



**Submission of the
Judicial Justices Association of British Columbia
Compensation Commission 2019**

May 29, 2019

Executive Summary

I. Salary and Benefit

The Association submits that a fair and reasonable annual salary for full-time Judicial Justices is:

- 2020 - \$138,000
- 2021 - \$141,000
- 2022 - \$144,500

II. Administrative Judicial Justices

The Association submits that the two Administrative Judicial Justices – Traffic Court and Justice Centre, should receive an additional 6% of the full-time salary of a Judicial Justice.

III. Shift Premiums

The Association submits that Judicial Justices working certain shifts should be provided with a shift premium, as follows:

Weekday afternoon shift	\$55
Weekend day shift	\$55
Weekend afternoon shift	\$85
Holiday day shift	\$85
Holiday afternoon shift	\$110
Super Statutory Holidays (Christmas, Good Friday, Easter, and New Year's Day)	\$245
Graveyard shift (worked from home)	same as the corresponding afternoon shift

IV. Professional Development Allowance

The Association requests this Commission support its proposal for an increase of \$750 to the Professional Development Allowance, which can be used towards educational expenses.

V. Pension

The Association submits that Judicial Justices should be enrolled in a pension plan with an accrual rate of 3% per year based on 70% of the Judicial Justice's best three-year average of earnings, which would be in line with the Provincial Court Judges.

Introduction

1. The Judicial Justices Association of British Columbia (the "Association") thanks the members of the Judicial Compensation Commission (the "Commission") for performing this important role in the determination of the remuneration of Judicial Justices in British Columbia.
2. The Association appreciates the commitment of the commissioners and acknowledges in advance the time and effort expended by this Commission throughout this process.
3. Within these submissions are references to several books of documents. For ease of reference these will be referred to as follows:
 - a. The joint book of documents between the Association and the Government of the Province of British Columbia will be referred to as the "JBOD – Government";
 - b. The joint book of documents between the Association and the Provincial Court Judges' Association of British Columbia will be referred to as the "JBOD – Judges";
 - c. The separate Association book of documents will be referred to as the "Association's BOD";
 - d. The separate book of documents of the Provincial Court Judges' Association of British Columbia will be referred to as the "Judges' BOD";
 - e. There is also a joint book of authorities between all parties which will be referred to as the "JBOA".

The Judicial Justices Association

4. The Association is a registered society and has participated in the judicial compensation process since 2003. The Association is the recognized representative of Judicial Justices in British Columbia, as stated in section 2 of the *Judicial Compensation Act*¹. The Association currently has eleven members but speaks for all Judicial Justices in this compensation commission.

¹ *Judicial Compensation Act*, JBOA, Tab 1

Judicial Justices – An Overview

5. Judicial Justices are appointed under sections 30.2 and 30.3 of the *Provincial Court Act*.² There are two types of Judicial Justice appointment: full-time and part-time. Currently there are 30 Judicial Justices, including eleven full-time and nineteen part-time, which can be further broken down as follows:
 - Eleven full-time:
 - Seven working regular full time hours
 - Two on Long-Term Disability (“LTD”) leave
 - One working one day per week combined with a LTD leave
 - One on leave for a doctorate degree
 - Nineteen part-time
6. The part-time Judicial Justices select the number of days and types of shifts they would like to work.
7. The *Provincial Court Act* section 11(1) authorizes the Chief Judge of the Provincial Court (“the Chief Judge”) to prescribe the jurisdiction of a Judicial Justice through an “Assignment of Duties”. The 2019 Assignment of Duties identifies a broad range of jurisdiction for the Judicial Justices.³
8. Judicial Justices perform judicial functions at both the Justice Centre and in courthouses around the province. The jurisdiction of all Judicial Justices is identical, regardless of where they are working.
9. An Associate Chief Judge oversees the Judicial Justices and there are two Administrative Judicial Justices: one for court sitting Judicial Justices and one for the Justice Centre Judicial Justices. The primary role of the Administrative Judicial Justice at the Justice Centre is to provide a liaison with the users of the Justice Centre in terms of policies and procedures.⁴ The primary role of the Administrative Judicial Justice at the Traffic Court is to ensure the smooth and effective running of the court division in accordance with various directives, policies and assorted administrative duties and responsibilities.⁵ Historically these administrative positions have been filled by full-time Judicial Justices.
10. Primarily, Judicial Justices consider applications such as search warrants under *Part XV Criminal Code Special Procedures and Powers*, production orders and tracking applications, Judicial Interim Release (bail) hearings, municipal bylaw

² *Provincial Court Act*, JBOA, Tab 2

³ Office of the Chief Judge, *Assignment of Duties*, 2019, JBOD – Government, Tab 2

⁴ Administrative Judicial Justice – Justice Centre Duties and Responsibilities, Updated August 4, 2011, Association’s BOD, Tab 1

⁵ Administrative Judicial Justice – Traffic Court Duties and Responsibilities, Association’s BOD, Tab 2

matters, Traffic Court matters (consisting of over 80 provincial statutes and *Federal Contravention Act*) and Small Claims payment hearings throughout the province. Judicial Justices reside in the Vancouver area and throughout the province.

11. The average court list for a Judicial Justice is approximately 50 – 60 cases per day, and this regularly includes unrepresented disputants, police prosecutors, interpreters and lay litigants. The Judicial Justice works independently with no administrative support for clerical functions and exhibit handling and Judicial Justices do not have sheriffs in their courtrooms.
12. Without requiring legislative amendment, Judicial Justices may be assigned to other duties through the Assignment of Duties, thus expanding their jurisdiction and contribution to the Provincial Court. An expansion of these duties would benefit the courts and the public by making Provincial Court Judges even more available for criminal and family trials.
13. Judicial Justices are the face of the justice system in British Columbia, and are often the only judicial officers the majority of people dealing with the justice system will ever experience. As stated by the 2007 Commission, at page 7 of its Report:

When presiding in Court [Judicial Justices] are attired and conduct themselves as judges in the ordinary sense, and are seen as such by thousands of people who appear before them each year. **To such persons there is no more important judge than the one before whom they appear.** Judicial justices are expected to demonstrate care and patience, courteous consideration and impartial judicial deportment that is required of judges. They do not impose sentences of imprisonment but their decisions on interim release can result in incarceration of persons not in the end convicted, or who are ultimately given not-custodial sentence, and in the granting or refusal of search warrants they must weigh important privacy rights with often urgent requirements of police.⁶ [emphasis added]

14. The 2016 Commission recognized this crucial role, at pages 60 and 64 of its Report:

Judges are the faces of the judicial system for many of the public and they play a major role in fashioning the jurisprudence of the country because it is their findings of fact and their application of the law, which start the "engine of jurisprudence" and give birth to the organic development of the law in a way that should make Canadians proud.

[...]

The description of judges as the "faces" of the justice system applies equally to judicial justices. The Commission was very impressed with the work done by judicial justices, often in circumstances where they have no assistance from clerks, sheriffs or counsel.⁷ [emphasis added]

⁶ 2007 Compensation Commission Report (the "2007 Report"), JBOD – Judges, Tab 6, p. 7

⁷ 2016 Compensation Commission Report (the "2016 Report"), JBOD – Judges, Tab 13, pp. 60 and 64

15. Previous Commissions have acknowledged the vital importance of Judicial Justices noting that “all matters heard by judicial justices are matters that would otherwise have to be heard by a Provincial Court Judge.”⁸ The Judicial Justice’s role is therefore crucial to maintaining efficiency in the justice system by freeing up the availability of Provincial Court Judge’s for trial.

The Qualifications of a Judicial Justice

16. Judicial Justices are members of the judiciary. As such, they are expected to have similar professional qualifications and personal characteristics as a judge.
17. Judicial Justice appointees are expected to have legal expertise including sound knowledge of procedure, excellence within their chosen area of the law, and experience in mediation or alternative dispute resolution. They must also demonstrate the highest levels of personal and professional integrity, inspire respect and confidence in the courtroom, and work at speed and under pressure to deliver judicial excellence.⁹
18. The application process is rigorous and applicants must provide references from five judges and up to ten lawyers, along with five non-lawyers and any articling student they may have mentored.¹⁰ They also undergo a professional record review from the Law Society of BC.
19. Judicial Justice appointees are often senior members of the legal profession though the minimum eligibility requirement for a Judicial Justice appointment is 5 years of active practice as a member of the Law Society of British Columbia.¹¹

The Work of a Judicial Justice

20. Judicial Justices currently work in four main roles:
 - (i) Some sit only in courthouses around the province, hearing disputed Violation Tickets, Payment Hearings under the *Small Claims Act*, disputed municipal bylaw tickets and applications for judicial authorizations that may come into the courthouse where they are sitting. Their sitting assignments are weekdays when the courthouses are open.
 - (ii) Some sit only at the Justice Centre conducting bail hearings and applications for judicial authorizations. These assignments are in eight (8) hour shifts, seven (7) days a week, 365 days a year from 8 a.m. until midnight.

⁸ 2016 Report, JBOD – Judges, Tab 13, p. 22

⁹ Criteria and Competencies for Appointment, Association’s BOD, Tab 3

¹⁰ Judicial Justice Candidate Application worksheet, Association’s BOD, Tab 4

¹¹ Judicial Council of BC Notice to the Profession Regarding Call for JJ Applications, JBOD – Government, Tab 6

- (iii) Some Judicial Justices are assigned to sit from midnight until 8 a.m. to hear applications for urgent judicial authorizations. This group will “sit” at home to hear such applications.
 - (iv) Some Judicial Justices sit both at the Justice Centre and in Traffic Court around the province.
21. When sitting in courthouses outside of the Lower Mainland, Judicial Justices generally travel in circuits, on Vancouver Island, the Kootenays, Okanagan, Central BC, Northern BC or the Peace River.

Traffic Court

22. Judicial Justices have the jurisdiction to deal with trials of provincial offences commenced by means of a violation ticket. Although referred to as Traffic Court, this level of court has the jurisdiction to deal with over 80 provincial offences, ranging from motor vehicle offences, new cannabis legislation violations to water sustainability.
23. The Judicial Justice must act as both judge and advisor to police officers and the public, who generally do not have any legal training. Unrepresented litigants are guided through the process to ensure the outcome is legal and fair.
24. In 2017/18, Judicial Justices heard 85,990 new traffic and bylaw cases, up 14% from the previous year.¹²

Municipal Law

25. Judicial Justices hear a variety of cases from minor dog offences to complex issues of fire safety and building codes. Substantial fines can be assessed and orders for compliance made.
26. Some case examples demonstrate the complex and significant issues of this area of Judicial Justice jurisdiction:
- In *City of Vancouver v. Piccadilly Investments Ltd.*,¹³ during a 3-day trial the offender faced 36 counts of bylaw infractions regarding an old four-storey building that had a pub on the main floor and 45 single room occupancy units (SROs) on the three remaining floors. The tenants of these units were “inner-city poor, many of whom struggle with issues related to substance abuse and/or mental health difficulties.” The Judicial Justice considered issues such as fire separation, nonworking fire doors, alarm functionality and basic human health needs such as useable, functioning bathrooms.

¹² Annual Report 2017-2018, Provincial Court of British Columbia (the “PC Annual Report”), JBOD – Judges, Tab 1, p. 9

¹³ *City of Vancouver v. Picadilly Investments Ltd.*, Association’s BOD, Tab 5

- In *City of Surrey v. RAI A Iverson and R's Skidding Ltd.*,¹⁴ the defendant was charged with 58 counts of cutting protected trees. The multi-day trial contained preliminary applications, expert evidence with credibility challenges and consideration of detailed documentary evidence.

The Justice Centre¹⁵

27. The Justice Centre is situated in Burnaby, British Columbia. The Justice Centre provides 24-hour, seven-day-a-week access to justice. Using sophisticated telephone and video conferencing methods, Judicial Justices at the Justice Centre consider federal and provincial search warrant applications, and preside over bail hearings. Police throughout the province rely on the Justice Centre to obtain search warrants in a timely manner and bring people who have been arrested and detained before a Judicial Justice within 24 hours.
28. The Justice Centre is physically open 16 hours a day, from 8:00 a.m. to midnight, every day of the year. From midnight to 8:00 a.m. a Judicial Justice operates the Justice Centre remotely from their home, including conducting search warrant applications by police officers.
29. Judicial Justices at the Justice Centre conduct face-to-face or faxed applications by law enforcement agencies for search warrants, production orders and tracking authorizations. Occasionally Traffic Court will be conducted by a Judicial Justice appearing by video conference from the Justice Centre to a courthouse location and dealing with the disputants in court.
30. Judicial Interim Release ("JIR") (i.e. bail) hearings are conducted by telephone and video conference with police and accused in other locations. Due to the high volumes of custody matters occurring on the weekends, four Hub court regions operate on each weekend day to ensure that the entire province receives uninterrupted service. These regions are: Vancouver and Coast, Surrey and the Fraser Valley, Vancouver Island, and the North and the Interior. A Hub court also operates from the Justice Centre in Vancouver each weeknight.
31. As noted in the 2016 Commission Report, "the criminal work done by judicial justices is unscheduled and is performed in 'real-time' in a fast-paced environment with high expectations for timely and 'right' decisions."¹⁶

Search Warrants, Production Orders and Tracking Warrants

32. Since 2015, by way of a practice directive from the Chief Judge,¹⁷ the majority of search warrant and document production applications for the entire province are

¹⁴ *City of Surrey v. RAI A Iverson and R's Skidding Ltd.*, Association's BOD, Tab 6

¹⁵ See, for example, letter from Gerry Hayes, Administrative Judicial Justice, February 1, 2019, JBOD – Government, Tab 5; PC Annual Report 2017-18, JBOD – Judges, Tab 1, pp. 36-37

¹⁶ 2016 Report, JBOD – Judges, Tab 13, p. 22

¹⁷ Practice Direction Daytime Search Warrant Applications, February 23, 2015, Association's BOD, Tab 7

routed through the Justice Centre. These applications are governed by the requirements of the *Criminal Code* in Part XV – Special Procedure and Powers and Part XVI – Compelling Appearance of Accused.

33. Recent amendments to the *Criminal Code* (for example, federal and provincial cannabis legislation) and evolving case law continue to ensure the complex nature of seemingly routine police investigations. Judicial Justices are also on the frontline of considering new areas of law and evolving technologies often without decided cases for guidance.
34. Applications are dealt with in person, by facsimile or telephone. These applications can take less than an hour or more than a day for a Judicial Justice to consider and respond. The application is issued as requested, amended or denied. Judicial Justices produce written reasons for any applications that are denied.¹⁸
35. All Judicial Justices have authority to deal with Search Warrant and other applications. Since the last Compensation Commission in 2016, over 30,500 applications have been considered.¹⁹

Judicial Interim Release Hearings

36. The Justice Centre deals with bail hearings throughout the province when provincial courts are closed or a local Provincial Court Judge is not available. These hearings determine an accused's right to liberty by way of section 7 of the *Charter* and the right not to be denied bail under section 11(d) of the *Charter*. A detention order can affect a person's access to counsel, employment and their family circumstances.
37. Historically during a bail hearing, the accused, a police officer and a Judicial Justice would participate by way of speaker phone at the Justice Centre. Recently with expanded access to video conferencing technology and the Crown led Hub courts, a virtual court procedure occurs during the weekend and weeknights.²⁰ This typically involves Crown counsel, the accused and their defense counsel attending by video from different locations, to conduct a meaningful bail hearing in a court of record.
38. The flexibility of the Justice Centre and presiding Judicial Justices provides an efficient, effective bail hearing for persons in custody. The round-the-clock availability of Judicial Justices ensures early release for persons in custody when possible, lessens the number of remands to courthouses and guarantees increased access to justice for people arrested outside of traditional court hours. Further, as fewer people from remote locations are transported to physical courthouses, fewer people are released from custody outside of their home communities, with limited means of returning home.²¹

¹⁸ Reasons for Decision of Judicial Justice H.W. Gordon, March 9, 2017, Association's BOD, Tab 8

¹⁹ Usage statistics spreadsheets, 2017-2019, Association's BOD, Tab 9

²⁰ Vancouver only

²¹ 2017-2018 Annual Report, JBOD – Judges, Tab 1, p. 60

39. The Justice Centre's bail operations during the weekends are an integral part of British Columbia's provincial court system, providing efficient access to justice. In 2017-2018, the Justice Centre conducted over 21,740 bail hearings.²²

History of Judicial Justices

40. Judicial Justices (formerly, Justices of the Peace) have existed in British Columbia since 1975. They have evolved from one Justice of the Peace sitting in Traffic Court in Vancouver. Initially, the Justices of the Peace were previous full-time employees of court services. In 1993, as a result of recommendations of the Judicial Council,²³ others were appointed from outside this resource.
41. Significant changes to the Justices of the Peace role began in the late 1990s. First, the Supreme Court of Canada's judgment in *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 SCR 3²⁴ set out the minimum standards of judicial independence from the executive branch, in particular with respect to the remuneration of the judiciary.
42. Then in 2000, the BC Supreme Court in *Re Independence of the Provincial Court of BC Justices of the Peace*, 2000 BCSC 1470²⁵ declared that as a result of the method of determining Judicial Justices' remuneration, they lacked the required degree of judicial independence. As a result, the *Provincial Court Act* was amended and the *Judicial Compensation Act* was enacted, establishing the Judicial Justices Compensation Commission (now the *Judicial Compensation Act*). In 2015, the *Judicial Compensation Act* was amended to combine both Provincial Court Judges' and Judicial Justices' compensation processes into one.
43. Next, in this trilogy of judicial authority, the BC Supreme Court, in *R. v. Do*, 2001 BCSC 1088²⁶, ruled in a voir dire that the Court Services Justice of the Peace who authorized a search warrant under the *Controlled Drugs and Substances Act* had insufficient judicial independence for such a task. This led to changes in who had authority to exercise this crucial judicial function, removing judicial authorization from Court Services Justices of the Peace.
44. Finally, about this time, the Provincial Court centralized bail hearings and warrant authorizations and assigned this task to Judicial Justices.
45. The Office of the Chief Judge then commenced a review of the role of Judicial Justices and their qualifications. One consideration in that review was the significant

²² 2017-2018 Annual Report, JBOD – Judges, Tab 1, p. 38

²³ Judicial Council is a statutory body with the main object of improving the quality of services provided by the judicial officers of the Provincial Court: Judicial Council of BC Annual Report 2017, JBOD – Government, Tab 4, p. 8

²⁴ JBOA, Tab 4

²⁵ JBOA, Tab 6

²⁶ JBOA, Tab 14

role the *Charter* played in bail hearings and in the issuance of warrants and other judicial authorizations. In 2007, the Judicial Council changed the qualifications of a Judicial Justice to require that they have a law degree and to have been practicing a minimum of 5 years. In effect, a Judicial Justice must have the same qualifications as a Provincial Court Judge, other than a Judge must have 10 years of practice.

46. At that time, incumbent full-time Judicial Justices who did not have law degrees were offered a voluntary severance package. Thirteen of them accepted this offer in March 2007. Several others remained with tenure and continued on as Judicial Justices. However, given the workload assigned to Judicial Justices and the inability to find lawyers who wished to become Judicial Justices, five full-time Judicial Justices who had accepted voluntary severance packages were appointed again as part-time Judicial Justices later that year.
47. In 2008, the Legislature amended the *Provincial Court Act* to change the term of appointment of part-time Judicial Justices. Those appointed after April 1, 2008 had their appointments limited to 10 years and were prohibited from being reappointed at the end of that term. Those appointed before April 1, 2008 retained the term of appointment until the age of 75.
48. As the end of the 10-year terms approached, the Legislature amended the term to 12 years, thereby extending the term of those already appointed by two years. The terms of seven part-time Judicial Justices will expire in 2020 and further legislative amendment will be required to extend their terms.
49. All Judicial Justices appointed since 2007 are part-time and remunerated on a per diem basis, calculated on a formula based on the annual remuneration of a full-time Judicial Justice.

Judicial Justice Compensation

Judicial Compensation Act

50. The *Judicial Compensation Act* provides this Commission with the authority and obligation to “report on all matters respecting the remuneration, allowances and benefits of ... judicial justices” and to make recommendations regarding same, for the next 3 fiscal years.
51. Section 5 of the *Judicial Compensation Act* requires that, in preparing its report, the Commission must consider all of the following criteria:
 - 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 3 fiscal years that are the subject of the report.
52. The Commission may also consider any other factors it considers relevant, and if it does so, it must explain the relevance of the factor(s) in its report.²⁷
53. At page 10 of its 2007 Report, the Commission made the following comments regarding the distinction between Judicial Justices and Provincial Court Judges, for purposes of compensation:

In locating the proper place of [Judicial Justices] for compensation purposes within the "vertical structure" of the court system to which the Chief Judge referred, it must be appreciated that the differences of consequence between judicial justices and Provincial Court judges now lies neither in qualification for appointment nor appointment process, nor in the importance of the duties performed by each or the manner in which these duties are discharged, but only in the breadth of their respective jurisdictions. This is the relevant distinguishing factor for judicial compensation purposes.²⁸

54. As noted by the 2016 Commission at page 5 of its Report:

All of the [statutory] criteria considered are ultimately in service of the need to provide reasonable compensation for judges and judicial justices over the three fiscal years of the Commission's mandate. The question for each commission is always what is fair and reasonable in the present circumstances.

Each of these statutory criteria will be considered in detail below.

The Need to Maintain A Strong Court by Attracting Highly Qualified Applicants

55. In June 2018, there was a public call for applicants to Judicial Justice positions,²⁹ which resulted in only nine applications and ultimately, in 2019, two appointments.³⁰
56. The following statistics, provided by the Office of the Chief Judge, sets out the number of applications, interviews and appointments of Judicial Justices from 2016 to 2019. As can be seen, there have been only eleven applications and three appointments since 2016 and the Association submits this is not sufficient to maintain a strong Judicial Justice bench and is clear evidence that current compensation is not sufficient to attract highly qualified applicants.

²⁷ *Judicial Compensation Act*, s. 5(2), JBOA, Tab 1

²⁸ 2007 Report, JBOD – Judges, Tab 6, p. 10

²⁹ BC Notice to the Profession regarding Call for JJ Applications, JBOD – Government, Tab 6

³⁰ Information provided by the Office of the Chief Judge

Year	Applications Received	Applicants Interviewed	Applicants Appointed
2019	0	3	2
2018	9	2	0
2017	2	0	0
2016	0	1	1

57. The Judicial Justice position itself is a personally rewarding and satisfying opportunity for public service. The Association submits that retaining Judicial Justices is not a problem but attracting qualified applicants clearly is. The pool from which the government draws appointments to Judicial Justice are senior lawyers with superb legal reputation, usually in the last third of their career. Those senior lawyers are entitled to salaries commensurate with their level of experience and knowledge.
58. Currently there are not sufficient Judicial Justices to comfortably fill all the available shifts on a regular basis.³¹ Weekend and holiday shifts are particularly difficult to fill.³² The Office of the Chief Judge has had to regularly bring in Judicial Justices who reside outside of the lower mainland and pay the associated expenses. The Office of the Chief Judge also relies heavily on Provincial Court Judges to cover Justice Centre shifts. The Chief Judge of the Provincial Court worked Christmas day in 2018 due to insufficient coverage. For 2018, Provincial Court Judges were required to cover 4.23% of all Judicial Justice shifts at the Justice Centre,³³ due to absences (not including conference attendance). As of April 2019, 10% of the Justice Centre weekend shifts that were allocated to Judicial Justices, were filled by judges. The Association submits that an increase in the pool of Judicial Justices will alleviate this stress on the current Judicial Justices and Provincial Court Judges.
59. There is a very real need for this Commission to consider recommending that Judicial Justice compensation be improved as set out below, such that it is sufficient to attract qualified candidates to the Judicial Justice role. The 2016 Commission, faced with similarly low interest in Judicial Justice positions, commented as follows regarding the importance of salary in attracting qualified candidates to the Judicial Justice role, at page 6 of its report:

While there was no evidence establishing that there is a link between the number of applicants and the salary of judicial justices, there is a real need to increase the applicant pool, particularly considering that in less than two years almost half of the current judicial justices will be retiring. Something must be done. **Ensuring a**

³¹ Email from Kevin Purdy, Justice of the Peace Administrator, Office of the Chief Judge, subject "statistics for Compensation hearings", March 20, 2019, Association's BOD, Tab 10

³² Email from Kevin Purdy, subject "Outstanding shifts", various time periods, Association's BOD, Tab 11

³³ Email exchanges between Kevin Purdy and others, Association's BOD, Tab 12

reasonable salary that is sufficient to attract exceptional candidates who meet the needs of the Court is crucial.³⁴ [emphasis added]

Changes to the Jurisdiction of Judicial Justices

60. Currently Judicial Justices' jurisdiction is not expanding into new duties; however, their assigned responsibilities are increasing by volume and workload. For example, the introduction of the Hub court system in 2018 has expanded the volume of after-hours services provided for all parties, including the Judicial Justices who are assigned to these after-hours shifts.³⁵
61. New legislation and government initiatives also add complexity as Judicial Justices are often the first-line of decision makers who will address these new and evolving areas of the law. Examples of this include intersection speed cameras which will increase the numbers of cases to be heard³⁶ and the changes to cannabis legislation. Judicial Justices are dealing with ticketed offences in this new area without the benefit of guidance from the higher courts and in the absence of a definitive test for cannabis intoxication.
62. Further, as previously mentioned, Judicial Justices are assigned their jurisdiction by the Chief Judge and there is the potential to expand this assignment. For example, the Association continues to lobby for Judicial Justices conducting all JIRs.

Compensation Provided in Respect of Similar Judicial Positions in Canada

63. The 2016 Compensation Commission found this particular legislative factor to be an "important consideration in determining reasonable compensation"³⁷ and considered the evidence regarding the position of Judicial Justices' salaries in comparison with other provinces throughout Canada to be "compelling". This is because as set out below, the Judicial Justices are paid significantly less than most of their counterparts across the country, despite working in one of the strongest economies in the country.
64. The Association submits that the role of Judicial Justice is similar in many provinces across Canada. Although no two roles are identical due to variations in jurisdiction, the Association submits that the role of Justice of the Peace in Alberta and Ontario is particularly relevant as a comparator.
65. In the 2007 Commission Report, the Commission recognized the many common duties shared by Judicial Justices in British Columbia and Justices of the Peace in Alberta and Ontario.³⁸ In particular, the two roles share many important aspects,

³⁴ 2016 Report, JBOD – Judges, Tab 13, p. 6

³⁵ BC Justice and Public Safety Council, Strategic Plan 2018, JBOD – Government, Tab 8, pp. 15-16.

³⁶ British Columbia News, "Thirty-five intersection cameras tweaked to slow worst leadfoots," May 2019, Association's BOD, Tab 13

³⁷ 2016 Report, JBOD – Judges, Tab 13, p. 6

³⁸ 2007 Report, JBOD – Judges, Tab 6, p. 39

such as the application of *Charter* considerations in search warrant applications, and balancing individual freedom against community safety in bail applications.

66. The Association submits that it is also worth considering the compensation of other Judicial Justices/Justices of the Peace in different jurisdictions when making determinations on reasonable compensations for British Columbia's Judicial Justices.
67. The following table sets out the compensation paid to other Judicial Justices/Justices of the Peace across the country:

Justice of the Peace Salaries Across Canada		
Jurisdiction	2016 / 17	2019 / 20
BC	\$118,000	\$122,000
Alberta	\$151,813	\$151,813
Saskatchewan	\$133,425	\$155,078
Manitoba*	\$108,968	\$116,960
Ontario	\$131,123	\$141,282
Quebec	\$142,387	\$144,960*
Nova Scotia*	No full-time JPs	No full-time JPs
Yukon	\$137,799	\$136,031.49

* Quebec JPs do not receive shift differentials for evening or weekend work but receive time off in lieu.

68. Manitoba and Nova Scotia do not have independent compensation commissions. In several provinces (Saskatchewan, Manitoba, Ontario and Nova Scotia) the salaries of Justices of the Peace are a percentage of provincial court judges in that province: Saskatchewan 51%, Manitoba 43%, and Ontario 47%.
69. As can be seen from this table, the salary for the Judicial Justices lags significantly behind every jurisdiction with an independent compensation commission. Judicial Justices are paid almost 25% less than Justices of the Peace in Alberta, and almost 20% less than Justices of the Peace in Ontario, despite there being a recognition from previous Commissions that these are strong comparators.

Changes in the Compensation of Others Paid by BC Provincial Funds

70. Compensation for public servants is established through a collective bargaining process between unions and the government, with oversight by the Public Sector Employers' Council. The Association submits that the public service is not an appropriate comparator, and indeed it has been expressly acknowledged by the

Supreme Court of Canada³⁹ that independence from the executive is a hallmark of Canada's justice system. Furthermore, the British Columbia Supreme Court has sternly rebuked the Provincial Government for applying its public sector bargaining mandate to the Judicial Compensation process.⁴⁰

71. Although the Commission is required to consider this factor under the *Judicial Compensation Act*, the Association submits that less weight should be accorded to it than other factors. The 2016 Compensation Commission commented on this as follows:

In this Commission's view, changes in compensation is a statutorily-mandated factor that it must, and did, consider. Similar to the criterion in sub-section 5(5)(c), its utility is in ensuring commissions consider whether judicial salaries in British Columbia are getting out of step. However, it must be remembered that the judicial role is unique: judges and judicial justices hold an office. They are not employees. Thus they are not easily compared with others in the British Columbia economy, even those in senior leadership in the public service. Moreover, the constitutional role of judicial compensation commissions is to depoliticize the determination of reasonable compensation. Therefore, too much emphasis on compensation changes to public sector employees, which is the result of political decisions made by Government setting its fiscal policy, must be avoided.⁴¹

72. Given that this Commission must consider this statutory factor, the Association submits that the closest suitable comparators of others paid by provincial public funds are Crown Counsel and legal aid lawyers. In many of the courtrooms and bail hearings presided over by Judicial Justices, provincial Crown Counsel appears before the Judicial Justice and a legal aid duty counsel may represent the defendant. Both are paid by public funds.
73. As of April 1, 2018, the salary rate for Crown Counsels at Level 2, which is considered "working level" and not senior,⁴² are:⁴³

Year of Call	Annual
6 (Step 1)	121,030.09
7 (Step 2)	128,574.59
8 (Step 3)	136,117.53
9 (Step 4)	143,668.04
10 (Step 5)	149,653.44

³⁹ *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island; Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island; R. v. Campbell; R. v. Ekmecic; R. v. Wickman Manitoba Provincial Judges Association v. Manitoba (Minister of Justice)*, [1997] 3 S.C.R. 3, [1997] S.C.J. No. 75 ("PEI Reference"), JBOA, Tab 4

⁴⁰ *Provincial Court Judges' Association of British Columbia v. British Columbia (Attorney General)* 2012 BCSC 1022, JBOA Tab 8

⁴¹ 2016 Report, JBOD - Judges, Tab 13, p. 53

⁴² Agreement between the Government of the Province of British Columbia and British Columbia Crown Counsel Association, Sch. A, JBOD – Government, Tab 9

⁴³ Government of BC Salary Information, Crown Counsel Level 2, Association's BOD, Tab 14

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74. Salaries' for Level 3 Crown Counsel begin at \$161,625, and the Association submits that this experience level is more akin to that of the Judicial Justices.⁴⁴
75. As can be seen, Judicial Justices are paid less (often substantially less) than equivalently qualified and experienced Crown Counsel appearing before them.
76. In addition to Crown Counsel, duty counsel may appear at bail hearings to represent the accused. Duty counsel are paid by government funds. The Attorney General has publicly conceded legal aid lawyers have been historically underpaid and agreed to an interim salary boost of 25%.⁴⁵ This 25% increase is an interim measure until October 31, 2019 pending further discussions between the government, the Legal Services Society and the Association of Legal Aid Lawyers. With this increase, the current daily rate for a senior legal aid lawyer in the Criminal Tariff is \$807.54. For an 8 hour day, the daily rate would be \$922.90.⁴⁶
77. For comparison, the 2019 daily rate for a part-time Judicial Justice is \$782.25.
78. Therefore, in a bail hearing involving defence counsel funded by legal aid and Crown Counsel, each of the three participants are paid from the same government purse, and the Judicial Justice hearing the matter is likely to be the lowest paid of the three.

Generally Accepted and Current Expected Economic Conditions

79. In each of the past six Commissions, excluding one (2007), the government has urged fiscal restraint due to poor economic conditions. The Association recognizes that economic conditions may be of concern to the government and the Commission. The Association submits that current and expected economic conditions in British Columbia favour a positive outlook which does not necessitate restraint.
80. British Columbia's economy has been and continues to be in a position of strength relative to Canada and the other provinces. In December 2018, the Economic Forecast Council, a 13 member panel of some of the most respected independent economic forecasters in Canada, revised its predictions for BC for 2019 and beyond, asserting that British Columbia's expected economic growth will outperform Canada over the next three years.⁴⁷
81. This assessment accords with the government's own projections. The following quote from the Finance Minister's Budget Highlights published on February 19,

⁴⁴ Government of BC Salary Information, Crown Counsel Level 3, Association's BOD, Tab 14a

⁴⁵ Media Release, "BC Government announces agreement with legal aid lawyers", March 29, 2019, Association's BOD Tab 15

⁴⁶ Legal Services Society Tariffs Quick Reference March 2019, JBOD – Government, Tab 10

⁴⁷ News Release, "BC to Lead Canada in Economic Growth", December 7, 2018, Judges' BOD, Tab 8

2019, highlights the government's acknowledgement of the province's economic strength:

British Columbia's economy is strong and projected to lead the country in growth in 2019 and 2020.

B.C. has the strongest economy in the country with the highest projected real GDP growth, lowest unemployment rate, and biggest wage gains nation-wide.⁴⁸

82. The Association notes that the Provincial Court Judges Association ("PCJA") has retained economist Ian McKinnon of Pacific Issues Partners to provide expert evidence on PCJA's behalf. Mr. McKinnon's report entitled *The Current and Expected Economic Conditions in British Columbia and the Financial Position of the Government of British Columbia* dated May 2019 (the "McKinnon Report")⁴⁹. The Association equally relies upon the findings and conclusions of the McKinnon Report.
83. The McKinnon Report examined the conventional markers of economic strength: debt-GDP ratio, diversity of exports, and employment rates and in analyzing them, found support for the government's positive economic forecast for the next three years:

In summary, for the past five years, B.C.'s economy has grown faster than the country as a whole. This economic strength is reflected in very strong employment numbers. Both the federal and B.C. provincial budget forecasts project low unemployment levels continuing over the next three years.⁵⁰

84. The McKinnon Report identified that an essential element of British Columbia's economy, and one of the key elements in inspiring "greater confidence in the projections about BC's expected economic conditions,"⁵¹ is British Columbia's economic diversification.
85. The importance of economic diversification is illustrated in the McKinnon Report at page 16:

We see that BC's economy is diversified and can, therefore, conclude that the economy is less likely to be deeply affected by an exogenous economic shock that affects a specific sector of the economy.

It is a resilient economy.

In considering the current and expected economic conditions in BC, this means that there is lower risk to forecasts than would be the case in a less diversified economy. Similarly, the current and expected financial position of the province is not as likely to be as volatile and uncertain as that of provinces more dependent on a narrower range of basic economic drivers.

⁴⁸ BC Government 2019 Budget Highlights, JBOD – Government, Tab 13

⁴⁹ McKinnon Report, Judges' BOD, Tab 4

⁵⁰ McKinnon Report, Judges' BOD, Tab 4, p. 11

⁵¹ McKinnon Report, Judges' BOD, Tab 4, p. 12

86. Whereas other provinces' economies are more narrowly dominated by a certain sector and consequently, more susceptible to changes in their economies based on vulnerabilities within that sector, British Columbia's economy is diversified into various sectors and types of exports produced:

[...] In contrast the well-diversified economies like B.C.s may not feel booms as strongly, but they are also less likely to be as deeply affected when a critical sector has difficulties. In turn, this implies less uncertainty in forecasts of future provincial economic growth.⁵²

87. British Columbia's economy is diversified not just in the range of goods we export, but also in the range of regions to which we export goods. This becomes especially important in:

In a time of trade disputes and threats of both tariff and non-tariff barriers, depending on a limited range of export destinations can be a source of risk.

....

While the U.S. is the destination for almost half of the province's exports, this is well below the national average. Further, B.C. has significant exports to several different areas. All this diversity means greater resilience if faced by external economic shocks like trade disputes. This is summarized in the conclusion of the BC government analysis of economic diversification in B.C.⁵³

The results place B.C. in a very favourable position among provinces, with diversified production (as measured by industrial GDP), employment by industry, and products exported. Although merchandise exports are highly concentrated when measuring country of destination, B.C. has one of the most diversified markets for exports among provinces and territories.⁵⁴

88. In its 2016 submissions, the government speculated that several factors occurring in the global context could negatively impact the economic position of British Columbia. These included the potential election of Donald Trump as President of the United States of America; the United Kingdom voting to leave the European Union, and China struggling financially. Further, the government's submissions centred on the potential for economic slow down within Canada due to those external factors.⁵⁵
89. The Association submits that many of the factors identified by the government in 2016 as risks to the economy, indeed came to pass and that British Columbia's economy nonetheless remained resilient. The Association submits that we can rely on the government's projections of continued economic strength and growth.

⁵² McKinnon Report, Judges' BOD, Tab 4, p. 14

⁵³ McKinnon Report, Judges' BOD, Tab 4, pp. 14-15

⁵⁴ British Columbia, BC Stats, *Measuring Diversification in British Columbia*, April 2018, Association's BOD, Tab 17, p. 14

⁵⁵ 2016 Report, JBOD – Judges, Tab 13, pp. 55-56

Financial position of the Government

90. As part of delivering this year's budget, BC's Finance Minister Carole James has consistently touted the strength of the financial position of BC's government.

91. Minister James has stated that:

British Columbia's economy is thriving with the strongest GDP and wage growth in Canada...⁵⁶

And:

Over the next three years of the fiscal plan, government will continue to run surpluses of \$274 million, \$287 million, and \$585 million in 2019-2, 2020-21, and 2021-22 respectively. B.C. remains the only province with a AAA credit rating from all three major international rating agencies and our debt-GDP ratio is at its lowest point since the 2008 financial crisis.⁵⁷

92. This projection accords with the Economic Forecast Council's independent assessment. The McKinnon Report notes that:

When BC forecasts surpluses, as it has for each of the three years that are the subject of the Commission's report, we can be very confident that those forecasts are the result of a prudent, sophisticated and cautious process undertaken by the Ministry of Finance.⁵⁸

93. In its submissions from 2016, the government took a cautious approach in relation to its financial position and asserted that despite its own assessment of having above average fiscal capacity, its financial position was fragile and unstable owing to risks it could not control.⁵⁹ The government further asserted that British Columbia has relative vulnerability due to its competitive challenges including high marginal effective tax rates on investment, rising MSP premiums, rising energy costs, and rising business property taxes.⁶⁰

94. The McKinnon Report contextualized the government's inclination to forecast cautiously as follows:

Faced with a sorry history of overly optimistic financial forecasts from the mid 1970s through the 1990s, it is understandable that one might question whether the government's projections of successive balanced budgets through to 2021/22 can be relied upon. Indeed, both federal and most provincial governments had, in the past, repeatedly forecast balanced budgets two or three years in the future—balanced budgets which never materialized. Increasingly however, governments have taken the opposite approach in recent years: forecast very cautiously and then exceed expectations.

⁵⁶ Budget 2019 Creates Opportunities, Makes Life Better For People, February 2019, Association's BOD, Tab 17

⁵⁷ BC Government 2019 Budget Highlights, JBOD – Government, Tab 13

⁵⁸ McKinnon Report, Judges' BOD, Tab 4, p. 30

⁵⁹ 2016 Report, JBOD – Judges, Tab 13, p. 57

⁶⁰ 2016 Report, JBOD – Judges, Tab 13, p. 55

Exemplifying the inherently cautious nature of the budget estimation and reporting practices of the current government, the B.C. Ministry of Finance has for the past decade, consistently reduced its deficit forecast (or increased its surplus forecast) as each fiscal year progressed.⁶¹

95. The McKinnon Report also went on to note that:

This is a consistent pattern of prudence. The government's forecasts have been cautious and, in the face of all but the most jarring of economic events, have been consistently and significantly conservative. Further, the government has used respected independent professionals to give external forecasts and evaluations, ensuring that the Budget does not fall prey to overly optimistic macro-economic or revenue forecasts.⁶²

96. The Association submits that the Commission need only look at the government's consistent and sustained record of strong fiscal capacity as evidence of the government's financial position. At page 19 of the McKinnon Report:

The salient point for the Commission is the continued plans for surpluses in the recent Budget. This is at the heart of the charge direction to the Commission to consider to the commission to assess "the current and expected financial position of the government for the three fiscal years that are the subject of the report."

The Provincial Budget shows nine successive budget surpluses, achieved or forecast.

This long time series also gives us the opportunity to look at the provincial government's experience in responding to even severe recessions – creating a significant record in its ability to manage public finances through all stages of the economic cycle.

....

The effective responses of the government in restoring strong budget balances, even following a significant downturn, gives us confidence that the B.C. economy and the provincial government's finances will be resilient, even with an external economic threat.

Salary and Benefit Submissions

97. For the following reasons, the Association submits that a fair and reasonable annual salary for full-time Judicial Justices is:

- 2020 - \$138,000
- 2021 - \$141,000
- 2022 - \$144,500

⁶¹ McKinnon Report, Judges' BOD, Tab 4, p. 27

⁶² McKinnon Report, Judges' BOD, Tab 4, p. 30

98. The 2016 Compensation Commission determined that the then current compensation for Judicial Justices was “not reasonable and is inadequate” and made recommendations to address this. The government rejected these recommendations such that the current salary for Judicial Justices, at \$122,000, is below the starting point recommended by the 2016 Compensation Commission and well below where the 2016 Compensation Commission recommended salary be at come 2019.
99. The Association submits that this Commission should use the recommendations of the 2016 Compensation Commission as the starting point for its consideration: i.e. a 2019/20 salary for Judicial Justices of \$128,778. An increase to \$138,000 in the first year would be an increase of just over 7%. There would then be an increase of just over 2% in the second year and just over 3% in the third year.⁶³
100. The Association recognizes that an increase from current salary levels to \$138,000 represents an increase of just over 13%, and submits that this is warranted and required in the circumstances.
101. As the previously reviewed statistics demonstrate, there has been a distinct lack of applicants for Judicial Justice positions, with just eleven applications and three appointments since 2016. The 2016 Commission implored the government to do something about this, but it is clear that no improvement has occurred. The Association submits that a substantial salary increase is required to attract well qualified candidates to the Judicial Justice position, particularly considering upcoming retirements and term completions.
102. These increases would go some way to bringing the compensation of the Judicial Justices in line with equivalent positions across the country. A salary of \$144,500 achieved in 2022 would still rank the Judicial Justices amongst the lowest in Canada but the Association recognizes that improvements can be made incrementally rather than all at once.
103. It is clear that the government is in a fiscal position to award these substantial salary increases. BC’s economy is strong, there are substantial budget surpluses forecast over the term of this Commission, and there is no basis for fiscal restraint at this time. Further, although the increases proposed by the Judicial Justices are substantial, when it is considered that there are only seven Judicial Justices working full-time and only nineteen part-time Judicial Justices, the overall cost of these increases is not substantial relative to the government’s spending on public wages.
104. The following table, compiled from a review of previous commission reports, sets out the history of Judicial Justice annual salary since 2002. As can be seen, there is a clear trend of the government not supporting the recommendations of the compensation commission and ultimately the legislature voting in favour of the government’s position. The Association submits that this has resulted in

⁶³ 2016 Report, JBOD – Judges, Tab 13, p. 64

compensation for Judicial Justices remaining substantially lower than it should be in order to attract excellent candidates and provide compensation that is fair and reasonable for the existing Judicial Justices. The government's approach of adopting its public sector compensation mandate has also led to substantial litigation, which has resulted in uncertainty at past compensation commissions.⁶⁴

Year	Commission Recommendation	Government Response	Legislature Vote
2002	<ul style="list-style-type: none"> • 2.5% for 2001, 2001 and 2003 • 3.9% for 2004 	<ul style="list-style-type: none"> • 2.5% for 2001 • 0% for 2002-2004 	<ul style="list-style-type: none"> • Per government response
2004	<ul style="list-style-type: none"> • 0% for 2005-2006 • 2% for 2006-2007 • 2% 2007-2008 	<ul style="list-style-type: none"> • 0% for all years 	<ul style="list-style-type: none"> • Per government response
2007	<ul style="list-style-type: none"> • 8.7% for 2008-2009 • 2.5% for 2009-2010 • 2.5% for 2010-2011 	<ul style="list-style-type: none"> • Agreed 	<ul style="list-style-type: none"> • Agreed
2010	<ul style="list-style-type: none"> • 0% for 2011-2012 and 2012-2013 • 8% for 2013-2014. 	<ul style="list-style-type: none"> • 0% for all years 	<ul style="list-style-type: none"> • Per government response
2013	<ul style="list-style-type: none"> • 5% for 2014-2015 • 2% for 2015-2016 • 2% 2016-2017 	<ul style="list-style-type: none"> • 1.5% for 2014-2015 • 2% for 2015-2016 • 2% for 2016-2017 <p>*Increase Agreed Upon After Litigation:</p> <ul style="list-style-type: none"> • 2.9% for 2014-2015 • 1.5% for 2015-2016 • 2% for 2016-2017 	<ul style="list-style-type: none"> • 1.5% for 2014-2015 • 1.5% for 2015-2016 • 2% for 2016-2017
2016	<ul style="list-style-type: none"> • \$125,000 for 2017-2018 • \$126,875 for 2018-2019 • \$128,778 for 2019-2020 	<ul style="list-style-type: none"> • \$118,000 for 2017-2018 • \$120,000 for 2018-2019 • \$122,000 for 2019-2020⁶⁵ 	<ul style="list-style-type: none"> • As per government

105. It can be noted that the current annual salary for Judicial Justices is below that recommended as the starting salary by the 2016 Commission.

⁶⁴ 2016 Report, JBOD – Judges, Tab 13, p. 4

⁶⁵ Notice of Motion, October 25, 2017, JBOD – Government, Tab 1

106. The Association respectfully requests that this Commission endorse its salary proposal in the strongest possible terms and hopes that the government respects this process by implementing the Commission's recommendations.

Administrative Judicial Justices

107. The Association submits that the two Administrative Judicial Justices – Traffic Court and Justice Centre, should receive an additional 6% of the full-time salary of a Judicial Justice, in recognition of the additional duties they perform. Through the joint consultation process, the government has indicated support for this position.

Part-Time Judicial Justices

108. The Association submits the formula for calculating the part-time per diem rate remain the same as established by the 2013 Judicial Compensation Commission:

- $\$FULL\ TIME\ SALARY / 207\ (sitting\ days) + 20\%\ benefits + \$75\ (overhead) = \$DAILY\ RATE$

Shift Premiums

109. The Association submits that Judicial Justices working certain shifts should be provided with a shift premium, as follows:

Weekday afternoon shift	\$55
Weekend day shift	\$55
Weekend afternoon shift	\$85
Holiday day shift	\$85
Holiday afternoon shift	\$110
Super Statutory Holidays (Christmas, Good Friday, Easter, and New Year's Day)	\$245
Graveyard shift (worked from home)	same as the corresponding afternoon shift

110. The Association notes that Alberta, a close comparator, provides its Justices of the Peace with a shift premium for: weekday evening shifts (\$54.25); weekday night shifts (\$134.29); weekend day shifts (\$54.29); weekend evening shifts (\$82.45);

holiday day shifts (\$82.45); holiday evening shifts (\$108.49); and holiday night shifts (\$243.19).⁶⁶

111. As noted above, the work at the Justice Centre is 24-hours a day, seven days per week. The need to work outside of regular business hours takes a toll on a human body physically and emotionally. The impact of shift work is felt by the whole family. Missing important social events such as Easter, Christmas and long holiday weekends has an impact. The Canadian Centre for Occupational Health and Safety released a study (August 2017) on shift work. Constantly changing schedules can:⁶⁷

- upset one's circadian rhythm (24-hour body cycle),
- cause sleep deprivation and disorders of the gastrointestinal and cardiovascular systems,
- make existing disorders worse, and disrupt family and social life.

112. The Justice Centre has been operational since 2001. As noted above, it is difficult to fill weekend and holiday shifts. Clearly the effects of shift work are being felt by the current complement of Judicial Justices.

113. The Association submits that a shift premium will fulfill the dual purpose of attracting more qualified applicants, thereby increasing the potential number of Judicial Justices for each available shift, as well as alleviating the current pressure of working a shift because there is simply no one available. Many of the Judicial Justices have taken an unwanted shift because a colleague is sick or plans change. The Judicial Justice bench is professional, responsible and dedicated; however, burn-out is a real risk without more Judicial Justices to share the load.

114. The Association notes that there is precedent for shift premiums based on the current practice of a Provincial Court Judge receiving an additional vacation day in exchange for filling a shift at the Justice Centre.

Flex Benefits

115. Full-time Judicial Justices receive an Extended Health and Dental Plan from the government. The Association has no submissions regarding the plan as it exists in 2019.

Professional Development Allowance

116. Judicial Justices currently receive a professional development allowance ("PDA") intended to cover working expenses.⁶⁸ Judicial Justices are reimbursed up to \$2,500 per year; \$1,500 can be used towards general expenses "reasonably

⁶⁶ Alberta Justice of the Peace Regulation 6/1999, s. 8.1, Association's BOD, Tab 18

⁶⁷ Canadian Centre for Occupational Health and Safety study (August 2017), Association's BOD, Tab 19

⁶⁸ Policy of the Provincial Court of British Columbia, PDA-2, April 1, 2019, Association's BOD, Tab 20

incurred in the execution of the office of a Judicial Justice" within a year and only \$1,000 can be used for seminars or conferences.

117. Judicial Justices often attend the same seminars, conferences and courses as Provincial Court Judges, who have an allowance of \$4,000, all of which can be put towards these conferences and courses.
118. The \$1,000 coverage for Judicial Justices is often insufficient to cover the cost of attendance at one out-of-province conference. Therefore, Judicial Justices are often out-of-pocket to attend important educational conferences and courses. For example, the current cost for attending the Cambridge Lectures in 2019 is \$3,400, which covers the course, meals and accommodation, but not travel costs.⁶⁹
119. The Association requests this Commission support its proposal for an increase of \$750 to the PDA, which can be used towards educational expenses.

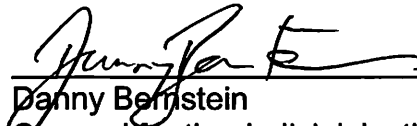
Pension

120. Judicial Justices are currently enrolled in the Public Sector Pension Plan, despite not being considered public servants. The Association notes that the Provincial Court Judges are enrolled in the Judicial Pension Plan under Part 3 of the *Judicial Compensation Act*.
121. The qualification requirements for a Judicial Justice, including the requisite skills and life experience needed to be a judicial officer, necessarily result in appointments at middle age or later. The average age of appointment for a Judicial Justice is approximately 65 years old. Certainly a Judicial Justice role is not "entry-level" and a pension plan that matches the responsibilities of the position, age and qualifications is warranted.
122. The Association submits that being enrolled in an improved pension plan is an important aspect of the overall compensation needed to attract qualified candidates and promote diversity on the bench.
123. Currently the Judicial Justice's rate of pension accrual is approximately 1.85% per annum and the pension value is based on 70% of the best five-year average of earnings. Given the late entry into services of the average Judicial Justice, this low accrual rate does not allow sufficient pension accrual come retirement age. The Association submits that a recommendation should be made that Judicial Justices be enrolled in a pension plan with an accrual rate of 3% per year based on 70% of the Judicial Justice's best three-year average of earnings, which would be in line with the Provincial Court Judges.

⁶⁹ Receipt of Judicial Justice Gordon, Association's BOD, Tab 21

124. The Association commissioned an actuarial costings report from Stephen Cheng of Westcoast Actuaries (the "Actuarial Costings Report") to estimate the value and costs of pension improvements for the Judicial Justices.⁷⁰
125. Though there are ten full-time Judicial Justices, only seven would be eligible to participate in the pension enhancements. Further, the government contributions would be spread over a number of years. The cost to the government reflects this reduction in eligible participants and the ability to disperse contributions over time.
126. In the Executive Summary of the Actuarial Costings Report, at page 2, the increased cost to the government for the period of April 1, 2020 to March 31, 2021, the highest contribution year, is only estimated to be \$142,000.
127. The table at page 12 of the Actuarial Costings Report illustrates the annual benefit to the Judicial Justices from this enhancement to pension, and the table at page 13 illustrates the annual cost to the Government of these improved pension benefits.
128. The enhanced value to the seven eligible Judicial Justices is significant. The present value of the proposed enhancements is \$640,000 over the life of the plan until retirement, representing an 11.3% increase in pension value.
129. The Association submits that improvements to pension benefits for Judicial Justices, accompanying other compensation improvements, will go a long way to attracting qualified candidates to the role, and would also be reasonable and equitable in accordance with the *Judicial Compensation Act*.

All of which is respectfully submitted this 29th day of May, 2019.



Danny Bernstein
Counsel for the Judicial Justices Association

⁷⁰ Westcoast Actuaries Costings Report, May 24, 2019, Association's BOD, Tab 22