



Government of British Columbia

Submission and Response

to the

Judicial Compensation Commission

June 14, 2016

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Introduction

1. As the consequence of recent amendments made to the *Judicial Compensation Act* (the “Act”), this Commission is now responsible for making recommendations for both Provincial Court Judges and Judicial Justices.
2. To try to ensure that both Associations receive equal treatment in this proceeding, the Government submission will deal with issues in common to both Associations followed by separate submissions with respect to each group.
3. In the course of this submission, we will provide our response to the submissions filed by each Association.

Overview and Summary of Government's Position

4. The Government and its officials are dedicated to providing the resources and the support needed to ensure the Provincial Court is able to carry out its obligations. It is in the public interest that the Court maintains full vitality and efficiency.
5. The work of Provincial Court Judges and Judicial Justices is important. In these proceedings, the Government will neither seek to minimize the role of these judicial officers, nor take an adversarial approach to the Commission process.
6. There are many compensation reports and court decisions dealing with the approach to be taken by Government in setting the compensation for Judges and Judicial Justices. These reports and judgments are relatively consistent and provide guidance for these proceedings.
7. In that respect, while the Judicial Compensation Commission has a central role to play in the establishment of the compensation for Judges and Judicial Justices, so also does the Government and the Legislative Assembly. The Legislative Assembly, with the advice of the Attorney General and the Government, must give meaningful effect to the recommendations of the Commission in deciding the ultimate changes to be made in the compensation of these judicial officials. However, there may be justifiable reasons to depart from the Commission's recommendations.
8. Section 5(5) of the *Act* now provides that the Commission "must be guided by the need to provide reasonable compensation for Judges and Judicial Justices...", and then provides for six factors which must be taken into account.¹ The factors really establish three themes:
 - a. The need to maintain a strong Court with highly qualified Judges and Judicial Justices taking into account any changes in their jurisdiction [Section 5(5) (a) and (b)],

¹ *Judicial Compensation Act*, Judges' Association Documents, Tab 1

- b. 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)].
 - c. The generally accepted and expected economic conditions in BC and the current expected financial position of the Government [Section 5(5) (e) and (f)].
9. 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*, [1997] 3. S.C.R. 3 (“*PEI Reference*”),² at paragraph 173:

...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.

10. It is easy to imagine circumstances where one of these themes might be more important than another. For example, a significant expansion of the jurisdiction of the Court might lead to that theme being of greater importance, or an established pattern of significant increases and compensation for provincial court judges across Canada might have greater importance, or a significant deterioration in the economy of the province might have greater importance.
11. In our current circumstances, the Government submits that these criteria are relatively neutral, resulting in it being appropriate to weigh them in a relatively equal manner:
- a. The Court is clearly strong and the Government has made the necessary appointments of highly qualified individuals to keep the number of Judges and Judicial Justices stable.

² *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3. S.C.R. 3, Judges' Association Documents, Tab 10

There has also not been any recent change to the jurisdiction of the Court (which is acknowledged by the Judges' Association).

- b. Compensation has been reasonably consistent across Canada for provincial court judges. In 2015 (the last year for which we have complete data) the median salary for Judges across Canada was \$250,050. The average salary for Judges during that period was \$259,055. Certain jurisdictions have recently suffered a significant deterioration in their economies and it therefore can be assumed that the higher level of provincial court salaries in jurisdictions such as Alberta are threatened. In BC, the levels of compensation for those funded by public funds have been restrained but have met the cost of living. Teachers under collective agreements in British Columbia rank fifth in Canada (excluding the Yukon and Northwest Territories). Nurses also have ranked fifth in Canada (excluding the Yukon and Northwest Territories). In the Public Service, at the strategic leadership range which includes directors and executive directors, BC ranks twelfth in Canada.
 - c. The Canadian and BC economies are characterized by significant deterioration in some jurisdictions and some growth in others. In BC, there remain some risks to the economy in the short and long term.
12. The current salary of Provincial Court Judges is \$244,112. This is the salary which should be used by the Commission as the base for calculations. The duty of the Commission is to recommend salaries prospectively for three years. The position of the Government is that the salary should be set at \$247,774 in the first year, \$251,491 in the second year, and \$255,263 in the third year, representing a 1.5% increase per year. The Government believes that these increases provide adequate and reasonable compensation to the Judges.
 13. The Judges' Association's position advocates that the annual salary of Judges be increased to \$285,000 for the first year, \$290,700 for the second year, and \$296,514 for the third year, which would result in a 21% increase over three years.

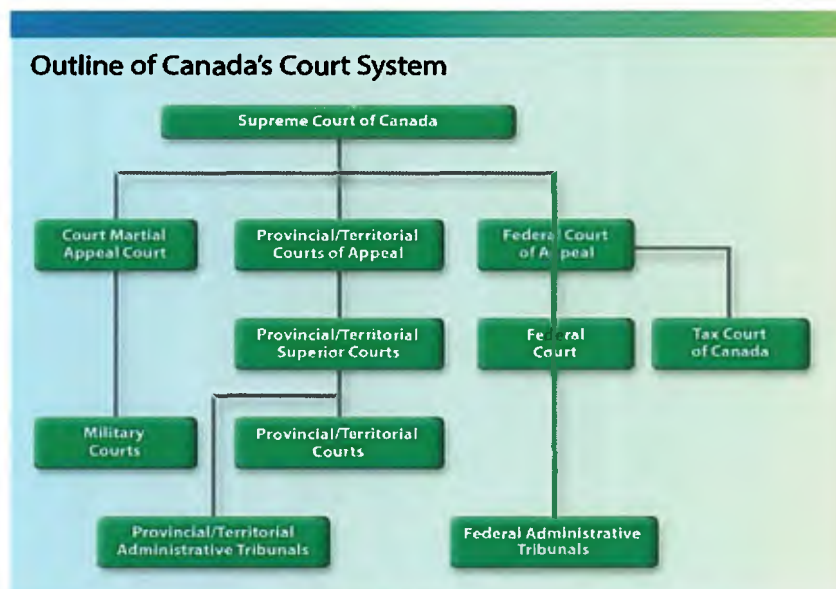
14. The Judges' Association proposes an increase in the pension accrual rate to 3.5%. This level is inconsistent with accrual rates for provincial court judges across Canada and is not supported by the Government.
15. With respect to Judicial Justices, there are currently facilitated discussions taking place with respect to the resolution of the judicial review regarding compensation for previous years. It is believed that the discussions will be successfully resolved. In these circumstances, we will not identify in this submission the ultimate position of the Government. Details will be communicated as soon as possible by way of a supplemental submission.
16. It is significant that the criteria established by Section 5(5) of the *Act* do not provide explicitly for a comparison to federally-appointed judges. It is the submission of Government that any formulaic relationship between federally-appointed judges and Provincial Court Judges is inappropriate.
17. It is acknowledged that the full salary and compensation costs of Judges and Judicial Justices are within the fiscal capacity of Government to pay. The annual budget of the Court in 2014/2015 was \$54,000,000. That is not the issue. The issue is what is reasonable and adequate compensation to meet the factors under the *Act*.

The British Columbia Provincial Court

18. The Provincial Court of British Columbia was established in 1969, but its history goes back to the fur trade and early European settlement.³ Over the decades, the Court has experienced significant change and its jurisdiction has expanded. Today, the Court is a busy trial court, and an important component of British Columbia's legal system.
19. The Provincial Court operates at a particular level within the judicial hierarchy of Canadian courts. In this part of the submission, we provide a brief overview of Canada's court system and the work, functions and jurisdiction of the Provincial Court, its Judges and Judicial Justices. We also discuss British Columbia's other trial court, the Supreme Court of British Columbia.

Canada's Court System

20. Canada's court system is organized hierarchically into four levels. Courts at every level exercise a common function of hearing and adjudicating disputes. The following diagram depicts the organization of Canada's court system:⁴



³ Online: Provincial Court of British Columbia <<http://www.provincialcourt.bc.ca/about-the-court/history>>

⁴ Online: Canada, Department of Justice <<http://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/02.html#sec1>>

21. It is at the provincial and territorial (lower) court stratum where most of the cases are heard. Generally, provincial and territorial courts in Canada deal with the following matters:

- most criminal offences, except the most serious ones;
- 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;
- claims involving money, up to a certain amount (set by the province or territory in question);
- 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).⁵

22. Provincial/territorial courts are established by provincial/territorial governments under enabling statutes and pursuant to Section 92(14) of the *Constitution Act, 1867*.

23. At the next level in the hierarchy are provincial and territorial superior courts. They are courts of inherent jurisdiction and are established under Section 96 of the *Constitution Act, 1867*. Superior courts deal with more serious crimes and civil matters, and also hear appeals from provincial and territorial courts.

⁵ Canada, Department of Justice, Canada's Court System (2015), online: Department of Justice <<http://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/pdf/courten.pdf>>, Government Documents, Tab 1, at pages 3-4

24. Above those superior courts, each province and territory also has a court of appeal. These courts hear appeals from decisions of the lower courts. The Supreme Court of Canada is the final court of appeal from all other Canadian courts.⁶

British Columbia Provincial Court

25. In British Columbia, the Provincial Court is the first level of trial court. It is established under the *Provincial Court Act* (the “PCA”).⁷ The PCA sets out, among other things, the jurisdiction of the Court, the powers and duties of the Chief Judge, and the requirements for appointment to the Bench and the term of office for Judges.
26. The PCA also establishes the independent Judicial Council. Pursuant to Section 21(2) of the PCA, the Judicial Council is comprised of nine members, including the Chief Judge, and other judges, lawyers and lay persons. The Judicial Council is tasked with advising the Government on the appointment of Provincial Court Judges and Judicial Justices.
27. As in other provinces, the Provincial Court in British Columbia hears the largest volume of cases of any of the three courts, including civil lawsuits for claims less than \$25,000 (small claims), approximately half of all family law cases, and most cases involving traffic and bylaw, criminal and young offender matters. In fact, 95% of criminal cases in this province are heard in the Provincial Court, although 73% are concluded using half a day or less of court time.⁸
28. There have been no changes made to the jurisdiction of the Provincial Court since 2005 when the small claims limit was increased to its current level.

⁶ Canada, Department of Justice, Canada’s Court System (2015), online: Department of Justice <<http://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/pdf/courten.pdf>>, Government Documents, Tab 1, at page 3

⁷ *Provincial Court Act*, Judges’ Association Documents, Tab 3

⁸ D. Geoffrey Cowper QC, “A Criminal Justice System for the 21st Century: Final Report to the Minister of Justice and Attorney General Honourable Shirley Bond” (27 August 2012), Government Documents, Tab 2, at page 31

The number of new cases is decreasing

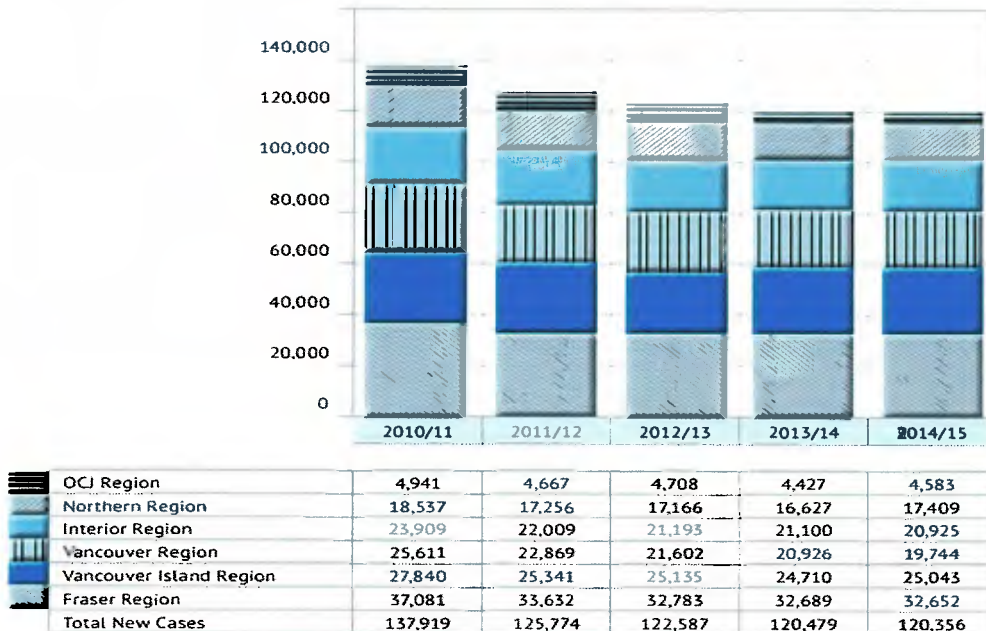
29. According to the Annual Report 2014/15 of the Provincial Court of British Columbia, the Court received the following number of new cases in each of the years since 2010/11:⁹

Figure 8. New Cases by Division, 2010/11 to 2014/15

| | 2010/11 | 2011/12 | 2012/13 | 2013/14 | 2014/15 |
|--|----------------|----------------|----------------|----------------|----------------|
| Adult Criminal Cases | 59,460 | 62,320 | 61,176 | 60,135 | 61,725 |
| Family Cases and Subsequent Applications | 35,396 | 34,729 | 33,640 | 31,363 | 31,453 |
| Small Claims Cases | 18,886 | 15,471 | 14,896 | 15,102 | 13,479 |
| Child Protection Cases and Subsequent Applications | 8,787 | 8,542 | 8,779 | 9,980 | 10,187 |
| Youth Criminal Cases | 5,390 | 4,712 | 4,096 | 3,899 | 3,512 |
| Total Cases | 137,919 | 125,774 | 122,587 | 120,479 | 120,356 |

30. While those cases were distributed among every geographic region in British Columbia, the greatest percentage of new cases were filed in the Fraser Region:¹⁰

Figure 11. Distribution of New Cases by Geographical Region, 2010/11 to 2014/15



⁹ Provincial Court of British Columbia, Annual Report 2014/15, Judges' Association Documents, Tab 3, at page 23

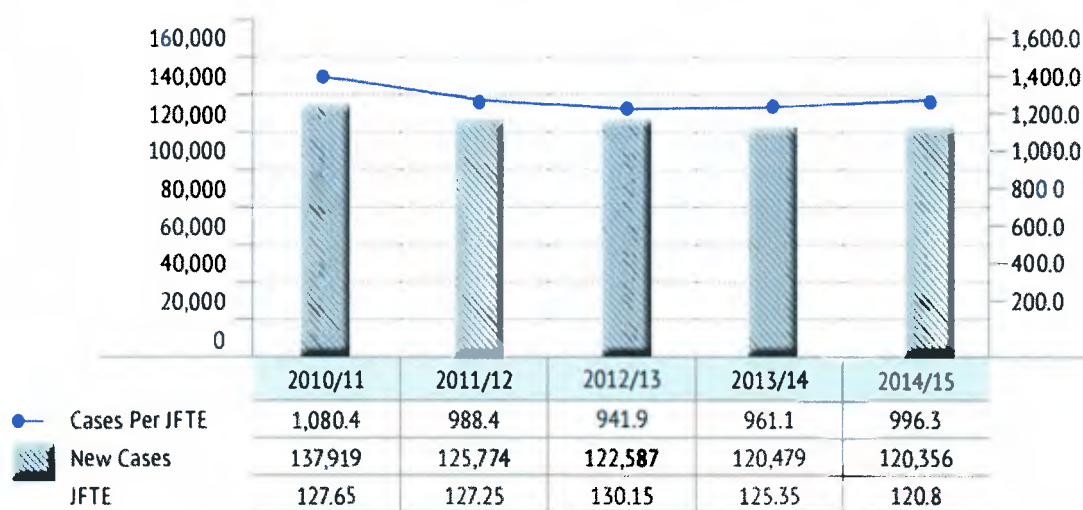
¹⁰ Provincial Court of British Columbia, Annual Report 2014/15, Judges' Association Documents, Tab 3, at page 25

31. The above tables illustrate the general trend that the number of new cases entering the Provincial Court has been decreasing over time, with a decrease of almost 13% over the past five years.

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

32. Similarly, over the past five years, the Annual Report discusses that the number of cases per full time equivalent Judge has decreased slightly from 1080.4 in 2010/11 to 996.3 in 2014/15, a decrease of almost 8%.¹¹

Figure 3. New Cases and Cases per JFTE, 2010/11 to 2014/15



The percentage of self-represented litigants is decreasing

33. Despite the trend of fewer cases per Judge, the legal system undoubtedly faces challenges and pressures. One of those challenges is the prevalence of self-represented litigants. However, the percentage of self-represented litigants in the Provincial Court has decreased slightly since 2010/11.¹²

¹¹ Provincial Court of British Columbia, Annual Report 2014/15, Judges' Association Documents, Tab 3, at page 16

¹² Provincial Court of British Columbia, Annual Report 2014/15, Judges' Association Documents, Tab 3, at page 31

Provincial Court Judges

Complement of Judges

34. Judges of the Provincial Court are appointed by the Lieutenant Governor in Council under section 6(1) of the *Provincial Court Act*, following a recommendation of the Judicial Council.

35. As of April 30, 2016, the Court had 144 Provincial Court Judges in various locations throughout the province:

- 108 full-time Judges; and
- 36 Senior (part-time) Judges.

36. Since that time, there have been two judicial appointments, effective May 2, 2016.¹³

37. The following table shows that the number of full-time Provincial Court Judges has remained relatively stable since 2012/13:

| Judge Complement | | | |
|-----------------------|-----------|--------|-------|
| Year | Full Time | Senior | Total |
| 2012/13 ¹⁴ | 109 | 47 | 156 |
| 2013/14 ¹⁵ | 105 | 43 | 148 |
| 2014/15 ¹⁶ | 104 | 36 | 140 |
| 2015/16 ¹⁷ | 108 | 36 | 144 |

Judgments

38. Provincial Court Judges generally sit four days a week, with the fifth day set aside for judgment writing. While most judgments of the Provincial Court are delivered orally from

¹³ Online: Provincial Court of British Columbia <<http://www.provincialcourt.bc.ca/news-reports/appointment-announcements>>

¹⁴ Provincial Court of British Columbia, Annual Report 2014/15, Judges' Association Documents, Tab 3, at page 15

¹⁵ Provincial Court of British Columbia, Annual Report 2014/15, Judges' Association Documents, Tab 3, at page 15

¹⁶ Provincial Court of British Columbia, Annual Report 2014/15, Judges' Association Documents, Tab 3, at page 15

¹⁷ Provincial Court of British Columbia, Provincial Court Judge Complement, Government Documents, Tab 3

the Bench, Provincial Court Judges also reserve judgment from time to time and prepare written reasons for their decisions. Since 2013, the Court has published an average of 404 written judgments per year:¹⁸

| Published Written Reasons for Judgment by Year – BC Provincial Court | |
|--|-----------|
| Year | Judgments |
| 2013 | 420 |
| 2014 | 386 |
| 2015 | 406 |

Judicial Justices

Appointment of Judicial Justices

39. Judicial Justices are appointed pursuant to Section 30.2 of the *Provincial Court Act*. 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.

40. Currently, the complement of 30 Judicial Justices includes:

- 8 Judicial Justices appointed to service on a full-time basis;
- 19 Judicial Justices appointed to service on a per diem basis; and
- 3 Judicial Justices appointed to service on an ad hoc basis.

41. There are also two Judicial Justices on long-term disability (one works one day per week), and one Judicial Justice on education leave.

¹⁸ Online: Provincial Court of British Columbia, Judgments & Decisions
<<http://www.provincialcourt.bc.ca/judgments.php?link=http://www.canlii.org/en/bc/bcpc/>>

Duties and Responsibilities of Judicial Justices

42. Judicial Justices may be assigned a variety of judicial duties by the Chief Judge, including hearing traffic matters and ticketable offences under provincial legislation, and hearing applications for search warrants, detention or bail. These duties may change depending upon the needs of the Court as determined by the Chief Judge.
43. The 2013 Judicial Justices Compensation Commission reported that the primary functions of Judicial Justices are:
 - i) sitting in court to hear Violation Tickets disputes issued under the Motor Vehicle Act and Offence Act and offences under municipal bylaws; ii) acting as 'justices' under the *Criminal Code* hearing applications for judicial interim release (bail) primarily via teleconference or videoconference, search warrants and production orders province wide; and iii) making payment orders under the *Small Claims Act*, RSBC 1996 Ch 430.¹⁹
44. The 2010 Judicial Justices Compensation Commission reported that Judicial Justices typically give oral reasons at the conclusion of hearings, but that there is an expectation of brief written reasons when search warrant and production order applications are refused.²⁰
45. There have not been changes to the jurisdiction of Judicial Justices since 2013. In 2003, an amendment to the *Provincial Court Act* removed Judicial Justices' jurisdiction to hear certain matters, including applications made under the *Canadian Charter of Rights and Freedoms* and offences that may result in imprisonment.²¹
46. Thus, pursuant to Section 2.1 of the *PCA*, Judges in the Provincial Court have the following exclusive jurisdiction:

In the Provincial Court of British Columbia, only a judge may

(a) commit for contempt of court,

¹⁹ Report of the 2013 Judicial Justices Compensation Commission, Judicial Justices' Association Documents, Tab 3, at page 1

²⁰ Report of the 2010 Judicial Justices Compensation Commission, Government Documents, Tab 4, at pages 10-11

²¹ Online: Provincial Court of British Columbia, Judicial Officers <<http://www.provincialcourt.bc.ca/about-the-court/judicial-officers/judicial-justices>>

(b) hear a matter for which notice under section 8 of the *Constitutional Question Act* is required,

(c) hear a matter that involves a determination of aboriginal or treaty rights or claims,

(d) 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

(e) 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.

47. Within their jurisdiction, Judicial Justices perform an important role in administering justice in British Columbia. 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.

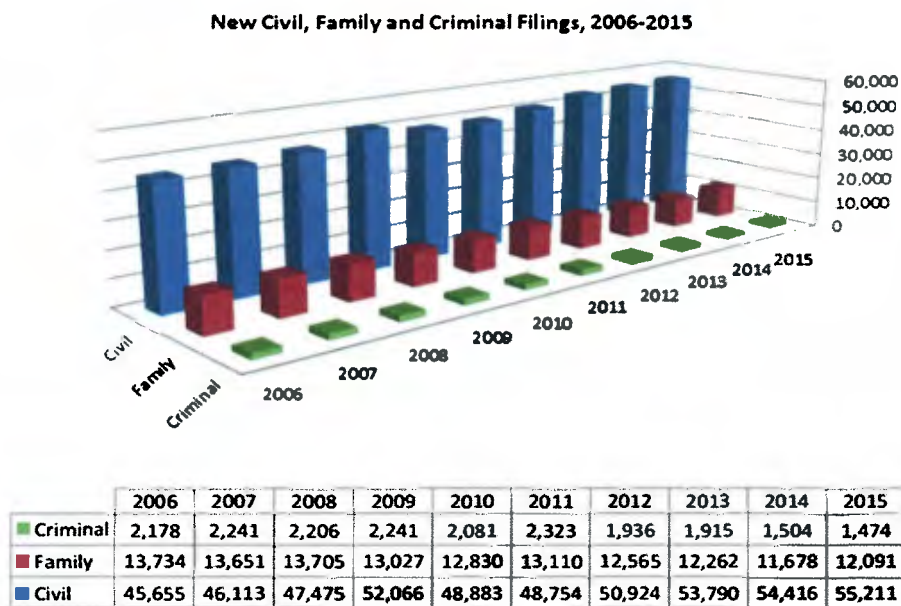
British Columbia Supreme Court

48. The superior trial court for the province is the Supreme Court of British Columbia (the "BCSC" or the "Supreme Court"), and its cases are heard by federally-appointed judges. Constitutionally, the Supreme Court exercises different functions than the Provincial Court. The Supreme Court is a Section 96 court of general and inherent jurisdiction, and hears matters related to larger civil claims and family matters, as well as the most serious criminal cases. It also hears appeals from the Provincial Court and some administrative tribunals, including the Labour Relations Board, Workers' Compensation Appeal Tribunal, the British Columbia Human Rights Tribunal and residential tenancies arbitration decisions.

49. 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, Cranbrook, Kamloops, Kelowna, Nanaimo, Nelson, New Westminster, Prince George, Prince Rupert, Smithers, Vancouver and Victoria. The Supreme

Court also sits as required in other locations where there is no resident judge or master including: Campbell River, Courtney, Dawson Creek, Duncan, Fort St. John, Golden, Penticton, Port Alberni, Powell River, Quesnel, Revelstoke, Rossland, Salmon Arm, Terrace, Vernon and Williams Lake.²²

50. As of December 31, 2015, the Supreme Court had 100 justices: the Chief Justice, the Associate Chief Justice, 88 justices and 15 supernumerary justices. As of December 31, 2015, there were six vacancies on the Supreme Court.²³ The current level of new cases filed in the Supreme Court is at the highest level it has been at any time over the past decade:²⁴



51. In fact, the case load in the Supreme Court has increased by 7.81% since 2010.
52. In addition to their normal workload of hearing cases and applications, deciding issues, attending to judicial functions out of the courtroom, and presiding at numerous case

²² Supreme Court of British Columbia, Annual Report 2015, Government Documents, Tab 5, at page 15

²³ Supreme Court of British Columbia, Annual Report 2015, Government Documents, Tab 5, at page 16

²⁴ Supreme Court of British Columbia, Annual Report 2015, Government Documents, Tab 5, at page 2

conferences before and after regular court hours, judges of the Supreme Court also have a heavy burden for writing reasons for judgment, often times in complex matters.

53. The 2015 Annual Report of the Supreme Court of British Columbia reports that the Court published the following numbers of reasons for judgment from 2011 – 2015:²⁵

| Published Reasons for Judgment by Year – BC Supreme Court | | | | | |
|---|-------------|-------------|-------------|-------------|-------------|
| | 2011 | 2012 | 2013 | 2014 | 2015 |
| CIVIL | | | | | |
| Oral | 274 | 267 | 260 | 285 | 316 |
| Written | 1120 | 1120 | 1133 | 1181 | 1050 |
| Total | 1394 | 1397 | 1393 | 1466 | 1366 |
| CRIMINAL | | | | | |
| Oral | 198 | 188 | 312 | 348 | 354 |
| Written | 116 | 144 | 123 | 120 | 114 |
| Total | 314 | 332 | 435 | 468 | 468 |
| FAMILY | | | | | |
| Oral | 41 | 29 | 54 | 66 | 96 |
| Written | 211 | 231 | 285 | 299 | 300 |
| Total | 252 | 260 | 339 | 365 | 396 |
| TOTAL | 1960 | 1979 | 2167 | 2299 | 2230 |

Justice Reform in British Columbia

54. While some of the above-noted trends are positive, the legal system does face challenges.
55. As a result, leaders in the legal system, including Government and the Provincial Court, have partnered to modernize and transform justice services in a way that meets the needs of British Columbians.

²⁵ Supreme Court of British Columbia, Annual Report 2015, Government Documents, Tab 5, at page 6

56. Some of the innovative initiatives include the introduction of a backlog reduction program, the expansion of problem-solving courts, administrative reorganizations, and technology-assisted remote appearances. The Report of the 2013 Judges Compensation Commission lists many other innovations and reforms that the Court has undertaken in recent years to enhance its efficiency and effectiveness, and concludes that the initiatives “demonstrate the innovation, flexibility, and hard work of BC Provincial Court judges in meeting the needs of the justice system”.²⁶
57. There has also been legislative reform. For example, British Columbia’s new *Family Law Act* provides an option for arbitration under the definition of “family law dispute resolution”. Previously, arbitration was “an exotic, rarely used, option amongst family lawyers and their clients primarily because s. 2 of the BC *Commercial Arbitration Act*, which governs the provision of arbitration services in BC specifically precluded [arbitration]”²⁷ in family law. Leaders in the family law bar anticipate that over time, the popularity of arbitration will grow²⁸ which may divert some cases away from the courts.
58. The general trend of a reduction in cases in the Provincial Court is attributable at least in part to new justice initiatives led by the Province. In particular, it is accepted that there has been a diversion of impaired drivers out of the criminal system and into the Immediate Roadside Prohibition (IRP) program.²⁹ That program allows police officers to hand out stiff administrative penalties to vehicle operators affected by alcohol. Possible penalties include

²⁶ Report of the 2013 Judicial Justices Compensation Commission, Judicial Justices’ Association Documents, Tab 3, at 19

²⁷ Online: Watson Goepel LLP, “Arbitration in the New Family Law Act” (23 January 2012) <<http://watsongoepel.com/arbitration-in-the-new-family-law-act/>>

²⁸ Online: Watson Goepel LLP, “Arbitration in the New Family Law Act” (23 January 2012) <<http://watsongoepel.com/arbitration-in-the-new-family-law-act/>>

²⁹ D. Geoffrey Cowper QC, “A Criminal Justice System for the 21st Century: Final Report to the Minister of Justice and Attorney General Honourable Shirley Bond” (27 August 2012), Government Documents, Tab 2, at pages 3-4

immediate 3, 7, 30 and 90 day driving prohibitions.³⁰ As a result, some lawyers report that criminal charges are extremely unlikely in most drinking-driving situations.³¹

Summary

59. In summary, the Provincial Court, one of British Columbia's three courts, is a vital component of our legal system and operates within a particular level and jurisdiction. Similar to provincial courts elsewhere in Canada, British Columbia's Provincial Court manages a high volume of cases, particularly criminal matters. Although the trend is that the number of new cases entering the system is steadily decreasing over time, pressures remain. The Court continues to demonstrate leadership with respect to judicial reform initiatives to improve the Court's delivery of "fair, effective and efficient justice".³²

The Judicial Compensation Process in British Columbia

60. In British Columbia, Government sets compensation for Provincial Court Judges and Judicial Justices through an independent, objective and effective commission process, as required by the Supreme Court of Canada. In accordance with this constitutional obligation, the *Judicial Compensation Act* requires that an independent commission be appointed every three years to consider and make recommendations with respect to all matters respecting the remuneration, allowances and benefits of Provincial Court Judges and Judicial Justices.
61. In 2015, the *Act* was amended to merge the Provincial Court Judges and the Judicial Justices compensation commissions into a single Judicial Compensation Commission, and to enumerate more robust criteria for the Commission to consider.

³⁰ Online: British Columbia, "The Various Alcohol and Drug Related Prohibitions and Suspensions" <<http://www2.gov.bc.ca/gov/content/transportation/driving-and-cycling/driving-prohibitions-suspensions/prohibitions-and-suspensions/alcohol-and-drug-related-suspensions>>

³¹ Online: BC Driving Lawyers, "Immediate Roadside Driving Prohibition" <<http://www.bcdriivinglawyers.com/driving-prohibitions/automatic-roadside-driving-prohibition/>>

³² Online: Provincial Court of British Columbia, Court Innovation <<http://www.provincialcourt.bc.ca/about-the-court/court-innovation>>

62. In this part of the submission, we describe the legal principles applicable to the commission process, and then provide an overview of the results of the previous commissions.

Legal Framework

63. It is settled law that financial security for judicial officers is one of three key components of judicial independence. The others are security of tenure and administrative independence.³³
64. The Supreme Court of Canada in *PEI Reference* described that the values embodied in judicial independence include the rule of law, fundamental justice, equality and preservation of the democratic process.³⁴ In short, judicial independence is the cornerstone of a democratic society.
65. *PEI Reference* was a case considering four appeals which had raised issues of independence of provincial courts and, in particular, the extent to which governments and legislatures could reduce the salaries of provincial court judges. Lamer C.J.C., writing for the majority, concluded that governments are entitled to reduce, increase, or freeze compensation of provincial court judges, but that financial security of judges must be governed by the following principles:

1. It is obvious to us that governments are free to reduce, increase, or freeze the salaries of provincial court judges, 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.

2. Provinces are under a constitutional obligation to establish bodies which are independent, effective, and objective, according to the criteria that I have laid down in these reasons. Any changes to or freezes in judicial remuneration require prior recourse to the independent body, which will review the proposed reduction or increase to, or freeze in, judicial remuneration. Any changes to or freezes in judicial remuneration made without prior recourse to the independent body are unconstitutional.

³³ *PEI Reference*, Judges' Association Documents, Tab 10, at para. 115

³⁴ *Provincial Court Judges' Assn. of New Brunswick v. New Brunswick (Minister of Justice)*, 2005 SCC 44 ("*Bodner*"), Judges' Association Documents, Tab 11, at para. 4

3. As well, in order to guard against the possibility that government inaction could be used as a means of economic manipulation, by allowing judges' real wages to fall because of inflation, and in order to protect against the possibility that judicial salaries will fall below the adequate minimum guaranteed by judicial independence, the commission must convene if a fixed period of time (e.g. three to five years) has elapsed since its last report, in order to consider the adequacy of judges' salaries in light of the cost of living and other relevant factors.

4. The recommendations of the independent body are non-binding. However, if the executive or legislature chooses to depart from those recommendations, it has to justify its decision according to a standard of simple rationality -- if need be, in a court of law.

5. Under no circumstances is it permissible for the judiciary to engage in negotiations over remuneration with the executive or representatives of the legislature. However, that does not preclude chief justices or judges, or bodies representing judges, from expressing concerns or making representations to governments regarding judicial remuneration.

66. Although it was hoped that the *PEI Reference* decision would reduce friction between judges and governments on the issue of compensation, unfortunately it did not. Instead, direct negotiations were replaced with litigation in many jurisdictions.³⁵
67. In 2005, the Supreme Court of Canada re-visited the important issues surrounding judicial independence and judicial remuneration in *Provincial Court Judges' Assn. of New Brunswick v. New Brunswick (Minister of Justice)*, 2005 SCC 44 ("*Bodner*"). In particular, the Court in *Bodner* considered the manner in which governments may depart from the recommendations of a compensation commission, and addressed the nature and scope of judicial review where a government does not accept a commission's recommendations.
68. The Court stated that the "starting point" for a commission's work is the date of the previous commission's report:

14 The *Reference* laid the groundwork to ensure that provincial court judges are independent from governments by precluding salary negotiations between them and avoiding any arbitrary interference with judges' remuneration. The commission process is an "institutional sieve" (*Reference*, at paras. 170, 185 and 189) – a structural separation between the government and the judiciary. The process is neither adjudicative interest arbitration nor judicial decision making. Its focus is on

³⁵ *Bodner*, Judges' Association Documents, Tab 11, at paras. 11-12

identifying the appropriate level of remuneration for the judicial office in question. All relevant issues may be addressed. The process is flexible and its purpose is not simply to "update" the previous commission's report. However, in the absence of reasons to the contrary, the starting point should be the date of the previous commission's report.

69. However, each commission must undertake its own review and make independent recommendations on that basis:

15 Each commission must make its assessment in its own context. However, this rule does not mean that each new compensation commission operates in a void, disregarding the work and recommendations of its predecessors. The reports of previous commissions and their outcomes form part of the background and context that a new compensation committee should consider. A new commission may very well decide that, in the circumstances, its predecessors conducted a thorough review of judicial compensation and that, in the absence of demonstrated change, only minor adjustments are necessary. If on the other hand, it considers that previous reports failed to set compensation and benefits at the appropriate level due to particular circumstances, the new commission may legitimately go beyond the findings of the previous commission, and after a careful review, make its own recommendations on that basis.

70. The Court went on to say that in the event a government departs from a commission's recommendations, government must respond to the recommendations. While governments ultimately determine judicial compensation, "that power...is not absolute".³⁶
71. The Court then described the scope and nature of judicial review, a process it hoped would "rarely" be required:

28 Once the commission has made its recommendations and the government has responded, it is hoped that, with the guidance of these reasons for judgment, the courts will rarely be involved. Judicial review must nonetheless be envisaged.

72. On judicial review, a government must justify its decision to depart from a commission's recommendations according to a standard of "simple rationality". A court reviewing a government's decision in that regard must focus on whether the purpose of the commission

³⁶ *Bodner*, Judges' Association Documents, Tab 11, at para. 22

process has been achieved. The Supreme Court of Canada set out the following three-stage analysis:³⁷

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

73. Although the significance of *Bodner* for the purposes of this Commission is its re-affirmation of the principles governing the process for setting the remuneration of judges, the results of the appeals which arose from New Brunswick, Ontario, Alberta and Quebec are also interesting. Applying the relevant principles, the Court determined that in three of the four provinces, the government had met the standard of “simple rationality” in departing from the recommendations of the commission:³⁸

New Brunswick

- * The government's response met the standard of rationality (para. 59);
- * The response raised legitimate concerns relating to the adequacy of the judges' existing salary and the excessiveness of the recommended raise (para. 69);
- * There was a reasonable factual foundation that provided a rational basis (para. 81); and
- * Viewed globally, and with deference, the response demonstrated that the government took the process seriously and participated actively even though the justification for departing from the commission's recommendations was unsatisfactory in several respects (para. 83).

Ontario

- * Also met the standard of rationality (para. 102);

³⁷ *Bodner*, Judges' Association Documents, Tab 11, at para 31

³⁸ *Provincial Court Judges' Assn. of British Columbia v. British Columbia (Attorney General)*, 2012 BCSC 1022, Judges' Association Documents, Tab 15, at para. 42

- * Reasons were legitimate and did not reveal any improper motive. Instead, the reasons reflected the depoliticization of the process and the need to preserve judicial independence (para. 98);

- * There was a reasonable factual foundation (para. 99);

- * Viewed globally, the objectives of the commission process were achieved. Ontario respected the process, took it seriously, and gave it meaningful effect (paras. 100-101).

Alberta (Justices of the Peace)

- * With one exception, met the standard of rationality (para. 133);

- * Reasons were legitimate. For example, the government accepted that an increase in compensation was needed (para. 124);

- * The government set out the factual basis upon which it relied and reliance was, for the most part, rational (para. 128);

- * Viewed globally, the commission process was effective. The government accepted the bulk of the recommendations in a depoliticized process (para. 131).

Québec (provincial court judges and municipal court judges)

- * Did not meet the standard of rationality (para. 165);

- * No evidence of improper political purpose or intent to manipulate or influence the judiciary but, on the core issue of judicial salaries, the response failed to address the most important recommendations of the commission. "Rather than responding, the Government appears to have been content to restate its original position without answering certain key justifications for the recommendations" (para. 159);

- * Viewed globally, an adequate answer on a number of more peripheral issues will not save a response that is flawed in respect of central questions (para. 165).

Previous Commissions

74. The above-described legal principles were applied by previous compensation commissions in British Columbia but in the context of the former legislated criteria. Previous to the 2015 amendments to the *Act*, commissions were guided by less vigorous criteria:

- a. the current financial position of the Government;
- b. the need to provide reasonable compensation to the judges or judicial justices;
- c. the need to maintain a strong court by attracting qualified applicants;
- d. the laws of British Columbia;
- e. any other matter the Commission considers relevant.

75. The legislative mandate of the 2016 Commission is different, and this Commission is not bound by the recommendations of prior commissions.

76. Nevertheless, the general legal principles articulated in *PEI Reference* and *Bodner* remain valid, and it is worthwhile to consider the recommendations of previous commissions and Government's responses thereto. A consideration of previous commissions is also in keeping with the Supreme Court of Canada's direction in *Bodner* that the "starting point" for a commission process is the date of the previous commission's report.

77. Below we describe the recommendations and responses of the 2010 and 2013 Judges Compensation Commissions and Judicial Justices Compensation Commissions. A summary of commissions previous to 2010 is attached as Appendix A.

Judges Compensation Commissions

The 2010 Judges Compensation Commission

78. The 2010 Judges Compensation Commission was a five person panel chaired by George Morfitt. The Commission made recommendations with respect to the period April 1, 2011 to March 31, 2014.

79. The Commission made a total of 15 recommendations. On the issue of salaries, the Commission stated:

The Commission recognizes that Provincial Court Judges are called upon to perform important work under conditions that are often difficult and stressful, and that they should be appropriately compensated. However, salary is only one component of a judicial compensation package that also includes pension and other benefits.

It is the view of the Commission that the current financial condition of the Government does not support salary increases in 2011/12 and 2012/13. This view is clearly shared by the Association, which has not requested an increase in those years. This is appropriate and to be respected.³⁹

80. In the result, the Commission recommended salary increases as follows:

- 2011/12: 0%
- 2012/13: 0%
- 2013/14: cumulative Consumer Price Index change over the preceding three years

81. The Commission also recommended an increase in the accrual rate for Judges' pensions, from 3.0% to 3.5%, and recommended that Judges be able to contribute to the plan until age 75.

82. The Commission declined an Association proposal to recommend that their vacation entitlement increase from 30 to 40 days and similarly declined to recommend the creation of a medical screening program.

83. Other recommendations included:

- enrolling Judges in the flexible benefits plan;
- extending long term disability (LTD) and life insurance to Judges up to age 75, with the latter to be extended in a manner that is cost-neutral to government. The commission also recommended changes in the administration of LTD for Judges over age 65; and

³⁹ Report of the 2010 Judges Compensation Commission, Judges' Association Documents, Tab 9, at para. 33

- permitting the Chief Judge to schedule senior part-time Judges in excess of their regularly scheduled sittings and exceed their legislated compensation limits in order to meet the needs of the Court.

84. In May 2011, the Government brought forward its response to the 2010 Judges Compensation Commission to the Legislative Assembly. The response rejected four recommendations, partially accepted one, delayed the implementation of two, and accepted the remaining eight. The Legislative Assembly voted unanimously to accept Government's proposed response.
85. The Government's response was challenged by the Provincial Court Judges' Association in BC Supreme Court. In *Provincial Court Judges' Association of British Columbia v. British Columbia (Attorney General)*, 2012 BCSC 1022,⁴⁰ the Court ruled that the response did not meet the constitutional test as set out by the Supreme Court of Canada in *PEI Reference*. In particular, the Court found that Government had not rationally explained why it departed from the Commission recommendations, and did not engage meaningfully in the constitutional process. In the result, the Court issued the order of *certiorari* and directed that the matter be returned to Government and the Legislative Assembly for reconsideration.
86. Accordingly, the 2010 report was remitted to Government to bring forward a new response to the Legislative Assembly.
87. Government's second response was approved unanimously by the Legislative Assembly on March 12, 2013. The response accepted nine recommendations, rejected four, accepted one recommendation in part, and delayed the implementation of one recommendation. The rejected recommendations and the substitutions made to them were as follows:

⁴⁰ *Provincial Court Judges' Assn. of British Columbia v. British Columbia (Attorney General)*, 2012 BCSC 1022, Judges' Association Documents, Tab 15

- The salary increase for 2013/14 was 1.5% rather than the 4.9% that would represent the amount required by the Commission's recommendation. The substituted figure represented the estimated change in consumer price index for the year 2013/14 alone and brought puisne Judges' salaries to \$234,605. Associate Chief Judges' salaries were set at \$248,681 and the Chief Judge's salary at \$262,757.
- The two pension recommendations were rejected. The accrual rate remained at 3.0% and Judges contributed to the pension plan to age 71.
- The recommendation that LTD benefits be funded outside the Office of the Chief Judge (OCJ) budget for Judges over age 65 was rejected. Instead, the OCJ would continue to provide parallel benefits for those Judges as it had in the past.

88. On May 10, 2013, the Association filed a petition in BC Supreme Court challenging the Legislative Assembly's second response. In a decision published on March 3, 2014, the Supreme Court dismissed the petition.⁴¹ 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.

89. The Judges' Association appealed the decision of Mr. Justice Savage. In a 2:1 decision released on March 27, 2015,⁴² the Court of Appeal quashed the 2014 judicial review decision and ordered that all of the 2010 Commission's recommendations be implemented. The Court of Appeal 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.

⁴¹ *Provincial Court Judges' Assn. of British Columbia v. British Columbia (Attorney General)*, 2014 BCSC 336, Judges' Association Documents, Tab 18

⁴² *Provincial Court Judges' Assn. of British Columbia v. British Columbia (Attorney General)*, 2015 BCCA 136, Judges' Association Documents, Tab 19

The 2013 Judges Compensation Commission

90. The 2013 Judges Compensation Commission was a five person panel chaired by Simon Margolis, QC. The mandate of the Commission was to make 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.

91. The 2013 Commission made eight recommendations including:

- 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.
- effective April 1, 2014, the accrual rate for judicial pensions be 3.25%; and
- the Government pay 100% of the reasonable costs of the Provincial Court Judges Association of British.

92. In its report, the Commission weighed some of the factors as follows:

- The Commission accepted that BC's economic outlook was for "gradual improvement" (page 4).
- The Commission pointed to the need to provide reasonable compensation, and accepted as relevant comparators the compensation paid to public sector, private sector and Supreme Court justices (page 5).

- The Commission considered the need to maintain a strong court by providing compensation that keeps pace with the “other options open to highly desirable candidates”, but concluded that the Court did not have a problem attracting a sufficient number of qualified candidates (page 5).

93. The Government in its response proposed that many of the Commission’s recommendations be accepted, including that Government pay 100% of the reasonable costs of the Association for participating in the Commission process. However, Government also proposed to the Legislative Assembly that some of the recommendations of the Commission be departed from as follows:

- the annual salary for Provincial Court Judges be set at:
 - 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; and
- there be no change to the pension accrual rate.

94. The Judges’ Association filed a petition for judicial review of Government’s response to the 2013 Commission report. That petition application is scheduled to be heard in BC Supreme Court later in June 2016.

Judicial Justices Compensation Commissions

The 2010 Judicial Justices Compensation Commission

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

2011/12: 0%

2012/13: 0%

2013/14: 8%

96. Other recommendations were:

- an adjustment to the formula used to determine part-time JJPs' per diems;
- the application of the formula to ad hoc JJPs;
- an increase in the professional development allowance from \$1,000 to \$1,500;
- no wellness benefit;
- the flexible benefits program be extended to JJPs; and
- no change to the vacation entitlement of 30 days.

97. In May 2011 the Government brought forward its response to the 2010 Commission to the Legislative Assembly. Citing the need to continue the Province's net-zero compensation mandate and apply it across the public sector, the response rejected the proposed salary increase in 2013/14 and substituted no increase as well as the recommended adjustments to the per diems. The flexible benefits recommendation was accepted but its implementation deferred to the start of the 2013/14 fiscal year. The Assembly voted unanimously to accept Government's proposed response.

2013 Judicial Justices Compensation Commission

98. The 2013 Judicial Justices Compensation Commission was a five member panel chaired by Murray Clemens, QC.

99. The Commission made various recommendations, including:

- a salary increase of 5% during the first year of the mandate, and 2% increase in each of the second and third years; and
- there be no provision for shift differentials, as such a provision “would interfere with the existing arrangements between the per diem JJs and the OCJ pursuant to the various Memoranda of Agreement applicable to each per diem JJ”.

100. The Government’s response to the recommendations is included in Government’s Documents, Tab 6.

101. With respect to Judicial Justices, there are currently facilitated discussions taking place with respect to the resolution of their judicial review regarding compensation for years that were the subject of the two most recent commissions. It is believed that the discussions will be successfully resolved.

The Government's Submission Regarding the Legislated Criteria

102. As described above, the past two compensation commissions have unfortunately resulted in litigation. That litigation has not yet been fully resolved.

103. Nevertheless, this 2016 Commission has a mandate to make recommendations respecting the salaries and benefits of Provincial Court Judges and Judicial Justices for the following fiscal years:

- April 1, 2017 – March 31, 2018;
- April 1, 2018 – March 31, 2019; and
- April 1, 2019 – March 31, 2020.

104. This Commission must also be informed by criteria which are different from previous commissions. Section 5(5) of the *Act* now requires the Commission to “be guided by the need to provide reasonable compensation for Judges and Judicial Justices...”, and then provides for the following six relevant factors for the Commission to consider:

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

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

105. 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.⁴³

106. The *Act* provides further guidance to the Commission:

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

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

107. Thus, the enabling statute requires this Commission to consider all of the six factors, and to demonstrate this consideration in the report.

108. 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.

The Need to Maintain a Strong Court

109. The first factor that this Commission must consider pursuant to Section 5(5) of the *Act* is the need to maintain a strong Court by attracting highly qualified applicants.

110. It is in the public interest that the Provincial Court attracts highly qualified applicants. As has been recognized by previous commissions, 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.

111. There are undoubtedly a number of reasons why a qualified person would apply to the Court: stability, continuity and the ability to make a personal impact on the law in British

⁴³ *Bodner*, Judges’ Association Documents, Tab 11, at para. 17

Columbia. To the extent that financial considerations apply, it is important that the compensation packages, including salary, benefits and pension, are sufficient to attract highly qualified applicants.

112. In the Government's view, the best indicator of 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.

Provincial Court Judges

113. 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

114. 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 Judicial Council has established criteria for judicial appointments, including a wide range of specific competencies. These competencies help to ensure that candidates appointed to the Bench are exceptional individuals who unquestionably demonstrate the highest professional qualifications, temperament, ability and community standing. In order to ensure this high standard, the Judicial Council receives detailed applications and investigates all applicants with the assistance of the B.C. Branch of the Canadian Bar Association. The Council interviews successful applicants and recommends the most capable to the Attorney General.⁴⁴

115. Specifically, applicants seeking appointment as Provincial Court Judge must meet the following requirements:⁴⁵

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.)

⁴⁴ Judicial Council of British Columbia, Annual Report 2014, Judges' Association Documents, Tab 22, at page 4

⁴⁵ Judicial Council of British Columbia, Annual Report 2014, Judges' Association Documents, Tab 22, at page 14

- 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*

Only the most capable are recommended and added to the roster

116. 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. The name remains on the roster for three years from the date of the 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.

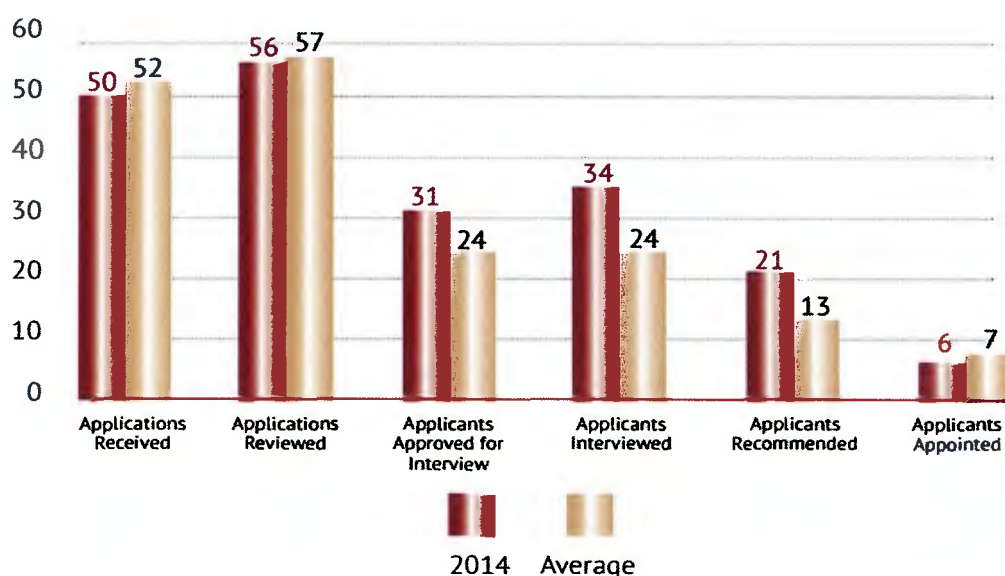
117. If two or more members of the nine-member Council vote against an applicant, that candidate is not added to the roster.

The Judicial Council recommends more applicants than are required by the Court

118. On average, 46% of applicants receive an interview, and 23% are recommended for appointment.⁴⁶ An average of seven Provincial Court Judges have been appointed each year over the last ten years, approximately 13% of the original number of applicants.

119. The following table illustrates that the Judicial Council recommends for appointment more candidates than are required to fill vacancies:⁴⁷

Figure 1: Applications for Appointment as Provincial Court Judge (2014 and 10-Year Average)



120. In 2015, the Judicial Council approved 16 applicants for appointment.⁴⁸

The Provincial Court Judge complement is stable

121. Moreover, the Provincial Court has experienced a stable complement on the Bench since the 2013 Commission.

⁴⁶ Judicial Council of British Columbia, Annual Report 2014, Judges' Association Documents, Tab 22, at page 16

⁴⁷ Judicial Council of British Columbia, Annual Report 2014, Judges' Association Documents, Tab 22, at page 16

⁴⁸ Judicial Council of British Columbia, Annual Report 2015, Draft

122. The following table illustrates that only three Provincial Court Judges have left the Court for appointment on the BC Supreme Court since 2012/13:

| Judges Elevated to BC Supreme Court | |
|-------------------------------------|------------------|
| Year | Number of Judges |
| 2012/13 ⁴⁹ | 2 |
| 2013/14 ⁵⁰ | 1 |
| 2014/15 | 0 |
| 2015/16 | 0 |

123. Conversely, eight judges have left the BC Supreme Court for the BC Court of Appeal since 2012:⁵¹

| Judges Elevated to BC Court of Appeal | |
|---------------------------------------|------------------|
| Year | Number of Judges |
| 2012 | 1 |
| 2013 | 3 |
| 2014 | 1 |
| 2015 | 3 |

⁴⁹ Provincial Court of British Columbia, Annual Report 2012/13, Government Documents, Tab 7, at page 8

⁵⁰ Provincial Court of British Columbia, Annual Report 2012/13, Government Documents, Tab 7, at page 8

⁵¹ Online: The Courts of British Columbia, Court of Appeal, Current & Former Justices of the Court of Appeal
<http://www.courts.gov.bc.ca/Court_of_Appeal/about_the_court_of_appeal/justices_of_the_court_of_appeal.aspx#>

There is diversity on the Bench

124. In addition, there appears to be at the present time a sufficient legal diversity on the Bench.

The following table illustrates the percentage of candidates who came from private practice prior to being appointed to the Bench:

| Provincial Court: Legal Diversity | | | |
|-----------------------------------|------------------|---------------|-------|
| Year | Private Practice | Crown Counsel | Other |
| 2013 ⁵² | 73.9% | 17.4% | 8.7% |
| 2014 ⁵³ | 56% | 36% | 8% |
| 2015 | 46% | 35% | 19% |

125. Thus, at the present time, the British Columbia Provincial Court is able to attract sufficient numbers of highly qualified applicants. British Columbia is well served by those appointed to the Bench:

The Commission is impressed with and convinced of the quality of the work performed by judges of the BC Provincial Court. The Provincial Court has been called the “People’s Court” because most citizens who come in contact with the justice system only experience it through the Provincial Court. In the view of this Commission, the people of British Columbia are well served by the Provincial Court Bench.⁵⁴

Judicial Justices

126. Government submits that the current compensation for Judicial Justices is sufficient to attract highly qualified applicants.

127. As with Judges, candidates for appointment as Judicial Justice must meet the criteria set by the Judicial Council. For Judicial Justices, that criteria is:⁵⁵

⁵² Judicial Council of British Columbia, Annual Report 2014, Judges’ Association Documents, Tab 22, at page 35

⁵³ Judicial Council of British Columbia, Annual Report 2014, Judges’ Association Documents, Tab 22, at page 35

⁵⁴ Report of the 2013 Judges Compensation Commission, Judges’ Association Documents, Tab 20, at page 15

⁵⁵ Judicial Council of British Columbia, Annual Report 2014, Judges’ Association Documents, Tab 22, at page 23

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*

128. According to the Annual Report of the Judicial Council, it did not conduct interviews from 2010 to 2012 due to the large number of appointments in 2007 and 2008. In 2014, the Council received one application for appointment as Judicial Justices and did not conduct

any interviews. In 2014, three applicants were appointed as Judicial Justices from the roster of those recommended.⁵⁶

129. 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.

Changes to the Jurisdiction of Judges or Judicial Justices

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

131. The Government agrees with the submissions of the Associations that there have been no changes to the jurisdiction of the Court since the 2013 Commissions.

132. In this proceeding, it is the Government's submission that the lack of any change in jurisdiction is significant in that this factor does not justify any special consideration.

Compensation in Respect of Similar Judicial Positions in Canada

133. 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.

134. Thus, the Government submits that this factor requires a consideration of two questions:

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

⁵⁶ Judicial Council of British Columbia, Annual Report 2014, Judges' Association Documents, Tab 22, at page 13

Provincial Court Judges

135. It is the position of Government 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, generally speaking, those courts perform similar functions and operate within a similar legislative framework.

136. Provincial and territorial courts hear the highest number of cases, and generally deal with the following matters:

- most criminal offences, except the most serious ones;
- 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;
- claims involving money, up to a certain amount (set by the province or territory in question);
- 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).⁵⁷

137. As discussed earlier in this submission, each of the four levels of Canada's court system is an integral component of the legal system. While all courts perform a common function of

⁵⁷ Canada, Department of Justice, Canada's Court System (2015), online: Department of Justice <<http://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/pdf/courten.pdf>>, Government Documents, Tab 1, at pages 3-4

engaging in the adjudication of matters, each level serves a specific function within a defined jurisdiction.

The median salary is \$250,050

138. In 2015 (the last year for which we have complete data) the median salary for provincial court judges across Canada was \$250,050. The average salary for provincial court judges during that period was \$259,055. The following table shows the salaries of provincial court judges for 2015:

| Judges' Annual Salaries – Effective April 1, 2015 | |
|---|-----------|
| | Amount |
| FEDS | \$306,600 |
| YK | \$268,013 |
| NWT | \$260,302 |
| BC | \$240,504 |
| AB | \$286,821 |
| SK | \$272,295 |
| MB | \$249,277 |
| ON | \$287,345 |
| QC | \$241,955 |
| NB | \$246,880 |
| NS | \$240,297 |
| PEI | \$250,050 |
| NFLD | \$215,372 |

139. Thus, Government's position with respect to salary would bring Judges of the Provincial Court generally in line with the median salary for provincial court judges in other jurisdictions in Canada.

Any formulaic relationship with federally-appointed judges is inappropriate

140. It is the submission of Government that any formulaic relationship between federally-appointed judges and Provincial Court Judges is inappropriate. Superior courts in Canada serve a different function than provincial courts, and federally-appointed judges are compensated by a different level of government.

141. The 2013 Judges Compensation Commission recognized that any formulaic relationship with federally-appointed judges is inappropriate.⁵⁸

The disparity in compensation between justices of the BC Supreme Court and judges of the BC Provincial Court is an important factor in determining reasonable compensation for Provincial Court judges, but it is not an overriding one. For the reasons discussed further below, the gulf should not become so wide that it makes the compensation of the Provincial Court judges unreasonable in the eyes of those who might seek to undertake the office. Yet, the compensation for Provincial Court judges should not be rigidly held at a specific target in relation to federally appointed judges, as these positions are different.

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.

142. Indeed, the Government submits that it would be equally as inappropriate to compare Judges of the Provincial Court to federally-appointed judges as it would be to compare Judges of the Provincial Court to Judicial Justices, given the important differences in functions and breadth of jurisdiction.

143. Further, the legislative mandate has changed since 2013, and the legislated factors do not provide expressly for a comparison with federally-appointed judges.

⁵⁸ Report of the 2013 Judges Compensation Commission, Judges' Association Documents, Tab 20, at page 38

144. In summary, it is the position of Government that it is inappropriate to compare Judges to federally-appointed justices, and that the most similar comparators are provincial/territorial (lower) court judges taking into consideration jurisdiction and legislative mandates.

Judicial Justices

145. With respect to Judicial Justices, the Government agrees with the Association that judicial justices/justices of the peace in other Canadian jurisdictions are an appropriate comparator.

146. There are some differences in respect of the jurisdiction of justices of the peace between the provinces/territories. In some provinces/territories, the jurisdiction of the justices of the peace is broader than in British Columbia, and includes:

- 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);
- imposing custodial sentences of up to 90 days and conditional sentences of up to 180 days (Yukon); and
- reading charges to the accused, and hearing applications by sureties pursuant to Sections 766, 767.1 and 769 of the *Criminal Code* (Northwest Territories).

147. Similarly, in at least one other province (Quebec), government requires justices of the peace to have at least ten years' practice prior to appointment.

148. However, the 2007 Judicial Justices of the Peace Compensation Commission acknowledged in its report that there are similarities in jurisdiction between the provinces as judicial justices in all provinces/territories perform functions pursuant to the *Criminal Code* such as granting and refusing judicial interim release.

149. In 2015, the median salary of judicial justices/justices of the peace in Canada was \$128,114. The average salary was \$126,323.

Differences with Other Jurisdictions

150. This legislated factor also obliges the Commission to give weight to any differences between other jurisdictions and British Columbia.

151. Historically various groups of persons paid by public funds have been quick to point to Alberta and Ontario as good benchmarks for compensation. However, governments in those jurisdictions have implemented fiscal plans which have differed significantly from British Columbia. Recently, certain jurisdictions in Canada have suffered significant deteriorations of their economies and it therefore can be assumed that the higher level of provincial court salaries in other jurisdictions is threatened.

152. As part of British Columbia's overall fiscal plan, the levels of compensation for those funded by public funds in our province have been restrained but have met the cost of living. Teachers under collective agreements in British Columbia rank fifth in Canada (excluding the Yukon and Northwest Territories). Nurses have also ranked fifth in Canada (excluding the Yukon and Northwest Territories). In the Public Service, at the strategic leadership range which includes directors and executive directors, BC ranks twelfth in Canada.

Changes in the Compensation of Others Paid by Public Funds

153. 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

154. The Government submits that the compensation of others paid by public funds is one of the most reliable markers of reasonableness. Compensation for Judges and Judicial Justices does not occur in a vacuum, and a consideration of changes in the compensation of others paid by public funds is necessary.

155. The 2013 Judges Compensation Commission agreed that the salaries and wage growth or decline of comparator groups was helpful as “objective markers of reasonableness”. The reason for this, the Commission stated, is that in “the absences of the parties being able to bargain over what constitutes a reasonable salary, the Commission needs to look to other objective markers of reasonableness. It does so by looking at comparator groups.”⁵⁹ One of those comparator groups included BC Public Service executives (deputy ministers and assistant deputy ministers).

Similar treatment to others helps sustain the perception of judicial independence

156. In fact, 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.⁶⁰

157. 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”:

⁵⁹ Report of the 2013 Judges Compensation Commission, Judges’ Association Documents, Tab 20, at page 36

⁶⁰ *PEI Reference*, Judges’ Association Documents, Tab 10, at para. 155

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):

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?

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.

158. 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.

159. 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...

160. At issue in *PEI Reference* was the question of salary reductions for provincial court judges, but the Court also noted the dangers of political interference through increases in judicial remuneration:

159 ... Manipulation and interference most clearly arise from reductions in remuneration; those reductions provide an economic lever for governments to wield against the courts. But salary increases can be powerful economic levers as well. For this reason, salary increases also have the potential to undermine judicial independence, and engage the guarantees of s. 100...

161. In the result, the Supreme Court of Canada concluded that governments “are free to reduce, increase, or freeze the salaries of provincial court judges, 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”.⁶¹

Those paid by public funds in BC have received modest wage increases

162. In British Columbia, unionized public sector employees received wage increases of just over 1%, on average, between 2012/13 to 2015/15:

- 2012/13: 1% to 2%
- 2013/14: 1% to 2%
- 2014/15: 0%
- 2015/16: 1.45%

163. During that same time period, excluded employees in the broader provincial public sector (i.e., management/executives) received no increases to their salary ranges or general wage increases. In 2015 and 2016, excluded employees were eligible for a merit increase of up to 2% within their range.

⁶¹ *PEI Reference*, Judges’ Association Documents, Tab 10, at para. 287

164. Over the next three years, unionized public sector employees will receive, on average, the following salary increases:

- 2016/17: 1.5%
- 2017/18: 1.5%
- 2018/19: 1.5%

165. Excluded public sector employees will be eligible for a performance-based salary increase of no more than 2% within their range during the same time period, but no general wage increases will be permitted.

Deputy Ministers/ADMs have received modest or no wages increases

166. In 2016, the average salary for Deputy Ministers/Associate Deputy Ministers in British Columbia is \$221,816. The average salary for Assistant Deputy Ministers is \$158,598:

| DM/ADM: Average Salaries | | | | |
|--------------------------|---------------------|---------------|------------------|---------------|
| Year | DMs & Associate DMs | | ADMs | |
| | Without Holdback | With Holdback | Without Holdback | With Holdback |
| 2013 | \$201,277 | \$223,641 | \$146,100 | \$161,728 |
| 2014 | \$202,810 | \$222,620 | \$145,175 | \$160,316 |
| 2015 | \$204,818 | \$222,059 | \$143,719 | \$158,855 |
| 2016 | \$204,778 | \$221,816 | \$143,438 | \$158,598 |

167. In 2016, the average salary of the Deputy Ministers with the five largest portfolios for the Province is \$249,600:

| DM Salary by Ministry | | | | | | |
|-----------------------|-------------|------------------------------------|-------------|------------------------------------|-------------|------------------------------------|
| Ministry | 2014 | | 2015 | | 2016 | |
| | Base Salary | Total Achievable (Base + Holdback) | Base Salary | Total Achievable (Base + Holdback) | Base Salary | Total Achievable (Base + Holdback) |
| Finance | \$237,500 | \$250,000 | \$241,300 | \$254,000 | \$247,000 | \$270,000 |
| Health | \$225,000 | \$250,000 | \$241,300 | \$254,000 | \$241,300 | \$254,000 |
| Transportation | \$214,184 | \$225,457 | \$218,500 | \$230,000 | \$218,500 | \$230,000 |
| Justice AG | \$220,500 | \$245,000 | \$237,500 | \$250,000 | \$237,500 | \$250,000 |
| Justice SG | \$227,050 | \$239,000 | \$227,050 | \$239,000 | \$231,800 | \$244,000 |

168. With respect to benefits and pensions, there have not been any improvements to the benefits and pensions for the public service since 2013.

Remuneration levels for Tribunal appointees have not changed since 2007

169. It is noteworthy that the appointee remuneration levels for Chairs, Vice-Chairs and Members of Tribunals (i.e., Labour Relations Board, Human Rights Tribunal, Employment Standards Tribunal) have not changed since 2007 pursuant to a Treasury Board directive:

| Full Time Appointees Remuneration | | | | | | |
|-----------------------------------|-----------|-----------|------------|-----------|-----------|-----------|
| Group | Chair | | Vice Chair | | Member | |
| | Minimum | Maximum | Minimum | Maximum | Minimum | Maximum |
| Group 1 | \$118,000 | \$135,000 | \$90,000 | \$108,500 | \$74,500 | \$85,000 |
| Group 2 | \$135,000 | \$180,000 | \$108,500 | \$144,000 | \$85,000 | \$113,500 |
| Group 3 | \$160,000 | \$200,000 | \$130,000 | \$160,000 | \$100,000 | \$124,000 |

170. In conclusion, this legislated factor does not justify significant compensation increases for Judges and Judicial Justices.

Current and Expected Economic Conditions in BC⁶²

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

172. The Province has seen modest improvement following the negative impacts felt as a result of the global economic recession. More recently, the British Columbia (BC) economy exceeded expectations in 2014 with growth of 3.2 per cent, and indications are that 2015 will also prove to be a good year (Statistics Canada will release expenditure side real GDP in November 2016). So far in 2016, many year-to-date economic indicators (such as employment, retail sales and housing starts) are also showing favourable growth prospects. However, this good fortune is clouded by significant risks on the horizon.

173. The substantial decline in crude oil prices since the middle of 2014 has taken a toll on the Canadian economy and the global economic situation is still fragile. Since BC is a small open economy with a vital trade sector, events in other jurisdictions can have a significant impact on the Province. Indeed so far in 2016, BC international merchandise exports are performing below expectations. Furthermore, private sector forecasts for external economies (for example, the United States, Japan, and Euro zone) have been downgraded since the beginning of the year. As such, risks to the BC economic outlook continue to be weighted to the downside. The main risks to the current outlook include the following:

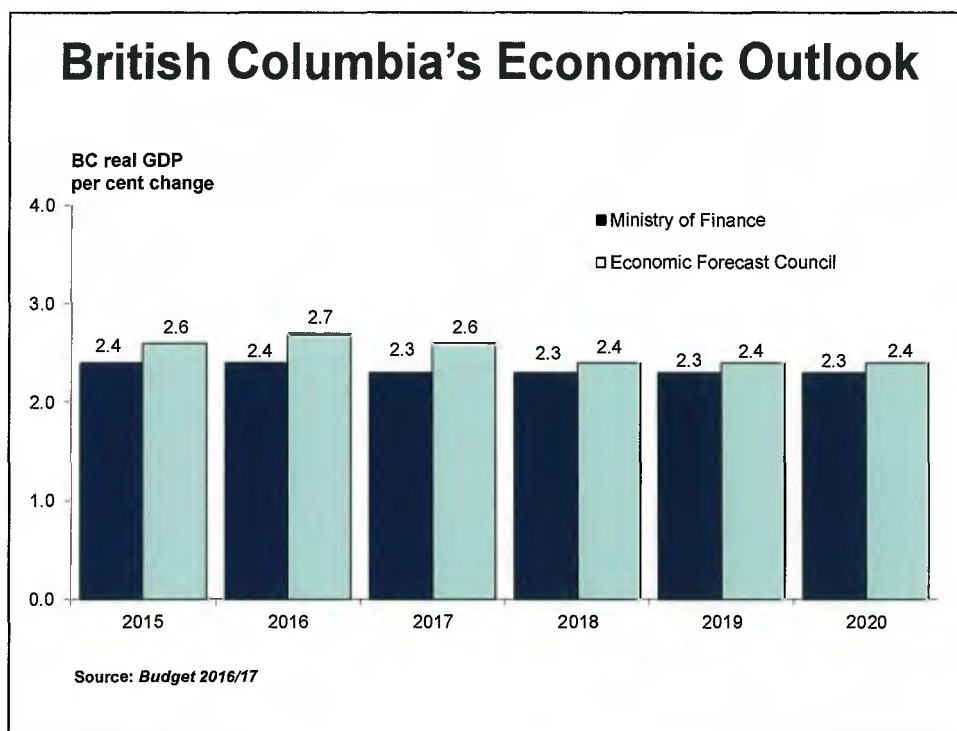
- potential for a slowdown in domestic and Canadian economic activity;

⁶² References: Auditor General of British Columbia. (2015). *Monitoring Fiscal Sustainability*; Business Council of BC. (2015a). Press Release: *Business Council Budget Recommendations Designed to Strengthen BC's Competitiveness and Attract Investment.*; Business Council of BC. (2015b). *Submission to the Select Standing Committee on Finance and Government Services in Advance of the 2016 Provincial Budget.*; Centre for the Study of Living Standards. (2015). *Long-term Fiscal and Economic Projections for Canada and the Provinces and Territories, 2014-2038.*; Conference Board of Canada. (2016). *Provincial Outlook 2016: Long-Term Economic Forecast.*; Expert Panel on BC's Business Tax Competitiveness. (2012). *Report of the Expert Panel on BC's Business Tax Competitiveness.*; TD Economics. (2015). *From a Longer-Term Growth Perspective, West is Still Best.*; Select Standing Committee on Finance and Government Services. (2015). *Report on the Budget 2016 Consultations.*

- renewed weakness in the US economy, particularly as interest rates increase;
- fragility in Europe as governments and the financial system deal with elevated sovereign debt alongside weak economic growth;
- slower than anticipated economic activity in Asia, particularly in China, resulting in weaker demand for BC's exports and downward pressure on global commodity prices;
- weaker than expected inflation; and
- exchange rate uncertainty.

174. In recognition of these risks, the Ministry of Finance builds prudence into the economic outlook. In Budget 2016/17, the Ministry of Finance forecasts the BC economy to grow by 2.4 per cent in 2016 and by 2.3 per cent annually from 2017 to 2020. Meanwhile, the Economic Forecast Council⁶³ (EFC) forecasts the BC economy to grow by 2.7 per cent in 2016, 2.6 per cent in 2017 and 2.4 per cent annually from 2018 to 2020. The Ministry's forecast is 0.3 percentage points below the projections provided by the EFC for both 2016 and 2017, and 0.1 percentage points below the EFC projections for 2018-2020. This prudence acknowledges the downside risks to the economic forecast and is one of the levels of prudence built into the fiscal plan.

⁶³ 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.

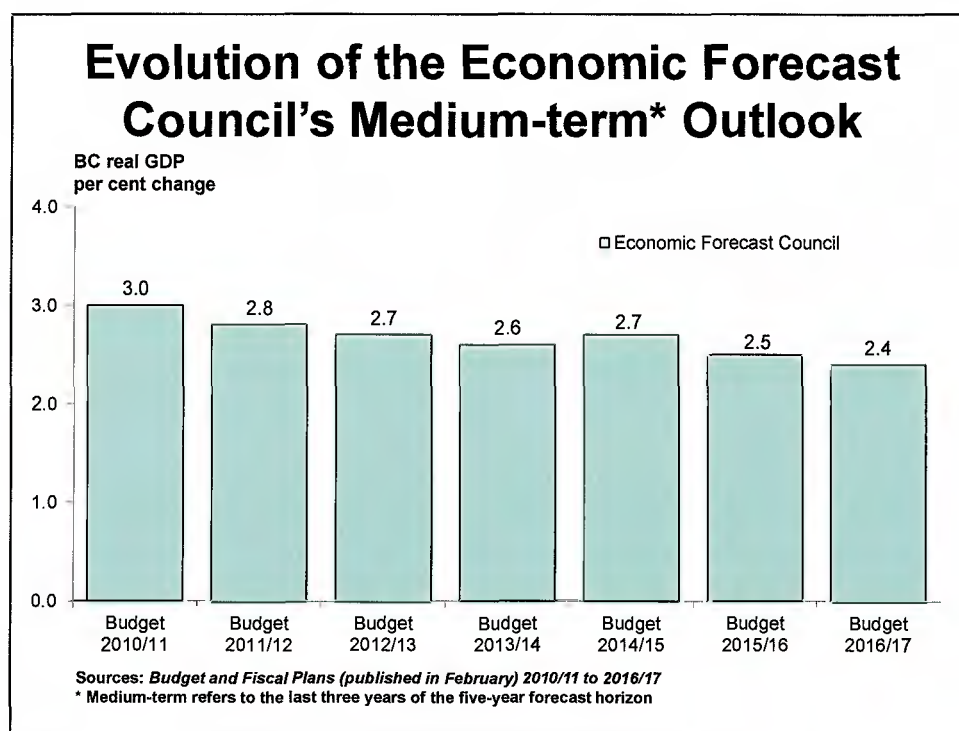


175. Further details regarding the economic outlook can be found in Government's Documents, Tab 8 (Part 3: British Columbia Economic Review and Outlook, *Budget 2016/17*). A summary of the EFC projections can be found in Government's Documents, Tab 9 (Topic Box: The Economic Forecast Council, 2016, *Budget 2016/17*).

176. Looking farther into the future, research shows that aging demographics pose a significant risk to long-term economic growth prospects in BC. 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. Below are some excerpts from the literature on aging demographics and long-run economic growth in BC and Canada:

177. "Population aging, a risk common to advanced economies worldwide, is expected to significantly impact both government revenues and program costs in the future. As a population ages, the proportion of the population that is of working age decreases. This is expected to slow economic growth and, with it, government's ability to generate revenues. At the same time, population aging will result in increasing pressure on government's overall cost of delivering services." (Auditor General of British Columbia, 2015)

178. "Economic growth [in Canada, the provinces and the territories] is generally projected to be slower over the next 24 years than since 2000." (Centre for the Study of Living Standards, 2015)
179. "Two trends in particular stand out: B.C.'s population growth will slow, and its population will age considerably. The changing age profile of the population will moderate labour force growth, which will in turn temper economic growth. As a result, real GDP in B.C. is forecast to slow to an average annual compound rate of 2.2 per cent over the 2015–35 period." (Conference Board of Canada, 2016)
180. "Despite positive net interprovincial migration, the aging of the baby boomers will dramatically alter the province's age profile. This shift will lead to slower overall economic growth and also curtail growth in domestic demand, with consumer spending patterns and housing activity undergoing the most pronounced changes." (Conference Board of Canada, 2016)
181. "...Central and Eastern Canada, as well as British Columbia, are expected to fall behind over the long term, largely as a result of weak population growth. And the slowly growing population in these provinces is aging rapidly, thereby putting further downward pressure on growth in hours worked." (TD Economics, 2015)
182. 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 BC'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 2.4 per cent growth for BC over the medium-term.



183. Another factor to consider when evaluating BC's economic prospects is the province's return to the Provincial Sales Tax (PST) from the Harmonized Sales Tax (HST), on April 1, 2013. This change in sales tax regime is detrimental to BC's competitiveness due to increased costs to businesses, which limits economic growth going forward. Various organizations have commented on such competitiveness concerns. Some of those comments are provided below:

184. "The PST's return has increased the cost of producing goods and services in BC by \$1.6 billion per year, while tax compliance costs have risen by \$150-200 million per year. This represents the biggest blow to BC's competitiveness in several decades..." (Business Council of BC, 2015a)

185. "With the HST in place, Ontario and Quebec both have aggregate business tax burdens lower than that in BC, particularly for new investment." (Business Council of BC, 2015b)

186. “Presenters noted that the PST can create some burden for businesses wanting to invest in capital infrastructure, such as equipment and machinery...” (Select Standing Committee on Finance and Government Services, 2015)

187. “The reintroduction of the PST on April 1, 2013 will impose a significant cost on BC businesses that wish to modernize their operations and preserve and create jobs in our Province.” (Expert Panel on BC’s Business Tax Competitiveness, 2012)

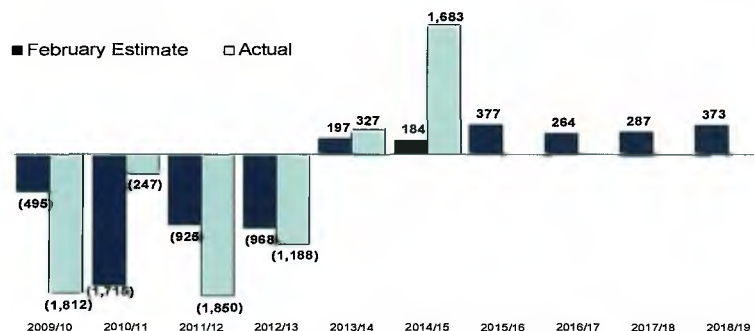
Current and Expected Financial Position of Government

188. The sixth factor for consideration is the current and expected financial position of the government over the three fiscal years that are the subject of the report.

189. Despite forecasts based on prudent assumptions, the Province’s financial position was negatively impacted by the fragile and unstable nature of the global economy resulting in three years since 2009/10 where the actual deficits were larger than originally estimated in February. This clearly demonstrates the significant volatility within the global economy and the depth of the impact this has on the performance of BC’s own economy and the government’s fiscal position. These actual deficits would also have been larger had the Province not responded to the economic downturn by implementing measures to curb spending growth and return to balanced budgets.

Chart 1: Budget Forecasts versus Actual Surplus/Deficit 2009/10 – 2018/19⁶⁴

February Estimates and Actuals

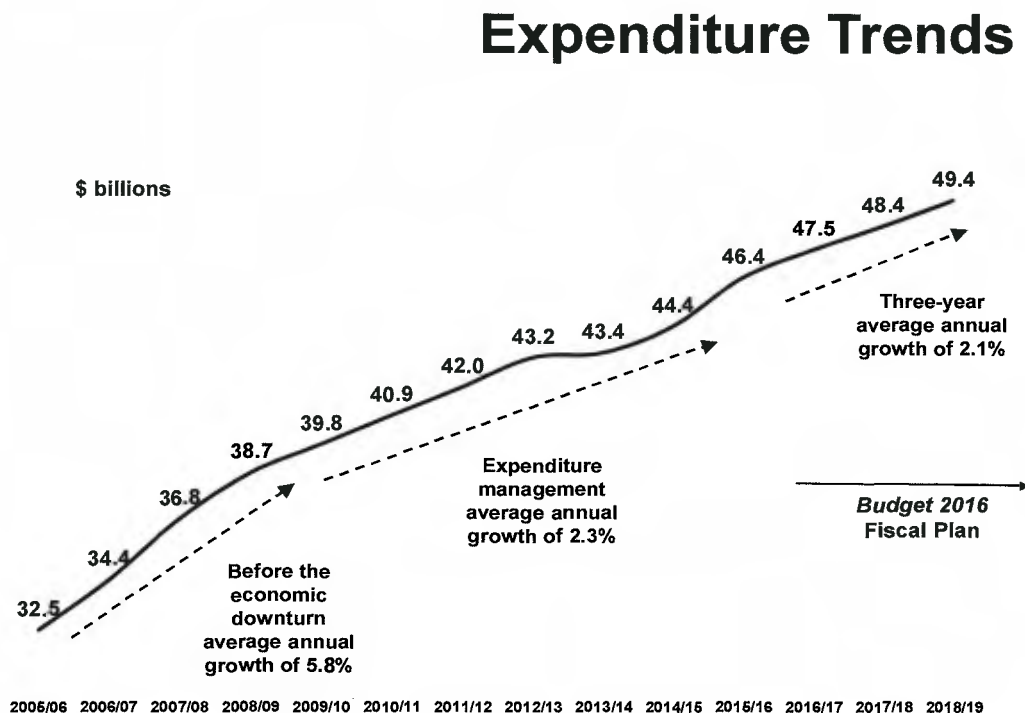


190. The \$1.7 billion surplus in 2014/15 was unexpected and included a number of one-time revenues that are not expected to be ongoing. The updated surplus forecast for 2015/16 is \$377 million, up \$93 million from the \$284 million budget estimate. The most recent government forecast from *Budget 2016* shows that over the next three years, the expected surpluses are not substantial, representing less than one per cent of revenues.

191. During the period leading up to the economic downturn, spending grew an average of 5.8 per cent annually. Expenditure management initiatives were instrumental in reducing the average annual spending growth to 2.3 per cent over the last six years. As presented in *Budget 2016*, average annual spending growth is projected to be 2.1 per cent over the three-year fiscal plan period to 2018/19.

⁶⁴ Sources: Annual February Estimates 2009/10 to 2014/15 and actuals from the 2014/15 *Public Accounts*. 2015/16 to 2018/19 forecasts from *Budget 2016* fiscal plan.

Chart 2: Expenditure Trends



192. In response to the global economic recession, deficit reduction and expenditure management initiatives were instrumental in returning to balanced budgets and continue to play an important role to ensure government can meet its fiscal targets.

193. Unlike many other jurisdictions, the Province committed to limiting and managing growth in public sector compensation, in recognition that it accounts for nearly sixty per cent of total government expenditures. This became a cornerstone in its fiscal discipline strategy to “bend the cost curve”.

194. In 2010, the “Net-Zero” collective bargaining mandate came into effect, whereby any proposed wage increases for contracts expiring in 2010 or 2011 had to be paid from efficiencies found within existing collective agreements and could not result in new costs to government or reductions in service. Had the Province ignored the economic reality and agreed to modest annual raises of even two per cent under the 2010 net-zero mandate

without offsetting savings, taxpayers could have been facing more than \$5.3 billion in additional compensation costs by Fiscal 2015/16.

195. In 2012, the “Cooperative Gains” mandate came into effect, covering collective agreements expiring on or after December 31, 2011. Under this mandate, any wage increases had to be funded from within existing agency budgets, with no reductions in public service, no off-loading of costs onto the public or negative impact to government’s fiscal plan. If government had been required to fund the settlements of between 1 – 2 per cent per year in 2012 and 2013 under Mandate 2012, it would have equated to additional annual compensation costs of up to \$396 million in year 1, and a further \$404 million in year 2 (for a total of \$800 million in year 2). At 2 per cent per year, cumulative additional compensation costs over the two years would have been about \$1.2 billion.

196. The current Economic Stability collective bargaining mandate is a five-year agreement with modest wage increases of 5.5 per cent over five years as well as allowing for additional compensation should actual economic growth exceed the average forecast of the Economic Forecast Council. This mandate reflects the Province’s continued approach to managing government compensation. Each additional 1 per cent in total compensation for all unionized public sector employees would cost approximately \$213 million. If applied to non-union and management groups, this would increase to \$259 million.

197. At the same time, managed hiring and controls on compensation for management employees and executives were put in place and remain in effect for government these public sector employees that are not subject to the collective bargaining process. If a 1 per cent increase to management and executive compensation had been provided, the cumulative impact since 2012 would have been \$640 million on top of approximately \$4.2 billion in annual total compensation costs for these public sector employees.

198. Even if there is steady economic growth in the next few years, the Province would still not be in a surplus or balanced budget position without the commitment that was made over

many years to limit and manage growth in public sector compensation – absent decisions to significantly reduce and impact core government services.

199. It is important to note that bending the cost curve downward was also achieved through a number of relatively smaller initiatives such as centralizing shared service functions across all government agencies (including health authorities and post-secondary institutions) as well as expenditure management controls for travel, office equipment, and other discretionary spending (e.g. grants). Most of these expenditure management controls are still in place.

Government's Current Fiscal Plan

200. The Government is committed to continuing to deliver balanced budgets, maintain debt affordability, ensure a competitive tax regime, while at the same time protecting core services for healthcare, education, skills training, and social supports; funding government priorities; and providing vital infrastructure such as hospitals, schools, post-secondary facilities, transit, and roads. This requires fiscal discipline, making tough decisions and trade-offs based on overall priorities.

201. The projected surpluses of \$264 million in 2016/17, \$287 million in 2017/18, and \$337 million in 2018/19 do not represent a return to the Province's pre-recession financial position when substantial annual surpluses were common, but rather the culmination of fiscal discipline and the expected tempered economic growth in BC and around the globe.

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

- assumptions underlying revenue and Crown corporation forecasts such as economic factors, commodity prices and weather conditions;
- the outcome of litigation, arbitrations, and negotiations with third parties;

- economic and fiscal impacts from potential litigation following the termination of the *2006 Softwood Lumber Agreement* between Canada and the United States;
- potential changes to federal government transfer allocations, cost-sharing agreements with the federal government 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.

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

- An additional \$673 million over the next three years in support of families and individuals most in need;
- \$131 million of new investments in community safety over three years; and
- Increases in the Ministry of Health's budget, resulting in average annual growth of 3.0 per cent over the next three years. This is much lower than the average growth before the economic downturn, illustrating the ongoing expenditure management initiatives that form part of the Province's continuing fiscal discipline.

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

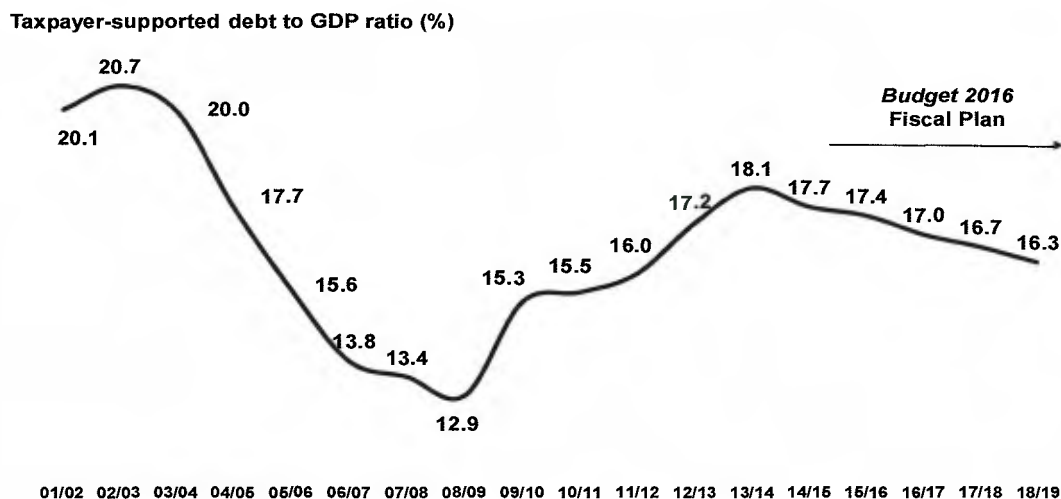
Provincial Debt

205. In recent years, debt has increased due to the capital infrastructure plan that helps keep British Columbians working and stimulate the economy. As government continues its capital investment program for infrastructure spending on hospitals, schools, post-secondary facilities, transit, roads, electrical generation, transmission and distribution projects, total provincial debt (including commercial Crown self-supported debt), will reach \$71.9 billion by 2018/19, an increase of \$33.9 billion from 2008/09 (89 per cent).

206. The impact of the global recession and financial crisis resulted in a significant increase in BC's taxpayer-supported debt-to-GDP ratio, rising to over 18 per cent by 2013/14 from below 13 per cent in 2008/09, despite overall growth in the economy over this period. In addition to the impact of borrowing to support infrastructure spending, the increase in debt in 2013/14 reflected the effects of transitioning from the HST to the PST/GST tax systems and the drawdown of deferred revenue. As the Province returns to balanced budgets, the debt-to-GDP ratio track is expected to decline slightly over the fiscal plan period, albeit remaining at a much elevated level compared to the years prior to the recession.

Chart 3: BC's Taxpayer Supported Debt-to-GDP Ratio

Taxpayer-supported debt-to-GDP



207. British Columbia's taxpayer-supported debt-to-GDP ratio is one of the lowest in Canada and this translates into a strong credit rating and relatively low debt servicing costs.
208. BC's interest bite (taxpayer-supported interest expense as % of taxpayer-supported revenue) was 4.2 per cent as of March 31, 2015 and is expected to rise over the next three years, averaging 4.4 per cent over the forecast horizon.
209. Despite reconfirmation of BC's credit rating, the rating agencies still put the Province on notice that rising debt levels could result in a negative outlook for the province's credit rating, further underscoring the importance of continuing efforts to control government spending and maintain debt affordability until such time that the global economy shows meaningful improvement and more sustainable signs of recovery. The rating agencies could also 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. In order to address the impacts of changes in the economy, including an increasingly important service sector, online purchases of goods and services and an ageing population, the Minister of Finance is establishing a Commission on Tax Competitiveness to evaluate the current tax structure within the context of these and other changes. Since a number of the Province's taxes were designed in the early 20th century, it is necessary to examine if the taxation regime has kept pace with the changing economy and whether the current policies encourage business investment and growth in the 21st century. The Commission will consult with British Columbians and make its recommendations to government in the fall of 2016.
210. The Province has incorporated four main levels of prudence in its current estimates to help mitigate the risks to the 2016/17 – 2018/19 fiscal plan:
211. The outlook for BC's real GDP growth is lower than the outlook provided by the Economic Forecast Council. The Ministry of Finance's forecast is 0.3 percentage points lower than the average in both 2016 and 2017 and 0.1 percentage point lower over the medium term.

212. The natural gas revenue forecast incorporates additional prudence by using a price forecast that is within the lowest 20th percentile of the private sector forecasts, following the advice provided by Doctor Tim O'Neil in his February 2013 review of the economic and revenue processes and forecasts.
213. A forecast allowance of \$350 million in each year of the 2016/17 to 2018/19 three-year plan to guard against revenue and statutory expense volatility.
214. The fiscal plan includes a Contingencies Vote allocation of \$450 million in 2016/17 and \$400 million in each year of the next two years to help manage unexpected pressures and fund critical priorities.
215. The degree of prudence in the Ministry of Finance's forecast is consistent with the amount of prudence that has been incorporated in the past.
216. Included in Government's Documents, Tab 10, is a report prepared by Ken Peacock entitled "BC's Economic Setting and Outlook: Holding up Amid Weak External Circumstances".

The Government's Submission to the Commission Regarding Judges

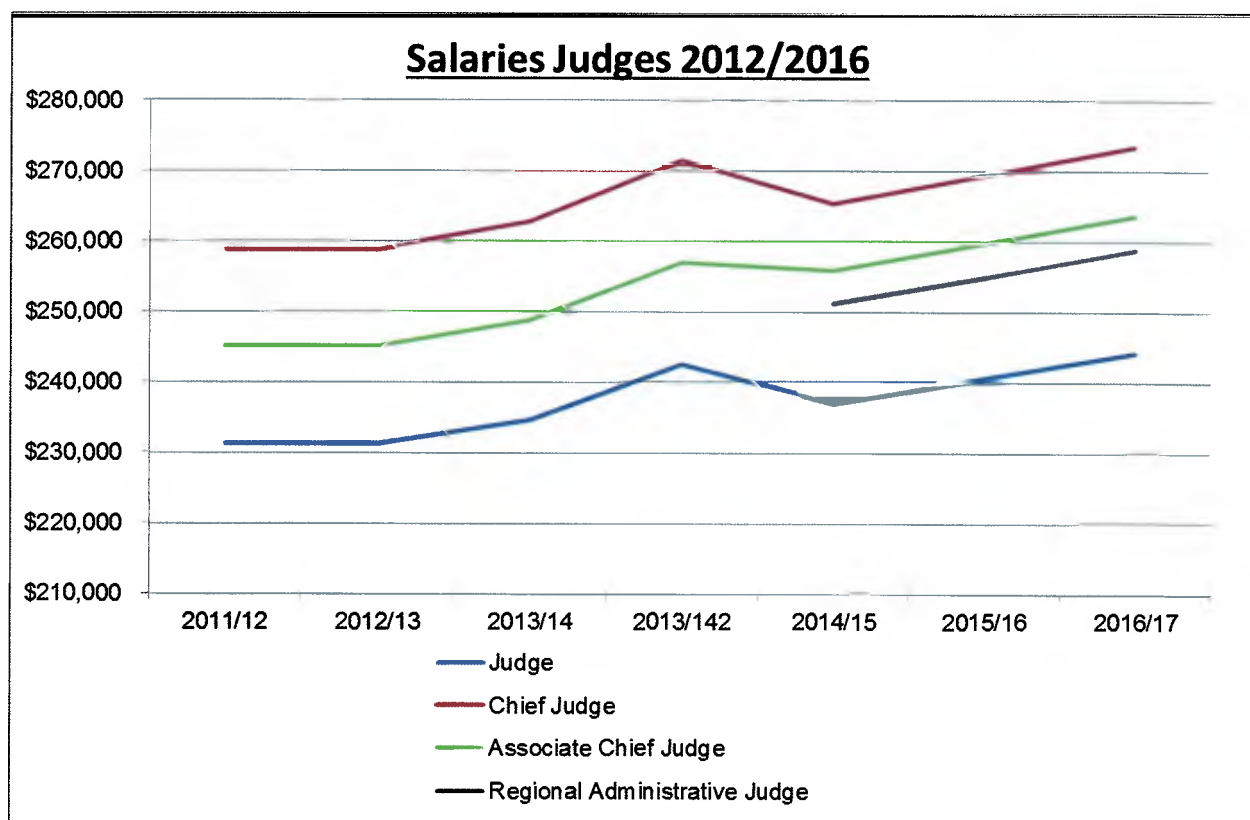
217. This Part of the submission provides Government's position with respect to Judges.

218. The Supreme Court of Canada has stated that the most useful starting point is the date of the last commission. Following Government's response to the Report of the 2013 Commission, Judges currently receive an annual salary of \$244,112. This is the salary which should be used by the Commission as the base for calculations.

Reasonable Compensation for Judges of the Provincial Court

Salaries

219. The current salary of Provincial Court Judges is \$244,112. The following table illustrates the history of increases to Judges' salaries since 2011/12:



220. The duty of the Commission is to recommend salaries prospectively for three years (April 1, 2017 – March 31, 2020). The position of the Government is that these salaries should be increased by 1.5% per year, resulting in the following:

- \$247,774 in the first year;
- \$251,491 in the second year; and
- \$255,263 in the third year.

221. The Government's position is based on the previous salaries set by the Legislative Assembly over time and provides adequate and reasonable compensation to the Judges.

222. The legislated factors do not support the salary position of the Association.

223. Government's position recognizes the levels of compensation across Canada as well as within British Columbia, and recognizes the economic and fiscal realities within the province. In BC, the levels of compensation for those funded by public funds have been restrained but have met the cost of living. Teachers under collective agreements in British Columbia rank fifth in Canada (excluding the Yukon and Northwest Territories). Nurses also have ranked fifth in Canada (excluding the Yukon and Northwest Territories). In the Public Service, at the strategic leadership range which includes directors and executive directors, BC ranks twelfth in Canada.

224. Further, in light of the comments of the Supreme Court of Canada, the Association's salary position is unsupportable. Absent factors heavily favouring a significant salary increase, judicial independence favours similar treatment with others paid by public funds.

225. In summary, the position of the Government is that the increase in salary it has proposed is both reasonable and adequate.

Pensions

226. The Judges' Association proposes that the accrual rate for pension purposes should be increased to 3.5%.

227. Attached to this submission as Government's Documents, Tab 11, is a power point prepared by the Government which demonstrates:

- a. The contribution by Judges to their pension (8.87%) is lower than provided by other identified public servants (page 4).
- b. The accrual rate of 3% is 50% higher than any other identified public servants other than Members of the Legislative Assembly (page 4).
- c. The period for calculating the pension value is three years whereas the period for most of the identified public servants is calculated on the last five years (page 4).
- d. Pension of 70% is achieved in 23.3 years of service which is much faster than most others (page 4).
- e. Comparisons with other professions are also favourable to Judges (page 5).
- f. A comparison across Canada for provincial court judges shows seven other provinces having an accrual rate of 3% (page 7).
- g. An increased accrual rate to 3.5% demonstrated that a full pension can be accrued in a significantly shorter period (page 8).

228. In summary, based on all of these reasons, the Government proposes an accrual rate of 3%.

Costs

229. The Judges' Association in its submission (at paragraphs 376 and following) request that the Commission recommend that the Government should pay 100% of the Judges' Association's

reasonable legal fees and disbursements including 100% of the cost of expert evidence. This request was made notwithstanding the provisions of Section 7.1 of the *Act*.

230. In support of its request, the Judges' Association describes the history of recommendations which were made by previous Commissions in 2004 and 2013.

231. The Judges' Association concedes in its submission (paragraph 385) that a constitutional rule does not exist, which requires that its cost be paid by Government.

232. The Judicial Justices' Association did not make such a request in its submission.

233. By way of response, the Government submits that the Commission may not make a recommendation on this issue. Section 7.1 of the *Act* provides as follows:

Appropriation

7.1 (1) Subject to subsection (2), the government may pay out of the consolidated revenue fund the reasonable costs, incurred by the Provincial Court Judges' Association of British Columbia and the Judicial Justices Association of British Columbia, of participating in the commission.

(2) The maximum amount that may be paid under subsection (1), which maximum amount applies separately to the Provincial Court Judges' Association of British Columbia and the Judicial Justices Association of British Columbia, is as follows:

(a) the first \$30 000 in costs;

(b) 2/3 of the costs over \$30 000 but under \$150 000.

(3) Despite subsections (1) and (2), the Lieutenant Governor in Council may, by regulation, set higher amounts for the purposes of subsection (2).

234. In our submission, the *Act* provides a defined formula for the reimbursement of costs which, if the costs of the Association were \$150,000, would allow them to make a claim up to \$109,200. The intent of the legislation is clear, and the only provision which could vary this amount was if the Government decided to adopt regulations permitting a higher level of reimbursement.

General Response to the Judges' Association Submission

235. The Government has already provided partial responses to the submission of the Judges' Association in earlier parts of this submission. Additionally, we have the following responses to make which we will identify by the paragraph numbering used in the Judges' Association submission.

Paragraph 6

236. The submission states that the Court has jurisdiction over 98% of criminal cases in the province and continues to expand its family and civil law jurisdiction. In our submission, it does not appear that the Provincial Court's jurisdiction to hear criminal, family or civil matters has changed significantly in recent years. There have been no substantial changes to the *Provincial Court Act*, which would affect the Court's jurisdiction, or any major changes to the legislation pertaining to matters over which it has current jurisdiction. The exception may be on family matters, which since March of 2013 have been dealt with under the *Family Law Act*. Although the new *Family Law Act* clarifies the Provincial Court and Supreme Court jurisdiction in Part 10, Division 1, it did not give the Provincial Court any additional authority to hear family matters.

237. There have also been no notable legislative changes to civil legislation affecting the Provincial Court's jurisdiction over those matters. The last major change to its civil jurisdiction came into effect in September of 2005 when the monetary limit for small claims was set at \$25,000.

238. Amendments to the *Criminal Code* and *Youth Criminal Justice Act* resulted in more serious and complex cases proceeding to the Provincial Court, although those changes are not specific to BC and impact all Provincial Courts.

239. The BC Provincial Court's website, last updated November 27, 2015, had its annual reports for the three prior years. All report that over 95% of all criminal cases in the province are

heard in the Provincial Court while 98% has been used in other circumstances. The Government is operating on the basis that it constitutes 95% of the criminal cases.

Paragraph 10

240. In this paragraph, the Judges' Association asserts that there are 108 full time and 47 part time judges. We are informed that as of April 30, 2016, the Court had 108 full time judges and 36 senior judges. Since that time, there have been two judicial appointments, effective May 2, 2016.

Paragraph 22

241. In this paragraph, the Judges' Association asserts that the number of family cases initiated in the Provincial Court has increased significantly in the last 20 years. By way of response, the most historic data available is from 2003. Since that time, the number of family cases initiated does not appear to have increased significantly.

Paragraph 44 and following

242. In these paragraphs, the Judges' Association describes the reforms that have taken place within the Provincial Court. These reforms were often taken to deal with particular caseloads and for the purpose of improving productivity and efficiency. It should be assumed that all courts engage in this activity based on the unique circumstances of the population they serve.

Paragraph 141

243. This paragraph of the Judges' submission submits that if a potential candidate looked no further than the current level of remuneration, one would surely question the candidate's intellectual qualification, sense of reality, or motivation for appointment, all of which bear upon qualification to hold judicial office. The Government takes very serious exception to this statement. Many applicants who are appointed to the Court receive a significant salary increase and possibly a significant change in their pension value. Additionally, applicants may not be concerned about their salary, because that is not the principle motivation for

seeking appointment. It seems extreme to question the intellectual qualifications of an applicant if they are prepared to agree to the current level of remuneration.

Paragraph 145

244. In this paragraph, the Judges' Association references the recognized importance of retaining qualified Judges as well as attracting qualified applicants. The Government responds by saying that, for example, there were no resignations between April 2015 and 2016. There were, however, ten retirements. There is no evidence that there is a risk of significant number of judges resigning from the Court.

Paragraph 150

245. In this paragraph, the Judges' Association asserts that screening by the Judicial Council does not make them qualified, it simply establishes that they have been screened. The Government again takes significant exception to this statement. It is assumed that being screened by the Judicial Council means that they are qualified to sit as a judge. This is the process which is intended to determine who is qualified and to screen out unqualified applicants.

Paragraph 157

246. The Judges' Association suggests that there is a real risk of individuals not seeking appointment to the Provincial Court if the gap in remuneration between the provincial and federal appointees is significant.

247. By way of response, it is clear there are quite different reasons why the candidate might seek federal appointment versus a provincial appointment. The suggestion that the salary gap would preclude individuals applying to the Provincial Court is purely speculative.

Paragraph 159

248. The Judges' Association state that they are paid 77.7% of the salary paid to federally appointed judges working in British Columbia. As we stated in the outset of this submission,

comparison to federally-appointed judges is not included within the criteria under Section 5 of the *Act*. In any event, most commissions have resisted submissions to make the relationship between a federal and provincial appointed judge to be defined as a percentage.

Paragraph 162

249. In this paragraph, the Judges' Association discusses the issue of Provincial Court applicants also applying for a federal appointment. This may be the case in some circumstances, which would tend to lead to the conclusion that the salary difference is not significant in that the applicant has sought appointment from both Courts. In any event, there has been only one judge in 2013/14 who was elevated to the Supreme Court and there have been no other judges elevated since that time.

Paragraph 165

250. In this paragraph, the Judges' Association argues that there is a relationship between the number of applications and the salary of Provincial Court Judges. Any link between the salary of Provincial Court Judges and the number of applicants is purely speculative.

Paragraph 170

251. The Judges' Association talks about the need for diversity on the bench. It is important to point out that in 2014, 21 applicants were recommended for appointment, 6 of whom were female. In that year, 6 candidates out of the 21 recommended were appointed, 2 who were male and 4 who were female. In 2013, approximately 74% of applicants came from private practice, and in 2014, approximately 56% came from private practice. This information is based on the Judicial Council Annual Report of 2014. In paragraph 179, the Judges' Association takes the position that Crown lawyers are over-represented on the bench. Based on the Judicial Council annual report, of 2014, in 2013 and 2014, Crown Counsel represented about 18% and 36% of applicants.

Paragraph 185

252. The Judges' Association addresses the issue of attracting senior members of the Bar. Again, based on the Judicial Council Annual Report, from 2011 to 2014, applicants had an average of 20 or more years of experience. In 2014 male applicants had an average of 23 years of experience while female applicants had an average of 20 years of experience. In 2013, male applicants had an average of 24 years of experience while female applicants had an average of 20 years of experience. In 2012, male applicants had an average of 26 years of experience, while female applicants had an average of 23 years.

253. It is submitted by the Government that this demonstrates these applicants would be senior members of the Bar.

Paragraph 187(B)

254. It is important to recognize that the Judges' Association does not assert that the jurisdiction of Judges has changed significantly since the 2013 Commission.

Paragraph 196

255. In this paragraph, the Judges' Association states that the judiciary is unique both in constitutional status and job function, and their work is not easily compared with others in the British Columbia economy, and certainly not with jobs within the public service.

256. By way of response, we would reiterate the fact that the Act contains this criteria explicitly and that it must be considered. The issue is, while ensuring the Judges are adequately paid in order to maintain the independence of the judiciary, it is relevant to know how other employees have been treated in the public service and public sector in the province.

Paragraph 210

257. The Judges' Association discusses the level of increases negotiated with or provided to public sector groups. They acknowledge that it could be a useful indicator of the Government's own assessment of its ability to pay, but otherwise it is of limited value.

Again, we reiterate that it is an explicit part of the criteria under the Act, and is relevant to a sense of fairness as to whether Provincial Court Judges are receiving significantly more or the same as other employees in the province. Provided that the Judges are adequately paid to maintain their independence, this factor is highly relevant in the view of the Government.

Paragraph 211 and 213

258. The Judges' Association focuses on collective bargaining and unionized staff; however, as noted in this submission, hiring and compensation controls for excluded public sector employees and Assistant Deputy Ministers and Deputy Ministers have also been a part of Government's fiscal management strategy.

Paragraph 215

259. In this paragraph, the Judges' Association refer to other groups such as Crown Counsel, Officers of the Legislature and Masters of the Supreme Court as being tied to the compensation of judges.

260. By way of response, the Government submits that the task of this Commission is to make recommendations with respect to compensation for Judges (and Judicial Justices), irrespective of whether Government may use the compensation as a benchmark for others who play a role in the administration of justice.

The Government's Submission to the Commission Regarding Judicial Justices

261. With respect to Judicial Justices, there are currently facilitated discussions taking place with respect to the resolution of the judicial review regarding compensation for years that were the subject of the two most recent commissions. It is believed that the discussions will be successful in resolving the issues raised. In these circumstances, we will not identify in this submission the ultimate position of the Government. Details will be communicated as soon as possible by way of a supplemental submission.

262. Below we provide a general response to the Association's submission.

General Response to the Judicial Justices' Association Submission

263. On page 7 of the Judicial Justices' Association submission, the submission is made that there is an alarming lack of interest in appointment. In response, we say that the evidence is clear that there are qualified applicants available when they are required.

264. On the same page, the Association acknowledges that the jurisdiction of the Judicial Justices is not expanding. The Government agrees.

265. On page 9, the Association reviews compensation for public servants. In response, we rely on our earlier submissions on this issue.

266. Similarly, we rely on the economic and fiscal submissions we have made earlier in this submission with respect to the economic and fiscal review found on pages 10, 11 and 12 of the Judicial Justices' Association submission.

Appendix

Previous Commissions

The 2004 Judges Compensation Commission

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

The recommended salary increases for this period (from a pre-commission base of \$161,250) were as follows:

| | |
|---------------------------|---|
| January 2004-March 31/05: | \$161,250 + change in B.C. Consumer Price Index |
| 2005/06: | previous year's salary + change in B.C. CPI |
| 2006/07: | \$198,000 |
| 2007/08: | \$198,000 + change in B.C. CPI |

The Legislature rejected the first two years' recommendations, replacing them with zero increases, but accepted the final two years' recommendations. The resulting salaries were as follows:

| | |
|---------------------------|-----------|
| January 2004-March 31/05: | \$161,250 |
| 2005/06: | \$161,250 |
| 2006/07: | \$198,000 |
| 2007/08: | \$202,356 |

Judges therefore received the bulk of the commission's recommended salary increases, forgoing only small increases in the first two years, and the cumulative increase was 25.5% over the four years.

In response to a proposal by the Judges' Association, the commission also recommended that, with the exception of benefit plans that apply to the general public such as MSP and Pharmacare, benefit plans for judges should not change without first being submitted to a compensation commission.

The 2007 Judges Compensation Commission

The 2007 commission recommended salary increases for judges of 14.2% for the years 2008/09 to 2010/11 inclusive. The salary levels in real terms were as follows:

2008/09: \$220,000

2009/10: \$225,500

2010/11: \$231,138

The commission also recommended a fixed percentage for employee and employer contributions to fund judges' benefits under the Public Service Pension Plan: 24% for judges and 76% for government, resulting in an effective rate of contribution by judges of 8.38% of their salary, and by government of 26.55% of that salary.

The commission declined an Association proposal to recommend that their vacation entitlement increase from 30 to 40 days. The commission accepted joint submissions on the scope of the judges' professional development allowance and extending membership in the senior judges' program from a maximum of five to seven years.

All of the commission's recommendations were accepted by the government.

The 2002 Judicial Justices Compensation Committee

The 2002 Judicial Justices Compensation Committee was the first independent commission to review the compensation of Judicial Justices of the Peace (“JJP”). It was created after amendments were enacted to the *Provincial Court Act* that established the position of JJP.

A significant effort was expended by both the Province and the Association in presenting their respective arguments on the nature and role of JJPs and how their compensation should best be considered. After consideration, the committee made 13 recommendations respecting JJPs’ salary, benefits and other matters. The Province accepted the majority of these recommendations but rejected four of them.

Two of the recommendations rejected by the Province related to salary. The committee had recommended the following salary increases on a base salary of \$70,312:

2001: 2.5%

2002: 2.5%

2003: 5.5%

2004: 9.0%

The Legislature rejected the final two years’ recommendations, instead substituting increases of zero per cent for both years as part of the zero-increase public sector compensation policy, with the result that JJPs’ salary just before the 2004 Commission was \$73,872.

The 2004 Judicial Justices of the Peace Compensation Commission

The 2004 Judicial Justices of the Peace Compensation Commission was the first such commission to report to the Legislature under the *Judicial Compensation Act*.

The recommendations of the commission were mainly focused upon the salary level of JJPs. The commission's recommendations set the JJP salary for January 1, 2005, at \$75,600 with increases of 0 %, 2% and 2% for the remaining years that it reviewed. The Legislature rejected the two salary recommendations for 2004 and 2005 in order to be consistent with government's public sector compensation policy of 0% increases for those years. However, the increase of 2.3% recommended by the commission for January 2005 was added to the recommended 2% increase for 2006/07. JJPs therefore received the salary increases of approximately 6.5% over three years as recommended by the commission, albeit with the initial increase delayed by two years.

As a result of the 2004 commission process, JJPs' salary increased as follows (from a pre-commission base of \$73,872):

2005/06: \$73,872

2006/07: \$77,112

2007/08: \$78,654

The 2004 Commission also recommended that vacation entitlement for all JJPs be set at 30 days and that JJPs receive a professional development allowance of \$500 per year subject to the Chief Judge's discretion to approve or disapprove specific expenditures.

The 2007 Judicial Justice of the Peace Compensation Commission

Shortly before the 2007 commission was appointed, the Office of the Chief Judge instituted changes to the position of JJP by creating a new part-time JJP position, which would be remunerated on a per diem basis. These new part-time JJPs would be drawn from among the practising legal community in British Columbia. The per diem in initial advertisements for the position was \$550 per day.

This commission was the first to consider appropriate remuneration in the form of per diems for these new part-time JJPs. Given the short time between the initial hiring of per diem JJPs and the 2007 commission process, the commission expended significant effort considering an appropriate per diem amount, in particular how to account for the overhead expenses that per diem JJPs would continue to carry during the days when they worked as JJPs. The commission eventually settled on a formula that divided the full-time JJPs' salary and benefits by the number of working days in a year, and added an amount to compensate for lawyer JJPs' fixed overhead costs.

In 2007 there were two part-time "incumbent" JJPs, who were former full-time JJPs serving in a part-time capacity and who were not hired under the new part-time "lawyer" JJP postings. Their existing per diem was \$343, which resulted from a formula of 80% of the full-time JJP salary divided by 210 working days per year.

The commission also recommended a significant lift to full-time JJPs' salaries, an increase to their professional development allowance, and provision of the same long-term disability plan benefits as for Provincial Court Judges.

The 2007 commission made the following specific recommendations:

Full-time JJPs

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

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

Full-time JJPs' professional development allowance was doubled from \$500 to \$1,000, and they were moved to long-term disability plan type "J", which is the same as that of Provincial Court Judges.

Part-time "Incumbent JJPs"

The per diem for part-time incumbent JJPs 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 |

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

Part-time "Lawyer JJPs"

The per diem for part-time "lawyer" JJPs was increased from the initial \$550 per diem as follows:

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

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.

All of the commission's recommendations were accepted by government.