

**British Columbia
Judicial Compensation Commission
2022**

FINAL REPORT

**To the Attorney General and the
Chief Judge of the Provincial Court**

April 28, 2023

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1 Overview

1.1 Introduction

The 2022 Judicial Compensation Commission (“2022 JCC”) makes this report with our recommendations to the Attorney General and the Chief Judge of the Provincial Court. We have been mandated to make independent and objective recommendations regarding the remuneration, allowances, and benefits of British Columbia’s Provincial Court judges and judicial justices. We have considered all the information placed before us¹ and assessed it with respect to each of the statutory factors (described below), and as a whole. We have looked back at the work of past judicial compensation commissions, and forward in making recommendations for the four fiscal years ahead.

Compensation of the judiciary—and the process by which changes to compensation occur—must respect the constitutional principle of judicial independence. The courts must “be free and appear to be free of political interference through economic manipulation by other branches of government” including the legislature.² While the legislative branch of government must authorize all public spending and may reduce, increase, or freeze judicial salaries, “the imperative of protecting the courts from political interference through economic manipulation requires that an independent body—a judicial compensation commission—be interposed between the judiciary and the other branches of government.”³

The executive and legislative branches of government may decide on the “exact shape and powers” of such a commission; nevertheless, a judicial compensation commission must be independent, objective, and effective.⁴ Its constitutional function is to depoliticize the process of determining judicial remuneration.

In British Columbia, the *Judicial Compensation Act* (the “Act”) sets out the process for selecting an independent commission to make recommendations on all matters respecting the remuneration, allowances and benefits of Provincial Court judges and judicial justices.⁵ The commissioners must

¹ See Appendices A, B, D, F, and G. The full citations for abbreviations used in the footnotes to this report are found in Appendices A, B, and D.

² *Reference re Remuneration of Judges of the Provincial Court of PEI; Reference re Independence and Impartiality of Judges of the Provincial Court of PEI*, [1997] 3 SCR 3 [“PEI Reference”], para. 131.

³ *PEI Reference*, para. 147.

⁴ *PEI Reference*, paras. 167, 170, 173, and 174.

⁵ *Judicial Compensation Act*, SBC 2003, c. 59 [the “*Judicial Compensation Act*”], ss. 2(2), and 5(1).

make recommendations with reference to objective criteria—not political expediencies.⁶ The Act provides objective criteria for the commission’s use in the form of six factors for consideration:⁷

- (a) the need to maintain a strong court by attracting highly qualified applicants;
- (b) changes, if any, to the jurisdiction of judges or judicial justices;
- (c) compensation provided in respect of similar judicial positions in Canada, having regard to the differences between those jurisdictions and British Columbia;
- (d) changes in the compensation of others paid by provincial public funds in British Columbia;
- (e) the generally accepted current and expected economic conditions in British Columbia; and
- (f) the current and expected financial position of the government over the 4 fiscal years that are the subject of the report.

The commission may also consider other factors it considers relevant.⁸

In addition to being independent and objective, “most importantly, the commission must also be effective.”⁹ For the commission process to be effective, the government must not make changes to judicial compensation until it has received a report from a judicial compensation commission, and the commission must convene at regular intervals to protect against the reduction in judicial salaries due to inflation.¹⁰ Further, the commission’s report “must have a meaningful effect on the determination of judicial salaries.”¹¹ “Meaningful effect” does not mean the commission’s report is binding on government; the government retains the power to depart from the commission’s recommendations as long as it justifies its decision to do so with “rational reasons.”¹² However, the commission’s recommendations must be given weight.¹³

⁶ *PEI Reference*, para. 173.

⁷ *Judicial Compensation Act*, s. 5(5).

⁸ *Judicial Compensation Act*, s. 5(5.2).

⁹ *PEI Reference*, para. 173.

¹⁰ *PEI Reference*, para. 174.

¹¹ *PEI Reference*, para. 175.

¹² *Provincial Court Judges’ Association of New Brunswick v. New Brunswick (Minister of Justice)*; *Ontario Judges’ Association 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 SCR 286 [“*Bodner*”], paras. 20-22; *PEI Reference*, paras. 182-184.

¹³ *Bodner*, para. 23.

1.2 Summary of Recommendations

1. *Salaries*: The Government should set the Provincial Court judges' and judicial justices' salaries for the next four fiscal years as follows:

Fiscal Year:	2023-24	2024-25	2025-26	2026-27
Provincial Court Judges	\$343,000	\$360,000	\$360,000 + a percentage increase equivalent to the annual average percentage change in BC CPI for 2024 ¹⁴	2025-26 salary + a percentage increase equivalent to the annual average percentage change in BC CPI for 2025
Judicial Justices	\$172,000	\$177,000	\$182,000	\$187,000

2. *Salary Differentials*: Administrative judges should continue to receive the following percentages of a puisne judge's salary: Chief Judge 112%; Associate Chief Judges 108%; and Regional Administrative Judges 106%. Administrative Judicial Justices should receive 106% of judicial justice compensation.
3. *Judges' Pensions*: The 3% accrual rate for judge's pensions should be maintained.
4. *Non-judicial Pensions for Judges*: The *Judicial Compensation Act* should be amended to align the non-judicial pensionable service provisions with the Public Service Pension Plan rule changes made in 2018 and 2022, as detailed in Appendix F, in respect of the following:
 - i. the benefit accrual rates for service between April 1, 2018 - March 31, 2022, and after April 1, 2022;
 - ii. the past service benefit enhancement and the bridge benefit for the period of April 1, 2006 - March 31, 2018 and after April 1, 2018; and
 - iii. the early retirement factor for non-judicial service earned on or after April 1, 2018.
5. *Flexible Benefits Program*: Effective January 1, 2024, Provincial Court judges should receive the enhancements to the flexible benefits program that were offered to excluded public sector employees on January 1, 2023. Future enhancements to the flexible benefits plan for excluded employees and appointees should be automatically implemented for the Provincial Court judges, with the judiciary having recourse to seek changes through future judicial compensation commissions.

¹⁴ See footnote 261, *infra*, for remarks about the calculation of BC CPI.

6. *Part-time Judicial Justice Amount in lieu of Benefits:* The amount in lieu of benefits added to the per diem pay for part-time judicial justices should be increased from 20% to 22%.
7. *Shift Premiums for Judicial Justices:* As set out in Appendix G, new holidays should be added to the list of the holidays that attract a \$245 shift premium, the shift premium for Christmas Day should be increased by \$75, a weekend shift premium of \$75 should be implemented and a court closure day shift premium of \$75 should be implemented.
8. *Overhead Amount for Part-time Judicial Justices:* The overhead amount added to the per diem pay for part-time judicial justices should be increased from \$75 to \$100.
9. *Professional Development Allowance:* For the next four fiscal years, the professional development allowance for judges should remain at \$4,500 per year, and the professional development allowance for judicial justices should remain at \$3,250 per year.
10. *Travel Allowance:* The current travel allowance (or travel per diems) for judges and judicial justices should be maintained.
11. *Interest on Retroactive Salary Increases:* For retroactive salary increases, the Government should pay judges or judicial justices pre-judgment interest from April 1, 2023 to the date on which the increase is established and post-judgment interest thereafter until payment is made.
12. *Costs:* The Government should, by regulation pursuant to section 7.1(3) of the *Judicial Compensation Act*, reimburse 100% of the reasonable costs and disbursements, including expert witness costs, of the Provincial Court Judges Association (PCJA) and the Judicial Justices Association (JJA) for their participation in the 2022 Commission process.

2 The 2022 Commission and Its Process

2.1 Who Are We and What Was our Mandate?

The 2022 JCC consists of five Commissioners tasked with preparing a report to the Attorney General and the Chief Judge on “all matters respecting the remuneration, allowances and benefits of judges and judicial justices.” The Commissioners make recommendations on those matters for each of the fiscal years 2023-24, 2024-25, 2025-26, and 2026-27.¹⁵ The need to provide reasonable compensation for judges and judicial justices guides this mandate.¹⁶

The statutory appointment process resulted in the following appointments:¹⁷

1. **Vern Blair**, FCPA, FCA, FCBV, FRICS, is a Chartered Professional Accountant and a Chartered Business Valuator. He negotiates for and advises owners and management and is an arbitrator and mediator.
2. **Lisa Castle** is a part-time consultant specializing in supporting organizations to become stronger with their people. She worked in higher education for 28 years, with the majority of those holding the most senior Human Resources role including UBC's first Vice-President, Human Resources.
3. **Eric Gottardi**, KC, is a Vancouver lawyer and former chair of the CBA National Criminal Law Section and the Criminal Section of the Uniform Law Conference of Canada. He sits as a non-bencher adjudicator with the Law Society’s Discipline Tribunal and on the Faculty (and as a planner) of the Federation of Law Societies’ Criminal Law Program.
4. **Robert Lapper**, KC, is a lawyer and law professor. Currently Faculty Chair in Law and Public Policy at the University of Victoria, he previously served as CEO of the Law Society of Ontario, and in several Deputy Minister and Assistant Deputy Minister positions in the BC Government.
5. **Lynn Smith**, OC, KC, Commission Chair, is a retired Justice of the Supreme Court of British Columbia and a former law Professor and Dean of Law at the University of British Columbia.

The Commissioners retained Kathy L. Grant as their counsel.

¹⁵ *Judicial Compensation Act*, ss. 2(2), and 5(1).

¹⁶ *Judicial Compensation Act*, s. 5(5).

¹⁷ *Judicial Compensation Act*, s. 2(2).

Independent of both government and the judiciary, the Commissioners strove to produce an objective report, based on evidence, and taking into account all the factors set out in section 5(5) of the Act.

2.2 What Did We Do?

After holding pre-hearing conferences with the main participants—the Government, the PCJA, the JJA, and the Chief Judge—we received written submissions from them and others, we held oral hearings, we visited several courts, and we deliberated and prepared this report.

As set out in Appendix A, we received written submissions from the main participants as well as the Judicial Council, Canadian Bar Association BC Branch, and the Law Society of British Columbia. The Government has made these submissions publicly available through the Commission’s webpage, online: <https://www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/judicial-compensation/2022-judicial-compensation-commission>. Appendix B describes the books of documents from the main participants, most of which were jointly compiled.

We held four days of in-person oral hearings in Vancouver in mid-February 2023. We held two additional virtual oral hearings, through Zoom, on March 10, 2023 and March 13, 2023, to hear submissions about the provincial budget that was delivered on February 28, 2023 and to complete submissions on the issue of costs. During oral hearings, we heard submissions from the PCJA, the JJA, the Chief Judge (who also spoke for the Judicial Council), and the Government.

We also heard from three witnesses, as set out in Appendix C. Both Mr. Ian McKinnon, a consultant with Pacific Issues Partners, and Ms. Heather Wood, Deputy Minister of Finance for British Columbia, provided evidence concerning the current and expected economic conditions in British Columbia and the current and expected financial position of the government. Mr. André Sauvé, an actuary in private practice, provided us with a comparative analysis of judicial pension plans in Canada.

Documents provided to the Commission during the oral hearing were marked as exhibits, as set out in Appendix D.

To inform our understanding of the work of the Provincial Court, we visited various court locations (see Appendix E). A representative of the Government attended all the court visits. We were impressed by the wide range of cases coming before the court and the fast pace of the work. We saw many instances of the judges dealing with unrepresented litigants and observed the judges’ and judicial justices’ abilities to find the delicate balance between ensuring equal access to justice for unrepresented persons and maintaining judicial impartiality. We also witnessed the impressive innovations of the Provincial Court through, for example, the Indigenous Court and the Downtown Community Court.

We considered all the submissions, documents, witness evidence, and other information described above during our deliberations and report writing. In this report, we highlight the information that is most pertinent to understanding our recommendations.

2.3 What Challenges Did We Face?

We begin by acknowledging the extraordinary work of the participants and their counsel in preparing for and organizing the hearings, and then providing us with evidence, documentation, and detailed and careful submissions—all in an unforgiving timeframe, as described below.

However, we did face certain challenges in completing our mandate.

First, recent statutory amendments extended the timeline for the Commission’s recommendations from three fiscal years to four fiscal years. The inherent uncertainty in forecasting future conditions, particularly with respect to the “expected” elements of the factors set out in subsections 5(5)(d) and 5(5)(e) of the Act, increases with the addition of another year to a commission’s mandate.

Second, the Government delayed the appointment and reporting of the 2022 JCC such that, instead of the Commission operating in the March 1 to October 31 timeframe, it operated over the September 1 to April 30 timeframe.¹⁸ The logical timing for hearings—midway during the commission process—could not be utilized as it fell during the December holiday season. Unfortunately, participants, counsel for the participants, and the Commissioners had prior commitments in January and early February that pushed the dates for oral hearings into mid-February 2023. This left only six weeks for the Commissioners to produce a preliminary report by April 1, 2023, instead of the 2.5 to three months usually available to judicial compensation commissions.

Third, this tight timeline became even more challenging due to the delivery of the 2023-24 provincial budget on February 28, 2023—after the Commission’s oral hearings. As the budget contained forecasting of economic conditions and the Government’s financial position through to later years of the Commission’s mandate, it was important for the Commissioners to hear submissions on the budget. The Commission held additional virtual hearings on March 10 and March 13, 2023. Consequently, the Commissioners had only three weeks after final submissions to prepare their preliminary report.

In addition, in the late afternoon of March 30, 2023, the day before we delivered our Preliminary Report, we were advised that the Lieutenant Governor in Council had increased the maximum amounts for participation costs for the Provincial Court Judges’ Association and the Judicial Justices’ Association.¹⁹

¹⁸ *Bill 30 – 2021 Attorney General Statutes Amendment Act, 2021*, third reading, s. 9.

¹⁹ B.C. Reg. 83/2023, approved and ordered on March 30, 2023. Order in Council No. 194 sets higher amounts for the purposes of section 7.1(2) of the Judicial Compensation Act and effectively revises that section to read as follows:

- (2) The maximum amount that may be paid under subsection (1), which maximum amount applies separately to the Provincial Court Judges’ Association of British Columbia and the Judicial Justices Association of British Columbia, is as follows:
 - (a) the first \$40,000 in costs;
 - (b) 85% of the costs over \$40,000 but under \$150,000.

We were, however, able to consider whether this new regulation changed our conclusions regarding costs prior to issuing our Final Report.

The results of the 2019 Judicial Compensation Commission (“2019 JCC”) with respect to Provincial Court judges’ compensation were unknown at the time we delivered our Preliminary Report. A decision from the Supreme Court of British Columbia on judicial review was then outstanding. As it happens, that Supreme Court decision was delivered on April 3, 2023, two days after we delivered our Preliminary Report on the 2022 JCC.²⁰ The Supreme Court quashed two motions of the Legislative Assembly rejecting the salary and costs recommendations of the 2019 JCC. The matter has been remitted back to the Legislative Assembly for its reconsideration. Thus, the question of compensation for Provincial Court judges for the period covered by the 2019 JCC is still unsettled, as is the question of costs for the 2019 JCC.

Unfortunately, these timing issues are not unique to the 2022 JCC. For several cycles, judicial compensation commissions have had to deal with the same problem: not knowing the final result of the previous commission process. We do not yet know the “final” compensation that will be paid to judges over the 2019 JCC’s mandate.

Finally, the issue of whether and in what circumstances a commission may make a recommendation that departs from the costs formula set out in section 7.1 of the *Judicial Compensation Act* was—at the time the Commission conducted its hearing and wrote its Preliminary Report—before the Supreme Court of British Columbia in the judicial review proceeding following the 2019 JCC. This Commission had to consider whether its recommendations on costs risked conflicting with the (then) anticipated court decision. Additionally, the Government delayed providing submissions on costs until the evening of March 4, 2023 to allow more time for the Court to deliver judgment.²¹ (As it transpired, in our view our recommendations on costs in the Preliminary Report of April 1, 2023, are fully consistent with the April 3, 2023 Supreme Court decision.)

While understandable, this delay put further stress on the timing for the 2022 JCC’s report.

Some of these challenges were unavoidable, but we make the following suggestions to aid future commissions in their work:

- Any change to the statutory timing for a judicial compensation commission should allow for hearings midway through the commission’s process (and should only be made after consultation with the PCJA, JJA, and Chief Judge). This will ensure adequate time for report preparation following the hearings;
- Counsel for the Government, JJA, and PCJA, as well as the Chief Judge should come to the process with significant flexibility in their schedules for a mid-process hearing. In the normal process this would mean hearings at the end of June or early July;

²⁰ *Provincial Court Judges’ Association of British Columbia v. British Columbia (Attorney General)*, 2023 BCSC 520.

²¹ Main Submission of Government, para. 71; Costs Submission of Government.

- Potential commissioners should be pre-screened, prior to their appointment, for their ability to participate in hearings midway through the process;
- The time frame for the commission's work should not overlap with a provincial budget; and
- Submissions on all substantive issues should be delivered to the commission prior to oral hearings. If necessary, the commission has the discretion to seek additional submissions or information if required.

3 The Role and Work of Provincial Court Judges and Judicial Justices

3.1 Jurisdiction and Composition of the Provincial Court

The Provincial Court’s judges and judicial justices are the face of justice to most British Columbians. The Court has broad jurisdiction and operates at over 80 locations.

The Provincial Court is one of two trial courts in the province—the other being the Supreme Court of British Columbia. The Provincial Court is a statutory court, with broad jurisdiction.²² The Court and every judge exercise “power” and “perform all the duties” conferred on them under federal and provincial legislation.²³ The Court exercises jurisdiction in six primary subject areas: adult criminal, youth criminal, family, child protection, civil (small claims), and traffic, ticket, and bylaw matters.

Previous judicial compensation commissions aptly described the Provincial Court as the “People’s Court.”²⁴ The Provincial Court hears 95% of the criminal cases in British Columbia. The only significant exceptions are where an accused elects to be tried by a Supreme Court Justice with or without a jury, murder cases, and extradition cases. In many such cases, a preliminary hearing may be held in Provincial Court. The Provincial Court has exclusive jurisdiction over child protection proceedings. It exercises concurrent jurisdiction with the Supreme Court under the *Family Law Act* over matters of guardianship, parenting arrangements and child and spousal support. It has broad civil jurisdiction over claims between \$5,001 and \$35,000, and it hears applications for exceptions from the Civil Resolution Tribunal (concerning matters of \$5,000 or less).²⁵

Certain matters before the court may only be heard by a Provincial Court judge.²⁶ Aside from these, the Chief Judge may assign the matters to be heard by either judges or judicial justices.²⁷ Currently, judicial justices hear the following: bail hearings outside court sitting hours, judicial

²² Main Submission of Government, para. 31; Submissions of Chief Judge, paras. 15-20; Main Submission of PCJA, paras. 79-80; Submission of Judicial Council, para. 19.

²³ *Provincial Court Act*, RSBC 1996, c. 379 [*Provincial Court Act*], s. 2(3).

²⁴ See for example, Judicial Compensation Commission 2019 Final Report, October 24, 2019, JBD, Vol. 1, Tab 18, p. 10.

²⁵ See descriptions of jurisdiction in Main Submission of PCJA paras. 79-103; Main Submission of Government, paras. 29-31, 42; and Submission of Chief Judge, paras. 17-20.

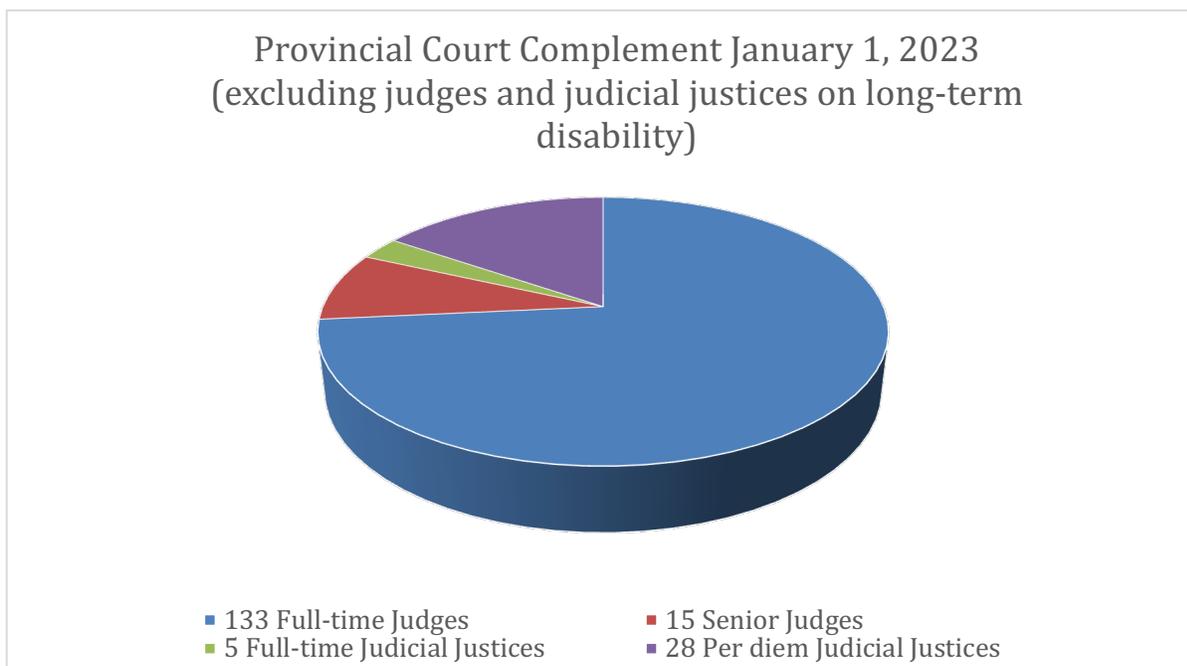
²⁶ *Provincial Court Act*, s. 2.1.

²⁷ *Provincial Court Act*, s. 11.

authorization applications (including for search warrants and production orders), payment hearings, ticket violation hearings, and traffic offences hearings.²⁸

In short, most people who come to court in British Columbia, do so before a judge or judicial justice of the Provincial Court. These judges and judicial justices are the face of justice to most British Columbians.

As of January 1, 2023, there were 131 full-time Provincial Court judges and 15 senior judges (0.45 of a full-time judge) for a complement of roughly 138 full-time equivalent judges.²⁹ Five full-time judicial justices and 28 part-time or “per diem” judicial justices make a total of 33 judicial justices.³⁰



The judges and judicial justices work at over 80 physical locations across the province, in five regions, as depicted in the figure below.³¹ Full-time registries operate at 44 of these locations. Additionally, since the fall of 2020, the Court sits in six virtual bail courts that do not have a

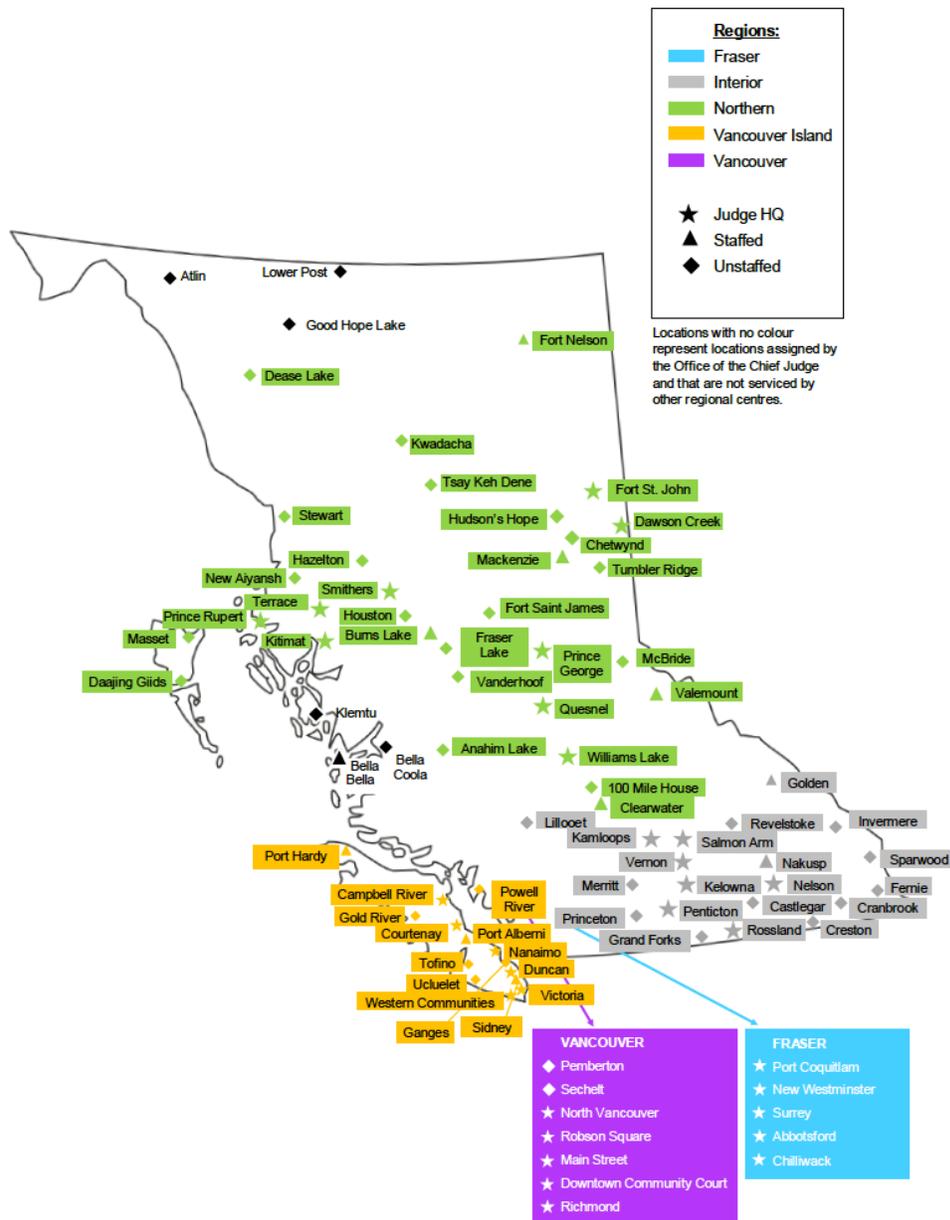
²⁸ Submission of Chief Judge, para. 137; Main Submission of JJA, paras. 40, 48, 58, 70, 74, and 78; Main Submission of Government, para. 60; Judicial Justices Assignment of Duties Pursuant to s. 11 of the *Provincial Court Act*, January 14, 2023, Supplemental Book of Documents of the JJA, Tab 7.

²⁹ Submission of Chief Judge, para. 31. Note these numbers do not include judges on long-term disability. The Chief Judge explained that these numbers are “constantly in flux” and that the number is expected to decline this year due to senior elections and retirements that are coming up: TR February 15, 2023, Chief Judge Gillespie, p. 162, ll. 15-19.

³⁰ Submission of Chief Judge, para. 135. Note these numbers do not include judicial justices on long-term disability. One of the full-time judicial justices is currently sitting part-time. Per diem judicial justices are guaranteed 40 working days per year under s. 30.2(4) of the *Provincial Court Act*, RSBC 1996, c. 379.

³¹ This figure was taken from Submission of the Chief Judge, p. 12.

physical building and that are staffed by clerks and judges (or judicial justices) who may be working in any location in the province. Similarly, the counsel and accused in these virtual bail courts may be at any location in the province.³²



Some judges hold administrative roles within the court. An administrative judge is paid more than a puisne judge because of their extra duties:

- The Chief Judge receives 112% of the puisne judge salary;

³² TR, February 15, 2023, Chief Judge Gillespie, p. 136, l. 1 to p. 137, l. 6.

- Two Associate Chief Judges receive 108% of the puisne judge salary; and
- Five Regional Administrative Judges receive 106% of the puisne judge salary.³³

Similarly, two Administrative Judicial Justices receive 106% of a judicial justice’s remuneration.³⁴

3.2 Current Work of the Court

On average, 65% of the Provincial Court’s work is criminal, 25% is family law (including child protection), and 10% is civil.³⁵

In 2021-22, the court received the following numbers of new or incoming cases:

- 79,458 new or incoming cases in the five subject areas heard by judges (adult criminal, youth criminal, family, child protection and small claims); and
- 69,346 new or incoming traffic, ticket and bylaw offences dealt with by judicial justices.³⁶

These numbers are the lowest in the last five years. However, both the Chief Judge and the Government told us to view the numbers since 2020 with caution due to the impact of the COVID-19 pandemic.³⁷

From 2017-18 to 2021-22, much of the drop in criminal cases—the largest portion of the Court’s work—is explained by drops in property offences and administration of justice offences (e.g., failure to appear or breaches of conditions). The pandemic closures and restrictions on travel, the reduction in in-person hearings, and the shift to working from home all resulted in reduced opportunity to commit these types of offences.³⁸ However, violent crime and offences against the person—including sexual assaults—have increased slightly over the period from 2017-18 to 2021-22. Increased reporting of sexual assault cases likely accounts for this increase.³⁹ Offences against the person are among the most complicated cases heard by the Provincial Court. Sexual assault cases can involve multiple applications and complicated rulings on *voir dire*s. They may require the appointment of legal aid counsel to assist the complainant, and commonly experience scheduling delays and lengthy trials.⁴⁰

The number of self-represented litigants has declined over the last two years. However, again, the numbers need to be approached with caution due to the court shut-down and modifications made during the COVID-19 pandemic. Still, in 2021, there were close to 70,000 appearances made by

³³ Submission of Chief Judge, para. 124.

³⁴ Submission of Chief Judge, para. 165.

³⁵ TR, February 15, 2023, Chief Judge Gillespie, p. 138, ll. 20-24.

³⁶ Main Submission of Government, para. 44; Submission of Chief Judge, paras. 16 and 150.

³⁷ Submission of Chief Judge, para. 16; Main Submission of Government, paras. 46 and 48.

³⁸ TR February 15, 2023, Chief Judge Gillespie, p. 149, ll. 4-14; Exhibit 8 pp. 10 and 19-20.

³⁹ TR February 15, 2023, Chief Judge Gillespie, p. 149, ll. 15-21; Exhibit 8 pp. 10 and 19-20.

⁴⁰ TR February 15, 2023, Chief Judge Gillespie, p. 150, ll. 4-23.

self-represented litigants in the small claims, family, and criminal divisions⁴¹—that is hundreds of appearances by self-represented litigants every day the court is open. The Chief Judge told us that “the number of self-represented litigants has an impact on every step of the court process.”⁴²

Provincial Court Judges

The Chief Judge explained that the workload of judges is affected by several factors in addition to the volume of new cases.⁴³ BC Provincial Court judges do not specialize as they do in some other provinces.⁴⁴ Judges in British Columbia hear all types of cases—criminal, family, and civil—sometimes all in the same day. Judges need to come to the court with either “a diverse practice or the ability to learn and be conversant in multiple areas of the law quickly.”⁴⁵ Sometimes, a judge may be the only judge at a court location and therefore must be capable of dealing with all subject matters and providing reasons on those matters in relatively quick order.⁴⁶ Judges working in the Northern Region often travel long distances in all types of weather to reach remote court locations. Judges assigned to chambers in the Northern Region may spend up to 30-40% of their sitting time on travel status.⁴⁷

While Provincial Court judges may reserve judgment in a longer matter, most decisions are delivered orally at the end of the case following a brief opportunity to consider the material. The judges have little research assistance.⁴⁸ Still, where cases are appealed to the Court of Appeal, the judges’ decisions face the same standard of appellate review as decisions of the Supreme Court of British Columbia, creating “a tension between the volume of the work and the desire to serve the public in a timely manner and to ‘get it right’.”⁴⁹

Technological innovations, particularly the ability of judges to sit virtually, have affected how judges work. As the Chief Judge told us, “It used to be your day was not completed as a judge until the work in your courthouse was completed. Now your day may not be completed until the work in the province is completed because you can be hearing virtual matters, case conferences, taking matters from bail lists all over the province.”⁵⁰ In 2021-22, 79% of all court appearances (excluding

⁴¹ Main Submission of Government, para. 47.

⁴² Submission of Chief Judge, para. 27.

⁴³ See full list of factors in Submission of Chief Judge, para. 21.

⁴⁴ TR February 15, 2023, Chief Judge Gillespie, p. 139, l. 1 to p. 140, l. 6; Submission of Judicial Council, para. 19.

⁴⁵ TR February 15, 2023, Chief Judge Gillespie, p. 140, l. 7 to p. 141, l. 4.

⁴⁶ *Ibid.*

⁴⁷ Submission of Judicial Council, para. 20.

⁴⁸ Submission of Judicial Council, para. 20.

⁴⁹ Submission of Chief Judge, para. 30.

⁵⁰ TR February 15, 2023, Chief Judge Gillespie, p. 156, l. 22 to p. 157, l. 7.

traffic and bylaw) were “technology enabled appearances” where one or more of the participants appeared remotely by audio- or video-conferencing or telephone.⁵¹

The Provincial Court has taken an innovative approach to the administration of justice, leading to national recognition for some of its specialized courts:⁵²

- Vancouver’s Downtown Community Court;
- Victoria’s Integrated Court;
- Drug Treatment Court of Vancouver;
- Indigenous Courts (in eight locations);
- Aboriginal Family Healing Court Conferences (New Westminster);
- Domestic Violence Courts (Cowichan Valley, Nanaimo, Surrey, Kelowna, Penticton, and Kamloops); and
- Kelowna Integrated Court.

Judicial Justices

Judicial justices work in two areas: ⁵³

- a. **Traffic Division:** these Judicial Justices sit in courthouses around the province, hearing disputed violation tickets, small claims payment hearings, disputed municipal bylaw tickets and applications for judicial authorizations brought in person before the court. These Judicial Justices work weekdays when the courthouses are open.
- b. **Justice Centre:** located in Burnaby, the Justice Centre provides access to Judicial Justices from anywhere in the province using telephone and video conferencing. Twenty-three Judicial Justices work through the Justice Centre, either on site or remotely (those working remotely will “sit” at home). These Judicial Justices conduct bail hearings daily outside of court sitting hours, including on weekends and statutory holidays. They also consider judicial authorization applications such as those for search warrants and production orders 24 hours a day, seven days a week.

For traffic, ticket, and bylaw work, as noted above, total case numbers have declined over the last five years—though the numbers need to be understood in the context of the COVID-19 pandemic. The work of a judicial justice in traffic court can be very demanding, with court lists in the range of 60 matters per day, and without the assistance of support staff, a court clerk, or a sheriff.⁵⁴ The large number of self-represented litigants contributes to the intensity of the workload. Judicial

⁵¹ Appendices for Submission of Government, Tab 1: Provincial Court of British Columbia Annual Report 2021/22, p. 34.

⁵² See generally, Submission of Chief Judge, paras. 72-106.

⁵³ Main Submission of Government, para. 61, based on Provincial Court of British Columbia Annual Report 2021/22 p. 33.

⁵⁴ Submission of Chief Judge, paras. 151-152; Submission of Judicial Council, paras. 40-41.

justices often need to inform self-represented litigants about procedural matters.⁵⁵ Payment hearings can be very stressful for all concerned as the judgment debtor often has little financial resources but is legally obligated to satisfy a judgement.⁵⁶

The number of bail hearings heard through the Justice Centre has declined somewhat over the last five years, with judicial justices conducting just over 18,000 bail hearings in 2021-22.⁵⁷ While judicial justices heard fewer search warrant/production order applications in 2021-22 than 2020-21, the total for 2021-22 (18,711) was considerably higher than for 2019-20 (16,297) and follows an upward trend in cases since 2015-16.⁵⁸

Almost all of the Justice Centre’s work is “unscheduled and is performed in ‘real time’, in a fast-paced environment with high expectations for timely decisions.”⁵⁹ Bail hearings often proceed without the accused person having a lawyer. This makes the determination of whether to release an individual and, if so, under what conditions, more challenging.⁶⁰ Despite the “Crown-led bail” initiative, discussed in section 3.3, police-led bail hearings continue to occur. Because the police officers are not lawyers and may have difficulty shedding their investigative role for the purpose of the hearing, the judicial justice must be particularly vigilant to the requirements of the administration of justice including fairness to the person detained. In judicial authorization applications, judicial justices must “balance an individual’s security against unreasonable search or seizure, weighed against the interest of the state to investigate crime.”⁶¹

We heard evidence about how the federal Bill S-4⁶² makes changes to the way in which judicial authorization applications are received and considered. More specifically, we heard about how this change is increasing the workload of judicial justices and how it is creating staffing challenges for the Chief Judge. This evidence is discussed in section 4.2.

3.3 Resilience and Resourcefulness of the Court

We heard much about the Provincial Court’s resilience and resourcefulness in delivering access to justice. We also observed some of the court’s innovations during our court visits.

In the area of family law, in collaboration with the Justice Services Branch of the Ministry of the Attorney General, the court has expanded an early resolution process, which launched in Victoria in 2019, to Surrey in 2020. This model provides families with early access to information and an

⁵⁵ Submission of Chief Judge, para. 153; Submission of Judicial Council, paras. 40-41.

⁵⁶ Submission of Chief Judge, para. 154.

⁵⁷ Submission of Chief Judge, para. 140.

⁵⁸ Submission of Chief Judge, para. 140.

⁵⁹ Submission of Chief Judge, para. 148.

⁶⁰ Submission of Chief Judge, para. 145; Submission of Judicial Council, para. 40-41.

⁶¹ Submission of Chief Judge, para. 147.

⁶² Bill S-4, *An Act to amend the Criminal Code and the Identification of Criminals Act and to make related amendments to other Acts (COVID-19 response and other measures)* received Royal Assent on December 15, 2022. It came into force on January 14, 2023.

opportunity to mediate. It has significantly reduced the cases that proceed to trial. In 2021, the court implemented new *Provincial Court Family Law Rules*, which are easier for litigants to understand, and which allow for streamlined appearances. Under the new Rules, the court launched the Informal Trial Pilot Project in Kamloops in 2022. If parties agree to the informal process, the judge may allow evidence that is relevant, material, and reliable, even if it might not be allowed under the strict rules of evidence. The judge may also help the parties settle issues.⁶³

The court has implemented a desk order process under the new *Family Law Rules*, enabling applicants to apply for an order without having to make a court appearance. These applications are processed within two days, adding to the workload of judges outside of court sitting hours. Every rejected application requires reasons. Since the desk order process started in 2022, the court has received about 314 per month (roughly equating to 3,700 per year).⁶⁴

On the criminal side, technological innovation, especially video technology and remote attendance, has enabled the court to optimize the deployment of judicial resources. It connects the Justice Centre to remote regions for bail hearings and allows for remand appearances and bail hearings from remand and custody centres.⁶⁵

According to the Chief Judge, the British Columbia Provincial Court is a leader in the collection and reporting of court related data,⁶⁶ including data on “time to trial.” These data enable the Chief Judge to make decisions about where in the province to send judicial resources. Currently “time to trial” delays are roughly the same as those experienced prior to the COVID-19 pandemic (but were longer during the pandemic). The Chief Judge said that, while there are declining caseloads, those declines need to be viewed in the context of increases in cases involving offences to the person, which take more time to proceed to trial. She suggested that the most significant reason for the reduction in case backlogs that occurred during the pandemic was “the innovative methods that were undertaken by this court during COVID to reduce times to trial delays, including virtual bail.”⁶⁷ For example, at the beginning of the COVID pandemic, the delay to trial in Fort St. John was more than 18 months. Now it is down to 11 months. The Chief Judge attributed this reduction to the fact that bail has been moved to the virtual bail court, which started in 2020. Bail applications occurring within court sitting hours are assigned to be heard virtually by judges from within the Region or at another location, thereby freeing up local Provincial Court judges to do the trial work at a particular court location without interruption. Outside of court sitting hours bail applications are heard by judicial justices at the Justice Centre.⁶⁸

⁶³ Submission of Chief Judge, paras. 49-54.

⁶⁴ Submission of Chief Judge, para. 56; TR February 15, 2023, Chief Judge Gillespie, p. 157, l. 8 to p. 158, l. 4.

⁶⁵ Submission of Chief Judge, para. 62.

⁶⁶ TR February 15, 2023, Chief Judge Gillespie, p. 152, ll. 2-3.

⁶⁷ TR February 15, 2023, Chief Judge Gillespie, p. 153, ll. 6-12.

⁶⁸ TR February 15, 2023, Chief Judge Gillespie, p. 153, ll. 21-24.

The implementation, in May 2020, of mandatory criminal pre-trial conferences has also reduced time to trial and been successful in resolving some cases or narrowing the issues in others.⁶⁹

At the Justice Centre, since 2018, significant work and inter-agency collaboration has enabled transition of the bail system from “police-led” bail (where police represent the Crown) to “Crown-led” bail proceedings in which all bail matters are heard in clerked courts, with Crown Counsel conducting the charge assessment, and with duty counsel available to assist those in custody. The change has resulted in an increase in consent releases because Crown and defence counsel have an opportunity to discuss reasonable release terms.⁷⁰ Despite this initiative, some instances of police-led bail still occur.

The court has also been exploring technology to allow a clerk (or a judicial justice working without a clerk), to capture the official court record for proceedings, allowing the proceeding to be recorded from anywhere there is internet.⁷¹

Other initiatives underway to improve access to justice in traffic court include creating an online option for initiating traffic disputes; creating digital case files for traffic and ticket matters; enabling judicial justices to adjudicate online requests for time to pay and fine reductions that do not require in-person hearings; and to notify parties of hearings by email.⁷² The court has also piloted a project in which parties volunteer to attend remote traffic hearings at certain court locations.⁷³ As well, judicial justices contributed to the government’s 2021 online information tool called “Understand Your Ticket.”⁷⁴

⁶⁹ TR February 15, 2023, Chief Judge Gillespie, p. 163, ll. 8-17; Submission of Chief Judge, para. 68.

⁷⁰ Submission of Chief Judge, paras. 168-169.

⁷¹ Submission of Chief Judge, para. 173.

⁷² Submission of Chief Judge, para. 175.

⁷³ Submission of Chief Judge, para. 176.

⁷⁴ Submission of Chief Judge, para. 174.

4 Assessment of Reasonable Compensation

The Supreme Court of Canada describes the role of a judicial compensation commission in this way: “The commission must objectively consider the submissions of all parties and any relevant factors identified in the enabling statute and regulations. Its recommendations must result from a fair and objective hearing. Its report must explain and justify its position.”⁷⁵

In British Columbia, sections 5(1), 5(5) and 5(5.2) of the Act⁷⁶ set out our mandate and the specification of relevant factors as follows:

(1) Not later than April 1, 2023 following its formation, the commission must, in a preliminary report to the minister and chief judge,

- (a) report on all matters respecting the remuneration, allowances and benefits of judges and judicial justices, and
- (b) make recommendations with respect to those matters for each of the next 4 fiscal years.

...

(5) In preparing a report, the commission must be guided by the need to provide reasonable compensation for judges and judicial justices in British Columbia over the 4 fiscal years that are the subject of the report, taking into account all of the following:

- (a) the need to maintain a strong court by attracting highly qualified applicants;
- (b) changes, if any, to the jurisdiction of judges or judicial justices;
- (c) compensation provided in respect of similar judicial positions in Canada, having regard to the differences between those jurisdictions and British Columbia;
- (d) changes in the compensation of others paid by provincial public funds in British Columbia;
- (e) the generally accepted current and expected economic conditions in British Columbia; and
- (f) the current and expected financial position of the government over the 4 fiscal years that are the subject of the report.

(5.1) The report of the commission must demonstrate that the commission has considered all of the factors set out in subsection (5).

(5.2) The commission may consider factors it considers relevant that are not set out in subsection (5), but if it relies on another factor, the report of the commission must explain the relevance of the factor.

[Emphasis added.]

⁷⁵ *Bodner*, para. 17; *PEI Reference*, para. 173: “the objectivity of the commission be ensured by including in the enabling legislation or regulations a list of relevant factors to guide the commission’s deliberations.”

⁷⁶ As amended by *Attorney General Statutes Amendment Act, 2021*, concerning the date in s. 5(1).

Reasonable compensation is not merely “adequate” compensation, nor is it “generous” compensation. It is *reasonable* total compensation for the work performed. Reasonableness is measured against objective factors. The factors set out in sections 5(5)(a) to (f) provide us with useful objective markers indicating whether the compensation for judicial officers in British Columbia is reasonable. No single one of these factors is overriding, and these factors are not exclusive. Instead, considered together, along with other relevant factors as contemplated in section 5(5.2), they assist us in assessing the current state of judicial compensation in British Columbia and, importantly, guide us in determining what constitutes reasonable compensation for judges and judicial justices over the next four years.

The statute requires us to take a proactive, future-oriented approach to judicial compensation. Our job is to look at the current conditions, as well as what can be predicted about the future. We must make the best assessment we can about reasonable compensation for judges and judicial justices for the next four years.

In the sections that follow, we consider the evidence in relation to each of the statutory factors and determine what each factor tells us about the reasonable compensation of judges and judicial justices for their work over the next four fiscal years.

4.1 Factor 1: The need to maintain a strong court by attracting highly qualified applicants

The compensation offered judges and judicial justices must be at a level to attract highly qualified applicants and keep those who are appointed motivated to stay with the court in the face of other options or the prospect of early retirement.

The Provincial Court is the face of justice for the vast majority of British Columbians who engage with the justice system. As described above, judges and judicial justices work in a fast-paced environment with long court lists. They often face complex matters. They must consider the issues before them with care and attention, yet they must also do it with speed. Sometimes the subject matter is emotionally challenging and traumatic, such as cases involving child pornography and sexual assaults against children. The Provincial Court needs “highly qualified applicants” so that highly qualified judges and judicial justices will be appointed to do this work.

Provincial Court Judges

We begin by assessing whether the Provincial Court can attract highly qualified applicants in sufficient numbers to maintain a strong court.

The Need for Highly Qualified Applicants

As described by the Judicial Council,

To move into the role of a provincial court judge requires lawyers with a wide breadth of skills (including effective case management and mediation skills) and the ability to render

high quality justice in all divisions of the court (family, civil, criminal, and youth). ... This is a demanding job that must be carried out in a respectful and impartial manner, dealing with emotionally draining issues, and still getting through an often overwhelming court list for the day.⁷⁷

The criteria for appointment include at least 10 years in the practice of law; superb legal reputation and a professional record review from the Law Society of British Columbia; experience in mediation or alternative dispute resolution; respect in the community; good health; appreciation of and experience with diversity; and a willingness to travel and to sit in all subject areas.⁷⁸ Applicants must also demonstrate a number of competencies in the areas of knowledge and technical skills, decision-making, communication and authority, professionalism and temperament, effectiveness, and leadership and management for those in administrative positions.⁷⁹

The PCJA points out that the standard set out in Factor 1 is not “qualified applicants” but “highly qualified applicants” and quotes from several past commissions (some under previous legislation) using words like “outstanding candidates,” “exceptional candidates,” and “best candidates.” It also notes the Judicial Council’s requirement that candidates have a superb legal reputation.⁸⁰ The Chief Judge expressed the need to ensure that the remuneration is reasonable and sufficient to attract the “most qualified applicants.”⁸¹ The Government, however, points out that the statutory standard looks at what is needed to maintain a “strong court” by attracting “highly qualified applicants.” The Government submits that applicants need not be the “most qualified” or “superior” to maintain a strong court.⁸² Since the Judicial Council has been making appointments every year, the Government submits that there must exist sufficient candidates who meet the Council’s standard.⁸³

Aside from the fact of appointments being made and the standards set by the Judicial Council, there was no evidence before the Commission about the *quality* of candidates for appointment as judges, and no way to know whether the court is attracting the best possible candidates.⁸⁴

No participant suggested that existing members of the court, including recent appointments, are less than high quality. The Government submitted that because the court attracts excellent candidates, some from the private bar where higher salaries exist, it follows that something more than salaries motivates candidates to apply to become a judge.⁸⁵

⁷⁷ Submission of Judicial Council, para. 19.

⁷⁸ Criteria and Competencies for Appointment, JBD, Vol. 1, Tab 10.

⁷⁹ Criteria and Competencies for Appointment, JBD, Vol. 1, Tab 10.

⁸⁰ Main Submission of PCJA, paras. 166-168.

⁸¹ Submission of Chief Judge, para. 120.

⁸² Reply Submission of Government, para. 111.

⁸³ TR February 16, 2023, Ms. Wolfe for Government, p. 28, ll. 1-10.

⁸⁴ TR February 16, 2023, Ms. Wolfe for Government, p. 30, ll.14-22. Main Submission of PCJA, para. 173: “It is difficult to comment upon the *quality* of the applications” [emphasis in original].

⁸⁵ TR February 16, 2023, Ms. Wolfe for Government, p. 34, ll. 21-24 and p. 35, ll. 3-22.

The only competition for those seeking judicial positions in British Columbia comes from the Supreme Court of British Columbia, whose judges are federally appointed. A candidate may apply to either court, and an existing Provincial Court judge or justice may move to the Supreme Court upon a successful application. The Government told us there have been no appointments to the Supreme Court from the Provincial Court since 2019, and only two in the last five years (one in 2017 and one in 2018).⁸⁶ As there is no way to know how many potential applicants decided to apply to the Supreme Court instead of the Provincial Court in the first place, this data point does not provide complete information on competition from the Supreme Court.

Diversity of the Court

The Government submitted that a strong court will have a diverse bench that reflects the population of British Columbia in terms of characteristics like “age, gender, ethnicity, residential region and type of practice.”⁸⁷ The PCJA agreed but focussed its submissions on “legal diversity.”

Consistent with 10-year averages, the average age of women applying to the bench in 2021 was 51, and for men was 54. Applicants had an average of 23 years of experience in the practice of law.⁸⁸ Numbers of applications from women decreased in 2021, while applications from men increased. However, more women than average were appointed in 2021 and conversely, less men were appointed in 2021. As of March 31, 2022, 52.7% of full-time judges were women, and the proportion of women has increased in recent years.⁸⁹

From 2012 to 2021, the numbers of applications received from candidates originating in different regions and the numbers of appointments in different regions are as follows:⁹⁰

Region	Vancouver	Fraser	Northern	Vancouver Island	Interior
Applications Received	120	75	48	71	59
Appointments Made	7	42	21	11	16

These numbers show that the court is attracting applications from all areas of the province with a higher proportion from the Lower Mainland. It is impossible to know whether the appointments made to a region came from applicants originating in that region or whether applicants in one region were appointed to another. As described below, the Chief Judge told us the Northern Region

⁸⁶ Main Submission of Government, para. 97.

⁸⁷ Main Submission of Government, para. 80.

⁸⁸ Main Submission of Government, para. 88, based on Judicial Council of British Columbia Annual Report 2021, p. 18, JBD, Vol. 1, Tab 2. Note: gender data is based on binary statistics for men and women; it does not yet include numbers of non-binary individuals. Note the 10-year average for years of practice was 22 years.

⁸⁹ Main Submission of Government, paras. 89-91.

⁹⁰ Judicial Council of British Columbia Annual Report 2021, JBD, Vol. 1, Tab 2, p. 18.

is hard to staff and that judges appointed to the North from other regions often transfer back to their “home” region when a position becomes available.

We have little information on ethnic, cultural, or other diversity of judicial applicants. Since 2014, applicants may provide this information on a voluntary basis, but the numbers of applicants who do so varies from year to year, and there is no information for those who choose not to provide it. In 2021, of the 24 applicants, two identified themselves as indigenous, four as ethnic or visible minority, and four as a diverse group.⁹¹

The discussion about “legal diversity” stemmed from the large representation of Crown Counsel in the pool of applicants for Provincial Court judgeships. We heard that in 2021, 50% of applicants came from private practice, 37% came from Crown Counsel, and 13% from other areas of law.⁹² These percentages are based on the positions held by applicants at the time of their applications, and do not reflect prior experience in other areas. These numbers have been roughly consistent over the last seven years.⁹³ In contrast, Crown prosecutors comprise only 4.3% of the practising lawyers in British Columbia.⁹⁴

The PCJA characterizes this as an overrepresentation of Crown Counsel,⁹⁵ and says the court would benefit from greater legal diversity (i.e., criminal defence counsel in private practice and lawyers in private practice with civil and family law backgrounds). Further, the PCJA says the rate of remuneration is at least one factor in this overrepresentation, as “all Crown counsel will receive at minimum a 15 percent pay increase in appointment [sic]” while “Many lawyers in private practice would incur a loss in salary upon appointment.”⁹⁶

The Government says the “total universe of practicing lawyers” is not the “best metric against which to measure the proportion of crown counsel” applying for judicial positions since the “total universe” includes solicitors and many other lawyers who do not have significant litigation or Provincial Court experience. Crown Counsel comprise “a significant portion of the practising lawyers who have both litigation experience and experience in the Provincial Court.”⁹⁷ Additionally, many Crown Counsel have legal experience prior to joining the Crown, and some

⁹¹ Both “visible minority” and “diverse group” may include individuals who are LGBTQ+, as well as First Nations persons or people of colour.

⁹² Main Submission of PCJA, para. 178, fn 138 indicates that “Crown Counsel” includes only prosecutors; the “other areas” includes other lawyers employed by government.

⁹³ Main Submission of Government, para. 93; Judicial Council of British Columbia Annual Report 2021, JBD, Vol. 1, Tab 2, p. 18. The Judicial Council records the position last held by the applicant and therefore do not reflect any prior experience of a candidate in other areas of law: see Main Submission of Government, para. 94; TR February 16, 2023, Ms. Wolfe for Government, p. 42, ll. 25 to p. 43, ll. 1-9.

⁹⁴ Reply Submission of PCJA, Appendix A: Letter from Law Society of British Columbia dated January 25, 2023.

⁹⁵ Main Submission of PCJA, para. 181.

⁹⁶ TR February 14, 2023, Ms. Latimer for PCJA, p. 154, ll. 6-11; p. 157, l. 23 to p. 158, l. 2.

⁹⁷ TR February 16, 2023, Ms. Wolfe for Government, p. 42, ll. 6-19.

judicial appointments that come from the Crown may have broader experience than just being Crown counsel—as demonstrated by some of the recent Provincial Court appointments.⁹⁸

Application and Appointment Statistics

Over the last 11 years, there has been a decline in the number of incoming applications.⁹⁹

Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
No. of applicants	35	46	50	27	43	63	27	37	30	24	23

Candidates apply through the Provincial Court’s website. The applicants go through extensive scrutiny including a confidential bar report prepared by the Canadian Bar Association, a report from the Law Society of British Columbia, and discreet inquiries to current judges who are familiar with the applicant. Based on this information, the nine-member Judicial Council votes on whom to interview; a candidate needs three votes to be granted an interview. At least five (but usually all nine) Council members conduct the interviews. After an interview, if two or more Council members vote to *not* approve an applicant, the applicant is not placed on the approved list. Otherwise, the applicant is placed on the approved list. Applicants are not notified of the outcome. If placed on the approved list, an applicant remains there for up to three years from the date of their interview. The Attorney General may then appoint judges from the “approved list.” An applicant who was not interviewed may reapply three years from the date of their previous application. An applicant who was interviewed but not appointed may reapply 2.5 years from the date of their previous interview.¹⁰⁰

The figure below from the Judicial Council’s 2021 Annual Report shows the application and appointment statistics for 2021 along with the 10-year average.¹⁰¹

The Government accepts that the decreasing number of applications is a trend that needs to be monitored, but says the “trend is not cause for alarm.”¹⁰² The Government suggests the COVID-19 pandemic may have impacted applications for judicial appointment.¹⁰³ It says the court is “still attracting a sufficient number of highly qualified applicants to allow ten appointments per year, as

⁹⁸ TR February 16, 2023, Ms. Wolfe for Government, p. 44, ll. 16-25; Appendices for Submission of Government, Tabs 8 and 9.

⁹⁹ Information taken from Submission of Chief Judge, para. 121. Note “the number of applications in 2017 was significantly higher due to the influx of paper applications being submitted before the launch of a new online application system”: Submission of Chief Judge, fn 8.

¹⁰⁰ See description of the application and appointment process in Judicial Council Submission, paras. 4-9.

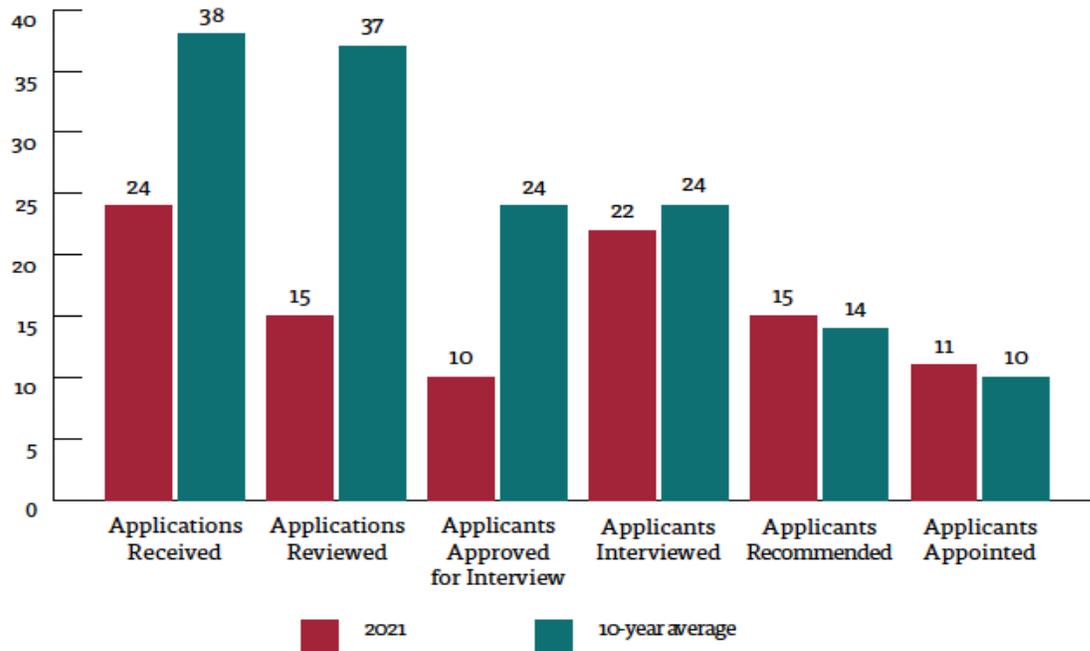
¹⁰¹ JBD, Vol. 1, Tab 2 p. 15.

¹⁰² Reply Submission of Government, paras. 113-114; Main Submission of Government, para. 101; TR February 16, 2023, Ms. Wolfe for Government, p. 21, l. 19 to p. 22, l. 5.

¹⁰³ Reply Submission of Government, para. 114.

the Chief Judge anticipates will continue.”¹⁰⁴ Also, the Government points out that the number of applicants recommended for appointment in 2021 (i.e., 15) was higher than in 2020 when only five were recommended, and slightly higher than the 10-year average of 14.¹⁰⁵

Figure 1: Applications and Outcomes (2021 and 10-Year Average)¹



As shown in the table below, 2022 has the lowest average number of candidates on the approved list since 1999.¹⁰⁶

Year	1999 2000 2001	2002 2003	2004 2005 2006	2007 2008	2009 2010	2011	2012	2013	2014	2015	2016
Average No. on approved list	36	39	31	20- 25	24	25	23	19	20	28	26

Year	2017	2018	2019	2020	2021	2022
Average No. on approved list	25	23	23	25	20	15

While the court is currently meeting its needs in terms of appointments, the appointment of an average of 10 judges per year speaks to the “high demand the court has for judges.”¹⁰⁷ The Chief

¹⁰⁴ Reply Submission of Government, para. 115.

¹⁰⁵ Reply Submission of Government, para. 116.

¹⁰⁶ This table is created from Exhibit 9.

¹⁰⁷ TR February 13, 2023, Chief Judge Gillespie, p. 162, ll. 22-24.

Judge characterized the decline in the number of candidates on the approved list as “quite alarming” and “significant.”¹⁰⁸ Some of the 15 candidates currently on the approved list will likely “time out” when they reach three years on the list. Approximately 37% of applicants are approved for appointment. That means “you get about nine candidates a year out of 24 applicants.” If the application number remains around 24 per year, this would equate to 36 approved candidates over the next four years (which the Chief Judge rounded up to 40). Over that same period, the court will need approximately 40 new judges.¹⁰⁹ But it is not as simple as matching 40 approved candidates to 40 new positions: “The vast majority of applicants apply for the Lower Mainland but there are a large number of positions in other places around the province in the north, in the northern part of the Island and in certain parts of the interior where it is difficult to attract candidates to that place.”¹¹⁰

Further, judges who are appointed to serve in, for example, the Northern Region but who come from other regions of the province often transfer back to their home region when positions become available, leaving vacancies in the North. Even judges who come from the North have moved to other locations because the travel demands in the North are so difficult or for other personal reasons. The Chief Judge said she is “very concerned” about the ability to staff the court generally, and specifically in locations outside the Lower Mainland.¹¹¹

While acknowledging that the average number of candidates on the approved list is low, the Government said the number “goes up and down.”¹¹² Also, the lower number in 2022 follows slightly higher than average appointments in 2021 (11 appointments) and 2022 (13 appointments), which may, in part, account for the lower average number on the approved list in 2022.¹¹³

Conclusions

Our review of the evidence shows a startlingly low level of interest in the Provincial Court, with a low and declining rate of applications for appointment to it. There is serious difficulty in filling judicial vacancies outside the Lower Mainland. While it is not surprising that a significant portion of applicants come from a Crown Counsel background, the court would benefit from greater legal diversity given the nature of the court’s work overall. The evidence shows a good gender balance in applicants and appointments to the court, but there is little information about other areas of diversity. The trends described above in terms of applications to the court, and the low numbers of candidates on the current approved list, indicate that there may well be insufficient highly qualified candidates to fill vacancies that are likely to arise before the next judicial compensation commission. While those appointed to the bench are “highly qualified” if measured by their average years of legal experience, which is well over the minimum, this is but one relevant measure for assessing the qualities of a prospective judge. To consistently appoint highly qualified judges

¹⁰⁸ TR February 15, 2023, Chief Judge Gillespie, p. 160, l. 25 to p. 161, l. 6.

¹⁰⁹ TR February 15, 2023, Chief Judge Gillespie, p. 165, ll. 3-20.

¹¹⁰ TR February 15, 2023, Chief Judge Gillespie, p. 165, l. 24 to p. 166, l. 5.

¹¹¹ TR February 15, 2023, Chief Judge Gillespie, p. 165, l. 24 to p. 166, l. 21; and p. 167 ll. 21-24.

¹¹² TR February 16, 2023, Ms. Wolfe for Government, p. 23, ll. 1-4.

¹¹³ TR February 16, 2023, Ms. Wolfe for Government, p. 23, ll. 6-19.

to this court, the appointing body should be able to draw from a much deeper pool of applicants than has been available in recent years.

Overall, this factor supports an increase in pay sufficient to attract more applicants for Provincial Court appointment from highly qualified lawyers of diverse legal backgrounds.

Judicial Justices

The Judicial Council describes the work of a judicial justice as “demanding and challenging and requires, at its foundation, a legally grounded, professional approach.” Judicial justices must apply all the same principles as those applied by a judge: “principles of natural justice, procedural fairness, legislation, rules of criminal evidence, and common law.”¹¹⁴ Indeed, aside from only requiring five years of legal practice instead of 10, the criteria and competencies for appointment as a judicial justice are almost identical to those of a judge.¹¹⁵

The JJA notes the words “highly qualified applicants” in section 5(5)(a) are “particularly instructive,” given the serious liberty and privacy issues judicial justices deal with, along with their role as the “face of justice” for ordinary citizens.¹¹⁶

The appointment process for judicial justices mirrors that for judges.¹¹⁷ Again, once recommended by the Judicial Council, an applicant stays on the “approved list” for three years. The following table shows the numbers of judicial justice applications received, interviews conducted, applicants recommended, and applicants appointed over the last 6 years:¹¹⁸

Year	Applications Received	Interviews Conducted	Applicants Recommended	Applicants Appointed
2017	2	0	0	0
2018	9	2	4 ¹¹⁹	0
2019	15	4	3	3
2020	5	3	2	3
2021	8	6	2	3
2022	4	4	2	1

¹¹⁴ Submission of Judicial Council, para. 37.

¹¹⁵ JBD, Vol. 1, Tab 13.

¹¹⁶ Main Submission of JJA, para. 96.

¹¹⁷ Submission of the Judicial Council, para. 27.

¹¹⁸ Main Submission of Government, para. 111; TR February 15, 2023, Chief Judge Gillespie, p. 169, ll. 11-20; Main Submission of JJA, para. 89. In respect of applicants for the position of judicial justice, we have no information on their ages, genders, regional area of origin, ethnic or cultural background, or legal diversity.

¹¹⁹ Two candidates were recommended without interviews in 2018 as they had previously been judicial officers.

The Government submits the salary increase and legislative amendments following the 2019 JCC “appear to be addressing the previous recruitment and retention problems.”¹²⁰ It notes the number of applicants recommended since 2018 is higher than the number of appointments, and “If these trends continue, it should be possible to address the upcoming retirements over the next four years.”¹²¹ The Government also said that, without knowing what a sufficient complement is for judicial justices, it is difficult to know whether needs are being met.¹²² Further, the Government submits its proposed salary recommendation and other proposed recommendations are “collectively sufficient to assist with recruitment and retention needs.”¹²³

In contrast, the Chief Judge described judicial justice recruitment as keeping “our head barely above water.”¹²⁴ She said she was not “sitting on big approved lists.” She could not tell us the number currently on the approved list because it is so small that revealing it “would be revealing to candidates who is and who is not on that list.”¹²⁵ The Chief Judge said the current complement of judicial justices is not large enough, given the increased numbers of production orders that judicial justices are dealing with due to the impact of Bill S-4 (described further below), and the increased evening bail shifts. Starting in March 2023, five shifts per week (260 shifts per year) will be added to meet these needs. The Chief Judge said that “at least” a couple more part-time justices are required to do that work.¹²⁶ The JJA also submitted that, while no one can currently answer how many judicial justices are needed, there clearly are not enough to meet current requirements.¹²⁷

Twelve of the current judicial justices will reach age 75 (mandatory retirement) between now and 2027. That is 36% of the judicial justice division. Further, the Chief Judge noted that half the judicial justices are older than 66 and “you have to be thinking on some level that some of those people are not going to stay until 75.”¹²⁸

The age demographics of the current judicial justices are shown in the figure below.¹²⁹

¹²⁰ Main Submission of Government, para. 113.

¹²¹ Reply Submission of Government, para. 94.

¹²² TR February 16, 2023, Ms. Wolfe for Government, p. 52, l. 24 to p. 53, l. 13.

¹²³ Supplemental Submission of Government, March 6, 2023, para. 15.

¹²⁴ TR February 15, 2023, Chief Judge Gillespie, p. 169, ll. 9-10.

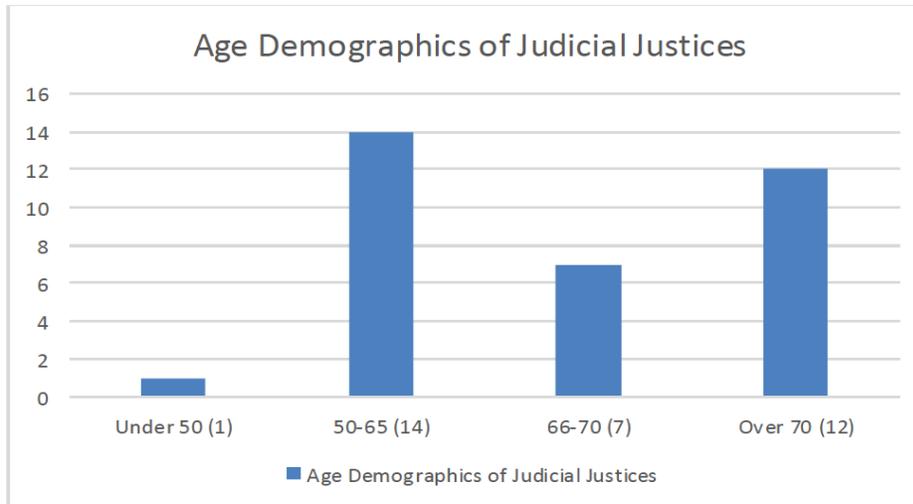
¹²⁵ TR February 15, 2023, Chief Judge Gillespie, p. 169, ll. 20-25.

¹²⁶ TR February 15, 2023, Chief Judge Gillespie, p. 171, ll. 2-5.

¹²⁷ TR February 15, 2023, Mr. Bernstein for JJA, p. 36, l. 23 to p. 37, l. 1.

¹²⁸ TR February 15, 2023, Chief Judge Gillespie, p. 169, ll.1-8.

¹²⁹ Submission of Chief Judge, p. 38, Figure 10.



When judicial justices are not able to cover shifts at the Justice Centre, the Chief Judge must assign judges to cover that work. Judges are currently paid more than twice as much as judicial justices. Further, they are offered “two for one holiday time” to take a shift at the Justice Centre. This builds up a “leave liability” because “those judges aren’t able to sit in court as much because they can only carry over a certain amount of holidays.” The Chief Judge compared the situation to robbing Peter to pay Paul.¹³⁰ The JJA advised that in 2022, Provincial Court judges filled 42 shifts at the Justice Centre. Twenty-three of these shifts occurred during judicial justices’ educational conferences. Of the remaining shifts, all but one were on weekends or holidays.¹³¹ The JJA also advised that judges filled eight judicial justice shifts so far in February and March 2023, and that 10 shifts remained unfilled for April 2023. All these shifts fall on weekends or holidays.¹³²

The Chief Judge has made efforts to recruit more judicial justices, speaking to many different bar groups. The Judicial Council made two recent calls for applicants (September 13, 2021, and November 18, 2022). These efforts have not resulted in any noticeable increase in applications.¹³³

In response to a question about why recruitment is aimed only at filling part-time judicial justice positions, the Chief Judge explained, “frankly, full-time lawyers will not work for the amount that we pay full-time judicial justices.”¹³⁴

Consideration of this factor reveals a looming crisis in attracting and maintaining a strong complement of judicial justices. Given the foreseeable retirements, older age demographics of the current complement, and very low application and approved candidate numbers, it is highly likely

¹³⁰ TR February 15, 2023, Chief Judge Gillespie, p. 171, ll. 15-22.

¹³¹ Main Submission of JJA, paras. 93-94.

¹³² Reply Submission of JJA, paras. 19-20.

¹³³ Submission of Chief Judge, paras. 178-179.

¹³⁴ TR February 15, 2023, Chief Judge Gillespie, p. 168, ll. 8-10.

that the court will not have a sufficient complement of judicial justices to meet the workload of the judicial justice division unless steps are taken immediately to improve recruitment.

This factor militates in favour of significant compensation increases for judicial justices.

4.2 Factor 2: Changes, if any, to the jurisdiction of judges or judicial justices

Provincial Court Judges

As no new changes in jurisdiction significantly impacted judges over the last three years, and we were not advised of predicted changes over the next four years, Factor 2 supports neither an increase nor decrease in the compensation paid to judges.

The PCJA submitted there have been no significant changes to the jurisdiction of Provincial Court judges since 2016.¹³⁵ The impact of changes that occurred prior to the last judicial compensation commission (i.e., the shift of small claims files under \$5001 to the Civil Resolution Tribunal, and changes to the number of hybrid offences in the *Criminal Code*) are difficult to assess due to the impact of the COVID-19 pandemic.¹³⁶ Similarly, the Government says it is difficult to assess if the new offences related to the COVID-19 pandemic had any effect on the court.¹³⁷

Neither participant argued that a change in jurisdiction was relevant to this Commission’s work concerning judges. As the Government pointed out, however, we must still take this statutory factor into account. The fact that there was no change in jurisdiction should be assessed along with the other factors in determining whether this factor supports an increase or supports compensation staying the same.”¹³⁸

We conclude that, on its own, this factor supports neither an increase nor decrease in compensation for Provincial Court judges.

Judicial Justices

Recent changes to the Criminal Code concerning judicial authorizations by telewarrant will significantly increase the collective workload of judicial justices. This factor supports an increase in compensation to judicial justices.

The JJA submits that Bill S-4’s changes to the *Criminal Code* constitute a change in the jurisdiction of judicial justices because these changes allow applications for judicial authorizations that previously had to be made in person (to either a judge or judicial justice) to now be made through

¹³⁵ Main Submission of PCJA, para. 184.

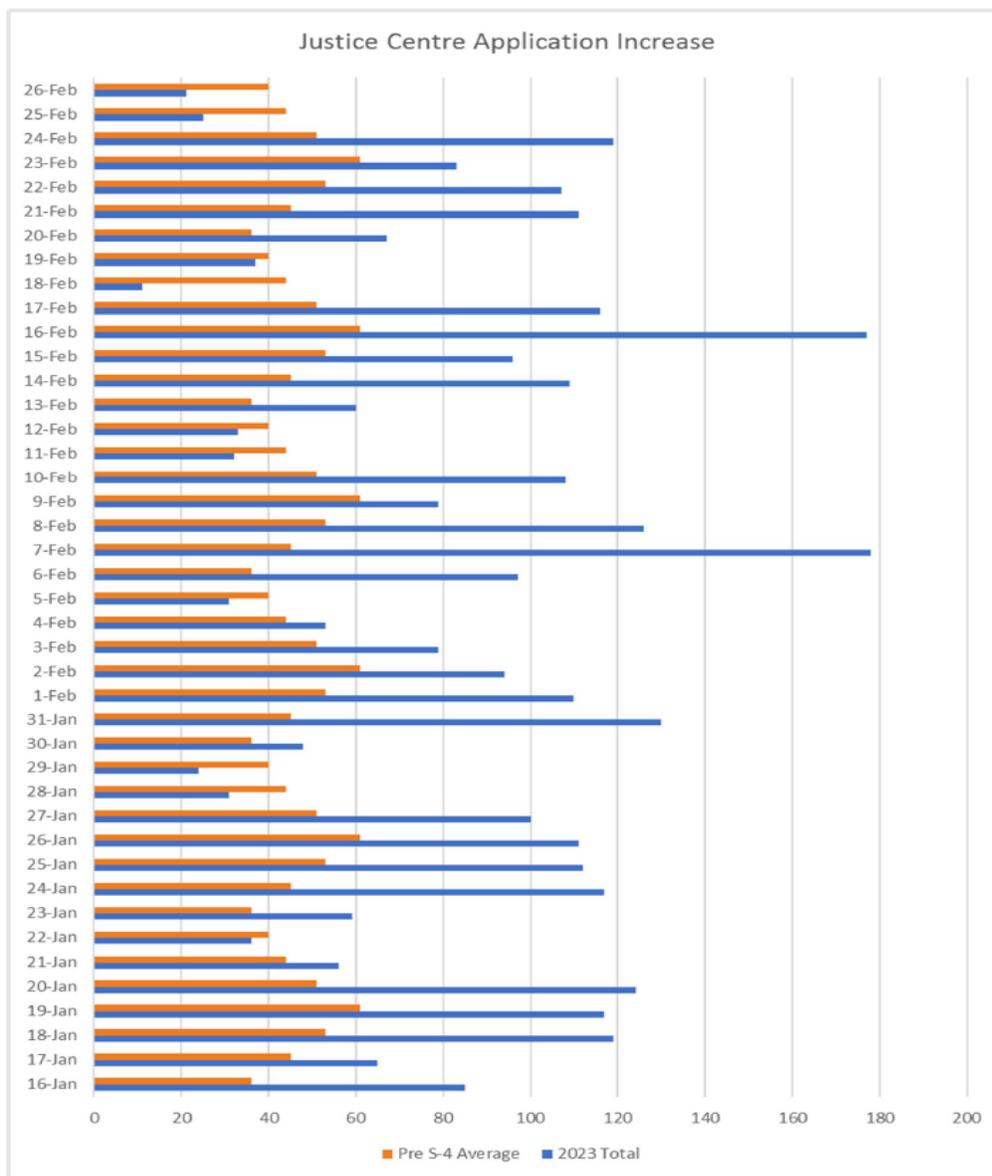
¹³⁶ Main Submission of PCJA, para. 184; Main Submission of Government, paras. 116-118.

¹³⁷ Main Submission of Government, para. 119.

¹³⁸ TR February 15, 2023, Ms. Wolfe for Government, p. 205, ll. 20-24.

telecommunications.¹³⁹ Stated differently, judicial justices now have jurisdiction to hear the vast majority of judicial authorization applications throughout the province by way of telecommunication. The changes took effect on January 16, 2023.

Data for the first 42 days since the change took effect show an increased number of applications per day to the Justice Centre (dark blue lines) compared to the average number of applications for the same day of the week (light orange lines, averaged over October, November, and December 2022), as shown in the figure below:¹⁴⁰



¹³⁹ Main Submission of JJA, para. 97.

¹⁴⁰ Figure taken from Supplementary Submission of JJA, para. 7.

The JJA told us that, as of March 6, 2023, the number of unfilled shifts at the Justice Centre “continues to grow” with 27 unfilled shifts from March 29 to May 31, 2023. As well, in response to both Bill S-4 and the anticipated opening of a new virtual bail court commencing March 13, 2023, over 230 new shifts have been created at the Justice Centre.¹⁴¹ The JJA submits there is no reason to expect that the number of applications received will decrease over time, noting that Bill S-4 was intended to introduce lasting changes to the criminal justice system in order to improve flexibility and efficiency.¹⁴²

The Government submitted that Bill S-4 is not a true change in jurisdiction since many of the authorizations now allowed to be heard by telecommunications could previously be heard by judicial justices in person. It said these shifts in workflow are of a different nature than the changes in jurisdiction that have been considered by previous commissions.¹⁴³ The Government says changes in the workload to judicial justices should be monitored over the 2022 cycle, but that it would be premature to recommend any significant adjustments (to compensation) until there is concrete evidence to determine the magnitude of the change.¹⁴⁴ The Government “doesn’t deny that there may be an impact,” but more time and data are needed to know whether this new process will “continue at the current level or is going to level off a bit.”¹⁴⁵ It says its proposal concerning shift premiums may help to address the need to fill new shifts.¹⁴⁶ It recognizes that “there may be a need to increase the overall complement of Judicial Justices in response to Bill S-4” but that it is “still too early to conclude that S-4, by itself, warrants an increase in salaries.”¹⁴⁷

The Chief Judge noted that whether this is a change in jurisdiction depends on how you define “jurisdiction.” In any event, “It results in an increase in their workload which is something I think jurisdiction is meant to address.”¹⁴⁸

The figure above shows a clear pattern: the days with the lowest numbers of applications (i.e., January 21, 22, 28 and 29, February 4, 5, 11, 12, 18, 19, 25 and 26) are weekend days; the higher application numbers are on weekdays, only one of which was a holiday (Family Day). While the data only reflect six weeks, they suggest the increased workload is coming on weekdays, and therefore would not be addressed in any way by a weekend shift premium. While we agree the available data about the impact from Bill S-4 are limited, they show a current, growing, significant increase to the workload of judicial justices. This increased workload, combined with the evidence that 230 to 260 new shifts per year will be needed at the Justice Centre, in part to cover this increased workload, is compelling. There is no logical reason to suspect that use of this new

¹⁴¹ Supplemental Submission of JJA, paras. 10-11. Note the Chief Judge’s evidence was that 260 shifts would be added: TR February 15, 2023, Chief Judge Gillespie, p. 171, ll. 2-5.

¹⁴² Supplemental Submission of JJA, para. 8.

¹⁴³ TR February 15, 2023, Ms. Wolfe for Government, p. 239, ll. 1-6.

¹⁴⁴ Reply Submission of Government, para. 99.

¹⁴⁵ TR February 15, 2023, Ms. Wolfe for Government, p. 239, l. 22 to p. 240, l. 4.

¹⁴⁶ TR February 15, 2023, Ms. Wolfe for Government, p. 241, ll. 5-10.

¹⁴⁷ Supplemental Submission of Government, March 6, 2023, para. 14.

¹⁴⁸ TR February 15, 2023, Chief Judge Gillespie, p. 173, l. 11 to p. 174, l. 6.

process will drop off; indeed, it seems likely to increase as police seeking authorizations become familiar with the new process. In any case, as Commissioners we are required to look ahead to the next four fiscal years. The evidence shows a real risk that the workload of judicial justices will increase significantly over the next four years in comparison to the last year.

We appreciate the Government’s submission that the nature of the change presented by Bill S-4 is different from the sorts of jurisdictional changes addressed by previous commissions. There is no caselaw in this context to help us in determining what “changes to the jurisdiction” of judicial justices means. We agree with the Chief Judge that, in including this factor, the legislature must have intended to capture changes in the workload of judicial justices that flow from changes to the legislation that gives them jurisdiction. This is such a change. This change stems directly from federal legislation that now permits judicial officers—in this case BC judicial justices—to hear matters (virtual applications for authorizations) that they were not permitted to hear previously. It is different from other possible changes in workload that might occur owing to factors unrelated to legislation.

Nevertheless, even if Bill S-4 does not amount to a “change in jurisdiction,” it does increase the workload on judicial justices and is another factor that we consider relevant to this Commission’s mandate under section 5(5.2) of the *Judicial Compensation Act*.¹⁴⁹ This change in workload is relevant because it increases the need for judicial justices to fill shifts at the Justice Centre or to take on greater workloads during their shifts. Further, it compounds the anticipated problems arising from an insufficient judicial justice complement and the apparent low interest in judicial justice positions, described above.

Whether the changes in workload arising from Bill S-4’s amendment of the *Criminal Code* are viewed as a jurisdictional change or as “another relevant factor,” these changes militate in favour of increases to judicial justice compensation.

4.3 Factor 3: Compensation provided in respect of similar judicial positions in Canada, having regard to the differences between those jurisdictions and British Columbia

Provincial Court Judges

Examining similar judicial positions in Canada reveals British Columbia’s Provincial Court judge salaries are out of step and well below the average of best comparators.

While this factor must be considered along with all the other statutory factors, we agree with the 2016 JCC and the 2019 JCC that the compensation of other judges in Canada is an important consideration in determining the reasonable compensation paid to BC judges.¹⁵⁰ We have looked at all other judges, including federally appointed and provincially appointed judges across Canada.

¹⁴⁹ We advised Government, JJA, PCJA, and Chief Judge that we may consider the effects of Bill S-4 as another relevant factor under s. 5(5.2) and those participants had an opportunity to make submissions on this issue.

¹⁵⁰ 2019 JCC Report, JBD, Vol. 1, Tab 18, p. 20; 2016 JCC Report, JBD, Vol. 1, Tab 21, p. 47.

The Government submits the federally appointed judges are not useful comparators because superior court judges have broader, and inherent, jurisdiction to hear civil, family, and criminal cases, and the superior court judges hear appeals from the Provincial Court and conduct judicial reviews.¹⁵¹ While the types of cases differ, and the Provincial Court judges are limited to their statutory jurisdiction, the judicial roles are similar in both courts. As noted by the PCJA, “the same qualities of judicial temperament, legal knowledge, and an abiding sense of fairness are required of all judges” and all judges make decisions that will greatly affect people’s lives, including the potential loss of freedom.¹⁵²

The BC Supreme Court logically competes with the BC Provincial Court for applicants by drawing from the same pool: BC lawyers with at least 10 years of experience. While some lawyers will apply to one court over the other for reasons other than compensation (e.g., because of differences in the nature of the cases heard), compensation will be an important consideration, as it is in applying for any position. Federally appointed judges currently receive \$83,700 more in salary per year than Provincial Court judges in British Columbia, and the compensation value of pension benefits for a federally appointed judge (expressed as a level of percentage of pay over the working lifetime of a typical judge) is 66.4% compared to 43.1% for a Provincial Court judge.¹⁵³

In short, while recognizing differences (including the type of work done in the superior courts of general jurisdiction compared with that done in statutory provincial courts), we also see similarities sufficient to include federally appointed judges as one element in the group of Canadian comparators.

While provincial courts in other provinces are less likely to compete with the BC Provincial Court for applicants, judges in provincial courts across Canada are important comparators because of the similarity in roles and subject matters dealt with by the other provincial courts.

The Government says the method of determining compensation in other jurisdictions is a “difference” that must be considered when comparing the salaries of provincial court judges in other Canadian jurisdictions to BC salaries.¹⁵⁴ Some provincial governments (Ontario, Saskatchewan, and New Brunswick) have chosen to set their judges’ salaries at a fixed percentage of superior court judges’ salaries. The Government says British Columbia has made a different policy choice that does not contemplate a fixed relationship, and that we must take account of this “difference” and “give effect to the choices made here.”¹⁵⁵ In Government’s submission, because Ontario, Saskatchewan, and New Brunswick use fixed percentages of superior court salaries to determine their provincial court salaries, these provinces do not make good comparators.¹⁵⁶

¹⁵¹ Main Submission of Government, paras. 128 and 130.

¹⁵² Main Submission of PCJA, para. 191.

¹⁵³ PCJA BD, Tab 3, p. 5.

¹⁵⁴ Main Submission of Government, paras. 132-135.

¹⁵⁵ Main Submission of Government, para. 134-135.

¹⁵⁶ Main Submission of Government, paras. 132, 145, 146

The wording of section 5(5)(c) seems aimed at directing commissions to consider *substantive* differences in either (a) the nature of judicial work, or (b) the economic or social characteristics of the region or “jurisdiction” where the work is done. The language of section 5(5)(c) does not naturally suggest that a commission should delve into the *processes* by which governments in other regions of Canada have chosen to make decisions about judicial compensation. Comparing judicial salaries to other similar positions is intended to provide an objective measure of the reasonableness of salaries that have been implemented by the BC Government. If we eliminate from comparison all the provinces whose governments have not made the same policy choices as the BC Government in respect of the process for setting judicial compensation, we will not have an objective comparative view of what is being paid for similar judicial work across the country. We will have a view that is biased to be as close as possible to the policy choices of the BC Government. Accordingly, we reject the Government’s contention that Ontario, Saskatchewan, and New Brunswick are inappropriate comparators.

In short, we agree with the 2019 JCC. In looking at provincial court salaries across the country, it considered both differences in the positions (“markers of similarity: the qualifications for the positions, the core qualities required for them and the nature of the judicial work, including jurisdiction”), and differences among regional jurisdictions (“performance of their respective economies and relative debt levels, populations, [and] budgets”).¹⁵⁷

The participants acknowledge the broad jurisdiction of BC Provincial Court judges.¹⁵⁸ Not all other provincial courts in Canada hear cases from the diverse subject areas represented before BC judges. In Alberta and Ontario, urban areas have specialized criminal, family, and civil divisions while rural areas have non-specialized judges. In Quebec, specialized courts exist in almost all areas of the province and judges are assigned exclusively to those divisions.¹⁵⁹

With respect to differences in economic indicators, the Government submits that Alberta and Quebec are the notable comparators for British Columbia, saying these are the closest to British Columbia in terms of GDP and population. It says the current salaries received by BC Provincial Court judges are “within a reasonable range” of these comparators.¹⁶⁰ The PCJA submits the best comparators are Alberta, Saskatchewan, and Ontario, as these jurisdictions are, like British Columbia, “in favourable economic positions” as measured by GDP per capita.¹⁶¹

While Quebec is close to British Columbia in terms of unemployment rate and provincial GDP, it is 63% larger in population, resulting in a lower GDP per capita. Nevertheless, the PCJA concedes that, comparing the six largest provinces, GDP per capita would be “broadly similar.” However, looking only at GDP per capita obscures the relative costs of living in different provinces such as the cost of buying a home. The only other province with comparable home prices to British

¹⁵⁷ 2019 JCC Report, JBD, Vol. 1, Tab 18, pp. 19-20

¹⁵⁸ TR February 16, 2023, Ms. Wolfe for Government, p. 16, ll. 12-14; Main Submission of Government, p. 31; Main Submission of PCJA, para. 79.

¹⁵⁹ TR February 15, 2023, Chief Judge Gillespie, p. 139, l. 1 to p. 140, l. 6.

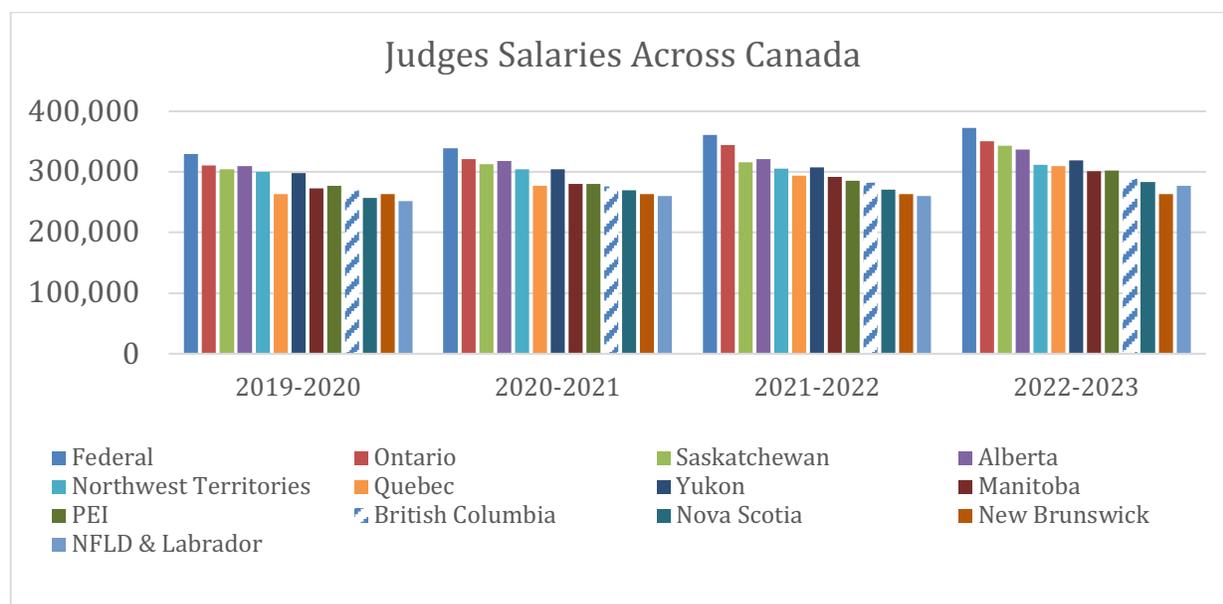
¹⁶⁰ Main Submission of Government, paras. 148-149.

¹⁶¹ Main Submission of PCJA, para. 208; Reply Submission of PCJA, para. 37; TR February 13, 2023, Mr. McKinnon, p. 77, ll. 9-13.

Columbia is Ontario.¹⁶² Other economic factors, such as debt as a percentage of GDP, make Alberta and Saskatchewan comparable to British Columbia.¹⁶³ Saskatchewan has the closest unemployment rate to British Columbia, and is also similarly diverse in its export destinations.¹⁶⁴

Taking these points into account, the closest comparators to BC Provincial Court judges are provincially appointed judges in Alberta, Saskatchewan, and Ontario. While some urban courts in Alberta and Ontario are more specialized than in British Columbia, the rural judges have comparatively broad jurisdiction—unlike the more specialized judges in Quebec. Alberta, Saskatchewan, and Ontario have similarly healthy economies. Ontario is most similar to British Columbia in terms of housing costs. Alberta and Saskatchewan are similar to British Columbia in terms of debt as a percentage of GDP. Alberta is similar in terms of population size, and Saskatchewan in terms of diverse export destinations.

The figure below shows annualized judicial salaries across Canada for the last four fiscal years.¹⁶⁵



¹⁶² Reply Submission of PCJA, paras. 38-39.

¹⁶³ Exhibit 1, slide: BC – Provincial Comparisons Taxpayer-Supported Debt (% of GDP).

¹⁶⁴ Exhibit 1, slide: Export Destinations; slide: Unemployment Rate by Province and Region.

¹⁶⁵ Data for this figure come from JBD, Vol. 2, Tab 34. For Alberta in 2021/22 and 2022/23 and Yukon 2022/23, the actual compensation is unknown. We assumed that these jurisdictions will be given at least an increase to account—in some way—for CPI. To provide an estimate of the 2021/22 salary for Alberta, the 2020/21 salary was increased by the amount equal to the change in “all items” monthly CPI for Alberta from January 2020 to January 2021: 0.8%. To provide an estimate of the 2022/23 salary for Alberta, the estimated 2021/22 salary was increased by the amount equal to the change in “all items” monthly CPI for Alberta from January 2021 to January 2022: 4.8%. To provide an estimate of the 2022/23 salary for the Yukon, the 2021/22 salary for Yukon was increased by the amount equal to the change in “all items” CPI for Yukon from January 2021 to January 2022: 3.7%. The “all items” monthly CPI numbers for these provinces were generated from Statistics Canada. [Table 18-10-0004-02 Consumer Price Index by geography, all-items, monthly, percentage change, not seasonally adjusted, Canada, provinces, Whitehorse, Yellowknife and Iqaluit.](#)

British Columbia’s Provincial Court judge salaries currently rank 10th out of all judicial salaries in Canada (9th if only considering provincial/territorial courts). We also note that, while the judicial salaries in most other provinces for the 2023-24 fiscal year are currently unknown, those that are known have increased from the 2022-23 values shown in the figure above.

The table below shows judicial salaries across Canada for the current year (2022-23), along with averages for comparison:¹⁶⁶

Jurisdiction	Salary for 2022-23
Federal	372,200
Ontario	350,212
Saskatchewan	343,045
Alberta	336,458 (estimate)
Yukon	319,107 (estimate)
Northwest Territories	311,723
Québec	310,000
Prince Edward Island	302,010
Manitoba	301,345
British Columbia	288,500
Nova Scotia	283,075
Newfoundland & Labrador	277,357
New Brunswick	263,920
AVERAGES	
All salaries (excluding BC)	314,204
All provinces/territories (excluding BC)	308,932
Alberta, Saskatchewan, and Ontario	343,238
Alberta, Saskatchewan, Ontario, and Quebec	334,928

For 2022-23, the average salary of all judges (federal and provincial) across Canada, excluding BC judges, is \$314,204. British Columbia’s judges’ salary is over \$25,000 below the national average.

If we look only at British Columbia’s closest comparators (Alberta, Saskatchewan, and Ontario) and exclude federal judges, the average salary is \$343,238. British Columbia’s economy is comparably healthy to their economies. With respect to BC’s financial position, independent bond rating agencies give British Columbia the highest rating in Canada (see discussion under section

¹⁶⁶ See *ibid.* for calculation of values for Alberta and Yukon.

4.5). Despite that, a BC Provincial Court judge’s salary is currently \$54,738 below the average of its closest comparators. This objective measure strongly suggests that BC judges’ salaries are unreasonably low.

Additionally, considering compensation as a whole (as described below in section 6.2), Mr. Sauvé’s undisputed evidence was that the estimated compensation value of the judicial pension arrangement in British Columbia is 43.1% of salary compared to an average compensation value of 54.6% for the other four jurisdictions he considered (federal, Alberta, Ontario, and Saskatchewan)—for a difference of 11.5% of salary.¹⁶⁷

In our view, British Columbia is not paying salaries to its Provincial Court judges that are within a reasonable range of the province’s comparators. This factor militates in favour of a significant increase in compensation.

Judicial Justices

British Columbia’s judicial justices are paid below average salaries for work similar to other judicial justices or justices of the peace in Canada, despite British Columbia’s strong economy and more favourable fiscal position.

Only Alberta, Saskatchewan, Manitoba, Ontario, and Quebec have judicial justice or justice of the peace positions (collectively “judicial justices”) that are comparable or analogous to those in British Columbia.¹⁶⁸

However, there are some differences. In British Columbia and Alberta, a judicial justice must have a law degree and have practised for five years, but in Ontario no legal training is required to hold the position. In Quebec, 10 year’s legal practice is required.¹⁶⁹ The Government also points to some differences in the jurisdiction of judicial justices among the six provinces,¹⁷⁰ but aside from Manitoba (where judicial justices conduct trials and sentencing hearings for summary convictions) and Quebec (where judicial justices rule on contested applications relating to the disposal of seized property), the differences in jurisdiction are relatively minor. All deal with significant liberty and privacy issues, and the Government acknowledged that the jurisdiction of judicial justices across Canada is “largely analogous.”¹⁷¹

The Government argues that we should consider the difference between the processes for determining compensation for judicial justices. It points to the fact that in Saskatchewan, Ontario, and Manitoba the salaries are set as a percentage of provincial judges’ salaries. For the same

¹⁶⁷ Comparative Analysis of Judicial Pension Plans, Prepared by Andre Sauvé, December 2022, PCJA BD, Tab 3, p.5.

¹⁶⁸ Main Submission of Government, para. 154; Main Submission of JJA, para. 101.

¹⁶⁹ Reply Submission of JJA, para. 61

¹⁷⁰ Main Submission of Government, para. 154.

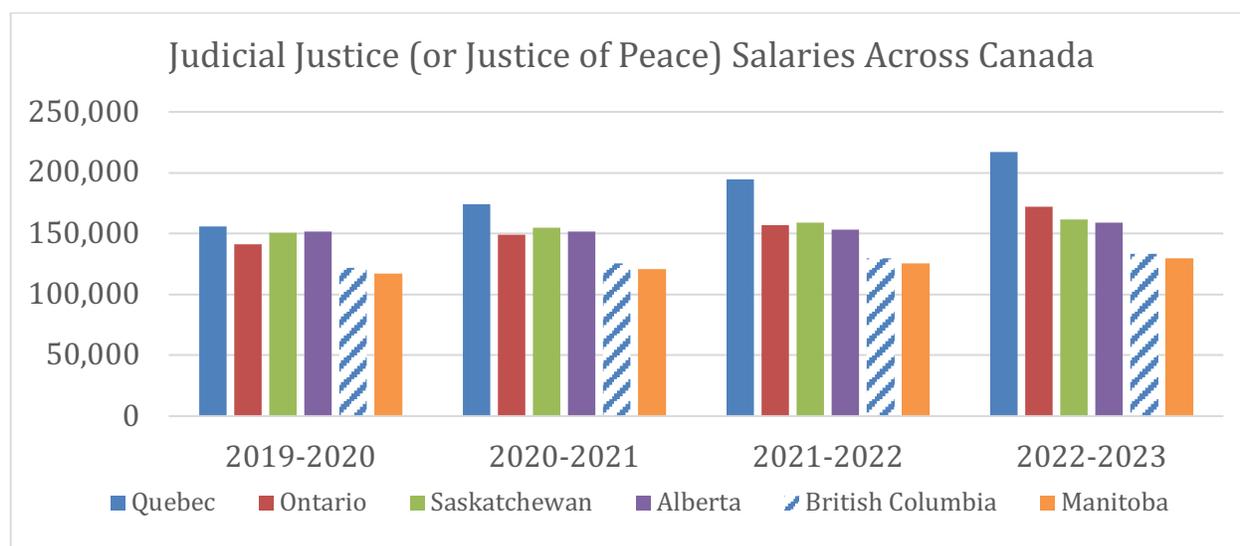
¹⁷¹ TR February 16, 2023, Ms. Wolfe for Government, p. 13, ll. 1-20; Main Submission of Government, paras. 152 and 154.

reasons described above in the section on judges, we do not find differences in the processes for determining compensation to be relevant considerations under this factor.

The Government says Alberta is the most appropriate comparator for judicial justice salaries in terms of “GDP, GDP growth, geographic location and population.” It says Quebec is not an appropriate comparator given differences in jurisdiction.¹⁷² The JJA adopted the 2019 JCC’s finding that Alberta and Ontario are the best comparators.¹⁷³

We find the roles of judicial justices across Canada to be roughly comparable, acknowledging some differences. As with the analysis above for judges, we find Alberta, Saskatchewan, and Ontario to be the closest to British Columbia with respect to the health of their economies, housing costs or provincial debt burdens. For consistency and given slight variations in the judicial justice roles in Quebec and Manitoba, we have determined that Alberta, Saskatchewan, and Ontario are the best comparators.

The figure below shows the annualized salaries of BC judicial justices and similar positions across Canada for the 2019-20 to 2022-23 fiscal years.¹⁷⁴



The current salary for BC judicial justices is \$34,366 below the average of all the other provinces. Despite British Columbia having a strong economy and an independently-ranked stronger financial

¹⁷² Main Submission of Government, para. 156.

¹⁷³ Main Submission of JJA, para. 102. TR February 15, 2022, Mr. Bernstein for JJA, p. 91, ll. 12-23; p. 93, ll. 3-10. p. 121, ll. 7-23.

¹⁷⁴ Data for this figure come from JBD, Vol. 2, Tab 35. For Alberta in 2021/22 and 2022/23, the actual compensation is unknown, but the participants provided us with an unconfirmed number for 2021/22 of \$151,813. Assuming at least an increase to account for CPI in the previous year, to provide an estimate of the 2022/23 salary for Alberta, the 2021/22 salary was increased by the amount equal to the change in “all items” CPI for Alberta from January 2021 to January 2022: 4.8%. The “all items” CPI numbers were generated from Statistics Canada. [Table 18-10-0004-02 Consumer Price Index by geography, all-items, monthly, percentage change, not seasonally adjusted, Canada, provinces, Whitehorse, Yellowknife and Iqaluit.](#)

position than any other province, BC judicial justice salaries are \$30,751 below the average of its closest comparators, Alberta, Saskatchewan, and Ontario.

The current salaries and averages for comparison are found in the following table:¹⁷⁵

Jurisdiction	Salary for 2022-23
Québec	217,000
Ontario	172,000
Saskatchewan	161,655
Alberta	159,100 (estimate)
British Columbia	133,500
Manitoba	129,578
AVERAGES	
All provinces (excluding BC)	167,866
Alberta, Saskatchewan, and Ontario	164,251
Alberta, Saskatchewan, Ontario, and Quebec	177,438

Within British Columbia, the position of a judicial justice may also be compared with that of a Provincial Court judge. The two positions have some overlapping jurisdiction such that Provincial Court judges fill shifts normally assigned to judicial justices. The qualifications for the positions are nearly identical. As noted by the JJA, “To the public, there is generally no discernible difference between a judicial justice and a Provincial Court judge.”¹⁷⁶ However, as described above, the statutory jurisdiction of a Provincial Court judge is much broader than that of a judicial justice. The judicial justice’s jurisdiction is further limited by the assignment of specific duties by the Chief Judge.

Currently, the salary of a full-time judicial justice is 46.3% of the annual salary of a judge: \$133,500 compared to \$288,500. In 1978, when judicial justices did not have to be lawyers, the salary of a judicial justice was 64.7% of a judge’s salary.¹⁷⁷ While judicial justices are much more specialized, have narrower jurisdiction, and do not conduct trials (other than in traffic court), it strikes us as remarkable that BC judicial justices are now paid less than half the salary of Provincial Court judges.

As with Provincial Court judges, this factor militates in favour of significant compensation increases for judicial justices.

¹⁷⁵ See *ibid.* for the estimate of Alberta Judicial Justice salary.

¹⁷⁶ Main Submission of JJA, para. 140.

¹⁷⁷ Main Submission of JJA, paras. 142-143.

4.4 Factor 4: Changes in the compensation of others paid by provincial public funds in British Columbia

The Government’s current approach to compensation of the public sector is relatively generous compared to recent history. The Government has shown its willingness to address specific problems such as recruitment and retention with increases in compensation.

This factor directs us to look at changes in the compensation of others paid out of the public purse. It is the *change* in compensation that is important—not a dollar-for-dollar comparison of compensation between different groups of public employees or public office-holders.¹⁷⁸ Under this factor, it is important to look at trends, and consider what those trends might say about a reasonable approach to judicial compensation, noting the unique, constitutional role of the judiciary. For example, looking at the changes to the compensation of others paid from the public purse might “support the inference that the Province had exercised moderation in dealing with other public salaries.”¹⁷⁹ Conversely, it might support an inference that the government has acted more expansively.

Under this factor we look at what the government has considered “to be a reasonable change in compensation for the rest of the public service.”¹⁸⁰ The Government acknowledged that a strict application of its public sector bargaining mandate to changes in compensation by the judiciary would not be appropriate.¹⁸¹

The Government rightly conceded that “we are in a different world” compared to the situation before past commissions.¹⁸² The *2022 Shared Recovery Mandate* is the most generous bargaining mandate that the BC Government has put forth in over 12 years.¹⁸³ It guarantees, over a three-year period, wage increases to the public sector of 11.5% to 13.75%, depending on whether cost of living adjustments need to be made.¹⁸⁴ The Government said the mandate was designed, in part, to respond to inflation. The PCJA pointed out that under this bargaining mandate, the BC

¹⁷⁸ *Provincial Court Judges’ Association of British Columbia v. British Columbia (Attorney General)*, 2021 BCCA 295, JBA, Vol. 1, Tab 14, para. 59.

¹⁷⁹ *Provincial Court Judges’ Association of British Columbia v. British Columbia (Attorney General)*, 2021 BCCA 295, JBA, Vol. 1, Tab 14, para. 61.

¹⁸⁰ TR February 16, 2023, Ms. Wolfe for Government, p. 61, ll. 2-4.

¹⁸¹ Main Submission of Government, para. 162, citing *Provincial Court Judges Association of British Columbia v. British Columbia (Attorney General)*, 2012 BCSC 1022.

¹⁸² TR February 16, 2023, Ms. Wolfe for Government, p. 61, l. 23 to p. 62, l. 2.

¹⁸³ For comparison, see the government’s public sector bargaining mandates from 2019, 2014, 2012, and 2010 at <https://www2.gov.bc.ca/gov/content/employment-business/employers/public-sector-employers/public-sector-bargaining/mandates-and-agreements>. The 2010 and 2012 mandates were for zero net increases. The 2014 mandate was for 0, 1, 1.5, 1.5 and 1.5% increases over 5 years. The 2019 mandate was for 2% increases in each of 3 years.

¹⁸⁴ Main Submission of Government, para. 177; 2022 Shared Recovery Mandate, JBD, Vol. 2, Tab 43.

Government is also offering “a flexibility allocation to target additional wage adjustments—over and above the general wage increases—that are needed to address, among other things, specific recruitment and retention challenges.”¹⁸⁵

The PCJA also described instances where small groups of employees receive certain bonuses or stipends.¹⁸⁶ In addition, some employees in the public sector receive step increases as they progress through “levels” of their positions. In contrast, all Provincial Court judges or judicial justices receive the same compensation regardless of years served; there are no salary increases or stipends or bonuses, and no promotion levels for a judge to move through (with the exception of the small number of administrative positions of Chief Judge, Associate Chief Judge, etc. referred to above). The Government submits such step increases are irrelevant to this Commission as members of the judiciary already receive the maximum salary for their position.¹⁸⁷ We accept that point, and in any event, on the evidence before us it is impossible to assess whether there has been a change in the compensation received by employees in the public sector as a result of changes in bonuses or the system of progression through position levels.

One conclusion is clearly supported by the evidence: in exceptional circumstances, the government has shown itself willing to depart from bargaining mandates and to implement greater compensation increases for specific groups. The PCJA says these exceptions demonstrate there are “circumstances in which government may need to offer increases over and above the bargaining mandate” to address problems.¹⁸⁸

For example, in 2019, when the government’s bargaining mandate was 2%, it increased legal aid tariff rates by 35% after the legal aid lawyers working for tariff rates threatened to strike. The context for this raise included that the tariff rates had not been raised in 13 years.¹⁸⁹

The PCJA and the Government referred to a current example: family physicians, who may receive changes in compensation greater than the *2022 Shared Recovery Mandate*, to ensure that the “take home pay of family doctors will be roughly comparable to equivalent hospital physicians going forward.”¹⁹⁰ The context here includes a health care system in crisis and “a recruitment and retention” problem for family doctors.

The Commission requested and the Government provided further details about the increased compensation for physicians. It appears that all physicians will see across the board increases to the rates and fees they may charge of 6-8.25% over three years (2022/23 to 2024/25), depending on whether a Cost of Living Protection Adjustment is triggered.¹⁹¹ On top of this, approximately

¹⁸⁵ Main Submission of PCJA, para. 331.

¹⁸⁶ TR February 14, Ms. Latimer for PCJA, p. 215, ll. 1-19.

¹⁸⁷ Reply Submission of Government, para. 34.

¹⁸⁸ TR February 14, 2023, Ms. Latimer for PCJA, p. 216, ll. 17-20.

¹⁸⁹ Main Submission of PCJA, para. 228; Reply Submission of Government, para. 37.

¹⁹⁰ Main Submission of PCJA, para. 231; Reply Submission of Government, para. 37.

¹⁹¹ Information Respecting Increases in Compensation for Family Physicians in British Columbia, prepared for 2022 JCC, p. 4. (See Appendix B, item 8.)

\$428 million dollars are available to address specific priority areas “such as increasing the Business Cost Premium to offset overhead costs of a physician’s practice.”¹⁹² There is also a new compensation model for family physicians which is intended to be competitive with compensation for hospitalists (physicians who work in hospitals). The actual compensation varies based on how individual family physicians “respond to various incentives in the model.”¹⁹³

From the information provided,¹⁹⁴ it is difficult to know exactly how much of an increase these combined compensation methods provide to an “average” family physician. However, the PCJA referred to documents from the Ministry of Health and statements made by the government to the media, both of which indicate that a full-time family doctor (meeting certain parameters set out in the compensation model) could receive an increase in pay from \$250,000 per year to \$385,000 per year under the new model. This potentially represents a 54% increase in gross income per year for those physicians meeting all the parameters and responding to the incentives in the model.¹⁹⁵ The Government agreed that the change in the compensation model for family doctors is meant to address recruitment and retention problems.¹⁹⁶

The evidence before us clearly shows the BC Government currently taking a generous approach to increases in compensation in the public sector when compared to the recent past. The evidence also shows that government is willing to allocate significant funding in order to correct specific problems like the recruitment and retention of family doctors.

Overall, this factor supports an increase in compensation for both judges and judicial justices.

4.5 Factors 5 and 6: The generally accepted current and expected economic conditions in British Columbia; and the current and expected financial position of the government over the four fiscal years that are the subject of the report

The BC economy is sound and solid. The government is currently embarked on a number of spending programs due to its fiscal surplus. British Columbia receives the highest credit ratings of any province. While a short-term economic slowdown is expected this year, the economy is expected to rebound to normal levels. The economic and fiscal position of British Columbia permits significant increases in compensation for Provincial Court judges and judicial justices.

¹⁹² Information Respecting Increases in Compensation for Family Physicians in British Columbia, prepared for 2022 JCC, pp. 3-4. (See Appendix B, item 8.)

¹⁹³ Information Respecting Increases in Compensation for Family Physicians in British Columbia, prepared for 2022 JCC, p. 4. (See Appendix B, item 8.)

¹⁹⁴ Information Respecting Increases in Compensation for Family Physicians in British Columbia, prepared for 2022 JCC. (See Appendix B, item 8.)

¹⁹⁵ Supplemental Submission of PCJA, para. 11 and Tabs D, E, and F.

¹⁹⁶ TR March 10, 2023, Ms. Wolfe for Government, p. 98, ll. 11-25.

Although Factors 5 and 6 are discrete factors, the “current and expected economic conditions” obviously affect the “current and expected financial position of the government.” Therefore, we have chosen—like the participants did in the oral hearings—to discuss these factors together.

Two witnesses gave evidence to help us understand these factors. We heard from Mr. Ian McKinnon, a consultant with Pacific Issues Partners, who provided us with a report, a supplementary report, and two PowerPoint presentations.¹⁹⁷ His evidence was presented by the PCJA. Ms. Heather Wood, Deputy Minister of Finance for British Columbia, was tendered by the Government. She provided a report, testified before us, and provided us with two PowerPoint presentations.¹⁹⁸ We also had before us considerable information regarding the 2023 Provincial Budget (“Budget 2023”).¹⁹⁹

Both witnesses spoke about the state of the BC economy. Mr. McKinnon told us the following:

- Canada has a considerable advantage over other G7 countries arising from lower debt levels. The IMF expects Canada’s economic growth forecast to be slightly above the average for advanced economies. International events are expected to have a positive effect on Canada’s economy, such as China’s relaxation of COVID restrictions, which is expected to improve supply chain issues, and the conflict in Eastern Europe, which has increased demand for Canadian grain and energy.²⁰⁰
- In response to inflation, over the last year the Bank of Canada increased interest rates “rapidly and fairly dramatically.” Inflation is now stabilizing and beginning to move down.²⁰¹ Since the summer of 2022, the consumer price index (CPI) has been trending down.²⁰²
- Canadian Real GDP is above where it was pre-COVID-19, by a “significant percent.”²⁰³ Similarly, Canadian employment levels have been fully restored to pre-pandemic levels and “have been growing since.”²⁰⁴
- In British Columbia, “the GDP has grown faster, unemployment has tended to be below the national average and we've got a diversified economy. Diversified economy means that you don't have the terrific ups, the booms ... but nor do we have the declines.”²⁰⁵ The BC economy is sound and solid.²⁰⁶

¹⁹⁷ PCJA BD Tab 1; Exhibit 1; Supplementary Submission of PCJA, Tab B; and Exhibit 14.

¹⁹⁸ Exhibit 2; and Exhibit 17.

¹⁹⁹ Budget Submission of Government, Appendices; and Supplemental Submission of PCJA, Appendices.

²⁰⁰ TR March 10, 2023, Mr. McKinnon, p. 12, l. 20 to p. 14, l. 8; Exhibit 14, p. 2.

²⁰¹ TR March 10, 2023, Mr. McKinnon, p. 15, ll. 4-15.

²⁰² TR March 10, 2023, Mr. McKinnon, p. 17, ll. 15-18.

²⁰³ TR March 10, 2023, Mr. McKinnon, p. 15, ll. 16-23; Exhibit 14, p. 4.

²⁰⁴ TR March 10, 2023, Mr. McKinnon, p. 15, l. 24 to p. 16, l. 4; Exhibit 14, p. 5.

²⁰⁵ TR March 10, 2023, Mr. McKinnon, p. 18, ll. 17-21; Exhibit 14, p. 7.

²⁰⁶ TR March 10, 2023, Mr. McKinnon, p. 25, ll. 18-22.

Ms. Wood similarly testified to the strength and resilience of the BC economy, but cautioned about an economic slowdown over the next year:

- The BC economy has proven to be resilient in facing the pandemic and geopolitical disruptions.²⁰⁷
- Economic growth was “very strong” in 2021 and 2022, slowing towards the end of 2022, and a slower growth in GDP is expected in the 2023-24 fiscal year as higher interest rates start to cool domestic and global demand.²⁰⁸
- BC real GDP growth in 2023 is forecast to be 0.4%, which is lower than the previous forecast of 1.5% from the First Quarterly Report.²⁰⁹ In the near and medium term, the economy is forecast to “expand by 1.5 percent in 2024” and to be in the range of 2.2 to 2.4 percent annually by 2025-2027.²¹⁰
- While economic growth is not strong every year, the “underlying fundamentals of BC’s economy are very strong.”²¹¹ Overall, British Columbia has a “sound, solid economy.”²¹²

With respect to the financial position of the BC government, Mr. McKinnon told us the following:

- The government’s strong financial position reflects British Columbia’s strong economy and the government’s “prudence” in budgeting.²¹³
- The government has been using the recent budgetary estimates to “spend as much of the surplus as they can.”²¹⁴ Given time constraints, this spending cannot go through normal processes and is subject to less reporting and evaluation.²¹⁵
- The current budget shows deficits over the next three years, largely due to increased spending.²¹⁶
- British Columbia has significant fiscal capacity due to its relatively low personal tax burden.²¹⁷

²⁰⁷ TR February 14, 2023, Ms. Wood, p. 34, ll. 13-17.

²⁰⁸ *Ibid.* and see TR March 13, 2023, Ms. Wood, p. 6, l. 15 to p. 8, l. 3.

²⁰⁹ TR March 13, 2023, Ms. Wood, p. 20, ll. 11-14; Budget Submission of Government, para. 7.

²¹⁰ TR March 13, 2023, Ms. Wood, p. 8, ll. 11-21.

²¹¹ TR March 13, 2023, Ms. Wood, p. 20, ll. 8-15.

²¹² TR February 14, 2023, Ms. Wood, p. 88, l. 1.

²¹³ TR March 10, 2023, Mr. McKinnon, p. 19, ll. 4-15; Exhibit 14, p.8 (Quote from Ms. Wood’s Letter of February 28, 2023, in *Budget 2023*, p. v).

²¹⁴ TR March 10, 2023, Mr. McKinnon, p. 20 ll. 17-24.

²¹⁵ TR March 10, 2023, Mr. McKinnon, p. 21, ll. 7-15.

²¹⁶ TR March 10, 2023, Mr. McKinnon, p. 21, l. 16 to p. 22, l. 2; Exhibit 14, p. 10.

²¹⁷ Exhibit 1, slide: Fiscal Capacity.

- It is “highly probable” that no other province in Canada builds the same level of prudence into its budgets as does British Columbia. British Columbia’s bigger margins are an “appropriate response” to uncertainty.²¹⁸
- British Columbia has the highest credit ratings (from independent rating agencies) of any province in the country. The strength of the rating influences the interest rate a debt-holder is charged.²¹⁹ The rating agencies’ “core mission” is similar to that of this Commission in terms of looking at the future of the economy and the fiscal prospects of the government—they look at these factors in determining the prospect that the government’s debt will be paid back.²²⁰ As shown in the figure below,²²¹ these ratings view British Columbia’s fiscal performance as better than any other province.²²²

Ratings Agencies Give BC Highest Provincial Rating

	S&P	DBRS	Moody’s
B.C.	AA+	AA high	Aaa
Alberta	A	AA low	Aa3
Sask.	AA	AA low	Aa1
Manitoba	A+	A high	Aa2
Ontario	A+	AA low	Aa3
Quebec	AA-	AA low	Aa2
N.B.	A+	A high	Aa2
Nova Scotia	A	A high	Aa2
Nfld.	A	A low	A1

Ms. Wood also told us about increased levels of government spending, the expected deficits, and the prudence in the budget. She also referred to lower expected revenues and increased debt levels:

- The third quarterly report for 2022-23 shows a surplus of \$3.6 billion, which is lower than the surplus noted in the second quarterly report because the Province has used \$2.1 billion of the formerly reported surplus to fund priorities in this fiscal year, including infrastructure grants to local governments, BC Ferries affordability, rental protections, and an

²¹⁸ TR March 10, 2023, Mr. McKinnon, p. 27, ll. 5-12; TR February 13, 2023, Mr. McKinnon, p. 70, ll. 1-7.

²¹⁹ TR March 10, 2023, Mr. McKinnon, p. 23, l. 15 to p. 24, l. 11; p. 32, ll. 2-15; Exhibit 14, p. 12.

²²⁰ TR March 10, 2023, Mr. McKinnon, p. 23, l. 21 to p. 24, l. 5.

²²¹ Exhibit 14, slide: Rating Agencies Give BC Highest Provincial Rating. See, TR March 10, 2023, Mr. McKinnon, p. 24, ll. 12-20, where Mr. McKinnon explains that the S&P (Standard and Poor’s) rating was updated in December 2022, leaving BC’s ratings exactly where they were in the spring of 2022.

²²² Exhibit 1, slide: B.C.’s Ratings; TR March 10, 2023, Mr. McKinnon, p. 23, ll. 2-8.

affordability tax credit.²²³ In relation to the \$1 billion dollar grant to municipalities for infrastructure, she said the Province does not maintain control over how the municipalities spend the money, but can indicate the categories of funding that local governments should be using and require public reporting on the use of the funds.²²⁴

- Any budgetary surplus from 2022-23 that is not spent before the end of the fiscal year will be applied against the province’s debt as a matter of law and accounting practice.²²⁵
- The government projects lower revenue for the next two years owing to tax revenues returning to “more normal levels from the highs of 2022.”²²⁶
- The operating surplus in 2022-23 “brought down the debt level but the forecasted deficits and capital spending forecasted in budget will result in increased debt and somewhat deteriorating debt affordability metrics.”²²⁷ While declining deficits are expected in later years of the forecast, provincial debt will “continue to increase as a result of capital spending.”²²⁸ However, long term, “BC continues to have relatively affordable levels of debt.”²²⁹
- The budget includes explicit layers of prudence through the economic forecast and forecast allowance and through contingencies (as explained further below). The prudence that is built into the budget makes the Province’s fiscal position resilient.²³⁰
- British Columbia is unique among provinces in that it has “multiple levels of prudence. We have economic prudence; we have contingencies allocation; we have forecast allowance. So BC is unique in that regard, and the credit rating agencies have acknowledged that.”²³¹

Both witnesses spoke in detail about the prudence measures built into the BC Government’s forecasting. Mr. McKinnon compared the monetary sum of the prudence measures incorporated into Budget 2023 for the next three years against the estimated deficits for the same years. Doing so results in a positive balance in the range of \$1.5 to \$2 billion per year.²³² Mr. McKinnon said one cannot look at multibillion dollar deficits without realizing that amounts are built into the budget to “respond to demand in needs or shortfalls on the income side.”²³³

²²³ TR March 13, 2023, Ms. Wood, p. 9, l. 22 to p. 10, l. 9.

²²⁴ TR March 13, 2023, Ms. Wood, p. 23, ll. 15-20.

²²⁵ TR February 14, 2023, Ms. Wood, p. 72, l. 20 to p. 73, l. 7.

²²⁶ TR March 13, 2023, Ms. Wood, p.10, l. 24 to p. 11, l. 3; Exhibit 17, p. 5 (Budget 2023 Fiscal Plan).

²²⁷ TR March 13, 2023, Ms. Wood, p. 12, ll. 10-15.

²²⁸ Exhibit 17, p. 8.

²²⁹ TR March 13, 2023, Ms. Wood, p. 13, ll. 4-7.

²³⁰ TR March 13, 2023, Ms. Wood, p. 28, ll. 3-15.

²³¹ TR March 13, 2023, Ms. Wood, p. 31, ll. 3-8.

²³² TR March 10, 2023, Mr. McKinnon, p. 22, ll. 3-24; Exhibit 14, p. 11.

²³³ TR March 10, 2023, Mr. McKinnon, p. 23, ll. 9-14.

Ms. Wood told us the government’s “prudence measures” in Budget 2023 fall into various categories: general contingencies, a forecast allowance, priority spending initiatives and caseload pressures, and specific contingencies.²³⁴ The bulk of the prudence measures (\$5.5 billion of \$6.2 in 2023-24) are general or specific contingencies, which are allocated expenses. She said it was not possible to “offset” the contingency measures against the forecast deficit as Mr. McKinnon had done.²³⁵ They “reflect actual expenses that are anticipated”—they are for “specific items such as the wage mandate costs, pandemic related spending and climate related disasters.”²³⁶ The “priority spending initiatives and caseload pressures” is a prudence measure built into the fiscal budget for 2025-26, acknowledging that, in later years of the fiscal plan, there will be a need to fund core government programs.²³⁷ It is only the “forecast allowance” that could “perhaps late in the fiscal year” be removed to get an assessment of the “bottom line” of the budget.²³⁸

We accept that, as Ms. Wood stated, it is unusual to compare the monetary sum of the prudence measures incorporated into Budget 2023 for the next three years against the estimated deficits for the same years, and we are not placing any weight on that comparison. Instead, we rely on the evidence from both Mr. McKinnon and Ms. Wood that the government’s prudence measures serve British Columbia well in times of uncertainty.

In submissions, the PCJA pointed out that the economy and the government’s financial position are so strong that the government has been able to make the largest infrastructure investment in the province’s history, spending very large sums “outside the normal budgeting processes and the analysis that is usually entailed in those financial decisions.” It says such actions are not those of “a government that sees significant fiscal risks in the next few years.”²³⁹ Further, the PCJA argued that a recent agreement with the federal government on healthcare spending is another positive change to the government’s fiscal position and “another reason to have confidence” in the government’s fiscal position.²⁴⁰ Ms. Wood testified that these agreements are not reflected in the forecasts in Budget 2023.²⁴¹ However, part of that funding will not help to offset costs until after 2025/26, and the other part of it will be for new costs and will not offset existing costs.²⁴²

²³⁴ Budget Submission of Government, Appendices (Budget 2023, p. 30).

²³⁵ TR March 13, 2023, Ms. Wood, p. 15, ll. 14-19.

²³⁶ TR March 13, 2023, Ms. Wood, p. 12, ll. 16-24; p. 17, ll. 20-25.

²³⁷ TR March 13, 2023, Ms. Wood, p. 16, ll. 8-17.

²³⁸ TR March 13, 2023, Ms. Wood, p.18, ll. 1-9.

²³⁹ Supplemental Submission of PCJA, para. 5; TR March 10, 2023, Ms. Latimer for PCJA, p. 41, l. 22 to p. 42, l. 6.

²⁴⁰ TR March 10, 2023, Ms. Latimer for PCJA, p. 42, l. 15 to p. 43, l. 5.

²⁴¹ TR March 13, 2023, Ms. Wood, p. 24, ll. 12-16.

²⁴² TR March 13, 2023, Ms. Wood, p. 32, ll. 2-13.

The JJA adopted the PCJA’s submissions, noting that a positive outlook for British Columbia is consistent with increases to judicial compensation.²⁴³

The Government’s submissions emphasized that the BC economy has slowed over 2022, and that forecasts call for further slowing or a recession in 2023.²⁴⁴ In the longer term, “British Columbia is expected to experience steady employment growth, solid investment activity, and higher international migration” resulting in “a higher real GDP growth range between 2025 and 2027.”²⁴⁵ Risks to the economy include persistent high inflation, uncertainty over the impact of higher interest rates on borrowing and the housing market, lingering supply chain disruptions, a weaker than expected global economy, the impacts of geopolitical conflicts on trade, and aging demographics leading to tighter labour markets.²⁴⁶

On its financial position, the Government noted increased spending measures aimed at British Columbians struggling with cost of living pressures, and debt metrics calling for fiscal prudence.²⁴⁷ The Government noted that the budget’s prudence measures account for a number of risks.²⁴⁸

We have considered all this evidence. Despite some disagreements, for example in the characterization of future risks to the economy (and consequently, the financial outlook of the government), by and large Mr. McKinnon’s and Ms. Wood’s evidence painted a consistent picture. The disagreements are not material to our conclusions about this factor.

We conclude that British Columbia’s economy is sound, solid, and resilient. Independent bond rating agencies have confidence in the province, giving it the highest ratings of any province in the country. The government builds layers of prudence into its budgets—more than other provinces—and this prudence makes for a resilient fiscal position. British Columbia is well-positioned financially to weather risks over the next few years. The rapid and record level spending of 2022-23’s budget surplus demonstrates the Government’s confidence in its own financial position. The short-term outlook is for an economic slowdown or recession in 2023-24, but then a recovery to normal levels of growth in 2024-25 and beyond.

In our view, the strength and resilience in the economy and the financial position of government are each compatible with significant increases in judicial compensation. However, the forecasted economic slowdown for 2023-24 indicates the need for some moderation in the next fiscal year.

²⁴³ Main Submission of JJA, para. 130; Reply Submission of JJA, para. 68; Supplemental Submission of JJA, para. 28; TR March 10, 2023, Mr. Bernstein for JJA, p. 54, ll. 4-6.

²⁴⁴ Budget Submission of Government, paras. 6-12. TR March 10, Ms. Wolfe for Government, p. 64, l. 15 to p. 65, l. 21.

²⁴⁵ Budget Submission of Government, para. 14.

²⁴⁶ Budget Submission of Government, para. 15.

²⁴⁷ Budget Submission of Government, paras. 22-23.

²⁴⁸ Budget Submission of Government, paras. 25-26.

5 Recommendations on Salaries

Both the PCJA and the JJA submitted that a significant “correction” to judicial salaries is needed to bring the compensation of judges and judicial justices up to the level of “reasonable compensation.”²⁴⁹ That correction, they say, should not just account for inflation but address the fall in ordinal rank in comparison to other judicial officers across Canada.²⁵⁰ The Government recommended modest increases to current salaries, incorporating “a level of catch-up” with inflation and then increases to address anticipated inflation over the 2022 cycle.²⁵¹

We heard different views about whether it is necessary for us to have a notional “starting point” from which to recommend increases (or decreases) to the salaries of judicial officers. The “starting point” would have to be notional (for judges) because, at the time of making our Final Report, the Legislative Assembly’s implemented salary for 2022-23 has been quashed and remitted back to the Legislative Assembly for reconsideration.²⁵² Thus, though the current judicial salary is \$288,500, the “final” salary—for at least the judges—for 2022-23 remains unknown.²⁵³

The Government argued that the legislature is responsible for approving public expenditures and, given it has approved the current salaries of judges, those current salaries have “to be the starting point of this commission’s work.”²⁵⁴ Further, it says the statutory factors that we are required to account for all involve changes in conditions in some form or another, so all need a starting point.²⁵⁵ More specifically, the Government submitted that to understand the magnitude of an increase that is being requested you need a starting point, especially when taking into account the changes in the compensation of others.²⁵⁶

²⁴⁹ TR February 15, 2023, Mr. Bernstein for JJA, p. 36, ll. 8-16.

²⁵⁰²⁵⁰ TR February 16, 2023, Ms. Latimer for PCJA, p. 101, ll. 3-10, p. 124 l. 17 to p. 125, l. 3; Mr. Bernstein for JJA p. 114, ll. 7-20. Also, see JBD, Vol. 2, Tab 34 which provides provincial court salary details for all the provinces and territories. These data show British Columbia’s fall in salary “rank” since 2010.

²⁵¹ Main Submission of Government, para. 9.

²⁵² *Provincial Court Judges’ Association of British Columbia v. British Columbia (Attorney General)*, 2023 BCSC 520.

²⁵³ The PCJA cautioned us to avoid the situation where, as happened in 2013, the commission recommends a percentage increase on what is currently paid to judges, only to have the starting point changed by a subsequent court decision: TR February 14, 2023, Ms. Latimer for PCJA, p. 139, ll. 11-23; *Provincial Court Judges’ Association of British Columbia v. British Columbia (Attorney General)*, 2017 BCCA 63 at paras. 4, 6, 8, and 9. See also the discussion of starting point in the 2016 JCC Report, JBD, Vol. 1, Tab 21, p. 59.

²⁵⁴ TR February 15, 2023, Ms. Wolfe for Government, p. 202, l. 21 to p. 203, l. 6.

²⁵⁵ TR February 15, 2023, Ms. Wolfe for Government, p. 207, ll. 7-13.

²⁵⁶ TR February 15, 2023, Ms. Wolfe for Government, p. 208, l. 18 to p. 209, l. 6; February 16, 2023, Ms. Wolfe for Government, p. 56, ll. 16-19.

The PCJA asked us to focus on a dollar amount rather than a percentage increase based on a notional starting point, as this will focus us on the appropriate question—the reasonable remuneration that should be paid to judges.²⁵⁷ It said the starting point is not particularly important with respect to changes to the compensation paid to others because we do not need to find that judges should receive identical increases to others paid by public funds.²⁵⁸ It urged us to focus on what changes in the compensation of others tell us about government’s approach to compensation generally, and to consider that evidence along with all the other statutory factors.²⁵⁹

In considering some of the statutory factors, it is obviously relevant and useful to look at what judges and judicial justices are currently being paid. However, we are not expressing our recommendations in terms of a percentage increase. Our focus is on what is reasonable compensation for the next four years—not only on what is a reasonable increase in compensation.

5.1 Provincial Court Judges

Our recommendation for Provincial Court judges’ salaries for the next four fiscal years appears in the table below along with the salaries proposed by the PCJA and the Government. Although the PCJA proposed a salary for 2023-24 and then requested an increase by the amount of CPI for each of the subsequent three years, we have expressed the subsequent years of its proposal in dollar terms for ease of comparison.

<u>Provincial Court Judges</u>	<u>Current Salary</u>	<u>2023 - 2024</u>	<u>2024 - 2025</u>	<u>2025 - 2026</u>	<u>2026 -2027</u>
Government Submission	\$288,500	\$311,000	\$323,000	\$332,000	\$338,000
PCJA Submission	\$288,500	\$350,860	\$364,547 (\$350,860 + est. 3.9% CPI increase) ²⁶⁰	\$373,296 (\$364,547 + est. 2.4% CPI increase)	\$381,509 (\$373,296 + est. 2.2% CPI increase)
RECOMMENDATION:		\$343,000	\$360,000	\$360,000 + a percentage increase equivalent to the annual average percentage change in BC CPI for 2024 ²⁶¹	2025-26 salary + a percentage increase equivalent to the annual average percentage change in BC CPI for 2025

²⁵⁷ TR February 14, 2023, Ms. Latimer for PCJA, p. 138, ll.15-24.

²⁵⁸ TR February 15, 2023, Ms. Latimer for PCJA, p. 6, ll. 3-11.

²⁵⁹ TR February 15, 2023, Ms. Latimer for PCJA, p. 6, ll. 13-22; p. 7, ll. 4-17.

²⁶⁰ These estimates for CPI are taken from Reply Submission of Government, para. 109.

²⁶¹ For clarity, “BC CPI” refers to CPI for the whole province of British Columbia (not CPI that may be experienced in a particular region of the province), and it refers to “all items” CPI (not CPI calculated on a subset

It must be remembered that “reasonable compensation” speaks to total compensation. For judges, pensions comprise a significant part of their total compensation. No participant proposed any changes to the overall value of pensions. Where increases in compensation are needed, we have determined that those increases should, at this time, come in the form of increased salary.

In arriving at our salary recommendations, we have considered what each statutory factor tells us about the reasonable compensation for judges:

- Factor 1 supports a salary increase sufficient to attract greater numbers of highly qualified applicants from diverse legal backgrounds to apply to become Provincial Court judges. There is currently low interest in this court, shown by declining applications, coupled with a serious difficulty in filling judicial vacancies outside the Lower Mainland. The court could benefit from more diversity in applicants’ previous legal practice. The appointing body needs a deeper pool of applicants from which to draw.
- Factor 2 supports neither an increase nor decrease in the compensation paid to judges.
- Factor 3 reveals BC Provincial Court judges’ salaries are out of step and well below the average of best comparators, which are objective indicators of reasonable judicial salaries. The ranking of current provincial/territorial court judges’ salaries across Canada shows British Columbia in 9th of 12 places. Provinces with comparable economies or costs of living (particularly housing) occupy the top three spots. Ontario, Saskatchewan, and Alberta are each close to \$50,000 above the current level of BC judges’ salaries. This gap, which grows larger if pension values are considered (see section 6.2 below), militates in favour of a significant increase in judges’ salaries.
- Factor 4 supports an increase in compensation for judges. The government has taken a relatively generous approach to compensation of the public sector and has shown a willingness to increase wages when needed to address recruitment and retention problems for others paid from the public purse.
- Factor 5 supports an increase in judges’ salaries. The BC economy is solid and resilient. While there is a forecasted economic slowdown that indicates the need for a degree of moderation in the next fiscal year, the overall and longer-term outlooks for the BC economy are both positive and strong.
- Factor 6 supports an increase in judges’ salaries. The financial position of government is strong, and arguably the best in Canada. British Columbia is well-positioned through its budgetary prudence to remain financially strong over the next four years.

Considered together, these factors overwhelmingly indicate the need for an increase in compensation. While Factor 2 is neutral, the alignment of all other factors shows that the time is ripe to correct the significantly below average pay earned by BC Provincial Court judges compared

of particular goods and/or services). BC CPI calculations should be made on the basis of the previous calendar year (e.g., for the 2025-2026 salary, use the annual average percent change from January 1, 2024 to December 31, 2024). BC Stats is to be relied on as the source for reporting BC CPI, using Stat Can data. BC CPI percentage changes should be calculated to one decimal place. If the annual average percentage change in the BC CPI over the previous calendar year is less than 0%, it should be treated as a 0% change and the judges’ salary will remain the same rather than being reduced.

to all other judges in Canada, and especially to their closest comparators. Given the healthy economy of British Columbia, and the strong financial position of the government, BC judges should receive compensation that puts them closer to the top group of courts on the table found on page 40 of this report and within the range of Alberta, Saskatchewan, and Ontario judges.

A significant correction in salary should help to address the Provincial Court’s challenge in recruiting judges. For one thing, it would reduce the current gap in pay between Provincial Court and Supreme Court judges. A pay correction also aligns with the government’s current approach to sharing the success of British Columbia’s strong financial position with others paid from public funds. Government’s actions in the past six months, and its approach in Budget 2023, show that it is able, while remaining commendably prudent, to give robust support to valuable public activities—such as the work of family physicians. We recognize that access to justice is not universally seen as equivalent to access to health care. However, a justice system that may struggle over the next four years with a declining court complement deserves support. The Government is clearly in a position to provide such support at this time.

We agree with the PCJA that a significant correction is required to judges salaries. However, we have determined that a lesser amount in the first year than what the PCJA has proposed would still meet the requirement for reasonable compensation so long as it is followed by a further corrective increase in the second year.

We also heard the Government’s submission that its proposed salaries “take into account the need to remain economically and fiscally prudent, given the anticipated initial decline and weakening of the economic and financial position that is reflected in budget 2023,” (with a forecast of a return to average growth, with some deficits and increased debt over the subsequent three years.)²⁶² While we disagree that the amounts proposed by the Government are reasonable when taking into account all the factors discussed above, we accept that an economic slowdown is expected for 2023-24 before a return to normal economic levels. In recognition of this, we have split the correction in judges’ salaries over the first two years of our mandate: 2023-24 and 2024-25. We recommend the judges receive increases in salary over and above rates of inflation for those two years. After the full correction is implemented, for the last two years of our mandate, we recommend inflationary increases equal to BC’s Consumer Price Index.²⁶³ By tying the later increases to CPI, we intend to keep judicial salaries stable against the cost of living.

Our salary recommendation will still likely put BC judges behind its closest comparators in 2023-24, but will likely place BC judges above the national average.

5.2 Judicial Justices

Our recommendation for judicial justices’ salaries for the next four fiscal years appears in the table below along with the salaries proposed by the JJA and Government.

²⁶² TR March 10, 2023, Ms. Wolfe for Government, p. 71 ll. 10-22.

²⁶³ See footnote 261, *supra*, for remarks about the calculation of BC CPI.

<u>Judicial Justices</u>	<u>Current Salary</u>	<u>2023 – 2024</u>	<u>2024 – 2025</u>	<u>2025 - 2026</u>	<u>2026-2027</u>
Government Submission	\$133,500	\$143,915	\$149,527	\$153,564	\$156,636
JJA Submission	\$133,500	\$175,000	\$180,000	\$185,000	\$190,000
RECOMMENDATION:		\$172,000	\$177,000	\$182,000	\$187,000

We note that most judicial justices work part-time and they will be paid pursuant to a per diem formula, based on the full-time salary.

We recognize that benefits factor into the total compensation of judicial justices, and accordingly we have recommended (below) an increase to the amount paid to part-time judicial justices in lieu of benefits, as well as an increase in the amount paid for “overhead” to part-time judicial justices. Further, in making our salary recommendation, we have considered that shift premiums factor into the total compensation of part-time judicial justices. Still, salary (or the per diem equivalent) remains the largest component of judicial justice compensation.

In arriving at our salary recommendations, we have considered what each statutory factor tells us about the reasonable compensation for judicial justices:

- Factor 1 reveals a looming crisis in attracting and maintaining a strong complement of judicial justices. It is very likely the court will not have a sufficient complement of judicial justices to meet the workloads of the Judicial Justice Division over the next four years unless steps are taken immediately to improve recruitment. This factor strongly militates in favour of significant salary increases for judicial justices.
- Whether the changes in workload arising from Bill S-4’s amendment of the *Criminal Code* are viewed as a jurisdictional change (Factor 2) or as “another relevant factor” under section 5(5.2), these changes militate in favour of increases to judicial justice compensation. The evidence clearly shows an impact to judicial justice workload and a current problem in finding judicial justices to do this work—a problem that is likely to worsen over time.
- Factor 3 shows BC judicial justice salaries are well below the average of those in other provinces, and over \$30,000 below BC’s closest comparators, Alberta, Saskatchewan, and Ontario. This factor supports significant salary increases.
- Factor 4 supports an increase in compensation for judicial justices. The government has taken a relatively generous approach to compensation of the public sector and has shown a willingness to increase wages when needed to address recruitment and retention problems for others paid from the public purse.
- Factor 5 supports an increase in compensation for judicial justices. The economy is solid and resilient. While there is a forecasted economic slowdown that indicates some moderation in salaries for the next fiscal year, the overall and longer-term outlook for the BC economy is one of strength.

- Factor 6 supports an increase in judicial justices’ salaries. The financial position of government is strong and arguably the best in Canada. British Columbia is well-positioned financially through its budgetary prudence to remain in a strong position over the next four years.

Considered together, these factors overwhelmingly support the need for increased compensation for judicial justices. The staffing impact of federal Bill S-4—whether considered under Factor 2 or as another relevant factor under section 5(5.2) of the Act—combined with the crisis in recruiting new judicial justices and the impending retirements over the next four years suggest that a significant bump in judicial justice salary must occur immediately.

The current salary is not reasonable when compared with that of other judicial justices in Canada; it is currently \$30,000 below the average of the closest comparators. In light of British Columbia’s healthy economy and its strong financial position, BC judicial justices should be paid at least the average of their Alberta, Saskatchewan, and Ontario counterparts. And, in our view, given the historic underpayment of these judicial officers and the crisis in recruitment that has ensued, a salary slightly above the average of those comparators is warranted. Our recommendation will put judicial justices’ salary at approximately 49% of our salary recommendation for a Provincial Court judge, which is an improvement over the current 46%, but still nowhere near the historical highs. A pay correction to address the unreasonably low pay of BC judicial justices also aligns with the government’s current approach to sharing the success of British Columbia’s strong financial position with others paid from public funds.

While we agree with the JJA that a significant correction to judicial justice salaries is required, we recommend a slightly lesser amount than what the JJA proposed as sufficient to meet the goal of reasonable compensation. We heard the Government’s submission that its proposed salaries take into account the need to remain economically and fiscally prudent, given the anticipated short-term decline and weakening of the economic and financial position that is reflected in Budget 2023. Still, we find the amounts proposed by the Government to be unreasonable given our assessment of all the factors discussed above.

Rather than dividing the corrective increase over two years, as we have recommended for judges, we conclude that the bulk of the salary correction needs to come in the first year of our mandate. The judicial justice division could soon be on life support if recruitment efforts continue to fail, and we think that a delay is too risky. We recommend the judicial justices receive a significant increase as of April 1, 2023. Recognizing that both the JJA and the Government told us they prefer the certainty of defined dollar amounts over increases linked to increases in CPI, we have recommended a fixed increase of \$5,000 in each of the following years of our mandate.

Our salary recommendation will likely put BC judicial justices near the national average, and somewhere in the range of judicial justices in Alberta, Saskatchewan, and Ontario.

6 Recommendations on Other Aspects of Judicial Compensation

6.1 Salary Differentials for Administrative Positions

RECOMMENDATION: Administrative judges should continue to receive the following percentages of a puisne judge's salary: Chief Judge 112%; Associate Chief Judges 108%; and Regional Administrative Judges 106%. Administrative Judicial Justices should receive 106% of judicial justice compensation.

We agree with the main participants that the current salary differentials for administrative positions within the court should remain as follows: the Chief Judge (112% of puisne judge), Associate Chief Judges (108% of puisne judge), Regional Administrative Judges (106% of puisne judge), and Administrative Judicial Justices (106% of judicial justice compensation). The higher compensation reflects the added responsibilities and workload that accompany these roles. Agreement among the participants indicates that the current salary differentials are reasonable and do not need to be changed.

6.2 Pensions for Provincial Court Judges

Accrual Rate

RECOMMENDATION: The 3% accrual rate for judge's pensions should be maintained.

Both the PCJA and the Government agree that the current accrual rate for judges' pensions should be maintained at 3%.

The only information before us about judicial pensions came from André Sauvé, Consulting Actuary, who prepared a report for the PCJA. His report compared the pension arrangements of the federal courts and provincial courts in British Columbia, Alberta, Saskatchewan, and Ontario. Aside from age-related accrual rate adjustments in Saskatchewan, both Alberta's and Saskatchewan's pension plans have 3% accrual rates. The Ontario and federal pensions have no fixed annual accrual rates; pension amounts in Ontario and for federally appointed judges use different formulas.²⁶⁴ Overall, Mr. Sauvé concluded that:

²⁶⁴ Comparative Analysis of Judicial Pension Plans, Prepared by Andre Sauvé, December 2022, PCJA BD, Tab 3, p.2.

The compensation value of the judicial pension arrangement in British Columbia is estimated to be 43.1% of salary compared to an average compensation value of 54.6% for the other four jurisdictions for a difference of 11.5% of salary.²⁶⁵

This evidence shows the pension of BC’s Provincial Court judges to be less valuable than the pensions of other courts. Still, the PCJA and the government have not made any arguments about changes to the judge’s pension arrangement. Instead, the PCJA uses this difference in pension value between jurisdictions to argue that their salary proposal is “modest” when considered in the context of the “combined value of both the salary and pension paid to judges in BC and the comparator jurisdictions.”²⁶⁶

Given the agreement of the PCJA and the Government to maintain the current 3% accrual rate, as well as the fact that it is the same rate as in Alberta and Saskatchewan, we recommend maintaining the 3% accrual rate for judges’ pensions.

Non-judicial Pensions

RECOMMENDATION: The Judicial Compensation Act should be amended to align the non-judicial pensionable service provisions with the Public Service Pension Plan rule changes made in 2018 and 2022, as detailed in Appendix F, in respect of the following:

- i. the benefit accrual rates for service between April 1, 2018-March 31, 2022, and after April 1, 2022;*
- ii. the past service benefit enhancement and the bridge benefit for the period of April 1, 2006-March 31, 2018 and after April 1, 2018; and*
- iii. the early retirement factor for non-judicial service earned on or after April 1, 2018.*

Some Provincial Court judges earned pensionable service in the Public Sector Pension Plan (“PSPP”) as public servants prior to appointment to the bench. However, once an individual is appointed to the bench, both the judicial and the “non-judicial” portions of their pension are governed by Part 3 of the *Judicial Compensation Act*. Historically, many aspects of the non-judicial pension benefit provisions under the Act were aligned with the PSPP rules; however, amendments to the PSPP rules in April 2018 and April 2022 have brought them out of alignment. The result is “a divergence between non-judicial pension benefits earned while working as a regular member of the PSPP ... and what would ultimately be received by a judge in respect of the non-judicial component of their pension upon retirement from the bench.”²⁶⁷

²⁶⁵ *Ibid.*, p.5.

²⁶⁶ Main Submission of PCJA, para. 287

²⁶⁷ Joint Submission on Non-Judicial Pensions, para. 4.

To correct this divergence, the Government and the PCJA, with the support of the Chief Judge, jointly proposed that we make the following recommendation:

That the *Act* be amended to align the non-judicial pensionable service provisions with the Public Service Pension Plan rule changes made in 2018 and 2022, as detailed in the attachment to the joint proposal, in respect of the following:

- i. the benefit accrual rates for service between April 1, 2018-March 31, 2022, and after April 1, 2022;
- ii. the past service benefit enhancement and the bridge benefit for the period of April 1, 2006-March 31, 2018 and after April 1, 2018; and
- iii. the early retirement factor for non-judicial service earned on or after April 1, 2018.

The attachment to the joint proposal is found in Appendix F to this report. The participants advise us that the proposed recommendation would be cost neutral for both the PSPP and for the judges to which the change would apply.²⁶⁸

Given that all affected participants support this proposed recommendation, and that it is cost neutral to them, we agree to make this recommendation.

6.3 Benefits

Enhancements to the Flexible Benefits for Judges and Full-time Judicial Justices

RECOMMENDATION: Effective January 1, 2024, Provincial Court judges should receive the enhancements to the flexible benefits program that were offered to excluded public sector employees on January 1, 2023. Future enhancements to the flexible benefits plan for excluded employees and appointees should be automatically implemented for the Provincial Court judges, with the judiciary having recourse to seek changes through future judicial compensation commissions.

The Government notes that modest enhancements were made to the flexible benefits plan for public sector excluded employees on January 1, 2023. The Government suggests that these benefits could be made available for judges and full-time judicial justices. The Government also proposes that “future enhancements to the flexible benefits plan for excluded employees and appointees be automatically implemented for the judiciary.” This would not preclude the judiciary from seeking other changes to the flexible benefits plan through future commission processes, but it would ensure that there is no lag time for the judiciary to access benefit enhancements to which other excluded employees become entitled.²⁶⁹ Examples of the enhancements are an increase in the

²⁶⁸ Joint Submission on Non-Judicial Pensions, para. 7.

²⁶⁹ Reply Submission of Government, paras. 59-60; JBD, Vol 2, Tab 46, p. 4 and Appendix “A”.

annual maximum for counselling services from \$500 to \$750, and an increase in the employee basic life insurance from \$80,000 to \$100,000.²⁷⁰

The PCJA supports these changes.²⁷¹

The JJA “does not wish for there to be any changes to its flexible benefits” and does not agree with the changes proposed by government.²⁷² The JJA opposes the changes based on its understanding that the changes include an annual cap on physiotherapy treatments, which are currently unlimited. The JJA says unlimited physiotherapy treatments are “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.”²⁷³

Despite the possible cap on physiotherapy treatments, overall, these changes or “enhancements” seem reasonable and are in line with the benefits provided to public sector excluded employees. However, we also note that there are only five full-time judicial justices who are affected by changes to the flexible benefits plans, some of whom may retire during this commission cycle, and that the JJA opposes these changes.

We recommend that, effective January 1, 2024, Provincial Court judges receive the enhancements to the flexible benefits program that were offered to excluded public sector employees on January 1, 2023, and that future enhancements to the flexible benefits plan for excluded employees and appointees be automatically implemented for Provincial Court Judges. We make no recommendation in respect of full-time judicial justices.

Part-time Judicial Justices Per Diem in Lieu of Benefits

RECOMMENDATION: The amount in lieu of benefits added to the per diem pay for part-time judicial justices should be increased from 20% to 22%.

Part-time judicial justices do not receive any benefits as part of their compensation. They currently receive an additional 20% in lieu of benefits, calculated on the amount of a full-time judicial justice salary divided by 207 days. For example, based on the current full-time judicial salary, the amount in lieu of benefits added to the part-time per diem rate would be as follows: $(\$133,500/207) \times 20\% = 128.98$. The JJA initially sought to increase the percentage amount to 25.4% as this is the government “charge-back” rate for budgeting the cost of benefits for full-time employees, including full-time judicial justices.²⁷⁴

The Government proposed an increase in the percentage amount in lieu of benefits to 22%, on the basis that the 25.4% chargeback rate includes a component for administration of the benefits

²⁷⁰ JBD, Vol. 2, Tab 46, Appendix “A”.

²⁷¹ TR February 16, 2023, Ms. Latimer for PCJA, p. 97, ll. 15-20.

²⁷² TR February 16, 2023, Mr. Bernstein for JJA, p. 109, ll. 10-17.

²⁷³ Supplemental Submission of JJA, paras. 14-15. Note that the Submission uses the words “physical therapy”, but the flexible benefits plan provides for “physiotherapy”: JBD, Vol. 2, Tab 39, p. 1, Column for Option 3.

²⁷⁴ Main Submission of JJA, paras. 150- 155.

regime. The Government provided a breakdown of the value of benefits paid for by government that actually go to a full-time judicial justice (expressed in terms of a percentage of full-time salary) as follows: pension contributions 15.9%; ETA/MSP 1.95%; health and dental benefits 3.08%; LTD 1.10%. These total 21.93%, which the Government rounded up to 22%.²⁷⁵ After considering this information, the JJA agreed that an increase in the percentage amount in lieu of benefits to 22% would be appropriate.²⁷⁶

We agree with the participants and recommend that the percentage amount added in lieu of benefits to the per diem for part-time judicial justices be increased to 22%. This increase is needed to keep the compensation of part-time judicial justices in line with that of their full-time colleagues.

Chief Judge’s Request for Increased Base Budget Funding to the Court to Cover Long-term Disability Plan Costs

The 2022 JCC makes no recommendation concerning funding to the court for long-term disability plan costs for judges and full-time judicial justices.

The Chief Judge sought a recommendation from us that government’s base budget funding to the Court be increased by \$1,000,000 per fiscal year to cover the cost for long-term disability benefits for judges and full-time judicial justices, with the court having access to contingency funds should the cost exceed \$1,000,000.²⁷⁷

In response, the Government says it has chosen to fund some of these expenditures associated with the plan through contingencies rather than an increase in base budget funding. Instead of accessing the available contingency funds, since 2020-21, the Office of the Chief Judge has been able to absorb the costs of the long-term disability plan that exceed the base budget amount. There has been no shortfall, and the Office of the Chief Judge has “not demonstrated any need to access the available contingencies earmarked for long-term disability expenditures for the last three fiscal years.”²⁷⁸ In these circumstances the Government requests the commission refrain from making any recommendation.²⁷⁹

We agree with the Government that there is no need for any recommendation on this issue. Funds appear to be available to the Office of the Chief Judge if necessary to make up any shortfall resulting from the costs of the long-term disability program.

²⁷⁵ TR February 15, 2023, Ms. Wolfe for Government, p. 220, ll. 1-23; Exhibit 12.

²⁷⁶ Supplemental Submission of JJA, para. 12.

²⁷⁷ Submission of Chief Judge, paras. 3 and 183.

²⁷⁸ Reply Submission of Government, para. 137.

²⁷⁹ Reply Submission of Government, paras. 132-138.

6.4 Shift Premiums for Judicial Justices

RECOMMENDATION: As set out in Appendix G, new holidays should be added to the list of the holidays attracting a \$245 shift premium, the shift premium for Christmas Day should be increased by \$75, a weekend shift premium of \$75 should be implemented and a court closure day shift premium of \$75 should be implemented.

Judicial justices currently receive a \$245 shift premium for taking shifts on certain holidays. The JJA asked that additional holidays be added to the list that attract the \$245 shift premium.²⁸⁰ The JJA also asked for the Christmas Day shift premium to be increased by \$75, noting that judges have had to fill Christmas Day shifts for the last four years.²⁸¹ The JJA also sought to establish a weekend premium of \$75, noting that weekend shifts are often difficult to fill.²⁸² As well, the JJA asked for a “court closure” premium of \$75 for shifts that fall on a court closure day (such as where a court closure occurs on a weekday to make up for a holiday that falls on a weekend).²⁸³

The Government supports adding additional holidays to the list that attracts the \$245 shift premium, and the increased premium for Christmas Day.²⁸⁴ The Government also supports implementing a weekend shift premium to address the evidence of staffing challenges at the Justice Centre. However, the Government proposes that a \$25 premium would be “proportionate to weekend shift premiums paid elsewhere in the public sector.”²⁸⁵ Similarly, for court closure days, the Government supports a \$25 premium.²⁸⁶

The JJA proposes specific language to describe the shift premiums, to avoid uncertainty over whether a shift attracts a premium and what that premium should be. The Government agrees with all the language proposed, except for the amount of the weekend and court closure premiums, which it submits should be \$25.²⁸⁷ The proposed language is set out in Appendix G.

We agree with both the JJA and the Government that adding the days proposed to the list of holidays attracting a \$245 premium, and increasing the premium for Christmas Day, will enhance the court’s capacity to staff shifts on these holidays. We also agree with the language proposed to describe the shift premiums.

With respect to weekends and court closure days, the evidence shows Provincial Court judges staffing shifts at the Justice Centre, particularly on weekends. (While we do not have specific information before us concerning court closure days, it is logical to treat them similarly to weekend

²⁸⁰ Main Submission of JJA, para. 167.

²⁸¹ Main Submission of JJA, para. 168-169.

²⁸² Main Submission of JJA, paras. 173, 93.

²⁸³ Supplementary Submission of JJA, para. 18.

²⁸⁴ Reply Submission of Government, para. 71; Exhibit 13.

²⁸⁵ Reply Submission of Government, para. 72.

²⁸⁶ Exhibit 13.

²⁸⁷ Supplemental Submission of JJA, paras. 19-21; Exhibit 13.

days as they usually result in a “long weekend.”) It is not clear to us whether either a \$25 or a \$75 shift premium will be sufficient to address the staffing problem; neither may be enough on their own. More judicial justices are required in the staffing pool, which our salary recommendation above is intended to address. Still, in the shorter term, given the much greater cost of having a Provincial Court judge fill a vacant weekend shift, adding a \$75 premium to encourage the current judicial justices to pick up these shifts seems reasonable, and that is what we recommend.

6.5 Overhead Amount for Judicial Justices

RECOMMENDATION: The overhead amount added to the per diem pay for part-time judicial justices should be increased from \$75 to \$100.

Since 2007, part-time judicial justices receive \$75 per shift to account for overhead costs. This amount has not been increased in over 15 years. The JJA sought an increase of this amount to \$100 per shift, arguing that it is required to keep up with inflation, and to attract highly qualified applicants to the judicial justice position.²⁸⁸ The Government supports this increase as “logical” given the increase in overhead costs that judicial justices would have incurred since 2007.²⁸⁹

We agree it is time to increase the overhead amount for part-time judicial justices to \$100 per shift in order to maintain the purchasing power intended when the overhead amount was implemented in 2007. We so recommend.

6.6 Professional Development Allowance

RECOMMENDATION: For the next four fiscal years, the professional development allowance for judges should remain at \$4,500 per year, and the professional development allowance for judicial justices should remain at \$3,250 per year.

The PCJA requests no changes to the judges’ professional development allowance (“PDA”) and the Government agrees that no change is necessary. As there is no evidence before us that an increase (or decrease) is required, we recommend this amount remain the same (\$4500 per year) for the next four fiscal years.

The JJA seeks an increase in judicial justices’ PDA from \$3,250 to \$4,500 to be at parity with the judges. It also seeks to increase the portion of a judicial justice’s PDA that can be used for “Expenses Reasonably Incurred in the Execution of the Office of a Judicial Justice and Approved Other Expenses” from the current \$1,500 to \$2,500. The JJA says judicial education is important and that the cost of attending conferences that are popular with judicial justices exceeds the current budget.²⁹⁰

²⁸⁸ Main Submission of JJA, paras. 157-160.

²⁸⁹ Reply Submission of Government, para. 65.

²⁹⁰ TR February 15, 2023, Mr. Bernstein for JJA, p. 124, ll. 3-15, l. 18 to p. 126, l. 17.

The Government does not support either of these proposed changes. It says no evidence demonstrates that recent increases in the PDA budget for judicial justices (implemented April 1, 2020) are ineffective.²⁹¹ The Government understands that PDA spending since 2020 has likely been impacted by the pandemic and is therefore not a good measure of need. However, judicial justices' PDA spending for the 2019-20 fiscal year—which occurred mostly prior to the pandemic—was less than one third of the total PDA budget available.²⁹² As well, during the 2019-20 fiscal year, the per justice PDA was lower at only \$2,500. While four justices exceeded that limit, as can be seen by the global numbers, overall, judicial justices only spent half the annual allotment in that year.²⁹³

On this evidence, we decline to recommend an adjustment to the PDA of judicial justices at this time.

6.7 Travel Allowance

RECOMMENDATION: The current travel allowance or per diems for judges and judicial justices should be maintained.

Neither the PCJA or the JJA seek changes to the current travel reimbursement and the Government asks that the current travel per diems be maintained.²⁹⁴ Judges and judicial justices both fall within government's "group 4" expense category, meaning they receive the same travel per diems as Members of the Legislative Assembly, which is the highest level.²⁹⁵ As there is no evidence before us showing a need to increase (or decrease) current travel allowances, we agree with the parties that current travel per diems, whereby judges and judicial justices receive the same travel per diems as Members of the Legislative Assembly, should be maintained.

²⁹¹ Reply Submission of Government, para. 80.

²⁹² Judicial justices spent only \$39,722 of the available \$124,330, comprised of the 2019-20 allowance of \$78,958 and \$45,372 carried over from the previous year: Exhibit 10.

²⁹³ Exhibit 10.

²⁹⁴ The JJA stated that "To the extent that changes are made, the JJABC seeks the same policy as Provincial Court Judges" though it did not ask for any changes be made: Main Submission of JJA, para. 23(c).

²⁹⁵ TR February 15, 2023, Ms. Wolfe for Government, p. 193, ll. 1-9.

7 Recommendations on Interest and Costs

7.1 Interest on any Retroactive Salary Adjustments

RECOMMENDATION: For retroactive salary increases, the Government should pay judges or judicial justices pre-judgment interest from April 1, 2023 to the date on which the increase is established and post-judgment interest thereafter until payment is made.

In respect of any retroactive salary increases that occur after April 1, 2023, both the PCJA and the JJA seek pre-judgment interest for judges and judicial justices from April 1, 2023 to the date on which the increase is established, and then post-judgment interest thereafter until the payments are made. The Government does not oppose these interest requests. In our view, interest on retroactive payments will ensure that judges and judicial justices receive the full benefit of any salary adjustments that are delayed. The use of the pre-judgment and post-judgment rates is appropriate for this purpose.

7.2 Costs of Participation in Commission Proceedings

*RECOMMENDATION: The Government should, by enacting a regulation pursuant to section 7.1(3) of the Judicial Compensation Act, reimburse 100% of the reasonable costs and disbursements, including expert costs, of the PCJA and JJA for their participation in the 2022 commission process.**

Both the PCJA and JJA ask us to recommend that the Government pay 100% of their reasonable legal fees and disbursements, including—for the PCJA—100% of the cost of its expert evidence.²⁹⁶ The JJA asks, in the alternative, for a recommendation for “a significant increase to the ceiling of reimbursed costs” by way of a regulation or amendment to the Act.²⁹⁷ The Government’s position is that the Commission should leave costs to be dealt with under section 7.1 of the Act.

In the late afternoon of March 30, 2023, the day before we delivered our Preliminary Report, we were advised that the Lieutenant Governor in Council had increased the maximum amounts for participation costs for the Provincial Court Judges’ Association and the Judicial Justices’ Association. Order in Council No. 194²⁹⁸ sets higher amounts for the purposes of section 7.1(2) of

²⁹⁶ Main Submission of PCJA, para. 355; Main Submission of JJA, para. 23(d).

²⁹⁷ Main Submission of JJA, para. 23(d).

²⁹⁸ B.C. Reg. 83/2023, approved and ordered on March 30, 2023.

the *Judicial Compensation Act*. Pursuant to that revision, the legislation effectively provides as follows:

- 7.1 (1) Subject to subsection (2), the government may pay out of the consolidated revenue fund the reasonable costs, incurred by the Provincial Court Judges' Association of British Columbia and the Judicial Justices Association of British Columbia, of participating in the commission.
- (2) The maximum amount that may be paid under subsection (1), which maximum amount applies separately to the Provincial Court Judges' Association of British Columbia and the Judicial Justices Association of British Columbia, is as follows:
 - (a) the first \$40 000 in costs;²⁹⁹
 - (b) 85% of the costs over \$40 000 but under \$150 000.³⁰⁰
- (3) Despite subsections (1) and (2), the Lieutenant Governor in Council may, by regulation, set higher amounts for the purposes of subsection (2).

The JJA tells us its anticipated total legal costs for this process will be approximately \$80,000 (including taxes), which is an increase of about \$20,000 over the 2019 JCC. It attributes most of the increase to a substantial increase in pre-hearing discussions and preparations.³⁰¹ We note the small number of members in the JJA, meaning that it likely has very limited resources.³⁰² If the JJA were responsible for one third of its legal costs over \$30,000, that could impose a \$500 to \$1000 burden on each individual member—up to 0.7% of a current full-time judicial justice salary.

The PCJA tells us its costs will be approximately \$90,000 for legal fees, and disbursements including expert reports, but not including junior counsel's attendance at the hearings. In 2019, the total costs were about \$85,000.³⁰³ The PCJA attributes the increase in fees this year to higher expert fees.³⁰⁴ While the PCJA has a larger pool of potential members with higher salaries than the JJA, it argues it is “manifestly unfair that the judiciary should be burdened by personally funding its participation in the process.” In contrast, it says the Government “uses any number of civil servants paid from the public purse and who are presumably capable of utilizing Government resources as they see fit in order to advance the Government's position.”³⁰⁵

The Government submits the costs formula under the Act has not been found unconstitutional and remains good law.³⁰⁶ We make no comment here on the constitutionality of those provisions. We speak instead to their effect on the 2022 Commission process.

²⁹⁹ Previously, \$30,000.

³⁰⁰ Previously, two-thirds of the costs over \$30,000 but under \$150,000.

³⁰¹ Supplementary Submission of JJA, para. 29.

³⁰² Main Submission of JJA, para. 188.

³⁰³ Supplemental Submission of PCJA, para. 23.

³⁰⁴ Supplemental Submission of PCJA, para. 23.

³⁰⁵ Main Submission of PCJA, para. 385.

³⁰⁶ Costs Submission of Government, para. 7.

The Government says the Commission should not make any recommendations on costs, arguing that costs do not fall within the broad jurisdiction of the Commission because costs are not “remuneration, allowances and benefits” of judges and judicial justices and do not “implicate” remuneration, allowances or benefits.³⁰⁷ The Government refers to a decision of Chief Justice Hinkson, in a judicial review of the Government’s response to the 2016 JCC. He upheld the validity of the Government’s rejection of the 2016 JCC’s decision on costs, and his decision was not appealed.³⁰⁸ The Government says, consistent with that decision, it may be open to a commission to make a recommendation on costs only “where it is necessary to ensure the approach to costs is ‘fair, equitable and reasonable’.”³⁰⁹ The Government says, “A recommendation to alter a legislated norm cannot be justified on the basis of matters the Legislature must have understood at the time the norm was established. Instead, a Commission’s recommendation to alter such a norm can only be justified on the basis of exceptional circumstances or a significant evolution in the Commission process.”³¹⁰ It submits the disparity of resources between the government and the judicial officers, the importance of judicial officer participation in the process, and the potential impact of inflation were all known to the Legislature and therefore do not justify departure from the statutory norm.³¹¹

The PCJA submits that the legislation sets out no requirement for “exceptional circumstances” before a commission may make recommendations respecting costs.³¹² It says section 5(1) of the Act gives a commission broad jurisdiction to report on “all matters respecting the remuneration, allowances and benefits of judges.” The PCJA says that the costs of participation in the hearings falls within this broad jurisdiction.³¹³ Further, it says, “There is no principled difference between recommendations made in the face of the statutory provisions concerning costs and a myriad of other issues that the commissions must consider and which may also require legislative change.”³¹⁴ Indeed, in these proceedings, the Government and the PCJA have jointly asked us to recommend an amendment to the Act concerning non-judicial pensions. Further, as the PCJA points out, it is difficult to imagine a bar to the commission recommending that government, by regulation, set higher amounts than those set out in the Act, as such regulations are expressly contemplated in section 7.1(3) of the Act.³¹⁵

We agree with the PCJA that we have jurisdiction to make a recommendation on costs.

First, while reimbursement for the cost of participating in a commission may not be “remuneration, allowances and benefits of judges and judicial justices” *per se*, it is “*a matter respecting remuneration, allowances and benefits.*” Participation in the commission process is the only way

³⁰⁷ TR March 10, 2023, Ms. Wolfe for Government, p. 88, ll. 17-20.

³⁰⁸ Costs Submission of Government, para. 9; *Provincial Court Judges’ Association v. British Columbia (Attorney General)*, 2020 BCSC 1264.

³⁰⁹ Costs Submission of Government, para. 18.

³¹⁰ Costs Submission of Government, para. 19.

³¹¹ Costs Submission of Government, para. 12.

³¹² Supplemental Submission of PCJA, para. 14.

³¹³ Main Submission of PCJA, paras. 356-357.

³¹⁴ Supplemental Submission of PCJA, para. 15.

³¹⁵ Supplemental Submission of PCJA, para. 18.

for judicial officers to seek changes to their compensation. Accordingly, the costs of that participation are very much a matter respecting remuneration.

Second, nothing in Chief Justice Hinkson’s decision prohibits us from making recommendations concerning costs; his ruling speaks to the rationality of the government’s rejection of the 2016 JJC’s recommendation on costs, not to the ability of a commission to make such a recommendation. While Chief Justice Hinkson noted departures from the “legislative norm” were for the legislative branch of government to consider, not the judiciary upon judicial review, he did not suggest that commissions cannot make recommendations that depart from the legislative norm.³¹⁶ He noted that the statutory formula may be overridden by the government through regulation. In our view, that is most likely to happen following a recommendation from a judicial compensation commission.

Third, there is no legislated requirement for exceptional circumstances to exist before a commission may make a recommendation on the costs of participation in the commission process. The legislature may establish a statutory formula for costs (as it has in BC since 2015), the government may agree to pay the participatory costs of the judiciary (as it did historically in BC), or the commission may determine costs. The Supreme Court of Canada has said that, irrespective of the approach to the payment of costs, “it should be fair, equitable and reasonable.”³¹⁷ If the statutory costs formula set out in section 7.1 of the Act results in an approach to the payment of costs that is not fair, equitable and reasonable, that is a “matter respecting remuneration” upon which this Commission may make recommendations. And, in assessing what is fair, equitable and reasonable, this Commission is not limited to the consideration of matters that could not have been known to the legislature at the time it enacted section 7.1. If it were so limited, the legislature could, knowingly, enact an unfair, inequitable, and unreasonable approach to costs without any recourse by the judicial officers who must engage through the commission process on matters respecting their remuneration.

The question for us is whether the application of the section 7.1 formula for costs in the circumstances of the 2022 JCC constitutes an approach to costs that is fair, equitable and reasonable.

As described in the introduction to this report, this Commission exists in fulfilment of a constitutional imperative. Judges and judicial justices alike *must* participate in this process to seek any changes to their compensation. They *may not* negotiate with the other branches of government over their compensation.³¹⁸ In our hearings, counsel for the JJA told us, “the current allowance for legal fees is insufficient to cover the costs of the association’s participation” such that “judicial justices carry some of the costs themselves.”³¹⁹ He said that the “concern about legal fees “really inhibits participation in this constitutionally mandated process,”³²⁰ and that his clients must think about how much it is going to cost them personally to participate, and consequently, how much

³¹⁶ *Provincial Court Judges’ Association v. British Columbia (Attorney General)*, 2020 BCSC 1264, at para. 99.

³¹⁷ *R. v. Campbell*, [1999] 2 SCR 956, para. 5.

³¹⁸ *PEI Reference*, paras. 186 to 191.

³¹⁹ TR February 15, 2023, Mr. Bernstein for JJA, p. 128, ll. 9-13.

³²⁰ TR February 15, 2023, Mr. Bernstein for JJA, p. 129, ll. 14-21.

time he can spend in preparing for the hearing.³²¹ This indicates to us a significant problem with the current costs formula. It creates a deterrent to the level of participation by judges and judicial justices that is reasonably necessary for this Commission to complete its mandate.

We agree with the PCJA that the approach to costs is not equitable. While the Government has resources for this process paid by the taxpayer, the judiciary must pay any amount over the statutory limits out of their own pockets. Further, the statutory formula does not treat different members of the judiciary equitably in that the financial burden on individual judicial justices to participate in the commission process is much greater than the burden on individual judges.

The costs approach is not fair. Section 7.1 does not account for inflation. Thus, with each passing commission cycle, it compensates the JJA and the PCJA less for their participation. We heard from the JJA that, based on inflation alone, the (former) \$30,000 amount, for full reimbursement, would need to be increased to \$36,000 to cover the same amount of participation costs.³²²

Most importantly, the costs approach is not reasonable. Section 7.1(1) of the Act speaks to government paying the “reasonable costs” of the PCJA’s and the JJA’s participation in the commission. But the maximum amounts set in subsection (2) are unreasonably low when considered against the amount of work involved in the commission process and the information required by the Commission to complete its mandate.

As noted by the PCJA, the Act does not prescribe a process for the commission.³²³ The commission is not a commission of inquiry with resources to retain counsel or other staff to produce evidence; that work is left to the participants. We were told that the amount of work has increased over the last three commissions since section 7.1 came into force, particularly in relation to document production and preparation for the commission hearings.³²⁴ The commission process entails—as described by the PCJA—“multiple days of hearings, expert evidence, experts being recalled and so on and a sufficiently complex process that the government sees fit that it needs to have two counsel presents [sic].”³²⁵ We note that the PCJA also had two counsel present at the hearings, and the JJA had a second counsel appear at one of the virtual hearings. The point is: significant work was required of *all* the main participants.

To be clear, the commission needs the work of the PCJA, the JJA, and the Government to enable it to do its job. All three of these participants need to be adequately funded. The commission also needs expert evidence, tested through well-informed cross-examination where necessary. The costs of leading, and responding to, expert evidence need to be adequately funded.

We have considered whether the March 30, 2023 change to the formula affects our recommendation on costs or the rationale for it.

³²¹ TR February 15, 2023, Mr. Bernstein for JJA, p. 130 l. 17 to p. 131, l. 6.

³²² Main Submission of JJA, para. 185.

³²³ *Judicial Compensation Act*, s. 5(6); TR March 10, 2023, Ms. Latimer for PCJA, p. 47, ll. 14-21.

³²⁴ TR March 10, 2023, Mr. Bernstein for JJA, p. 53, l. 10 to p. 54, l. 3; Ms. Latimer for PCJA, p. 47, l. 21 to p. 48, l.3.

³²⁵ TR March 10, 2023, Ms. Latimer for PCJA, p. 47, l. 24 to p. 48, l. 3.

While the higher amount of \$40,000 in section 7.1(2)(a) does remedy the negative inflationary impact that we note in our discussion (above) concerning the former \$30,000 amount for full reimbursement, nothing in the revised amounts in OIC No. 194 detracts from our core reasons for recommending that the Government should reimburse 100% of the reasonable costs and disbursements, including expert costs, of the PCJA and the JJA for participation in the 2022 commission process.

We have also considered whether the April 3, 2023 judgment by The Honourable Justice Sharma on judicial review of the legislative response to the 2019 JCC³²⁶ requires us to revisit our analysis of the costs issue. We have concluded that it does not; the approach taken by the Court there is consistent with the one we have taken here in our Report.

In summary, the current statutory formula for costs does not lead to a fair, equitable or reasonable result in the context of the 2022 JCC. The result places financial burdens on individual judicial officers. The statutory formula also does not provide for inflationary increases that have occurred since the legislation was passed. Importantly, the current limits on reimbursement deter reasonably full participation in this constitutionally-mandated process.

Consequently, we recommend that Government enact a regulation pursuant to section 7.1(3) to reimburse 100% of the reasonable costs and disbursements of the PCJA and JJA for their participation in the 2022 Commission. If there is controversy about the reasonableness of the costs and disbursements claimed, the participants can come back to us through written submissions or at a hearing.

³²⁶ *Provincial Court Judges' Association of British Columbia v. British Columbia (Attorney General)*, 2023 BCSC 520.

8 Confidence in the Commission Process

We heard from participants about their levels of confidence in this process. We have also reflected on the judicial compensation process and its history in British Columbia. We hope these comments prove useful to future commissions and to the government in considering our recommendations.

The Recent History of Judicial Compensation Processes

As we noted in our salary recommendations above, salary comprises the largest component of judicial compensation. It has also proven to be the most contentious. The Government provided useful tables summarizing the salary recommendations, responses of the government, ensuing litigation, and outcomes of the last four commissions as shown below:³²⁷

Year	JCC recommendations (Provincial Court Judges)	Government (Govt) Initial Response	Further Developments
2010	<ul style="list-style-type: none"> • 2011/12: 0% • 2012/13: 0% • 2013/14: cumulative CPI over prior 3 years 	<ul style="list-style-type: none"> • Rejected salary (and pension) • Substituted 0% salary increase (consistent with net-zero public sector mandate) 	<ul style="list-style-type: none"> • Response challenged • BCSC set aside initial response; remitted back • Second response substituted 1.5% increase for 2013/14 • Second response set aside by BCCA and Govt ordered to accept 2010 JCC recommendations, resulting in 2013/14 salary of \$242,464
2013	<ul style="list-style-type: none"> • 2014/15: \$241,500 • 2015/16: \$245,122 • 2016/17: \$250,024 <p>As 2010 litigation still outstanding, JCC used</p>	<ul style="list-style-type: none"> • Rejected salary (and pension) • Substituted: 2014/15: \$236,950 2015/15: \$240,504 2016/17: \$244,112 	<ul style="list-style-type: none"> • Response challenged • BCSC set aside initial response; remitted back

³²⁷ These tables are recreated from Main Submission of Government, paras. 66 and 72. We corrected typographic errors to the dates in the middle column of the 2016 rows. See also “Judicial Compensation Commissions 2010 to 2019 – Summary of Submissions and Results,” JBD, Vol. 1, Tab 17.

Year	JCC recommendations (Provincial Court Judges)	Government (Govt) Initial Response	Further Developments
	Govt's second response as starting point (\$234,605)		<ul style="list-style-type: none"> Govt appealed; Judges cross-appealed BCCA dismissed appeal; ordered Govt to reconsider response without attributing fault to any party or the legislature (as outcome of 2010 litigation changed the starting point) Second response not challenged; set at: 2014/15: \$244,889 2015/16: \$248,562 2016/17: \$252,290
2016	<ul style="list-style-type: none"> 2017/18: \$273,000 2018/19: \$277,095 2019/20: \$281,251 100% of reasonable costs 	<ul style="list-style-type: none"> Rejected salary (and costs) Substituted: 2017/18: \$262,000 2018/19: \$266,000 2019/20: \$270,000 	<ul style="list-style-type: none"> Response challenged BCSC set aside initial response on salaries but upheld rejection of costs; remitted back Govt appealed on salaries BCCA allowed appeal, upholding Govt's initial response
2019	<ul style="list-style-type: none"> 2020/21: \$287,000 2021/22: \$297,000 2021/23: \$307,000 Regulation be enacted to permit 100% of reasonable costs 	<ul style="list-style-type: none"> Rejected salary (and costs) Substituted: 2020/21: \$276,000 2021/22: \$282,250 2022/23: \$288,500 	<ul style="list-style-type: none"> Response challenged Litigation ongoing – petition argued September 2022 and decision reserved

Year	JCC recommendations (Judicial Justices)	Government (Govt) Initial Response	Further Developments
2010	<ul style="list-style-type: none"> 2011/12: 0% 2012/13: 0% 2013/14: 8% (\$107,487) 	<ul style="list-style-type: none"> Rejected salary and per diem Substituted 0% salary increase (consistent with 	<ul style="list-style-type: none"> Response to 2010 and 2013 challenged Govt later agreed to place motion

Year	JCC recommendations (Judicial Justices)	Government (Govt) Initial Response	Further Developments
	<ul style="list-style-type: none"> Change to per diem formula (FT salary/219 days + 24.5% in lieu of benefits +\$80 overhead) 	<ul style="list-style-type: none"> net-zero public sector mandate) 	<ul style="list-style-type: none"> before legislature to increase salary by 4.9% from previous fiscal Legislature adopted motion in July 2016, resulting in 2013/14 salary of \$104,402 Court case discontinued
2013	<ul style="list-style-type: none"> 2014/15: \$104,501 2015/16: \$106,591 2016/17: \$108,723 Change to per diem formula (change number of days to 207 to account for chambers days allowed to FT JJs) 	<ul style="list-style-type: none"> Rejected salary; accepted per diem change Substituted: 2014/15: \$101,018 2015/16: \$103,038 2016/17: \$105,099 	<ul style="list-style-type: none"> Resulting motion of legislature in July 2016; salaries set at: 2014/15: \$105,968 2015/16: \$108,087 2015/17: \$110,249
2016	<ul style="list-style-type: none"> 2017/18: \$125,000 2018/19: \$126,875 2019/20: \$128,778 100% of reasonable costs 	<ul style="list-style-type: none"> Rejected salary (and costs) Substituted: 2017/18: \$118,000 2018/19: \$120,000 2019/20: \$122,000 	<ul style="list-style-type: none"> Salaries implemented per Govt response Costs paid per statutory formula
2019	<ul style="list-style-type: none"> 2020/21: \$138,000 2021/22: \$142,000 2022/23: \$146,000 Regulation be enacted to permit 100% of reasonable costs 	<ul style="list-style-type: none"> Rejected salary (and costs) Substituted: 2020/21: \$125,750 2021/22: \$129,500 2022/23: \$133,500 	<ul style="list-style-type: none"> Salaries implemented per Govt response Costs paid per statutory formula

These tables show the repeated history of commissions making salary recommendations, governments rejecting those recommendations, and the PCJA petitioning the court for judicial review, followed by one or more of the parties appealing the judgment to the Court of Appeal, occasionally resulting in an amended response and further litigation.

Disillusionment with the Commission Process

The PCJA set out the ideal view of judicial compensation commissions in its submissions, stating that their very existence attracts qualified applicants to the court because a commission provides candidates with the “legitimate expectation that compensation will be regularly, meaningfully, and effectively reviewed, and adjusted in good faith.” This expectation, the PCJA says, reduces the “risk that only those lawyers whose current level of compensation is less than that of a judge will

be attracted [to applying for the position].”³²⁸ Further, the existence of a commission and the prospect of increases in compensation that at least keep pace with inflation may explain why judges remain as judges after appointment.³²⁹

In the oral submissions, we heard a disheartened view of the actual commission process over time. Counsel for the JJA described its members’ strong feelings of disillusion.³³⁰ This is perhaps unsurprising, given the history set out above. Repeatedly, judges and judicial justices have participated in time-consuming processes in good faith before independent commissions. The commissions’ resulting recommendations for salary increases are then rejected by the government. For the last four commission cycles, the government’s rejection of the salary recommendations has led to the judges seeking judicial review of those decisions. The Court of Appeal commented in 2021 that while the commission process in British Columbia “has avoided the unseemly involvement of judges of the British Columbia Provincial Court in the negotiation of their remuneration, it has done so at the cost of constant litigation.”³³¹ (It appears that judicial justices have not been involved in the same amount of litigation simply because they cannot afford it.³³²)

This repeated pattern risks compromising the commission process itself. Participation in commissions can seem pointless and ineffective to those whose livelihoods are at stake. This problem is compounded where the costs of participation are not covered.

It must be recalled that judicial compensation commissions are constitutionally required to be independent, objective, and “most importantly, the commission must also be effective.”³³³ The commission’s report “must have a meaningful effect on the determination of judicial salaries.”³³⁴ This does not mean the commission’s report is binding on government; the government retains power to depart from the commission’s recommendations as long as it justifies its decision to do so with “rational reasons.”³³⁵ However, the commission’s recommendations must be given weight.³³⁶ The pattern of almost routine rejection of the salary recommendations of independent and objective commissioners seriously undermines the effectiveness of the commission process.

We also note that this pattern creates uncertainty around judicial compensation that could well affect the ability of the Provincial Court to recruit new judges and judicial justices. The legislature has specified that commissioners must consider the need to attract highly qualified applicants in

³²⁸ Main Submission of PCJA, paras. 155 and 157.

³²⁹ Main Submission of PCJA, para. 158.

³³⁰ TR February 13, 2023, Mr. Bernstein for JJA, p. 20, ll. 10-23.

³³¹ *Provincial Court Judges’ Association of British Columbia v. British Columbia (Attorney General)*, 2021 BCCA 295, JBA, Vol. 1, Tab 14, para. 7.

³³² As counsel for the JJA noted in his opening remarks at the Commission hearing: “The judicial justices are not involved in litigation, ... That isn’t to say that they necessarily agree with previous outcomes, but there’s resource issues involved in litigation.” See: TR February 13, 2023, Mr. Bernstein for JJA, p. 22 ll. 2-7.

³³³ *PEI Reference*, para. 174.

³³⁴ *PEI Reference*, para. 175.

³³⁵ *Bodner*, paras. 20-22; *PEI Reference*, paras. 182-184.

³³⁶ *Bodner*, para. 23.

order to maintain a strong court. To say the least, perpetual litigation and uncertainty about salary—the largest component of compensation—is not a feature that would attract highly qualified candidates to apply for appointment to this court; it is much more likely to be a deterrent.

The pattern could also lead to a decline in morale due to the repeated cycle of commission recommendation, government rejection, judicial review, appeal, and eventual resolution of a salary, possibly years after it has been earned. So far as we are aware, no other group of people paid from the public purse is subject to this constant cycle of uncertainty over their salaries.

The Government argued that the disillusion spoken of in the submissions of the PCJA and JJA—concerning whether the work of this Commission would meaningfully affect the outcome—stems from the incorrect view that the legislature is intended to simply accept the recommendations of the commission in order for them to have meaningful effect.³³⁷

While the Government is correct that commissions' recommendations are not binding, they do need to be given "meaningful effect." Any *single* rejection of a salary recommendation does not necessarily undermine the constitutional process for judicial compensation. However, the repeated pattern of government receiving, rejecting, and substituting lower numbers for the salaries recommended by multiple independent commissions at the very least raises doubt about the effectiveness of the process in the minds of participants (and the commissioners who undertake this work).

When Chief Justice Lamer wrote in the *PEI Reference* that government must be prepared to justify—if necessary in a court of law—"one or more" recommendations it chooses not to accept, he likely did not envision what has ensued in British Columbia over the last 13 years. Independent commissioners have worked hard to review the evidence and to make impartial recommendations for salaries that reflect reasonable compensation in consideration of the statutory factors. They have arrived at recommendations after submissions from the Government, from the judges and judicial justices, and from external organizations such as the Canadian Bar Association and the Law Society, and after giving serious consideration to all of those submissions. There has been no suggestion that previous commissions were anything but impartial. If this process is working properly, rejection should be the exception, not the norm. The government should have confidence in the process that it set up. It should have confidence in the commissioners who are appointed through that process.

We hope that our recommendations will receive careful consideration, followed by implementation, and that this 2022 Judicial Compensation Commission will mark a change in the unfortunate pattern that has been established over the previous decade. Such an outcome would begin to restore confidence in the commission process.

³³⁷ TR March 10, 2023, Ms. Wolfe for Government, p. 94, ll. 2-7.

9 Conclusions

Despite the concerns about the process identified in the preceding section, we remain hopeful that the work we have done to develop recommendations for the reasonable compensation of British Columbia’s Provincial Court judges and judicial justices for the next four fiscal years will be useful and that this Commission’s work will prove to be not only independent and impartial, but also effective.

The work of the 2022 JCC was shared by many people. We thank counsel for the Government, PCJA, and JJA, and the participants themselves, for the thoughtful work that went into compiling information and providing useful submissions. We could not have done our job without you. We also thank the witnesses who took time to appear at our hearings—two of them more than once. Your testimony helped us understand some of the factors we needed to consider in making our recommendations. We thank government officials and counsel for making all the arrangements for our hearings at UBC Robson Square, and for handling the administration of the hearings. We recognize the contributions of the Chief Judge’s staff and the judicial justices who organized court tours for us in conjunction with our counsel. We thank the Chief Judge and the other judges and judicial justices who took the time to speak with us during our court visits. We also appreciate the written submissions of the Law Society and the Canadian Bar Association – BC Branch.

The Commission particularly thanks Commission Counsel, Kathy Grant, for her invaluable assistance, advice, and support. As not only Commission Counsel, but also as the Commission’s only administrative support, Ms. Grant played many roles, all effectively and with aplomb.



Lynn Smith, OC, KC, Commission Chair



Eric Gottardi, KC



Vern Blair, FCPA, FCA, FCBV, FRICS



Robert Lapper, KC



Lisa Castle

Appendix A: List of Submissions

1. Submission of the Provincial Court Judges Association of British Columbia to the 2022 Judicial Compensation Commission, January 12, 2023, Counsel: Alison M. Latimer, KC [**“Main Submission of PCJA”**]
2. Submission of the Judicial Justices Association of British Columbia, 2022 Judicial Compensation Commission, January 12, 2023, Counsel: Danny Bernstein [**“Main Submission of JJA”**]
3. Submission of the Government of British Columbia to the 2022 Judicial Compensation Commission, January 12, 2023, Counsel: Karrie Wolfe and Steven Davis [**“Main Submission of Government”**]
4. Submission of the Canadian Bar Association, BC Branch to the 2022 Judicial Compensation Committee [sic], January 23, 2023
5. Submission of the Law Society of British Columbia, 2022 Judicial Compensation Commission, January 24, 2023
6. Submission of the Chief Judge of the Provincial Court of British Columbia to the 2022 Judicial Compensation Commission, January 25, 2023 [**“Submission of Chief Judge”**]
7. Submission of the Judicial Council of British Columbia to the 2022 Judicial Compensation Commission, January 25, 2023 [**“Submission of Judicial Council”**]
8. Reply Submission of the Provincial Court Judges Association of British Columbia to the 2022 Judicial Compensation Commission, February 3, 2023, Counsel: Alison M. Latimer, KC [**“Reply Submission of PCJA”**]
9. Reply Submission of the Judicial Justices Association of British Columbia, Compensation Commission 2022, February 3, 2023, Counsel: Danny Bernstein [**“Reply Submission of JJA”**]
10. Reply Submission of the Government of British Columbia to the 2022 Judicial Compensation Commission, February 3, 2023, Counsel: Karrie Wolfe and Steven Davis [**“Reply Submission of Government”**]
11. Joint Proposed Recommendation to the 2022 Judicial Compensation Commission respecting Non-Judicial Pensions for Provincial Court Judges, March 3, 2023 [**“Joint Submission on Non-Judicial Pensions”**]
12. The Government of British Columbia’s Submissions to the 2022 Judicial Compensation Commission respecting participation costs, March 4, 2023 [**“Cost Submission of Government”**]

13. Supplemental Submission of the Government of British Columbia to the 2022 Judicial Compensation Commission regarding matters specific to the Judicial Justices Association, March 6, 2023 [**“Supplemental Submission of Government, March 6, 2023”**]
14. Supplemental Submission of the Government of British Columbia to the 2022 Judicial Compensation Commission on Budget 2023, March 7, 2023 [**“Budget Submission of Government”**]
15. Supplemental Submission of the Provincial Court Judges Association of British Columbia to the 2022 Judicial Compensation Commission, March 7, 2023 [**“Supplemental Submission of PCJA”**]
16. Supplemental Submission of the Judicial Justices Association of British Columbia, Compensation Commission 2022, March 7, 2023 [**“Supplemental Submission of JJA”**]

Appendix B: Documents and Authorities

1. Joint Book of Documents of the Parties, Volumes 1 and 2, with revised Tab 34 (revised March 9, 2023) [**JBD**]
2. Book of Documents of the Provincial Court Judges Association of British Columbia [**PCJA BD**]
3. Book of Documents of the Judicial Justices Association of British Columbia
4. Appendices for the Submission of the Government of British Columbia [**Appendices for Submission of Government**]
5. Appendices to the Reply Submission of the Government of British Columbia (in same volume as the Government's Reply Submissions)
6. Supplemental Book of Documents of the Judicial Justices Association of British Columbia
7. Joint Book of Authorities of the Parties, Volumes 1 and 2 [**JBA**]
8. Package of seven documents prepared or compiled by the Government concerning recent pay increases to family physicians.
9. Executive Council of Nova Scotia, OIC 2023-71, March 7, 2023, adopting recommendations of the Nova Scotia Provincial Judges' Salaries and Benefits Tribunal for period of April 1, 2023 to March 31, 2026.
10. Transcripts of Oral Hearings for February 13, 2023, February 14, 2023, February 15, 2023, February 16, 2023, March 10, 2023, and March 13, 2023 [**TR**]

Appendix C: Witnesses

Monday, February 13, 2023

Mr. Ian McKinnon, Pacific Issues Partners

Mr. André Sauvé, actuary in private practice

Tuesday, February 14, 2023

Ms. Heather Wood, Deputy Minister of Finance for British Columbia

Friday, March 10, 2023

Mr. Ian McKinnon, Pacific Issues Partners

Monday March 13, 2023

Ms. Heather Wood, Deputy Minister of Finance for British Columbia

Appendix D: Hearing Exhibits

Exhibit	Description
1	The Current Financial Position of the Government: A report for Submission to the Judicial Compensation Commission Prepared by Ian McKinnon – Presentation Material
2	Point in Time Report on the Current and Expected Economic Conditions in British Columbia and the Current and Expected Financial Position of Government as of December 2022, prepared by Heather Wood; and Presentation to the Judicial Compensation Commission, February 14, 2023
3	Times Colonist Article, February 6, 2023 “B.C. throne speech forecasts slowdown but says it’s not time to cut back on spending”
4	British Columbia News Release, office of the premier, dated February 12, 2023 “B.C. building stronger communities with \$1-billion Growing Communities Fund”
5	Vancouver Sun, February 13, 2023 “Vaughn Palmer: Why B.C.’s premier is in a rush to spend, spend, spend”
6	British Columbia Construction Association, BC Construction Industry Statistics (Fall-2022)
7	The Cambridge Lectures 2023 Registration Form, and the 2023 NCLP Registration Form
8	BC Prosecution Service Annual Report 2021/22
9	Memo to Judicial Compensation Commission from Chief Judge Melissa Gillespie, February 14, 2023 Re: Judicial Applicant Information
10	2019-20 table of expenditures of Judicial Justice Professional Development Expenses
11	Replacement for p. 3 of Government Reply Submissions (Blue Coloured Table)
12	Email from Mr. Davis, February 16, 2023 concerning “22% for pay in lieu of benefits - part-time Judicial Justices”
13	Email from Ms. Wolfe, March 7, 2023 concerning “2022 JCC – Government’s position re: JJABC modified shift premium proposal”

14	Ian McKinnon Presentation, “The Current Financial Position of the Government Post-Budget Update” March 2023
15	Vancouver Sun, News Article, March 6, 2023, “Surrey might reduce property tax hike, but only if RCMP remains, mayor says”
16	Vancouver Sun, News Article, February 23, 2023, “2021 B.C. floods recovery: Federal government provides \$557 million to help address devastation”
17	Heather Wood, Presentation to the Judicial Compensation Commission re: Budget and Fiscal Plan 2023/24 – 2025/26, March 10, 2023

Appendix E: Court Tours and Site Visits

1. November 21, 2022³³⁸
 - a. Robson Courthouse, 800 Hornby St, Vancouver, BC
 - ACJ Wishart spoke about virtual family management conferences and settlement conferences
 - Commissioners and participant representatives watched traffic court, and civil law hearings
 - b. Vancouver Criminal Court, 222 Main St, Vancouver, BC
 - Commissioners and participant representatives watched disposition court
 - c. Downtown Community Court, 211 Gore Ave, Vancouver, BC
 - Commissioners and participant representatives watched the Downtown Community Court
 - Judge Doherty provided an overview of the Court
 - d. Surrey Courthouse, 14340 – 57 Ave, Surrey, BC
 - ACJ Wishart provided an overview of virtual bail
 - Commissioners and participant representatives watched virtual bail, in-person bail and other criminal matters
2. February 10, 2023
 - a. Indigenous Court, Inn at the Quay, 900 Quayside Dr, New Westminster, BC
 - Judge Brown provided an overview of the court, prior to sitting
 - Commissioners and participant representatives watched the court, including client updates and sentencing
3. February 11, 2023
 - a. Justice Centre
 - Chief Judge Gillespie, Judicial Justice Brown, and Judicial Justice Blackstone provided an overview of work at the Justice Centre
 - Commissioners and participant representatives watched bail hearings
 - Commissioners and participant representatives viewed how a judicial justice deals with an electronic search warrant application

³³⁸ Commissioner Castle was unable to attend on this day due to illness. Commissioner Gottardi was only able to attend at Surrey Courthouse.

Appendix F: Attachment to Joint Proposed Recommendation Re: Non-judicial Pensions

Attachment to Joint Proposed Recommendation re: non-judicial pensions
ECKLER

MEMO

TO Paul Craven, ADM, Justice Service Branch, Ministry of Attorney General
Melissa Gillespie, Chief Judge, Provincial Court of British Columbia

FROM Catherine Robertson, Eckler Ltd.

CC: Chris Skillings, Director, Reporting & Analysis, Provincial Treasury
Stuart Morgan, Executive Director, Public Service Pension Board of Trustees

DATE February 24, 2023

RE **2022 Judicial Compensation Commission (“JCC”) proposal to recommend amendments to the Judicial Compensation Act to incorporate non-judicial pension benefit plan design changes**

Further to the letter of February 15, 2023 from the Public Service Pension Board, this memo sets out the requested analysis on potential cost implications from the proposal to recommend amendments to the Judicial Compensation Act (“JCA”) to incorporate non-judicial pension benefit plan design changes.

Background

The background document provided to us is attached to this memo for reference. In summary, the Public Service Pension Plan (the “PSPP”) has been amended twice recently. Firstly, effective April 1, 2018, the benefits for general PSPP members were amended to introduce a flat accrual rate of 1.85%, eliminate the bridge benefit and the rule of 85, provide an early retirement reduction of 6.2% per annum below age 60, as well as providing a retroactive benefit improvement to increase the below YMPE accrual rate from 1.35% to 1.65%, with a corresponding reduction in the bridge benefit, for service accrued from April 1, 2006 to March 31, 2018. We refer to these amendments in this memo as the “2018 PSPP amendments”. Secondly, effective April 1, 2022, the benefits for general PSPP members were amended to increase the flat accrual rate to 1.95% for future service, “the 2022 PSPP amendments”.

In the absence of a change to the JCA, currently when any PSPP plan member is appointed as a judge, any non-judicial service under the PSPP reverts back to the PSPP benefits prior to the 2018 and 2022 PSPP amendments. This memo considers the cost implications, if any, of the proposed amendments to apply the 2018 and 2022 PSPP amendments to non-judicial service for judges (the “JCC non-judicial proposed amendments”). No changes are being proposed, or have been considered, for judicial service.

The request is for us to consider any cost implications from the JCC non-judicial proposed amendments both for PSPP and for Judges.

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PSPP Cost Implications

We have reviewed the impact of the JCC non-judicial proposed amendments on the PSPP, and conclude there is no cost impact to PSPP.

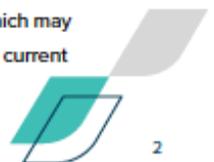
As noted in our valuation reports for PSPP, we ignore the enhanced benefits which are provided to certain member e.g. judges in the valuation, and report separately to the Board on the additional contributions required for such members. As a result, when costing both the 2018 PSPP amendments and the 2022 PSPP amendments, we assumed the amendments would apply to all members, including judges. This means we have already reflected the cost of providing the 2018 and 2022 PSPP amendments to non-judicial service for judges within the 2018 and 2022 PSPP amendments. Generally, where these amendments resulted in a cost to the PSPP, these costs were met out of surplus. The surplus arose on all PSPP members, so has been allocated appropriately. The appropriate contributions have also been made for the benefits provided.

Judges Cost Implications

We have reviewed the impact of the JCC non-judicial proposed amendments on the contributions currently being paid by judges, and conclude there is no cost increase to judges.

We establish the contributions due from judges based on a separate valuation. Judges are a relatively small group of members, who are on average older than the general PSPP active population, and with more generous benefit provisions. Due to the size of the group, and the potential spread of ages at which judges are appointed, it is not appropriate to use the entry age normal cost method that is used for the regular plan. Accordingly, we use the projected unit credit method, which estimates the cost of benefits accruing following the valuation and therefore accurately allows for the age profile of the judges and the increasing cost of accrual over time.

Although there are no changes being proposed to the current benefits for judicial service, the JCC non-judicial proposed amendments may slightly reduce the current judges contributions. The reason for this is that where the JCC non-judicial proposed amendments have an impact on the accrued pension, they will, in aggregate across all judges, increase the total accrued pension. As a result, where a judge is projected to meet the current maximum accrual of 70% of the member's highest average salary, then they may meet this limit sooner allowing for the JCC non-judicial proposed amendments. On reaching this maximum, the valuation assumes that contributions cease, resulting in a lower required contribution. The data we have includes the total non-judicial service, so we have had to approximate how that service is split between April 1, 2006 to March 31, 2018 and from April 1, 2018 (to March 31, 2020, the date of the last valuation). The estimated contribution reduction is marginal. Given that the magnitude of the reduction is not material, the approximations involved in the estimate, and the upcoming valuation as of March 31, 2023 (which may lead to contribution changes due to experience or data changes), we would recommend that the current contributions are maintained until the 2023 valuation is completed.



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With respect to any increase in accrued benefits that may apply to individual judges as a result of the JCC non-judicial proposed amendments, as noted above, these increases were already costed in the 2018 and 2022 PSPP amendments, with any increased cost largely being met from surplus. Hence, the judges should not be charged again for any benefit improvements to accrued service as a result of the JCC non-judicial proposed amendments. In addition, the appropriate contributions have been paid to the PSPP for any post March 31, 2018 non-judicial service accrued by any current judge.

We would be pleased to discuss this further.



2022 Judicial Compensation Commission ("JCC") proposal to recommend amendments to the *Judicial Compensation Act* to incorporate non-judicial pension benefit plan design changes

Background

The *Judicial Compensation Act* ("JCA") includes provisions for judges' pension benefits for both judicial service and non-judicial service (if any). At retirement, judges will receive a blended lifetime pension benefit if they earned any pensionable service as a regular member under the Public Service Pension Plan ("PSPP") prior to being appointed to the provincial court (for example, working as a government lawyer).

Historically, the JCA's non-judicial pension benefits provisions have been harmonious with the PSPP rules in many respects. This harmony ensured the pension benefit earned and paid for while serving as a regular member is maintained despite the change in employment status. However, plan design changes made by the PSPP in recent years have not been incorporated into the JCA, resulting in a divergence in the benefits for impacted judges in relation to non-judicial service.

The changes proposed for recommendation to the 2022 JCC intend to incorporate the plan design changes to ensure impacted judges receive benefits in harmony with the current PSPP plan design (i.e., the benefit that was earned prior to judicial appointment). If ultimately implemented through subsequent JCA amendments, it is expected the changes will result in improved lifetime benefits for virtually all existing active and retired impacted judges.

Proposed Amendments to be Recommended

The proposal is to pursue incorporating plan design changes into the JCA for those elements where the JCA and PSPP have been historically harmonious (an overview of pension benefits is provided in Appendix A). These elements include the benefit accrual rates, the bridge benefit, and the early retirement factor. If implemented, the proposed changes would apply to non-judicial service only; there would be no changes to the judicial benefit. Specifically, the proposed changes are as follows:

1. Moving from 1.35%/2% integrated benefit accrual rates to the following flat benefit accrual rates:
 - a. 1.85% for service from April 1, 2018 – March 31, 2022
 - b. 1.95% for service after April 1, 2022
2. Past service benefit enhancement ("benefit enhancement") to the lifetime portion of the pension of 1.35% up to 1.65% for service on earnings up to Yearly Maximum Pensionable Earnings ("YMPE") for the period of April 1, 2006 – March 31, 2018
3. Corresponding elimination / reduction to the bridge benefit payable until the earlier of age 65 and death:
 - a. Elimination of bridge benefit for service after April 1, 2018; and
 - b. Reduction of bridge benefit from 0.65% to 0.35% on earnings up to the YMPE for service between April 1, 2006 and March 31, 2018 (offset by the benefit enhancement to the lifetime portion above)

4. Increasing the Early Retirement Factor (ERF) from 5% to 6.2% for the non-judicial benefit portion of service earned on or after April 1, 2018, for judges that do not qualify for an unreduced pension.

Individual judges' pensionable service will likely cross over the timeframes shown above.

There are other pension elements that have **not** been historically harmonious between the two regimes and would therefore not be changed by this proposal if ultimately implemented. They include:

1. Shorter three year Highest Average Salary (HAS) calculation for both judicial and non-judicial service, compared to five years for regular members;
2. More favourable "Rule of 55/5" (no reduction in pension if retire at age 55 with at least 5 years of service) for all service (both judicial and non-judicial). Depending on the service period, regular members must meet the rule of 85 (for service pre-plan design), have 35 years of service or reach age 60 with at least 2 years of service to qualify for an unreduced pension; and
3. Enhanced 'normal form' of pension that includes a joint life 60 per cent normal form option with no reduction for married members. Regular members are only provided a single life with a 10-year guarantee normal form, regardless of their spousal status.

In each case, the features above result in a more favourable pension benefit for judges compared to benefits earned by regular members of the plan. The continuation of these more favourable features is an important factor in support of the 'net benefit' outcomes for impacted judges under the proposal for recommendation.

Determination of Impacted Judges

The plan design changes were applied to all regular members that still had an entitlement in the plan at the time of implementation, regardless of status: all active, inactive/deferred and retired members were impacted to the extent pensionable service was earned during the periods noted above. However, because the non-judicial component of judges' pensions is prescribed by the JCA, the plan design changes did not apply to judges.

The proposal will apply the changes in a consistent manner for judges with non-judicial service earned during the effective dates if those judges still have an entitlement in the plan¹. This is true regardless of status under the plan: e.g. active, inactive/deferred, or retired. This application is the most equitable approach to implementing plan design changes, including because it ensures the past service benefit enhancement is awarded consistently to all members.

Pension Corporation has confirmed there are a total of 54 impacted judges with non-judicial service earned in the timeframe that would be affected by the plan design changes, if

¹ Any member who remains in the pension plan, whether actively employed, retired, or deferred but with benefits left in the plan, holds an entitlement.

implemented: 47 active judges and 7 retired judges². There are no inactive/deferred members impacted. An assessment of the population of impacted judges is provided in Appendix B.

Effective dates

The proposal for recommendation would, if implemented, apply the new provisions retroactively to the effective dates of the plan design changes. This retroactivity ensures impacted judges receive the benefits of plan design changes consistent with what would have applied to their previous earned time if they had not been appointed, creating equity with continuing regular members of the plan.

Importantly, the past service benefit enhancement was provided to members with an entitlement under the plan on or after October 1, 2019. All members, whether active, inactive/deferred, or retired that were in the plan on or after this date received the benefit enhancement for time served during the April 1, 2006 to March 31, 2018 period. The proposal for recommendation would, if implemented, retroactively award the benefit to eligible judges (including retired judges) with an entitlement as of the October 1, 2019 date.

For judges that are not eligible for an unreduced pension (i.e. members who receive a reduced pension), the higher ERF would apply to the non-judicial pension component at the time of retirement for non-judicial service earned after April 1, 2018 (being the start date of the new flat accrual structure). However, Pension Corporation advises there have been no reduced pensions put into pay over the last 15 years. As a result, this change has no impact on the existing retired judge population and is not anticipated to impact active judges as a population in the future.

The October 1, 2019 effective date for the benefit enhancement would also be relevant in the following specific circumstances.

Commuted values

The October 1, 2019 effective date was relevant for calculating a commuted value in the event a member elects to leave the plan or a lump sum payout is required due to a member's death³. A member/beneficiary who took their commuted value prior to this date did not receive the benefit enhancement.

Pension corporation has confirmed there have been no commuted values calculated for impacted judges since October 1, 2019, and therefore there is no impact for existing judges (and no recalculations required). Assuming the parties agree to propose, and the JCC recommends, these changes, it is proposed that, rather than using the October 1, 2019 date for purposes of determining a member's entitlement for commuted values, the date the JCC recommendations in this regard are either accepted by the Lieutenant Governor in Council or approved by the

² In addition to the 54 impacted judges, there are also 5 impacted masters: 2 active master and 3 retired masters. While masters' pensions are tied to those of provincial court judges under the *Supreme Court Act*, the 2022 JCC will not deal with masters directly, so the remainder of this document omits reference to the 5 impacted masters.

legislative assembly be used instead. This approach would avoid the complexity of having to recalculate the amount if a commuted value payment is made to a judge between today and the effective date of the JCA amendments. If a judge is paid a commuted value after the date of the JCA amendments, the benefit enhancement would be included.

Adjustments to the normal form

For members who are currently receiving a pension and chose a pension option with a greater value than the normal form pension, the proposal will ensure that member's pension prior to age 65 does not decrease. This means that for members currently receiving a pension who chose a single life pension guaranteed for 15 years or a 100% joint survivor pension, there would be a slight reduction in their lifetime pension increase in order to maintain the same pension prior to age 65⁴. This is the same principle that was applied for regular members at the time plan design was implemented.

Pension Corporation has confirmed there are two existing retired judges who would be impacted by this issue if the changes are ultimately implemented. These members would see no impact to their pre-65 payments and would still receive an increase to lifetime benefits after age 65, albeit on a slightly reduced basis for the reason noted above.

Refund of overcontributions

The JCA permits a lifetime pension benefit up to a maximum 70% of HAS. When an active judge's benefit accrual reaches 70%⁵, contributions cease. If proposed plan design changes result in a judge exceeding the 70% maximum, or reaching the maximum more quickly, the judge will have made an over-contribution retrospectively. Under the proposal, overcontributions would have to be calculated and returned to any judge in this situation who has an entitlement on or after October 1, 2019.

Pension Corporation has confirmed there are three judges (two active, one retired) that have reached the 70% maximum and would require a refund of overcontributions if the changes are implemented. There are no inactive/deferred judges impacted.

Cost implications to the Plan

The plan design changes were developed and implemented within a 'cost neutral', or 'fully funded' framework; the benefit of new flat accrual rates was funded by foregoing the bridge benefit and increased early retirement factor on future service. As well, the estimated cost related to the past service benefit enhancement was funded from a portion of the plan's surplus identified in the 2017 actuarial valuation. In combination, both changes were fully funded and did not result in a change to contribution rates.

⁴ An optional form factor is applied to the lifetime pension when a greater pension form is provided than the normal form. This factor is not applied to the temporary bridge benefit, therefore this can result in a small reduction in the net payment before age 65.

⁵ For example, for a judge that works 100% in a judicial capacity (i.e. has no non-judicial service), the 70% max is reached after 23.33 years (70% / 3% accrual per year).

It is expected that the proposal, if implemented, will have no incremental cost to the plan: as members of the pension plan, costs associated with the benefits accrued were considered at the time the actuarial work was performed. This is expected to be true even with anticipated retroactive benefit enhancements and/or overcontributions that result in lump sum payments to impacted judges. The proposal here simply ensures the benefits are awarded to judges with non-judicial service during the relevant timeframes as the plan design changes originally contemplated.

Pension Corporation's internal actuary has reviewed the proposal and agrees with this conclusion. The plan's actuary will be engaged to confirm this understanding. The ability to move forward with the proposal for recommendation to the 2022 JCC is contingent on the actuary's confirmation of no cost outcome. If a cost is identified, funding sources and/or modifications will need to be identified.

Next steps

- Confirm a clear understanding with all parties of the proposal, respond to any additional questions, and agreement to proceed
- Liaise with Pension Corporation for additional information and/or modelling, if needed
- Confirm the 'no cost' implications with plan actuary
- Confirm JCC submission approach

Appendix A – Overview of Defined Benefit Pension Benefit

Judicial pensions are a **defined benefit (DB)** pension arrangement. The amount of the lifetime pension benefit is calculated based on a benefit accrual rate, years of service under the plan, and the salary earned by the member.

While judges are members of the Public Service Pension Plan (PSPP), their enhanced pension rules for judicial service are contained in the *Judicial Compensation Act (JCA)*. The JCA also contains the pension rules for non-judicial service.

Glossary of Key Terms

Benefit Accrual Rate: The multiplier used in the pension formula, along with a member's pensionable service and earnings, to calculate the member's lifetime pension.

Bridge Benefit: A temporary monthly amount paid in addition to the lifetime pension. It is payable from the member's retirement date until the member turns 65 or dies, whichever comes first. For regular members, the bridge benefit applies only to service up to March 31, 2018.

Commuted Value: A lump-sum value based on the amount of money the pension plan would need to put aside today, at current interest rates, to pay for a member's future pension at retirement.

Highest Average Salary (HAS): The average of a member's three highest years of pensionable salary for judges (compared to a five year average for regular members). To calculate this average, the plan uses the best three years of full-time-equivalent earnings from the member's entire time with the plan. When a member retires, their pension is based on a formula that uses the member's highest average salary.

Normal Form of pension: Is the single life or joint life amount of a pension set by the Board or as specified in the *Judicial Compensation Act*, before any actuarial factors are applied to calculate the various pension option amounts.

Year's maximum pensionable earnings (YMPE): A salary limit set by the federal government each year for the purposes of determining the maximum annual contributions workers make to the Canada Pension Plan. It is also used as part of the pension formula to calculate contributions and pension benefits for certain periods.

Existing JCA terms

Accrual Rates

Non-judicial service:

- Lifetime: 1.35% up to the YMPE, 2.0% over the YMPE
- Bridge Benefit: 0.65% up to lesser of HAS or YMPE

Judicial service:

- Lifetime: flat 3.0%
- Bridge Benefit: No bridge benefit

Highest Average Salary (HAS)

- 3-year HAS applied to both non-judicial and judicial service

Early retirement reduction rates

- 5.0% per year from age 60, for non-judicial and judicial service, subject to unreduced rule below
- Judges qualify for an unreduced pension at age 55 if they have at least 5 years of contributory service (55/5 rule)

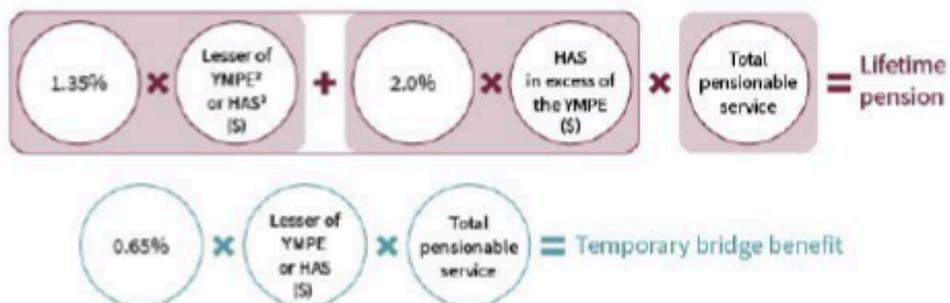
Sample Calculation (under existing JCA pension benefits):

- Assume the following:
 - 10 years of non-judicial service and 10 years as a judge
 - HAS of \$290,000
 - YMPE \$64,900
 - Retirement age: 65 (no bridge benefit or early reduction applied)
- Non judicial service:
 - $1.35\% \times 10 \text{ years} \times \$64,900 = \$ 8,762$ plus
 - $2.0\% \times 10 \text{ years} \times \$225,100 = \$45,020$
- Judicial service:
 - $3.0\% \times 10 \text{ years} \times \$290,000 = \$87,000$
- Total Annual Pension = \$140,782

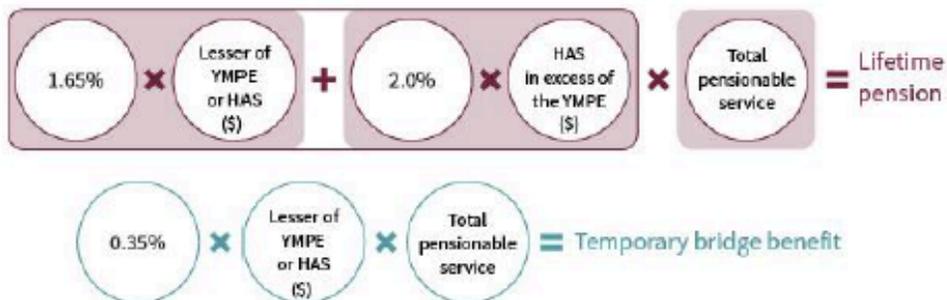
Plan Design Changes for Regular Members

- Past service benefit enhancement (increased the below YMPE accrual rate from 1.35% to 1.65%, corresponding decrease in bridge benefit from 0.65% to 0.35%) for service earned between April 1, 2006 and March 31, 2018, effective October 1, 2019)
- Flat 1.85% accrual rate, effective April 1, 2018
- Flat 1.95% accrual rate, effective April 1, 2022

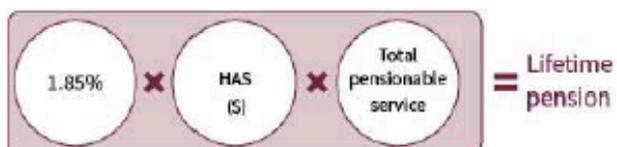
For pensionable service earned before April 1, 2006:



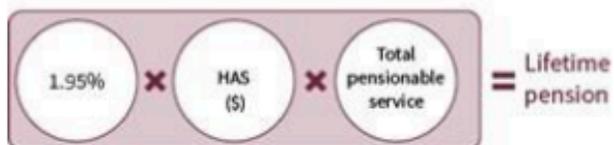
For pensionable service earned between April 1, 2006 and March 31, 2018, inclusive:



For pensionable service earned on and after April 1, 2018, to March 31, 2022, inclusive:



For pensionable service earned on or after April 1, 2022:



Appendix B – Assessment of implications for Impacted Judges

Pension Corporation have confirmed there are a total of 54 active and retired judges impacted by the proposal. Of the 54 total, 47 are active judges and 7 are retired judges. There are no inactive/deferred members impacted.

The following table provides an overview of the identified population by group based on timeframe of non-judicial service. Individual judges' experience will vary depending on the duration and timespan of the time earned, retirement age, HAS, and YMPE - final outcomes for active members cannot be known in advance of a specific retirement date being identified.

Scenario	Plan design changes applied	Comments on impacts
Of the 47 active judges:		
30 judges have April 1, 2006 to March 31, 2018 service only	past service benefit enhancement with offsetting bridge benefit reduction to age 65	No change to net pensions paid up to age 65, increased lifetime pensions paid beyond. All judges are better off
2 judges have April 1, 2018 March 31, 2022 service only	change from 2%/1.35% accrual rate to flat 1.85% for duration of non-judicial service	Impact depends on HAS and YMPE at time of retirement. Using current YMPE and a HAS of \$288,500, <u>members will see marginal reduction in lifetime pension</u> [note members identified have only 2.22 and 0.6 years of non-judicial service.]
14 judges have both April 1, 2006 to March 31, 2018 and April 1, 2018 to March 31, 2022 service	Both: i) change from 2%/1.35% accrual rate to flat 1.85% for duration of non-judicial service, and ii) past service benefit enhancement with offsetting bridge benefit reduction to age 65	Impact will depend on duration of time between the two periods, age of retirement, and HAS and YMPE at time of retirement. The past service benefit enhancement will offset time at 1.85% to some degree. The net impact will vary on a case by case basis. Average judge experience supports a net benefit outcome in most cases. The amount of the lost/reduced bridge benefit will be paid back over a period of time depending on the factors noted above.

1 judge has service through all three periods; April 1, 2006 to March 31, 2018 and April 1, 2018 to March 31, 2022 service as well as post-April 1, 2022 service	All: i) change from 2%/1.35% accrual rate to flat 1.85% for duration of non-judicial service, ii) 1.95% on time after 2022 iii) past service benefit enhancement with offsetting bridge benefit reduction to age 65	Impact will depend on duration of time between the two periods, age at retirement, and HAS and YMPE at time of retirement. For one judge identified, Pension Corporation has confirmed time spanning pre-2018 and post-2022 is expected to offset period at 1.85% resulting in net benefit after age 65. The amount of the lost/reduced bridge benefit will be paid back over a period of time depending on the factors noted above.
Of the 7 retired judges:		
7 retired judges have time earned only in the 2006 – 2018 period	past service benefit enhancement with offsetting bridge benefit reduction to age 65	No change to net pensions paid up to age 65, increased lifetime pensions paid beyond. Judges will receive a lump sum benefit enhancement for pensions paid after October 1, 2019 All judges are better off

Other factors assessed:

- 3 judges (two active, 1 retired) have hit the 70% maximum accrual such that contributions ceased. These individuals would receive an overcontribution refund to the extent changes accelerated reaching 70%.
- There have been no commuted value asset transfers out of the plan (due to leaving or lump sum payout due to member death) on or after the effective date – there are no situations where the issue of a commuted value recalculation is currently needed.
- There is one terminated judge who has post-April 1, 2006 non-judicial service, but that individual was paid out in 2013, prior to the October 1, 2019 effective date and is therefore not affected.
- There are two retired members who retired prior to age 65 and elected a Joint Survivor 100% form for lifetime pension. These two individuals will be subject to the mechanism discussed above to ensure net payments prior to age 65 are not impacted and will receive a slightly lower increase to the lifetime pension.

- An assessment of marriage breakdown is still required: if there are any instances, the limited member's benefit will be treated the same way as the member's benefit.

Appendix G: Changes to Shift Premiums for 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.