



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

March 7, 2023

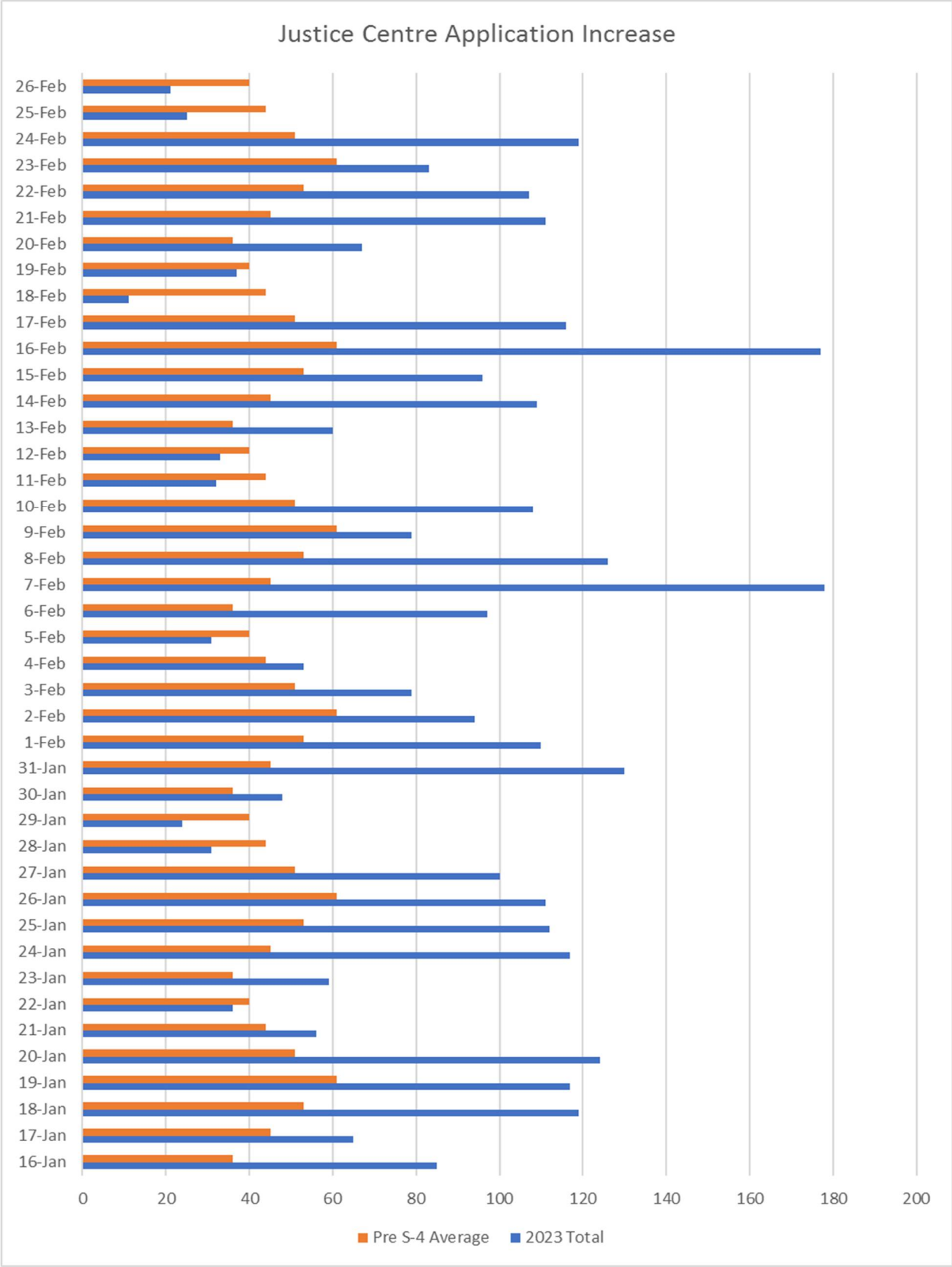
INTRODUCTION

1. The Judicial Justices Association of British Columbia (the “Association”) makes the following supplemental submissions in response to the questions asked by the Commissioners during and after the Commission hearing, and as a result of new information arising after the hearing.
2. The Association is disappointed and troubled with Government’s suggestion in paragraph 15 of its Supplemental Submission dated March 6, 2023. The Association does not agree that the additional measures to which Government has agreed will assist with attracting highly qualified applicants, alleviating workload pressures and providing necessary recognition, in the absence of a significant increase in judicial justice salaries.
3. The Association has engaged in further discussions with Government and sets out below a revised shift premiums submission, in light of these discussions.
4. The Association thanks the Commission for this opportunity to make these supplemental submissions.

Impact of Bill S-4

5. As set out in the Association’s prior written submissions, it is the Association’s view that the introduction of Bill S-4 and its impact on the work of judicial justices, is a jurisdictional change as that term is used under the *Judicial Compensation Act*.
6. The Commission is also able to consider any other relevant “factors”, and if it does consider other factors, it must explain the relevance of the factor considered (*Act*, s.5(5.2)). Therefore, it is equally open to the Commission to consider the introduction of Bill S-4 and its impact on the work of judicial justices under section 5(5.2) of the *Act*, and not under s5(5)(b) (changes to jurisdiction). There can be no doubt that Bill S-4 is an important consideration for this Commission, whether jurisdictional or otherwise.

7. In our previous submissions, we explained how Bill S-4 immediately and significantly increased the workload of judicial justices, and we provided evidence of this impact. We have updated the graph from paragraph 32 of the Association's reply submissions of February 3, 2023: as well as the supporting table – which is attached to this supplement submission at **Exhibit "A"**.



8. The graph shows that the initial increase in applications has continued, and the Association submits that this new level of applications will be sustained over the years to come. Indeed, Bill S-4 was intended to introduce lasting changes to the criminal justice system, improving flexibility and efficiency¹. There is no reason to suggest that the number of applications received will decrease over time
9. As indicated by the Chief Judge at the hearing, the Court has been forced to add additional shifts at the Justice Centre in order to deal with the large volume of files that need to be adjudicated. To date, there has been a call for additional eight hour shifts on the following days:
 - January 25, 26, and 27
 - February 1, 2, 8, 9, 14, 21, 22
 - March 1, 7, 8
10. We can also indicate that the number of unfilled shifts continues to grow. As of March 6, 2023, the following 27 shifts remain unfilled:
 - Wednesday March 29 3pm
 - Friday April 7 at 10 am (Good Friday)
 - Saturday April 8 at 8 am, and 3 shifts at 10 am
 - Sunday April 9 at 8 am and 10 am (Easter Sunday)
 - Monday April 10 at 10 am (Easter Monday)
 - Sunday April 23 at 8 am and 10 am
 - Friday May 12 at noon (PCJ conference)
 - Sunday May 14, 2 shifts at 10 am
 - Saturday May 20 at 8 am, 3 shifts at 10 am, 3pm
 - Sunday May 21 at 8 am, 3 shifts at 10 am, 3 pm

¹ https://www.justice.gc.ca/eng/csj-sjc/pl/charte-charte/s4_1.html

- Monday May 22, 2 shifts at 10 am (Victoria Day)
 - Monday May 29 at 3 pm
11. Justice Centre Administrative Judicial Justice Hayes has indicated that in response to Bill S-4 and the anticipated opening of Fraser Region Crown led bail court (virtual bail hub commencing March 13), an additional 230+ afternoon shifts have been created at the Justice Centre. This is consistent with the anticipated high numbers of judicial authorizations and serves as a strong reminder that unless sufficient numbers of highly qualified candidates are attracted to the judicial justice position, then the existing complement, especially in light of upcoming retirements, will be insufficient to meet the Court's needs.

Per-Diem Formula

12. The Association now agrees with Government that 22% is used in lieu of benefits for part time judicial justices. The formula to be used is now: full-time annual salary/207 (=\$X) + 22% (=\$Y) + \$100 = \$Z.
13. The Association asks that the email from Mr. Davis dated February 16, 2023 concerning calculation of government's proposed 22% in lieu of benefits for judicial justices, be entered as an exhibit.

Government's proposed enhancement to flex benefits

14. Currently, full-time judicial justices are entitled to unlimited use of physical therapy treatments. This is a valuable benefit given the rigors of the job including the many hours spent at a desk, using a computer and looking at a screen.
15. The Association understands that moving to the flexible benefits program proposed by Government would result in an annual cap on physical therapy treatments.

Modified Shift Premium position

16. The Association appreciates the ongoing discussions with Government regarding this issue.
17. The Association now updates its proposal regarding shift premiums which was originally set out at paragraphs 23 and 168 of its main submission dated January 12, 2023. The modifications recognize Government's confirmed acceptance of premiums attaching when "any portion" of the shift falls on a weekend or holiday, and also recognize the need to avoid double billing of the same premium.
18. The Association's modified proposal also seeks to assist with challenges with coverage for long weekends by narrowing court closure days to be only Mondays or Tuesdays (that would typically follow holidays that fell on a weekend) and to attract a \$75 premium, which will also assist with preventing double compensation when a shift falls over a holiday and a court closure day.
19. The following replaces paragraph 168 of the Association's submissions of January 12, 2023. The most significant change is that the Association has added a new definition of 'court closure days' and has moved this out of the previous definition of 'holidays'. These 'court closure days' are proposed to attract a lower premium of \$75 per day than the \$245 per day previously proposed.
20. The Association understands that Government has agreed to the entirety of this revised submission except that Government proposes a \$25 premium for weekends and court closure days whereas the Association proposes a \$75 premium for these days.
21. This recommendation relates to shift premiums added to the *per diem* rate for part time judicial justices:
 - (a) Definitions:
 - (i) "Shift" means an 8-hour scheduled Shift.

- (ii) “Weekend” includes any Shift where any portion of the Shift falls on a Saturday or Sunday, but does not include Holidays.
- (iii) “Court closure day” means any Shift where any portion of the shift falls on a Monday or Tuesday that is not a holiday, on which day courts are generally closed for provincial court judges in BC (for example, when July 1 falls on a Saturday or Sunday and courts are generally closed on the following Monday).
- (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; or
 - (B) Any Shift where any portion of the Shift falls on a Holiday.
- (b) Weekend Shift premium: \$75
- (c) Holiday Shift premium: Remain at \$245 but with an additional \$75 for any Christmas Day Shift
- (d) Court closure day premium: \$75
- (e) A judicial justice may only claim the Holiday premium once for the same Holiday. For example, if a night judicial justice works June 30th from 11pm to 7am, as well as July 1st from 11pm to 7am, that judicial justice may only claim the Holiday premium for one of these shifts. As another example, if one judicial justice works June 30th from 11pm to 7am and a different judicial justice works July 1st from 11pm to 7am, each judicial justice will receive the Holiday premium.
- (f) Any Shift worked by a judicial justice will attract the highest applicable premium for that Shift, and only that premium.

22. The Association maintains, as set out in paragraphs 175 and 199 of its submissions dated January 12, 2023, that shift premiums are necessary to attract more qualified applicants and to recognize sacrifices made when working on Holidays and Weekends. However, the Association wishes to stress that these comments are made in the context of the overall submission regarding the need for significant salary increases (and accordingly the *per-diem* rate).

The Four-Year Commission Cycle

23. As explained at the hearing, the Association's position is that the Commission should be pro-active rather than adopt a 'wait-and-see' approach with respect to its recommendations. As set out in the Association's prior submissions, an immediate correction is needed.
24. The Association now makes the following further points, in response to this question from the Commission.
25. As previously indicated, there is a significant component of judicial justices who will mandatorily retire during this Commission's four-year cycle. If this Commission adopts a 'wait-and-see' approach, and the next Commission determines that the approach adopted by this Commission was too conservative (for example, because the S-4 impacts were indeed sustained), then the group of judicial justices who retire prior to the next Commission will effectively have been underpaid for the remaining time of their appointments. That is, a future 'correction' will be of no benefit to these judicial justices.
26. It is equally important that the complement of judicial justices is sufficient to meet current and expected future demand. As the data regarding the impact of Bill S-4 and unfilled shifts indicates, this is a serious issue that warrants a pro-active approach rather than waiting and learning in four (4) years that the court was not able to operate efficiently due to insufficient coverage support.
27. We also remind the Commission that various other jurisdictions are yet to determine their judicial compensation, and therefore a 'wait-and-see' approach by

this Commission risks BC's judicial justices falling further behind their relevant comparators.

Budget 2023

28. The Association re-affirms its previous submissions regarding subsections 5(5)(e) and (f) of the *Act*. The latest budget documents reflect Government's continuing confidence in the strength of the economy and its fiscal position. The Association notes the significant levels of public spending earmarked by the Government, including in relation to access to justice initiatives.

Costs

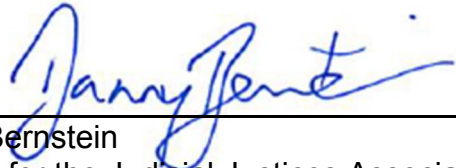
29. The Association anticipates that its total legal costs for participation in this Commission process, from commencement of preparations through to the end of the hearing on March 9, 2023, will be approximately \$80,000 (including taxes). There may be additional costs following receipt of the Commission's report and any additional issues that arise. This is an increase of approximately \$20,000 from the previous commission process where legal and professional fees totaled approximately \$60,000. Much of this increase in costs can be attributed to a substantial increase in pre-hearing discussions and preparations, and in ensuring that the Association was able to present the Commission with as much information as possible.

Government's revised salary proposal

30. The Association acknowledges that Government has improved its salary position as set out in paragraphs 7 through 12 of its supplemental submission dated March 6, 2023. Despite that development, the Association maintains that the increase proposed by Government is insufficient and would maintain judicial justices' compensation at an unreasonably low level.
31. The Association takes strong issue with the suggestion that it has somehow admitted that this modest increase in salary, along with improvements to

premiums, is “sufficient” to address the challenges faced by judicial justices. As the Association has previously indicated, a significant correction to annual salary is required and Government’s modest proposed increase, along with the agreed-to premiums, goes only some of the way towards making compensation “reasonable” for judicial justices.

32. Given the tone of Government’s submission, the Association is concerned that it foreshadows how Government intends to respond to this Commission’s Report and any salary recommendations which it may make.
33. All of which is respectfully submitted this 6th day of March, 2023.



Danny Bernstein
Counsel for the Judicial Justices Association

Supplemental Submissions March 7, 2023 – Appendix “A”

S-4 / SFTS Impact since January 16th, 2023

Day (Week 1)	F2F	Fax	SFTS	Total	Pre S-4 Average
Monday (16 th)	36	15	30	85	36
Tuesday (17 th)	12	15	38	65	45
Wednesday (18 th)	35	46	38	119	53
Thursday (19 th)	47	36	41	117	61
Friday (20 th)	82	68	24	124	51
Saturday (21 st)	3	55	17	56	44
Sunday (22 nd)	26	10	0	36	40

Day (Week 2)	F2F	Fax	SFTS	Total	Pre S-4 Average
Monday (23 rd)	23	33	19	59	36
Tuesday (24 th)	43	77	25	117	45
Wednesday (25 th)	46	78	22	112	53
Thursday (26 th)	53	52	26	111	61
Friday (27 th)	64	69	2	100	51
Saturday (28 th)	8	21	2	31	44
Sunday (29 th)	2	17	5	24	40

Day (Week 3)	F2F	Fax	SFTS	Total	Pre S-4
Monday (30 th)	20	27	1	48	36
Tuesday (31 st)	51	43	36	130	45
Wednesday (Feb 1 st)	50	45	15	110	53

Thursday (2 nd)	24	58	12	94	61
Friday (3 rd)	15	34	30	79	51
Saturday (4 th)	22	31	0	53	44
Sunday (5 th)	5	26	0	31	40

Day (Week 4)	F2F	Fax	SFTS	Total	Pre S-4
Monday (6 th)	19	63	15	97	36
Tuesday (7 th)	37	113	28	178	45
Wednesday (8 th)	29	65	12	126	53
Thursday (9 th)	24	34	19	79	61
Friday (10 th)	21	45	41	108	51
Saturday (11 th)	0	18	14	32	44
Sunday (12 th)	3	9	9	33	40

Day (Week 5)	F2F	Fax	SFTS	Total	Pre-S-4
Monday (13 th)	23	21	17	60	36
Tuesday (14 th)	32	55	22	109	45
Wednesday (15 th)	12	53	31	96	53
Thursday (16 th)	64	68	45	177	61
Friday (17 th)	16	87	13	116	51
Saturday (18 th)	0	11	0	11	44
Sunday (19 th)	4	30	3	37	40

Day (Week 6)	F2F	Fax	SFTS	Total	Pre- S-4
Monday (20 th)	34	31	2	67	36

Tuesday (21 st)	33	45	33	111	45
Wednesday (22 nd)	28	55	24	107	53
Thursday (23 rd)	17	52	14	83	61
Friday (24 th)	33	55	31	119	51
Saturday (25 th)	16	7	2	25	44
Sunday (26 th)	0	17	4	21	40

Type	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6
F2F	241	239	160	133	147	161
Fax	265	377	207	347	348	262
SFTS	188	101	94	138	131	110
Total	694	717	471	618	626	533