



**SUBMISSIONS  
OF THE  
CANADIAN BAR ASSOCIATION (BRITISH COLUMBIA BRANCH)  
TO THE  
BRITISH COLUMBIA  
2019 JUDICIAL COMPENSATION COMMISSION**

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## **PREFACE**

The Canadian Bar Association (British Columbia Branch) (the “CBA”) is pleased to provide its unique point of view regarding judicial compensation for Provincial Court Judges and Judicial Justices to the British Columbia 2019 Judicial Compensation Commission (the “Commission”).

Formed in 1896, the purpose of the CBA is to:

- Improve the law;
- Improve the administration of justice;
- To improve and promote access to justice;
- To promote equality, diversity and inclusion in the legal profession and in the justice system;
- To improve and promote the knowledge, skills, ethical standards and well-being of members of the legal profession;
- To represent the legal profession provincially, nationally and internationally; and
- To promote the interests of the members of the Canadian Bar Association.

The CBA nationally represents approximately 36,000 members and the British Columbia Branch itself has over 7,000 members. Our members practice law in many different areas. The CBA has established 76 different sections to provide a focus for lawyers who practice in similar areas to participate in continuing legal education, networking, research and law reform. The CBA has also established committees to develop policy and submissions in specific areas and to develop and implement programs of interest to members.

In 2007, 2010, 2013 and 2016, the CBA made submissions to the Commission regarding compensation for Provincial Court Judges and Judicial Justices.

## **EXECUTIVE SUMMARY**

The CBA makes seven submissions for the Commission to consider.

First, the CBA submits the Commission apply the applicable constitutional principles in order to ensure an effective process characterized by government goodwill, a depoliticized judicial compensation process and judicial independence through fair and reasonable judicial compensation.

Second, the CBA submits the Commission consider the Provincial Court judges' and the Judicial Justices' work environment as the Province's "people's court", its heavy and complex caseload, the need for judges to travel and the unique demands imposed on Provincial Court judges in working with large numbers of unrepresented litigants.

Third, the CBA submits the Commission consider the Judicial Justices' work environment: that Judicial Justices are the face of the Provincial Court, are perceived by the public as judges, are often conducting hearings with lay litigants and have considerable responsibility for the legal rights and freedoms of ordinary people.

Fourth, the CBA submits the Commission find the government pay the costs incurred by the Provincial Court Judges' Association of British Columbia ("PCJA") to prepare and make its submissions to the Commission.

Fifth, the CBA submits the Commission approach changes in the compensation of others paid by provincial public funds in British Columbia cautiously and with due regard to the constitutional factors.

Sixth, the CBA submits the Commission be mindful of the applicable constitutional principles when considering the generally accepted current and expected economic conditions in British Columbia. Further, the CBA suggests the Commission find the current and expected economic conditions in BC permit fair and reasonable judicial compensation for both Provincial Court Judges and Judicial Justices.

Seventh, the CBA submits the Commission find the current and expected financial position of the government over the 3 fiscal years that are the subject of the report permits fair and reasonable judicial compensation for both Provincial Court Judges and Judicial Justices.

## **FAIR PROCESS TO DETERMINE JUDICIAL COMPENSATION**

Under the [Judicial Compensation Act](#), S.B.C. 2003, c. 59 (the “Act”), the Commission must report to the Minister of Justice on all matters respecting the remuneration, allowances and benefits of judges and judicial justices and make recommendations with respect to those matters covering the next 3 fiscal years.

The Act further requires the Minister of Justice to submit the Commission’s report to the Legislative Assembly. Under the Act, the Legislative Assembly may reject one or more of the recommendations made in the report and set the remuneration, allowances or benefits to be substituted for those proposed by the rejected Commission’s recommendations.

Section 5(5) of the Act lists the factors the Commission must consider in recommending judicial compensation:

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

Section 5.1 of the Act provides that the Commission's report must demonstrate that the Commission has considered all of the factors set out in section 5(5).

Section 5(5.2) allows that the Commission may consider factors it considers relevant that are not set out in section 5(5), but if the Commission relies on another factor, the Commission's report must explain the relevance of the factor.

### ***Judicial Independence***

Recently, the Supreme Court of Canada has taken the opportunity to make observations about judicial independence. In *Groia v. Law Society of Upper Canada*, [\[2018\] 1 SCR 772](#), 2018 SCC 27 (CanLII) at para. 167:

Judicial independence is, without question, a cornerstone of Canadian democracy. It is essential to both the impartiality of the judiciary and the maintenance of the rule of law (*Reference Re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997 CanLII 317 \(SCC\)](#), [1997] 3 S.C.R. 3, at para. 10). As Chief Justice Dickson remarked more than 30 years ago: “The role of the courts as resolver of disputes, interpreter of the law and defender of the Constitution requires that they be completely separate in authority and function from all other participants in the justice system” (*Beauregard v. Canada*, [1986 CanLII 24 \(SCC\)](#), [1986] 2 S.C.R. 56, at p. 73 (emphasis in original); see also *Mackeigan v. Hickman*, [1989 CanLII 40 \(SCC\)](#), [1989] 2 S.C.R. 796, at pp. 827-28).

The CBA recommends that the Commission be mindful that its work is grounded with the overriding principle that judicial independence is the cornerstone of democracy.

### ***Constitutional Principles Applied to the Function of Judicial Compensation Commissions for Provincial Court Judges***

As a matter of constitutional law, certain additional legal principles have been established to provide key guidance for any judicial compensation commission. In [Reference Re Remuneration of Judges of the Provincial Court of Prince Edward Island](#), [1997] 3 SCR 3 (“*PEI Reference*”) (a case in which the CBA intervened), the Supreme Court of Canada considered the manner and extent to which provincial governments and legislatures can reduce the salaries of provincial court judges. Chief Justice Lamer described the Court’s task as “explain[ing] the proper constitutional relationship between provincial court judges and provincial executives” (para. 8). He noted at paras. 9-10 the connection between financial security and judicial independence and the goals served by judicial independence:

One of these goals is the maintenance of public confidence in the impartiality of the judiciary, which is essential to the effectiveness of the court system. Independence contributes to the perception that justice will be done in individual cases. Another social goal served by judicial independence is the maintenance of the rule of law, one aspect of which is the constitutional principle that the exercise of all public power must find its ultimate source in a legal rule.

Having considered applicable constitutional principles, Chief Justice Lamer set out the following principles to be followed in setting judicial compensation:

- a) salaries of Provincial Court judges may be reduced, increased or frozen, but any changes to or freezes in judicial remuneration require prior recourse to a special process, which is independent, effective and objective, for determining judicial remuneration (para. 133);
- b) under no circumstances is it permissible for the judiciary to engage in negotiations over remuneration with the executive or representatives of the legislature (para. 134);
- c) any reduction to judicial remuneration, including *de facto* reductions through the erosion of salaries by inflation, cannot take those salaries below a basic minimum level of remuneration which is required for the office of a judge (para. 135);
- d) the commissions charged with the responsibility of dealing with the issue of judicial remuneration must meet three general criteria: they must be independent, objective and effective (para. 169);

- e) with respect to the question of the commission being “effective”, while this does not mandate that a commission report be binding (paras. 178):

The fact that the report need not be binding does not mean that the executive and the legislature should be free to ignore it. On the contrary, for collective or institutional financial security to have any meaning at all, and to be taken seriously, the commission process must have a meaningful impact on the decision to set judges’ salaries.

- f) financial security is a means to the end of judicial independence, and is therefore for the benefit of the public (para. 193);
- g) the same principles that apply to salaries for judges apply equally to judicial pensions and other benefits (para. 136);
- h) judges, although they must ultimately be paid from the public purse, are not civil servants since civil servants are part of the executive, and judges, by definition, are independent of the executive (para. 143);
- i) if a government rejects the recommendations of a judicial compensation commission, the government must “articulate a legitimate reason” why it has chosen to depart from the recommendations of the commission (para. 183);
- j) if judicial review is sought after a government rejects the recommendations of a judicial compensation commission, a reviewing court must inquire into the reasonableness of the factual foundation of the claim (para. 183);
- k) there should be no negotiation for remuneration between the judiciary and the executive and legislature because negotiations for remuneration from the public purse are “indelibly political”, but it is proper for Provincial Court judges to convey their concerns and make submissions to government regarding the adequacy of current levels of remuneration (para. 134); and

- l) judges' salaries must not fall below the basic minimum level of remuneration for the office of a judge (para. 135) that is "adequate, commensurate with the status, dignity and responsibility of their office" (para. 194).

These constitutional principles also apply to the Act to inform the factors listed in section 5(5) of the Act.

### ***Constitutional Principles Applied Since The PEI Reference for Provincial Court Judges***

In 2005, the Supreme Court of Canada reaffirmed the constitutional principles from the *PEI Reference* in [\*Provincial Court Judges' Assn. of New Brunswick v. New Brunswick \(Minister of Justice\)\*](#); [\*Ontario Judges' Assn. v. Ontario \(Management Board\)\*](#); [\*Bodner v. Alberta\*](#); [\*Conférence des juges du Québec v. Québec \(Attorney General\)\*](#); [\*Minc v. Québec \(Attorney General\)\*](#), 2005 SCC 44, [2005] 2 S.C.R. 286 ("*Bodner*") (another case in which the CBA intervened).

Having confirmed that the principles stated in the *PEI Reference* remain valid (para. 13), the Court went on to emphasize the importance of judicial independence within Canada, stating that:

- a) judicial independence is "the lifeblood of constitutionalism in democratic societies" (para. 4);
- b) judicial independence is "necessary because of the judiciary's role as protector of the Constitution and the fundamental values embodied in it, including the rule of law, fundamental justice, equality and preservation of the democratic process" (para. 4);

- c) judicial independence has two dimensions: first, the individual dimension, which relates to the independence of a particular judge and the second, the institutional dimension, which relates to the independence of the court the judge sits on; “Both dimensions depend upon objective standards that protect the judiciary’s role” (para. 5);
- d) the “judiciary must both be and be seen to be independent” (para. 6);
- e) “[j]udicial independence serves not as an end in itself, but as a means to safeguard our constitutional order and to maintain public confidence in the administration of justice” (para. 6); and
- f) key components of judicial independence are: security of tenure, administrative independence and financial security (para. 7).

The Supreme Court of Canada stated in *Bodner* that a commission must focus on identifying the appropriate level of remuneration for the judicial office in question and address all relevant issues in a flexible manner (para. 14).

The *Bodner* decision requires a government to give weight to the commission’s recommendations, and provide a complete response to them (para. 23). A government may depart from a commission’s recommendations, if the government provides complete and legitimate reasons and that deal with a commission’s recommendations in a meaningful way that will meet the standard of rationality (para. 25).

On judicial review of a government’s refusal to follow a commission’s recommendations, *Bodner* provides that the court must focus on the government’s response and on whether the purpose of the commission process has been achieved. Further, the reviewing court should apply a three-stage test for determining the rationality of the government’s response:

1. Has the government articulated a legitimate reason for departing from the commission's recommendations?
2. Do the government's reasons rely upon a reasonable factual foundation? and
3. Viewed globally, has the commission process been respected and have the purposes of the commission — preserving judicial independence and depoliticizing the setting of judicial remuneration — been achieved? (para. 31).

### ***Constitutional Principles Applied to the Function of Judicial Compensation Commissions for Judicial Justices***

In 2003, the Supreme Court of Canada released its decision in [Ell v. Alberta](#), [2003] 1 SCR 857, 2003 SCC 35 (CanLII)(*Ell*). In *Ell*, the Supreme Court held that the principles of judicial independence that apply to Provincial Court Judges apply equally to Judicial Justices. Specifically, in *Ell*, the Supreme Court of Canada held that:

- a) principles of judicial independence apply to judicial justices as a result of their authority to exercise judicial functions (para. 17);
- b) Judicial justices serve on the front line of the criminal justice process, and perform numerous judicial functions that significantly affect the rights and liberties of individuals (para. 24);
- c) Judicial justices are included in the definition of “justice” under s. 2 of the *Criminal Code*, R.S.C. 1985, c. C-46, and are authorized to determine judicial interim release (bail) pursuant to s. 515 of the *Code* (para. 24).

Further, in *Ell*, the Supreme Court of Canada acknowledged that:

[j]ustices of the peace have played an important role in Canada's administration of justice since the adoption of the position from England in the 18th century... [t]he administration of justice could not be carried on in the Provinces effectually without the appointment of justices of the peace and police magistrates” (para. 4).

The Supreme Court of Canada further held that the principles of judicial independence that apply to judges apply equally to Judicial Justices. More specifically, the Supreme Court of Canada determined that Judicial justices:

- a) exercise an important judicial role;
- b) have had their functions expanded over the years; and
- c) require constitutional protection (para. 24).

### ***Meaningful Effect***

In 2016, *Bodner* was considered by the Ontario Superior Court Of Justice in [Association of Justices of the Peace of Ontario v Ontario](#), 2016 ONSC 2187 (CanLII). The Ontario Superior Court Of Justice granted an interim order staying implementation of changes to benefits regarding Ontario judicial justices, in favor of the justices association. In that case, considering *Bodner*, the Ontario Superior Court of Justice held that:

[20] The applicable principles governing government responses to judicial compensation Commission reports have also been set out in a series of decisions of the Supreme Court of Canada which has stressed that the work of judicial compensation Commissions must be given “meaningful effect”. This does not mean that the recommendations of Commissions must be binding, as they are not binding absent specific legislation requiring them to be so. Rather, governments are permitted to depart from recommendations in a report, but only for a “rational” reason. A government’s response “must be complete, must respond to the recommendations themselves and must not simply reiterate earlier submissions that were made to and substantively addressed by the commission” (*Bodner*, supra). I understand that statement to mean that a “reason” may be found to not be adequately “rational” as required by the constitutional process and therefore a government’s response may not pass constitutional muster.

### **Conclusion**

The judgments in the *PEI Reference* and in *Bodner* reflect the ongoing tension between the need to protect judicial independence, and the need for the judicial compensation commission process to be effective, with the ability of the government to properly manage the public's finances. Determining whether such commission reports have been given "meaningful effect", which is the key manifestation of the constitutional requirement that such commissions be "effective", has led to recent litigation in British Columbia.

The Commission should be proceeding on the assumption that its recommendations will be given meaningful effect. British Columbia's judicial compensation commissions have attempted to balance the various statutory factors and constitutional imperatives within which they work. While the recommendations of a commission are not binding, they are to be accorded respect and the circumstances in which they are not implemented should be few and far between.

## **WORK OF PROVINCIAL COURT JUDGES AND JUDICIAL JUSTICES**

The work of the Provincial Court Judges and Judicial Justices is challenging and essential for the proper administration of justice and access to justice in BC.

### ***Provincial Court Judges***

Past commissions have all acknowledged the extensive and comprehensive work of Provincial Court judges.

The 2001 Commission called the Provincial Court, the “people’s court”; that “name reflects the high volume of cases it hears and the fact that the Provincial Court is the only court many people in BC will ever deal with directly.”<sup>1</sup>

The 2004 Commission observed that many judges “travel extensively to provide the full range of criminal, civil and family justice in a great many locations throughout the province”.<sup>2</sup>

The 2007 Commission identified that, “the work of the Provincial Court is such that its judges are the personification of justice for the vast majority of British Columbians”.<sup>3</sup>

The 2010 Commission found that working with the large number of unrepresented litigants “demands that Provincial Court judges possess the qualities of patience, humility and compassion, and a keen understanding of human nature.”<sup>4</sup>

The 2013 Commission found that the “Court’s work is impressive and that British Columbians are well served by their Provincial Court judges.”<sup>5</sup>

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<sup>1</sup> [Page 10.](#)

<sup>2</sup> [Page 13.](#)

<sup>3</sup> [Page 10.](#)

<sup>4</sup> [Page 19.](#)

The 2016 Commission found that the “quality of the work performed by judges and judicial justices of the Provincial Court is remarkable” and that the Commission is “convinced that that people of British Columbians are well-served by its dedicated and impressive Provincial Court judges and judicial justices.”<sup>6</sup>

The CBA recommends that the Commission consider the Provincial Court judges’ work environment, as the Province’s “people’s court”, its heavy and complex caseload, the need for judges to travel and the unique demands imposed on Provincial Court judges in working with large numbers of unrepresented litigants.

### ***Judicial Justices***

Like Provincial Court Judges, past commissions have all recognized the excellent work that Judicial Justices do.

The first 2002 British Columbia Judicial Justices Of The Peace Compensation Commission found that Judicial Justices, are for many British Columbians, “the face” of the Provincial Court.”<sup>7</sup>

The 2004 British Columbia Judicial Justices Of The Peace Compensation Commission observed that:

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<sup>5</sup> [Page 19.](#)

<sup>6</sup> [Page 17.](#)

<sup>7</sup> [Page v.](#)

The absence of lawyers—both to defend and to prosecute the majority of cases heard in this court—places a burden on the JJPs. The defendant is often experiencing the court system for the first time, is usually anxious and may be uncomfortable in the English language. With no lawyers to explain the procedures and relevant law to the defendant, that job falls to the JJP, who must take special care to maintain both the reality and the appearance of impartiality.<sup>8</sup>

The 2007 British Columbia Judicial Justices Of The Peace Compensation Commission identified that:

When presiding in court, JJPs 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 the care and patience, courteous consideration and impartial judicial deportment that is required of judges.<sup>9</sup>

The 2010 British Columbia Judicial Justices Of The Peace Compensation Commission found that:

Judicial Justices deal with judicial interim releases at the Justice Centre by teleconference or by videoconference. In conducting these hearings they are frequently dealing with unrepresented litigants and inexperienced police officers. As in court, these hearings are conducted without the benefit of additional support staff. The responsibility of the JJs is considerable as the outcome of these hearings could result in the incarceration of an individual until the conclusion of their trial – regardless of whether the individual is ultimately found guilty of the offence charged.<sup>10</sup>

The 2013 British Columbia Judicial Justices Of The Peace Compensation Commission concluded that:

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<sup>8</sup> [Page 7.](#)

<sup>9</sup> [Page 7.](#)

<sup>10</sup> [Page 10.](#)

Without exception, the members of the Commission were impressed by the work done by the JJPs and we have no doubt that the residents of British Columbia are very well served by those that hold the office of Judicial Justice.<sup>11</sup>

The CBA recommends that the Commission consider the Judicial Justices' work environment, that:

- a) Judicial Justice are the face of the Provincial Court;
- b) Are perceived by the public as judges;
- c) Are often conducting hearings with lay litigants; and
- d) Have considerable responsibility for the legal rights and freedoms of ordinary people.

## **REMUNERATION, ALLOWANCES AND BENEFITS OF JUDGES OR JUDICIAL JUSTICES**

Section 5(1)(a) of the Act requires the Commission to report on all matters respecting the remuneration, allowances and benefits of judges or judicial justices.

Costs of the PCJA to make its submissions to the Commission come under the section 5(1)(a). The CBA submits that it is reasonable for the Commission to recommend that

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<sup>11</sup> [Page 16.](#)

the government pay the costs incurred by the PCJA to prepare and make its submissions to the Commission, including legal fees, disbursements and experts. In its submissions, the PCJA have requested that the Commission to have the government pay its costs. The government has paid the PCJA's costs in the past.

## **THE NEED TO MAINTAIN A STRONG COURT BY ATTRACTING QUALIFIED APPLICANTS**

Judicial salaries should be sufficient so as to attract highly qualified applicants. The proper and efficient operation of the judicial system depends on a high level of judicial competence. In order to attract qualified applicants, judicial compensation must be comparable. It is submitted that this factor is key both within the context of the statutory mandate of the Commission as well as in the way it reflects the constitutional imperatives highlighted in the *PEI Reference* and *Bodner*.

## **CHANGES TO THE JURISDICTION OF JUDGES OR JUDICIAL JUSTICES**

In the 2016 Judicial Compensation Commission reported there was consensus that there was no change to the jurisdiction of judges or judicial justices. As a result, this factor was neutral in the Commission's determinations.<sup>12</sup> Since then, there have been changes to this jurisdiction.

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<sup>12</sup> [Page 46.](#)

On July 8, 2016 the Supreme Court of Canada released *R. v. Jordan*, [\[2016\] 1 SCR 631](#), 2016 SCC 27 (CanLII). *Jordan* established a new framework that applied to trial delays to determine the right of the accused to be tried within a reasonable time. For Provincial Court trials, delays that are more than 18 months from the time the Information is sworn to the conclusion of the trial are considered unreasonable. Compliance with *Jordan*'s 18-month deadline imposes stress and strain on the work of the Provincial Court Judges. The CBA is concerned that "beating the ticking clock" cannot supersede trial fairness and speed cannot supersede the truth-seeking function of the trial process. While the Provincial Court reports that "[i]n almost all areas of the province the Court is able to offer court time for trials well below the 18 month ceiling"<sup>13</sup>, *Jordan* requires deployment of available judicial resources, with Judges needing to manage longer cases, that are more complex, always mindful that the clock is ticking.

On June 1, 2017, the Provincial Court's small claims jurisdiction was increased from \$25,000 to \$35,000 while at the same time, small claims matters less than \$5,001 are no longer resolved in Provincial Court but in the Civil Resolution Tribunal.<sup>14</sup> This has resulted in a decrease in new small claims files in Provincial Court.<sup>15</sup> However, the increased monetary limit allows litigants, who previously could only bring these larger claims in the BC Supreme Court, to apply to have the Provincial Court resolve their claims.

The CBA recommends that the Commission apply this change of jurisdiction factor in a positive manner to benefit Provincial Court Judges.

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<sup>13</sup> [Provincial Court of BC Annual Report 2017/2018 \(PC Annual Report\) at page 43.](#)

<sup>14</sup> [B.C. Reg. 120/2017.](#)

<sup>15</sup> [PC Annual Report at page 35.](#)

## **CHANGES IN THE COMPENSATION OF OTHERS PAID BY PROVINCIAL PUBLIC FUNDS IN BRITISH COLUMBIA**

This factor requires the Commission to consider changes in the compensation of others paid by provincial public funds in British Columbia. While not defined in the Act, these are civil servants employed by the public service. Civil servants in British Columbia regularly engage in negotiations with the BC government for remuneration, pensions and benefits.

The CBA recommends that the Commission approach this factor cautiously and with due regard to the constitutional factors discussed earlier in this submission. The *PEI Reference*, noted above, sets out several differences between judges (and judicial justices) and civil servants.

First, unlike civil servants, Provincial Court Judges and Judicial Justices are legally barred from collective bargaining with the BC government (para. 134).

Second, unlike civil servants, any reduction to judicial remuneration made by the BC government, including *de facto* reductions through the erosion of salaries by inflation, cannot take those salaries below a basic minimum level of remuneration which is required for the office of a judge or judicial justice (para. 135).

Third, the same principles that apply to salaries for judges and judicial justices apply equally to judicial pensions and other benefits (para. 136).

Fourth, judges and judicial justices, although they must ultimately be paid from the public purse, are not civil servants since civil servants are part of the executive, and judges and judicial justices, by definition, are independent of the executive (para. 143).

Fifth, judicial salaries must not fall below the basic minimum level of remuneration for the office of a judge or judicial justice (para. 135) that is “adequate, commensurate with the status, dignity and responsibility of their office” (para. 194).

Unlike others paid by provincial public funds, judges are constitutionally guaranteed a minimum acceptable level of judicial remuneration. This is because judges ensure that the rule of law protects citizens against the arbitrary exercise of power and resolve disputes among citizens. Although sometimes referred to as a third level of government, judges are independent from government. In making these points, we wish to underscore the unique and important role the judiciary occupies in our democratic society requiring caution when comparing to civil servants.

One anomaly that should be noted is the linkage between legal counsel salary increases with Provincial Court judges' salary increases. Crown counsel and legal counsel are entitled to the equivalent of any Provincial Court judges' salary increase plus 1.27%. If, indeed the changes in the compensation of others paid by provincial public funds in British Columbia are to be sufficiently factored in, then the Provincial Judges salary increases will always and consistently fall behind salary increases paid to the Provincial Crown and legal counsel salaries. In our view, this linkage underscores a cautious approach to considering this factor.

Percentage increases in remuneration are only a relevant measure with respect to section 5(5)(d) of the Act regarding changes in the compensation of others paid by provincial public funds. The Commission is unable to adequately assess the other factors required by the Act if its recommendation is made on a percentage basis.

While consideration of this factor is required by legislation, the existing constitutional jurisprudence mandates a cautious approach and suggests that in these circumstances, less weight be given to this factor.

## GENERALLY ACCEPTED CURRENT AND EXPECTED ECONOMIC CONDITIONS IN BRITISH COLUMBIA

The generally accepted current and expected economic conditions in British Columbia is a relevant factor for the Commission to consider.

The BC government currently has not only a balanced budget but maintains a large surplus. As the government describes in its 2019 Budget Highlights, “careful fiscal management allowed the government to eliminate British Columbia’s operating debt in Q2 of the 2018–19 fiscal year for the first time in 40 years.”<sup>16</sup>

On April 16, 2019, the government reported that:

Standard & Poor’s (S&P) has affirmed British Columbia’s ‘AAA’ credit rating, citing strong financial management, balanced budgets and a robust and diversified economy.<sup>17</sup>

On May 6, 2019, the government reported that the:

International credit rating agency Moody’s Investors Service has affirmed British Columbia’s AAA credit rating, citing strengths in B.C.’s diversified economy, consistent balanced budgets, projected surpluses and strong debt affordability.<sup>18</sup>

On May 10, 2019, the government reported that:

With increased job growth, British Columbia continues to have the best-performing economy in the country. For 21 months in a row, British Columbia has held the lowest rate of unemployment in Canada. In April, it was 4.6%.<sup>19</sup>

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<sup>16</sup> [Page 7.](#)

<sup>17</sup> [Ministry of Finance News Release](#)

<sup>18</sup> [Ministry of Finance News Release](#)

<sup>19</sup> [Ministry of Jobs, Trade and Technology News Release](#)

As a result, the CBA recommends that the Commission find that the current and expected economic conditions in BC permit fair and reasonable judicial compensation for both Provincial Court Judges and Judicial Justices.

**THE CURRENT AND EXPECTED FINANCIAL POSITION OF GOVERNMENT OVER THE THREE FISCAL YEARS THAT ARE THE SUBJECT OF THE REPORT**

The current and expected financial position of the government over the 3 fiscal years that are the subject of the report is a factor that focuses on the government’s own current and projected financial condition.

The government’s current and expected future finances are very strong. Currently the government has not only a balanced budget but has surpluses. The government’s economic forecast for each of the next 3 years is all about large surpluses:<sup>20</sup>

<b>Fiscal Year</b>	<b>BC Government Surpluses</b>
2019-2020	\$274 million
2020-2021	\$287 million
2021-2022	\$585 million

As a result, the CBA recommends that the Commission find that the current and expected financial position of the government over the 3 fiscal years that are the subject of the report permits fair and reasonable judicial compensation for both Provincial Court Judges and Judicial Justices.

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<sup>20</sup> BC Budget and Fiscal Plan 2019-20 to 2021-2022 at [page 7](#).

## **SUMMARY OF SUBMISSIONS**

In these Submissions, the CBA submits that:

### **SUBMISSION #1:**

The CBA submits the Commission apply the applicable constitutional principles in order to ensure an effective process characterized by government goodwill, a depoliticized judicial compensation process and judicial independence through fair and reasonable judicial compensation.

### **SUBMISSION #2:**

The CBA submits the Commission consider the Provincial Court judges' and the Judicial Justices' work environments as the Province's "people's court", its heavy and complex caseload, the need for judges to travel and the unique demands imposed on Provincial Court judges in working with large numbers of unrepresented litigants.

### **SUBMISSION #3:**

The CBA submits the Commission consider the Judicial Justices' work environment: that Judicial Justice are the face of the Provincial Court, are perceived by the public as judges, are often conducting hearings with lay litigants and have considerable responsibility for the legal rights and freedoms of ordinary people.

**SUBMISSION #4:**

The CBA submits the Commission find the government pay the costs incurred by the Provincial Court Judges' Association of British Columbia ("PCJA") to prepare and make its submissions to the Commission.

**SUBMISSION #5:**

The CBA submits the Commission approach this factor-- changes in the compensation of others paid by provincial public funds in British Columbia--cautiously and with due regard to the constitutional factors.

**SUBMISSION #6:**

The CBA submits the Commission be mindful of the applicable constitutional principles when considering the generally accepted current and expected economic conditions in British Columbia. Further, the CBA suggests that the Commission find the current and expected economic conditions in BC permit fair and reasonable judicial compensation for both Provincial Court Judges and Judicial Justices.

**SUBMISSION #7:**

The CBA submits the Commission find that the current and expected financial position of the government over the 3 fiscal years that are the subject of the report permits fair and reasonable judicial compensation for both Provincial Court Judges and Judicial Justices.

## **CONCLUSION**

The CBA has a proud tradition of speaking out and protecting the independence of the judiciary and providing access to justice.

Consequently, we urge this Commission to recommend to the government that both the Provincial Court Judges and Judicial Justices be fairly and reasonably compensated in order to uphold, preserve and protect the independence of the judiciary in British Columbia.

All of which is respectfully submitted this 5<sup>th</sup> day of June 2019.

## **ORIGINAL SIGNED BY**

*Kenneth Armstrong*

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