

2007 BRITISH COLUMBIA JUDICIAL JUSTICES OF THE

PEACE COMPENSATION COMMISSION

Report and Recommendations

August 21, 2007

BRITISH COLUMBIA JUDICIAL JUSTICES OF THE PEACE 2007 COMPENSATION COMMISSION

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Commissioner

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Chair

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Commissioner

August 21, 2007

DELIVERED BY COURIER

Honourable Wallace T. Oppal, Q.C.
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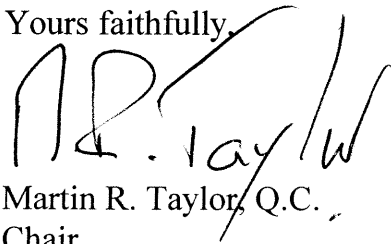
Dear Mr. Attorney:

Re: Judicial Justices Compensation Commission

Delivered herewith, pursuant to s. 5(1) of the *Judicial Compensation Act*, is the Report and Recommendations of the 2007 Judicial Justices Compensation Commission.

As required by that provision, we are contemporaneously delivering a copy of the Report and Recommendations to the Chief Judge of the Provincial Court; pending its tabling in the Legislative Assembly, and subject to your direction, we do not believe we have authority to release this document to any other party.

Yours faithfully,



Martin R. Taylor, Q.C.
Chair

MRT/vle
Enclosure

cc: Hon. Hugh Stansfield
Chief Judge
Provincial Court of B.C.

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REPORT OF THE 2007 BRITISH COLUMBIA JUDICIAL JUSTICES

OF THE PEACE COMPENSATION COMMISSION

I. INTRODUCTION

(a) The Commission's Task

Judicial Justices of the Peace are auxiliary members of the provincial judiciary whose functions include: (i) sitting in court to adjudicate 'ticketable' charges laid under provincial statutes, mostly for traffic offences, and under municipal bylaws; (ii) acting as 'justices' under the *Criminal Code* to decide applications for judicial interim release, by speakerphone or videoconference, and for search warrants by fax or in person; and (iii) making payment orders under the *Small Claims Act*.

Theirs is work that could otherwise be done only by judges of the Provincial Court. The Supreme Court of Canada has declared it part of the core function of the court system to which judicial independence is constitutionally assured. This includes assurance of financial security through periodic review of compensation by an independent commission authorized to make recommendations that can only be legislatively departed from, or over-ridden, on rational grounds. The statutory basis for the process is found in

the *Judicial Compensation Act*, SBC 2003 Ch. 59, which provides for the appointment of such a commission every three years to report on all matters respecting “remuneration, allowances and benefits” of judicial justices and make recommendations as to these for the three following fiscal years. Section 5(5) requires that the commission in so doing consider the need to “provide reasonable compensation” for judicial justices and to “maintain a strong Court by attracting qualified applicants”.

At the start of our proceedings there were 15 full-time and three part-time judicial justices, to whom we shall refer as “incumbents”, all of long experience in the court system but none qualified to practice law. On the last day of our scheduled hearing seven new part-time JJPs were appointed who are all members of the Law Society of British Columbia of at least five years standing – a long-established requirement for appointment of judges of the Provincial Court that is from now on to be required also of applicants for appointment as judicial justices. During the coming three fiscal years at least 20 more such “lawyer-JJPs” will be required by the Court.

The timing, and implications for compensation purposes, of the introduction of this new component of lawyer-JJPs, to work with the incumbent JJPs and perform the same tasks, has rendered that of the commission a challenging one.

(b) The Process

Ours is the third commission appointed to review JJP compensation in British Columbia; the first was established in 2002 under the *Provincial Court Act*, as it then stood, the second under the present statute, in 2004.

Recommendations for substantial increases in compensation were made by the 2002 commission but these were to a significant extent rejected by the Legislative Assembly. More modest increases recommended by the 2004 commission were delayed by the legislature in implementation. In both cases the then financial situation of the province was cited by Government as the principal reason for not adopting in full the commission recommendations. Ours is the first commission to consider JJP compensation issues with the province's finances in substantial surplus.

The process is governed by statutory time constraints. Section 5(1)(a) and (b) of the *Judicial Compensation Act* require that the commission make a "preliminary report" by September 1 of the year of appointment on "all matters respecting the remuneration, allowances and benefits" of the judicial justices, with recommendations for the three following fiscal years. Within 14 days of receiving this report the Attorney General or Chief Judge may seek clarification by the commission and such clarification must under s. 5(3) be provided by September 30. Section 6(1) requires the Attorney General to lay the report, with any clarification, before the Legislative Assembly within seven days, if

then sitting, or otherwise within seven days of the opening of the next legislative session. Section 6(3) provides that unless rejected by resolution within 28 days of being laid before the Assembly, the recommendations of the Commission will have effect from April 1 of the next following year.

Of the 28 full-time JJPs who held office at the beginning of the year, 13 accepted an attractive retirement package effective March 31, 2007. There then remained the present 15 full-time and three part-time non-lawyer JJPs, two of the latter being retired JJPs and one a retired Provincial Court judge. Almost all of the remaining incumbent JJPs, as we shall call them, were qualified by at least 10 years' experience in the Court Services Branch prior to appointment; many have degrees, some have law degrees. They received further training on appointment, and have had continued legal training throughout their service in the areas of law with which they are concerned. An issue vigorously contested before us is whether there should, as the Government contends, be a differential in level of compensation as between remaining incumbent justices and the new lawyer-JJPs. They work side-by-side at the Justice Centre in Burnaby, where Vancouver-area lawyer-JJPs have first been assigned, dealing with bail 16 hours a day and with search warrant applications on a 24-hour basis. Both will sit in court to adjudicate charges falling within the JJP jurisdiction, the new lawyer-JJPs doing so at first only outside the Vancouver area but eventually in all centres, with retirement of

incumbent JJPs in the ordinary course. Both incumbents and lawyer-JJPs have tenure “during good behaviour” and are expected to retire at age 65.

The commission issued a notice of hearing in April, 2007, published in the *Vancouver Sun* and *Victoria Times-Colonist* and sent by mail or e-mail, together with an Information Circular, to the Chief Judge of the Provincial Court, Provincial Court Judges Association, Legal Services Society, Trial Lawyers Association of B.C., Law Society of B.C., Canadian Bar Association B.C. Branch, B.C. Chief of Police Association, B.C. Crown Counsel Association, Judicial Justices of the Peace Association and all Judicial Justices of the Peace, and shown on the Attorney General Ministry website. On June 12, 13 and 16, 2007, respectively, we saw justices presiding in the Vancouver and Richmond JJP courts and at the Burnaby Justice Centre where the bail applications and search warrant and production order applications are dealt with.

The commission held its originally-scheduled public hearing July 3 and 4, 2007. It considered submissions from the Chief Judge in person, the Judicial Council of B.C. represented by Frits Verhoeven, Q.C., the Government of B.C. represented by Tim Leadem, Q.C., the Judicial Justices of the Peace Association represented by Thomas Roper, Q.C., Zahid Makhdoom, JJP, in person, and the Canadian Bar Association B.C. Branch represented by Carman Overholt, Q.C. The Law Society of B.C. filed a written submission but was not represented at the hearing.

On the last day of that hearing the Chief Judge told us there was a possibility that the awaited appointment of the first of what we have described as “lawyer-JJPs” might soon be announced. The commission undertook to hold a special sitting at the end of July so that, should appointments be made in time, any new-appointee who wished to do so would have an opportunity, however short, to make a submission before our report had to be completed. It transpired, the next day, that the first seven appointments had in fact been made during the course of the last day of our sitting. The commission then scheduled a special sitting for July 31, 2007, at which any new appointee who made a written submission to the commission by July 24 would be heard.

At the special sitting, Ed Bowes, JJP, one of the new appointees, presented a hastily-prepared brief submission on behalf of all seven, and answered questions.

(c) The JJP Function

The Chief Judge referred in his helpful submission before us to the historic “vertical structure” of the court system in Canada, and its relevance in determining the level of compensation of those carrying out judicial functions.

It quickly became apparent to us, as to the 2007 Ontario Justice of the Peace Remuneration Commission, that judicial justices of the peace occupy a place within this structure that is not always properly recognized. At their full complement last year they

accounted for about 15 per-cent of the Provincial Court judicial strength but handled about 40 per-cent of its penal workload. Their function has sometimes been seen as that of dealing on a large scale with minor, routine and largely-uncontested matters, and this view has been reinforced by reference to the fact that they may not deal with *Charter* issues or impose sentences of imprisonment. The submissions before us and our own observations, in court and at the Justice Centre, led us to a different view. When presiding in court, JJPs are attired and conduct themselves as judges in the ordinary sense, and are seen as such by thousands of people who appear before them each year. To such persons there is no more important judge than the one before whom they appear. Judicial justices are expected to demonstrate the care and patience, courteous consideration and impartial judicial deportment that is required of judges. They do not impose sentences of imprisonment but their decisions on interim release can result in incarceration of persons not in the end convicted, or who are ultimately given non-custodial sentences, and in the granting or refusal of search warrants they must weigh important privacy rights with often urgent requirements of the police.

As well as having the knowledge of *Charter* rights necessary for proper performance of their work in court and at the Justice Centre, they must be able to recognize *Charter* issues arising in the course of hearings involving unrepresented defendants so as to be able to refer such cases to a Provincial Court judge for disposition. The fines they impose for traffic and bylaw offences can amount to thousands of dollars,

in the case particularly of commercial vehicle owners and operators and of breach of construction bylaws. Their adjudication of traffic charges can result in insurance premium penalties and driver's licence suspensions that may profoundly affect those whose livelihood is dependent on their ability to drive.

Written reasons for judgment are not normally given by judicial justices presiding in court. But they are always given briefly when refusing search warrant or production order applications, and we were shown written reasons of judicial justices sitting in court that have been reviewed, and approved, on appeal to the British Columbia Supreme Court. Like other judges, JJPs give recorded oral reasons for judgment in every trial in which judgment is not reserved. Contested proceedings before them follow essentially the same course as trials before Provincial Court judges, except that JJPs very often have neither counsel nor clerk to assist them.

In its recently-published report, the 2007 Ontario Justices of the Peace Remuneration Commission chaired by the Hon. Peter Cory observes (at p. 4) that sufficient emphasis has not always been given to the importance of the work of judicial justices in the granting and refusal of search warrants, whose significance under s. 8 of the *Charter* has long been recognized by the Supreme Court of Canada. No less important, the commission observes, is their work in granting and refusal of judicial interim release, of which the commission says (at p. 5):

They are the first to consider applications for bail. In undertaking this task, they must take into account and balance the fundamentally important concepts of the freedom of the subject and the safety of the community. This is a role that cannot be lightly undertaken. Rather very serious consideration must be given to every application. This demonstrates the type of important judicial decision that Justices of the Peace are called on to make every day. There must be respect for this role in the community.

While the jurisdiction of Ontario justices inevitably differs in some respects from that of the judicial justices in this province, the aspects emphasized by the Cory Commission are common to both. These are duties that lawyer-JJPs and incumbent non-lawyer JJPs will now discharge in this province side-by-side.

Judicial justices sit in court in Vancouver, Richmond, Coquitlam, Victoria and the Okanagan. In 2006 they heard 90,628 cases, comprising 70,000 statute-violation prosecutions and 20,000 bylaw cases. Eight full-time justices are assigned to the Justice Centre, dealing in eight-hour shifts around the clock with search warrant or production order applications from throughout the province. Bail is dealt with by videoconference or speakerphone at least 16 hours a day, and when courts are closed all bail is dealt with there. In 2006, a total of 18,247 bail applications, and 4,459 search warrant and 600 production-order applications, were dealt with at the centre.

Among changes likely to be introduced by the Provincial Court in the near future are the transfer of as many bail applications as possible to the judicial justices, so as to

free judges of the Court for trial work and sentencing, the holding of evening and weekend JJP court sittings and extended use of JJPs in *Small Claims Act* proceedings. The workload of judicial justices is likely to increase significantly during the three-year period with which our recommendations are concerned.

While the timing of their appointments rendered it impossible for the new appointees to present their case fully within the time-limits imposed on the commission, and the submissions for the justices necessarily concentrated on the position of full-time JJPs, we recognize that practising-lawyer JJPs are the “JJPs of the future” in this province, and that they will shortly constitute a majority.

We must bear in mind that all JJPs appointed during the period with which we are concerned will now have the same qualifications as do Provincial Court judges, as well as being appointed by the same process.

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

II. THE ISSUES

The issues we have to decide may conveniently be dealt with under the following headings, the JJPs in office prior to July 2007 being described as “incumbent JJPs”, and those appointed in and after July 2007 as “lawyer-JJPs”:

1. **‘Incumbent JJP’ Full-Time Remuneration:** The JJP Association seeks an initial increase of approximately 28.5 per-cent for the fiscal year 2008-09, from the present 2007-08 remuneration of \$78,654 to a salary effective April 1, 2008, of \$101,076, followed for each of the fiscal years 2009-10 and 2010-11 by a five per-cent increase plus cost-of-living adjustment, for an ultimate 47.75 per-cent increase to \$116,263 in 2010-11; the Government supports only three annual increases of 2 per-cent, yielding a 2008-09 salary of \$80,227 and an ultimate 2010-11 salary of \$83,450.

2. **‘Incumbent JJP’ Full-Time Benefits:** The JJP Association seeks: (i) improvement in the long-term disability plan to bring it into conformity with that applicable to judges of the Court; (ii) increased vacation time from 30 to 35 days a year; (iii) increase in professional development allowance from \$500 to \$1,000 and (iv) costs of these proceedings. The Government agrees to (iii) and (iv).

3. **‘Incumbent JJP’ *Per Diem* Remuneration:** The JJP Association seeks an increase in the present 8-hour \$343 *per diem* for the three incumbent pensioned retirees

who perform part-time JJP duties to whatever *per diem* is arrived at for the new lawyer-JJPs, on the basis that no deduction is warranted for benefits received by the retirees or ‘overhead’ incurred by the new lawyer-JJPs, other perhaps than minor health benefits, resulting in an initial increase of as much as 60 per-cent; the government’s position would result in the same three 2 per-cent annual increases as for incumbent full-time JJPs.

4. **‘Lawyer-JJP’ *Per Diem* Remuneration:** The Chief Judge recommends a *per diem* of \$550 to \$625 for each of the three fiscal years; the lawyer-JJPs ask for \$1,000 with incumbent JJP remuneration being raised to an equivalent level after allowance for benefits received by incumbents that they do not receive and ‘overhead’ costs which they bear and incumbents do not; the government supports the \$550 *per diem* approved as an interim payment, recognizing that acceptance of its position as a whole would result in lawyer-JJPs receiving a significantly higher level of compensation than incumbent JJPs with whom they will perform the same functions.

III. ‘INCUMBENT JJP’ FULL-TIME REMUNERATION

(a) The JJP Association Position

The JJP Association contends that its members should receive for 2008-09 the remuneration they would receive if recommendations of the 2002 (“Hughes”) commission

had been fully implemented and adjusted upwards for subsequent increases in the consumer price index; for each of the years 2009-10 and 2010-11 it seeks a further 5 per-cent increase plus cost-of-living adjustment to achieve the objectives stated by the 2002 commission, particularly a narrowing of the large difference that has developed between their remuneration and that of Provincial Court judges.

The Association's request would result in 2008-09 in an increase of more than 28 per-cent in the annual remuneration of \$78,654 for full-time justices, and total increase of close to 48 per-cent over the three-year period. The Government's proposal of no more than a 2 per-cent annual increase over the three-year period produces a difference between the parties for the final year under consideration of \$32,813, almost seven times the total increase for which the Government argues. The Association lays weight on the view expressed by the Hughes Commission in 2002 that the decline in the relationship of JJP remuneration to that of judges of the Provincial Court must be redressed. At the time of the 2002 report the salary of JJPs had fallen over a 10-year period from 62 per-cent of that of a Provincial Court judge to 47 per-cent. The 2002 commission recommended increases totalling almost 24 per-cent for the following four calendar years, and further increases by later commissions, as economic circumstances might permit.

The 2002 recommendations were for a 2.5 per-cent increase in each of the calendar years 2001 and 2002, followed by increases of 5.5 per-cent and 9.0 per-cent for 2003 and 2004 respectively, raising the 2000 salary of \$68,597 over the following four years to

\$84,949. In a statement in support of the Government's resolution of the Legislature varying the commission's recommendations, the then Attorney General proposed acceptance of the 2.5 percent increases in 2001 and 2002, but rejection of the proposed 5.5 and 9.0 per-cent increases for 2003 and 2004 respectively, citing particularly the Government's fiscal strategy designed to eliminate a deficit then expected to climb to \$1.8 billion in 2003-04. The Attorney General noted that the existing JJP salary level had proved adequate in 2001 to attract 100 persons employed in the Court Services Branch to apply for 10 newly-created positions, of which 19 were short-listed for interviews. The Attorney General rejected reliance by the commission on compensation paid to Saskatchewan, Alberta and Ontario justices of the peace as a guide, noting that Saskatchewan justices have broader jurisdiction, extending to trials for some summary offences and breaches of federal statutes and issuance of peace bonds, that Alberta justices are lawyers with at least five years' practice, most of whom serve part-time with only 10-year tenure, and that the Ontario and Alberta economies were at that time stronger than that of British Columbia. The Attorney General rejected the commission's concern with the declining relationship between compensation of the judicial justices and judges of the Provincial Court, stating that the difference between the work of each "is significant enough to make a comparison unhelpful". The Attorney General also rejected comparison by the commission of JJP salaries with compensation of members of certain higher-level provincial administrative tribunals on the ground that the latter deal with "more difficult and complex matters".

The 2004 (“Lovett”) commission, whose recommendations brought the timing of the process into line with the Government’s fiscal year, recommended a salary of \$75,600 commencing January 1, 2005, and increases of 2 per-cent per annum effective April 1, 2006, and April 1, 2007. Its recommendations were influenced by the then continuing government policy of fiscal restraint. The commission noted that during a recent JJP recruitment, for which 10-year service in the Court Services Branch was a required qualification, 48 applications had been received, fewer than had previously been the case, but it accepted that this decline did not indicate difficulty in attracting a sufficient number of qualified applicants at the current salary level. The commission noted that there remained a sufficient ‘pool’ of applications to fill vacancies expected for the next several years. Its recommended two 2 per-cent increases were delayed in implementation by resolution of the Legislature until the present fiscal year.

Before us the Association demonstrated that full-time JJP remuneration has fallen from 62 per-cent of that of a Provincial Court Judge in 1992, and 47 per-cent at the time of the Hughes Report, to 39 per-cent today. During the 15-year period 1992 to 2007 salaries of Provincial Court judges increased by 85 per-cent, from \$107,000 to \$198,000, including annual increases as large as 21 per-cent and 22 per-cent, while the JJP salary increased in total over this same period by only 19 per-cent, from \$65,602 to \$78,684, with the largest yearly increase being less than 4 per-cent.

The Association emphasized that the remuneration of JJPs has fallen well behind inflation in recent years. It also drew attention to the fact that Members of the Legislative Assembly recently approved for cabinet members and themselves a ‘catch-up’ increase in compensation of between 29 and 54 per-cent.

The Association rejected the Lovett Commission’s choice of “Group 1 Tribunal” member as the appropriate comparable position within government. It urged that we look at the compensation of justices of the peace in Alberta and Ontario, “Bylaw Notice Adjudicators” in this province and “Group 2 Tribunal” members. Bylaw Notice Adjudicators are remunerated at the “Group 1 Tribunal” rate of \$74,500-\$85,000, with a \$400 *per diem* for hearing 18 parking ticket disputes per day; the Association contended that judicial justices dealing with a broad range of offences and decisions involving personal liberty and invasion of privacy more logically equate to “Group 2 Tribunal” members, who receive \$90,000 to \$113,500 a year. Alberta judicial justices were recently awarded \$110,000 for 2007, with part-time *per diem* of \$645, by a commission decision agreed to by both sides that has now received government approval. The 2005-2008 Ontario commission, whose delayed report was released in early July, recommends a salary of \$109,000 for the 2007-08 fiscal year

The Association relies on these figures, on the need identified by the Hughes commission to recover ‘lost ground’ in the relationship with remuneration of Provincial Court judges, and on past uncompensated inflationary erosion – in addition to its claim to

parity with newly-appointed part-time lawyer-JJPs – in contending for 2008-09 remuneration of \$101,076, rising to \$116,263 in 2010-11.

(b) Supporting Submissions

Submissions in support of a substantial increase for incumbent JJPs were made by the Chief Judge and Judicial Council, and also by Zahid Makhdoom, JJP, who contended for a somewhat larger increase, together with a one-time bonus of \$3,000 to \$4,000, while the Law Society and Canadian Bar Association submitted that remuneration should be generous enough to achieve the objectives of the process but neither was able to offer any suggestion as to figures appropriate for this purpose.

The Hon. Hugh Stansfield, Chief Judge, urged us to adopt the Association's recommendations and deal separately with *per diem* remuneration of new lawyer-JJPs. The Chief Judge did not support any disparity between the level of compensation for each based on qualifications alone but only such as could be justified by differences in benefits received or costs incurred, or by financial savings to the court flowing from the flexibility in scheduling possible with part-time personnel and avoidance of travel costs. The Judicial Council supported the position of the Chief Judge and emphasized the importance of the work of the justices, the high volume of cases handled by them, the stress caused by often long and irregular hours, and the extent to which public perception of the court system is shaped by experiences of the large number of people who appear

before them. The Council noted that five incumbent justices are materially impaired by health problems, and described remuneration as a key factor in maintaining morale that must bear on the quality of justice administered.

Justice Makhdoom gave a description of problems dealt with daily in ‘JJP court’ and the stressful circumstances under which the remaining justices have been obliged to handle double case-loads during the three months since half of their number took the early retirement package, resulting in a large number of trials having to be adjourned. Since only seven new part-time replacement justices have so far been recruited, and no ‘pool’ of applicants remains, and even if the new justices were to work half a week, no more than one-quarter of the retirees have so far been replaced, the circumstances described by Justice Makhdoom may continue for some time.

Justice Makhdoom’s recommendations included linking of JJP salaries to those of Provincial Court judges, presumably at close to the 65 per-cent level that formerly prevailed, and one-time \$3-4,000 ‘signing bonuses’, as paid to government employee groups in recent collective-bargaining settlements.

(c) The Government’s Response

The Government position is that the current annual remuneration of \$78,654 for the incumbent full-time JJPs is reasonable, that the increases of 2 per-cent per annum for

each of the next three fiscal years proposed by Government are consistent with its policy for sectors of the public service where “recruitment and retention are not major issues”, and that the 28.5 per-cent increase sought by the JJP Association for 2008-09, and subsequent increases of 7.25 per-cent, are “unmerited and unfounded”, emphasizing that there is no need to recruit or retain full-time JJPs, who will simply “be phased out of existence” as future retirements occur.

Counsel took the position that the Province should apply the same “principled reasoning” to JJP compensation as to other public-sector compensation issues. The improved financial position on which the Association places weight has been achieved, counsel said, through this approach to public service wage settlements. Government rejects reliance on compensation received by judicial justices in other provinces as “problematic”, and endorses the 2004 commission’s rejection of comparison with the compensation of Provincial Court judges on the ground that the jurisdiction of the justices is “considerably narrower”, their proceedings “less legalistic and formal”, and preparation of written reasons for judgment by them “very much the exception”.

Government takes the position that “Group 1 Tribunal Member” constitutes the appropriate position within the public service to which JJPs should be related, being the view of the 2004 commission, and that the duties and of JJPs have not changed significantly since 2004. We were urged to have in mind that financial compensation is

not the only reward that attracts applicants to the position – that others include desire to serve, prestige and the satisfaction of meting out of justice.

(d) The Association's Reply

In its reply the Association protests what it describes as unacceptable understatement by government of the value of the work of JJPs and a desire to impose a civil service wage increase regime that ensures continual reduction in income by denying compensation for the erosive effect of inflation.

The Association cites the decision of the Supreme Court of Canada in the *Prince Edward Island Judges* reference, [1997] 3 SCR 3, as authority for the proposition that governments may not bring about “*de facto* reduction” of judicial remuneration through inflation when public finances permit cost-of-living adjustment. The salary of judicial justices rose 4.4 per-cent between 2004 and 2007, while the consumer price index increased over this period by 12 per-cent, it says, and is projected to further increase to 15 per-cent by April 2008. The Association says that JJP salaries have increased only 40.4 per-cent since 1988 while the index has risen 58 per-cent.

The Association says that the government's approach demonstrates the need for the independent compensation process if those performing judicial functions are to achieve their constitutionally-required assurance of financial security.

IV. 'INCUMBENT JJP' FULL-TIME BENEFITS

Other issues involving incumbent full-time JJP compensation are raised by the Association's requests for: (i) increased annual vacation entitlement from 30 to 35 days; and (iii) reclassification of long-term disability benefit entitlement within the public service disability scheme from "Plan I" to "Plan J".

The increased vacation time sought is said to be afforded to certain administrative tribunal members and is supported by the Chief Judge and Judicial Council as having potential for reduction in the current incidence of stress absence among JJPs. The Chief Judge points out that without increased efficiencies the cost would involve diversion of one full-time JJP from other work for at least a third of a year. The Government opposes the request, contending that the 2004 commission increased the vacation allowance from 22 to 30 days, so that granting the further increase would result in a 60 per-cent increase in vacation over only three years.

Judicial justices appear at one time to have been covered by Plan "A" as defined in Regulation 2.3(a) under the *Public Service Benefit Plan Act*. For some reason, perhaps belief that persons entitled to 'judicial independence' could not be grouped for benefit purposes with other public employees, they were re-classified under Plan "I", which applies only to their occupation. The Association contends that they should be under Plan "J", which covers Provincial Court judges. The principal differences between the

three plans appear to be: (i) Plan “A” covers 70 per-cent of the first \$2,600 of monthly earnings and 50 per-cent of monthly earnings above \$2,600 and requires that the disabled employee take other employment if unable to perform all regular duties but able to do that other work; (ii) Plan “J”, the judges’ plan, assures the disabled employee of 70 per-cent of all gross monthly earnings indefinitely, with no obligation to perform other work if able; and (iii) Plan “I”, the judicial justices plan, covers 68.3 percent of the first \$2,500 of monthly earnings, plus 50 per-cent of monthly earnings above \$2,500, but only for the first two years of disability, and nothing thereafter.

Government accepts that a mistake was made in defining the benefits available under Plan “I”, particularly in imposing a two-year cut-off for “long-term” disability. The government asks that the judicial justices be restored to Plan “A”, if that would not in fact contravene the principle of judicial independence, or alternatively that Plan “I” be appropriately amended to give them similar coverage. Government opposes the Association’s request that the justices be placed with judges in Plan “J”, on the ground that judges are at the “apex” of the government compensation scheme and enjoy long-term disability benefits to which not even deputy-ministers are entitled. If judicial justices were put into Plan “J”, the government says, other public service employee groups will argue that they should be similarly re-classified.

The Association, which is unconditionally supported on this point by the Chief Judge, says that since judicial justices are entitled to working-life tenure they cannot be

required to take other employment, as contemplated by Plan “A”, and that raising the level of protected earnings to that provided by Plan “A” would not suffice. The Association denies the government’s contention that Plan “J” is for judges only, pointing out that Supreme Court masters are in fact covered by it.

V. ‘INCUMBENT JJP’ PART-TIME REMUNERATION

We were told that the two active incumbent part-time JJPs are retired JJPs in receipt of pensions as such, and that one retired Provincial Court judge acts as a part-time JJP while in receipt of a judge’s pension.

We were told that remuneration of part-time JJPs who are in receipt of pensions and associated benefits has traditionally been set at 80 per-cent of a *per-diem* figure arrived at by dividing the annual JJP salary by 210, as the effective number of working days. Deduction of 20 per-cent of the *pro-rata per diem* figure is intended to reflect the fact that retirees already enjoy government income and benefits by reason of their pensionable status and are allowed to continue to do so while still working part-time for the government. The arrangement is said to be similar to that under which pensioned Provincial Court judges provide part-time service as such.

The position of the JJP Association is that incumbent part-time JJPs should be remunerated at the same level as new “lawyer-JJPs”. Government accepts that incumbents should continue to be remunerated by the established formula, that is to say 0.8 times incumbent full-time annual remuneration divided by 210.

The combined consequence of the government’s proposals would be that part-time incumbent JJPs would receive a 2008-09 *per diem* of \$306 for a 7-hour day, or \$351 for an 8-hour day, while part-time lawyer-JJPs working alongside them, would receive a \$550 *per diem* for an 8-hour day for the same work. The consequence of the JJP Association proposals, on the other hand, could be that both would receive at least \$550, representing, at minimum, a 60 per-cent increase for the part-time incumbents. The Chief Judge produced a *pro-forma* calculation of ‘fixed overhead’ that might be borne by a hypothetical part-time lawyer-JJP with a home office, this being allocated to days engaged in JJP work at \$210 a day. Deducted from the interim *per diem* of \$550, this produces a figure net of overhead of \$340 for the purposes of comparison with a 2007-08 incumbent part-time *per diem* rate of \$344, adjusted for an 8-hour day.

The Chief Justice did not specifically refer to this *pro forma* ‘fixed overhead’ calculation in comparing the proposed full-time incumbent JJP *per annum* salary with his suggested \$550 or \$625 lawyer-JJP *per diem*, but noted that “the realities of continuing to maintain a law practice” should also be taken into account in that context when considering whether a differential is economically justified.

VI. 'LAWYER-JJP' PER DIEM REMUNERATION

(a) Terms of Service

New “lawyer-JJPs” are retained under the terms of a standard-form “Memorandum of Understanding”, entered into with each.

The Memorandum of Understanding acknowledges that the applicant has been recommended for appointment as Judicial Justice of the Peace of the Provincial Court to serve on a part-time basis while retaining the capacity to practice law, will be remunerated on a part-time basis in accordance with the *Judicial Compensation Act*, will not be an employee for the purposes of the *Public Service Benefit Plan Act* and will receive *per diem* compensation “fixed by the Judicial Justices Compensation Commission” process inclusive of all remuneration and benefits.

Pending establishment of such remuneration, in the case of the initial appointees, their remuneration is to be at the rate of \$550 a day.

The memorandum guarantees each new JJP a minimum of 40 days of duty a year, and states that by mutual agreement the Chief Judge may assign further days. It provides that hours of duty may include evenings, nights, weekends and holidays. The applicant is not to engage in the practice of law or any other activity in any way that conflicts, or

could be perceived as conflicting, with the role of JJP. In particular, the applicant agrees not to practice criminal law or act for or against the Crown, and not to perform JJP duties from premises used to practice law without consent of the Chief Judge.

An earlier plan under which the new lawyer-JJPs would have tenure of five or 10 years has been abandoned. Although not stated in the memorandum, we were told that the new “lawyer-JJPs” will hold office in the same way as judges and incumbent JJPs, that is to say “during good behaviour”. The memorandum presumes that the applicant will continue while a JJP to be a member of the Law Society of B.C., and practice law within the prescribed limits. It refers to a “protocol” recently entered into between the Law Society and the Provincial Court regarding conduct complaints and disciplinary proceedings, and the exchange of information in this regard.

The Chief Judge told us that no decision had been made whether “lawyer-JJPs” are *obliged* to remain in the profession, although their terms of service presume they will. They will probably perform JJP duties 70 or 80 days a year.

(b) The Recruitment Process

The written submission of the Judicial Council described the results of this year’s call for lawyer-JJP applications as “encouraging”; it became apparent from

Mr. Verhoeven's oral remarks that this word is used in the sense of giving courage to do better, rather than satisfaction with success so far achieved.

If, as the evidence suggests, more than 20 further lawyer-JJPs will have to be recruited in the near future, experience to date suggests that at least 60 more applications will be needed in order to create the necessary "pool" – that is to say three times the number generated by this year's call. The *per diem* remuneration established by the present process must inevitably play an important part in any such recruitment campaign. The two *per diem* figures advanced by the Chief Judge, \$550 and \$625, are supported in his submission by reference to various rates paid by government for the services of lawyers in the public service and private practice, and also by the value to the Court of increased efficiencies in terms of volume of work handled and saving of travel time and expenses resulting from use of part-time and locally-based personnel. It is difficult to say to what extent the recent response may have been influenced by the interim compensation figure of \$550 *per diem* since it was known to all applicants that a decision on their compensation would have to be made through the present process. It is possible that the relatively low return – 20 responses of which only nine led to interviews – may to some extent have been influenced by failure to advertise the positions more widely.

The most prominent notice, a little over a page in length, was published in the March 2007 edition of *The Advocate*, circulated to all 11,000 members of the B.C. bar, in which qualifications are mentioned, the duties quite fully described, reference made to the

Provincial Court website for further details, and remuneration described as “\$550 per day, subject to change following the next Compensation Committee process scheduled for the spring of 2007”. The announcement says that it is expected that applicants will continue to practice law other than criminal law “devoting a mutually agreed amount of time to the Court”. The only other announcements to which we have been referred are a brief mention on the CBA job website for B.C. and the Provincial Court website message referred to on that website and in *The Advocate*.

The Chief Judge provided us with “thumbnail sketch” profiles of the seven persons selected. These show experience in practice of between 15 and 33 years. All but two are described as sole practitioners; of the two not described as sole practitioners, one is described as “associate counsel” with a smaller firm. Two work part-time for government agencies and one is described as “semi-retired”. The table shows the shifts that each is prepared to work but not how many each is interested in working on a regular basis. There is nothing to suggest that any of the appointees intends to abandon the practice of law, and work solely as a part-time judicial justice.

(c) Justification for a ‘Differential’

There is obvious justification for a ‘differential’ between the *per diem* rate for lawyer-JJPs and the *per diem* equivalent of incumbent full-time JJP salary based on benefits additional to their salary that the latter receive, but the value of such benefits in

the case of JJPs is not easily determined and figures cited at the present hearing and before the 2004 commission are markedly different.

In a revised submission filed by the government the present cost to government of benefits paid to full-time JJPs is put at \$15,588, or 19.81 per-cent. The Chief Judge states, in reliance on information received from a chartered accountant responsible for the matter within his office, that every “responsibility centre” in government is charged on account of benefits with 23.83 per-cent of all salaries paid to those employed by it, this being reflective of average cost of benefits paid to all persons employed by government. It is impossible to establish whether the cost of benefits for full-time JJPs is above or below this average figure. A figure of 13 per-cent as cost of benefits is mentioned in the 2004 commission report; the difference has not been explained to us. The 13 per-cent figure appears low, in relation to the cost of employee benefits generally, and particularly that of those available to JJPs as compared with the normal cost of benefits. Using general impression, in the absence of any other evidence, the figure offered by the Chief Judge appears reasonable as a measure of value of benefits in the present context, that is to say value to full-time incumbent JJPs, but so, too, does the 19.81 per-cent figure decreasing with increased income that is used by counsel for the province.

Using a necessarily somewhat arbitrary constant benefit figure of 20 per-cent with 219 working days per year as the maximum number of ‘on duty’ days for this purpose, the present compensation of incumbent full-time JJPs, including benefits, amounts on a *per*

diem basis to \$431, leaving a ‘differential’ of \$119 a day or \$26,061 a year – that is to say 28% – between the present compensation of incumbent JJPs and the \$550 *per diem* being paid on an interim basis to lawyer-JJPs.

The Chief Judge takes the position that this disparity cannot be justified by the difference in qualification but that some disparity can be justified by economic factors, including efficiencies and cost-savings to the court already mentioned. A question arises whether it can also be justified in part by the fact that lawyer-JJPs have, or are likely to have, continuing fixed costs of practice that incumbents do not incur. In dealing with the differential between the two groups of *part-time* JJPs, the Chief Judge, as has been mentioned (at p. 24), estimated ‘fixed costs’ of a hypothetical home-practitioner at \$210 a day. Mr. Overholt, speaking not for the CBA but at our request for himself, put the cost to a conscientious lawyer of simply maintaining membership in the profession – Law Society and Canadian Bar Association fees, necessary continuing legal education and legal data-base access costs – at about \$6,000 a year.

The position of the JJP Association is that incumbent JJPs have home offices and other overhead expenses that are not covered by their professional development allowance, and that any additional cost imposed on lawyer-JJPs by reason of their continued practice is offset by the benefit which they enjoy by being allowed to have another occupation, something that is denied to incumbent full-time JJPs.

On behalf of the CBA, Mr. Overholt submitted supplementary material concerning the practice in B.C, an increasing demand for lawyers with accelerating retirement and data from a “B.C. Work Futures” profile of the profession, which includes a figure of \$99,233 as average income of lawyers in the province. Accompanying material suggests that the figure reflects income in 2000 and also that it is ‘updated’ to May, 2005. An attached CBA memorandum suggests that this figure is derived from income tax returns and does not present a true picture of lawyer income generally, and particularly not that of senior lawyers; the CBA re-asserted its position that it can suggest no specific figure as a *per diem* compensation for lawyers acting as judicial justices. If one were to assume the \$99,233 to be a 2005 average figure, and add to it a 7.5% inflation adjustment to arrive at the equivalent for 2008-09 – that is to say \$106,675 – it becomes apparent that such a lawyer in private practice with 40 per-cent overhead, likely to be regarded as low, would have to gross \$177,000 per annum, or \$808 a day on a 219-day working year basis, to achieve such a figure in 2008-09, the first year with which we are concerned.

It is notable that the recently-approved report of the 2007 Alberta compensation commission, in recommending current *per diem* remuneration of \$645 for lawyers performing this function, takes into account (at p. 9) that “part-time Justices of the Peace have responsibility for overhead” and (at p. 13) that its predecessor commission in 2001 “recommended per diem rates for part-time sitting and presiding Justices of the Peace [that] reflected consideration of the overhead of mature legal practices”.

(d) Submission of New Appointees

The seven newly-appointed lawyer-JJPs did not, in preparing their brief written submission in the time available, find it possible to provide information regarding costs of practice, current lawyer remuneration or other data relevant to establishment of the reasonable level of compensation contemplated by the authorities.

In their written submission the new appointees emphasized that all seven are senior members of the bar in private practice and are now constrained by the terms of the JJP letter of undertaking in the work that they can undertake in their practice. While accepting that the remuneration they receive as JJPs will be less than that available in private practice, they emphasize the importance of rights at stake in the course of bail and search warrant applications, and the need for experience, good judgement and an understanding of the constitutional, statute and common law in deciding such applications, and seek a level of compensation that properly reflects these factors. They emphasize the need also for remuneration that will compensate them for the fixed overhead they continue to bear while performing JJP work, the lack of any provision for benefits, and the time that they will have to devote without additional compensation to maintaining their familiarity with the law.

Their submission urged that the commission consider hourly rates in private practice, remember that the contemplated *per diem* has no premium for weekend or

holiday work, and have in mind that the interim figure of \$550 amounts to only \$68.75 an hour for an 8-hour day, which is below the legal aid tariff. They contend that the *per diem* should be raised to \$1,000, or \$125 an hour. They suggest that anything less than this must be a disincentive to their undertaking more than the minimum number of shifts a month, and also the recruitment of other lawyers for the work.

They submit also that the annual salary of the incumbent full-time JJPs should be the annual equivalent to a part-time *per diem* of \$1,000, after appropriate adjustments for difference in the relevant economic circumstances including overhead costs borne by lawyer-JJPs and benefits that the incumbents receive.

At the special sitting Mr. Bowes, who appeared with Timothy Holmes, another of the new appointees, provided us with further information regarding members of the group, their introductory experience their expectations. He observed that no large-firm member could afford to take the appointment because of the contribution such a practitioner has to make to fixed overhead. As a sole practitioner with a lower-overhead downtown Vancouver office he felt able to give some of his time to JJP duty, even though the interim payment for an 8-hour day is less than he would charge for 2-hours work in his office or at court. Mr. Bowes was attracted by the interesting nature of the work and the opportunity to perform a judicial role. He spoke of the recent intensive training experience, and the valuable guidance being given to his group by incumbent justices. At the Justice Centre the work can be particularly stressful, he found, when search warrants

are sought on an urgent basis, often by police officers in person. Judicial justices engaged in such assignments stay beyond their shift if necessary to complete a task. Without benefits, pension, overtime or holiday pay, the interim rate -- amounting to \$68.75 an hour -- is very low, he said, less than that paid for legal aid work. Mr. Bowes regarded as conservative the Chief Judge's *pro forma* overhead estimate for a hypothetical sole practitioner with a home-office at \$44,000 a year.

From the evidence of Mr. Bowes, and further remarks of the Chief Judge, it became apparent that the hoped-for introduction of a centralized system for all bail in the province operated from the Justice Centre, and its success, to a large extent depend on achievement of a level of expertise on the part of the incumbent justices and lawyer-justices who are together staffing the centre that will gain the confidence of the defence bar and others in the justice system, and that this will in turn depend on the success of the two-way learning process that is now underway.

VII. THE COMMISSION'S CONCLUSIONS

(a) Principles and Considerations

As applied to compensation, the principle of 'judicial independence' requires that those carrying out judicial functions be assured of reasonable remuneration and benefits

without being required to engage in a bargaining process with government, or otherwise appearing beholden to government as their paymaster.

It is established that reasonable compensation in this context means such compensation as will assure “financial security” to judicial office-holders and enable them to maintain themselves appropriately to their occupation. The function of an independent compensation commission is to hear the appointees, government and other interested parties in public and make a report to the legislature with recommendations which can be publicly debated and only rejected, in whole or part, on a rational basis . The purpose is to ensure that those performing judicial functions cannot reasonably be thought to exercise their duties under financial pressure, or have reason to show favour toward government, or toward those connected with government, or to any other party. The importance of the process in the present context is readily apparent. Judicial justices of the peace are the lowest paid of those to whom judicial independence is constitutionally assured, but exercise important criminal law authority. Government in some capacity is a party in almost every matter that comes before them – as prosecutor, or applicant for search warrants, or the respondent on bail applications – as well as being the collector of revenues derived from the fines they impose.

In the *Prince Edward Island Judges* reference, [1997] 3 SCR 3, Chief Justice Lamer says (at pp.115-117) that judicial salaries must not permit the perception that “the judiciary could be tempted to adjudicate cases in a particular way in order to secure a

higher salary from the executive or the legislature or to receive benefits from one of the litigants.” The Chief Justice cites United Nations declarations that describe “adequate remuneration” of judges as compensation “commensurate with the status, dignity and responsibilities of their office”. Speaking of the effect on judicial salaries of continuing uncompensated inflation, the Chief Justice says (at pp. 89-90): “Public confidence in the independence of the judiciary would be undermined if judges were paid at such a low rate that they could be perceived as susceptible to political pressure through economic manipulation, as is witnessed in many countries.”

The difficulty of assuring the appropriate level of compensation to judicial officers engaged on a part-time basis is apparent from a consideration of the position of the lawyer-JJPs who will soon represent a majority of the serving judicial justices. The “financial security” offered to them is a guaranteed minimum 40 days of work a year. At the “interim” *per diem* of \$550 this amounts to \$22,000 a year. It is more likely, but not assured, that they will have 70 or 80 days work a year, enabling them to receive gross income at the interim rate of \$38,500 to \$44,000 a year. They will have no pension, health plan, paid vacation time or benefits of any other sort. Should they, as contemplated, continue membership in the legal profession, the cost of maintaining that qualification would be some \$6,000 a year. For such part-time justices “financial security”, as an essential of judicial independence, can be achieved only by their ability to engage profitably in another occupation, particularly the practice of law, or entitlement to

pension income from another occupation, spousal income contribution or private means. In selecting applicants for appointment the Judicial Council will have tried to satisfy itself that they are likely to assure themselves of sufficient supplementary income from other appropriate sources to achieve the requirements of judicial independence. The circumstance of every appointee will obviously differ, but we must have in mind that the practice of law will inevitably be the source of supplementary income for most lawyer-JJPs. Those who supplement their income in this way, no matter in what work they are currently engaged, have continuing fixed costs which incumbent JJPs do not.

In addition to the constitutional requirements of judicial independence, as applied to compensation, we must have in mind the listing of factors required to be taken into account that is found in the *Judicial Compensation Act*:

Section 5(5) of the Act requires that the commission consider: (a) *the current financial position of the government*, which is now in surplus, permitting establishment of a reasonable level of compensation without concern for any governmental policy of fiscal restraint, but nothing more; (b) *the need to provide reasonable compensation to the judges or judicial justices*, the principal matter that we address throughout; (c) *the need to maintain a strong court by attracting qualified applicants*, a matter of particular and immediate concern in this case; (d) *the laws of British Columbia*, and (e) *any other matter the commission considers relevant*.

(b) **'Incumbent-JJP' Full-Time Compensation**

The commission is of the view that the evidence summarized above shows the present remuneration of incumbent full-time JJPs to be unreasonably low.

This appears particularly from: (i) the extent to which their salary has been eroded by uncompensated inflation; (ii) the widening disparity between their pay and that of judges of the Provincial Court, the only other persons who can to perform their function; (iii) the disparity between their remuneration and that recently recommended for similar judicial officers performing the same *Criminal Code* functions, in Ontario and Alberta; (iv) the increase in the scope of their duties during the last three years, which is expected to continue; (v) recent recognition of the importance of their work by the raising of qualifications for their office; (vi) the need to achieve compensation equity with the newly appointed lawyer-JJPs now being trained by them, and beside whom they will now be performing the same work.

With respect to points (i) and (ii), the impact of inflation on remuneration of JJPs and the widening difference between their salary and that of Provincial Court judges dealt with above (at p. 15) are demonstrated graphically in Appendix 1. With respect to point (iii), the discrepancy between the current remuneration of judicial justices in this province and that just recommended for the present fiscal year for those exercising similar judicial functions elsewhere, the recently-accepted report of the Alberta compensation

commission and recently-released report of the Ontario commission both call for remuneration of full-time justices at a level 40 per-cent higher than that being received by judicial justices here. In deciding how much weight to give to these reports, we have not overlooked the fact that the qualifications required, jurisdiction exercised and tenure enjoyed inevitably differs between provinces. We give weight to the fact that the *Criminal Code* functions of granting and refusing judicial interim release, and issuing or declining to issue search warrants, are the same in Ontario and Alberta, and that these are the aspects of the work on which emphasis is properly placed in all jurisdictions. We have particularly borne in mind that Alberta justices are required to be members of the legal profession and Ontario justices are not. With respect to point (iv), we note that at the time of the last commission hearing, in 2004, bylaw charges and *Small Claims Act* applications had been removed from the JJP jurisdiction, but both have since been restored and, as mentioned above (at pp.9-10), it is anticipated that JJPs will have new responsibilities and deal with bail on a broader basis during the period with which we are concerned. With regard to point (v), in regard to the importance attached to the work of JJPs it is notable that qualifications for appointment have now been raised to those of Provincial Court judges. We attach particular importance to point (vi), the need for equity as between compensation levels of incumbents and the new lawyer-JJPs, if there is to be a “strong court”, referred to by s. 5(5)(c) of the *Judicial Compensation Act* in the context of recruitment. We agree with the Chief Judge that any difference in the level of

compensation must be justifiable and cannot be justified by the difference in qualifications, or by the fact that full-time JJPs are being “phased out”.

We have considered the level of remuneration of full-time members of administrative tribunals in British Columbia, ranging from \$74,000 to \$124,000 according to the group in which their tribunal is classified. Of 26 tribunals listed, 22 are in Group 1, three in Group 2 and only one – the Labour Relations Board – in the highest classification, Group 3. The basis on which the classification has been done is unclear. It is notable that two tribunals dealing with important individual rights, the Mental Health Review Board and the *Criminal Code* Review Board, are classified at the lowest level, while tribunals dealing with utilities, workers’ compensation and labour relations are in the higher groups. It is notable also that others who carry out judicial functions under provincial jurisdiction -- Provincial Court judges and Supreme Court masters -- are remunerated at a level 60 per-cent above the highest administrative tribunal category. We do not think it appropriate on the evidence we have heard to single out a single administrative tribunal or other civil service category as comparable to the JJP function despite differences involved, reject others *because of* differences, and adopt the salary approved by government for the chosen category as that appropriate to judicial justices. We have instead considered occupations in this and other provinces that have some significant relevance, accepting that differences exist in every case and giving to each such weight as seems proper in that light. In this context we give weight to the fact that

the midpoint on the current provincial administrative tribunal scale is \$99,000 per annum, or 26 per-cent higher than the present remuneration of full-time JJPs.

Taking into account the evidence summarized above, particularly that mentioned in this section, we conclude that a 17.5 per-cent increase in annual remuneration should currently be regarded as appropriate for full-time JJPs, and that a 2.5 per-cent inflation adjustment should be made in setting their remuneration for each of the next three following fiscal years. We recommend that the annual salary of full-time JJPs for 2008-09 be rounded at \$94,730, that for 2009-10 at \$97,100 and that for 2010-11 at \$99,525. The figures for all three years are below the midpoint of the current range for administrative tribunal members, below 2007-08 salary levels set or recommended for the similar judicial positions in both Ontario and Alberta, and still less than half the current salary of Provincial Court judges in this province, now under review.

For the reasons given by the JJP Association, supported by the Chief Judge and summarized above (at pp. 22-23), we are of the view that JJPs should be classified for long-term disability purposes under Plan "J", along with Provincial Court judges and Supreme Court masters. We do not recommend an increase the present vacation allowance of 30 working days, or six calendar weeks. The vacation allowance is generous, and since it is the same as that of Provincial Court judges we can find no justification, on the basis of work stress or otherwise, for increasing it.

During our hearing counsel for the province accepted the JJP Association requests for an increase in the professional development allowance for full-time JJPs from \$500 to \$1,000 a year, and payment of its costs of these proceedings.

(c) **'Incumbent-JJP' Part-Time Remuneration**

We accept the established position that retired judicial officers, in receipt of pensions and associated benefits as such, who continue despite 'retirement' to be employed as JJPs on a part-time basis should not receive in addition to their pensions and any related benefits a *pro-rata per diem* based on the full remuneration of full-time JJPs. While an argument could be made that such "working pensioners" have earned their pensions and other retirement benefits by their pre-retirement services, and are entitled to be paid for further work at the same rate as those who have not retired and are still making pension contributions, no such argument was advanced and there are arguments in favour of the present formula for remunerating judicial retirees working on a part-time basis as judge or judicial justice that have prevailed in the past. The 2001 Provincial Court Judges Compensation Commission accepted the view that judicial retirees should not receive by way of judicial pension and *per diem* remuneration for part-time judicial employment more than a full-time judge. The present formula, as applied to judicial justices since 2002, results in remuneration of retirees at 80 per-cent of a *per diem* arrived at by dividing the annual pay of full-time justices by 210. The JJP Association asserted that 'incumbent' retirees should be paid at the same *per diem* rate as the new

‘lawyer-JJPs’ subject perhaps to allowance for health benefits, but made no challenge to rationale for the present formula. Even though they have no assurance, as do the new part-time appointees, of any minimum number of days employment, nor would such assurance be warranted, retired justices who continue to work on a part-time basis enjoy through their judicial pensions a large measure of financial security, and the present practice presents no threat to their judicial independence, our matter of first concern. While the formula applied in calculating the appropriate reduction from a *pro rata per diem* is puzzling, we are prepared in the circumstances to recommend that the present *per diem* for judicial retirees performing part-time JJP service be accepted as a starting point and recommend that it be increased by the same percentages as full-time judicial justices – for a 7-hour day rounded to \$360 for 2008-09, to \$370 for 2009-10, and \$380 for 2010-11, with 8-hour figures being \$415, \$425 and \$435 respectively. This would apply only to judicial retirees receiving pensions as such.

(d) ‘Lawyer-JJP’ Part-Time Remuneration

On the basis of the whole of the evidence we recommend remuneration for JJPs appointed on or after July 4, 2007, who remain members of the Law Society of British Columbia, approximately equivalent to the yearly remuneration of ‘incumbent’ JJPs divided by 219, as a notional measure of maximum ‘duty days’ for full-time JJPs, plus 20 per-cent *in lieu* of benefits and a \$75-a-day addition to recognize, as does the Alberta

commission, fixed ‘overhead’ expenses which they must continue to incur in connection with their practice while performing JJP duties.

The figure at which we have arrived for lawyer-JJP part-time *per diem* for 2008-09 is \$600, for 2009-10 \$615 and for 2010-11 \$625, being close to but below that the figure of \$645 recently set for 2007-08 for lawyers performing similar duties in Alberta. Comparison with the recently-recommended Ontario figure for 2007-08 is difficult because remuneration is stated on a *per annum* basis only in the Cory Commission report, and no guidance given as to how a *pro-rata per diem* rate is to be derived – the number of working days to be used or the allowance made for benefits. For all three years the above recommended *per diem* rates are within the lower half of the \$500-\$750 *per diem* range set for the present year for *ad hoc* Crown counsel in this province. The suggested rates fall within the range recommended by the Chief Judge. In addition to economies resulting to the Court from use of part-time as opposed to full-time personnel, wider use of JJPs for bail applications will ensure that the recommended rates do not reduce the substantial overall saving achieved by government – in support staff and accommodation costs, as well as in salary differential – from the use of JJPs to carry out functions that Provincial Court judges would otherwise have to perform.

In making for comparative purposes a \$75-per-day adjustment for fixed overhead costs borne by lawyer-JJPs while engaged in JJP work, we have used a figure much less than that proposed by the Chief Judge’s *pro forma* calculation. We do not accept the JJP

Association's contention that the incumbent JJPs have fixed overhead costs that can possibly be equated with those borne by practicing lawyers. We recognize that some lawyer-JJPs might choose, at least in some years, not to conduct any other practice, relying instead on spousal or other private income to supplement their JJP earnings. For such persons the \$75-per-day that we attribute to fixed overhead would suffice on an 80-day working year basis to pay expenses incurred by a conscientious lawyer-JJP simply to maintain his or her professional status (see Appendix 2).

For the majority, who continue to practice law as contemplated by their terms of service, the \$75-a-day would represent a modest recognition of their continuing fixed overhead in respect of those days when engaged in JJP work, to assist in maintaining the viable practice that they must have if they are to achieve the financial security essential for those to whom judicial independence must be assured.

We are aware that a shorter length or fewer number of working days might be assumed for full-time JJPs – particularly when they are working at the Justice Centre – and that their benefits might be valued at a higher or lower level. An attempt might also be made to place some numerical value on the advantage that lawyer-JJPs enjoy in being able to devote their non-duty days to other remunerative work, while full-time JJPs are denied the right to put their off-duty days to remunerative use. Value might also be ascribed to the fact that full-time justices enjoy guaranteed income and benefits worth together four to five times the minimum that is guaranteed to the new lawyer-JJPs. We

have not attempted to resolve these uncertainties, or place a numerical value on unquantifiable opposing advantages and disadvantages. Our concern has been to arrive at a *per diem* rate for the new JJPs that we regard as in itself reasonable, on the basis of the evidence reviewed, and which is not, on what we regard as a reasonable approach to quantifiable differences, unfair when considered in relation to the annual remuneration recommended for full-time JJPs.

Any reduction in the assumed length or number of working days based on the present schedule for full-time JJPs while working at the Justice Centre – as opposed to sitting in Court – would result in some reduction of the assumed differential, and further support the conclusion that it is fairly justifiable.

VIII. SUMMARY OF RECOMMENDATIONS

	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>
1. <u>Full-Time ‘Incumbent JJPs’</u>			
(i) <i>Per Annum</i> Remuneration	\$94,730	\$97,100	\$99,525
(ii) Professional Development Allowance	\$1,000	\$1,000	\$1,000
(iii) Vacation	30 days	30 days	30 days
(iv) Long-Term Disability Plan	“J”	“J”	“J”

2. Part-Time ‘Incumbent JJPs’

(i) <i>Per Diem</i> Remuneration: 7 hours	\$360	\$370	\$380
(ii) <i>Per Diem</i> Remuneration: 8 hours	\$415	\$425	\$435

3. Part-Time ‘Lawyer-JJPs’

<i>Per Diem</i> Remuneration: 8 hours	\$600	\$615	\$625
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4. Costs of JJP Association: to be paid by the Province in accordance with the agreement reached between counsel at the hearing.

IX. LAST WORDS

We have recommended a substantial increase in remuneration for incumbent judicial justices effective April 1, 2008, in the belief that the present level of compensation is well below that acceptable today for persons performing their judicial functions, especially those functions exercised under the *Criminal Code* involving personal liberty and protection from unreasonable search and seizure.

We have particularly had in mind the widening of the JJP jurisdiction since the last compensation commission process in 2004 and the plans for increased use of JJPs in future to achieve efficiencies in the administration of justice and savings for the government. The recommended initial increase of 20 per-cent for full-time JJPs is less

than increases granted in individual recent years to Provincial Court judges, and less than the 23 per-cent increase recently recommended for Ontario justices. We have rejected any contention that retention of incumbent justices is not a factor to be taken into account in establishing their remuneration – that they can be regarded for compensation purposes as in process of being “phased out”. We were referred to no case in which persons engaged by government to perform the same work as incumbents are compensated at a higher level on the basis of a new required qualification than more senior co-workers. We believe that such a policy would in the present case be unreasonable and injurious to workplace morale and the administration of justice.

In proposing for the new lawyer-JJPs an increase in their ‘interim’ *per diem* compensation commencing April 1, 2008, we have had in mind the need for recruitment in the near future of at least 20 more lawyers to undertake this work, and that the response received to the initial job offer was modest. We have had in mind that it may not otherwise be possible under the applicable statutory provisions and associated constitutional principles for government to increase the amount offered before the next commission makes its report in 2010. We have particularly been concerned that the remuneration of the new lawyer-JJPs be sufficient to compensate them for some of the fixed overhead they bear while performing JJP duties if they are to achieve the degree of financial security regarded as necessary to judicial independence, something assured to incumbent justices by the guarantee of full-time employment.

The commission has been faced with a situation that cannot have been foreseen when the present process was established. It wishes to express its thanks to all of the participants for their generous assistance in meeting this challenge, and also to our secretary, Drew Demerse, for his invaluable services.

The above constitute our Report and Recommendations under s. 5(1) of the *Judicial Compensation Act*, made at Vancouver, B.C., this 21st day of August, 2007.



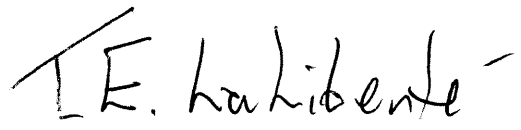
MARTIN R. TAYLOR, Q.C.

Chair



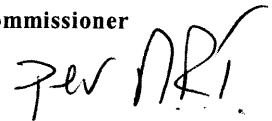
ISRAEL CHAFETZ, Q.C.

Commissioner



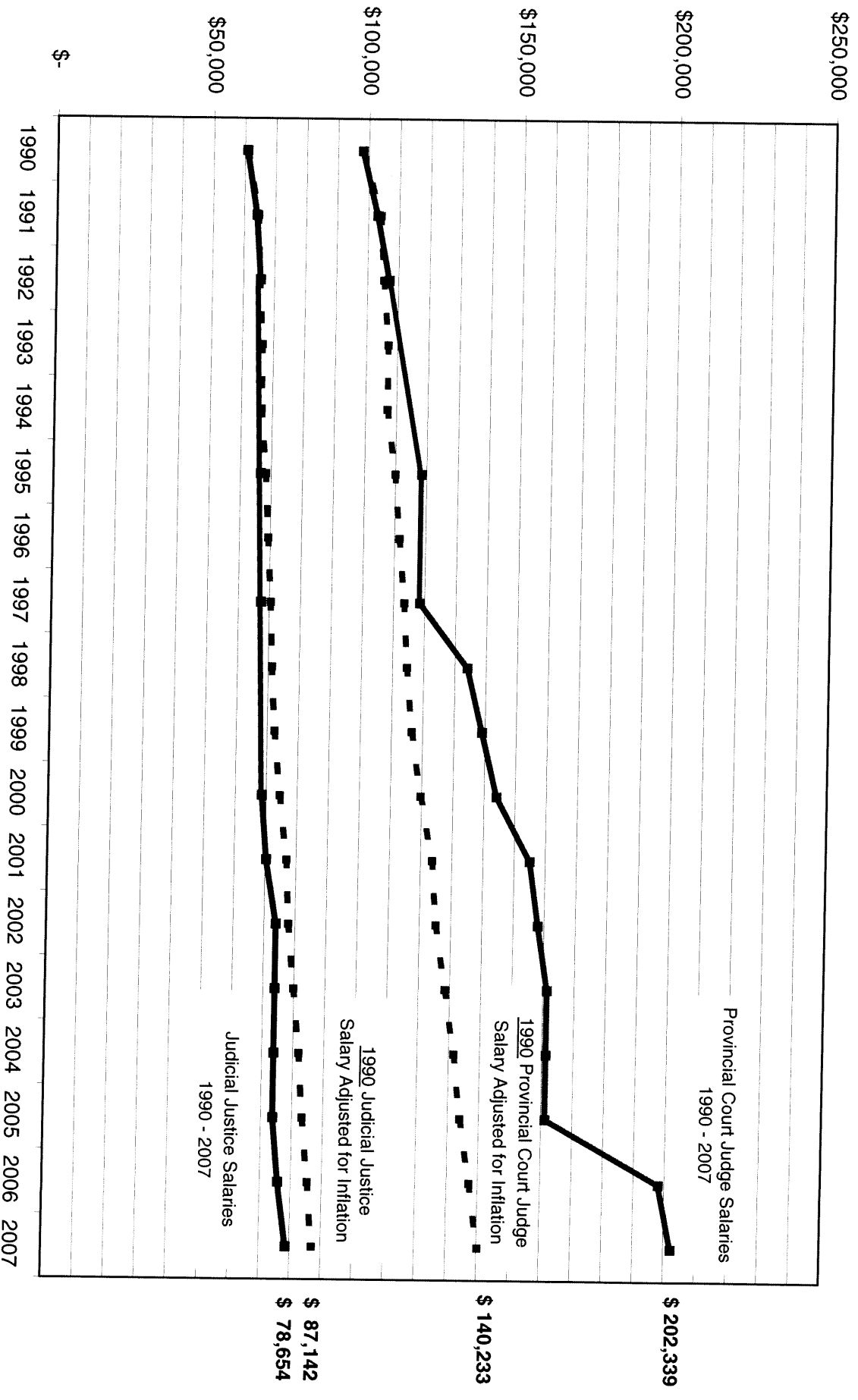
TERENCE E. LA LIBERTÉ, Q.C.

Commissioner



APPENDIX 1

Remuneration of Provincial Court Judges and Judicial Justices With CPI Comparison: 1990 - 2007



Data Source: Statistics Canada, Consumer Price Indexes for Canada, Monthly, 1914-2006 (V41690973 series), <http://www.statcan.ca>.

APPENDIX 2

Cost of Professional Memberships for 'Lawyer JJPs': 2007

1.	Full-time Membership in Law Society of B.C.		\$3,197.00
		GST	191.82
2.	Membership in Canadian Bar Association (inc. GST)		598.25
3.	Required Continuing Legal Education (2 one-day courses)		990.00
		GST	59.40
4.	Allowance for Printed Material and Data Base Access		500.00
		GST	30.00
5.	Membership in JJP Association (covered by PDA for full-time JJPS)		250.00
		GST	15.00
			<hr/>
			\$5,831.47
			<hr/>