable. It is important to note that an increase in PDA is not an increase in salary as the expenditure must be made and reimbursed; according to policy it must meet pre-approval and guideline scrutiny.

Pension

Since 2001, Judicial Justices have achieved partial parity with Provincial Court Judges on non-salary benefits such as Long Term Disability, PDA, Health Care flex benefits and vacation. However, whilst Provincial Court Judges are enrolled in the Judicial Pension Plan under Part 3 of the *Judicial Compensation Act*, Judicial Justices receive a different (i.e. less favourable) pension from the government.

The qualification requirements for a Judicial Justice, including the necessary skills and life experience to deal with the nature of being a judge, necessarily results in appointment at middle age or later. The average age for appointment is 45-50 years. Certainly a Judicial Justice role is not "entry level". A pension plan for Judicial Justices is warranted, that matches the responsibilities of the position, age and qualifications.

The Association submits that being enrolled in an equivalent pension plan to the Judges will go some way to addressing the need to attract qualified candidates and promote diversity on the bench.

The Association submits that a recommendation should be made that Judicial Justices be included in the Judicial Pension Plan set out in Part 3 of the *Judicial Compensation Act*. There are currently nine full time Judicial Justices that would be eligible for enrollment in this pension plan, and as such the financial impact to government would be minimal.

All of which is respectfully submitted

Irene Blackstone

Linda Mayner

Hunter Gordon

EXHIBIT "A"

Judicial Justices and Provincial Court Judges

Salary Comparisons - 1978 to 2013

Year	JJP	PCJ	%
<u>1978</u>	<u>27,000</u>	<u>41,762</u>	<u>65%</u>
1979	29,160	50,000	58%
1980	31,488	56,000	56%
1981	37,100	65,000	57%
1984	37,800	66,300	57%
1985	38,200	73,659	52%
1986	39,560	73,659	53%
1987	45,080	83,644	54%
<u>1988</u>	<u>54,937</u>	<u>87,826</u>	<u>62%</u>
1989	57,525	94,000	61%
1990	60,898	98,000	62%
1991	64,135	103,000	62%
1992	65,602	107,000	61%
1995	66,586	118,402	56%
1997	67,251	118,402	57%
1998	*	134,000	50%
1999	*	139,000	48%
2000	68,597	144,000	47%
2001	73,872	155,000	45%
2002	*	158,000	45%
2003	*	161,250	43%
2004	*		
2005	*		
2006	75,760	198,000	38%
2007	78,654	202,356	38%
2008	94,730	204,552	
2009	97,100	225,000	
2010	99,525	231,500	44%
2011	*		
2012	*		
2013	*	235,500	42%

"*" represent years with no salary increase, of which there are 9 over the last 15 years.