

FINAL REPORT OF THE  
2010 BRITISH COLUMBIA  
JUDGES COMPENSATION COMMISSION

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Report to the Attorney General of British Columbia  
and the Chief Judge of the Provincial Court of British Columbia  
Pursuant to Section 5(3) of the Judicial Compensation Act

September 20<sup>th</sup> 2010



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## Composition of the Commission

The 2010 Judges Compensation Commission (the “Commission”) was appointed pursuant to the provisions of the *Judicial Compensation Act*, S.B.C. 2003, c. 59, as amended (the “Act”). Section 2 of the *Act* provides that the Commission shall consist of five members. Two members are appointed by the Attorney General of British Columbia. Two members are appointed by the Chief Judge of the Provincial Court in consultation with the Provincial Court Judges Association of British Columbia (the “Association”). These four members then appoint a fifth, who sits as Chair of the Commission.

The members of the 2010 Commission were appointed as follows:

Commission Chair	George Morfitt, FCA Victoria, B.C.
Attorney General Appointments	Geoffrey Cowper, Q.C. Vancouver, B.C.  John Dustan Vancouver, B.C.
Chief Judge Appointments	Robin McFee, Q.C. Vancouver, B.C.  Brian Kenning Vancouver, B.C.

## Mandate of the Commission

The Commission’s mandate, as set out in section 5(1) of the *Act*, is to make a report to the Attorney General and Chief Judge on all matters respecting the remuneration, allowances and benefits of Provincial Court Judges, and to make recommendations with respect to those matters for each of the next three fiscal years.

Section 5(5) of the *Act* requires the Commission to consider all of the following criteria in the course of fulfilling its mandate:

- (a) The current financial position of the government of British Columbia (the “Government”);
- (b) The need to provide reasonable compensation to the judges;
- (c) The need to maintain a strong court by attracting qualified applicants;
- (d) The laws of British Columbia; and
- (e) Any other matter the commission considers relevant.

The 2010 Commission’s recommendations are made with respect to the period April 1, 2011 to March 31, 2014.

## Judicial Independence

Canadians rightly assume that the work of judges is carried out impartially by judges who are truly independent of the government and the parties appearing before them. The importance of judicial independence has gradually been realized in theory and practice over the course of several centuries.

In the Anglo-Canadian tradition, the idea that judges ought to have tenure independent of the wishes of the executive branch of government was formally recognized in the *Act of Settlement* of 1701. More recently, the Supreme Court of Canada in *Reference Re Public Sector Pay Reduction Act (P.E.I.)* (1997), 150 D.L.R. 4th 650 (S.C.C.) (the “*P.E.I. Reference Case*”) acknowledged that after judicial tenure the second core characteristic of judicial independence is financial security, which is ensured by a process whereby the terms of judicial compensation are settled independently of the other two branches of government.

The third core characteristic of judicial independence is administrative independence. In the *P.E.I. Reference Case*, it was acknowledged that judicial control over assignment of judges, sittings of the court, court lists, allocation of courtrooms and direction of administrative staff is essential to the independent exercise of the judicial function. Administrative independence also fosters the collaborative pursuit of innovation and improvement in court processes.

One often overlooked feature of judicial independence is its role in informing and influencing our civic and economic culture. Judicial independence and expertise plays an important role in delivering the transparency, predictability and fairness which enables a modern society to flourish.

All British Columbians can be grateful that among the many challenges our community faces in the areas of criminal misconduct, fractured family relationships and civil disputes, the Provincial Court has proven itself a willing advocate for, and participant in, programs for the general improvement of the justice system without sacrificing essential tenets of judicial impartiality, independence and expertise in the law.

## Purpose of the Commission

The Compensation Commission process is designed to ensure the financial security of the judiciary, the second core characteristic of judicial independence as set out in the *P.E.I. Reference Case*.

In that case, the Supreme Court of Canada set out the constitutional nature of this process and the proper role of the commission, and laid the groundwork for the establishment of a system of independent judicial compensation commissions throughout Canada. This case was summarized in the Report of the 2004 Judges Compensation Commission, as follows:

*Although it may be obvious, this Commission affirms that a healthy and independent judiciary is the very cornerstone of democracy. Judges must be paid salaries that adequately reflect their essential importance to proper functioning*

*of our constitutional machinery. It must be borne in mind, as well, that when making recommendations concerning judicial compensation, we are involved in no less a matter than the proper funding of a separate and independent branch of government. Judicial independence “requires objective conditions that ensure the judiciary’s freedom to act without interference from any other entity. That principle finds explicit constitutional reference in ss. 96 to 100 of the Constitution Act 1867 and s. 11(d) of the Canadian Charter of Rights and Freedoms”:* see *Ell v. Alberta* [2003] 1 S.C.R. 857 per Major J. at paragraph 18.

*For the very reason that all judicial operations are funded by consent and approval of the legislature and, through it, the executive, the Supreme Court of Canada in the P.E.I. Reference Case has declared that the matter of judges’ pay and emoluments must be scrupulously depoliticized to maintain public confidence in judicial independence. The spectre must never arise of judges being manipulated by financial means for political ends. Thus it is said that the depoliticization of the relationship between the judiciary and the other branches of government is constitutionally mandated, and therefore part of the supreme law of this country.*

*The constitutional principles that apply are set out in the P.E.I. Reference Case and include the following:*

- *Salaries of Provincial Court Judges may be reduced, increased or frozen, subject to prior recourse to a special process which is independent, effective and objective, for determining judicial remuneration (page 637, para. 133);*
- *Under no circumstances is it permissible for the judiciary to engage in negotiations over remuneration with the executive or representatives of the legislature (page 637, para. 134);*
- *Any reduction to judicial remuneration, including de facto reduction through the erosion of salaries by inflation, cannot take those salaries below a basic minimum level of remuneration required for the office of a judge (page 638, para. 135); the principles that apply to salaries for judges apply equally to judicial pensions and other benefits (page 638, para. 136); judges, although they must ultimately be paid from the public purse, are not civil servants, since civil servants are part of the executive and judges, by definition, are independent of the executive (page 640, para. 143);*
- *If a government rejects the recommendations of a judicial compensation commission, the government must articulate legitimate reasons why it has chosen to depart from the recommendations of the Commission;*
- *If judicial review is sought after a government rejects the recommendations of a judicial compensation commission, a reviewing court must inquire into the reasonableness of the factual foundation of the claim made by the government (page 654, para. 183);*
- *There should be no negotiation of remuneration between the judiciary and the executive and legislature, because negotiations from the public*

*purse are “inherently political” (para. 146). However, it is proper for the Provincial Court Judges to convey their concerns and make submissions to government regarding the adequacy of current levels of remuneration (pages 655-656, paras. 186 – 189);*

- *Financial security is a means to an end of judicial independence and is therefore for the benefit of the public purse (page 658, para. 193); judges’ salaries must not fall below the basic minimum level of salary that is “adequate and commensurate with the status, dignity and reasonability of the office of judge” (page 659, para. 194).*

The *P.E.I. Reference Case* also provided the following important direction to judicial compensation commissions, which has guided us in our deliberations (p. 650, para. 173):

*In addition to being independent, the [judicial] salary commissions must be objective. 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” (Canada, Department of Justice, Report and Recommendations of the 1995 Commission on Judges’ Salaries and Benefits (1996), at p. 7). Although s. 11(d) does not require it, the Commission’s objectivity can be promoted by ensuring that it is fully informed before deliberating and making its recommendations. This can best be achieved by requiring that the Commission receive and consider submissions from the judiciary, the executive, and the legislature.*

The Supreme Court of Canada has had further opportunity to consider the issue of judicial compensation in *Provincial Court Judges’ Assn. of New Brunswick v. New Brunswick (Minister of Justice)*; et al, [2005] 2 S.C.R. 286 (commonly referred to as the “*Bodner*” decision). The Report of the 2007 Judges Compensation Commission sets out the following passage from the *Bodner* decision (paras. 14 – 15):

*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 identifying the appropriate level of remuneration for 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.*

*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 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.*

In *Bodner*, the Supreme Court of Canada stated the following principles:

- It is a constitutional requirement that commissions be independent, objective and effective (para. 16);
- The commission must objectively consider the submissions of all parties and any relevant factors identified in the enabling statute and recommendations. Its recommendations must result from a fair and objective hearing. Its report must explain and justify its position (para. 17);
- The commission's recommendations must have a "meaningful effect" even though they are not binding on government (paras. 17 and 20);
- Government retains the power to depart from the commission's recommendations as long as it justifies its decision with rational reasons which must be included in the government's response to the commission's recommendations (para. 21);
- Although the power to determine judicial compensation belongs to government, that power is not absolute. The commission's recommendations must be given weight. The government's response must be complete, must respond to the recommendations themselves, and must not simply reiterate earlier submissions by government that were made to and substantially addressed by the commission (paras. 22, 23);
- The response must be tailored to the commission's recommendations and must be "legitimate" (Reference, paras. 180 – 183), which is what the law, fair dealing and respect for the process require. The government must respond to the commission's recommendations and give legitimate reasons for departing from or varying them (para. 24);
- Reasons that are complete and that deal with the commission's recommendations in a meaningful way will meet the standard of rationality. Legitimate reasons must be compatible with the common law and the Constitution. The Government must deal with the issues at stake in good faith. Bald expressions of rejection or disapproval are inadequate. Instead, the reasons must show that the commission's recommendations have been taken into account and must be based on facts and sound reasoning. They must state in what respect and to what extent they depart from the recommendations, articulating the grounds for rejection or variation.

The reasons should reveal a consideration of the judicial office and an intention to deal with it appropriately. They must preclude any suggestion of attempting to manipulate the judiciary. The reasons must reflect the underlying public interest in having a commission process, being depoliticization of the remuneration process and the need to preserve judicial independence (para. 25).

## Methodology of the Commission

In May and June 2010, the Commissioners met with representatives of the Association and the Government to observe the following Provincial Court venues within the province:

- Prince George Provincial Courthouse;
- Vancouver Downtown Community Court;
- Vancouver Main Street Provincial Courthouse;
- Kelowna Provincial Courthouse; and
- Surrey Provincial Courthouse.

The Commission posted information about its composition and its mandated public hearings on the Ministry of Attorney General's website at [www.ag.gov.bc.ca/judicial-compensation](http://www.ag.gov.bc.ca/judicial-compensation). Through that website, the Commission also invited submissions from the public on all matters concerning the salaries and benefits of Provincial Court Judges.

The Chair also solicited written submissions from the following parties:

- Chief Judge Thomas J. Crabtree, Provincial Court of British Columbia;
- The Canadian Bar Association, British Columbia Branch;
- The Judicial Council of British Columbia; and
- The Law Society of British Columbia.

In response, the Commission received written submissions from the following parties:

- The Provincial Court Judges Association of British Columbia;
- The Government of British Columbia;
- The Honourable Chief Judge Thomas J. Crabtree;
- The Judicial Council of British Columbia;
- The Law Society of British Columbia; and
- The Canadian Bar Association, British Columbia Branch.

These materials were marked as exhibits and form part of the record of the Commission, all of which has been fully considered.

The Commission conducted public hearings in Courtroom 101 of the Robson Square Provincial Courthouse located at 800 Hornby Street in Vancouver, British Columbia, on June 21, 22 and 25, 2010. Those hearings were conducted in an informal manner, and the Commission did not require witnesses to be under oath. During the hearings, the Commission heard oral presentations from the following persons:

- On behalf of the Association:
  - The Honourable Judge Robert Higinbotham;
  - The Honourable Judge Josiah Wood;
  - The Honourable Judge Al Betton;
  - The Honourable Judge John Milne;
  - Mr. Donald M. Smith, Western Compensation and Benefits Consultants; and
  - Mr. Ian McKinnon, Pacific Issues Partners;
- On behalf of the Government:
  - Mr. Richard Fyfe, Q.C., Assistant Deputy Attorney General; and
  - Mr. Graham Whitmarsh, Deputy Minister of Finance;
- The Honourable Chief Justice Thomas J. Crabtree;
- Mr. Art Vertlieb, Q.C., Judicial Council of British Columbia; and
- Mr. James Bond, Canadian Bar Association, British Columbia Branch.

The Commission is indebted to all of the participants in this process for their input and assistance.

## Summary of the 2007 Commission Report

In the *Bodner* decision, the Supreme Court of Canada held that the “starting point” for the work of each commission should be the date of the previous commission’s report. The previous report forms the background and context in which the present commission performs its function. Thus, we have attempted to summarize the key issues considered and recommendations made by the 2007 Commission in order to put the present analysis in its proper context.

### Salary

The 2007 Commission recommended a significant increase in the salaries of *puisne* judges of the Provincial Court. In 2007, judges earned \$202,356.00 annually. The Commission recognized that judicial salaries must be set at a level that will attract highly qualified lawyers from both the private bar and public service. While the Commission declined to recommend that salaries of Provincial Court Judges be tied to those of Supreme Court

Justices, the Commission recognized the importance of minimizing the wage disparity between the two courts. The Commission also noted that the remuneration of Provincial Court Judges in British Columbia should keep pace with that of other provinces.

In 2007, the Commission found that the Province's economic outlook was "healthy". Accordingly, the Commission saw no reason why judges of British Columbia's Provincial Court should not receive salaries in keeping with B.C.'s relative economic position within the country.

The Commission made the following salary recommendations for the period April 1, 2008 – March 31, 2011:

<b>April 1, 2008 – March 31, 2009</b>	\$220,000.00 (an increase of 8.7%)
<b>April 1, 2009 – March 31, 2010</b>	\$225,500.00 (an increase of 2.5%)
<b>April 1, 2010 – March 31, 2011</b>	\$231,138.00 (an increase of 2.5%)

The Commission also recommended that the Chief Judge continue to receive a salary of a *puisne* judge plus 12%, and that the Associate Chief Judge continue to receive the *puisne* judge salary plus 6%.

The Government adopted the 2007 Commission's recommendations with respect to salary. In the present 2010/11 fiscal year, Provincial Court Judges earn a salary of \$231,138.00. As a result, British Columbia's Provincial Court Judges' salaries are currently the second highest in Canada (after Ontario), and approximately 85% of federally-appointed Supreme Court Justices' salaries.

## **Pension and Benefit Plans**

British Columbia's Provincial Court Judges are members of the Public Service Pension Plan (the "Pension Plan"). In 2004, the total annual cost to fund the judges' pension was 29.2% of their salary. Pursuant to the *Act* (and consistent with the obligations of other members of the Pension Plan), the judges' contribution rate was fixed at 7%, with the balance of 22.2% paid by the Government, or a ratio of 24:76.

By 2007, the trustees of the Pension Plan had increased the member contribution rate from 7% to 9.13%. The Government sought the 2007 Commission's approval of this change, and a recommendation that further changes to the Pension Plan by its trustees flow through to the judges without involvement of the Commission.

The Commission accepted that the trustees of the Pension Plan may make changes to the pension contribution rates from time to time, and that the provisions of the *Act* that fix the contribution rates for judges and the Government can be amended without compromising judicial independence. The Commission specifically recommended that the salary-based contribution rates in s. 18(1) of the *Act* be replaced by provisions requiring the judges to contribute 24% of the total premium cost of the Pension Plan, and the Government to contribute 76% of the premium cost. Any future increases or decreases in the overall contribution premiums required by the trustees would automatically flow through to the

judges without the involvement of a compensation commission. The changes, however, would be borne proportionately by both parties according to the 24:76 ratio fixed by the *Act*.

The Commission recommended that all other changes to the terms or benefits of the Pension Plan applicable to sitting judges must be subject to the prior consideration of a commission.

The Commission also recommended that all changes made to the public sector Extended Health Plan and Group Life Insurance Plan since 2004 also be extended to judges, effective April 1, 2008.

The Government partially adopted the Commission's recommendations in this regard. Section 18(1) of the *Act* has been amended to fix the pension contribution ratio at 24:76. However, s. 18(1.2) sets out the current contribution rates for both judges (8.38%) and Government (26.55%).

### **Vacation Entitlement**

The 2007 Commission declined to recommend an increase, proposed by the Association, to the vacation entitlement of Provincial Court Judges from 30 to 40 days.

#### Professional Development Allowance

The 2007 Commission recommended that the joint proposal of the Association and the Government concerning the proposed Professional Development Allowance be adopted. The parties proposed:

- That the allowance be increased from \$3,000.00 to \$4,000.00, with the ability to carry over any unused portion for one year;
- That the allowance may be used to cover reasonable expenses associated with a judge's attendance at courses, seminars or conferences; and
- That in any year, \$2,500.00 of the Allowance may be used for certain defined expenses reasonably incurred in the execution of the office of a judge.

### **Senior Judges Program**

The Senior Judges Program, which was created in 2003 by amendment to the *Provincial Court Act*, R.S.B.C. 1996, c. 379, allows a Provincial Court Judge to retire from full-time duties and begin receiving his or her pension, but to continue sitting as a judge on a part-time (or supernumerary) basis. The 2007 Commission recommended that the maximum length of participation in the Program be extended from five to seven years. The Government, which supported the Chief Judge's proposal in this regard, accepted the Commission's recommendation and amended the *Provincial Court Act* to reflect this change.

## Recruitment Incentive Program

The 2007 Commission raised an issue *ex mero motu* concerning the limited number of qualified applicants prepared to fill judicial vacancies in certain locations within the province. For reasons of policy and principle, it was considered undesirable for judges in outlying area to receive a greater salary and benefit package than other judges. However, the Commission recognized that in other professional settings, recruitment challenges are met by the provision of incentive programs, including allowances that recognize the higher cost of travel and other expenses.

The Commission suggested that the Government consider providing discretionary funding to the Judicial Council to introduce an incentive program designed to meet the needs of the judiciary. The Commission urged the Government to pursue a solution to the issue in consultation with the Chief Judge and Judicial Council.

## Summary of Issues before the 2010 Commission

### Salaries

The current annual salary of a *puisne* judge of the Provincial Court for the period April 1, 2010 to March 31, 2011 is \$231,138.00. The Association proposed that Provincial Court Judges should receive no salary increases during the 2011/12 and 2012/13 fiscal years, followed by an increase during the 2013/14 fiscal year which would bring their salaries up to 90% of the salaries of the justices of the Supreme Court of British Columbia.

The annual salary for a Justice of the Supreme Court of British Columbia as of April 1, 2010 was \$271,400.00. Pursuant to section 25 of the *Judges Act*, R.S. 1985, c.J-1, that salary will be adjusted on April 1, 2011 by the lesser of the 12 month increase in the Industrial Aggregate Index (“IAI”) as determined by Statistics Canada, or 7 %. By May 30, 2012, the 2011 Quadrennial Judicial Compensation and Benefits Commission will deliver a report which reviews current Supreme Court Justices’ remuneration and may recommend an adjustment of base salary levels for the 2012/13 – 2016/7 fiscal years. Accordingly, the 2013/14 salary of a Justice of the Supreme Court of British Columbia is presently unknown.

The Provincial Court Judges, through their Association, have taken the position that in the interests of judicial independence and public confidence in the administration of justice, they would not ask for any increase in compensation or benefits for a two year period, which is equivalent to that which the Government has asked members of the public service to accept for the 2010/11 and 2011/12. In doing so they acknowledge the following observation of Lamer, C.J.C. in the *P.E.I. Reference Case* that independent review of compensation does not require automatic and irreversible increases in compensation (para. 196):

*...the guarantee of a minimum acceptable level of judicial remuneration is not a device to shield the courts from the effects of deficit reduction. Nothing would be more damaging to the reputation of the judiciary and the*

*administration of justice than a perception that judges were not shouldering their share of the burden in difficult economic times.*

However, the Government is forecasting a return to a balanced budget in 2013/2014. Accordingly, the Association proposes that a salary increase to the level of 90% of the salary of a Supreme Court Justice (currently set at \$271,400.00 per year) would be appropriate in the third year of the Commission's mandate.

The Association observes that there is no principled reason for federally-appointed Supreme Court Justices to be paid more than Provincial Court Judges. Furthermore, there is intense competition between the Supreme Court and Provincial Court for qualified applicants. The Association submits that the more attractive salary and benefits package offered by the Supreme Court is a significant factor that leads qualified lawyers to prefer a position on that bench over the Provincial Court bench. It also leads sitting Provincial Court Judges to leave their bench for positions with the Supreme Court. Setting salaries at 90% of Supreme Court Justices' salaries would help to attract a greater number of qualified applicants and might also persuade current Provincial Court Judges to remain on that bench.

The Association's submission in this regard is supported by the Chief Judge of British Columbia. There are vacancies on the Provincial Court bench; the Provincial and Supreme Courts are competing for qualified applicants from the same pool. An increase in salary to at least 90% of that paid to a Supreme Court Justice is critical to attracting and retaining qualified applicants.

The Association also submits that the current salary differential between *puisne* judges and the Chief Judge and Associate Chief Judge should continue. The Chief Judge is paid 112% of the salary of a *puisne* judge. The Associate Chief Judge is paid 106% of the salary of a *puisne* judge.

The Government observes that due to the recent recession, growing provincial debt and deficit budgets forecast to continue through at least 2012/13, it has an obligation to contain spending. Accordingly, it has adopted a "net zero" public sector compensation mandate. This mandate requires that any public sector salary or benefits enhancement must be offset by savings elsewhere, so that there is no net cost to the Government.

The Government proposes that the judges accept the model that it has asked all members of the public service to adopt, which is to acknowledge the extraordinary character of contemporary economic events and the need for restraint in government spending.

Accordingly, the Government proposes no net salary increases for the period covered by the Commission's mandate.

### **Pension: Accrual Rate**

Provincial Court Judges currently accrue pension at the rate of 3% per year to a maximum benefit of 70% of salary. Accordingly, a newly appointed Provincial Court Judge with no prior pension accrual must sit for 23.3 years in order to reach a 70% pension.

The Association observes that the accrual rate for federally-appointed Supreme Court Justices is 4.44% per year to a maximum of 67% of salary. That level of benefit is reached after fifteen years of service, or when a judge has served for at least ten years and has reached the age of mandatory retirement (the “rule of 80”).

The Association submits that the differential pension accrual rates accorded to Supreme Court Justices and Provincial Court Judges is a factor which makes a position on the Supreme Court more attractive to qualified applicants. The Association proposes that the pension accrual rate for Provincial Court Judges be set at 4% of salary, whereby maximum pension could be earned after 17.5 years of service. The Association’s alternative proposal is that the accrual rate be set at 3.5% of salary, whereby maximum pension could be earned after 20 years of service. The Association proposes that this change be made effective on April 1, 2013.

The Association’s proposal in this regard is supported by the Chief Judge.

In response, the Government proposes that there should be no increase to the Provincial Court Judges’ pension accrual rates, which are already 1% higher than all others in the public sector, except MLAs. Any increase in the pension accrual rates would result in an increase in the Government’s contribution rate and an added cost to Government. This is inconsistent with the Government’s “net zero” mandate. However, the Government is prepared to consider a proposal which re-balances the contribution rates so that there is no net cost increase.

### **Pension: Contribution Period**

Section 18(4) of the *Act* provides that member and Government contributions to the Pension Plan must stop on the earlier of (a) the member reaching “latest retirement age”, and (b) the member accruing the maximum pension of 70% of the member’s highest average salary. The Pension Plan Rules require pension contributions to cease to be made and pension benefits commence to be paid upon the member reaching “latest retirement age”, which is defined as “November 30th of the calendar year in which a member reaches the age prescribed under s. 8502(e) of the Regulations” under the *Income Tax Act*.

Section 8502(e) of the Regulations requires that pension benefits be paid “not later than the end of the calendar year in which the member attains 71 years of age”, except with the approval of the Minister. Accordingly, no later than December 31 of the year that a judge reaches the age of 71, contributions to the Pension Plan must cease, and payment of pension benefits must commence.

In 2008, s. 17(3) of the *Provincial Court Act* was amended to increase the age of mandatory retirement for judges from 70 to 75 years. Accordingly, judges who choose to sit until the age of 75 years are unable to accrue pension or make contributions to the Plan during their final four years of service. Under the current pension accrual rate of 3% per year, no judge appointed over the age of 48 could attain his or her maximum benefit of 70% of salary by the age of 71. The average age of appointment to the Provincial Court bench is 53.3 years.

The Association submits that there is an inconsistency between s. 17(3) of the *Provincial Court Act*, which sets the age of mandatory retirement at 75 years, and the provisions of the Pension Plan and the Regulations which requires pension contributions to cease and benefits to be paid no later than December 31 of the calendar year in which a judge reaches the age of 71 years. The Association proposes that this inconsistency be resolved in the following manner:

- that the Government request that the federal Minister permit pension benefits to be paid commencing upon the date of retirement of the judge; and
- that the *Act* be amended by defining “latest retirement age” as “the last day of the month in which the judge reaches the age of mandatory retirement”.

The Association submits that these changes will result in an overall benefit to the Pension Plan in that pension benefits will be deferred for up to an additional four years, and will be paid out over a shorter period of time. Further, the additional contributions will enhance the Plan’s balance sheet. The Association proposes that these changes be made effective April 1, 2011.

The Government does not accept the Association’s proposal. A four-year increase in the pension contribution period would result in additional contribution costs to Government, which is inconsistent with the Government’s “net zero” mandate.

## **Annual Leave**

Provincial Court Judges currently have 30 days annual leave per year pursuant to s. 1 of the *Judges’ Leave Entitlement Regulation*, B.C. Reg. 327/95 passed pursuant to the *Provincial Court Act*. The Association proposes that the Regulation be amended to increase judges’ annual leave to 40 days.

The Association notes that Ontario Provincial Court Judges have enjoyed 40 days of annual leave per year since the mid-1990s, a change that did not result in a decrease in judicial output. Yukon Territory Judges receive 35 days of annual leave per year. The annual leave allotted to Judges of the Northwest Territories is calculated on a sliding scale of 31.5 to 35 to 40 days, depending on years of service. All other provincial court judges across Canada receive 30 days annual leave or less.

Federally-appointed Supreme Court Justices have no specific provision for annual leave. Rather, Supreme Court Justices are required to sit thirty-two weeks per year. Non-sitting “judgment weeks”, during which time judges are expected to write judgments in adjudicated cases, are scheduled for every fourth week of the year. Eight non-sitting weeks are left, which effectively become a judge’s annual leave.

The Association also notes that pursuant to various collective agreements and Treasury Board orders, many senior members of the civil service (including senior employees of the Court Services Branch and Crown Counsel office) are entitled to up to seven weeks (35 days) annual leave. Judges who were senior Crown Counsel at the time of their

appointment would therefore experience a reduction in their vacation entitlement upon appointment.

The Chief Judge supports the Association's submission concerning annual leave. Provincial Court Judges are experiencing an increase in the volume and complexity of their work which justifies a longer period of annual leave. The anticipated impact upon judicial resources could be alleviated by Government providing additional resources to the Court.

The Judicial Council also supports the Association's proposal concerning annual leave.

The Government does not accept the Association's proposal. It takes the position that the current allocation of 30 days annual leave is sufficient and is the standard for provincial courts across Canada. The Government observes that Provincial Court Judges receive their full 30 day annual leave entitlement immediately upon appointment, unlike others in the civil service who receive graduated increases in their entitlements based upon years of service. To reach the maximum allotment of 35 days annual leave requires 25 years of public service.

Furthermore, the Government observes that if the Association's proposal were accepted it would represent the loss of five judges' worth of time, and would require the appointment of another five judges to keep the Court operating at current capacity.

## **Long Term Disability**

Currently, the long term disability ("LTD") benefit available to judges up to the age of 65 years is provided under Plan "J" of the public sector LTD plan. That plan is administered by an insurance company, but is funded by the Government. The benefit available under Plan "J" is 70% of monthly earnings.

The Association advised the Commission that Provincial Court Judges' Benefits Manual states that after the age of 65 years, judges' coverage under the public sector LTD plan ends and coverage under an LTD plan administered by the Office of the Chief Judge begins. The Manual further states that the Chief Judge's plan offers identical benefits to those provided under the public sector LTD plan. However, the Manual provides no details concerning the benefits available under the Chief Judge's plan. Furthermore, there does not appear to be any LTD coverage provided to judges over the age of 70 years.

LTD benefits paid under the plan administered by the Office of the Chief Judge are paid from the Court's operating budget. Accordingly, when a judge aged 65 to 69 becomes disabled, his or her LTD benefit is paid from the Chief Judge's existing salary funds. There are no new funds made available to provide LTD benefits to the disabled judge. Accordingly, the Chief Judge has little or no capacity in his budget to hire a new appointee to replace the disabled judge.

In the 1997 B.C. Supreme Court decision in *Craig v. British Columbia* (1997) 40 B.C.L.R. (3d) 289 (the "Craig decision"), Mr. Justice Parrett considered the adequacy of delivering LTD benefits to judges aged 65 years and over through the current plan administered by

the Office of the Chief Judge. He held that the current plan is “less than ideal”. However, the system provides equivalent coverage to the pre-65 plan, and the role of the Chief Judge in determining entitlement to benefits under the plan limits the scope for executive interference in the decision making process. Accordingly, Mr. Justice Parrett declined to find that the Government had failed to provide “guaranteed LTD benefits” or that the plan infringed the equality provisions of s. 15 of the *Canadian Charter of Rights and Freedoms*.

Within the term of the Commission’s mandate there is expected to be at least one judge aged 65 or over on LTD. The Association is concerned that the Office of the Chief Judge cannot afford to pay LTD benefits out of its own budget without compromising the quality of judicial service. The Association submits that there should be no distinction in the way that LTD coverage is funded, regardless of the age of the benefit recipient.

The Association also notes that under the provincial LTD plan, judges under the age of 65 years continue to accrue pension during the period of disability, with contributions to the plan paid by the insurer. The program administered by the Chief Judge is silent on this aspect of the age 65 and over plan. Further, the Pension Plan Rules require an LTD plan to be “approved” in order for pensionable service to accrue and contributions to be waived during the period of disability. There is no indication that the plan administered by the Office of the Chief Judge has been or would be approved by the trustees of the Pension Plan.

Accordingly, the Association proposes that LTD coverage be provided to all judges under the provincial group LTD plan, and that coverage be extended under that plan to all sitting judges up to the age of 75 years.

The Government does not oppose the extension of LTD benefits to judges to the age of 75 years. However, the Government submits that the current manner by which this benefit is provided to judges through the Office of the Chief Judge is sufficient and need not change. The Government does not currently extend LTD benefits under the existing plan to public sector employees (for whom there is no mandatory age of retirement) past the age of 65 years. The Government is concerned that making an exception for judges would stimulate similar demands by public sector bargaining units.

## **Life Insurance Coverage and Benefits**

Currently, Provincial Court Judges receive life insurance coverage to the age of 70 only. The benefit available under the group life plan is three times annual salary. Government pays the premium for the first \$80,000.00 of coverage; the balance of the premium is borne by the plan members.

With the recent increase in the age of mandatory retirement to 75 years, Provincial Court Judges who choose to sit beyond the age of 70 years are without life insurance coverage during their final years of service. The Association proposes that life insurance coverage be extended to judges who choose to sit beyond the age of 70, and that the benefit available under that coverage be identical to that provided to judges 70 years and under.

This issue was also considered by Mr. Justice Parrett in the *Craig* decision. In that case, the age of mandatory retirement for Provincial Court Judges had recently been increased from 65 to 70 years. The Association sought the extension of life insurance coverage to the age of 70 years to match the age of mandatory retirement. Mr. Justice Parrett found that the group life insurance policy applicable to judges and which failed to provide coverage for judges over the age of 65 infringed the equality provisions of s. 15 of the *Canadian Charter of Rights and Freedoms*, in that it set up a distinction between judges based solely on age. Furthermore, Mr. Justice Parrett found that the inequality was not justifiable under s. 1 of the *Charter* as a reasonable limit prescribed by law in a free and democratic society.

The Government submits that the *Craig* decision does not require the automatic extension of life insurance to a judge's actual age of retirement, but rather only to the age of 70 years. The Government notes that in other provinces life insurance is provided to judges past the age of 65 years, but at reduced levels of coverage.

The Government has proposed the following cost-neutral options to the proposal advanced by the Association:

- To provide additional age bands under the Employee Optional Life Plan available under the Flexible Benefit Plan. Currently, Employee Optional Life Plan coverage ceases at the age of 65. The Government's proposal would require the addition of a 65-69 and 70-75 age band for all members of the Plan. The maximum benefit available to these members would be \$50,000.00, and would require a medical examination for eligibility.
- To reduce the benefit for judges from age 65 to age 69 to create a savings under the plan which could then be used to provide coverage from age 70 to 75. The Government proposes reducing the benefit available to the age 65-69 cohort by 50% (one and a half times salary), with a further reduction to \$100,000.00 for the age 70-75 cohort.

## **Medical Screening**

The Association proposes that Provincial Court Judges be permitted to attend at a designated medical clinic once every five years for the purpose of screening for the early detection and diagnosis of health-related risk factors. The Association notes that judges are at elevated risk for stress- and age-related health problems. Early detection and treatment of these problems would protect the public's investment in the judiciary, and would reduce LTD claims.

The cost of a "full" diagnostic screening has been quoted at slightly less than \$4,000.00 per year per judge. Not every judge would undergo the full screening, but might choose a less expensive option. Under the Association's proposal, each judge would pay the cost of the screening him or herself and be reimbursed by Government at a rate of \$1,000.00 per year until full reimbursement has been made.

The Chief Judge supports the Association's proposal concerning medical screening. The Office of the Chief Judge pays a judge's salary during the first seven months of an extended illness. Regular medical screening to ensure that a judge is healthy and medically fit to work is a good investment for the Court and the Province.

The Government does not accept the Association's proposal. It observes that the proposal could cost the Government approximately \$140,000.00 per year. The Government is unwilling to authorize the use of public funds to pay for services at private medical clinics. The Government also notes that the proposal is not cost-neutral and is therefore inconsistent with its "net-zero" mandate.

### **Flexible Benefit Plan**

The Flexible Benefit Plan provides extended health, dental and other benefits to certain enumerated categories of senior public employees, including Order in Council appointees, Deputy Ministers, Associate Deputy Ministers and Assistant Deputy Ministers.

The details of the Flexible Benefit Plan and the benefits available thereunder can be found at the Government website [www.bcpublicservice.ca/benefits/index.html](http://www.bcpublicservice.ca/benefits/index.html). The key element of the Plan is that members have flexibility to tailor coverage from year to year (and in some cases, mid-year) to suit their individual or family needs.

The cost of including Provincial Court Judges in the Flexible Benefit Plan is \$300.00 each per year, plus a small initial administrative fee. The Association proposes that judges be enrolled in the Plan effective April 1, 2011, or alternatively at the earliest possible enrollment time following that date.

The Chief Judge supports the Association's proposal for inclusion of Provincial Court Judges in the Flexible Benefit Plan.

The Government notes that judges' benefits cannot be changed without prior recourse to a judicial compensation commission. This is a principal reason why the Flexible Benefits Plan was not extended to judges along with the other enumerated categories of eligible employees when it became available in 2008.

The Government does not accept the Association's proposal. The Government asks the Commission not to recommend the extension of the Flexible Benefit Plan to Provincial Court Judges, but acknowledges that it would have been extended in 2009 but for the necessity of submitting any proposed change in judges' benefits to the commission process. The Government observes that the cost of enrolling all 111 sitting judges in the Flexible Benefit Plan would be \$33,300.00 per year, plus a one-time administration fee. This is inconsistent with the Government's "net zero" mandate.

### **Extension of the Senior Judges Program**

Currently, judges participating in the Senior Judges Program are limited in the amount of time that they can work in a calendar year. Furthermore, s. 8(2) of the *Act* limits the salary

payable to a participant in the Program to 40% of the salary of a full-time judge. The salary payable to a participant in the program cannot exceed the difference between the salary payable to a full-time judge, and the part-time judge's pension benefit for the year. In practical terms, this limits participants in the Program to a six month annual work term.

The Chief Judge observes that judges are an older population, sometimes afflicted with serious health issues and challenged by the rigours of travel to outlying Court locations. The Provincial Court is subject to urgent demands resulting from increased caseloads, and the difficulty of replacing disabled or retiring judges. The Court also has identified a need to regularly involve sitting judges in continuing judicial education. This results in occasional urgent short term demands for additional judicial resources.

In the past, the Chief Judge has met these increased demands by utilizing the members of the Senior Judges Program. However, the *Act* limits the amount of time that a participant can sit. Once that resource is fully utilized, the burden then falls upon the already oversubscribed full-time sitting judges. If that burden cannot be adequately shouldered, backlogs arise.

The Chief Judge proposes expanding the Senior Judges Program by amendment to the *Act*. Such an amendment would allow him, in his discretion and if adequate budgetary resources exist, to authorize one or more part-time judges to provide coverage to meet the following demands:

- Urgent and unforeseen needs resulting from illness or injury;
- Absences due to judicial educational leave; and
- Short-term vacancies caused by an unanticipated departure of a judge or judges which adversely affects the operation of the Court.

The proposed amendment is intended to fill sittings already scheduled for full-time judges who then become unavailable, and not to permanently expand the judicial complement with part-time judges.

The Association does not support the Chief Judge's proposal. The Association does not want the Provincial Court to become a "part-time court" filled by part-time judges. In the Association's view, demand for additional judges should be met by filling existing vacancies with full-time judges who will contribute a full-time effort to the Court. However, should the Senior Judges Program be expanded in the manner proposed by the Chief Judge, the Association recommends a "sunset clause" which would require the program to be reviewed and reconsidered within the near future.

The Government also does not support the Chief Judge's proposal. The Chief Judge is in the process of preparing a report to Government regarding Court resources, including the appropriate number of full-time judges required to adequately staff the Provincial Court. Once agreement is reached and the requisite new full-time appointments are made, the existing complement of part-time judges should be sufficient to provide the coverage required by the Chief Judge at the levels currently permitted by the *Act*.

## Work of the Provincial Court

As of May 2010, there were 111 full-time judges of the Provincial Court, and 35 part-time judges working within the Senior Judges Program. These judges preside in approximately 100 court locations in 88 communities throughout the Province. For judges serving outside the Lower Mainland, travel by car (and occasionally by air) between court locations is a constant and rigorous feature of their work.

The average age of appointment to the Provincial Court bench is 53.3 years, and the average age of a sitting judge is 58. In 2008, the age of mandatory retirement was raised from 70 to 75 years.

The Provincial Court of British Columbia has one of the broadest jurisdictions of any provincial court in Canada, along with Quebec and Alberta. The Court now adjudicates almost all of the criminal charges laid in British Columbia. It also has jurisdiction in family law, child protection law, and civil law. It was recognized by the 2007 Commission, and it remains true today, that the Provincial Court brings the administration of justice to the citizens of British Columbia, and for the vast majority of them it is the face of justice.

Given the broad jurisdiction of the Provincial Court, judges must be capable and competent across many areas of the law. As those who appear before them are often unrepresented, judges often do not have the assistance of counsel to direct them to relevant law. The Commission heard evidence from the Association that approximately 90% of civil litigants are unrepresented, as are 40% of criminal accused and 90-95% of family law litigants. Dealing with unrepresented litigants demands that Provincial Court judges possess the qualities of patience, humility and compassion, and a keen understanding of human nature.

The judges of the Court also volunteer their time on such diverse committees as justice reform, pandemic and emergency planning, public legal education, judicial education reform, community outreach and law student moot competitions.

### Criminal Jurisdiction

The Provincial Court adjudicates virtually all of the criminal charges laid in British Columbia. The only significant exceptions are cases of adult murder charges, and a diminishing number of cases where an accused elects to be tried by a Supreme Court Justice sitting with or without a jury.

Between 2007/08 and 2009/10, the number of new criminal cases brought before the Provincial Court increased from 98,223 to 101,865. Also increased over that period was the number of serious and complex cases brought before the Court (such as sexual assault, aggravated assault, and kidnapping), which result in longer trials and require more judicial resources than other cases.

## **Young Offender Jurisdiction**

Section 13 of the federal *Youth Criminal Justice Act* (S.C. 2002, c.1) gives the Provincial Court exclusive jurisdiction over criminal matters involving young offenders. The only exceptions to this jurisdiction are cases wherein a young offender elects to be tried by a Supreme Court Justice sitting with or without a jury on a very limited number of offences. Over the period 2007/08 to 2009/10, the number of young offender cases brought before the Provincial Court declined from 8977 to 8097.

The *Youth Criminal Justice Act* has greatly expanded the statutory framework concerning youth sentencing. Provincial Court Judges must consider and draw upon a wide range of community-based resources when fashioning appropriate sentences for young offenders.

## **Family Jurisdiction**

The *Family Relations Act*, R.S.B.C. 1996, c. 128 grants the Provincial Court shared jurisdiction with the Supreme Court in the areas of children's custody, access and support, as well as spousal support. Provincial Court Judges are responsible for making difficult decisions that have enormous impacts upon children and families.

The *Family Maintenance Enforcement Act*, R.S.B.C. 1996, c. 127 gives the Provincial Court exclusive jurisdiction to enforce maintenance orders, and to determine questions of paternity. The only aspects of family law excluded from Provincial Court jurisdiction are the division of matrimonial property, adoption and the granting of decrees of divorce.

## **Child Protection**

Provincial Court Judges hear all proceedings relating to child protection under the *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46. Under that Act, judges have the responsibility of ordering the removal of children from their families when it is determined that the children are not being properly cared for. In this capacity, judges are called upon to assist child protection authorities and parents in reaching solutions that ensure the well being of children while also respecting the rights and interests of families.

Child protection cases average over two thousand per year in number. Trials in these matters can often be difficult and protracted.

## **Civil Jurisdiction**

In 2005, the *Small Claims Act*, R.S.B.C. 1996, c. 430 expanded the Provincial Court's civil jurisdiction to claims up to \$25,000.00 for debt, damages, recovery of personal property, and specific performance of agreements relating to personal property or services, from the previous limit of \$10,000.00. The Court has no jurisdiction over claims for libel, slander, and malicious prosecution. It is anticipated that the present \$25,000.00 limit may be increased by regulation to \$50,000.00 in the near future.

The Provincial Court of British Columbia has a broader civil jurisdiction than most other provincial courts in Canada. Alberta's Small Claims Court has a similar monetary limit of \$25,000.00, while the Saskatchewan Provincial Court's civil jurisdiction is \$20,000.00. In Newfoundland and Labrador, the monetary limit is \$5,000.00. In Manitoba, New Brunswick, Nova Scotia and Prince Edward Island, Provincial Court Judges do not hear civil matters at all. In Ontario, the Small Claims Court is a division of the Ontario Superior Court of Justice, a federal court. Only one division of the Quebec Provincial Court, which has a monetary limit of \$70,000.00, has a greater limit than the B.C. Court.

With the expansion of the Provincial Court's civil jurisdiction and increase in its monetary limit, cases heard by the Court have become legally and factually more complex. Trials are longer, and parties are often represented by counsel. Judges preside over pre-trial conferences designed to streamline the litigation process and increase trial efficiency. Judges also attend settlement conferences designed to assist the parties to resolve their disputes, and to ensure that judicial resources are conserved for those matters which require adjudication.

## **Education**

Provincial Court Judges participate in ongoing judicial education to ensure that they are well-informed on the myriad of legal issues which arise in their courtrooms, and upon which they must make difficult and often instantaneous decisions. The judicial education program has three major components:

- Five days of mandatory educational programming annually, sponsored and organized by the Office of the Chief Judge and the Association;
- Online updates from the Office of the Chief Judge's legal officers, weekly Continuing Legal Education updates, and various bulletins and information from government and private legal publishing sources; and
- Up to five days of paid educational leave annually to attend conferences and educational seminars, the cost of which is paid from a judge's professional development allowance.

## **Innovation and Reform**

British Columbia's Provincial Court Judges, both through the Office of the Chief Judge and upon the initiative of individual judges, have shown strong leadership in making the Court more responsive to the needs of the people who appear before it, improving access to justice, increasing productivity and delivering efficiencies in the use of the Court's time.

The Commission heard evidence concerning a wide variety of reforms undertaken by the Provincial Court Judges since the time of the last Commission. Chief Judge Crabtree described the District Review process, which commenced in 2007 and was designed to determine whether the Court was meeting the needs of the people of British Columbia. Under that process, each judicial district was analyzed, its effectiveness and efficiency

rated, and changes recommended. This Review formed the factual framework for an evaluation of the need for additional judicial resources, and of the effectiveness of a variety of pilot projects.

Arising from the Review were a variety of reforms, including:

- Changes to the operation of sentencing and bail courts to establish procedural timelines, reduce waiting time for trials and delegate duties from judges to judicial case managers where possible;
- The appointment of senior lawyers to sit as Justices of the Peace to hear small claims matters up to a monetary limit of \$5,000.00, the provision of mediators to help resolve claims in the range of \$5,000.00 - \$25,000.00 and the implementation of pre-trial conferences in two Vancouver court locations to narrow the issues in order to expedite trials;
- The use of video conferencing to accommodate remote hearings and to increase judicial output. Under the Bail Reform Project, hearings are scheduled before a Judicial Justice at the Justice Centre in the Lower Mainland, and the participants appear by videoconference from their respective locations.

Since the time of the last Commission, the Provincial Court has also initiated numerous “problem solving courts” which specifically target identified offender groups. These courts coordinate with community and government agencies to address the underlying causes of criminal activity, and to reduce recidivism. Such initiatives include:

- A First Nations Court presided over by British Columbia’s only female aboriginal jurist, Judge Buller Bennett. This Court provides a holistic and restorative approach to sentencing which incorporates aboriginal practices and community consultation, and addresses offenders’ needs for housing and health services;
- Vancouver’s Downtown Community Court, that deals with crime caused by drug addiction, mental illness and poverty. This Court brings offenders together with social agencies and health professionals. Most importantly, it connects offenders with people who can help them secure stable housing, which is an important factor in reducing recidivism;
- Victoria’s Integrated Court, that deals with restricted group of offenders who have a history of addiction, mental illness and unstable housing. Like the Community Court, it brings together a number of social agencies together to provide a coordinated and supportive approach to sentencing, treatment and housing. A similar court is in the planning stages in Kelowna and is expected to begin in the fall of 2010;
- Duncan’s Domestic Violence Court, that has been initiated to bring a more efficient and consistent approach to the disproportionate number of domestic violence cases within that community; and

- A specialized Administrative Court, that operates in many parts of the Province to further expedite the criminal pre-trial process and conserve judicial resources by monitoring compliance with the Criminal Caseflow Management Rules.

Provincial Court Judges also volunteer their time and resources to work with Government and other stakeholders on law reform initiatives. Members of the Court are currently working with the Family Justice Reform Working Group to suggest changes in the Court's family jurisdiction. They are also working with Government on the possible expansion of the Court's civil jurisdiction to include monetary claims up to \$50,000.00.

The Commission applauds the work that the Judges have done to bring innovation and efficiencies to the Provincial Court. However, little data has been made available which objectively quantifies those efficiencies in a way that would usefully inform the work of this Commission. The Commission encourages the Office of the Chief Judge and the Government to engage in the necessary review processes to ensure that this important issue can be more readily factored into the remuneration analysis by future commissions.

## Financial Position of the Government

The forecasted financial position of the Government is the subject of differing views between the Association and the Government. While the Association acknowledges that the recent global economic downturn has posed a "significant challenge" over the past year, it takes the position that the Government's finances have weathered the economic uncertainty very well and that it will be in a position to provide increases in salary and benefits in the 2013/14 fiscal year.

In response, the Government advances the position that it is only by dramatically curtailing program spending that it can return British Columbia to financial health within the near future. Accordingly, the Government has adopted a "net zero" public sector compensation mandate that requires any enhancements to public sector salary or benefits be offset by savings elsewhere. That mandate is currently slated to run through 2011/12.

The Commission had the benefit of a written report and an oral presentation from Mr. Ian McKinnon, a consultant in public policy and statistical analysis, on behalf of the Association. Mr. McKinnon has made similar presentations to three previous commissions.

Mr. McKinnon notes that Canada entered the global recession in a better position than other advanced industrialized nations due to low leverage levels in all sectors of the economy. Canada entered the recession later than most other advanced economies, and has emerged sooner. While the federal government has started to run significant deficits, it has not had to use the massive levels of stimulus spending resorted to by other G7 countries in order to sustain the economy. The debt-to-GDP ratio is currently and forecast to remain quite low compared to almost any time over the last thirty years.

In British Columbia, GDP declined by 2.3% in 2009. This decline is significant, but not as severe as declines that the province has suffered in past recessions. The recession has

reduced Government revenues by almost \$3 billion since 2008, while expenses have risen. The Government tabled a deficit budget for the 2009/10 fiscal year (-\$2.650 billion, later revised to -\$2.775 billion), and is forecasting further deficits for the 2010/11, 2011/12 and 2012/13 fiscal years. A return to a balanced budget is not forecast until the final year of this Commission’s mandate in 2013/14.

However, Mr. McKinnon notes that the Government’s fiscal projections are historically conservative, and it can be reasonably expected that future deficits will be lower than presently forecast. This observation has been borne out by the Government’s recent \$1 billion revision of the 2009/10 estimated deficit from -\$2.775 billion to -\$1.779 billion.

In recent years, British Columbia has brought in balanced budget legislation, and it has been necessary for the Government to obtain legislative permission to table deficit budgets through the 2012/13 fiscal year by amendment to the *Balanced Budget and Ministerial Accountability Act*, S.B.C. 2001, c. 28. However, the current and forecast deficits are comparable to deficits posted within the last decade.

Mr. McKinnon also observes that despite the economic downturn, recent provincial total debt-to-GDP ratios are among the lowest recorded over the past decade. Since 1997, those ratios have been as follows:

1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
27.0%	26.5%	27.9%	28.6%	26.2%	27.0%	26.7%	25.9%	22.8%	20.4%	18.3%	18.1%	19.2%	22.0%

Currently, B.C. has the third-lowest debt-to-GDP ratio in Canada. That ratio is projected to rise by 3.9% to 25.9% by the 2012/13 fiscal year. Mr. McKinnon observes that even with this increase, provincial debt levels will remain below those seen over the past decade, and well below those of other advanced economies.

The Province has pursued an economic strategy that encourages economic growth through capital expenditure and tax reductions. Mr. McKinnon observes that these policies indicate that the Government’s finances are sufficiently sound that despite the sharp downturn in most advanced economies, it is able to run comparatively small deficits while maintaining high levels of capital investment and a reduced tax effort.

Mr. McKinnon asserts that bond rating agencies provide an independent assessment of a government’s ability to carry and service its debt load. In October 2006, Moody’s Investors Service raised British Columbia’s credit rating from “Aa1” to “Aaa”. The only other governments in Canada that enjoy “Aaa” credit ratings from Moody’s are the Government of Alberta and the federal government.

Overall, Mr. McKinnon’s conclusion is that despite the recession, British Columbia’s financial position is “solid”. The Association adopts Mr. McKinnon’s conclusions and invites the Commission to find that the provincial economy will recover by the 2013/14 fiscal year. Accordingly, the Association submits that its proposals concerning monetary enhancements to salary and benefits should take effect on April 1, 2013.

The Government does not dispute Mr. McKinnon's evidence. However, it does submit that the Province's ability to return to a balanced budget by the 2013/14 fiscal year depends upon two factors: (1) a disciplined approach to program spending reductions; and (2) continued economic growth.

The Deputy Minister of Finance advised the Commission that virtually all provincial Government ministries have suffered spending cuts totaling in excess of \$300 million, with the exception of the health and education sectors. There have also been significant cuts to public service employment levels. The budget for the Ministry of Attorney General has been reduced by \$7 million since 2008/09. Discretionary grants to non-profit justice programs have been dramatically reduced. Under present fiscal policy, there is a finite amount of money available to fund the justice system. If compensation to existing judges is increased, there will be no budget to increase the judicial complement by appointing new judges.

A key element of the Government's current fiscal policy is a "net zero" public sector compensation mandate which requires any enhancements to salary or benefits to be offset by savings elsewhere. This mandate has been the basis for all settled public sector wage negotiations in the past year. The Government takes the position that the "net zero" mandate applies to judges as it does to every other component of the public sector, and that this mandate can be expected to extend past 2011/12. Even when British Columbia returns to balanced budgets as planned in 2013/14, the *Budget Transparency and Accountability Act*, S.B.C. 2000, c. 23 will mandate the use of any surplus cash and cash equivalents in the consolidated revenue fund to reduce direct operating debt.

Given that the Commission will be making recommendations for the period 2011/12 – 2013/14, the Ministry of Attorney General received from the Government a specific "net zero" mandate for its submissions to the Commission on Provincial Court Judges' salaries and benefits that covers all three fiscal years.

Furthermore, the Government submits that despite recent growth, the provincial and global economies remain highly unpredictable. Despite historical trends, the Government's economic forecasts are speculative at best, and its return to a balanced budget in 2013/14 is by no means a certainty. Volatile markets, combined with the slow pace of recovery in the U.S. and recent events in Europe, give rise to the possibility of a "double-dip" recession.

## **Analysis**

The reference in s. 5(5)(a) of the *Act* to "the current financial position of the government" should not be understood to be limited to the Government's current financial circumstances alone. Since the Commission is required to make recommendations spanning the next three fiscal years, efforts at forecasting are relevant and helpful. Similarly, "the current financial position of the government" is not restricted to questions of affordability. Generally speaking, judicial compensation forms such a small part of Government expenditure that increases in that compensation will always be affordable.

For the purposes of its assessment the Commission has assumed that the Province will recover from its present economic circumstances and return to fiscal balance in 2013/14. The Commission does so recognizing that the difficulties of forecasting can be illustrated by the fact that the 2007 Commission felt confident in making its recommendations on the basis that there would be substantial budgetary surpluses to 2010/11. The 13.7% increase in judicial salaries which flowed from the 2007 Commission's recommendations was based upon an economic forecast that was ultimately not borne out by actual events.

The Commission accepts that the global economic downturn has had a significant negative effect on the Government's finances as compared to 2007. While the Commission is not bound by the Government's "net zero" mandate, it is of the view that significant enhancements to judicial salaries and benefits are not supportable for the 2011/12 and 2012/13 fiscal years. However, the Commission has concluded that it is reasonable to expect that the Government will be in a position to support increases in the 2013/14 fiscal year which will ensure fair and reasonable compensation for Provincial Court Judges.

## Need to Provide Reasonable Compensation to Judges

Judges occupy a unique role in our society, and shoulder unique burdens. Without the courts, and the rule of law applied by judges, the power of the state over the individual would be unbridled. Essentially, judges stand between the power of the state and the liberty of the individual.

The 1998 Judicial Compensation Committee addressed the challenge in arriving at a figure to compensate the work of Provincial Court Judges (p. 13 – 14):

*We entrust to judges a unique and weighty responsibility. We ask them to sit in judgment on any one of us – from the highest to the lowest rank – and fairly and impartially apply the law to our deeds.*

*But what would be reasonable compensation for the burden of deciding which of two loving parents, now separated, will have the privilege of putting their children to bed each night and seeing them at breakfast in the morning?*

*What would be reasonable compensation for the judge who must face a man who was brutalized as a boy and has now injured another, and decide how long he will spend behind bars, potentially to be victimized again?*

*There is no simple definition of "reasonable compensation" just as there is no easy answer to the questions judges face every day.*

*The salary and benefits provided to judges of every court should reflect the position of dignity and respect in which they are held by society. Judges make a unique and essential contribution to the stability and order that British Columbians value and their remuneration should reflect that fact.*

As noted elsewhere in this Report, the expanding jurisdiction of the Provincial Court means that now, more than ever, judges are required to have or develop expertise in broad areas of the law. Trials are longer and more complex than in the past, but decisions must be rendered quickly. Judges are also called upon to be mediators, to coordinate community and government services to youth, aboriginal, addicted and mentally ill offenders, and to ensure that the rights of unrepresented parties are protected.

The Commission also heard evidence that despite strong efforts by all parties to create procedural and technological efficiencies in the use of judicial time, Provincial Court Judges' caseloads are steadily increasing. Court time is double and triple booked, and matters are often adjourned for lack of an available judge. Backlogs develop quickly. Judicial appointments that would ease these pressures have not been made. This combination of factors creates a stressful working environment for judges, who are not only the face of justice for the people of British Columbia but often also the face of delay, frustration and inconvenience.

Travel is a regular and rigorous feature of the work of Provincial Court Judges who sit outside of the Lower Mainland. Year-round and in all weather, judges travel by car (and occasionally by air) to remote courthouses around the province, often in the late evenings and early mornings, and often on consecutive days. This is a significant demand upon the older judicial population.

It is with all of these factors in mind that the Commission approaches the task of determining a reasonable level of compensation. It was the view of both the 2004 and 2007 Commissions that a useful comparator for this purpose is the salaries of other judges within Canada. We agree that this is a relevant starting point.

### **Comparison with Supreme Court Salaries**

As noted above, the annual salary for a justice of the Supreme Court of British Columbia as of April 1, 2010 was \$271,400.00. Pursuant to section 25 of the *Judges Act*, R.S. 1985, c.J-1, that salary will be adjusted on April 1, 2011 by the lesser of the 12 month increase in the Industrial Aggregate Index ("I.A.I.") as determined by Statistics Canada, or 7 %. By May 30, 2012, the 2011 Quadrennial Judicial Compensation and Benefits Commission will deliver a report which reviews current Supreme Court Justices' remuneration and may recommend an adjustment of base salary levels for the 2012/13 – 2016/7 fiscal years.

However, salary is just one component of the total compensation package. The Association notes that a 55 year old appointee to the Supreme Court who retires at 70 and lives to 85 will earn \$4,071,000.00 over his judicial career (assuming no increases to his base salary) and a further \$2,727,570.00 in pension for a total of \$6,798,570.00. Using the same assumptions, a Provincial Court Judge will earn \$3,467,070.00 in salary and \$1,560,181.00 in pension for a total of \$5,027,251.00. This amounts to a differential of \$118,088.00 per year.

The Association and the Chief Judge submit that there is an increasing similarity in the functions of the Provincial and Supreme Courts such that any disparity in the compensation

payable to judges of the two benches is unjustified. Over the past several years, significant jurisdiction over criminal, family and civil matters has been transferred from the Supreme Court to the Provincial Court. The Provincial Court enforces both provincial and federal enactments, and does so quickly and efficiently.

The Association also advances the position that rather than being a “second rate” court, the Provincial Court is the “face of justice” for the average citizens of British Columbia. It adjudicates cases that are just as important to the participants as those heard in Supreme Court, and serves a wider cross-section of the population. It should not be perceived as a court where its judges deserve less remuneration, and less respect.

The Government advances the position that Supreme Court Justices’ salaries are of limited comparative usefulness. It recommends the approach taken by the 1998 British Columbia Judicial Compensation Committee, which stated that “B.C. salaries should be determined with reference to B.C. realities, and not the circumstances that exist in other, very different, parts of the country.” The reasonableness of judicial remuneration must be viewed in the context of British Columbia’s particular fiscal realities. Linking Provincial Court Judges’ salaries to those of Supreme Court Justices would mean that the former are effectively set outside of British Columbia, and would undermine the mandate and function of commissions appointed under the Act.

The changing nature of the work undertaken by Provincial Court Judges and federally-appointed Supreme Court Justices in British Columbia has been the subject of submissions to several Commissions. As noted above, is said on behalf of the Provincial Court Judges that there is a growing similarity between the functions of both such that a continuing discrepancy in compensation is no longer justified. Previous commissions have declined to tie their recommendations to Supreme Court compensation, and this Commission has continued that approach. Nevertheless, the Commission offers the following observations in the interests of identifying the issues and advancing this ongoing dialogue.

It makes little sense for provincial compensation commissions to adopt, as a proxy of their own considerations, the results of federal compensation commissions. To do so would diminish the role and independence of these commissions in a way that might undermine public acceptance of their recommendations. Federal judicial compensation is relevant to provincial compensation where it can be shown to result in recruiting or retention challenges for the Provincial Court. As well, to the extent that a compensation differential can be said to be unfair to Provincial Court Judges, such a finding should primarily be based upon similarities in the work performed by judges on both Courts.

The evidence before the Commission certainly demonstrates that over the past 15 years there has been dramatic change in the processes and work of the Provincial Court. The submission that the work of the Court has become more complex and significant is well justified. This does not mean, however, that the work of the two Courts has become more similar. Indeed, these changes have in some important respects resulted in a growing dissimilarity in the work of the two Courts. For example, the migration of the vast majority of criminal cases to the Provincial Court has resulted in very little criminal adjudication being performed by the Supreme Court. Over the period of 1995/96-2009/10 Supreme

Court criminal hours declined from 22,025 to 12,850, and the number of new criminal cases declined from 4,711 to 895.

As well, the recent increase in the monetary jurisdiction of the Provincial Court from \$10,000.00 to \$25,000.00 will likely mean that the Supreme Court will only infrequently handle smaller civil claims. Presently, personal injury cases are largely tried in the Supreme Court; however, this may change in the future in the event that the monetary jurisdiction of the Provincial Court increases again to \$50,000.00. The increase in the use of summary trial procedures and the advent of new civil rules will also mean that the number of conventional civil trials heard in the Supreme Court may well continue to decline. Many of the civil judgments rendered in Supreme Court are now rendered pursuant to the summary trial procedure, which permits judges to decide cases based upon affidavit evidence alone. In contrast, civil trials heard in Provincial Court are decided primarily upon vive voce evidence.

The evidence before the Commission establishes that the Provincial Court's jurisdiction is expanding, its caseload is increasing and the cases before it are increasingly complex and varied in nature. Moreover, there are expanding case management and other administrative demands placed upon Judges of the Court. As previously stated, this Commission declines to tie its recommendations to Supreme Court compensation. However, while there are differences between the types of cases and functions of the Provincial Court and Supreme Court, each plays a very important role in the administration of justice in British Columbia.

### Comparison with Provincial Court Salaries

The Association provided the following figures representing the 2009 (and, to the extent known, 2010 and 2011) salary levels for Provincial and Territorial Court Judges across Canada:

Province	2009 Salary	2010 Salary	2011 Salary
N.W.T.	\$221,255.00		
Yukon	\$228,889.00		
B.C.	\$225,500.00	\$231,138.00	
Alberta	\$220,000.00		
Saskatchewan	\$220,916.00	\$229,753.00	\$238,943.00
Manitoba	\$197,736.00	\$197,736.00	\$199,722.00
Ontario	\$248,057.00	\$252,274.00	
Quebec	\$221,270.00		
New Brunswick	Not available		
Prince Edward Island	\$213,360.00		
Nova Scotia	\$202,910.00	202,910.00 + statutory indexing (I.A.I.)	
Newfoundland and Labrador	Not available		

Some observations concerning the above figures are necessary. Ontario's Seventh Triennial Commission, charged with making salary recommendations for the period 2007 – 2010, has yet to complete this process. As such, the figure provided for 2010 represents the 2009 salary level adjusted annually by the statutory indexing factor of the twelve-month increase in the Industrial Aggregate Index ("I.A.I."), which is presently 1.6%. The Association makes the point that the Ontario Commission may also recommend adjustments to the 2010 base salary figure. Under the Ontario legislation, salary recommendations are binding upon government.

With respect to New Brunswick, the Association advises that the New Brunswick Judges Compensation Commission has delivered its report to government for the years 2008 – 2011, but it has not yet been considered by the Legislature. There is a ban on publication of the report contents until the report has been translated.

In Newfoundland, the Judges Compensation Commission has not yet delivered recommendations for the period 2009 – 2011. In Alberta, Quebec, Prince Edward Island and the Yukon Territory, the Commissions appointed in those provinces have yet to deliver recommendations for the period 2010 – 2012.

As this table indicates, British Columbia Provincial Court Judges' salaries are currently the second-highest in Canada (after Ontario), and above the national average of \$214,360.00. However, the Commission otherwise finds the table to be of limited usefulness. As noted elsewhere in this Report, salary is only one component of the judicial compensation package. In the absence of information concerning the value of the benefits provided to judges in other jurisdictions, it is difficult to draw a meaningful comparison between Provincial Court Judges' compensation in B.C. and elsewhere.

## **Comparison with Public Sector Salaries**

The Government advances the position that Provincial Court Judges' salaries are consistently higher than those of cabinet ministers (by \$80,000.00 per year), and deputy ministers (by \$30,000.00 per year), and MLAs (by over \$100,000.00 per year). Provincial Court Judges also have more attractive pension benefits than other senior members of the public service.

The Association made no submission on the comparability of Provincial Court Judges' compensation to public sector salaries.

## **Need to Maintain a Strong Court by Attracting Qualified Applicants**

The Commission recognizes the need to set compensation for Provincial Court Judges at a level sufficient to attract outstanding candidates from both the private bar and the public service. It is essential to the maintenance of a strong and vibrant Court that its bench be

filled by applicants who bring with them expertise in broad areas of the law, a superb legal reputation, the respect of their communities, and a willingness to take on the significant challenges inherent in the role of a Provincial Court Judge.

The Commission had the benefit of written submissions and an oral presentation by Mr. Art Vertlieb, Q.C., on behalf of the Judicial Council. The Judicial Council is an independent body constituted pursuant to s. 21 of the *Provincial Court Act*. It is responsible for considering applications from lawyers seeking appointment to the Provincial Court bench, and for making recommendations to the Government concerning suitable candidates.

Mr. Vertlieb advised the Commission that since 2000, the Judicial Council has been engaged in an ongoing revision of its approval process designed to “raise the bar” for prospective candidates. This process has resulted in the Council’s adoption in 2009 of new criteria and skills requirements for successful judicial candidates. This effort has been driven by the increasingly complex and varied nature of the Court’s work, its expanding civil jurisdiction, accelerating workloads, and increased case management and other administrative demands placed upon judges of the Court. In particular, the Judicial Council has identified a need for the Provincial Court to attract experienced private practitioners with a breadth of experience, particularly in civil litigation. This sector of the Bar is not well represented in the Provincial Court application pool.

Mr. Vertlieb provided the Commission with recruitment statistics gathered over the last six years. Those statistics indicate that the two years with the highest application rates were 2007 (with 89 applications) and 2009 (with 59 applications). Mr. Vertlieb invited the Commission to draw the conclusion that those spikes were the result of the judicial salary increases recommended by the previous Commission in 2007, and implemented in 2009.

Mr. Vertlieb also advised the Commission that the total number of approved candidates fell from 13 in 2008 (out of a total number of 54 applications received) to 7 in 2009 (out of a total number of 59 applications received). This corresponds with the Council’s implementation of stricter criteria for successful judicial applicants (although it may also reflect the calibre of the applicants in those years).

The Chief Judge, who chairs the Judicial Council, advised the Commission that he is in the process of reviewing the Court’s needs for new appointees to bolster the present judicial complement of 111 judges. He expects to issue a report to Government by late August 2010. Furthermore, the Chief Judge anticipates that within the next year approximately 10 judges will elect to sit part-time through the Senior Judges Program. This is equivalent to the loss of five full-time judges. Accordingly, the Provincial Court will face significant recruiting challenges within the near future.

The Association, the Chief Judge and the Judicial Council made submissions concerning the competition between the Supreme Court and the Provincial Court for applicants from the same pool of qualified practitioners. The argument is advanced that while every candidate may possess a certain temperament and skill set that makes him or her more suited to an appointment on one or the other trial bench, the compensation disparity of

\$118,000.00 per year will inevitably result in applicants choosing to pursue an appointment to the Supreme Court who would otherwise be better suited to an appointment to the Provincial Court.

The Commission also heard evidence that several new appointments to the Supreme Court bench have come from the ranks of the Provincial Court. The Chief Judge advised the Commission that the Provincial Court has lost three judges to the Supreme Court in the last year alone. The compensation disparity presents not only a recruitment barrier, but a retention challenge.

The Government submits that there is no evidence to support the assertion that the compensation disparity between the Supreme and Provincial Courts has hampered the Provincial Court's ability to attract qualified applicants. It takes the position that there are other factors, such as the desire to serve the public interest, and a greater interest or experience in the type of cases adjudicated, that might motivate a qualified applicant to seek an appointment to the Provincial Court. The Government also notes that the Provincial Court has not suffered for qualified applicants, even during the period 2000 – 2006 when the compensation disparity was at its greatest.

On the evidence before it, the Commission is unable to reach any conclusion as to whether the disparity in compensation paid to Provincial Court Judges and Supreme Court Justices has had a material effect on recruitment on qualified judicial candidates to the Provincial Court. In particular, the evidence presented to the Commission does not allow the Commission to conclude whether the disparity in compensation has deterred excellent candidates with a breadth of experience, particularly in civil litigation, from applying to the Provincial Court. In this regard, there was no evidence that the list of persons approved for Federal and Provincial appointments overlap significantly, although there was some anecdotal evidence that applications to both Courts are more common than in the past. The Commission also notes that, while a small number of Provincial Court Judges have been appointed to the Federal Bench in recent years, it remains the case that few Judges serve on both Courts in the course of their careers. While it is reasonable to expect that the need for a civil litigation background will increase with the increase in the Small Claims monetary jurisdiction it is premature to predict what effect this will have on recruiting new judges.

## **The Laws of British Columbia**

In its deliberations the Commission has given due consideration and deference to the laws of British Columbia, which are referenced throughout this Report.

## **Costs**

The Government has agreed to pay the Association's reasonable costs of appearing before the Commission, including the cost of Mr. McKinnon's and Mr. Smith's reports.

## Recommendations

Having considered all of the foregoing, the Commission makes the following recommendations:

### Salaries

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.

The Association has proposed a salary increase for the 2013/14 fiscal year which would bring Provincial Court Judges' salaries to 90% of Supreme Court Justices' salaries. In this regard, the Commission adopts the following passage from the Report of the 2007 Commission (page 23):

*Judicial salaries must be set at a level that will continue to attract highly qualified lawyers from both the private bar and public service. British Columbians would not be well served by a Provincial Court that is overlooked for financial reasons by those lawyers best suited for it. While the Commission does not recommend that the salaries of Provincial Court Judges be tied to those of Supreme Court Justices, the Commission does recognize the importance of setting Provincial Court salaries with a view to minimizing the wage disparity between the two courts.*

Given that Supreme Court Justices' salaries are due for reconsideration in 2011, it is impossible to accurately foresee what they will be in 2013/14. However, the Commission observes that Supreme Court Justices' salaries are statutorily indexed against the eroding effects of inflation and is of the view that Provincial Court Judges' salaries should be similarly protected. Accordingly, the Commission recommends that effective April 1, 2013, *puisne* judges of the Provincial Court receive a salary increase equal to the accumulated increase in the B.C. Consumer Price Index over the preceding three fiscal years, compounded annually. The accumulated increase in the B.C. Consumer Price Index should be calculated based upon an annual average monthly percentage change in that Index using figures published by Statistics Canada on a calendar year basis which should then be adjusted to the Government's fiscal year ending March 31.

The Commission recommends that the Chief Judge's salary remain at *puisne* judge salary plus 12%, and that the Associate Chief Judge's salary remain at *puisne* judge salary plus 6%.

## **Pensions: Accrual Rate**

In recent years, the average age of appointment of a Provincial Court Judge has risen to 53.3 years. This increase is primarily driven by the changing needs and expanded jurisdiction of the Court. The Judicial Council is recruiting senior practitioners with considerable expertise to fill judicial vacancies. At the current accrual rate of 3%, an appointee with no pre-existing pension accrual must sit for 23.3 years before qualifying for the maximum pension benefit of 70% of salary. At that rate, most judges will not reach maximum pension before mandatory retirement at age 75 years.

The Commission believes that there is significant value to the public in maintaining a vibrant and energetic Provincial Court bench, wherein senior judges are replaced by new appointees at appropriate intervals. Furthermore, the challenging caseload and travel expected of a Provincial Court Judge may in some cases be unsustainable for a judge in his or her 70s. It does not serve the public interest to have judges continue to sit on a full-time basis past the point at which their capacity to do so may be compromised by age, simply to accrue the maximum pension benefit of 70% of salary.

In light of the foregoing, the Commission recommends an increase in the Provincial Court Judges' pension accrual rate to 3.5%, effective April 1, 2013. This will allow judges to accrue the maximum pension benefit of 70% after 20 years of service. Based upon the current average age of appointment of 53.3 years, at an accrual rate of 3.5% judges will reach maximum pension at the age of 73.3 years.

On this issue, the Commission had the benefit of an actuarial report prepared on behalf of the Association by Mr. Don Smith of Western Compensation and Benefits Consultants. Mr. Smith indicates that the annual additional cost to the Government of the proposed increase in the judges' pension accrual rate from 3.0% to 3.5% is \$1,272,500.00 for the first 15 years following the implementation of the change. Thereafter, the annual additional cost to the Government will be \$1,082,000.00 per year (in 2010 dollars).

The Commission is satisfied that this is a reasonable cost for the Government to bear. An increase in the pension accrual rate to 3.5% will also serve to narrow the disparity between Supreme Court Justices' and Provincial Court Judges' compensation packages.

The Commission recommends that there be no change to the statutory contribution ratio of 24:76. The statutory contribution ratio is part of the overall compensation package payable to judges, and the Commission is satisfied that it is set at a reasonable level. There was no evidence presented to the Commission that would justify a change in the contribution ratio at this time.

## **Pensions: Contribution Period**

The Commission recommends the adoption of the Association's proposal in regard to the pension contribution period. In light of the 2008 amendment to the *Provincial Court Act* which increased the age of mandatory retirement from 70 to 75 years, it is appropriate that the Government make the necessary statutory amendments which will allow

Provincial Court Judges who choose to sit past the age of 70 to continue making pension contributions until he or she retires.

The implementation of this recommendation will require the Government to request that the federal Minister of Customs and Revenue permit pension benefits to be paid commencing upon the date of actual retirement of the judge, pursuant to s. 8502(e) of the *Regulations*. Mr. Donald Smith of Western Compensation and Benefits Consultants advised the Commission that the Minister is likely to approve this change as a matter of course.

The Government must also request the B.C. Legislature to amend the *Act* by defining “latest retirement age” as “the last day of the month in which the judge reaches the age of mandatory retirement”. This will allow judges and Government to continue to make pension contributions until the date of actual retirement, regardless of whether retirement occurs before or after the age of 71.

The Commission further recommends that the necessary statutory amendments be made effective as of April 1, 2011.

### **Annual Leave**

The Commission recommends no increase in the period of annual leave. The Commission is satisfied that the current period of annual leave of 30 days provided to Provincial Court Judges is sufficient, taking into account the annual leave provisions made for their counterparts in other provinces.

### **Long Term Disability**

The Commission recommends that Long Term Disability coverage should be extended to judges up to age 75, effective April 1, 2011. The Commission further recommends that the Office of the Chief Judge should deliver that benefit to judges aged 70 to 75 years, as it does for judges aged 65 to 69 years.

However, the Commission is concerned that the present method of funding this benefit may be detrimental to the delivery of judicial services to the public. The Chief Judge is obligated to pay the benefit from his existing salary budget. This leaves the Chief Judge without funds to hire a new appointee to replace the disabled judge, and adds to the caseload of an already overburdened Provincial Court judiciary.

Accordingly, the Commission recommends that the cost of LTD benefits should be separately funded by Government outside of the budget of the Office of the Chief Judge, including provision for ongoing funding of pension contributions. In the alternative, it should be a separate item within the Chief Judge’s budget, distinct from the salary budget. The aim of this recommendation is for the Chief Judge to have sufficient budget to both pay LTD benefits to disabled judges, and to hire replacements for judges who go on LTD.

## **Life Insurance Coverage and Benefits**

The Commission is of the view that as a result of the *Craig* decision, the Government is constitutionally required to provide life insurance coverage to judges aged 71 to 75 years, as it currently does to judges up to the age of 70 years. In respect of the level of life insurance coverage that must be provided to retirement, the Commission received conflicting representations from the Association and the Government as to the effect of the *Craig* decision on the determination of such level of coverage. The Commission is not in a position to adjudicate this issue. However, provided that it is constitutionally permissible, the Commission makes the following recommendation.

The Commission recommends that effective April 1, 2010 the level of coverage for the age 65 - 69 cohort be adjusted in order to extend coverage to the age 70 - 75 cohort in a manner that is cost-neutral to Government. Actuarial assistance will be required to determine the manner in which this outcome can be achieved. Further, it may be possible (and it would certainly be desirable) for judges to be able to tailor their benefits available under the plan to meet the needs of their own family, and/or choose to carry the cost of additional benefits themselves. Accordingly, the Commission declines to make a recommendation as to the specific level(s) of coverage to be provided to judges aged 65 to 75 years.

The Commission notes that there is ample precedent for declining levels of coverage for the 65-75 age group in other jurisdictions. Federally-appointed Supreme Court Justices and Saskatchewan Provincial Court Judges experience a 10% per year reduction in their life insurance benefits, beginning at age 65. In Alberta, the benefit is reduced at age 65 from 2.5 times annual salary to a single year's annual salary, with a further reduction to \$25,000.00 at age 70. In Manitoba, the benefit is reduced to \$4,500.00 by age 75. There are no comparators that would support the maintenance of full life insurance coverage (three times salary) past the age of 70 years.

## **Medical Screening**

The Commission recommends that no medical screening benefits be provided to Provincial Court Judges. The Commission commends the efforts of the judges to work together to enhance their health and to seek the best advice to ensure the effectiveness of the Court. However, there is very little before the Commission to establish the details and benefits of such a program and, given current constraints, the Commission would suggest that thought be given to addressing this issue in more detail and with options before the next Commission.

## **Flexible Benefit Plan**

The Commission recommends the inclusion of Provincial Court Judges in the Flexible Benefit Plan, effective April 1, 2011. This is a benefit that would have been automatically extended to Provincial Court Judges in the absence of a requirement that the change first be submitted to the Commission. The Commission notes that the annual cost to Government is minimal.

## Expansion of the Senior Judges Program

The Commission recommends the expansion of the Senior Judges Program by an amendment to the Act which would allow the Chief Judge to increase the number of a participant's sitting days if, in his discretion, it is necessary to do so to ensure the normal operation of the Court. That amendment should go into force on April 1, 2011.

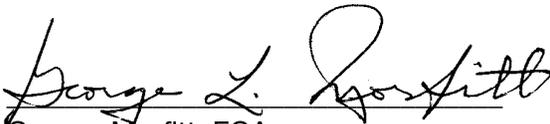
In the view of the Commission, it is in the public interest to allow the Chief Judge the discretion to utilize the resources available to him under the Program to meet unexpected short-term demands for additional judges. However, the range of circumstances in which such a demand may arise is unforeseeable, and the Chief Judge should have the flexibility to exercise his discretion as those needs arise. Accordingly, the Commission does not recommend that the circumstances in which the Chief Judge is permitted to exercise that discretion be limited by statute.

The Commission also recommends that any statutory amendment include a "sunset clause" which would require the review of the expanded Senior Judges Program three years from the date of implementation.

All of which is respectfully submitted.

September 20<sup>th</sup> 2010

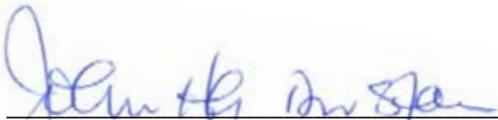
2010 Judges Compensation Commission

  
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