



**Government of British Columbia Submission**  
**to the**  
**2019 Judicial Compensation Commission**

**May 29, 2019**

# INDEX

INTRODUCTION	3
OVERVIEW AND SUMMARY OF GOVERNMENT’S POSITION	4
THE JUSTICE SYSTEM IN BRITISH COLUMBIA	8
Canada’s Court System	8
British Columbia Provincial Court	9
Provincial Court Judges	14
Provincial Court Judicial Justices	16
British Columbia Supreme Court	18
Investing in the Justice System – Innovation and Reform	21
THE JUDICIAL COMPENSATION PROCESS IN BRITISH COLUMBIA	27
Summary of Current Compensation	29
Previous Compensation Commissions	30
Judges Compensation Commissions	30
Judicial Justices Compensation Commissions	37
2016 Judicial Compensation Commission	42
THE GOVERNMENT’S SUBMISSION REGARDING THE LEGISLATED CRITERIA	44
The need to maintain a strong court by attracting highly qualified applicants	45
Changes, if any, to the jurisdiction of judges or judicial justices	55

Compensation provided in respect of similar judicial positions in Canada, having regard to the differences between those jurisdictions and British Columbia	56
Changes in the compensation of others paid by provincial public funds in British Columbia	67
The generally accepted current and expected economic conditions in British Columbia	80
The current and expected financial position of the government over the three fiscal years that are the subject of the report	85
<b>THE GOVERNMENT’S SUBMISSION TO THE COMMISSION</b>	<b>93</b>
Reasonable Compensation for Judges	93
Reasonable Compensation for Judicial Justices	97
Joint Submissions	99

## Introduction

1. The British Columbia Government welcomes the opportunity to make its submission to the 2019 Judicial Compensation Commission respecting the salaries and benefits for both Provincial Court Judges and Judicial Justices for the fiscal years 2020/21, 2021/22 and 2022/23.
2. This submission sets out Government's proposal which reflects the statutory factors that the *Judicial Compensation Act* requires the Commission to consider.

## Overview and Summary of Government's Position

3. The Government of British Columbia is dedicated to ensuring that the Provincial Court Judges and Judicial Justices are able to carry out their important work of dispensing justice with complete judicial independence.
4. The process for the 2019 Judicial Compensation Commission ("the Commission") is determined by the *Judicial Compensation Act* (Act). The Commission has an important statutory mandate to make recommendations to the legislature regarding the compensation for Provincial Court Judges and Judicial Justices after considering all of the statutory factors.
5. Section 5(5) of the Act provides that the Commission "must be guided by the need to provide reasonable compensation for Judges and Judicial Justices...", and provides six factors which must be taken into account. The factors establish three themes:
  - i. The need to maintain a strong Court with highly qualified judges taking into account any changes in their jurisdiction [Section 5(5) (a) and (b)],
  - ii. Compensation provided in respect to similar judicial positions across Canada and compensation provided to other publicly funded employees in British Columbia [Section 5(5) (c) and (d)].
  - iii. The generally accepted and expected economic conditions in B.C. and the current expected financial position of the Government [Section 5(5) (e) and (f)].
6. The three themes are objective criteria similar to what was expected to be followed by Lamer, C.J.C. in *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*:
 

...They must make recommendations on judges' remuneration by reference to objective criteria, not political expediencies. The goal is to present "an objective and fair set of recommendations dictated by the public interest"..... I recommend (but do not require) that the objectivity of the commission be ensured by including in the enabling legislation or regulations a list of relevant factors to guide the commission's

deliberations. These factors need not be exhaustive. A list of relevant factors might include, for example, increases in the cost of living, the need to ensure that judges' salaries remain adequate, as well as the need to attract excellent candidates to the judiciary.<sup>1</sup>

The clear intent is that the cumulative effect of all of the statutory factors should be considered by the Commission when determining its recommendations as to what remuneration is fair and reasonable.

### **Summary of Government's Position**

7. Government's view, taking into account all of the statutory factors, is that modest compensation adjustments are appropriate for both Judges and Judicial Justices and will result in fair and reasonable compensation for both groups of judicial officers. Government's overall position may be summarized as follows:

- The Court continues to attract more than sufficient highly qualified candidates, and the judicial complement is extremely stable. There is no demonstrated need to increase compensation to address any recruitment and retention issues.
- Others in the B.C. public sector are receiving modest compensation increases, in keeping with projected increases in the cost of living.
- The financial position of the government is relatively healthy, but forecasted surpluses are very small (less than 1% of the budget) as government responds to significant pent-up demand for services across the board.

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<sup>1</sup> *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3 ("PEI Reference"), para 173.

- The Government will continue to be required to make difficult funding decisions, both large and small, to ensure government priorities can be funded while maintaining affordable debt levels and a competitive tax environment.
- Justice sector funding reflects the overriding priority of investing in the system to enhance access to justice for British Columbians.
- Following a period of robust expansion, the province has recently seen a moderation in economic growth. Some indicators, particularly the housing sector, have not only slowed following previous strong growth, but have declined.
- Compensation paid to other judges and Judicial Justice equivalents in Canada is useful as a general comparison after taking into consideration the statutory requirement of “having regard to the differences between those jurisdictions and British Columbia”. This comparison helps to ensure that British Columbia’s judiciary are not significantly out of step with their counterparts elsewhere. However, compensation for British Columbia Judges and Judicial Justices should not be driven by a focus on ordinal rankings between jurisdictions, nor by funding decisions made in other jurisdictions, each of which has its own unique fiscal, statutory and policy environments. In particular, a focus on superior court judges’ compensation that is, in turn, driven by federal Deputy Minister salaries and estimates of private sector lawyers’ salaries should be avoided.
- The evidence for cross-provincial comparisons indicates that British Columbia’s judges’ and Judicial Justices’ salaries are not out of step with their provincial counterparts:
  - Most other provincial judges’ salaries are within plus/minus 10% of British Columbia’s judges; and

- While four of the other five provinces with positions equivalent to B.C.'s Judicial Justices pay higher salaries, there are differences in scope of jurisdiction that are meaningful in the compensation context. Further, most other provinces simply determine their Judicial Justice salary as a fixed percentage of their judges' salaries.
- The only change in jurisdiction for Judges is an increase in the small claims limit from \$25,000 to \$35,000, coupled with the removal of small claims matters \$5,000 and below, which are now heard by the Civil Resolution Tribunal. The most significant effect of this change is to reduce the number of small claims cases coming to Provincial Court by approximately 40%. There have been no changes in the jurisdiction of Judicial Justices.

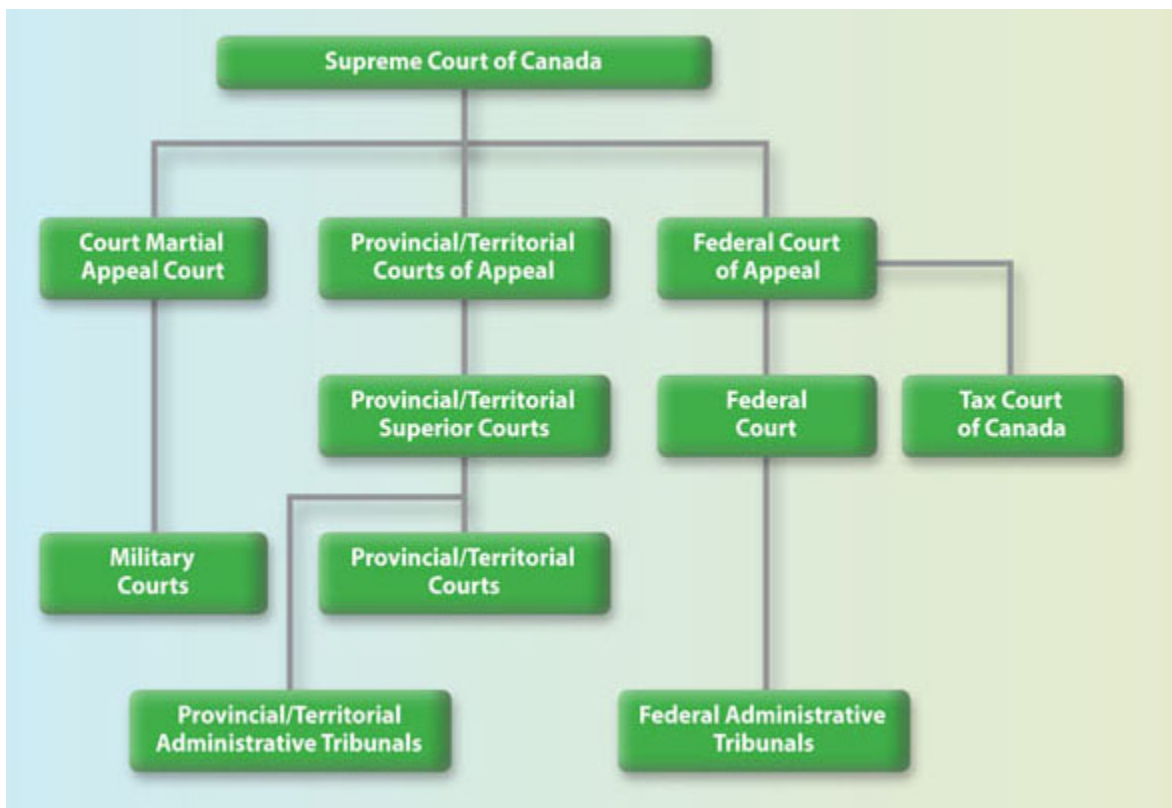


## The Justice System in British Columbia

8. In the following section of this submission, we provide a brief overview of Canada's court system, and the jurisdiction, roles and work of the Provincial Court Judges and Judicial Justices.

### Canada's Court System

9. The justice system encompasses criminal, civil, family and administrative law. The following diagram depicts the organization of Canada's court system.



10. In British Columbia, there are three levels of court: the Provincial Court, the Supreme Court and Court of Appeal.

11. The Provincial Court hears the majority of court cases in British Columbia – including all civil lawsuits for small claims between \$5,001 and \$35,000, approximately 50% of family law cases, most traffic and bylaw matters, over 95% of criminal cases, and most cases involving young offenders.
12. The Supreme Court of British Columbia is British Columbia's superior trial court. Established under Section 96 of the *Constitution Act, 1867*, superior courts are courts of inherent jurisdiction and can therefore hear any type of civil or criminal case, including offenses stipulated in section 469 of the *Criminal Code of Canada* including murder, treason, seditious offences, accessory to murder or treason and certain offences relating to war crimes and crimes against humanity. The Supreme Court also hears appeals from both the Provincial Court and arbitration.
13. The highest court in British Columbia is the Court of Appeal, which hears appeals from the Supreme Court, from the Provincial Court on some criminal matters, and reviews and appeals from administrative boards and tribunals. The *Court of Appeal Act, 1996* establishes the Court of Appeal, which is headed by the Chief Justice of British Columbia.

## **The British Columbia Provincial Court**

14. Provincial and territorial courts were established by provincial/territorial governments under enabling statutes and pursuant to Section 92 (14) of the *Constitution Act, 1867*. Cases heard in the Provincial Court fall into five main categories: criminal, family, youth court, small claims and traffic and bylaw cases. Most of the cases heard by provincial and territorial courts in Canada deal with the following matters:
  - o most criminal offences, except the most serious ones;
  - o family law matters (e.g., child support, child protection, adoption, but not divorce);

- young persons from 12 to 17 in conflict with the law;
- traffic and bylaw violations;
- provincial/territorial regulatory offences;
- small claims (civil cases that resolve private disputes involving limited sums of money); and
- all preliminary inquiries (hearings to determine whether there is enough evidence to justify a full trial in serious criminal cases).

15. The British Columbia Provincial Court was established in 1969, by the British Columbia *Provincial Court Act*. The Act sets out the jurisdiction of the court, the powers and duties of the chief judge, the requirements for appointment to the bench, the term of office for judges, and establishes and defines the role of the Judicial Council.

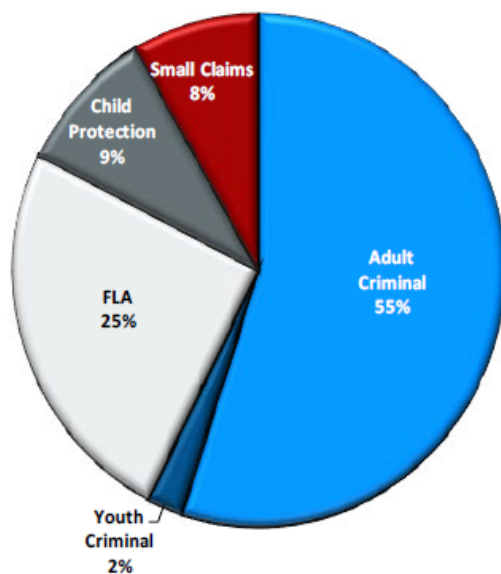
16. The jurisdiction of the Provincial Court changed June 1, 2017 when the Small Claims Act was amended to increase the small claims limit from \$25,000 to \$35,000, and to remove small claims under \$5,000. The amendments correlated to the introduction of the Civil Resolution Tribunal which resolves small claims disputes under \$5,000, as well as many strata disputes and certain motor vehicle disputes up to a monetary limit of \$50,000.

17. In 2017/18 more than 200,000 cases were initiated in the Provincial Court, including:

- 85,990 new traffic and bylaw cases, generally heard by Judicial Justices, up 14% from last year; and
- 114,584 new adult and youth criminal, family, child protection and small claims cases heard by Judges, down by 6% from the previous year.

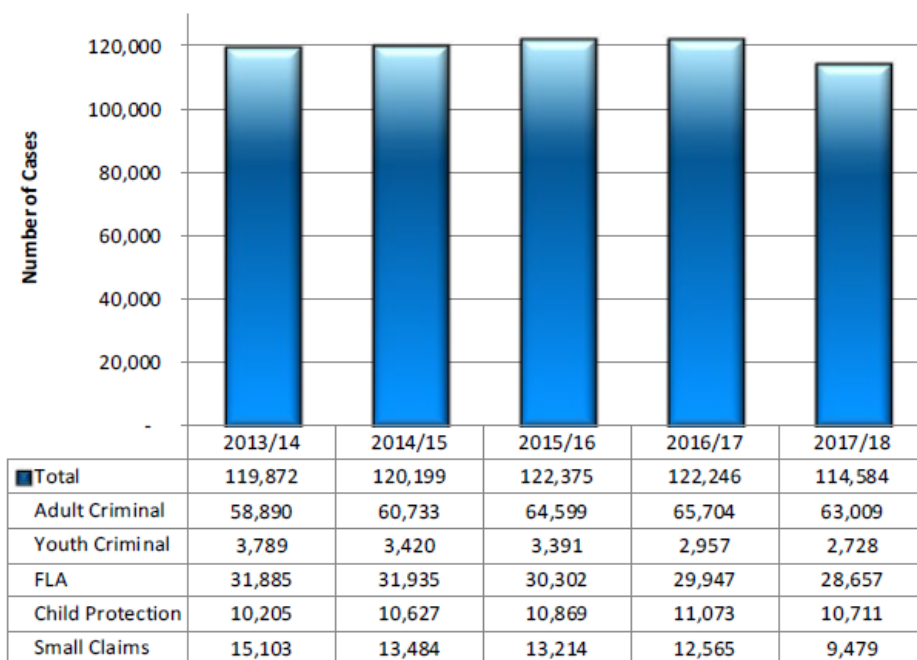
18. The 2017/18 Provincial Court Annual Report provides a percentage breakdown of the 114,584 new adult and youth criminal, family, child protection and small claims cases:

**FIGURE 13 - PERCENTAGE BREAKDOWN OF NEW CASES BY DIVISION 2017/18**



The number of new cases is decreasing

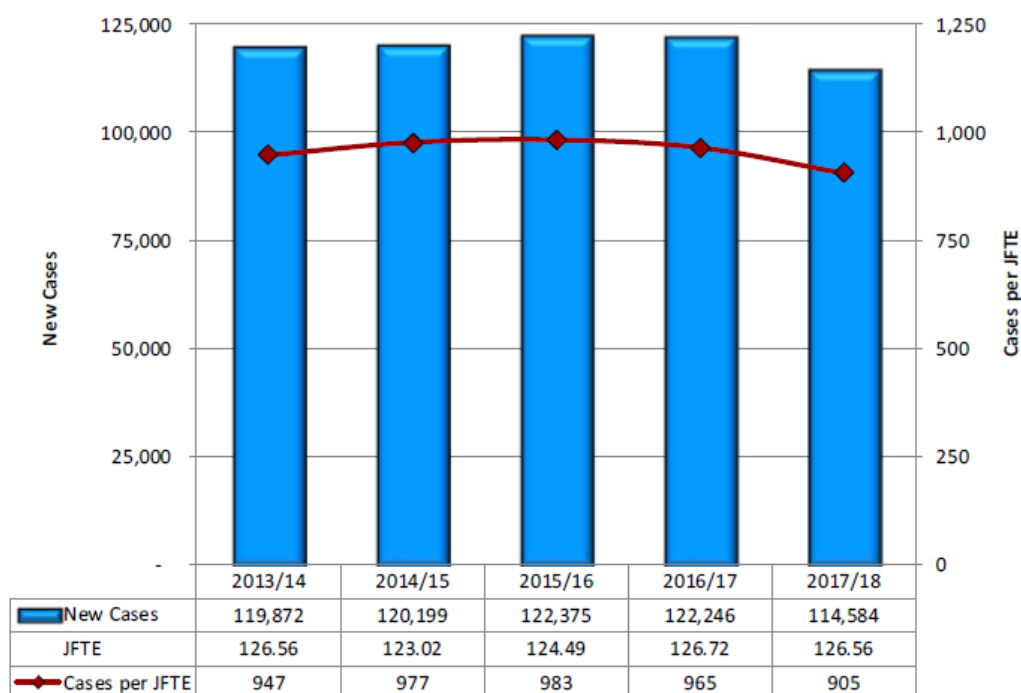
19. The 2017/18 Provincial Court Annual Report illustrates that the number of new cases has decreased by 6.2% since 2016/17. According to the 2017/18 annual report, the Court received the following number of new cases in each of the years since 2013/14:

**FIGURE 11 - NEW CASES BY DIVISION, 2013/14 - 2017/18**

The number of cases per full-time equivalent Judge is decreasing

20. The 2017/18 Provincial Court Annual Report also showed that the number of new cases per full time equivalent Judge has continued to decrease. The 905 new cases per judicial full time equivalent (FTE) in 2017/18 is significantly lower than the five-year average of 955.

FIGURE 10 - NEW CASES AND NEW CASES PER JFTE, 2013/14 - 2017/18

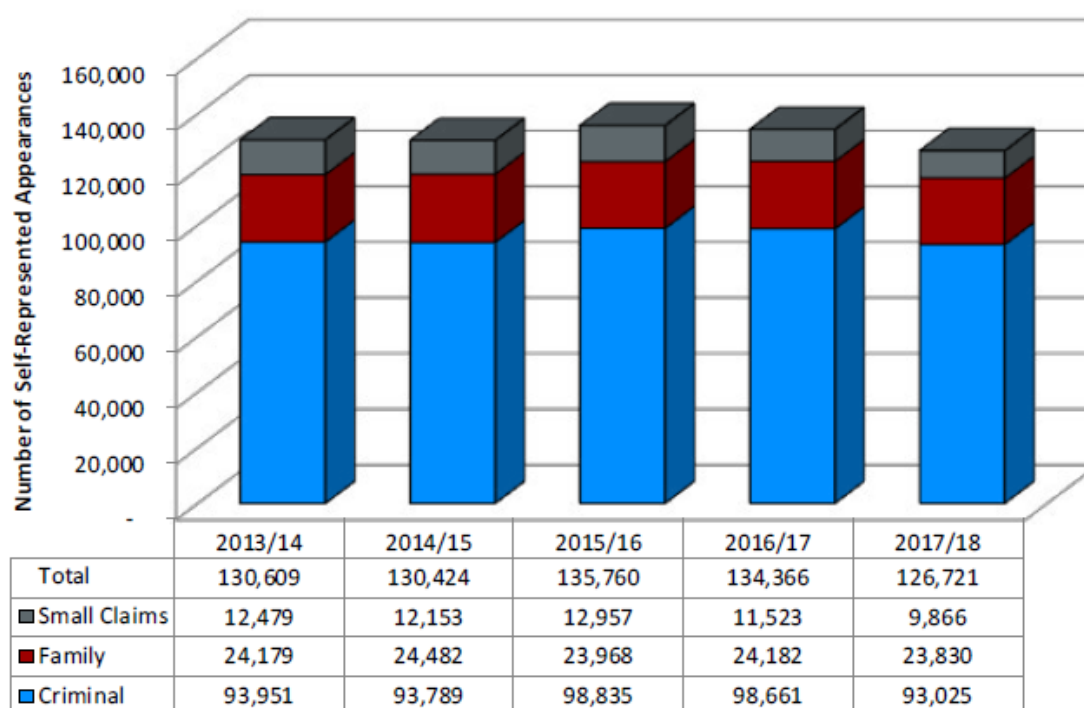


21. The 2017/18 Provincial Court Annual Report credits the newly-established Civil Resolution Tribunal for decreasing the number of new small claims files before the Court in 2017/18, stating “a decrease this year in the number of new small claims files appears to be related to the change in jurisdiction”. The caseload volume for small claims decreased by 37% between 2013/14 and 2017/18. Most notably, in 2016/17 there were 12,565 new small claims cases, and in 2017/18 there were only 9,479<sup>2</sup>.

### The percentage of self-represented litigants is decreasing

22. In 2017/18 the number of self-represented appearances decreased by 6% compared to 2016/17. The overall rate of self-representation is at its lowest point in five years

<sup>2</sup> <http://www.provincialcourt.bc.ca/downloads/pdf/AnnualReport2017-2018.pdf>, p. 31-32

**FIGURE 35 - NUMBER OF SELF-REPRESENTED APPEARANCES BY DIVISION, 2013/14 - 2017/18**

## Provincial Court Judges

23. Provincial Court judges are appointed by Order in Council of the provincial government following a recommendation of the Judicial Council. Judges of the Provincial Court exercise powers given to them by laws enacted by the federal and provincial governments, and may hear all matters that come before the Court..
24. The *Provincial Court Act* establishes the Independent Judicial Council, comprised of nine people, including the Chief Judge, an Associate Chief Judge, four members appointed by the Attorney General of B.C., the president of the Provincial Court Judges Association, president of B.C. Branch of Canadian Bar Association and president of the Law Society of B.C. The Judicial Council's primary responsibility is to advise government on the appointment of Provincial Court Judges and Judicial Justices.

25. In the 2017/18 fiscal year, 11 judges were appointed. On October 19, 2018 the Honourable Judge Melissa Gillespie was appointed Chief Judge.

26. Currently, the Court has approximately 150 Provincial Court Judges in various locations throughout the province:

- o 117 full-time Judges
- o 24 Senior (part-time) Judges
- o 2 Associate Chief Judges
- o 1 judge currently sitting part-time.

27. This includes all judges appointed since the start of 2019: one on January 14, 2019, one on February 25, 2019, two on May 29, 2019 and one appointment effective June 12, 2019<sup>3</sup>.

28. Additionally, there are 4 full time judges and 1 senior judge not sitting due to long-term disability conditions<sup>4</sup>.

29. Overall, the complement of judges has remained stable, at an average of 125.47 judicial FTEs over the past five years.

## Judgments

30. Most judgments of the Provincial Court are delivered orally, however Provincial Court Judges are able to “reserve” judgment and draft written reasons for judgments when cases require more time to consider and explain decisions clearly. In the previous three years, an average of 417 written judgements were published each year.

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<sup>3</sup> <http://www.provincialcourt.bc.ca/news-reports/appointment-announcements>

<sup>4</sup> <http://www.provincialcourt.bc.ca/about-the-court/judicial-officers/judges-court/by-district>



Published Written Reason for Judgments by Year BC Provincial Court <sup>5</sup>	
Year	Judgments
2016	430
2017	445
2018	378

## Provincial Court Judicial Justices

### Appointment of Judicial Justices

31. Judicial Justices are appointed pursuant to Section 30.2 of the *Provincial Court Act* and may be assigned to a variety of duties by the Chief Judge. The *PCA* requires that applicants must have been a member in good standing of the Law Society of British Columbia for at least five years or have other legal or judicial experience satisfactory to the Judicial Council.

32. Judicial Justices duties include conducting bail hearings and reviewing search warrant applications at the Justice Centre and presiding in tariff and bylaw courts and small claims payment hearings. Judicial Justices also hear an assortment of preliminary matters, including arraignment hearings in some specialized courts.

33. As of March 14, 2019, the complement of 30 Judicial Justices includes:

- 7 Judicial Justices appointed to service on a full-time basis;
- 22 Judicial Justices appointed to service on a per diem basis; and
- 1 full-time Judicial Justice currently sitting part-time.<sup>6</sup>

<sup>5</sup> <http://www.provincialcourt.bc.ca/judgments.php?link=http://www.canlii.org/en/bc/bcpc/>.

<sup>6</sup> <http://www.provincialcourt.bc.ca/about-the-court/judicial-officers/judicial-justices>

34. On March 13, 2019 two Provincial Court Judicial Justices were appointed<sup>7</sup>.

### Duties and Responsibilities of Judicial Justices

35. Judicial Justices may be appointed to serve on a full-time basis or part-time for a 12-year fixed term of appointment. Within their jurisdiction, B.C.'s Judicial Justices perform an important role in administering justice in British Columbia. Judicial Justices are assigned a variety of duties by the Chief Judge, including:

- In courtrooms:
  - Hearing traffic matters and ticketable offences under provincial laws, as well as municipal bylaw matters
  - conducting small claims payment hearings
- In Justice Centres:
  - considering search warrant applications and hear applications for detention or bail
- Conducting criminal arraignment hearings and dealing with applications under the Criminal Code in the Victoria Integrated Court, one of the province's specialized courts.

36. Those who adjudicate traffic and bylaw matters are required to deal with a high volume of cases and arrive at decisions quickly and efficiently, usually to self-represented litigants who may be unfamiliar with the operations of the court. Those who staff the Justice Centre make decisions on search warrant applications and conduct interim release hearings, which have clear implications for individuals' property and whether an accused is to be returned to the community or remain in custody.

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<sup>7</sup> <http://www.provincialcourt.bc.ca/news-reports/appointment-announcements>

37. Judicial justices do not deal with applications under the *Canadian Charter of Rights and Freedoms* or offences that may result in imprisonment. If a Charter issue is raised in traffic court or in another matter normally heard by a judicial justice, the matter is referred to a judge. Matters where the prosecution is seeking jail are also generally scheduled to be heard by a judge.

38. Section 2.1 of the *Provincial Court Act* describes matters in Provincial Court that can be heard only by a Provincial Court Judge:

- commit for contempt of court,
- hear a matter for which notice under section 8 of the *Constitutional Question Act* is required,
- hear a matter that involves a determination of aboriginal or treaty rights or claims,
- hear a matter arising under the *Canadian Charter of Rights and Freedoms* for which notice under section 8 of the *Constitutional Question Act* is not required, and
- preside over the trial of a person charged with an offence for which, on conviction, the person is liable to be sentenced to a term of imprisonment.

## British Columbia Supreme Court

39. The Supreme Court of British Columbia has jurisdiction to hear and decide any matter that comes before it, unless a statute or rule limits that authority or grants exclusive jurisdiction to another court or tribunal. The Supreme Court hears matters related to larger civil claims and family matters, as well as most serious criminal cases. It also hears appeals from the Provincial Court, and reviews the decisions of administrative tribunals, including the Labour

Relations Board, Workers Compensation Appeal Tribunal, the B.C. Human Rights Tribunal and residential tenancies arbitration decisions.

40. The Supreme Court is a circuit court in which all the judges and masters travel throughout the province to preside over cases. The Supreme Court sits in seven judicial districts and has resident judges in Chilliwack, Kamloops, Kelowna, Nanaimo, Nelson, New Westminster, Prince George, Vancouver, and Victoria. The Supreme Court also sits in other locations where there is no resident judge or master as required, including Campbell River, Cranbrook, Courtenay, Dawson Creek, Duncan, Fort St. John, Golden, Penticton, Port Alberni, Powell River, Prince Rupert, Quesnel, Revelstoke, Rossland, Salmon Arm, Smithers, Terrace, Vernon, and Williams Lake.

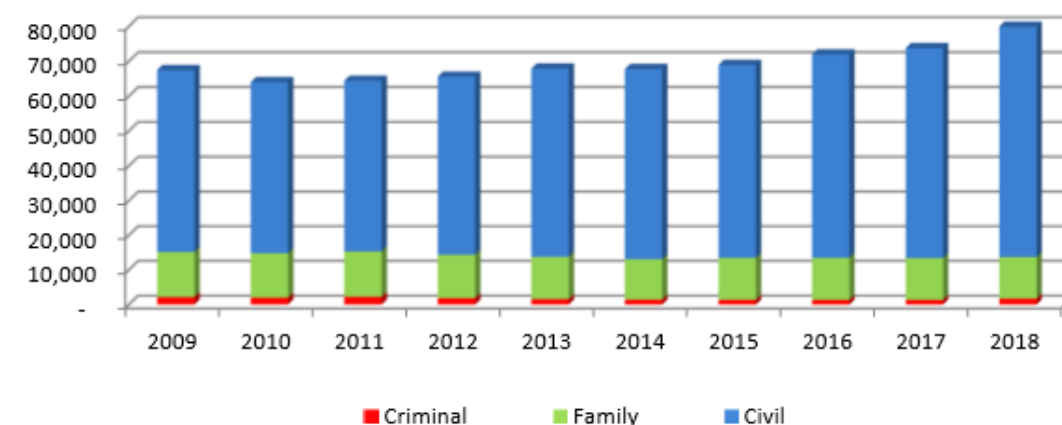
### **Complement of Supreme Court Judges**

41. As of December 31, 2018, the Supreme Court had 104 justices: the Chief Justice, the Associate Chief Justice, 85 full-time justices and 17 supernumerary justices. As of December 31, 2018, there were five vacancies<sup>1</sup> on the Supreme Court.

### **New Filings**

42. In 2017, there were 73,723 new filings in the Supreme Court, which increased to 79,890 new filings in 2018.

**Figure 1: New Criminal, Family and Civil Filings**



	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
■ Civil	52,301	49,163	49,058	51,193	54,075	54,661	55,446	58,501	60,334	66,182
■ Family	13,026	12,832	13,110	12,564	12,263	11,680	12,086	12,123	12,039	12,057
■ Criminal	2,123	1,978	2,212	1,834	1,523	1,396	1,362	1,336	1,350	1,651

Data Source: Courthouse Activity Cube, CRIM tables - March 5, 2019

Historical numbers are updated to current information. Data may change due to data settling and corrections.

43. Since 2009, the case load in the Supreme Court has increased by 15.6%.

## Judgments

44. In addition to their normal workload of hearing cases and applications, decision issues, attending judicial functions out of the courtroom and presiding at numerous case conferences before and after regulator court hours, Supreme Court judges are responsible for writing reasons for judgments. The 2018 Annual Report of the Supreme Court of British Columbia<sup>8</sup> reports that in 2018 a total of 1,279 written judgements were published.

<sup>8</sup> [https://www.courts.gov.bc.ca/supreme\\_court/about\\_the\\_supreme\\_court/annual\\_reports/2018\\_SC\\_Annual\\_Report.pdf](https://www.courts.gov.bc.ca/supreme_court/about_the_supreme_court/annual_reports/2018_SC_Annual_Report.pdf)

**Figure 14: Published Reasons for Judgment by Subject, Type, and Year**

This table provides the number of published reasons for judgment by subject (civil, criminal and family) and type (written or transcribed oral) from 2011-2018. The reasons for judgment that **are included** in the table that follows are:

1. published written reasons for judgment and
2. transcribed oral reasons for judgment that the issuing judge, master or registrar has directed be published.

	2011	2012	2013	2014	2015	2016	2017	2018
<b>CIVIL</b>								
Oral	274	267	260	285	316	306	340	305
Written	1,120	1,120	1,133	1,181	1,050	1,009	868	895
<b>Total</b>	<b>1,394</b>	<b>1,387</b>	<b>1,393</b>	<b>1,466</b>	<b>1,366</b>	<b>1,315</b>	<b>1,208</b>	<b>1,200</b>
<b>CRIMINAL</b>								
Oral	198	188	312	348	354	280	344	377
Written	116	144	123	120	114	63	113	109
<b>Total</b>	<b>314</b>	<b>332</b>	<b>435</b>	<b>468</b>	<b>468</b>	<b>343</b>	<b>457</b>	<b>486</b>
<b>FAMILY</b>								
Oral	41	29	54	66	96	94	86	95
Written	211	231	285	299	300	267	272	275
<b>Total</b>	<b>252</b>	<b>260</b>	<b>339</b>	<b>365</b>	<b>396</b>	<b>361</b>	<b>358</b>	<b>370</b>
<b>TOTAL</b>	<b>1,960</b>	<b>1,979</b>	<b>2,167</b>	<b>2,299</b>	<b>2,230</b>	<b>2,019</b>	<b>2,023</b>	<b>2,056</b>

## Investing in the Justice System – Innovation and Reform

45. The British Columbia Government is committed to a justice and public safety sector founded on the rule of law – one that is fair, protects people, is sustainable, and has the public's confidence.

46. The operating environment of the Ministry of Attorney General is complex and challenging. It includes numerous factors which continue to shape and create policy and funding pressures for the priorities of the justice sector, including:

- The ongoing dialogue, both within and outside the courts, on the need to improve access to justice;
- The opioid public health emergency;
- The legalization of non-medical cannabis;
- Mental health and addiction issues demanding increasing resources and enhanced coordination of services;
- Over-representation of Indigenous people in the sector;
- Violence against women;
- Guns and gang violence;
- Organized crime and gang involvement in illegal gambling and money-laundering in gambling facilities;
- Increasing vehicle crashes and traffic injuries;
- Increasing service delivery demands and costs;
- Court decisions impacting service delivery, including timeliness of service;
- Rapidly changing technology and demand for digitized services;
- Federal government commitments that impact the province;
- Constitutional and legislative requirements;
- External audits, reviews and commissions of inquiry.

It is critical for the health of the justice system and for British Columbia society that government addresses all of these challenges – none are optional and none are simple.

47. The Attorney General's strategies to increase access to justice include:

- Developing an Access to Justice Framework and Action Plan that will be used to set policy, guide strategic planning for the justice sector, establish funding priorities, promote collaboration among government ministries, partners and the public, and define outcomes for continuous improvement;

- Delivering client-based, accessible and effective court services that people count on while supporting the smooth operation and security of the courts of British Columbia;
- Improving and support legal aid programs and services for British Columbians;
- Improving dispute resolution services for B.C. families; and
- Supporting the creation of an integrated network of independent community legal clinics to provide family law and poverty law services, as well as other related services.

Further details of spending initiatives to address these goals are provided in the section “Funding to Enhance Access to Justice” below.

## Specialized Courts

48. Government recognizes the need to move beyond the traditional justice system to address unique criminal justice issues in the most effective, evidence-based way. Specialized courts represent a specific policy direction, as well as a particular use of public resources, that are frequently beyond those normally required for courtroom operation. The growing number of specialized courts and judicial initiatives in British Columbia indicate that the judiciary, government, communities, and service providers are committed to finding effective solutions to challenges in the justice system.

49. The province has six Indigenous Courts to address criminal matters in New Westminster, North Vancouver, Kamloops, Duncan, Nicola Valley and Prince George. These are sentencing courts that provide support to assist with rehabilitation, and to reduce recidivism, while acknowledging and repairing harm done to victims and community. This court does not conduct trial. Local Indigenous communities are encouraged to contribute to the proceedings and incorporate traditional indigenous practices.



50. The Drug Treatment Court of Vancouver was created in 2001 through the efforts of the federal and provincial governments and the judiciary. Modelled on the Toronto Drug Treatment Court, it provides an alternative criminal court process for individuals who have committed drug offences or minor Criminal Code offences arising from addiction to controlled substances.
51. Opened in 2008, the Vancouver Downtown Community Court is a collaboration between the Government and the Office of the Chief Judge that aims to prevent criminal activity through a partnership of justice, social and health care services, and onsite victim support workers.
52. Domestic Violence Courts in the province use different models in different locations. In Duncan and Nanaimo, the judge led domestic violence courts adopt a collaborative approach to coordinating information and services and facilitating access to information and services for victims and offenders. Kelowna and Penticton have scheduled days for domestic violence cases.
53. The Victoria Integrated Court, opened in 2011, is not a trial court, but a court where eligibility individuals may have bail hearings, plead guilty and be sentenced. Judges at the Victoria Integrated Court are made aware about housing, medical and other issues affecting an offender, and hear recommendations for orders to help a team support and supervise the offender. By improving access to health, social and economic services, the Victoria Integrated Court aims to improve public safety and to hold offenders accountable for their actions in a timely manner.

### **Civil Resolution Tribunal**

54. The Civil Resolution Tribunal (CRT) is the world's first online dispute resolution system that is fully integrated in the justice system. Established in 2017, the CRT provides the public with access to interactive information pathways, tools, and a variety of dispute resolution

methods including negotiation, facilitation, and if necessary, adjudication. Currently, the CRT resolves certain motor vehicle injury disputes up to \$50,000, small claims disputes \$5,000 and under (including shared accommodations and some housing disputes under \$5,000), and strata property disputes and societies and cooperative association disputes of any amount.

55. The CRT model aims to widen access to justice by providing seamless, simple, end-to-end online dispute resolution processes that is fair and convenient to the public<sup>9</sup>. The CRT also demonstrates how alternative services are able to decrease the caseload of the judiciary, as historically, claims under \$5,000 make up approximately 40% of all small claims files<sup>10</sup>.
56. As of April 2019, the CRT has been responsible for a total of 10,631 disputes. 8,837 of these disputes were completed by April 2019. Of these total disputes, 8,864 were Small Claim disputes. The April 2019 “Statistic Snapshot” provides details regarding the status of these disputes<sup>11</sup>:
- Total Small Claims Disputes: 8,864
  - Completed Small Claims Disputes: 7,457
  - Outstanding Small Claims Disputes: 1,407
  - Small Claims Disputes resolved by default decision: 2,627
  - Small Claims Disputes resolved by adjudication (CRT member decision): 1,510
  - Total notices of objection to small claims decisions (both default and adjudication) since June 2017: 236.

The CRT anonymously surveys individuals who have gone through the tribunal process.

Feedback<sup>12</sup> from April to December 2018 indicate that:

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<sup>9</sup> [http://www.bailii.org/bailii/lecture/2018/BAIILII\\_Lecture\\_2018.pdf](http://www.bailii.org/bailii/lecture/2018/BAIILII_Lecture_2018.pdf);

<sup>10</sup> <http://www.provincialcourt.bc.ca/downloads/pdf/AnnualReport2017-2018.pdf>, page 35

<sup>11</sup> <https://civilresolutionbc.ca/crt-statistics-snapshot-april-2019/>

<sup>12</sup> <https://civilresolutionbc.ca/participant-satisfaction-survey-april-december-2018/>

- 75% were likely to recommend the CRT to others;
- 71% agree or strongly agree that CRT's online services were easy to use;
- 85% agree or strongly agree that CRT staff were professional, and 82% agree or strongly agree that they were treated fairly throughout the process;
- 77% agree or strongly agree that the CRT provided information that prepared them for dispute resolution.

## The Judicial Compensation Process in British Columbia

57. It is a fundamental principle of the Canadian constitution that the courts must be independent of government and private actors. The Supreme Court of Canada has recognized three essential conditions for judicial independence: security of tenure, financial security and administrative independence.
58. As a constitutional requirement for financial security, judicial remuneration must not become the subject of negotiation between the judiciary and government but must be established through a process that incorporates an independent and effective judicial compensation commission that reports and makes recommendations on judicial remuneration.
59. The general constitutional principles underlying the setting of judicial compensation were described by the Supreme Court of Canada in *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island* [1997] S.C.R. 3 (“PEI Reference”):
- First, as a general constitutional principle, the salaries of provincial court judges can be reduced, increased, or frozen, either as part of an overall economic measure which affects the salaries of all or some persons who are remunerated from public funds, or as part of a measure which is directed at provincial court judges as a class.
  - However, any changes to or freezes in judicial remuneration require prior recourse to a special process, which is independent, effective, and objective, for determining judicial remuneration, to avoid the possibility of, or the appearance of, political interference through economic manipulation. What judicial independence requires is an independent body, along the lines of the bodies that exist in many provinces and at the federal level to set or recommend the levels of judicial remuneration.
  - Governments are constitutionally bound to go through the commission process. The recommendations of the commission would not be binding on the executive or

the legislature. Nevertheless, though those recommendations are non-binding, they should not be set aside lightly, and, if the executive or the legislature chooses to depart from them, it has to justify its decision — if need be, in a court of law.

- o Second, under no circumstances is it permissible for the judiciary — not only collectively through representative organizations, but also as individuals — to engage in negotiations over remuneration with the executive or representatives of the legislature.
- o Third, and finally, any reductions to judicial remuneration, including *de facto* reductions through the erosion of judicial salaries by inflation, cannot take those salaries below a basic minimum level of remuneration which is required for the office of a judge. 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.<sup>13</sup>

60. In this submission, Government re-emphasizes its respect for and its commitment to the principle of judicial independence. In accordance with the constitutional requirement, the *Judicial Compensation Act* was enacted in 2002 and requires an independent commission to be appointed every three years to consider and report on all matters respecting the remuneration, allowances, and benefits of provincial court judges and judicial justices. Since 2002, there have been five Judges Compensation Commissions (JCC) and Judicial Justices Compensation Commissions (JJCCs) in 2004, 2007, 2010, 2013 (plus an additional JJCC in 2002).

61. In 2015, the *Act* was amended to merge the Provincial Court Judges and Judicial Justices compensation commissions into a single Judicial Compensation Commission. The

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<sup>13</sup> *PEI Reference*, paras 133-135.

amendments also updated the factors the Commission is required to consider when formulating its recommendations, and included a formula for participation costs. The 2016 Judicial Compensation Commission was the first commission to be formed following the amendments.

## Summary of Current Compensation – Judges

62. The compensation paid to Judges includes salary as well as pension and other benefits. The current employer-paid compensation for Provincial Court Judges is as follows:

- **Salary (2019/20):** \$270,000
- **Employer Pension Contributions:** \$67,851 (25.13% of a Judge's salary)
- **Other Benefits (Coverage for CPP, Health Benefits, Disability Benefits):** \$11,234
- **Total Compensation**<sup>14</sup>: \$349,085

## Summary of Current Compensation – Judicial Justices

63. The compensation paid to full-time Judicial Justices includes salary as well as pension and other benefits. Part-time JJs receive payment in lieu of benefits as part of the formula for determining their per diems. The current employer-paid compensation for Provincial Court Judicial Justices is as follows:

- **Salary (2019/20):** \$122,000
- **Employer Pension Contributions:** \$12,018
- **Other Benefits (Coverage for CPP, Health Benefits, Disability Benefits):** \$9,300
- **Total Full-time Compensation:** \$143,327
- **Per Diem (Part-time Judicial Justices):** \$787.00

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<sup>14</sup> These figures are for a Judge with Couple status. The value of Health Benefits differ for Judges with dependents, resulting in the following total compensation figures: Judge with Single status \$347,717, Judge with Family status \$350,009.

## Previous Compensation Commissions

64. This Commission is not bound by its predecessors, although it may review their work.

Following is a summary of the salary recommendations and responses from past commissions.

## Judges Compensation Commissions

### Salary Summary – Changes by Commission

Commission Year	Commission recommended salary increases over three fiscal years	Salary increases implemented over three fiscal years
2004	25.5%	25.5%
2007	14.2%	14.2%
2010	4.9%	4.9%^
2013	6.6%	4.1%
2016	11.5%	7.0%*
<b>Total change (all commissions)</b>	<b>62.7%</b>	<b>55.7%</b>

^ imposed by the court

\*currently under judicial review

### The 2004 Judges Compensation Commission

65. Due to the implementation of the *Judicial Compensation Act* in 2002, and the resulting switch from calendar years to fiscal years for considering judicial compensation, the 2004 commission made recommendations for the period of January 1, 2004 to March 31, 2008.

The 2004 Commission recommended judges salaries to be as follows:

- January 2004 – March 31, 2005: \$161,250 (the pre-commission base rate) + change in B.C. Consumer Price Index (CPI)
- 2005/06: Previous year's salary + change in BC CPI
- 2006/07: \$198,000

- 2007/08: \$198,000 + change in BC CPI.
66. The Legislative Assembly replaced the first two-year recommendations with no increases but accepted the final two years recommendations. As a result, the salaries for Judges were:
- January 2004 – March 31, 2005: \$161,250
  - 2005/06: \$161,250
  - 2006/07: \$198,000
  - 2007/08: \$202,356.
67. While the Judges did not receive an increase in the first two years, the cumulative increase was 25.5% over the four years and in the third year matched the salary recommended by the 2004 Commission.

#### **The 2007 Judges Compensation Commission**

68. The 2007 Commission recommended the following salary levels:
- 2008/09: \$220,000 (an increase of 8.7%)
  - 2009/10: \$225,500 (an increase of 2.5%)
  - 2010/11: \$231,138 (an increase of 2.5%).
69. All the 2007 Judicial Compensation Commission's recommendations were accepted by Government. The accepted recommendations resulted in a 14.2% increase in salary level between 2008/09 to 2010/11.

#### **The 2010 Judges Compensation Commission**

70. The 2010 commission recommended judges salary increases as follows:
- 2011/12: 0%
  - 2012/13: 0%
  - 2013/14: cumulative CPI change over the preceding three years.



71. The 2010 commission expressed the view “that the current financial condition of the Government does not support salary increases in 2011/12 and 2012/13. This view [was] clearly shared by the Association, which [had] not requested an increase in those years.”<sup>15</sup>
72. In May 2011, the Government brought forward its response to the 2010 Judges Compensation Commission to the Legislative Assembly. Citing the government’s net-zero compensation mandate at that time, which had been applied across the public sector, the response rejected the salary increase in 2013/14 and substituted a 0% increase.
73. The Legislative Assembly voted unanimously to accept Government’s proposed response.
74. The response was challenged by the Provincial Court Judges’ Association (PCJA) in B.C. Supreme Court, and in July 2012 the court ruled that the response did not meet the constitutional test as set out by the Supreme Court of Canada. Accordingly, the 2010 JCC report was remitted to government to bring forward a new response.
75. Government’s second response was approved unanimously by the Legislative Assembly on March 12, 2013. The response made the following salary substitution:
- o The salary increase for the fiscal year 2013/14 was 1.5% rather than the 4.9% that would represent the amount required by the JCC’s recommendation. The substituted figure represented the estimated change in CPI for *only* the year 2013/14 and resulted in judges’ salaries increasing to \$234,605.
76. On May 10, 2013, the PCJA filed a petition in B.C. Supreme Court challenging the Legislative Assembly’s second response. In a decision published on March 3, 2014, the Supreme Court dismissed the petition. Mr. Justice Savage found legitimate reasons for the Legislative Assembly to have rejected the recommendations based, in part, on the economic downturn that had occurred since the commission.

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<sup>15</sup> Report of the 2010 Judges Compensation Commission, para 33.

77. The PCJA appealed the decision of Mr. Justice Savage. In a 2:1 decision released on March 27, 2015, the B.C. Court of Appeal (BCCA) quashed the 2014 judicial review decision and made a declaration that all of the 2010 Commission's recommendations should be implemented. The BCCA held that the Province was not entitled to rely on economic circumstances that occurred following the Commission, or to advance new substantive reasons for rejecting the Commission's recommendations

### **The 2013 Judges Compensation Commission**

78. The 2013 commission was responsible for making recommendations for the period of April 1, 2014 to March 31, 2017. As the Government's response to the 2010 Commission report was still before the courts when the 2013 report was published, the Commission used as its starting point the actual compensation the Judges received following the 2010 Commission.

79. The commission, in its report, recommended the annual salary of puisne judges be set at the following:

- effective April 1, 2014, \$241,500;
- effective April 1, 2015, the salary be increased by 1.5% to \$245,122;
- effective April 1, 2016, the salary be increased by 2% to \$250,024.

80. The Government in its response proposed to the Legislative Assembly that many of the Commission's recommendations be accepted, but that the annual salary for Provincial Court judges be set as follows:

- effective April 1, 2014, \$236,950;
- effective April 1, 2015, the salary be increased by 1.5% to \$240,504;
- effective April 1, 2016, the salary be increased by 1.5% to \$244,112.

81. The PCJA filed a petition for judicial review of Government's response to the 2013 Commission report. On July 29, 2016 the Supreme Court allowed the petition. Justice

Grauer found that in rejecting the 2013 JCC recommendations regarding salary and pension, the Government did not adhere to the approach mandated by the Act and the Constitution of Canada.

82. The Government appealed Justice Grauer’s decision, and the PCJA cross-appealed on the issue of remedy. On February 7, 2017, after the 2016 Commission had issued its report, the B.C. Court of Appeal (“BCCA”) ordered the Legislature to reconsider the Legislature’s response to the 2013 Commission Report. The previous decision of the BCCA respecting the 2010 Commission Report had raised the salary and pension accrual rates of the judges for the 2013/2014 fiscal year as recommended by the 2010 Commission: instead of the 1.5% increase approved by the Legislative Assembly, the judges were awarded a 4.9% increase, resulting in a salary of \$242,464 for that year. In the February 2017 decision the BCCA held that those changes should be taken into account when remuneration was set for the three years of the 2013 Commission’s mandate.

83. Accordingly, a reconsideration of the 2013 Commission report was tabled by the Attorney General and approved by the Legislative Assembly on October 25, 2017. The reconsidered response raised the salaries of PCJs for the three years covered by the 2013 Commission as follows:

- 2014/15: \$244,889
- 2015/16: \$248,562
- 2016/17: \$252,290<sup>16</sup>

Those salaries were higher than the salaries recommended by the 2013 Commission, and the increases represented a cumulative 4.1% increase over three years above the court-imposed salary increase flowing from the 2010 commission process.

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<sup>16</sup> <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/judicial-compensation-commission/judicial-compensation-commission/govt-proposed-reconsideration-2013jcc.pdf>

## Judges Pension Summary

84. Subject to Section 17(1) of the *Judicial Compensation Act*, the Public Service Pension Plan applies to every judge. Under the Act's provisions, Judges receive accelerated benefits compared to regular members of the Plan. The principal differences are:

- o An accrual rate of 3.0% instead of 1.85%<sup>17</sup>;
- o Pension calculated on 3 years' highest average salary (HAS) instead of 5 years.

85. In addition, the contributions required to fund judges' pensions do not have the same ratio as for regular members of the Plan. The 2007 Commission recommended that the ratio of contributions from active members and government be fixed by statute. As a result, while the actual amounts contributed may change following actuarial analyses, the contribution rates for government as the employer and for Judges are set by Section 18 (1) of the Act as follows:

- o The total amount of the contributions required to fund the pension benefits provided under this Act, as determined under subsection (1), must be paid as follows:
  - (a) the active members must contribute 24% of that amount;
  - (b) the government must contribute 76% of that amount.

Currently, government contributes \$67,851 per Judges (approximately 25.13% of a Judge's salary), and an individual Judge contributes \$21,427 (approximately 7.94% of a Judge's salary). By comparison, the ratio of contributions for regular members of the Plan is 48% by the employee and 52% by government.

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<sup>17</sup> As a result of the 2010 JCC process, the accrual rate for 2013/14 was 3.5%.

## **Judges – Other Benefits Summary**

### **Flexible Benefits Program**

86. In 2007, government and the PCJA submitted a joint submission proposing an increase to judges professional development allowance. As a result, the Commission recommended that the total annual amount of allowance per judge should be \$4,000, with the ability to carry over any unused portion for one year. Government accepted this recommendation.

87. Since April 1, 2013 Judges have been enrolled in the Flexible Benefits Program, a comprehensive benefits program that permits individual members to make a number of choices in order to tailor their benefits to their personal needs. Benefits included in the Plan are:

- Extended health (prescription drugs, vision, paramedical services such as massage and physiotherapy);
- Dental;
- Life insurance;
- Accidental Death and Dismemberment Insurance (optional); and
- Medical Services Plan premium coverage.

Since April 1, 2013, no proposed changes to flexible benefits have been recommended.

### **Vacation Days**

88. All Judges receive 30 vacations days per year upon appointment to the bench.

### **Professional Development Allowance**

89. In 2007, government and the PCJA submitted a joint submission proposing an increase to judges professional development allowance. As a result, the Commission recommended that the total annual amount of allowance per judge should be \$4,000, with the ability to carry over any unused portion for one year. Government accepted this recommendation.

## Judicial Justices Compensation Commissions

### Salary Summary -- Changes by Commission

Commission year	Commission recommendations – salary increases over three fiscal years	Salary increases implemented over three fiscal years
2002	16.5%	5.0%
2004	6.5%	6.5%
2007	26.5%	26.5%
2010	8%	4.9%
2013	9%	5.5%
2016	16.8%	10.7%
<b>Total change (all commissions)</b>	<b>83.3%</b>	<b>59.1%</b>

### The 2002 Judicial Justices Compensation Commission

90. The 2002 Judicial Justices Compensation Committee was the first independent commission to review the compensation of Judicial Justices of the Peace. The committee had recommended the following salary increases on a base salary of \$70,312:

- 2001: 2.5%
- 2002: 2.5%
- 2003: 2.5%
- 2004: 9.0%

91. The Legislature accepted the recommendation for a salary increase in the first years but rejected the recommendations for the final two years and substituted increases of zero per cent for both years as part of the zero-increase public sector compensation policy. This resulted in a base salary at the end of the 2002 Commission being \$73,872.

### **The 2004 Judicial Justices Compensation Commission**

92. The 2004 Judicial Justices of the Peace Compensation Commission was the first to report under the Judicial Compensation Act. The Commission recommended that the salary for JJs be set at:

- Jan 1, 2005: \$75,600
- 2005/06: 0%
- 2006/06: 2%
- 2007/08: 2%

93. The legislature rejected the recommendations for 2004 and 2005 in accordance with the zero-increase public sector compensation policy. It did, however, add the increase of 2.3% recommended by the commission for January 2005 to the recommended 2% increase for 2006/07. As a result, JJs received an increase of approximately 6.5% over the three years, albeit the initial increase delayed by two years:

- 2005/06: \$73,872
- 2006/07: \$77,112
- 2007/08: \$78,654.

### **The 2007 Judicial Justices Compensation Commission**

94. Shortly before the appointment of the 2007 Commission, the Office of the Chief Judge created the office of part time Judicial Justice, to be remunerated on a per diem basis. The 2007 commission was responsible for recommending remuneration for both the full time Judicial Justices and the new per diem Judicial Justices.

95. The 2007 commission made the following specific recommendations:

Full-time JJs

96. Salary was increased as follows, from a pre-commission base of \$78,654:

- 2008/09: \$94,730
- 2009/10: \$97,100
- 2010/11: \$99,525

97. These recommendations represented a cumulative increase of 26.5% from the pre-commission base.

Part-time “Incumbent JJs”

98. The per diem for part-time incumbent JJs was increased as follows, from a pre-commission base of \$343:

	<u>7-hour day</u>	<u>8-hour day</u>
○ 2008/09:	\$360	\$415
○ 2009/10:	\$370	\$425
○ 2010/11:	\$380	\$435

99. Cumulatively, the increases equal 10.8% for a 7-hour day and 26.8% for an 8-hour day.

Part-time “Lawyer JJs”

100. The Commission devised a formula to for compensating the new part time JJ’s by dividing the full time salary of JJ’s by the number of working days in a year, and recommended that they be paid an addition 20% in lieu of benefits plus \$75 for overhead expenses.



101. The per diem for part-time “lawyer” JJs was increased from the initial \$550 per diem as follows:

- o 2008/09: \$600
- o 2009/10: \$615
- o 2010/11: \$625

102. This per diem is calculated based on an 8-hour day, and represents a cumulative increase of 13.6% from the pre-commission base that had been established shortly before by the Chief Judge.

103. All of the commission’s recommendations were accepted by Government.

#### **The 2010 Judicial Justices Compensation Commission**

104. The 2010 Judicial Justices Compensation Commission made various recommendations, including salary increases as follows:

- o 2011/12: 0%
- o 2012/13: 0%
- o 2013/14: 8%

105. The Commission recommended, effective April 1, 2011 that the per diem compensation formula should be:

Full time judicial salary / 219 (days of work) + 24.5% (in lieu of benefits) + \$80  
(office overhead)

106. In May 2011 the Government brought forward its response to the 2010 Commission to the Legislative Assembly. Citing the need to continue the Government’s net-zero compensation mandate and apply it across the public sector, the response rejected the proposed 8% salary

increase in 2013/14. Similarly, the Assembly rejected the recommended adjustments to the per diems. The Assembly voted unanimously to accept Government's proposed response.

### **2013 Judicial Justices Compensation Commission**

107. The 2013 Judicial Justices Compensation Commission recommended:

- Salary increase of 5% during the first year of the mandate, and 2% increase in each of the second and third years; and
- Per diem compensation formula be changed to account for the 12 chamber days available to full-time judicial justices but not to part-time judicial justices.

The recommended per diem formula was:

- Full time judicial salary / 207 (days of work) + 20% (in lieu of benefits) + \$75 (office overhead).

108. Government accepted these recommendations except for the 5% increase in fiscal year 2014/15 in which it substituted a 1.5% increase.

109. The JJA filed for judicial review of the Government's response to the 2010 JCC and 2013 JCC recommendations. At the hearings, the Attorney General agreed to place a motion before the Legislative Assembly to increase the salary of full-time judicial justices by 4.9% from the previous fiscal year, and for ad hoc judicial justices to receive the same per diem rate as per diem judicial justices effective April 1, 2014. On July 28, 2016 the Legislative Assembly adopted the resolutions.

## 2016 Judicial Compensation Commission

110. In 2015 the *Judicial Compensation Act* was amended to merge the two existing compensation commissions into a single Judicial Compensation Commission responsible for making recommendations respecting both groups of judicial officers.

111. The 2016 Judicial Compensation Commission recommended Provincial Court Judges salaries to be set as follows:

- Effective April 1, 2017, at \$273,000;
- Effective April 1, 2018, at \$277,095; and
- Effective April 1, 2019 at \$281,251.

112. In the government's Response to the 2016 Judicial Compensation Commission, government rejected the commissions' recommended salaries, and proposed the following to the Legislative Assembly:

- Effective April 1, 2017, that the salary for puisne judges be \$262,000;
- Effective April 1, 2018, that the salary for puisne judges be \$266,000;
- Effective April 1, 2019, that the salary for puisne judges be \$270,000.

113. The commission recommended the following salaries for full-time Judicial Justices:

- Effective April 1, 2017, at \$125,000;
- Effective April 1, 2018, at \$126,875; and
- Effective April 1, 2019, at \$128,778.

114. Government rejected the proposed salaries, and substituted the salary for full-time Judicial Justices as follows:

- Effective April 1, 2017, that the salary for judicial justices be \$118,000;
- Effective April 1, 2018, that the salary for judicial justices be \$120,000;
- Effective April 1, 2019, that the salary for judicial justices be \$122,000.

115. The Legislative Assembly adopted government's proposed response to the report on October 25, 2017.

#### **Salary Differentials – Provincial Court Judges**

116. All Provincial Court Judges are remunerated equally except for those who hold administrative posts and are paid salary differentials as follows:

- the Chief Judge of the Provincial Court Judges is paid a salary fixed at 112% of a puisne judge;
- two Associate Chief Judges are paid salaries at 108% of a puisne judge; and
- five Regional Administrative Judges are paid salaries at 106% of a puisne judge.

### The Government's Submission Regarding the Legislated Criteria

117. Section 5(1) of the *Judicial Compensation Act* requires that the report of the commission demonstrate that the commission has considered all the six factors set out in subsection (5).

118. Section 5(5) of the *Act* requires the Commission to “be guided by the need to provide reasonable compensation for Judges and Judicial Justices...”, and requires the Commission to consider the following six factors:

- The need to maintain a strong court by attracting highly qualified applicants;
- Changes, if any, to the jurisdiction of judges or judicial justices;
- Compensation provided in respect of similar judicial positions in Canada, having regard to the differences between those jurisdictions and British Columbia;
- Changes in the compensation of others paid by provincial public funds in British Columbia;
- The generally accepted current and expected economic conditions in British Columbia; and
- The current and expected financial position of the government over the 3 fiscal years that are the subject of the report.

119. The *Act* also allows the commission to consider factors it considers relevant that are not set out in subsection (5) but in order to do so, the commission must explain the relevance of the factor.

120. The Supreme Court of Canada in *Bodner* confirmed that a judicial compensation commission must consider the submissions of all parties and any relevant factors identified in the enabling statute and regulations.<sup>18</sup>

121. In this part of the submission, we discuss each of the six factors enumerated under Section 5(5) of the *Act*, and their application to Judges and Judicial Justices.

122. In order to arrive at recommendations that are consistent with the intent of the *Act* and that are fair and provide for reasonable compensation for the judiciary, the Commission's recommendations should be based on an evaluation of all the factors collectively. This general approach was recognized by the 2016 Judicial Compensation Commission, which stated that "no one criterion is *prima facie* more important than the other"<sup>19</sup>.

### **I. The Need to Maintain a Strong Court**

123. The first factor to be considered is the need to maintain a strong court by attracting highly qualified applicants.

124. The Government recognizes that it is in the public interest that the Provincial Court continue to attract highly qualified applicants. The Provincial Court is often referred to as "The People's Court" and the Judges and Judicial Justices are the most visible face of justice to those who enter its courtrooms.

125. There are undoubtedly several reasons why a qualified person would apply to the Court, such as the stability provided by a tenured appointment to the bench, as well as the ability to make a personal impact on the law in British Columbia that is different from that of a member of the bar. The government agrees that to the extent that financial considerations

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<sup>18</sup> *Provincial Court Judges' Assn. of New Brunswick v. New Brunswick (Minister of Justice)*; *Ontario Judges' Assn. v. Ontario (Management Board)*; *Bodner v. Alberta*; *Conférence des juges du Québec v. Québec (Attorney General)*; *Minc v. Québec (Attorney General)*, para. 17.

<sup>19</sup> 2016 Judicial Compensation Commission *Report and Recommendations*, page 42.

apply, it is important that the compensation packages, including salary, pension and other benefits, are sufficient to attract highly qualified applicants.

126. The Government submits the best indicator as to whether compensation is sufficient to attract qualified applicants is whether the Court is experiencing any unmet need in the number of applicants approved and recommended by the Judicial Council, and whether the judicial complement demonstrates stability overall.

### **Provincial Court Judges**

127. The Government notes that the Judicial Council recommends more applicants who meet the criteria and capability requirements of the Council than are required by Court. As a result, government submits that the British Columbia Provincial Court is able to attract sufficient numbers of highly qualified applicants for appointment as Judge.

### **Applicants are required to meet criteria set by the Judicial Council**

128. The Judicial Council was established by the provincial government in 1969 and given the responsibility to improve the quality of service provided by the judicial officers of the Provincial Court. Although the *Provincial Court Act* sets out requirements for appointments, the Judicial Council requires applicants to meet criteria which exceed those provided under the *PCA*. The Judicial Council then recommends only the most capable to the Attorney General:

The *Provincial Court Act* gives Judicial Council the objective of improving the quality of judicial service. Therefore, the approval process must ensure that only the most exceptional applicants, who are unquestionably capable of meeting the demands of judicial service, be recommended for appointment..<sup>20</sup>

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<sup>20</sup> Judicial Council, 2017 Annual Report, Page 17

129. Specifically, applicants seeking appointment as Provincial Court Judge must meet the following requirements:<sup>21</sup>

- CRITERIA:
  - at least 10 years in the practice of law (those with less legal practice experience are considered if they have a range of related experience.)
  - superb legal reputation and a professional record review from the Law Society of British Columbia
  - experience in mediation or alternative dispute resolution
  - respect in the community
  - good health
  - appreciation of and experience with diversity
  - willingness to travel and to sit in all subject areas
- COMPETENCIES
  - knowledge and technical skills  
*Conscientiousness, commitment to high standards*
  - decision-making  
*Decisiveness, confidence, courage, independence, impartiality*
  - Communication and authority  
*Firmness without arrogance, courtesy, patience, tolerance, fairness, sensitivity, compassion, self-discipline*
  - Professionalism and temperament  
*Capacity to handle stress and isolation of judicial role, sense of ethics, patience, honesty, tolerance, consideration of others, personal responsibility*
  - Effectiveness  
*Commitment to public service, commitment to efficient administration, self-discipline*
  - Leadership and management for Judges holding administrative positions  
*Responsibility, imagination, commitment to efficient administration.*

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<sup>21</sup> Judicial Council Annual Report, page 14



### **Only the most capable are recommended and added to the roster**

130. The Judicial Council requires candidates to undergo a screening process and adds names of those who are recommended by the Council to a roster for consideration by the Attorney General. If two or more members of the nine-member Council vote against an applicant, that candidate is not added to the roster.

131. Names of recommended candidates remain on the roster for three years from the date of their interview. When a vacancy arises, or when the Lieutenant Governor in Council otherwise determines that an appointment is necessary, the Attorney General may select a candidate from the roster and submit the name to the Lieutenant Governor in Council for appointment.

### **Applications are strong and the Judicial Council recommends more applicants than are required by the Court**

132. The most recent data from the Judicial Council indicates that more qualified applicants apply to the Court than are required to fill vacancies on the bench.

133. In 2017, the Judicial Council received 63 applications for appointment as a Provincial Court Judge, which is the largest number of applicants in over a decade. The Council interviewed 27 applicants and recommended 14 candidates for the bench<sup>22</sup>.

134. Over the 10-year period from 2008 to 2017, the Council received on average 47 applicants a year for appointment as a Judge, approved 25 for an interview, and recommended an average of 14 applicants for the bench<sup>23</sup>.

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<sup>22</sup> <http://www.provincialcourt.bc.ca/downloads/judicialCouncil/JudicialCouncilAnnualReport2017.pdf>

<sup>23</sup> <http://www.provincialcourt.bc.ca/downloads/judicialCouncil/JudicialCouncilAnnualReport2017.pdf>

**Figure A.1: Applications for Appointment as a Provincial Court Judge (2008 – 2017)**

	Applications Received			Applications Reviewed			Applicants Approved for Interview			Applicants Interviewed			Applicants Recommended for Appointment			Applicants Appointment		
Year	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F
2017	63	41	22	57	31	26	36	20	16	27	14	13	14	7	7	14	4	10
2016	43	23	20	30	19	11	24	14	10	24	15	9	11	5	6	9	6	3
2015	27	13	14	35	13	22	23	9	14	27	9	18	17	7	10	13	6	7
2014	50	24	26	40	24	16	31	18	13	33	23	10	19	14	5	6	2	4
2013	46	33	13	39	28	11	29	18	11	24	11	13	11	4	7	10	5	5
2012	35	19	16	39	20	19	22	9	13	21	9	12	12	7	5	11	8	3
2011	44	26	18	46	33	13	22	15	7	21	17	4	14	11	3	6	5	1
2010	49	33	16	33	24	9	15	13	2	28	19	9	17	13	4	8	6	2
2009	61	41	20	67	39	28	24	14	10	21	13	8	7	5	2	4	2	2
2008	55	32	23	48	28	20	24	11	13	21	13	8	13	8	5	5	3	2
Average	47.3	28.5	18.8	43.4	25.9	17.5	25.0	14.1	10.9	24.7	14.3	10.4	13.5	8.1	5.4	8.6	4.7	3.9

135. There continue to be more than enough highly qualified applicants to provide an adequate pool of approved candidates, as evidenced by the rates of applicants recommended for appointment compared to the average number of appointments to the Provincial Court:

- Over the last five years, an average of 15 applicants per year have been recommended for appointment by the Judicial Council, and an average of 10.4 judges are appointed to the Court each year.
- The ten-year trend has seen an average of 13.5 recommended applicants per year compared to 8.6 judges appointed.

### The Provincial Court Judge complement is stable

136. Aside from consistently healthy applications to the Court, since 2009 an average of one Provincial Court Judge has been appointed to the B.C. Supreme Court, illustrating that the Provincial Court complement is stable.

137. The following table shows that only three judges out of a complement of around 150 (approximately 120 of whom are full-time) have left the Court for appointment on the B.C. Supreme Court since 2014<sup>24</sup>:

Year	Appointments to BCSC
2014	0
2015	0
2016	1
2017	1
2018	1

138. By comparison, seven judges out of a judicial complement of 90 have left the B.C. Supreme Court following appointment to the B.C. Court of Appeal since 2014<sup>25</sup>:

Year	Appointments to BCCA
2014	1
2015	3
2016	0
2017	1
2018	2

139. These figures illustrate that in terms of judicial mobility, it is much more common for judges to move between different levels of the superior courts than to move from the Provincial Court to the superior courts.

<sup>24</sup> [https://www.courts.gov.bc.ca/supreme\\_court/about\\_the\\_supreme\\_court/annual\\_reports/index.aspx](https://www.courts.gov.bc.ca/supreme_court/about_the_supreme_court/annual_reports/index.aspx)

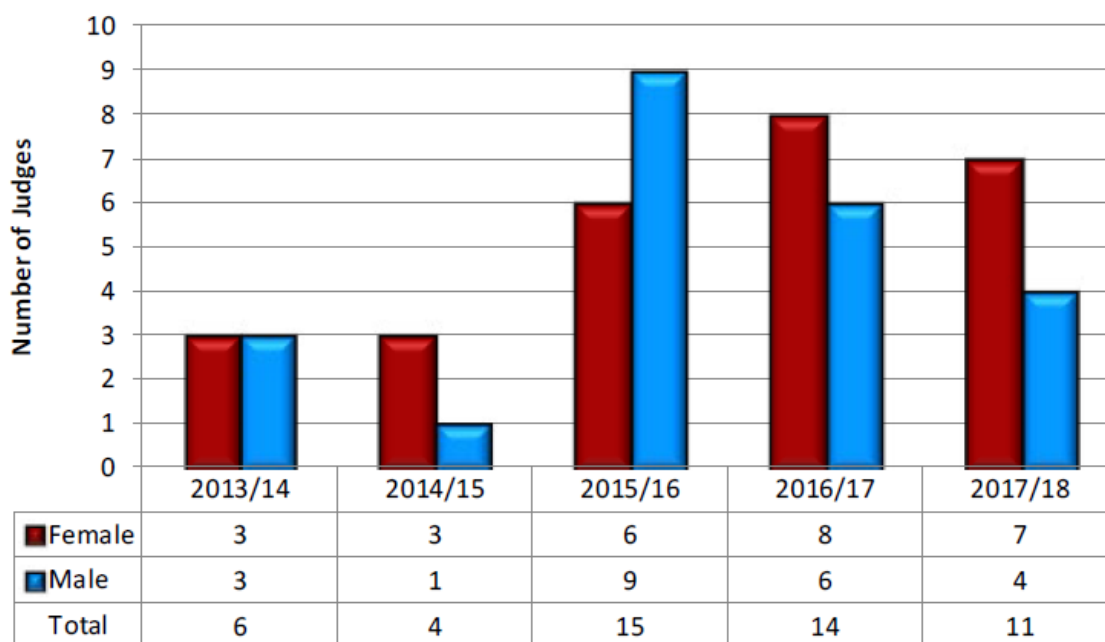
<sup>25</sup> [https://www.courts.gov.bc.ca/supreme\\_court/about\\_the\\_supreme\\_court/annual\\_reports/index.aspx](https://www.courts.gov.bc.ca/supreme_court/about_the_supreme_court/annual_reports/index.aspx)

### There is diversity on the bench

140. In addition, the Provincial Court's Annual Reports illustrate that the Court attracts candidates that are diverse in terms of gender, geography and legal background.

141. The 2017/18 Annual Report notes that of the 50 judges appointed during the previous five fiscal years over half (27) were women.

**FIGURE 6 - JUDGES BY GENDER AND YEAR OF APPOINTMENT**



142. Over the past five years, the number of appointments to specific regions in British Columbia were as follows:

Region	#
Vancouver Island	8
Vancouver	4
Fraser	20
Interior	10
Northern	6
Office of the Chief Judge	4

143. The following table illustrates the percentage of candidates who came from different areas of practice prior to being appointed to the Bench.<sup>26</sup> The “Other” category refers to individuals who are in public practice or work for other judicial offices.

	Private Practice	Crown Counsel	Other
2013 <sup>27</sup>	73.9%	17.4%	8.7%
2014 <sup>28</sup>	56%	36%	8%
2015	46.2%	34.6%	19.2%
2016	62%	28.5%	9.5%
2017	51.7%	33.3%	15%

144. The above data, taken together, clearly indicates that the Court attracting more than sufficient numbers of highly qualified applicants from a range of backgrounds.

## Judicial Justices

145. As with Judges, candidates for appointment as Judicial Justice must meet the criteria set by the Judicial Council. For Judicial Justices, those criteria are:<sup>29</sup>

<sup>26</sup> <http://www.provincialcourt.bc.ca/downloads/judicialCouncil/JudicialCouncilAnnualReport2017.pdf>, p. 43.

<sup>27</sup> [Judicial Council Annual Report, 2014](#), pg 35.

<sup>28</sup> [Judicial Council Annual Report, 2014](#), pg 35.

<sup>29</sup> Judicial Council Annual Report, 2017, pp. 28-29.

- CRITERIA:
  - At least five years in the practice of law (those with less legal practice experience are considered if they have a range of related experience.)
  - Superb legal reputation and a professional record review from the Law Society of British Columbia
  - Experience in mediation or alternative dispute resolution
  - Respect in the community
  - Good health
  - Appreciation of and experience with diversity
  - Willingness to travel and to sit in all subject areas.
- COMPETENCIES
  - Knowledge and technical skills  
*Conscientiousness, commitment to high standards*
  - Decision-making  
*Decisiveness, confidence, courage, independence, impartiality*
  - Communication and authority  
*Firmness without arrogance, courtesy, patience, tolerance, fairness, sensitivity, compassion, self-discipline*
  - Professionalism and temperament  
*Capacity to handle stress and isolation of judicial role, sense of ethics, patience, honesty, tolerance, consideration of others, personal responsibility*
  - Effectiveness  
*Commitment to public service, commitment to efficient administration, self-discipline*
  - Leadership and management for Judicial Justices holding administrative positions  
*Responsibility, imagination, commitment to efficient administration.*

146. There are two types of Judicial Justice currently on the Court:

- Full-time Judicial Justices appointed to age 75, who are paid salary and benefits, including pension;

- Part-time Judicial Justices appointed for a fixed 12-year term, who are paid a per diem according to a formula that is linked to the full-time JJs' salary and includes an amount in lieu of benefits, as well as an amount to compensate for overhead costs of their law practices.

147. The fixed-term Judicial Justice position was created by the Court in 2007, and all appointments since then have been part-time. The initial term was 10 years, which was extended to 12 years through an amendment to the *Provincial Court Act* in 2017 at the request of the Court.

148. There is no evidence to suggest that the roster of approved candidates for appointment as Judicial Justice is insufficient to meet the needs of the Court as required.

149. According to the Judicial Council<sup>30</sup>, it did not conduct interviews from 2010 to 2012 due to the large number of appointments in 2007 and 2008. Since 2013, the Council has interviewed 5 applicants, and 4 judicial justices have been appointed. Overall, there is far less data on applications because the Council has not felt it necessary to initiate significant outreach or conduct interviews consistently over this period of time – this in itself suggests that the Council believes there is a sufficient number of Judicial Justices to serve the Court's needs.

150. Government submits that the Judicial Justice complement is stable, as evidenced by the request from the Court in 2017 to extend the term of part-time JJs from 10 to 12 years – the large cohort initially appointed in 2007 and 2008 were approaching the end of their term and a number wished to remain on the Court. Further, government is currently considering a request from the Court to provide for the re-appointment of Judicial Justices on a part-time basis for a subsequent term of 10 years – if enacted, this change would permit current fixed-

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<sup>30</sup> Judicial Council Annual Report 2014, p. 24.

term JJs to remain on the Court for a subsequent period of time, further reducing the need for recruitment of new JJs.

## **II. Changes to the Jurisdiction of Judges or Judicial Justices**

151. The second factor that this Commission must consider is whether there have been any changes to the jurisdiction of Judges or Judicial Justices.

### **Judges**

152. As noted above, claims of up to \$5,000 are no longer dealt with in the Provincial Court's Small Claims Court – instead, they are resolved by the British Columbia Civil Resolution Tribunal (CRT). Accompanying the changes that established the CRT in 2017, the upper limit of small claims cases heard in the Provincial Court was increased from \$25,000 to \$35,000. The 2017 change is the first time the small claims limit has been increased since 2004, when it was increased from \$10,000 to \$25,000.

153. As noted above, the advent of the CRT has resulted in a significant reduction in the overall caseload of the Provincial Court. Apart from small claims, as of April 1, 2019 the CRT can hear motor vehicle injury disputes up to \$50,000.<sup>31</sup> These changes, particularly the small claims jurisdiction, free up judicial time for other criminal and family matters and assist the Court in meeting its target timelines for all types of cases.

154. Government submits that the small claims limit increase in Provincial Court does not represent a significant change in the type or scope of matters that will be dealt with by Provincial Court Judges. The increase in the limit should be considered in the context of a large percentage of the civil case load of the Court historically being in the \$5,000 jurisdiction

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<sup>31</sup> The CRT also can hear a range of strata disputes up to any amount, which previously were the domain of B.C. Supreme Court.



of the CRT. Further, the small claims limit has not kept pace with inflation since the last increase in 2004. Therefore, a combination of the introduction of the CRT and an increase which has not kept pace with inflation results in a net decrease in work load for the Court.

### **Judicial Justices**

155. There have been no changes in their jurisdiction of Judicial Justices that the government is aware of. In government's submission, this factor is therefore neutral in respect of compensation matters.

### **III. Compensation in Respect of Similar Judicial Positions in Canada**

156. The third factor that this Commission must consider is the compensation provided in respect of similar judicial positions in Canada, having regard to the differences between those jurisdictions and British Columbia.

157. To address this statutory requirement, Government submits that the Commission must consider both:

- Which judicial positions elsewhere in Canada are most similar to the positions of Provincial Court Judge and Judicial Justice?
- Are there differences between those other Canadian jurisdictions and British Columbia that are relevant to the issue of compensation?

## Judges

**Which judicial positions elsewhere in Canada are most similar to the positions of Provincial Court Judges?**

158. Government submits that the most similar judicial position in Canada to Provincial Court Judges are judges of other provincial and territorial (lower) courts. While there are some differences in respect of provincially constituted courts, these courts perform similar functions and operate within a similar legislative framework.

159. It is also the submission of Government that any formulaic relationship between federally-appointed judges and Provincial Court Judges is inappropriate. As discussed earlier in the submission, superior courts in Canada have a broader mandate than provincial courts, and federally-appointed judges are compensated by a different level of government.

160. The 2013 Judges Compensation Commission recognized that any formulaic relationship with federally-appointed judges is inappropriate:

Both the Provincial and Supreme Courts require excellent candidates and they compete for the same senior members of the criminal defence bar, the best from the Crown counsel ranks, and for many of the best civil litigators in family law, personal injury, and insurance defence. However, while there is significant overlap in the needs of two courts, the needs are not identical. The Supreme Court has broader jurisdiction in civil matters, and a great need of candidates with experience in complex corporate commercial matters. Also, federal court judges are compensated by a different government, which faces varied financial and other considerations.<sup>32</sup> [Emphasis added.]

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<sup>32</sup> 2013 Judges Compensation Commission report, p. 38.

161. Case law also supports the argument that it is flawed to view a parity between provincial and federal courts as a primary comparator. *Provincial Court Judges Association of New Brunswick v. New Brunswick (Minister of Justice)* 2003 NBCA 54 concluded that “the federal salary is fixed by reference to factors that have no application in the provincial context” [para 163].

162. In this regard, it is interesting to note that New Brunswick and Ontario have chosen to set their judges’ salaries at a fixed percentage of superior judges’ salaries. This is a policy choice that British Columbia and most other provinces have not made: government believes that compensation in British Columbia should be decided by examination of the relevant factors as they apply in our province, and any fixed-percentage relationship between the two levels of court would defeat that fundamental requirement.

**Are there differences between those other Canadian jurisdictions and British Columbia that are relevant to the issue of compensation?**

163. There are a number of differences that should be taken into account when considering how other jurisdictions’ compensation to Judges and Judicial Justices.

164. First, and most obviously, each jurisdiction has its own legislature, its own economic conditions, and its own policies respecting the expenditure of public funds. The setting of compensation generally, and judicial compensation in particular, will be to greater or lesser degree a reflection of these different conditions and policies. For example, in response to the severe economic downturn beginning in 2008, British Columbia for several years pursued an overarching policy of expenditure restraint to maintain balanced budgets.

165. This is why British Columbia’s 1998 Committee, for example, recognized that “B.C. salaries should be determined with reference to B.C. realities, and not the circumstances that exist in other, very different, parts of the country”<sup>33</sup>.

166. Second, the timing and process for setting remuneration for judges differs in other provinces and territories. This should be considered when attempting to compare British Columbia salaries directly to other jurisdictions.

167. The cycle of compensation commissions does not align between jurisdictions, and therefore scans conducted of yearly salaries at any point in time are always incomplete due to different timing of commission processes. This Commission is required to make recommendations for the next three fiscal years, but at the present time no other jurisdiction has set judicial salaries beyond the current fiscal year. Therefore, it will not be possible for the Commission to make its recommendations with reference to specific comparisons to other jurisdictions for the same period of time.

168. There are other process and substantive differences between the jurisdictions that influence the setting of judicial compensation:

- Each jurisdiction has its own statutory factors that are required to be considered by the Commission; these factors flow from that jurisdiction’s view of what is most relevant. (Saskatchewan, Newfoundland & Labrador and Nunavut do not have specific factors outlined in their legislation, so their commissions develop their own.) Because these factors do not align across the country, different compensation commissions will base their recommendations on different factors and considerations:

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<sup>33</sup> 1998 Compensation Committee Report, 1998. p. 16.

- o Some jurisdictions set minimum thresholds for judicial salaries. For example, Saskatchewan’s legislation provides that the Legislative Assembly may not impose a salary that is less than the national average for provincial court judges.<sup>34</sup>
- o Prince Edward Island pays their provincial court judges an average of the other nine provinces and two territories (not Nunavut). Superior court judges’ salaries are not used to calculate the average.
- o For many year, the Federal Judicial Compensation and Benefits Commission has used the midpoint of the highest Deputy Ministers salary range (DM3) in the belief that it provides a consistent salary benchmark for judges and is “the best choice as a public sector comparator group for the judiciary” because of the groups’ seniority and the functions its members discharge<sup>35</sup>. The 2011 Commission noted that successive federal commissions had endorsed the concept that “the marketplace expects to pay individuals of outstanding character and ability, which are attributes shared by deputy ministers and judges”.<sup>36</sup>
- o Ontario’s Government has for many years agreed to be bound by the Commission’s recommendations with respect to salary, benefits and allowances. (Recommendations with respect to pension are non-binding.) This precludes the possibility that the Legislature may conduct a review of those recommendations.
- o Ontario judges’ salaries are now calculated by applying the Industrial Aggregate Index (Canada) to the existing salary of Ontario Judges, and then adding an additional increase to bring the salary to a percentage of federal judges salary (93.47% in 2018, 94.07% in 2019, 94.67% in 2020, and 95.2% in 2021).

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<sup>34</sup> Saskatchewan Provincial Court Act, s. 45(1).

<sup>35</sup> <http://www.quadcom.gc.ca/archives/2011/Media/Pdf/2011/FinalReport.pdf>, p. 9.

<sup>36</sup> <http://www.quadcom.gc.ca/archives/2011/Media/Pdf/2011/FinalReport.pdf>, p. 9.

- o The annual salary of a provincial court judge in New Brunswick is now set at the equivalent of 80% of federally appointed judges in Canada.

169. It is important to note that federally-appointed judges' salaries result from two main considerations: the salaries of federal Deputy Ministers paid at the DM3 (highest) level, and estimates of compensation paid to lawyers in the private sector.<sup>37</sup> Recent history indicates that the process in some other jurisdictions is becoming closely focussed on superior judges' salaries. As discussed above, New Brunswick and Ontario set their salaries as a direct percentage of superior court Judges' salaries. As a result, the salaries of federal DMs are also influencing the rates of pay to judges in these jurisdictions. Further, PEI's salary, which calculates the average of the provinces, and two of the territories, is also impacted by federal DM salaries because it incorporates Ontario's and New Brunswick's salaries. And in the current Alberta compensation commission round, the Alberta Judges' Association has advocated for a fixed-percentage link to superior court judges.<sup>38</sup>

170. A fixed link to a different level of court in another jurisdiction, which is itself fixed to remuneration for the highest levels of federal civil servants, is inescapably arbitrary, as it effectively removes any consideration consistent with the factors set out in B.C.'s *Judicial Compensation Act*.

### Salary relationship: Provinces

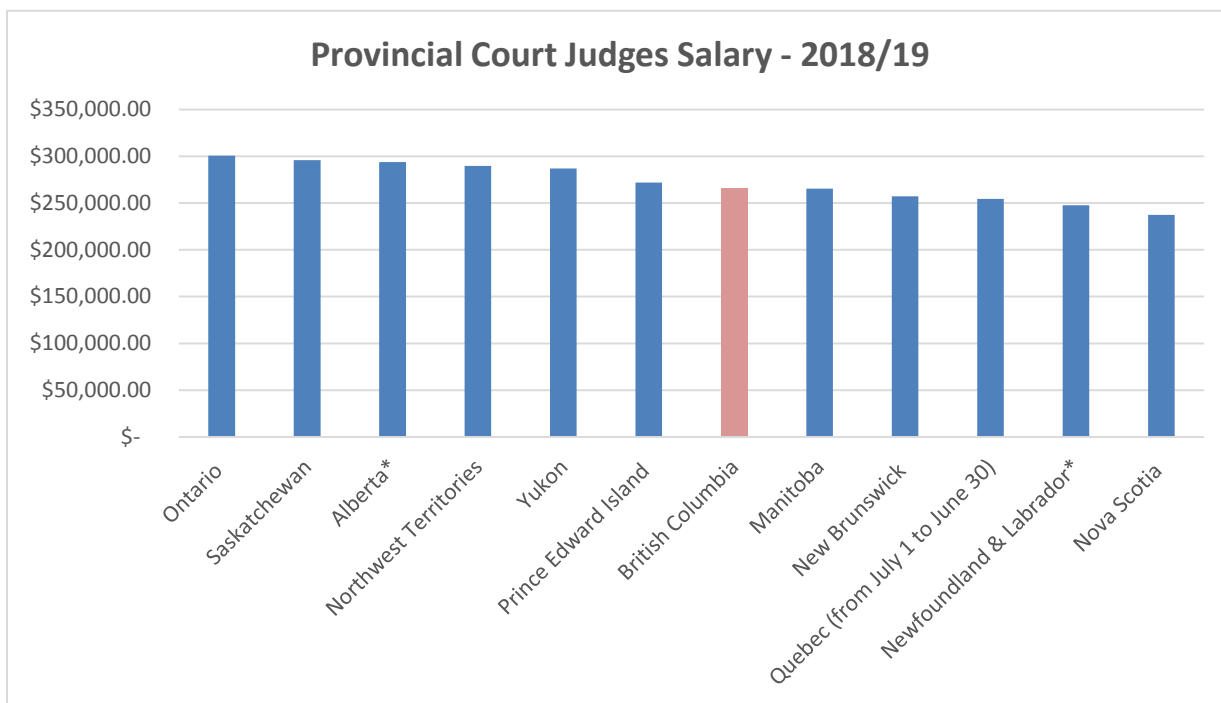
171. When comparing salary information across the provinces and territories, focusing on ordinal rankings is less informative than examining the relationship between the actual salaries paid. The data indicate that while there is some variation, particularly at the extremes of high

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<sup>37</sup> Judicial Compensation and Benefits Commission, *Report and Recommendations*, June 30, 2016, pp. 13-20, [http://www.quadcom.gc.ca/pg\\_JcJc\\_QC\\_10-eng.php](http://www.quadcom.gc.ca/pg_JcJc_QC_10-eng.php).

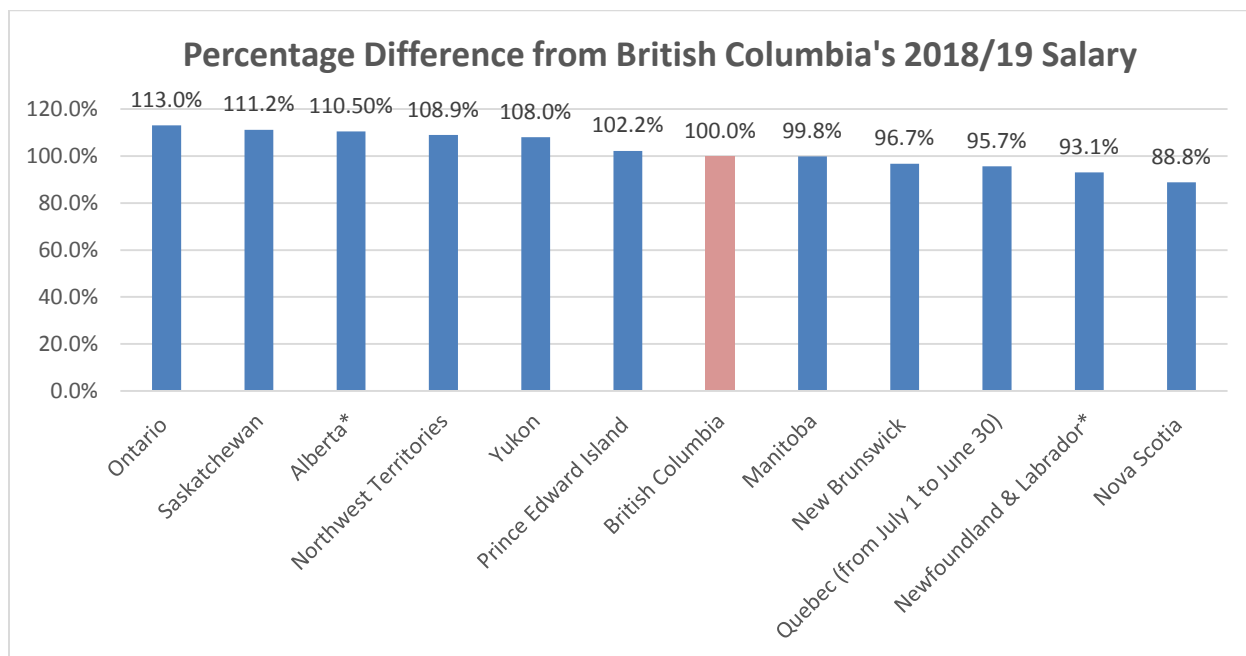
<sup>38</sup> Submission of the Alberta Provincial Judges' Association to the 2017 Judicial Compensation Commission, p. 77.

(Saskatchewan, Albert and Ontario) and low (Nova Scotia), most provinces remunerate their Provincial Court judges at fairly similar levels.



\*Alberta and Newfoundland & Labrador 2018/19 salaries have not been set yet, and so 2016/17 salaries were used in place of those to be determined salaries.

172. As indicated by the graphs, the salaries of British Columbia, Manitoba, Prince Edward Island, Quebec, New Brunswick and Newfoundland & Labrador are within a close range. Specifically, the graph below shows that eight provinces and territories are within plus/minus 10% of British Columbia's judges, and the largest discrepancy (to Saskatchewan) represents a 14% difference. Overall, there is a close correlation amongst the majority of provinces and territories, clustering around the \$250,000 to \$270,000 range.



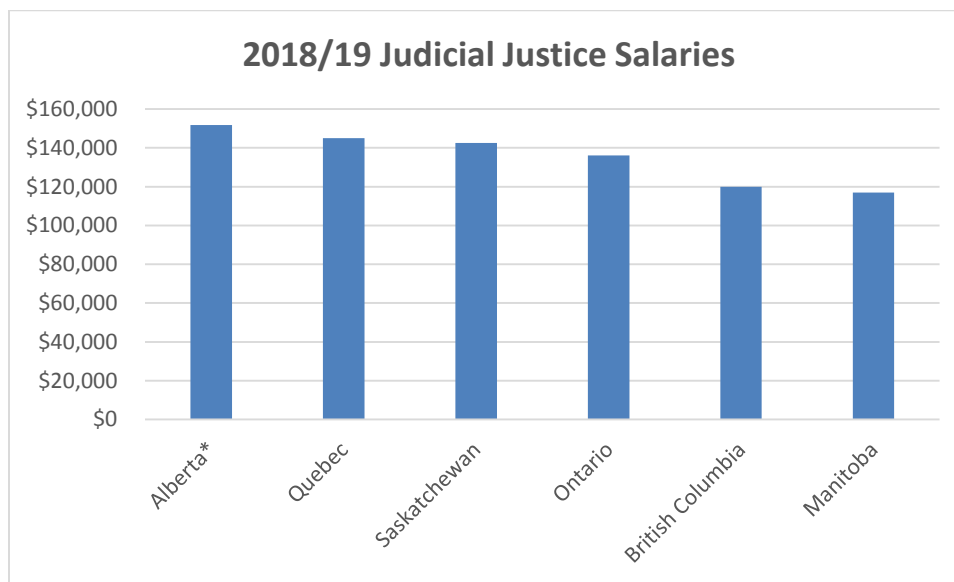
\*Alberta and Newfoundland & Labrador 2018/19 salaries have not been set yet, and so 2016/17 salaries were used in place of those to be determined salaries.

## Judicial Justices

**Which judicial positions elsewhere in Canada are most similar to the positions of Provincial Court Judicial Justices?**

173. Not all provinces have comparable positions to B.C.'s Judicial Justices. Those that do often have the title of Sitting or Presiding Justice of the Peace. (For simplicity throughout this submission, we will refer to all these positions as Judicial Justices.) The relevant provinces are Alberta, Saskatchewan, Manitoba, Ontario, and Quebec. Two of the territories (Yukon and Northwest Territories) have similar positions, but these are not full-time Judicial Justices, and are not directly comparable for compensation purposes.





\*Alberta 2018/19 salaries have not been set yet, and so 2016/17 salaries were used in place of those to be determined salaries

**Are there differences between those other Canadian jurisdictions and British Columbia that are relevant to the issue of compensation?**

174. There are some relevant differences in respect of the jurisdiction of Judicial justices amongst the provinces/territories. In some provinces/territories, the jurisdiction of the justices of the peace is broader than in British Columbia, including the following:

- issuing orders to apprehend a child in need of protection or emergency protection orders (Ontario, Alberta);
- issuing orders to apprehend an individual for a mental health examination (Ontario);
- conducting trials and sentencing hearings for summary convictions (Manitoba);
- presiding at appearances and ordering the remanding of the accused to custody (Quebec);

- ruling on contested applications relating to the disposal of property seized with or without a warrant (Quebec);
- As well, in at least one other province (Quebec), government requires justices of the peace to have at least ten years' practice prior to appointment.

The process for determining compensation rates for Judicial Justices in other provinces also contain differences that should be considered when comparing salaries across jurisdictions. For example:

- In Saskatchewan, the 2013 JPCC set JPs' salaries (from 2013 to 2018) at 49% of Judges' salary for the previous year
- Ontario's 2018 JPCC set JPs' salaries (from 2019 to 2023) at a fixed percentage of Judges' salaries:
  - 2019/20 = 47%;
  - 2020/21 = 48%;
  - 2021/22 = 49%; and
  - 2022/23 = 50%.

175. Manitoba does not have a compensation commission for their Judicial Justice equivalent position, but their legislation sets Justices of the Peace's salaries at 43% of Manitoba Judges' salaries.

176. Although British Columbia has not set the province's Judicial Justices' salaries as a percentage of B.C.'s Provincial Court Judges' salary, for comparison purposes with the above, over the past several years JJs' salaries have varied between 43% to 45% of a Judge's salary, and are currently at 45.2%.

## Summary

177. Overall, government submits that compensation paid to other judges and Judicial Justice equivalents in Canada is useful as a general comparison after taking into consideration the statutory requirement of “having regard to the differences between those jurisdictions and British Columbia”. This comparison helps to ensure that British Columbia’s judiciary are not significantly out of step with their counterparts elsewhere. However, compensation for British Columbia judges and JJs should not be driven by a focus on ordinal rankings between jurisdictions, nor by funding decisions made in other jurisdictions, each of which has its own unique fiscal, statutory and policy environments. In particular, a focus on superior court judges’ compensation that is, in turn, driven by federal Deputy Minister salaries and estimates of private sector lawyers’ salaries should be avoided.

178. Government submits that the evidence for this factor indicates that British Columbia’s judges’ and Judicial Justices’ salaries are not out of step with their provincial counterparts:

- Most other provincial judges’ salaries are within plus/minus 10% of British Columbia’s judges; and
- While four of the other five provinces with positions equivalent to B.C.’s Judicial Justices pay higher salaries, there are differences in scope of jurisdiction that are meaningful in the compensation context. Further, most other provinces determine their Judicial Justice salary as a fixed percentage of their judges’ salaries.

#### IV. Changes in the Compensation of Others Paid by Provincial Public Funds

179. The fourth factor that requires consideration pursuant to the *Act* is changes in the compensation of others paid by provincial public funds in British Columbia.

##### **Compensation of others is a marker of reasonableness**

180. The Government submits that the compensation of others paid by public funds in British Columbia is one of the most reliable markers of reasonableness in determining judicial compensation. Consideration of changes in the compensation of others paid by public funds in British Columbia is necessary to ensure that judicial compensation reflects the values and economic realities of our provincial public sector.

181. A succinct summary of the value of comparing judicial compensation to others in the public sector comes from a submission by the Alberta Judges Association to its compensation commission in 2013:

218. The levels of the increases provided to other programs or persons funded by the Government show what increases the Government has been prepared to agree to for public sector groups which engage in collective bargaining. These levels also show what the Government has, itself, decided it will pay to employees who do not bargain collectively.

219. The levels of increases must be viewed as evidence of the willingness of the Government to pay and accordingly, its own assessment of its financial position. [.....] Accordingly, when considered as an indicator of the willingness of the Government to pay, the levels of the increases provided to other groups are a useful consideration

against which the Government’s position about appropriate salaries for judges can be tested.<sup>39</sup>

182. Likewise, the 2013 British Columbia Judges Compensation Commission noted that “objective markers of reasonableness” include comparisons with both British Columbia public sector salaries and private sector wages within British Columbia.<sup>40</sup>

### **Similar treatment to others helps sustain the perception of judicial independence**

183. It goes without saying that judges are not civil servants – they are not employees of the executive branch of government. They are, however, public servants in the full sense of that concept, in that they are appointed to serve the public and are paid from the public purse.

184. The Supreme Court of Canada in *PEI Reference* noted that in some circumstances “identical treatment” between judges and those paid by public funds is “preferable” as a matter of judicial independence.<sup>41</sup>

185. The Court arrived at this conclusion by reasoning that when judges are treated identically to others paid by the public purse, such a measure “helps to sustain the perception of judicial independence precisely because judges are not being singled out for differential treatment”:

156 ... I return to one of the goals of financial security -- to ensure that the courts be free and appear to be free from political interference through economic manipulation. To be sure, a salary cut for superior court judges which is part of a measure affecting the salaries of all persons paid from the public purse helps to sustain the perception of judicial independence precisely because judges are not being singled out for differential treatment. As Professor Renke has explained (in *Invoking Independence: Judicial Independence as a No-cut Wage Guarantee* (1994), at p. 30):

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<sup>39</sup> *Submission of the Alberta Provincial Judges’ Association to the 2013 Judicial Compensation Commission*, pp. 68-69.

<sup>40</sup> 2013 Judges Compensation Commission report, p. 36.

<sup>41</sup> *PEI Reference*, para 155.

Financial security is an essential condition of judicial independence. It must not, however, be considered abstractly. It must be considered in relation to its purpose, which is, ultimately, to protect the judiciary from economic manipulation by the legislature or executive. Where economic measures apply equally to clerks, secretaries, managers, public sector workers of all grades and departments, as well as judges, how could judges be manipulated? [emphasis added]

Conversely, if superior court judges alone had their salaries reduced, one could conclude that Parliament was somehow meting out punishment against the judiciary for adjudicating cases in a particular way.

186. The Court also considered the following counter-argument, that perhaps identical treatment undermines judicial independence:

157 However, many parties to these appeals presented a plausible counter-argument by turning this position on its head -- that far from securing a perception of independence, salary reductions which treat superior court judges in the same manner as civil servants undermine judicial independence precisely because they create the impression that judges are merely public employees and are not independent of the government. This submission has a kernel of truth to it. For example, as I have stated above, if judges' salaries were set by the same process as the salaries of public sector employees, there might well be reason to be concerned about judicial independence. [emphasis added]

187. On balance, however, the Court concluded that to ensure courts are free, and appear to be free, from political interference, identical treatment amongst all those paid by public funds is preferred:

158 ...In my opinion, the risk of political interference through economic manipulation is clearly greater when judges are treated differently from other persons paid from the public purse...

188. It is key to note that in the above passage in para 157, the argument reflecting concern around identical treatment is based on the process for setting judicial compensation, not the outcome – a concern that was addressed by the Court in establishing the requirement for independent and effective compensation commissions such as this one.

189. The fundamental point is not that it is always necessary to provide compensation changes to judges that are identical to others in the public service; rather, the Court’s words serve as a useful reminder that compensation outcomes for judges that consistently differ from those of others are more apt to raise potential questions than if judges are treated more similarly.

### **Those paid by public funds in British Columbia have received modest wage increases**

190. Exercising a disciplined approach to public sector compensation is critical to maintaining a sound budget and fiscal plan. Public sector compensation accounts for more than half of the provincial government’s budget, and a 1% change in compensation across the board results in a fiscal impact to government of approximately \$300 million.<sup>42</sup> Further, compensation increases consistently build upon previous years’ increases, which effectively become the “floor” for future years.

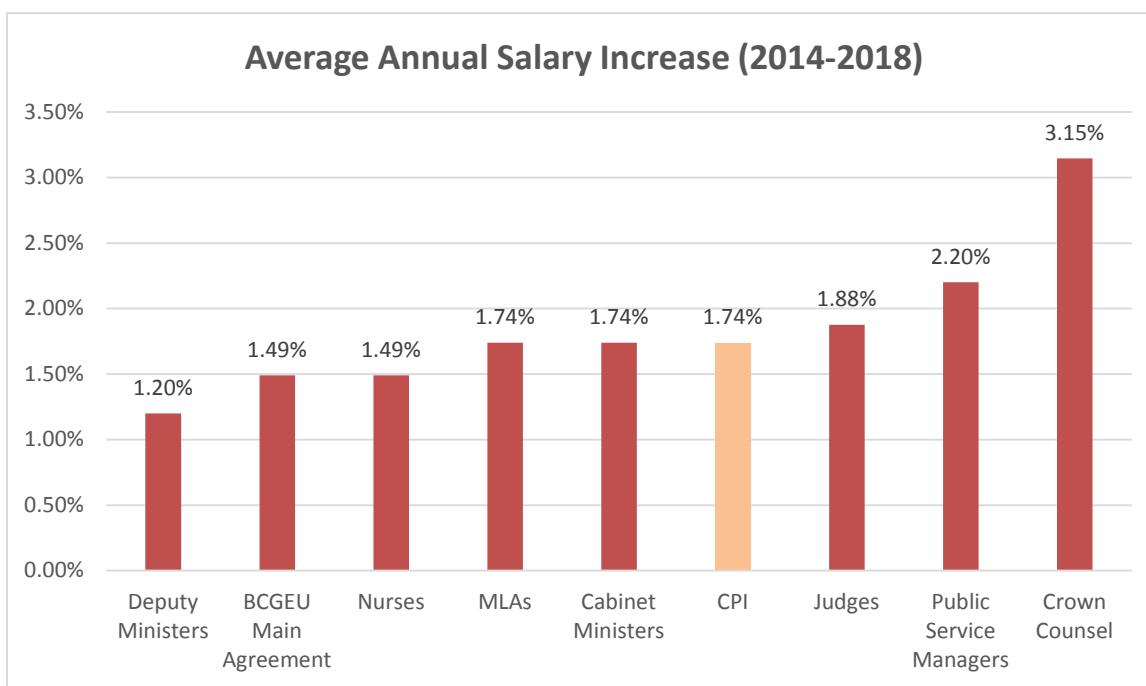
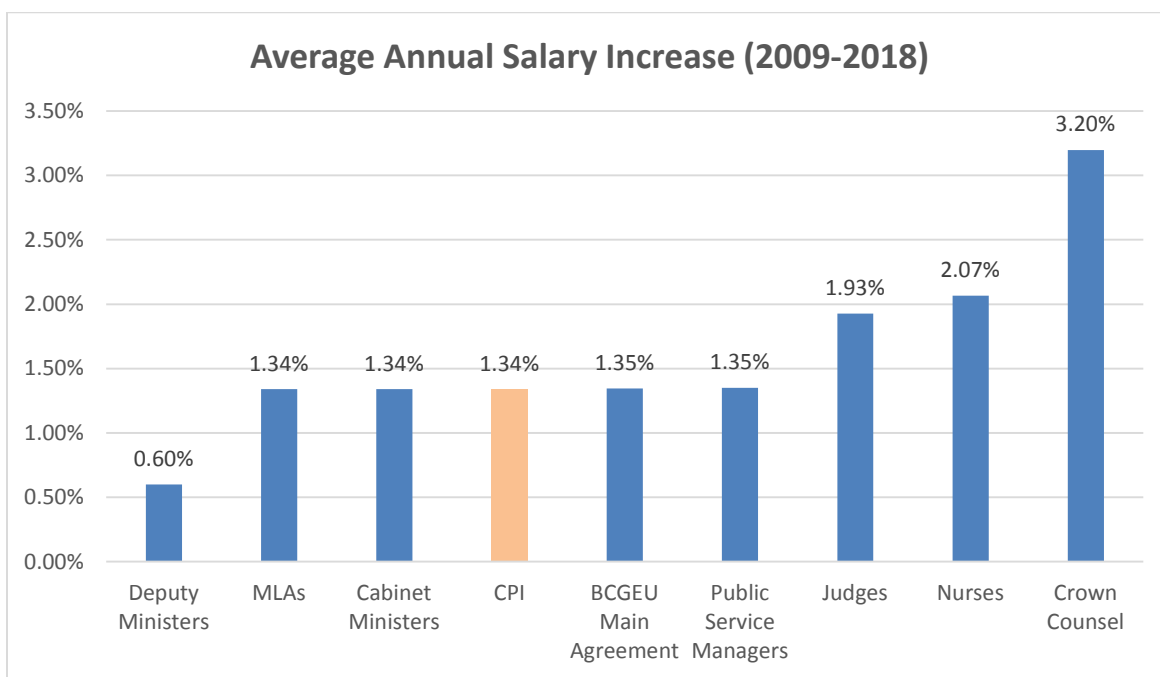
191. The British Columbia government’s response to the severe economic downturn of 2008 was to exercise significant fiscal restraint across all areas of government, including public sector compensation.

192. In British Columbia, unionized public sector employees received annual wage increases of 1.35%, on average, between 2009 and 2018, which approximately matched the Consumer Price Index (CPI) increase over this same time-period<sup>43</sup>. During that same time-period, Provincial Court Judges received annualized 1.93% increases, while Judicial Justices received 2.4%%.

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<sup>42</sup> *Provincial Bargaining Update – May 14, 2019*, Public Sector Employers’ Council Secretariat

<sup>43</sup> B.C. Public Sector Employers Council



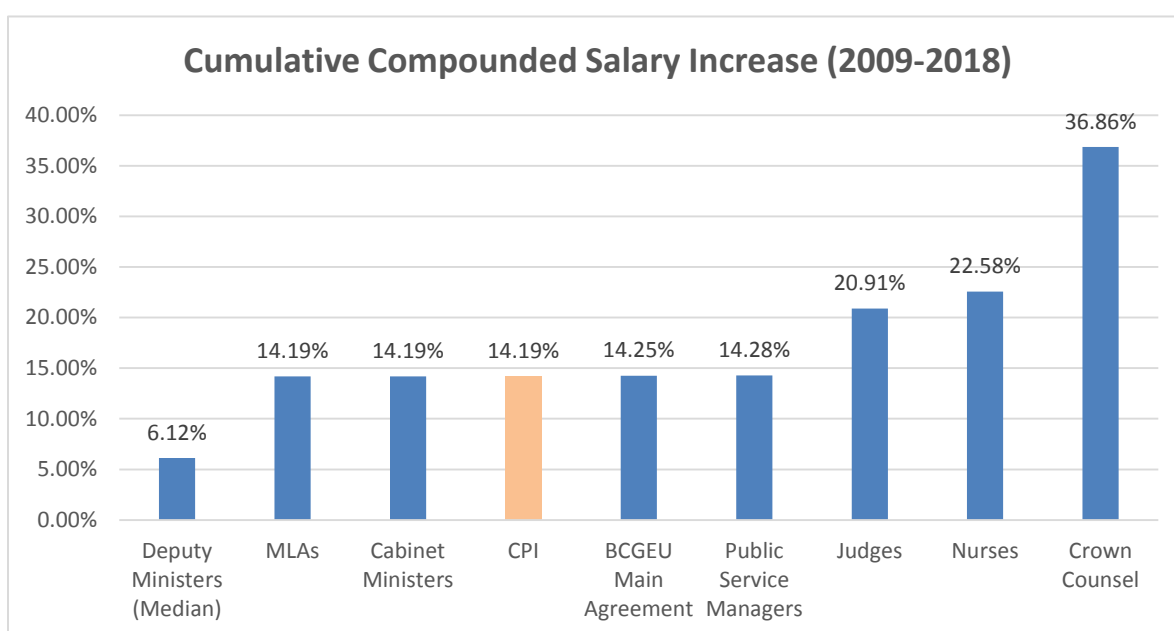
193. Additionally, as indicated in the graph above, even though the Legislative Assembly rejected the recommendations of the 2013 and 2016 Commission, the average annual salary increase

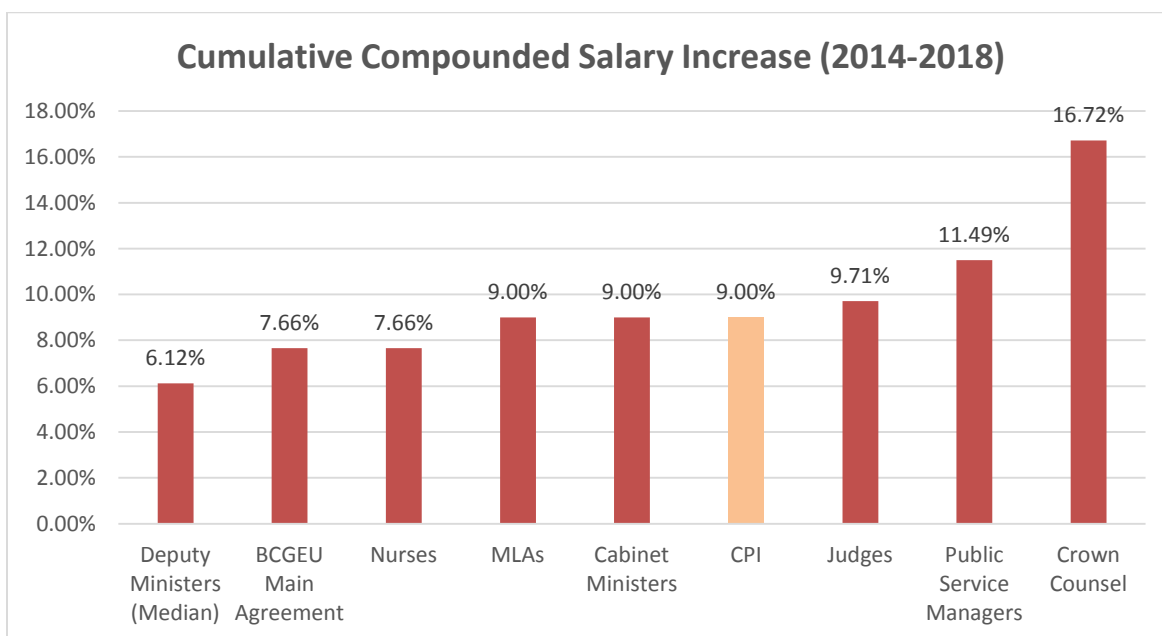


for B.C. judges is higher than CPI and the increase in compensation received by Deputy Ministers, BCGEU employees, Nurses, MLAs and Cabinet Ministers.

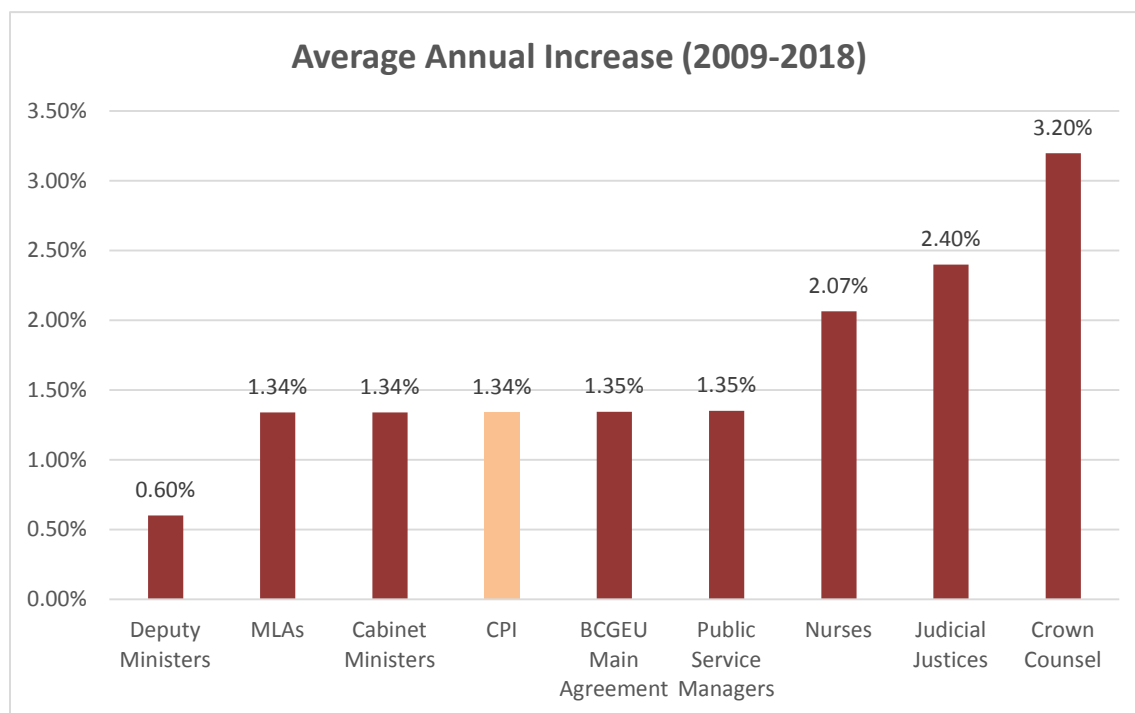
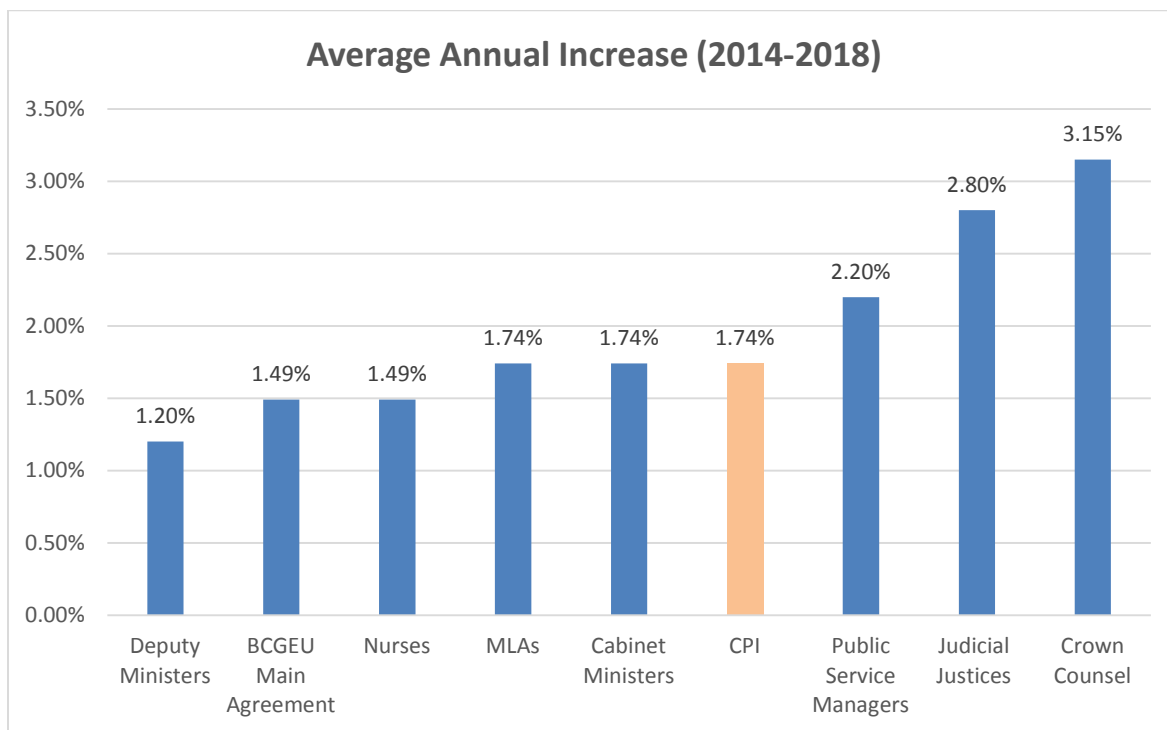
194. As part of British Columbia's overall fiscal plan, the levels of compensation for those paid by public funds in our province have been restrained but have met the cost of living.

Cumulatively, while unionized public sector employees received a 14.25% increase (just above the cumulative CPI) between 2009 and 2018, Judges received an increase of 20.91%.





195. As indicated in the graphs below, although government has rejected the Commissions' recommendations for Judicial Justices salary increases in some fiscal years, the average increases over both a ten-year and five-year period have exceeded the increase in CPI as well as most others in the public sector.



## Remuneration levels for Tribunal appointees

196. The appointee remuneration levels for the recently-established Civil Resolution Tribunal are:

Chair	\$168,000-200,000
Vice Chair	\$143,000-161,000
Full Time	\$118,000 - \$132,000
Part Time	\$500/575 per day

197. For Chairs, Vice-Chairs and members of administrative tribunals (e.g. Labour Relations Board, Human Rights Tribunal, Employment Standards Tribunal) a Treasury Board directive outlines the following maximum remuneration rates of full-time appointees.<sup>44</sup>

Full Time Remuneration						
	Chair		Vice Chair		Member	
	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
1	\$124,000	\$137,000	\$105,000	\$116,000	\$87,000	\$96,000
2	\$137,000	\$147,000	\$116,000	\$125,000	\$96,000	\$103,000
3	\$147,000	\$168,000	\$125,000	\$143,000	\$103,000	\$118,000
4	\$168,000	\$190,000	\$143,000	\$161,000	\$118,000	\$132,000
5	\$190,000	\$210,000	\$161,000	\$179,000	\$132,000	\$147,000

198. This directive was issued in 2017 and was the first increase in tribunal compensation since 2010. Previously, there were only three levels of tribunals, with considerable salary ranges within each class. This makes comparisons over time difficult, but the previous maximum for Group 1 chairs was \$135,000, for Group 2 chairs \$180,000, and for Group 3 chairs \$200,000. Thus, it is clear that the maximums at the lowest and highest ends of the salary ranges increased only marginally.

<sup>44</sup> <https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/government-finances/treasury-board-directives/tbd1-17-remuneration-guidelines-for-appointees-to-administrative-tribunals.pdf>

### British Columbia public sector compensation and other provinces

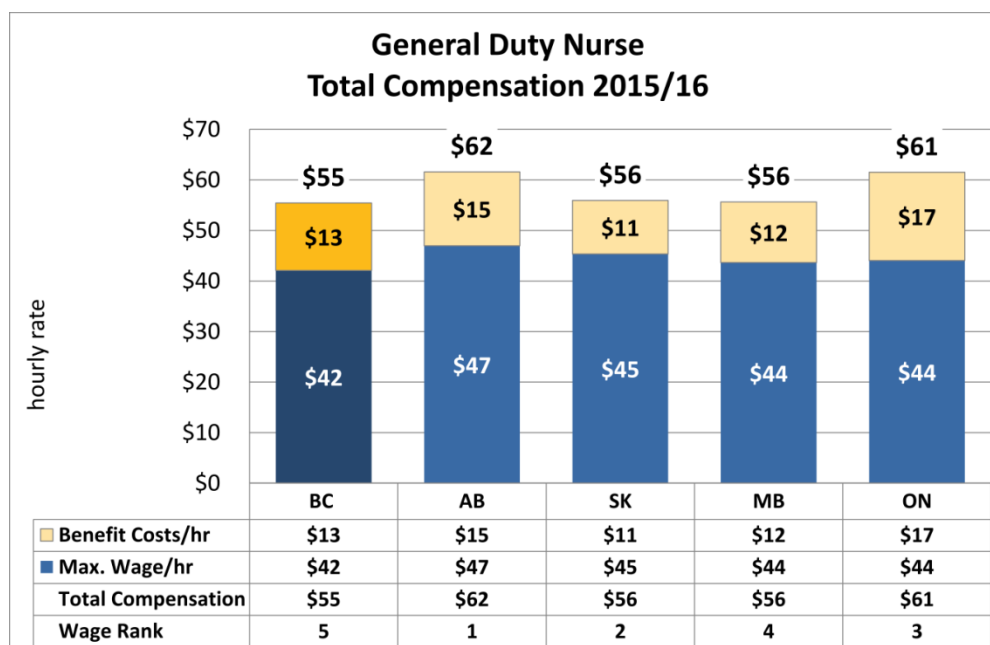
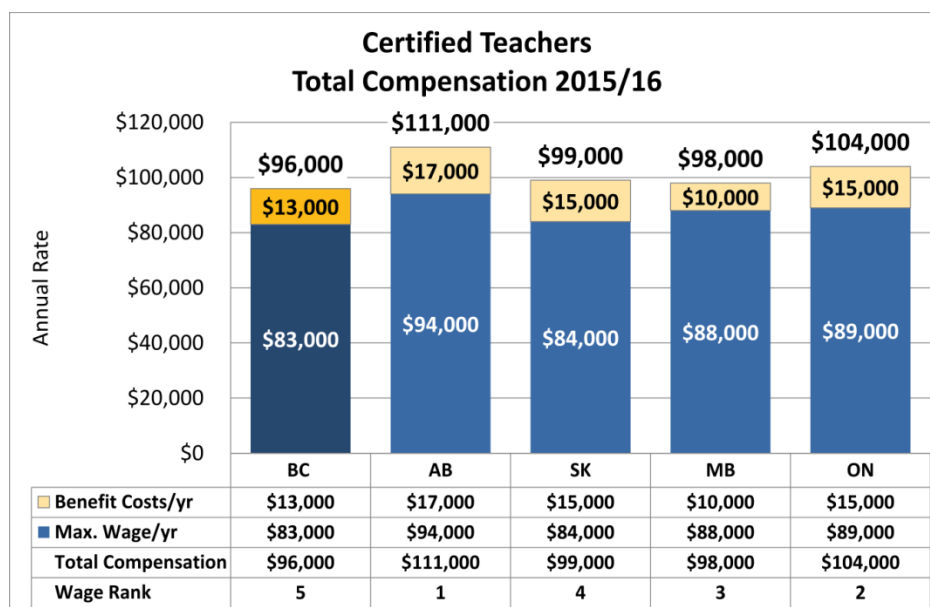
199. The British Columbia government does not have a policy respecting the desired rank of the province in respect of inter-provincial compensation levels, and does not maintain comprehensive up-to-date data on all public sector compensation positions across the country. Data is typically updated in advance of a new round of collective bargaining – the most recent update was in 2017 featuring previous fiscal year data.

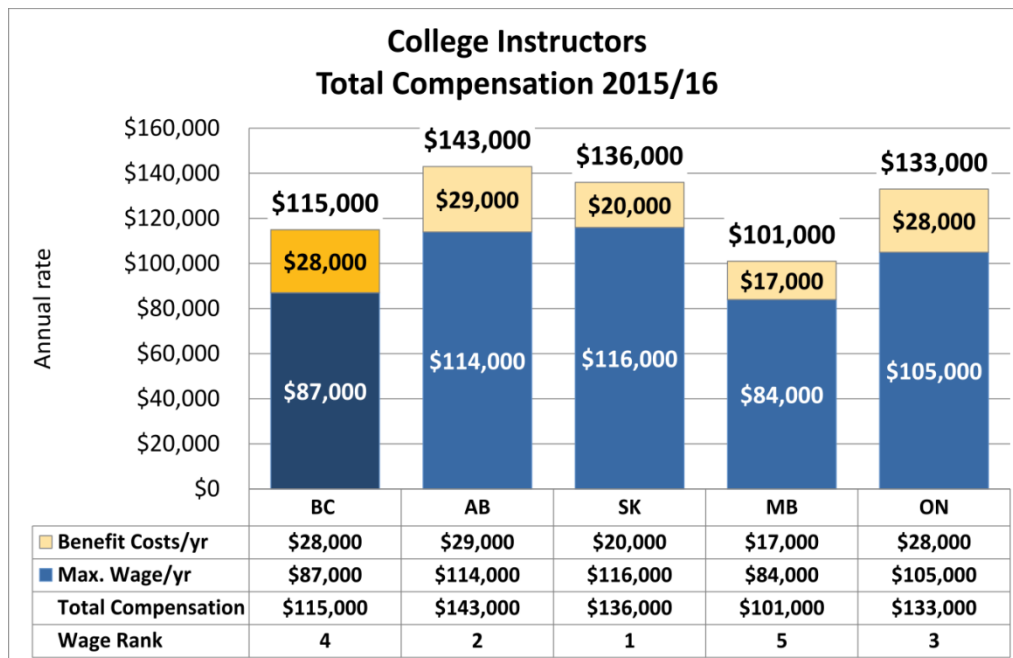
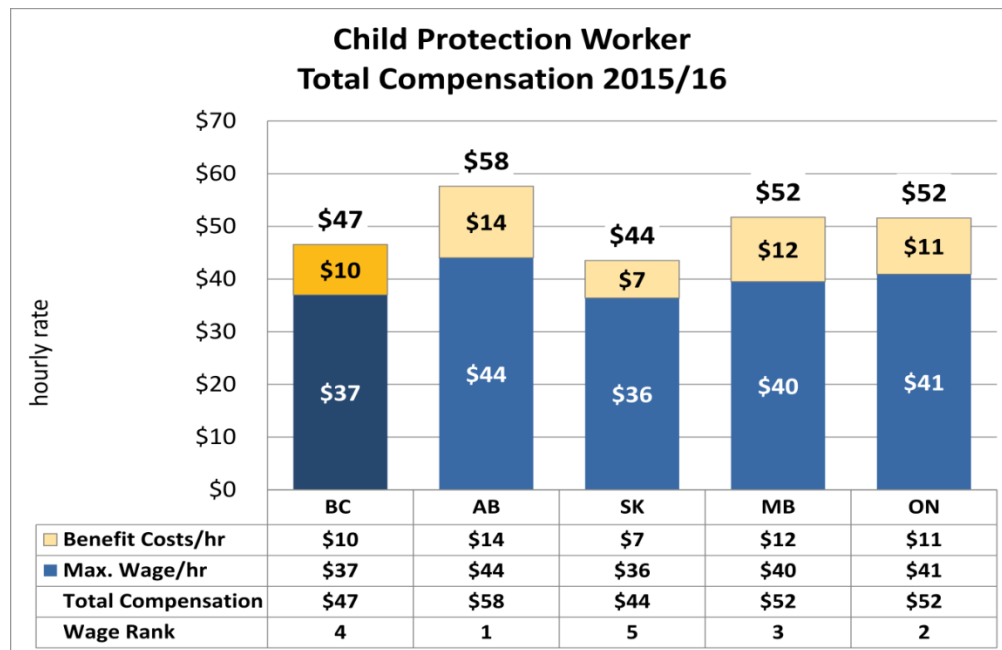
200. For the purpose of collective bargaining with a mobile labour force, government typically surveys other provinces that are relevant in terms of labour market size and geographic location: Alberta, Saskatchewan, Manitoba and Ontario. The Territories are excluded because compensation levels there are affected by distance and isolation, and Maritime provinces and Quebec because their distance makes them less relevant to determining labour market competition.

201. Data from the most recent update indicate that for a number of significant positions such as teachers, nurses, child protection workers and college instructors, B.C. ranks in the bottom portion of the five provinces included in the survey.<sup>45</sup>

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<sup>45</sup> B.C. Public Sector Employers Council





## Current public sector mandate

202. The current mandate for public sector compensation is called the Sustainable Services Negotiating Mandate. It applies to all public sector employers with unionized employees whose collective agreements expire on or after December 31, 2018. This includes the core public service in government ministries, Crown corporations and agencies, health and community social service workers, K-12 public education, and post-secondary institutions.

203. The mandate has been designed for the purpose of ensuring B.C.'s fiscal sustainability while providing fair compensation. Within the broader context of government's fiscal responsibilities, the mandate aims to improve the delivery of services for people in B.C. and balance the need for fair and reasonable wage increases with outcomes that are affordable and managed within the government's fiscal plan. This mandate is designed to support government's core priorities and enhance and modernize the delivery of services that British Columbians rely on.

204. Elements of the 2019 mandate are:

- Three-year term;
- General wage increases of 2% in each year;
- Ability to negotiate conditional and modest funding that can be used to drive tangible service improvements for British Columbians. (An example would be targeted funds to address existing, chronic labour market challenges where employers need to meet service delivery commitments or changes that achieve service enhancements such as innovations, modernization or efficiencies.)

205. As of May 14, 2019, 23 tentative and ratified collective agreements have been concluded under the mandate covering over 217,000 public sector workers.



206. General wage increases are not provided to excluded employees (i.e. those in management positions) across the provincial public sector. Based on a review of employee performance, some excluded employees may receive a modest annual adjustment within their existing salary range.

## **V. Current and Expected Economic Conditions in British Columbia**

207. The *Act* also requires this Commission to consider the generally accepted current and expected economic conditions in British Columbia.

208. The province has recently seen a moderation in economic growth, following a period of robust expansion. While real GDP (expenditure-based) expanded by a strong 3.2 per cent in 2016 and 3.8 per cent in 2017, data currently available for 2018 and 2019 indicate more moderate real GDP growth. A first estimate of real GDP growth for 2018, based on GDP by industry data (Statistics Canada will release expenditure-based real GDP in November 2019), puts B.C. economic growth at 2.4 per cent last year. Further, so far in 2019, many year-to-date economic indicators (such as employment, merchandise exports, and retail sales) continue to show more modest growth prospects, compared to the robust expansion observed in 2016 and 2017. Some indicators, namely in the housing sector, have not only slowed following previous strong growth, but have declined; housing starts, the number of home sales, average home sale prices, and the value of building permits are lower so far in 2019 than they were at the same time last year (data as of May 17, 2019).

209. Since B.C. is a small open economy with a vital trade sector, events in other jurisdictions can have a significant impact on the province. At this time, Canada's central and private banks continue to cite trade uncertainty and global slowdown as key concerns for Canada's international trade. Indeed, so far in

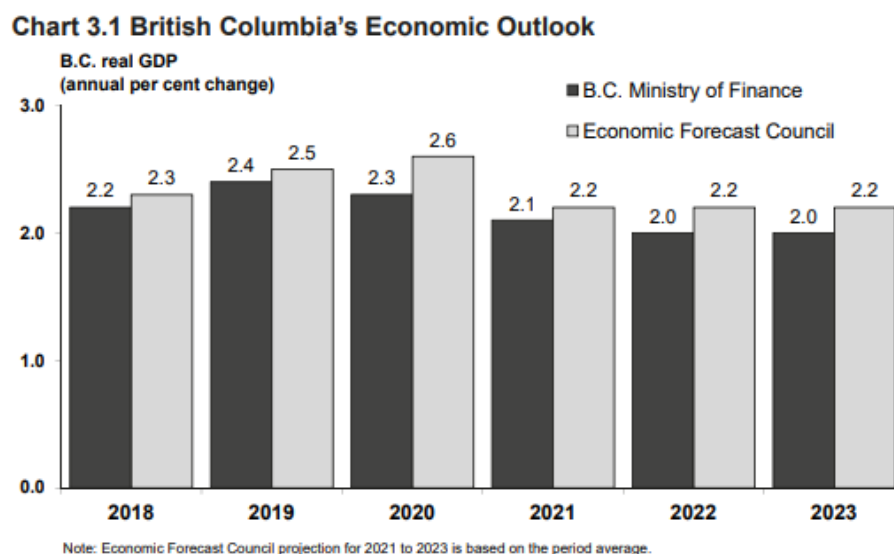
2019, B.C. international merchandise exports are performing below expectations. Furthermore, private sector forecasts for Canada and external economies (for example, Japan and the Euro zone) have been downgraded since the beginning of the year.

210. The Bank of Canada noted in its latest policy statement (released April 24, 2019) that Canadian economic growth over the first half of this year is now expected to be slower than it anticipated at the start of this year, due to the negative knock-on effects from slowing global economic activity, trade policy uncertainty, last year's oil price decline, and weaker-than-anticipated domestic housing and consumption activity. As such, risks to the B.C. economic outlook continue to be weighted to the downside. The main downside risks to the current outlook include the following:

- uncertainty regarding global trade policy, including tariffs and the softwood lumber dispute;
- weakening global economic activity, with slowing growth in Asia and other regions, resulting in weaker demand for B.C.'s commodity exports;
- lower commodity prices, in particular natural gas, lumber, and coal;
- the risk of disruption to Europe's economic growth as it faces the challenges of the UK exiting the European Union and elevated sovereign debt;
- timing of investment and hiring related to the LNG Canada project;
- stronger than expected impacts of past and future monetary policy tightening on interest rate sensitive sectors; and
- exchange rate volatility.

211. In recognition of these risks, the Ministry of Finance builds prudence into the economic

outlook. In *Budget 2019/20*, the Ministry of Finance forecasts the B.C. economy to grow by 2.4 per cent in 2019, by 2.3 per cent in 2020, 2.1 per cent in 2021, and 2.0 per cent annually from 2022 to 2023. Meanwhile, the Economic Forecast Council<sup>46</sup> (EFC) forecasts the B.C. economy to grow by 2.5 per cent in 2019, 2.6 per cent in 2020 and 2.2 per cent annually from 2021 to 2023. The Ministry's forecast is below the projections provided by the EFC for the entirety of the forecast horizon; by 0.1 percentage point in 2019, 0.3 percentage points in 2020, 0.1 percentage point in 2021, and 0.2 percentage points lower in both 2022 and 2023. This prudence acknowledges the downside risks to the economic forecast and is one of the levels of prudence built into the fiscal plan.



212. Further details regarding the economic outlook and a summary of the EFC projections can be found in the *British Columbia Budget and Fiscal Plan* (Part 3: British Columbia Economic Review and Outlook, *Budget 2019/20*).

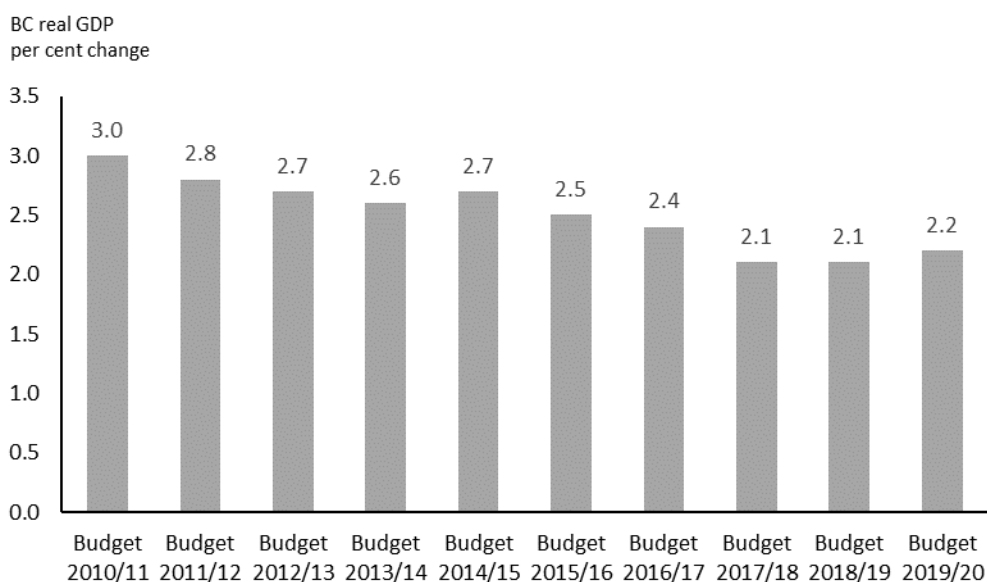
213. More recently, the private sector has lowered its forecasts of Canadian and B.C. economic

<sup>46</sup> In accordance with the *Budget Transparency and Accountability Act*, the Minister of Finance, in preparing each year's provincial budget, consults the Economic Forecast Council on British Columbia's economic outlook. The Council is comprised of 13 leading economists from several of Canada's major banks and private research institutions.

growth for this year and next year. As of May 17, 2019, the private sector average forecast (an average of the outlooks from BMO, CIBC, National Bank, RBC, Scotiabank, and TD) for B.C. real GDP was 2.0 per cent for 2019 and 2.5 per cent for 2020. This is down considerably from the same average earlier in the year (February 6, 2019), when the forecast was 2.4 per cent for 2019 and 2.7 per cent for 2020. Further, year-to-date data for several economic indicators has been weaker than expected by the Ministry of Finance (international merchandise exports, retail sales, and the value of residential home sales). That said, it is still early in 2019 and only a limited amount of data is available. As such, the economic outlook is a risk that the Ministry of Finance will continue to monitor.

214. Looking further into the future, research shows that aging demographics pose a significant risk to long-term economic growth prospects in B.C. While the province is not alone in this predicament (numerous jurisdictions face similar challenges), it is important to keep this in mind from a fiscal planning perspective.

#### Evolution of the Economic Forecast Council's Medium-term\* Outlook

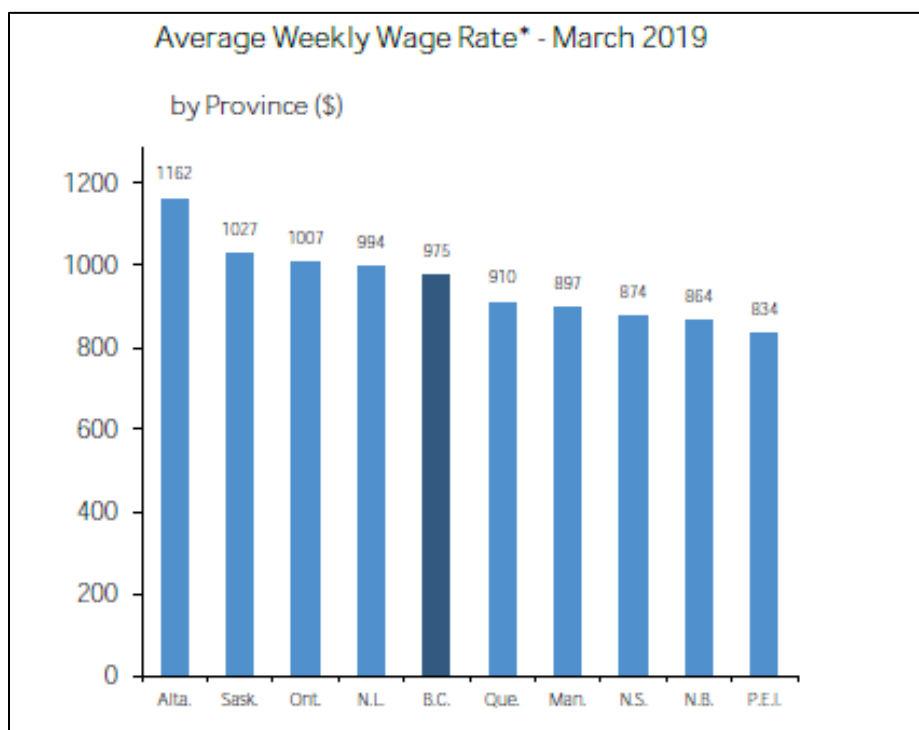


Source: *Budget and Fiscal Plans (published in February) 2010/11 to 2019/20*

\*Medium-term refers to the last three years of the five-year forecast horizon

215. Although not long-term in nature, a reflection of this lowering growth trend can be observed from the EFC's medium-term outlook (where medium-term refers to the last three years of the five-year forecast horizon). In Budget 2010/11, the EFC forecast B.C.'s economy to grow by 3.0 per cent in the medium-term, however the EFC has lowered their medium-term projections in subsequent budgets and is now forecasting 2.2 per cent growth for B.C. over the medium-term.

216. When it comes to the labour market in the province, British Columbia's current (March 2019) unemployment rate of 4.7% is lower than the national average of 5.8%. However, earnings in B.C. are in the middle of the pack nationally, with B.C.'s average weekly wages ranking fifth amongst provinces.<sup>47</sup>



\* Latest 12-month average

<sup>47</sup> BC Stats: Earnings and Employment Trends – March 2019, p. 1.

217. This reflects a long-standing trend, as British Columbia's average weekly wages have been below the national average for the last seven years running.<sup>48</sup> The table below compares the changes in average weekly wage rates between B.C. and the Canadian average between 2005 and 2018, and compares those changes to inflation (the Consumer Price Index) and changes to judicial salaries.

	Cumulative change between 2005 and 2018 <sup>49</sup>
Consumer Price Index (B.C.)	21.09%
Average Weekly Wage Rate (B.C.)	38.46%
Average Weekly Wage Rate (Canada)	39.97%
Provincial Court Judges (B.C.)	64.96%
Provincial Court Judges (Prince Edward Island = national provincial average)	55.42%

As the table indicates, over this longer period, B.C.'s average weekly wages have increased at very close to the national average and have exceeded inflation, but are significantly below the salary increases received by judges in B.C. and in other provinces.

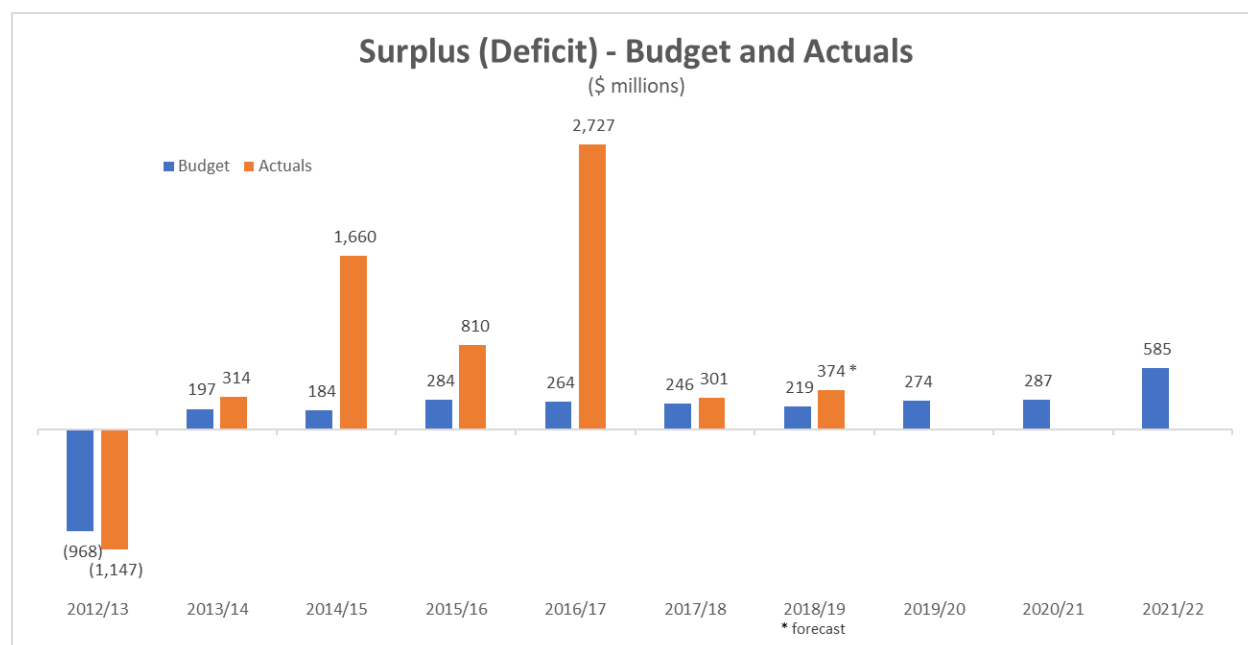
## **VI. Current and Expected Financial Position of Government**

218. In the fiscal years 2014/15 through 2016/17, the Government saw large and unexpected surpluses. The higher-than-expected growth in the economy was a major factor affecting provincial revenues in 2014/15 and 2016/17 – in particular revenue from personal and corporate income taxes, sales tax and property transfer tax.

<sup>48</sup> Ibid., Table 2.1.

<sup>49</sup> Sources: Joint Book of Documents (Judges), Tab 15 (judicial salary comparison); StatsCan Table: 14-10-0340-01 <https://www150.statcan.gc.ca/t1/tbl1/en/cv.action?pid=1410034001#timeframe> (wage rates); <https://www2.gov.bc.ca/gov/content/data/statistics/economy/consumer-price-index> (CPI change). Note that CPI and judges' figures are by fiscal year and weekly wages are by calendar year.

219. Given the uncertainty in global trade policies and the housing sector, growth in the B.C. economy is unlikely to return to the pace experienced in those years. Likewise, fiscal surpluses of this magnitude are not expected to continue. The most recent government forecast from *Budget 2019* shows that expected surpluses over the next three years are modest and represent less than one per cent of annual revenues.



220. After two years of relatively high growth (6.2 per cent in 2016/17 and 7.8 per cent forecast for 2017/18) in support of new priorities and reinvestments, government spending is forecast to increase moderately over the next three years with an average annual growth forecast of 3.4 per cent. However, this excludes potential significant cost increases related to flood and wildfire response and recovery that reached historic highs in 2017 and 2018 (totalling \$650 million and \$615 million respectively).

221. The government and provincial public sector employers spend about \$30.4 billion on compensation. This makes up more than half of the Government's budget. An increase of 1% in total compensation for all employees, including unionized, non-union and management employees would cost approximately \$304 million.

## Government's Current Fiscal Plan

222. The Government is committed to continuing to deliver balanced budgets, maintain debt affordability, ensure a competitive tax regime, while at the same time sustainably funding pent-up need for healthcare, education, childcare, housing and the environment. In addition, the province is funding vital infrastructure such as hospitals, schools, post-secondary facilities, transit, and roads. This requires fiscal discipline and trade-offs based on overall priorities.

223. Fiscal discipline across all sectors of government and lower debt servicing costs through the elimination of operating debt has yielded increased budgetary resources over the fiscal plan period for allocation to government priorities and public services, including the following new programs and initiatives:

- Over \$3.5 billion in funding to support new collective agreements consistent with the Sustainable Services Negotiation Mandate. This includes a 2 per cent general wage increase in each of the three years of the term with a focus on tangible changes that support the improvement of public services;
- Over \$1.3 billion for the health sector to address a back-log of demand for access to general health care services, expansion of drugs covered under Pharmacare and underfunded services such as mental health and the opioid overdose emergency;
- \$860 million over the next three years to help people get ahead, including the B.C. Child Opportunity Benefit, student loan interest elimination, increases to income and disability assistance rates and increased payments for children at risk;
- \$679 million in funding for the CleanBC plan to reduce carbon pollution and promote the use of clean energy to power B.C.'s economy;
- \$550 million to meet the projected enrolment growth in the K-12 education system;



- \$297 million in revenue-sharing payments to First Nations of B.C. in support of government's commitment to reconciliation;
- \$111 million to the fire management vote in response to the increase in wildfire activity in recent years;
- \$47 million to improve access to Justice and Public Safety, including funding for the Civil Resolution Tribunal; and,
- \$39 million for affordable housing measures, further to funding provided in Budget 2018.

224. Maintaining balanced budgets in the coming years will require the Government to make difficult funding decisions, both large and small, to ensure government priorities can be funded while maintaining affordable debt levels and a competitive tax environment

#### **Funding to Enhance Access to Justice**

225. The Ministry of Attorney General is under tremendous pressure to deliver core operations as well as to proceed with justice reform, including the many recommendations contained in recent reports and reviews related to the sector.

226. The range of new expenditures in the justice system includes:

- \$157 million for a new courthouse in Abbotsford, to be operational in early 2021;
- \$26 million over the next three years to the Legal Services Society for the expansion of legal aid service delivery supports, including Indigenous, family law (through Parents Legal Clinics) and duty counsel services;
- \$7.6 annually to fund the Civil Resolution Tribunal;
- \$3.0 million to support the initial implementation of the new Human Rights Commission, with further expenditures necessary as the Commission reaches full capacity in 2020 and beyond;

- \$2.3 million for Gaming Policy and Enforcement for enhanced anti-money laundering enforcement;
- \$1.4 million to support the development of the Ministry's Indigenous Justice Strategy and the implementation of up to three Indigenous Justice Centres that will provide legal information, advice and representation to clients;
- \$2.1 million over the next three years to focus on more effective implementation throughout the justice system of Gladue principles respecting Indigenous offenders' backgrounds and sentencing;
- \$1.3 million increase to fund market adjustments to recruit and retain Sheriffs, and \$1.0 million for Sheriffs' overtime;
- \$1.9 million in capital funding for courts technology innovation such as Court of Appeal e-filing, online divorce assistance, and enhanced access to court transcripts;
- \$1.5 million for Justice Access Centres (JACs), including funding for 4.5 new FTEs at the Victoria JAC for early resolution and case management for family law disputes and \$0.8 million in new funding to create a new JAC in Surrey.

227. Related justice system pressures include legal aid, which is provided through the Legal Services Society (LSS). While government's funding for legal aid has increased significantly since 2017, the LSS continues to struggle to entice the private bar to take legal aid work under the current tariff regime. Service withdrawal threats and the emergence of a new advocate agency, the Association of Legal Aid Lawyers, has precipitated a government response which includes the development of a bargaining framework to address the longstanding tariff issue. In addition to an interim measure of investing \$8 million, an increased tariff framework, if approved, will create pressures in other areas of the sector.

228. In summary, there are myriad needs and priorities that the government address through the Government's budget, including the justice system. As former Deputy Minister of Finance Graham Whitmarsh said to the 2010 Judges Compensation Commission:

“What I learned .... is it's not the big things that save you money, it's tens of thousands of little decisions, and that's been my experience in government....

One of my other learnings is that it's very easy to pick any issue you want in an entity as big as the government and you can find hundreds of great ideas, hundreds of ideas that will break your heart, hundreds of ideas that you think absolutely we should invest in, but when you line them up and you have a finite amount of resources there's some really, really tough decisions that need to be made and you find that you simply cannot do most of them and trying to narrow down what you can do is very difficult.”<sup>50</sup>

## Provincial Debt

229. Although the Government's operating debt has been eliminated, total provincial debt is projected to increase by \$14.5 billion over the fiscal plan period to reach \$82.4 billion by 2021/22. This includes taxpayer-supported debt which is forecast to increase by \$10 billion to \$54 billion by 2021/22. This increase is due to funding for significant investments in capital infrastructure over the next three years.

230. Despite the reconfirmation of B.C.'s credit rating, the rating agencies still put the Government on notice that rising debt levels could result in a negative outlook for the province's credit rating. Further to this, the rating agencies could react unfavourably should there be significant increases to spending through higher compensation costs or significant tax increases that might impact competitiveness and private sector investment.

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<sup>50</sup> 2010 Judges Compensation Commission, Transcript of Proceedings, June 25, 2010, pp. 10 and 12.

## Fiscal Plan – Risks and Prudence

231. The economic, financial and external variables that impact the estimates of revenues, expenditures, capital spending and debt are dynamic, and the fiscal plan will be updated accordingly throughout the year.

232. There are still many risks to the fiscal plan stemming from changes in factors that government does not directly control. These include:

- assumptions underlying revenue and commercial Crown corporation forecasts such as economic factors, commodity prices and weather conditions;
- the outcome of litigation, arbitrations, and negotiations with third parties;
- increased potential for costs related to natural disaster response and recovery, exacerbated by the impact of climate change.
- economic and fiscal impacts from trade related issues, including the ongoing US-Canada softwood lumber dispute and ratification and implementation of the *Canada-United -Mexico Agreement*;
- potential changes to federal government transfer allocations, including health and social transfers and cost-sharing and impacts on the provincial income tax bases arising from federal tax policy and budget changes;
- utilization rates for demand-driven government services such as healthcare, children and family services, and income assistance; and
- changes in accounting treatment or revised interpretations of generally accepted accounting principles (GAAP) could have material impacts on the bottom line.

233. The Government has incorporated four main levels of prudence in its current estimates to help mitigate the risks to the fiscal plan and these measures generally have resulted in surpluses in strong economic times. These measures are:

- A lower economic growth forecast than the average of the Economic Forecasts Council's average. In 2019 0.1 percentage point lower, in 2020 0.3 percentage points lower and 0.1 percentage point lower in 2021.
- A natural gas price forecast for the budget period of \$0.70 lower than the average of the private sector forecasts as per the recommendation of Dr. Tim O'Neil in 2013 to adopt more caution in preparing the natural gas forecast.
- A forecast allowance of \$500 million in 2019/20 and \$300 million in each of the two subsequent years. This is to deal with unanticipated revenue or statutory expense volatility such as additional costs to deal with wildfires, floods or other emergencies.

234.A Contingencies Vote allocation of \$750 million in 2019/20 and \$400 million in each year of the next two years to help manage unforeseen expenses and fund critical priorities.

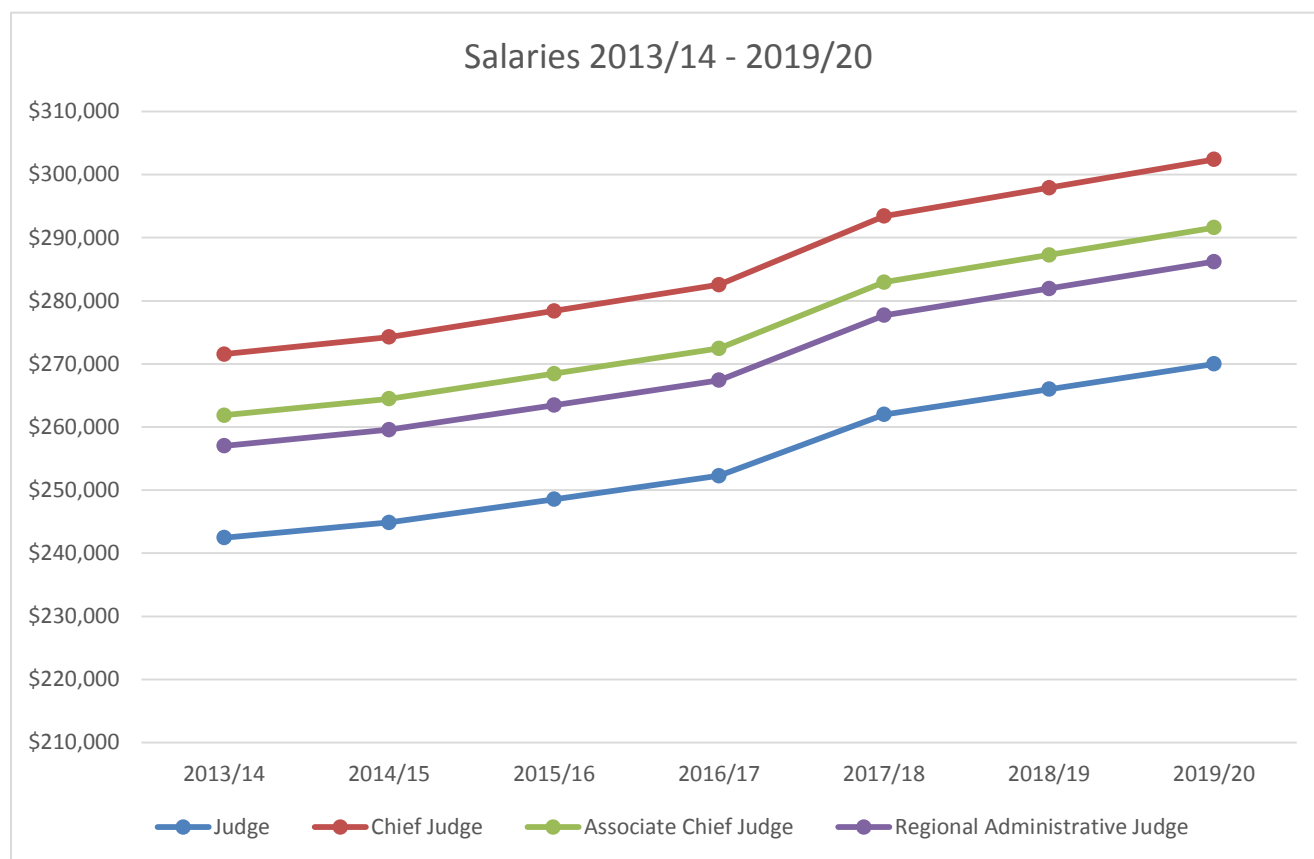
## The Government's Submission to the Commission

### Reasonable Compensation for Judges of the Provincial Court

#### Salaries

235. The mandate of the Commission is to recommend salaries for Provincial Court Judges for the next three fiscal years: 2020/21 to 2022/23.

236. The current salary of puisne Provincial Court Judges is \$270,000. The following table illustrates the history of increases to Judges' salaries since 2013/14:



237. Government's submission results from a consideration of all the required statutory factors, and takes into account the relevant levels of compensation across Canada as well as within

British Columbia, and recognizes the economic and fiscal realities unique to our province. In summary:

- The Court continues to attract more than sufficient highly qualified candidates, and the judicial complement is extremely stable. There is no demonstrated need to increase compensation to address any recruitment and retention issues.
- Others in the B.C. public sector are receiving modest compensation increases, in keeping with projected increases in the cost of living.
- The financial position of the government is relatively healthy, but forecasted surpluses are very small (less than 1% of the budget) as government responds to significant pent-up demand for services across the board.
- The Government will continue to be required to make difficult funding decisions, both large and small, to ensure government priorities can be funded while maintaining affordable debt levels and a competitive tax environment.
- Justice sector funding reflects the overriding priority of investing in the system to enhance access to justice for British Columbians, e.g. in the Civil Resolution Tribunal and specialized courts.
- Following a period of robust expansion, the province has recently seen a moderation in economic growth. Some indicators, particularly the housing sector, have not only slowed following previous strong growth, but have declined.
- Compensation for British Columbia judges should not be driven by funding decisions made in other jurisdictions, particularly through linkages to superior court judges'

compensation that is, in turn, driven by federal Deputy Minister salaries and estimates of private sector lawyers' salaries.

238. Compensation paid to other judges in Canada is useful as a general comparison to ensure the British Columbia's judges are not significantly out of step with their counterparts elsewhere. It is not possible to know at this point what judges in other provinces will be paid over the next three fiscal years, but Government's proposed salaries would very likely maintain British Columbia judges in a position amongst the provinces and territories that is similar to today.

239. The Provincial Court small claims limit increase will not result in a significant change to the scope of matters heard by Judges, and the jurisdiction of the Civil Resolution Tribunal is assisting in reducing overall Provincial Court caseloads.

240. The position of the government is that, taking all the factors into account, only minor adjustments are needed to ensure fair and reasonable compensation to British Columbia Provincial Court Judges. Government proposes the following in respect of Provincial Court Judges' salaries:

**Puisne Judges:** that these salaries should be increased by 2.0% per year, resulting in the following salaries:

- o \$275,400 in the first year,
- o \$280,908 in the second year, and
- o \$286,526 in the third year.

**Chief Judge, Associate Chief Judges and Regional Administrative Judges:** no change to salary differentials.



## Flexible Benefits Proposal

241. Government submits that the following changes be made to the Flexible Benefits Plan for Judges. These changes would take effect on January 1, 2021, as the Plan is administered by calendar year:

- Remove MSP credit from the Flexible Benefits Program, as MSP premiums will no longer be levied, and instead will be funded through the Employer Health Tax.
- Increase the lifetime maximum for extended health benefits and out of province/country emergencies from \$250,000 to \$3 million. This maximum would apply to all options except for waived option.
- Add qualified social workers to the list of eligible providers of counselling services, with no change to plan maximums. This change would apply to all options except for waived option.
- Increase employer life insurance flex credits from \$80,000 to \$100,000. This change would apply to all options.
- Change physiotherapy limits as follows:
  - Options 1 and 2: no change (\$300 and \$800 per year respectively for all paramedical services<sup>51</sup> combined);
  - Option 3: \$1,500 annual limit (from unlimited);
  - Options 4 and 5: \$2,000 annual limit (from \$500 per year for each paramedical service).
- Increase the maximum amount for eye examination from \$75 to \$100, and remove the maximum age limit of 65. These changes would apply to all options except for waived option.

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<sup>51</sup> Paramedical services include physiotherapy, massage therapy, acupuncture, chiropractic, naturopathy, and podiatry.

## Reasonable Compensation for Judicial Justices

### Salaries

242. Government's submission to the Commission respecting Judicial Justices' salaries results from a consideration of all the required statutory factors:

- The complement of Judicial Justices is extremely stable, and there is no demonstrated need to increase compensation to address any recruitment and retention issues.
- Others in the B.C. public sector are receiving modest salary increases, in keeping with projected increases in the cost of living.
- The financial position of the government is relatively healthy, but forecasted surpluses are very small (less than 1% of the budget) as government responds to significant pent-up demand for services across the board.
- The Government will continue to be required to make difficult funding decisions, both large and small, to ensure government priorities can be funded while maintaining affordable debt levels and a competitive tax environment.
- Justice sector funding reflects the overriding priority of investing in the system to enhance access to justice for British Columbians, e.g. in the Civil Resolution Tribunal and specialized courts.
- Following a period of robust expansion, the province has recently seen a moderation in economic growth. Some indicators, particularly the housing sector, have not only slowed following previous strong growth, but have declined.
- Compensation for British Columbia Judicial Justices should not be driven by funding decisions made in other provinces, including through direct linkages to those other jurisdictions' Provincial Court Judges. In addition, particular attention should be paid

to differences in the scope of duties and jurisdiction between the various equivalent positions.

- o There have been no changes in the jurisdiction of Judicial Justices.

243. The position of the Government is that, taking all the factors into account, only minor adjustments are needed to ensure fair and reasonable compensation to Judicial Justices. In government's submission, these salaries should be increased by 2.0% per year, resulting in the following:

- o \$124,440 in the first year;
- o \$126,929 in the second year; and
- o \$129,467 in the third year.

### **Per Diems**

244. Government submits that the formula for determining the salary for per diem Judicial Justices should not be changed. The per diem amount will increase from its current \$787 in proportion to the increases in Judicial Justices' salaries, as follows:

- o \$801 in the first year;
- o \$816 in the second year; and
- o \$830 in the third year.

### **Flexible Benefits Program**

245. Government proposes no changes to the current flexible benefits program for Judicial Justices.

## Joint Submissions

246. For positions relating to the following issues please see separate Joint Submissions:

- Administrative Judicial Justices Salary
- Professional Development Allowance (Judges and Judicial Justices).