



THE PROVINCIAL COURT
OF BRITISH COLUMBIA

SUBMISSION OF

**THE CHIEF JUDGE OF THE PROVINCIAL
COURT OF BRITISH COLUMBIA**

to the

**2019 JUDICIAL COMPENSATION
COMMISSION**

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I. Introduction

[1] The Chief Judge is designated by the Lieutenant Governor in Council under the *Provincial Court Act*. The Chief Judge's statutory responsibilities are delineated in s. 11 of the *Provincial Court Act* and can be summarized as follows:

- (a) Supervision of judges, judicial justices, and justices of the peace;
- (b) Designating the case or matter, or class of cases or matters, in which a judge, judicial justice or justice of the peace is to act;
- (c) Designating the court facility where a judge, judicial justice or justice of the peace is to act;
- (d) Assigning a judge, judicial justice or justice of the peace to the duties the Chief Judge considers advisable;
- (e) Establishing administrative standards and procedures to which judges, judicial justices or justices of the peace must conform;
- (f) Revoking or changing any designation or assignment made, or standard or procedure established;
- (g) Exercising other powers and performing other duties prescribed by the Lieutenant Governor in Council;
- (h) Chairing the Judicial Council;
- (i) Addressing complaints made against the judiciary; and
- (j) Serving as a major support for judges.

[2] The Chief Judge is also responsible for overseeing and administering the Court to ensure the equitable, effective and efficient use of judges, judicial justices, and other resources in accordance with standards and policies of the Court and in the best interests of the Court and the public it serves. The responsibilities of administration and oversight

include matters such as:

- (a) Oversight of those that directly report to the Chief Judge including the Executive Director of Organizational Services, Senior Legal Officer, and the Judicial Coordinator to the Chief Judge;
- (b) Ensuring the existence and effective operation of both judicial and organizational services, resources and systems;
- (c) Chairing the Governance Committee;
- (d) Representing the Court in liaising with all levels of government;
- (e) Attending ceremonial functions on behalf of the Court;
- (f) Engaging in community outreach activities to ensure the profile of the Provincial Court is maintained and that the court is responsive to access to justice concerns arising in the community;
- (g) Relationships with external stakeholders such as the Canadian Bar Association (CBA), and local Bar Associations;
- (h) Participating in educational programs through organizations like the Continuing Legal Education Society of BC (CLEBC), CBA, Advocates' Society and others;
- (i) Planning for the judicial resources needed by the Court;
- (j) Direct responsibility for specific initiatives that he/she wishes to undertake; and
- (k) Participation on Court committees and justice sector committees¹, as required.

[3] Given the responsibility for overseeing and administering the Court, the Chief

¹ Committees include for example: Executive Committee; Judicial Administration Committee; Governance Committee; Education Committee; Criminal Law Committee; Family Law Committee; Civil Law Committee; Judicial Justice Administration Committee; A2J Committee; Canadian Association of Provincial Court Judges; Canadian Council of Chief Judges; and Court Technology Board. The Court relies on the civil, family and criminal law committees to provide feedback on issues and initiatives in each division of the Court.

Judge can be expected to provide a different perspective to the judicial compensation process than that of the Provincial Court Judges Association of British Columbia and the Judicial Justices Association of British Columbia. The Office of the Chief Judge and each Association have always worked collaboratively and in a respectful manner with the goal of providing accessible and affordable justice to the people of British Columbia. In providing this submission to the Judicial Compensation Commission, it is my intention to provide information and perspective regarding the following:

- The current pressures faced by the Court, the judges and judicial justices of the Court who serve the public;
- The initiatives undertaken by the judges and judicial justices of the Court to better serve the litigant and the public; and
- The importance of attracting counsel of superior quality for appointment as judges and judicial justices and to retain the judges and judicial justices who currently serve the public as part of the Provincial Court.

II. Provincial Court Judges

A. The Provincial Court of British Columbia – Background

[4] The Provincial Court's primary asset in the discharge of its day-to-day work in managing and determining cases and in its focused attempt to reform existing processes and implement new initiatives, is its judges. It is the quality of the Court's judges, as evidenced by their professional experiences, skill, high degree of energy, work ethic and commitment, community engagement, and their desire to seek change and innovation to benefit the public they serve that provides the foundation of the Provincial Court of British Columbia.

[5] In order for the Commission to be able to fulfil its mandate, it is necessary, in my submission, to have an appreciation of the Court.

[6] The Court's mission and vision statement, adopted in 2006, continues to guide the Court. The Court's mission and vision statements are as follows:

Mission

As an independent judiciary, the mission of the Provincial Court of British Columbia is to impartially and consistently provide a forum for justice that assures equal access for all, enhances respect for the rule of law, and builds confidence in the administration of justice.

Vision

Our vision is to provide an accessible, fair, efficient and innovative system of justice for the benefit of the public.

[7] The Court is also guided by four core values and goals which are as follows:

Core Values

- Independence

- Integrity
- Fairness
- Excellence

Goals

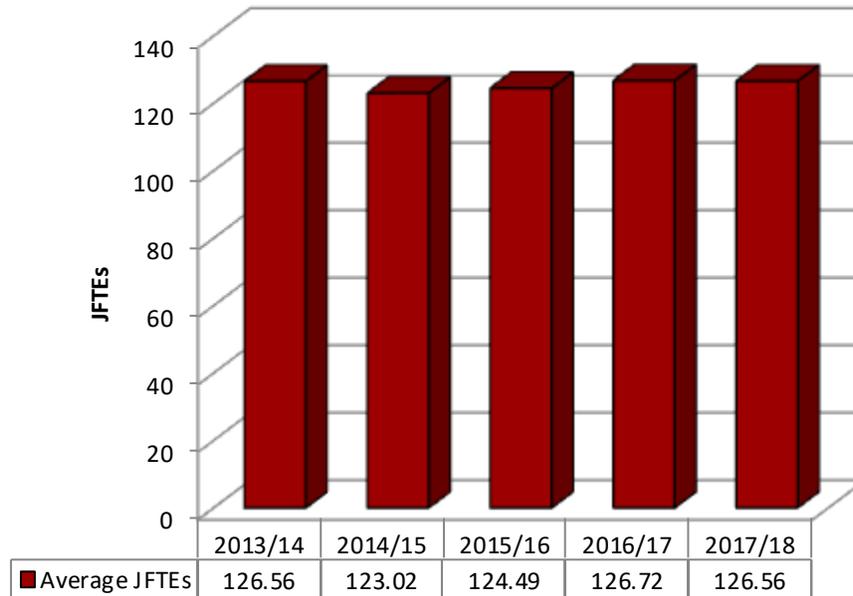
1. To excel in the delivery of justice.
2. To enhance meaningful public access to the Court, its facilities and processes.
3. To continue judicial innovation and reform to anticipate and meet the needs of society.
4. To ensure that the administration and management of the Court is transparent, fair, effective and efficient and that it is consistent with the principles of judicial independence.

[8] As of May 31, 2019, the full time judicial sitting complement of the Provincial Court was 132.50 and consisted of:

- 122 full time Provincial Court judges, and
- 22 senior judges (calculated at 0.45 of a full time judge).

[9] Figure 1 depicts the average complement of Provincial Court judges for the last five fiscal years. As one can appreciate, the Court complement is dynamic and fluctuates over the course of the year. Overall, for 2018/19 the number of full time judges has increased by four to address the needs of the communities that the Surrey Courthouse serves, as three new courtrooms have been built in the Surrey location and are expected to be operational as of July 1, 2019.

Figure 1



[10] The issue of judicial complement was an important piece of the presentation to the 2010 Judicial Compensation Commission. At the time, the Court had experienced a significant reduction in the total complement from 143.65 to 126.3. The reduction in judicial resources had contributed to significant delays in each of the areas of the Court's jurisdiction.

[11] An assessment was undertaken to evaluate the situation and to recommend a course of action, which would assist in addressing the litigants' inability to obtain timely court dates. This culminated in the report [Justice Delayed: A Report of the Provincial Court of British Columbia Concerning Judicial Resources](#), which is dated September 14, 2010.

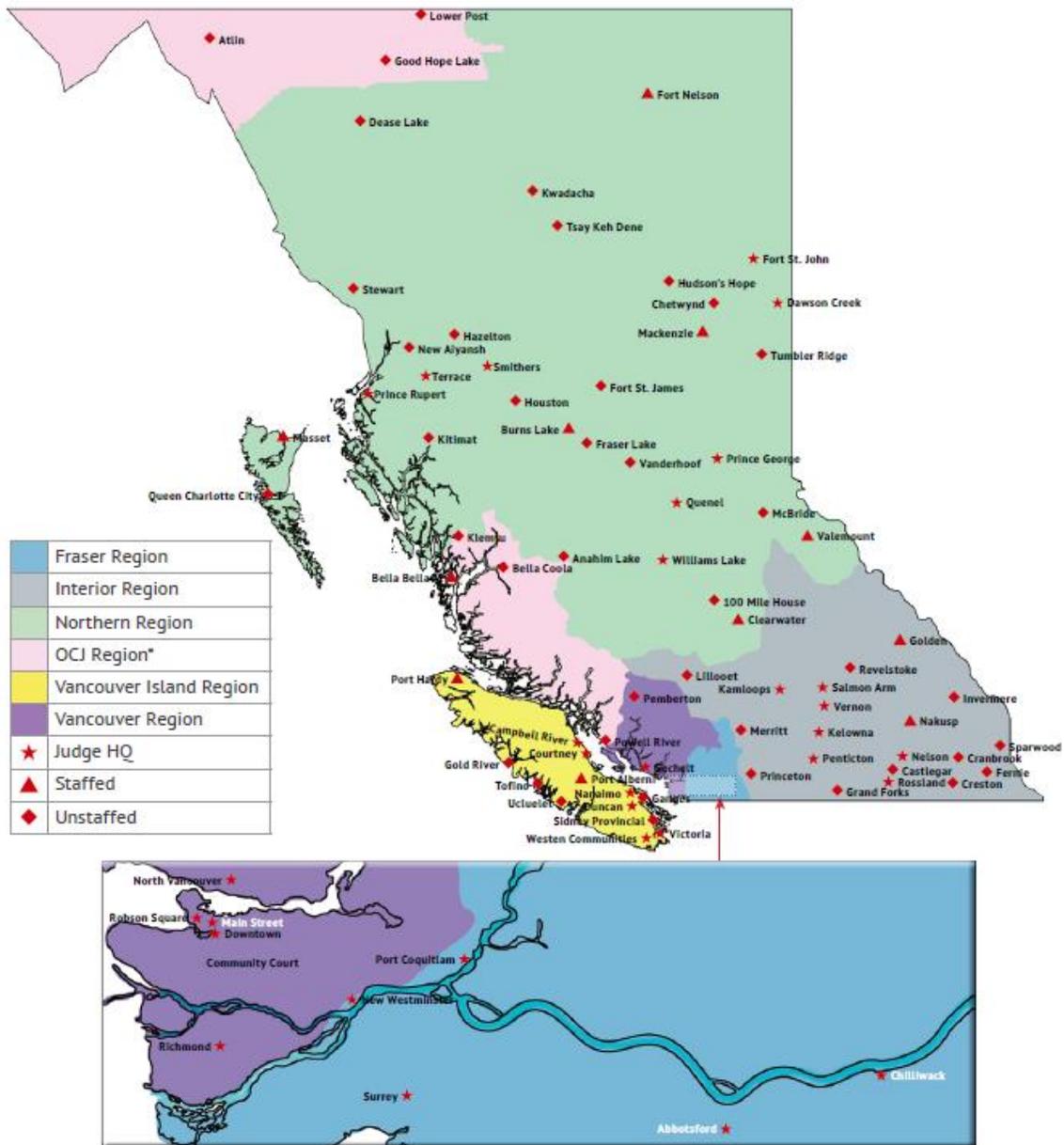
[12] Since the publishing of the original report, an update on the Court's [complement](#) is published on the Court website every six months. As well, delay or the "[Time to Trial](#)" in each area of our jurisdiction is developed and published on the Court website every six months. The delays have been reduced since the report was first issued, thanks to the efforts of the judges of the Court and a declining number of new cases from 137,919 in 2010/11 to 114,584 in 2017/18 (excluding traffic and bylaw matters). The Court continues

to collaborate with other justice system service providers, for example, Court Services Branch (CSB), Crown counsel and Legal Services Society to enhance opportunities to improve access to justice for the people of British Columbia.

[13] The Provincial Court of British Columbia is one of two trial courts in the province; the other is the Supreme Court of British Columbia. The Provincial Court is a generalist Court and its jurisdiction encompasses the following primary subject areas: adult criminal; youth; civil; family; child protection; traffic; and, bylaw matters.

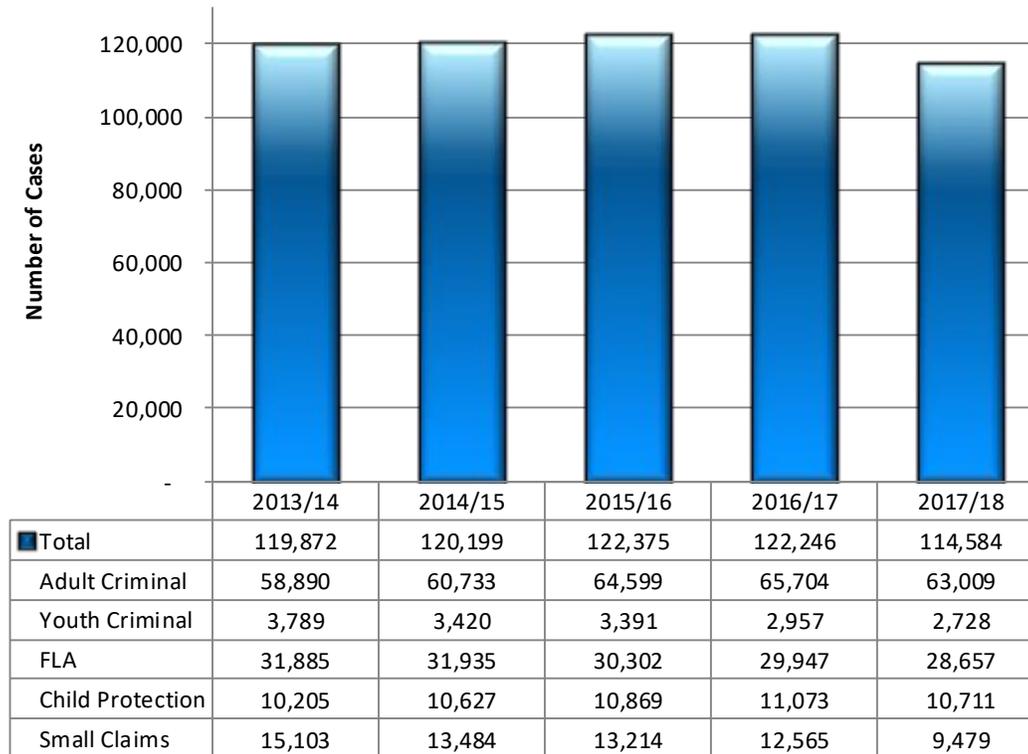
[14] The judges and judicial justices of the Court serve the people of British Columbia in 84 locations throughout the province, which are depicted on the map in Figure 2.

Figure 2



[15] Figure 3 provides the total and a breakdown by jurisdiction of the new or incoming cases filed in each for the past five years reported on a fiscal basis. The number of new cases levelled off in 2015/16 and 2016/17 and decreased slightly in 2017/18.

Figure 3



[16] In criminal matters, the Court's general jurisdiction extends to all matters, except for a limited few over which the Supreme Court has exclusive jurisdiction (such as trials of adults charged with murder under s. 469 of the *Criminal Code*). In some criminal matters, a preliminary inquiry may be held in the Provincial Court before a trial which would be held in the Supreme Court. The Provincial Court has exclusive jurisdiction in all summary conviction trials and hears all indictable matters where the accused does not elect to have their matter heard in the Supreme Court.

[17] In the criminal jurisdiction the Provincial Court handles in excess of 95% of the criminal cases, by volume, in the province. Our greatest challenge is to ensure that we are utilizing judicial resources in the most effective way possible. To that end, I refer the

Commissioners to the discussion later in this document which identifies the Provincial Court Scheduling Program and the Balanced Rota Template as well as other court-initiated projects undertaken to accomplish our goal of effective administration.

[18] The Court has exclusive jurisdiction in matters pertaining to child protection proceedings, of which there are in excess of 10,000 new cases each year. Child protection matters require a particular skill and understanding. These trials often take considerable time to hear and are emotionally trying for all involved. Arguably, the cases are amongst the most serious that the Court is involved in, particularly when faced with a determination as to whether the child(ren) should be permanently removed from their parents and placed in the care of the State. It is also imperative that these matters be addressed expeditiously in light of these factors and the significant impact the removal of the child from a home has on the child and the family.

[19] Under the *Family Law Act*, the Court has concurrent jurisdiction with the Supreme Court in guardianship, parenting time, and child and spousal maintenance. In 2017/2018 there were 28,657 new cases and applications initiated in this particular area of the Court's jurisdiction. The BC Supreme Court's [Annual Report for 2018](#) indicates that it received 12,057 new filings for family proceedings in 2018.

[20] The Provincial Court also has broad civil jurisdiction with a \$35,000 monetary limit. For some time it has been anticipated that the monetary limit will increase to \$50,000 (by Order in Council). Provincial Court judges must have the flexibility and skill set to engage in both hearing trials and in alternative dispute resolution mechanisms when sitting in family or civil case conferences and child protection matters.

[21] In addition to the judges of the Provincial Court, there are three other categories of justices who are members of the Provincial Court and who are administered by the Chief Judge.

[22] The Judicial Justice Division of the Court consists of 11 full time and 21 part time judicial justices (of these full time judicial justices, three are on long term disability and one is on education leave). The role and jurisdiction of the judicial justices will be

discussed later in this submission.

[23] The judicial complement of the Court also consists of four Justice of the Peace Adjudicators - senior lawyers holding a Justice of a Peace Commission who, on a part time (per diem) basis, adjudicate civil claims from \$5,001 to \$10,000 in the Vancouver and Richmond Provincial Court locations.

[24] As well, the complement of the Court consists of judicial case managers who are responsible for court scheduling, coordination of judges' sittings, conducting initial criminal appearances, and managing the flow of cases. They are instrumental in ensuring that judicial resources are effectively allocated and utilized in a manner consistent with the rules and policies of the Court. Judicial case managers hold a Justice of the Peace Commission and exercise limited judicial functions as part of their duties. As of April 1, 2019, there are 26 full time, 15 part time and 11 auxiliary judicial case managers.

B. The Workload of the Court

[25] The workload of the Court is the product of a number of inter-related factors. It is the combination of these factors that has the most impact on how heavy the workload is. Those factors that impact on the workload of judges include:

- Volume of new cases;
- Legislative activity at the federal and provincial levels (For example, the recently enacted *Cannabis Act* engages statutory interpretation that impacts case complexity);
- Increasing complexity of the law (For example, the most recent change in *R. v. Meyers*, 2019 SCC 18, where the SCC found that the principle of proportionality applies to an assessment of whether pretrial detention of an accused is appropriate);
- Judicial non-sitting work functions, including: case management; decision writing; reviewing search warrants, DNA warrant applications, one party consent

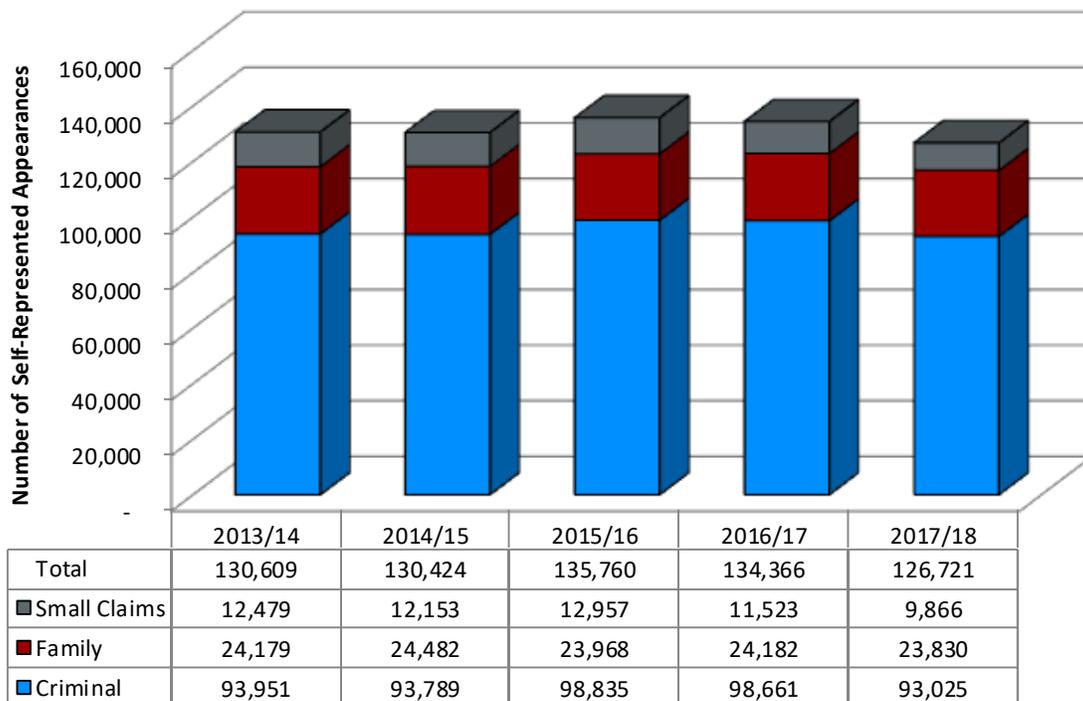
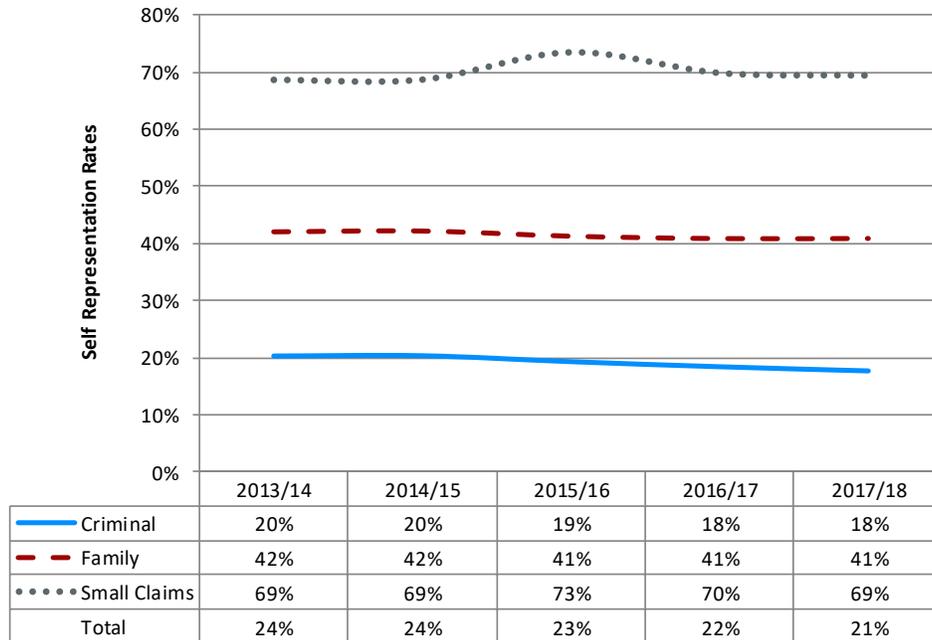
applications, and production order applications; judicial education; and important committee work, including volunteering for the Education Committee, Criminal Law Committee, Family Law Committee and Civil Law Committee;

- Administrative work functions;
- Economic growth of the province;
- Changing demographics and population;
- Number of locations at which the Court sits;
- Increased access in rural and remote areas and aboriginal communities;
- Level of Legal Aid funding;
- Specialized courts sitting in diverse areas of the province, for example indigenous and integrated courts;
- New technological innovations; and
- Level of support services provided to the judiciary.

[26] Based on a number of studies, one critical factor in assessing the workload relative to a judicial officer is whether the litigants appearing before the Court are represented by counsel or not. A self-represented litigant or litigants adds a degree of complexity to the cases heard by the Court and increases the workload of the judge hearing the case because the judge is required to ensure that the trial process is fair and that all litigants are receiving timely and fair access to justice.

[27] The Court records data with respect to self-represented litigants. A self-represented appearance is one at which at least one party is not represented by counsel or an agent. The Court saw 126,721 self-represented appearances during the 2017/18 fiscal year, 7,637 fewer than in the 2016/17 fiscal year. The number of new cases in Provincial Court declined by 6% between those two fiscal years and the number of self-represented appearances also declined by 6%. Although the number of cases has declined, this has no impact on the workload of individual judges as there is no meaningful correlation between that and the day-to-day workload of our judges. It may be that cases can be heard sooner in the long run, but at this time the court is not yet meeting its "[Time to Trial](#)" standards in all divisions. *R. v. Jordan*, 2016 SCC 27, puts further pressure on the court in terms of timeliness in the criminal division. Notwithstanding the *Jordan* pressures, the court still needs to provide sufficient time to the other divisions of our court as they do not have constitutional remedies available to them to address delay. Figure 4 shows the self-representation rate by division for the past five fiscal years. Self-representation rates over this period have been between 21% and 24% with the highest percentages of self-representation occurring in small claims and family matters.

Figure 4
Self-Representation Rates by Division
(2013/14 to 2017/18)



[28] In 2006, the Canadian Judicial Council adopted a [*Statement of Principles on Self-Represented Litigants and Accused Persons*](#). While advisory in nature, the Statement made it clear that judges have heightened responsibilities when it comes to ensuring equal access to justice for people without representation. These duties can include providing self-represented persons with legal information, explaining the relevant law and its implications, providing information to assist the person to raise arguments before the Court, questioning witnesses and making referrals to legal advocacy organizations. The Supreme Court of Canada in [*Pintea v. Johns*](#), 2017 SCC 23, stated that it “endorse[d] the *Statement of Principles on Self-represented Litigants and Accused Persons* (2006) (online) established by the Canadian Judicial Council.”

[29] Mr. Leonard Doust, Q.C. was commissioned to examine the state of legal services in British Columbia and his findings were contained in the March, 2011 report: [*Foundation for Change: Report of the Public Commission on Legal Aid in British Columbia*](#).

[30] While the Doust Report does not contain statistics regarding the overall number of self-represented persons in the BC court system, it references that “hundreds of thousands of BC residents struggling with a range of legal problems do so without the benefit of a lawyer or any qualified assistance” (p. 22). In addition to the significantly increased court time and resources spent assisting self-represented litigants in navigating a complex legal and procedural system, safety is also a concern. As the Report quoted at p. 23:

... in both civil and criminal matters, self-represented accused tend to take matters much more personally, for obvious reasons, to be more emotional, to display poor judgment, and to feel that they have been unfairly treated by a system that is stacked against them. All of those things lead to a greater likelihood of unpredictable and disrupted behaviour, which slows down the court process, sometimes bringing it to a complete stop. And all of which leads to an increased likelihood of violence.

[31] The Report also noted at p. 21 that: “an unrepresented bully can also wreak havoc inside and outside the courtroom.” The increased frustration and, consequently,

increased likelihood of aggression or risk of violence that may accompany self-represented proceedings can be exacerbated by the number of sheriffs available to ensure safety and security in courthouses.

[32] In January 2019 Jamie Maclaren, Q.C. issued a report entitled [*An External Review of Legal Aid Service Delivery in British Columbia*](#) which stated at p. (v) and p. 37:

Years of underfunding and shifting political priorities have taken their toll on the range and quality of legal aid services, and especially on the people who need them.

...

LSS staff were candid in reporting their struggles to fill FDC [family duty counsel] shifts at sixteen courthouse locations ...²

[33] In summary, the information available would suggest that the Provincial Court deals with a significant number of self-represented litigants and this has consequences for the workload of Provincial Court judges. Two of these have been identified earlier in this document. First, judges have additional responsibilities ensuring equal access to justice for self-represented litigants, which increases the amount of court time and resources utilized. Second, self-represented litigants can be more emotional, unpredictable and in some cases disruptive which, in turn, slows down the court process.

[34] It is respectfully submitted that the number of self-represented litigants has had a dramatic impact on every step of the court process and is increasingly being recognized as a serious issue that requires action. The additional burden that the self-represented litigant places on the process as a whole and on the judge in particular is significant.

² On May 29, 2019 Legal Services Society launched a new legal aid service for early resolution for criminal cases following a similar program piloted in Port Coquitlam
<https://lss.bc.ca/communications/news/new-legal-aid-service-offers-early-resolution-criminal-cases>.

C. The Court's Administrative Structure

[35] Based on discussions within the Court and with the input of experts in the field of organizational structures, the Court embarked upon a reorganization of its administrative structure. The reorganization was implemented on April 1, 2013. In his report, [*A Criminal Justice System for the 21st Century*](#), Mr. Cowper, Q.C. supported the move toward a more modern governance structure. On p. 8 of his report, Mr. Cowper, Q.C. stated:

The Provincial Court's capacity to expertly manage its court, including use of modern information and communication systems, modern business process analysis and other modern management techniques should be enhanced through a more clear and modern governance structure within the court.

[36] Prior to the changes that my predecessor, former Chief Judge Crabtree, introduced, the previous judicial administration consisted of a Chief Judge, two to four Associate Chief Judges (the number depended on workload and projects), and 12 Administrative Judges representing the 12 administrative districts of the Court. The previous administrative structure of the Court consisted of an Executive Committee and a Management Committee. The Executive Committee was comprised of the Chief Judge, the Associate Chief Judges and the Executive Director. The Management Committee consisted of the Chief Judge, the Associate Chief Judges, 12 Administrative Judges and the Executive Director. The two committees comprised the Court's previous management/administrative structure.

[37] Under the previous administrative structure and based on the recommendation of the Judicial Compensation Commission, the Chief Judge received an additional 12% and the Associate Chief Judges 6% remuneration. The Administrative Judges received non-sitting time to attend to administrative matters, as well as additional annual leave, but no additional remuneration.

[38] As indicated earlier in this document, a reorganization was implemented on April 1, 2013, with a period of transition until June 2014. The current administrative structure

is a more effective administrative model, providing a number of benefits including:

1. Increased transparency;
2. Simplified administrative structure; and
3. Meaningful input into the decision-making process.

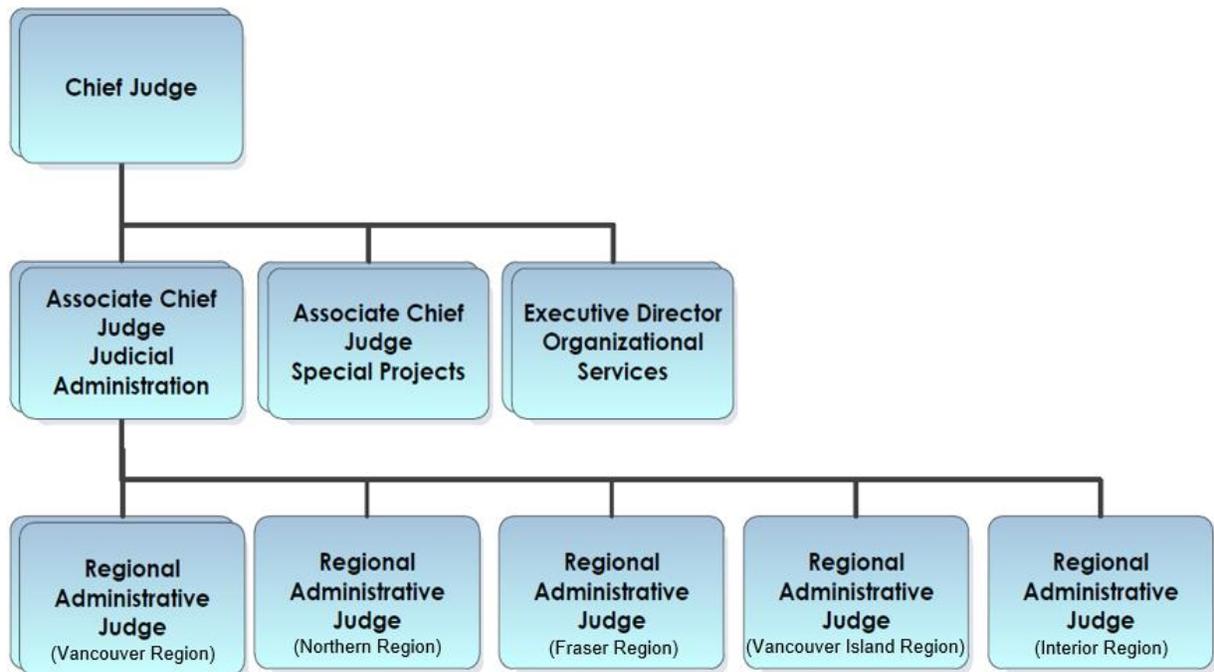
[39] Under the current administrative structure, the province is divided into the following five administrative regions, which are similar to the CSB regions: Fraser; Interior; Northern; Vancouver Island; and Vancouver. Each region is administered by a Regional Administrative Judge. The Administrative and Governance Committees of the Court have merged, with the Regional Administrative Judges serving on both committees.

[40] The Governance Committee is led by the Chief Judge and the Administrative Committee is chaired by the Associate Chief Judge who oversees judicial administration, including the annual ROTA [schedule] building. The regions are administered by a Regional Administrative Judge who may be assisted, where necessary, by a Local Liaison Judge in a particular court facility. The Local Liaison Judge performs his or her duties in the course of a regular sitting schedule.

[41] The current administrative structure is depicted in Figure 5.

Figure 5

Court Administrative Structure



[42] These changes were supported by Government, which made the necessary amendments to the *Provincial Court Act*.

[43] As recommended by the 2013 and 2016 Judges Judicial Compensation Commissions, the current remuneration for the judges involved in the judicial administration of the Court is as follows:

- puisne judge salary plus 12% for the Chief Judge;
- puisne judge salary plus 8% for the Associate Chief Judges; and
- puisne judge salary plus 6% for the Regional Administrative Judges.

[44] I note that the additional remuneration paid to the administrative judges is limited to the term of office. The increased salary for any administrative judge does not continue,

as in other jurisdictions, once the term of office is completed.

[45] This administrative model places more responsibilities and duties on the Regional Administrative Judges. In addition to sitting responsibilities, they are expected to:

- Spend more time involved in matters of court administration within the region to which they are assigned in order to facilitate and support effective judicial administrative performance [it is important to remember that three of the five regions are geographically spread out and have a number of court locations within them];
- Ensure compliance with standards and policies and participate in the drafting and reviewing of the court's policies;
- Addressing any facilities issues or court closures due to weather or other emergencies;
- Act as the informational link between the judges of the region and the Chief Judge; and
- Liaise with stakeholders and the justice system community including CSB, Crown counsel, defence counsel and sheriffs to ensure the Court is aware of and responsive to any regional and local issues and concerns.

[46] To fulfill their role, they are also expected to devote time and energy to acquiring additional knowledge and skills in administrative matters and to travel more extensively within the region in the fulfillment of their responsibilities. At the same time, Regional Administrative Judges are expected to continue to preside in court in their region sitting a modified schedule.

[47] The current administrative structure is effective because it reduces the number of administrative judges required to oversee court administration and provides the administrative judges with the authority and time to travel around the region and manage more local issues as they arise.

D. Initiatives and Innovation Undertaken to Enhance Effectiveness and Efficiency

[48] The Provincial Court of British Columbia is known for its willingness to consider and, where appropriate, to undertake new and innovative processes to benefit litigants and provide an improved level of service to the public. It does so in an effort to address issues of workload and to examine ways in which to improve our practices and procedures, increase access to justice, and improve the experience of users of the justice system.

[49] Embracing innovation and making meaningful change is not a recent development. The Court's approach to dispute resolution, in requiring each civil and family litigant to engage in mediation, beginning in 1991, received international recognition. It was just the start of over 25 years of an ongoing commitment to better serve the public.

[50] This desire and commitment continues, and in this section a number of current and ongoing initiatives are discussed.

[51] In his report titled: [*A Criminal Justice System for the 21st Century*](#), Mr. Cowper, Q.C. had this to say about the Provincial Court's reform efforts:

Leaders of the Provincial Court have advanced farsighted and significant reforms over the past 15 years. These proposals and initiatives have included rules to promote early resolutions, the reduction of backlogs, the development of public performance measures for the court, the development of problem-solving and specialized courts such as the Downtown Community Court (DCC) and the Victoria Integrated Court (VIC), and the development of a vision and mission statement for the court. As discussed, the current leadership of the court has identified that a new approach to criminal process and trial scheduling is necessary. To better enable the Provincial Court to fulfill its important role, I recommend changes to the ways in which its judicial complement are determined and enhancements to its governance and managerial capacity.

[52] In his fourth anniversary update to [*A Criminal Justice System for the 21st Century*](#) (October 2016) Mr. Cowper added:

(c) **Transparency and accountability:** The Provincial Court has made huge strides in making available accessible information respecting timeliness and the trends in its work. The Court's website and the Chief Judge's Annual Reports offer the public a quick understanding of timeliness by subject area.

(d) **Scheduling project:** The Court has rolled out an assignment court scheduling system in the seven highest volume courthouses in the Province. ... The assignment court provides an excellent example of innovation in services which was championed by the Court, facilitated by Court Services and others in the system, and accomplished without sacrificing judicial independence.

[53] The Provincial Court, supported by the judges, justices and administrative staff, has continued to engage in exploring, assessing and, where appropriate, undertaking initiatives in an effort to enhance the effectiveness and the efficiency of the Court. The Court recognizes the need for an evidence-based approach to such initiatives, and in that regard continues to assess, re-evaluate and revise the initiatives undertaken in order that they will more effectively meet the needs of the public. The following are examples of the various initiatives and reforms undertaken by the Provincial Court.

Provincial Court Scheduling Project

[54] In 2012 the Court began to revamp judicial scheduling practices to make them more effective, equitable and efficient. The scheduling reforms also sought to take advantage of technology to assist with changes. To help foster success, the Court consulted extensively with members of the private bar (criminal, family and civil), Crown counsel, the Legal Services Society, and CSB. The Court also engaged a business process expert to help review existing scheduling practices and develop new ones.

[55] The Court has a [Practice Direction](#) regarding the Criminal Case Flow Management Rules. The Rules simplify the criminal front-end process with a goal of reducing administrative procedures and enabling judges to focus on complex and demanding adjudicative work.

[56] In addition to the front-end criminal process reforms, the Court has also implemented “delayed assignment” throughout the province in all divisions of the Court’s work. Given the high rate by which cases scheduled for trial do not proceed, delayed assignment aims to have judges assigned to cases at or near the hearing date when counsel or the parties have confirmed that the matter requires judicial determination. Cases resolved without a trial (by consent order, guilty plea, stay of proceedings, etc.) can be dealt with in a manner which has less impact on trial work allowing the Court to make more effective use of judge time and reducing delays to trial.

[57] In seven locations (Vancouver, Surrey, Port Coquitlam, Robson Square, Kelowna, Abbotsford, and Victoria) the Court now delays the assignment of judicial resources to trials until the morning cases are scheduled for hearing. Only when the parties confirm on the trial date that they have been unable to resolve the case without judicial adjudication are matters assigned to a judge and moved into a trial courtroom. Last-minute case collapse can be dealt with more effectively so that judges can focus on important trial work. In these same seven locations, the court has also implemented Summary Proceedings Court where hearings of a brief duration can be heard in a more timely way.

[58] To support the scheduling process, the Court designed and implemented software which enables the Court to obtain better management information to help monitor processes and make continuous improvements.

[59] The revised scheduling process has brought about efficiencies to help the Court to better keep pace with incoming workloads in all divisions (family, criminal and civil). The delayed assignment of the scheduling process has increased scheduling flexibility to better enable the Court to accommodate last-minute developments on trials and changing resource capabilities, thereby making better use of court time and increasing access to

justice. In [R. v. Jordan](#), 2016 SCC 27, the Supreme Court of Canada imposed ceilings beyond which delay is presumed to be unreasonable. While the scheduling system was introduced prior to that decision, the Court is able to use that system to monitor the effective use of judicial resources.

The Balanced Rota Template

[60] Since 2014, the balanced Rota templates have been in place throughout the province for the scheduling of judges to cases and cases to courtrooms.

[61] In essence, the process of creating a balanced scheduling template involves the Chief Judge and an Associate Chief Judge meeting with the Manager of Judicial Resource Analysis and Management Information Systems, the Administrative Judicial Case Manager and the Regional Administrative Judge to review and analyze the divisions of the court in each courthouse location within a Region. The Court uses that information to understand what the likely future demands will be for court locations given the observable trends identified and the time to trial pressures. The Court then builds a scheduling template for the year for that court location.

[62] The design of local templates is further informed by management information such as incoming file volume, court standards for times to trial in each division, and judicial resourcing. A process has been put in place to review the templates annually and to make revisions to them when changes to caseload or resourcing require.

[63] This process also helps the Chief Judge understand what new judicial appointments should be sought to address vacancies created by retiring judges or judges who are electing to go senior, as well as whether there is a need for more judicial resources or a realignment of existing judicial resources.

[64] This type of analysis also ensures the Court understands the travel patterns of its judges and where necessary, and possible, to address changing demands by making alternative decisions about where to appoint judges to address these needs.

[65] The balanced Rota template work has proven to be a valuable scheduling tool in

that it enables the Court to more equitably meet caseload demands from courthouse to courthouse and within the family, civil and criminal divisions. The repeating and balanced scheduling pattern allows others in the justice system, particularly Court Services, Sheriff Services and Crown counsel, to be confident in the staffing requirements needed to operate and support the courts. Moreover, as part of the Rota template work, court schedules are developed earlier, which assists other organizations and individuals to plan more effectively.

Management Information System

[66] In addition to the Court's ability to generate reports from the scheduling and Rota programs, the Court has developed key performance measures and the ability to retrieve advanced court data to provide the Court with better management information and business intelligence. Through this initiative, the types of data obtained and the reports generated include: on-time case processing information; case completion rates; case age; next date surveys; reserve judgment reports; and a number of trial scheduling reports. This information assists the Court to monitor time to trial and pending case data, consistent with the statements in *R. v. Jordan*, 2016 SCC 27.

[67] In addition, the management information system retrieves case information on files in the problem-solving courts. Through the collection of this data, the Court can assess and evaluate the various aspects of the operation of problem-solving courts.

Vancouver's Downtown Community Court

[68] Canada's first community court, the Vancouver Downtown Community Court (DCC), coordinates with multiple agencies in an attempt to effectively address the root causes of crime in the region, notably mental illness, addiction and poverty. Opened in September 2008 as a collaboration between the Office of the Chief Judge and the Government of British Columbia, it focuses on a Vancouver catchment area including the Downtown and Downtown Eastside.

[69] The community court attempts to prevent criminal activity and to address the risks posed by offenders, while also supporting their health and social needs, through a

partnership of justice, social and health care services. Together, they provide a timely, coordinated and meaningful response to treating and sentencing offenders. The needs of victims of crime are also addressed with an onsite victim support worker available to provide information, support and referrals to programs and services.

[70] In the last few years, the Court received visits from a variety of individuals and groups interested in the innovative way in which DCC operates. This included visits from: Canadian Senators; delegations from countries such as New Zealand, Guyana and the Ukraine; and from students attending secondary schools and post-secondary institutions.

[71] DCC often collaborates with local agencies or businesses in creating a supportive community. For example, in the past businesses have donated money to help provide bedding for clients recently released from custody into the community.

[72] Having celebrated its 10th anniversary last year, the DCC continues to serve as a model from which specific innovations or programs may be adopted in other locations throughout the province. Discussion about the development of integrated courts, for example, have been held with the communities of Kelowna and Port Coquitlam.

[73] A peer-reviewed evaluation concluded that DCC successfully reduced recidivism to a significant degree for a cohort of its most chronic and highest needs offenders. Additional information about DCC can be found on the Provincial Court website: [Downtown Community Court](#)

Victoria's Integrated Court

[74] Eight years after being established, the Victoria Integrated Court (VIC) continues to focus on addressing the health, social and economic needs of chronic offenders; improving public safety; and holding offenders accountable for their actions in a timely manner.

[75] In 2010, the Provincial Court responded to a community-led initiative to address street crime in Victoria by adopting an integrated approach to chronic offenders for offenders with mental health and substance abuse issues. A small number of homeless

people with mental health and substance abuse problems were responsible for many police encounters and court appearances. Integrated teams of police, health, social workers and community corrections service providers began to deliver emergency and health services to these people. VIC deals with people supported by one of these teams.

[76] VIC is not a trial court, but eligible individuals may have bail hearings or plead guilty and be sentenced in VIC. Those who plead not guilty are tried in the regular court system, but if found guilty and given a community sentence, they may have that sentence supervised in VIC. In the Integrated Court, judges are told about housing, medical and other issues affecting an offender and hear recommendations for orders to help a team support and supervise the offender, often including community service.

[77] Teams including community outreach workers, social workers, probation officers and police meet regularly with the dedicated Crown counsel and defence counsel to plan support and supervision in the community. The teams closely monitor the participants and review them as needed in weekly meetings of the Court, a feature of VIC that contributes to its effectiveness.

[78] For 2017/18, VIC Community teams supported 128 people in the Court, up slightly from 124 the previous year.

[79] In 2014, a master's thesis by two students of the School of Public Administration at the University of Victoria concluded that VIC provided benefits to the health care system and the administration of justice, including lowered costs and reduced recidivism. However, it noted the strain of a high case load, as well as the difficulty of drawing conclusions from the statistics available. A *program report* includes several stories of individuals who have benefited from the program, found housing and treatments, and ended criminal activities. More information and previous reports are available on the Court's website: [Victoria Integrated Court](#)

First Nations Court

[80] Six First Nations Courts operate throughout British Columbia:

- New Westminster (established 2006)
- North Vancouver (2012)
- Kamloops (2013)
- Duncan (2013)
- Merritt (2017)
- Prince George (2018)

[81] A First Nations Court is developed in consultation with local First Nations, the community at large, the police, community corrections, Crown counsel, the defense bar, and many other support service groups such as the Native Courtworker and Counselling Association of British Columbia.

[82] The approach of the First Nations Court is holistic, recognizing the unique circumstances of First Nations offenders within the framework of existing laws. The ongoing intent in the restorative approach is to address criminal matters for offenders with a First Nations background.

[83] The Court provides support and healing to assist offenders in their rehabilitation and to reduce recidivism. It also seeks to acknowledge and repair the harm done to the victims and the community. The Court encourages local First Nations communities to contribute to the proceedings.

[84] Discussions are underway with several communities including Williams Lake, Hazelton, Port Hardy and Port Alberni regarding the development of First Nations Courts in those communities. The success of these initiatives is due in large part to the effort of a number of stakeholders, including the community as a whole and the Legal Services Society. The Court continues to work with stakeholders in the hope that these initiatives will continue to evolve and the restorative approach will be adopted when appropriate to meet the needs of the communities.

[85] Additional information regarding First Nations Courts can be found on the Provincial Court website: [First Nations Court](#).

Aboriginal Family Healing Court Conference

[86] The Aboriginal Family Healing Court Conference (AFHCC) is a three year pilot project in New Westminster designed to reduce the over-representation of Aboriginal children in foster care. The pilot project launched in January 2017. The goals of the pilot project are to: provide cultural interventions that increase the effectiveness of court processes for child protection cases; reduce the number of cases that proceed to trial; and improve health, social and justice outcomes for Aboriginal children and families who come into contact with the child protection system.

[87] The AFHCC is an expansion of the Family Case Conference into a healing circle to allow for a more culturally appropriate process. A family can tell their stories in an environment that is attentive to both their cultural practices and their unique personal situation. Families work with Elders to develop a Healing and Wellness Plan. Where appropriate, aspects of the Healing and Wellness Plan may be included in any consent order that a Judge makes at the case conference. More information about the AFHCC is available on the Court's website: [Family Healing](#)

Drug Treatment Court of Vancouver

[88] Created in 2001, the Drug Treatment Court of Vancouver (DTCV) is a Court with a fully integrated treatment program for all of its participants.

[89] The DTCV provides an alternative to the regular criminal court process for individuals who commit drug offences or other minor *Criminal Code* offences arising out of their addiction to cocaine, heroin or other controlled substances.

[90] The goal of the program is to help offenders achieve:

- Abstinence from drug use;
- Reduced or eliminated future contact with the criminal justice system;

- Improved overall well-being, including improved housing;
- Employment and education; and
- Pro-social use of their time.

[91] For a minimum of 14 months, DTCV participants undergo a drug addiction treatment, which is supervised by a DTCV judge. The participants receive services from addiction counsellors, case managers, a psychologist, a physician who specializes in addictions medicine, a nurse and a financial assistance worker. Drug use is monitored through random urine screening. The participants move through four phases of the program (pre-treatment, recovery skills, stabilization and seniors group). At the end of the 14-month period, the participants may be eligible to “graduate” from the program and receive a non-custodial sentence or have the Crown stay the charge.

[92] To graduate, participants must have done all of the following:

- Abstained from consuming all intoxicants for the three-month period immediately prior to graduation;
- Secured stable housing, approved by the DTCV judge;
- Not been charged with a new criminal offence in the six months immediately preceding graduation; and
- Engaged in secure employment, training or volunteering for the three months immediately preceding graduation.

[93] In the 2017/18 fiscal year, the program received 38 new intakes.

[94] Additional information about the DTCV can be found on the Provincial Court website: [Drug Treatment Court](#)

Domestic Violence Courts

[95] The Cowichan Valley Domestic Violence Court Project was the first dedicated court in BC to address issues of domestic violence. It has been in operation since March 2009.

[96] The Court is a blend of an “expedited case management” court and a “treatment or problem-solving” court. The goal is to: bring these cases to the disposition stage (either by plea or trial and sentence) as soon as possible to reduce the rate of victim recantation or other witness-related problems; offer a less punitive approach for those willing to accept responsibility for their actions and seek treatment; and ensure the safety of victims and the public.

[97] Partners in this project include specially-trained and dedicated Crown counsel, RCMP, probation officers, community-based victim services, a Native Courtworker and a child protection social worker.

[98] In 2013, a similar court was established in Nanaimo through the collaborative effort of the local coordinating committee for domestic safety.

[99] In May of 2016 a domestic violence initiative was undertaken at the Surrey Courthouse in which all domestic violence cases are assigned to one courtroom to deal with front end appearances. This initiative is supported by a dedicated duty counsel and a domestic violence team of prosecutors.

[100] An empirical and court user assessment of the Surrey court’s utilization in June 2018 reaffirmed its benefits as a courtroom dedicated to domestic violence. In spite of the fact that all front end activities (such as initial appearances, bail hearings, bail variations and ancillary applications, arraignments, dispositions and sentencings) take place in that court it still maintained a lower “net file duration” and a lower number of average appearances than the non-domestic violence initial appearance courtroom.

[101] From a court users’ perspective, counsel, victim service workers, court interpreters and others have expressed higher levels of satisfaction due to a perception of increased

access to justice. This is reflected in fewer delays waiting for other courtrooms to become available to assist processing files on busy court dates and more timely judicial interim release hearings for in custody adults charged with domestic violence offences.

[102] In Kelowna, Penticton and Kamloops, particular days are scheduled for domestic violence cases to ensure that they receive early trial dates and can proceed through court without delay.

Victoria Early Resolution Prototype

[103] In May 2019, the Court and the Ministry of Attorney General launched the Victoria Early Resolution Prototype. The Court and the Ministry are working on a project to change the rules of procedure for family matters in Provincial Court. Early implementation of key aspects of the model were launched in this pilot project.

[104] The early resolution model is a new front-end process designed to assist families in the early resolution of their issues before any court appearances. Except for urgent matters, parties will be required to meet with a Family Justice Worker as a first step. There will be early assessment, mediation, access to resources such as legal advice, and parenting education services. The goal of the new model is to help parents achieve collaborative resolution.

[105] Those parties who have completed the new front-end process but have not resolved all issues can then file an application with the Court. Parties will be scheduled for a Family Management Conference (FMC) which replaces the current first appearance. The judge conducting the FMC will try to resolve the issues and may make orders to help clarify issues and ensure the matter is ready for trial.

Video Technology

[106] Video technology is utilized in many court locations throughout the province to accommodate remand appearances and bail hearings. In addition, sentencing proceedings and family and civil matters are conducted by video where appropriate. For example, in the fiscal year 2017/18 the use of video technology resulted in 34,731 saved prisoner transports for persons required to appear in court for preliminary matters.

[107] The Court continues to use video technology:

- To connect the Justice Centre in Burnaby to remote locations for bail hearings;
- For remand appearances and bail hearings for persons charged with offences and appearing from a remand or custody centre; and
- To maximize judicial resources by allowing judges and judicial case managers in one courthouse to hear preliminary matters from another.

[108] The Court continues to expand its use of video technology. In 2017/18 videoconference equipment was refreshed at four locations. Sixteen additional units were deployed to locations with existing videoconferencing. Five new units were deployed at locations with no videoconferencing. Further expansion to circuit and satellite court locations is planned for 2019/20 with specific locations to be determined.

[109] The Court and the Ministry of the Attorney General are also piloting a videoconferencing suite that allows for remote access to interpreter services. While the pilot is being carried out at the Richmond and Robson Square Court locations, if successful, it could assist by improving interpreter services in many remote communities.

[110] The Court continues to believe that greater video capability in all staffed courthouses and most circuit court locations would enhance access to justice and save operational expenses by reducing prisoner and witness transport costs.

Civil Division

[111] In 2017 changes were announced to the work of the Provincial Court under the *Small Claims Act*. As of 2017, with just a few exceptions, civil claims of up to \$5,000 are dealt with in BC's Civil Resolution Tribunal ("CRT"). At the same time, the upper limit of civil cases heard in Provincial Court was increased to \$35,000. The slight decrease in the number of self-represented individuals is most likely attributed to the CRT taking that jurisdiction.

[112] Also, since the CRT became fully operational and mandatory, the Provincial Court hears: (1) applications for exemption to the CRT process; (2) matters where the CRT refuses to resolve a claim; (3) appeals of CRT small claims decisions as new trials; and (4) enforcement of CRT orders.

[113] As of April 2019, while Provincial Court continues to deal with some disputes involving motor vehicle accidents, other motor vehicle injury disputes up to \$50,000 must be taken to the CRT.

Family Division

[114] Significant work is currently being undertaken by the Court's Family Law Committee, made up of judges who volunteer their time, to create a family law bootcamp. The program will deliver substantive and procedural judicial education in family law matters to newly appointed judges.

Criminal Division

[115] Significant work was undertaken by the Criminal Law Committee, also made up of judges who volunteer, in their development of criminal picklists and the development and launch in 2018 of a three-day criminal law bootcamp. The program delivers in-depth, interactive and practical education about criminal law for newly appointed judges.

Communications Initiatives

[116] The Provincial Court of BC is recognized as a leader among Canadian courts for

its active and engaging online communications. The Court's website analytics for 2017 showed more than 940,000 page views by more than 225,000 unique visitors. Page views of [eNews](#), the informal articles posted weekly on the website, increased by 60% over the previous year, reaching 35,928.

[117] In 2017, the Court also held its second live Twitter Town Hall, hosted a workshop for journalists, and published a [Media Guide](#).

[118] In 2018, the Court published a [Guide to Disputing a \(Traffic\) Ticket](#) which is one of the most viewed pages on the Court's website.

[119] In 2019, the Court launched a new [media form](#) to facilitate media inquiries made to the Court. The Court is planning to host, with another Court and a former self-represented litigant as representatives of Access to Justice BC, a third Twitter Town Hall in the fall of 2019 focussed on access to justice.

Peter A. Allard School of Law at the University of British Columbia (UBC) Intern Program

[120] Since January 2007, the Court and the Peter A. Allard School of Law at UBC have partnered in the delivery of a judicial internship program for third-year law students (eight students in each of the fall and winter terms). The program provides an opportunity unique among Canadian universities for students to spend an entire law school term working with the Provincial Court judiciary throughout the province on an array of legal subject areas and issues. The students earn credit towards their academic law degrees from their work with the Court.

[121] The program exposes students to all areas of the Court's work. The interns' work comprises not only legal research pertaining to issues at the judges' request, but also the observation of trials and other court processes and the discussion of issues with the judges of the Court.

[122] Of particular note, and a very rewarding part of the program for the student interns, is that each intern participates in a circuit court. Each student accompanies a presiding

judge and the court party to a remote registry in British Columbia in order to witness the delivery of justice first-hand throughout the province. The circuit court program broadens the students' education, exposes them to legal practice outside the Lower Mainland and offers insight into the Court as a "problem-solving" court that operates in geographic areas with significant variations in its extra-legal resources.

[123] The Court has been very fortunate to receive ongoing funding from the Law Foundation of British Columbia to cover the costs of intern travel and accommodation while on circuit, and gratefully acknowledges its contribution in that regard.

[124] Further information and articles about the program are available on our website at: [Law Intern Program](#)

E. Understanding the Court's Challenges Moving Forward

[125] Most significantly for this Commission are the challenges faced by the Court during the term of the Commission's mandate. While it is difficult to project the Court's resource needs, looking back over the past three years provides some insight.

[126] In the last three years, there have been, on average, approximately 14 judges appointed each year to fill vacancies and for the Surrey Courthouse expansion.³ I expect that we will still continue to see a high number of annual appointments. On this basis, there is a need to ensure that the remuneration is reasonable and sufficient enough to attract the most qualified applicants from which to draw, as new judges are appointed to the Court, and to retain those already on the Court.

[127] The world has changed dramatically and judges are under far more stress and pressures than they were previously. Long lists and serious cases require judges to render decisions in a timely fashion.

[128] It can be the case that matters heard in the Provincial Court may take less time than if heard in the Supreme Court. In the Provincial Court, decisions are often delivered orally

³ Further positions are anticipated when the new Abbotsford courthouse is completed.

at the end of the case, following a short opportunity to consider the material. It is also the case that longer matters may result in a judge reserving and, as required, reading in their decisions in criminal matters. Judges may also read in decisions in civil and family matters. While the decisions may appear to be oral decisions, they are written decisions read in to the record and not subsequently published. Matters themselves are often complex, and in our court complexity is not reflected in whether a decision is published or not. In those few cases which are appealed, the decisions of our Court are subject to the same appellate review and standard as the Supreme Court. While this is entirely appropriate, it creates a tension between the volume of the work and the desire to serve the public in a timely manner and to “get it right”. This, along with requirement that all judges of the Court must be able to hear matters in all the divisions of the Court, places an enormous burden on the judges of the Court.

[129] Historically, the reduction in funding of Legal Aid has meant that there are a significant number of self-represented litigants, which adds to the trial judges' obligation to ensure that an individual's right to a fair trial is safeguarded.

[130] At this crucial time, I believe it is the role of the Chief Judge to support its judges, recognizing the significant effort that judges have devoted to the Court. For the purpose of this document, we have focused specifically on the past few years, and on the great stress and burden that judges find themselves under each day as they strive to serve the public in an effective manner. That pressure is going to increase, not lessen. It is in these circumstances and for the forgoing reasons that reasonable remuneration is an important factor in being able to attract well-qualified applicants to the BC Provincial Court and to retain those already appointed to the Court.

[131] The Provincial Court has experienced a loss of nine judges to the Supreme Court over the past nine years. As one might anticipate, a judge appointed to the Supreme Court and removed without notice from an existing schedule (which is assigned approximately 18 months in advance) is particularly problematic to litigants, witnesses and more generally to members of the public. The loss of colleagues to the Supreme Court creates the potential for delay and inconvenience to those relying on the Court.

[132] In terms of attracting new judges, in 2017 there were 63 applications for appointment as a judge received by the Provincial Court. The number of applicants in 2017 was significantly higher than the 10-year average. This was due to the influx of paper applications being submitted before the launch of a new online application system by the Court. Over the period from 2008 to 2017, on average 47 applications were received each year for appointment as a judge. In 2018 only 27 applications were received. Often the Provincial and Supreme Courts are seeking applicants from the same general pool of potential candidates.

F. PCJA Submission

[133] I have read the 2019 Submission to the Judicial Compensation Commission from the Provincial Court Judges Association of British Columbia. I adopt and support their submission as being consistent with what I believe is necessary to attract and retain qualified applicants and to support the judges of the Provincial Court as they move forward to serve the needs of the citizens of British Columbia.

G. Recommendations

i. Reasonable Per Diem Travel Allowance

[134] Section 10 of the *Judicial Compensation Act* provides: “A judge or judicial justice must be reimbursed for reasonable travelling and out of pocket expenses incurred by the judge or judicial justice in discharging his or her duties”.

[135] Present travelling and out-of-pocket expenses are reimbursed to judges and judicial justices in accordance with Treasury Board Directive 01/07, which is attached as **Appendix 1**.

[136] Reimbursement⁴ is currently as follows:

⁴ The Court uses the half day rate rather than, for example, reimbursing the actual meal expense incurred.

Figure 6

1. Meal/Per Diem Allowances

- (1) Meal/per diem reimbursement when traveling on the Employer's business will be in accordance with Treasury Board Orders and Directives at the following rates:

Effective April 1, 2019									
Employee Group	Full Day \$	Half Day \$	Breakfast Only \$	Lunch Only \$	Dinner Only \$	B&L Only \$	L&D Only \$	B&D Only \$	Incidental Only \$
I	51.00	N/A	12.25	14.25	24.50	26.50	38.75	36.75	N/A
II	49.00	N/A	22.00	22.00	28.50	30.00	36.50	36.50	14.00
III	51.50	25.75	22.75	22.75	30.50	33.25	41.00	41.00	12.25

- (2) Unless otherwise provided for in this appendix, the reimbursement rates for Groups II and III cover meal and other out-of-pocket travel expenses.
- (3) Where travel is for a partial day, only meals that are applicable to that portion of the day spent on travel status are claimed.
- (4) Where a meal is provided without charge or is paid for from public funds, no claim for that meal can be made.
- (5) The meal/per diem allowances cover expenses arising from absences away from headquarters or geographic location over a meal period(s).
- (6) Meal expenses incurred within headquarters or geographic location due to job responsibilities, will be reimbursed as follows:

Group I and Group II	Group III
at the meal rate(s) specified in 1(1) for Group I, above	for all actual meal expenses incurred

[137] Judges and judicial justices of the Court spend a considerable number of days each year on travel status in order to fulfil their sitting duties. For example, judges assigned to chambers in the northern region of British Columbia can spend 50% of their sitting time on travel status.

[138] It is submitted that the current per diem rates of reimbursement for meals is inadequate. Per diem rates of several other organizations are set out below.

[139] The daily meal and incidental allowances for travel within Canada for federal employees (including federal Crown counsel), covered under the National Joint Council of the Public Service of Canada's [Travel Directive](#), are, effective [April 1, 2019](#), a \$91.25 daily meal allowance plus a \$17.30 daily incidental allowance for a daily total allowance of \$108.55.

[140] The meal per diem for reimbursement is \$60.00 under the [University of British Columbia's Policy](#) available on its website.

[141] The per diem amount provided to sitting Members of the Legislative Assembly (MLAs) is set out in the Legislative Assembly's [Members Guide to Policy and Resources](#) as follows:

Full Day	Half Day	Breakfast Only	Lunch Only	Dinner Only	Breakfast & Lunch Only	Lunch & Dinner Only	Breakfast & Dinner Only	Incidentals Only
\$61.00	\$30.50	\$27.00	\$27.00	\$36.00	\$39.50	\$48.50	\$48.50	\$14.50

[142] It is submitted that judges and judicial justices of the Court should be reimbursed in an amount similar to that for an MLA to cover the cost of meals and incidental expenses while on travel status.

[143] At present, an MLA may claim up to \$61.00 per day to cover the cost of meals and incidental expenses while a Member is away from their home or constituency.

[144] It is submitted that fixing the per diem travel reimbursement for the judges and judicial justices at the same rate as may exist from time to time as MLAs would be reasonable.

ii. Remuneration for Administrative Judges

[145] Further to the information provided above in paras. 45 to 47, I respectfully request the following recommendations be made by this Commission, consistent with past Commissions to reflect the increased demands associated with these positions:

- The Chief Judge's salary remain at the puisne judge salary plus 12%;
- The Associate Chief Judge's salary remain at a puisne judge salary plus 8%;
- A Regional Administrative Judge's salary remain at a puisne judge salary plus 6%.

iii. Long Term Disability Plan (Age 65 – 75)

[146] The government provides long term disability benefits for judges and full time judicial justices under the age of 65 through Great West Life. From age 65 onward, the Office of the Chief Judge pays the equivalent amount of money which the judge or judicial justice would have received for long term disability benefits through Great West Life out of the Court's budget. (A description of the history of long term disability payments is found in *Craig v. The Province of British Columbia* (1997) 40 B.C.L.R. (3d) 289, as well as in the 2010 submission by the Provincial Court Judge's Association to the JCC.)

[147] In 2010 the Judges Judicial Compensation Commission stated at p. 35:

... 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 ...

[148] The Hansard debates for Tuesday, March 12, 2013 state:

4. The recommendation that the cost of long-term disability benefits for judges over age 65 be separately funded by government outside of the budget of the Office of the Chief Judge is rejected. The cost of long-term disability benefits for these judges will remain within the budget of the Office of the Chief Judge.

[149] Justice Chiasson for the majority in [*Provincial Court Judges' Association of British Columbia v. British Columbia \(Attorney General\)*](#), 2015 BCCA 136, (application for leave to appeal to [SCC dismissed](#)) stated:

[86] Absent consideration of 2013 data and new arguments, in light of the reasons of Macaulay J., there is no basis on which the recommendations of the 2010 JCC report can be rejected.

[87] I would set aside the Legislature's 2013 response to the 2010 JCC report

pursuant to s. 2(2) of the Judicial Review Procedure Act.

[88] I would declare that the PCJs are entitled to the recommendations in the 2010 JCC report.

[89] I do not consider it appropriate to direct the Legislature how to act, but assume it will respond in accordance with the declarations made.

[150] While some funding is received by the Court from the government in this respect, these payments are not fully funded by the government. For example, for a number of years the government has provided funding for long term disability in the amount of just over \$400,000 a year. For context, the cost of in-house, long term disability to the Court for fiscal 2018/2019 was approximately \$1,400,000, and for 2019/2020 is projected to be approximately \$1,200,000.

[151] There are currently four judges and one judicial justice on long term disability paid by the Court. These numbers fluctuate as more individuals go on or come off of long term disability. For example, in 2011/2012 there was only one judge receiving long term disability payments whereas in 2018/19 eight individuals received such payments.

[152] The Office of the Chief Judge does not have the budget to continue to partially self-fund a long term disability program for judges and full time judicial justices from age 65 to age 75. Having to do so impacts the Court's ability to serve the people of British Columbia by reducing the budget money available for other expenses. The current situation also creates budget uncertainty as it is unknown from year to year how many individuals will require these payments.

[153] There should be no distinction in the way long term disability coverage is funded, regardless of the age of the benefit recipient.

[154] It is submitted that the provision of long term disability benefits for judges and full time judicial justices age 65 to 75 be fully funded by the government on an ongoing basis.

III. Judicial Justices

A. Introduction

[156] The judicial justice division is an integral and indispensable part of the Provincial Court of British Columbia. The division is currently made up of a combination of full time and part time judicial justices. The judicial justice division underwent a reorganization following a review undertaken in 2005 and 2006. The Chief Judge Submission submitted to the 2007 Judicial Justices Compensation Commission by former Chief Judge Stansfield provides a useful background to the current judicial justice program. It includes the rationale for the introduction of part time judicial justices, how their initial compensation was determined, and the important role that the judicial justices play overall within the Provincial Court of British Columbia. This document is attached as **Appendix 2**.

[157] A total of 32 judicial justices comprise the complement of the division. Of these, 11 are full time judicial justices and 21 are part time judicial justices. For the full time judicial justices, three are on long term disability and one is on education leave. The current full time judicial justices have been in the position for more than 17 years, and the majority have a background in CSB or law enforcement, three have law degrees. For the current part time judicial justices the majority have law degrees.

[158] Judicial justices are committed to maintaining a high calibre of competency and professionalism in the execution of their judicial duties.

B. The Work of the Judicial Justice Division

[159] Subject to s. 2.1 of the *Provincial Court Act* which sets out certain matters that only a judge may hear, the current assignment of duties to judicial justices by the Chief Judge under s. 11 of the *Provincial Court Act* is as follows:

1. All matters to which Court Services Justices of the Peace and Judicial Case Managers are assigned;

2. All matters in which there is a judicial determination affecting the liberty of a person taken into custody other than such matters as are assigned exclusively to or are under the exclusive jurisdiction of Provincial Court judges;
3. All applications pursuant to federal or provincial enactments for search warrants, orders for access to records and data, and warrants or authorizations to enter a dwelling house, premises or other place, whether application is made in person or by telephone or other means of telecommunication, and where authorized by law. With respect to telewarrants, in addition to s. 11(1) of the *Provincial Court Act*, this assignment constitutes a designation pursuant to s. 487.1 of the *Criminal Code* and s. 22 of the *Offence Act*;
4. Payment hearings pursuant to the *Small Claims Act* and *Small Claims Rules*;
5. (a) Hearings in respect of all provincial offences and federal *Contraventions Act* offences, in which proceedings are commenced by violation ticket;

(b) Hearings in respect of all municipal bylaw offences; and

(c) Hearings in respect of any traffic-related offences under the *Government Property Traffic Regulations* and *Airport Traffic Regulations* made pursuant to the *Government Property Traffic Act* of Canada (adult only).

[160] The following portions of this submission set out the nature of the above-noted assignments and the important contribution of the judicial justices in the delivery of these vitally important public services in the administration of justice in greater detail.

[161] I will commence with a review of the division's work in the area of judicial interim release. We live in a society that values individual liberty and freedom and a criminal justice system based on the presumption of innocence. When that liberty is imperiled by virtue of a police investigation resulting in an individual being taken into police custody, it is important that the individual be brought before a judicial justice as soon as is practical and, in any event, not later than 24 hours from the time of arrest, for a determination of whether the continued detention, pending the adjudication of the matter, is justified. It is

accepted that outstanding criminal charges and any accompanying deprivation of liberty can have enormous consequences upon the lives of individuals, impacting their personal lives, their family and their employment, often in a very public way.

[162] Judicial justices provide 24-hours-a-day, 7-days-a-week service to British Columbians in specific areas of criminal justice. This work consists of judicial interim release (bail) hearings, as well as consideration of police applications for search warrants and production orders under the *Criminal Code*. The below table includes the total amount of Bail Hearings and Search Warrants and Production Orders conducted at the Justice Centre for each fiscal year, ranging from 2010/2011 to 2017/2018. Applications under various other statutes are also considered. While this work is done at various locations throughout the province, it is primarily performed at the Justice Centre which is a dedicated facility located in Burnaby. This facility is resourced during both daytime and evening hours.

Figure 7

Fiscal Year	Bail Hearing Totals	Search Warrant/ Production Order Application Totals
2010/2011	21998	4868
2011/2012	20543	4525
2012/2013	19467	4862
2013/2014	20185	6135
2014/2015	21981	7038
2015/2016	24111	8909
2016/2017	23129	10604
2017/2018	21740	11928

[163] A portion of the evening bail hearings is conducted by judicial justices using video technology. This enables simultaneous participation by the judicial officer, the accused, the prosecutor and the defense lawyer. However, this technology is not yet available in all cases or from all communities in the province. As a result, many evening hour bail

hearings are held under challenging circumstances over the telephone and until 2018 were presented to the judicial justice not by a Crown prosecutor from a courtroom, rather by a police officer at the detachment where the accused is being held. (Further information about the change in this respect is discussed later in this submission.)

[164] Often, due to the urgency of the situation, the accused person wishes to proceed with the bail hearing without the benefit of having a lawyer. This makes the appropriate determination of whether the individual ought to be released and if so, under what conditions, that much more challenging to ascertain. It is to the credit of the judicial justices that they perform these duties, day after day, with the skill and dedication in the manner that they do.

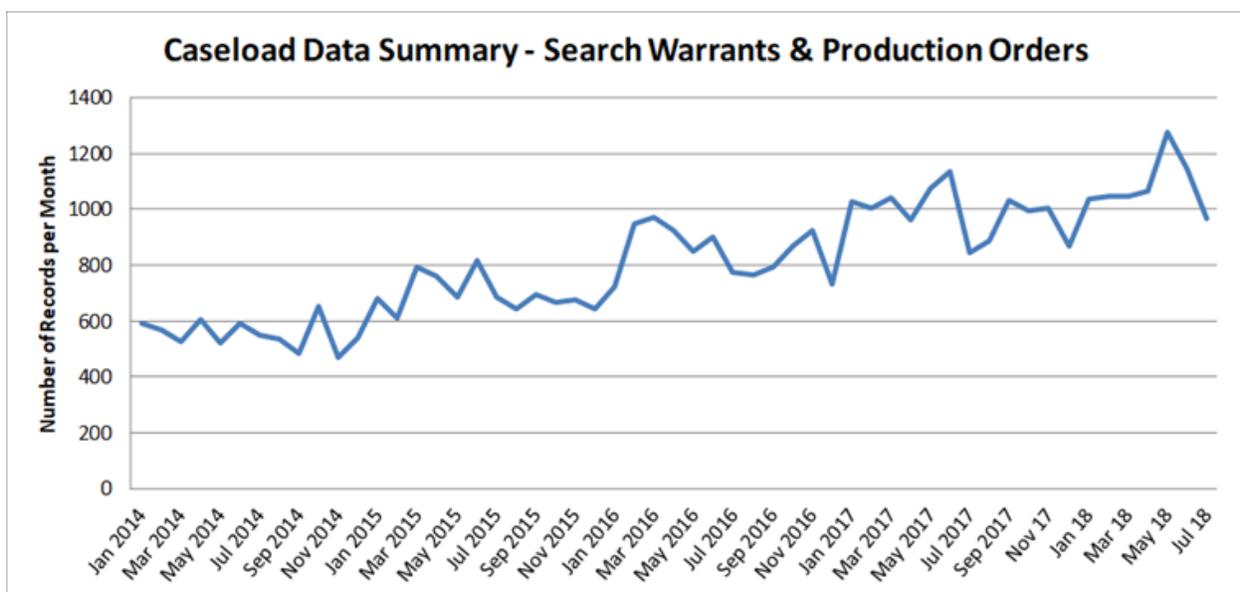
[165] Judicial justices also hear a great number of search warrant and production order applications. While police agencies require investigative tools in the course of their work, many of these tools have the potential to infringe on the privacy rights of individuals who may not ultimately be charged with any offense or, if charged, may be determined not guilty. It is for this reason and the nature of the intrusion involved that many of these investigative measures require prior judicial authorization to ensure the existence of a proper legal foundation for their approval and to assure that any such approvals be accompanied by any appropriately limiting terms and conditions.

[166] Police investigations can be accompanied by a degree of urgency. Often the underlying investigations are lengthy and complex and the applications are time-sensitive. Under these circumstances, judicial justices can be called upon to assess applications faxed to them during late hours in the evening. These applications often consist of significant amounts of descriptive narrative material, setting out what the police agency believes to be reasonable and probable grounds for the issuance of the authorization sought. This is demanding work and it requires a swift balancing and consideration of an individual's security against unreasonable search or seizure, weighed against the legitimate interest of the state, to investigate crime.

[167] Virtually all of the aforementioned work is, by its very nature, unscheduled and is performed in “real time”, in a fast-paced environment, with high expectations for timely decisions.

[168] The Chart below shows the number of search warrant and production order records per month from 2014 to 2018. The five-year average is 807 records per month. The five-year trend reveals a significant increase in the amount of records going through the Justice Centre each year.

Figure 8



[169] Over the past four years, there were a total of 32,266 search warrant and production order records at the Justice Centre. Judicial Justices spend the most time per matter, on average, completing sealing orders, production orders and *Controlled Drugs and Substances Act* orders. In 2017/2018 the Centre heard almost 22,000 bail hearings and processed almost 12,000 applications for search warrants and production orders.

[170] Judicial justices also adjudicate traffic and bylaw cases, sitting at various court locations throughout the province. A large number of such matters are heard at the courthouse located at Robson Square in Vancouver.

[171] In the last five calendar years, the number of new traffic and bylaw matters filed

with the Court are:

	2014	2015	2016	2017	2018
Traffic & Bylaw	95,827	84,299	75,437	82,758	82,514

[172] The work performed by the division in adjudicating traffic, bylaw and other offences prescribed by statute is equally important. Performing this work in a public courtroom setting means that, for the most part, judicial justices constitute the face of justice in this province. This is because citizens – who may otherwise have absolutely no interaction with the justice system – will possibly have to deal with a traffic or bylaw infraction and, in doing so, will form a lasting impression about our justice system and the principles of independence, impartiality and other values under which it operates. This work can be very demanding, comprising court lists in the range of 60 matters per day, all of which are expected to be conducted in a fair and courteous manner.

[173] The number of new cases is significant and represents a considerable workload for the judicial justices. This work occurs, as noted above, in circumstances where the judicial officer is in the courtroom without the assistance of support staff, a court clerk, or a sheriff. It is anticipated that workload will be impacted by initiatives such as increasing use of speed enforcement cameras and the use of violation tickets for cannabis offences.

[174] Another contributing factor to the nature and intensity of the workload of judicial justices is the large number of self-represented litigants involved. Judicial justices hear cases where the litigants are self-represented on a daily basis. The challenge of accommodating self-represented litigants often results in an increase in the time and complexity of cases, due to the defendants' lack of familiarity with the process, the legal issues involved, and the judicial justices' responsibility to inform the self-represented litigants.

[175] Judicial justices also provide significant assistance with work arising out of the Court's civil division, specifically in the conduct of payment hearings held pursuant to the *Small Claims Act* and *Small Claims Rules*. The purpose of these hearings is for the presiding judicial officer to determine the timely payment of judgments awarded to litigants

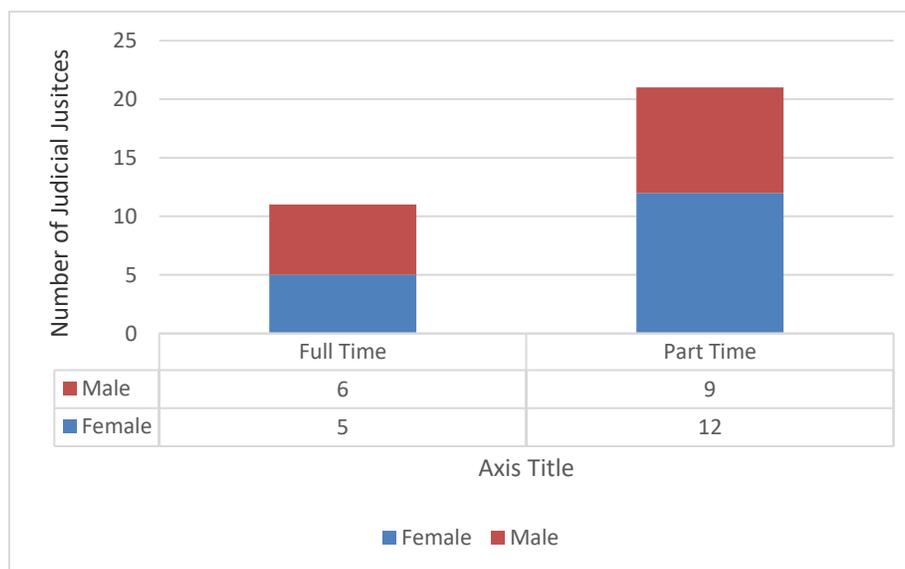
under civil proceedings conducted by a Provincial Court judge. Conducted under circumstances where the judgment debtor may often have very little in the way of available financial resources, but is nonetheless legally obligated to satisfy the judgment, these hearings can be stressful for all concerned.

C. Current Makeup of the Division

[176] The Court has a long history of providing innovation in the area of justice delivery and the judicial justice division has featured prominently in that regard. Service delivery innovations include the appointment of part time judicial justices to complement the division.

[177] Currently, judicial justices are appointed under s. 30.2 of the *Provincial Court Act*, and, as noted earlier under “Introduction”, there are two types of judicial justice appointments: full time and part time.⁵ The current complement of the judicial justice division is illustrated in the following Figure.

Figure 9



⁵ Previously there was a third category of “ad hoc” judicial justices. Following the 2016 Judicial Compensation Commission process as the “ad hoc” judicial justices then received the same per diem rate as “per diem” judicial justices there is now only “part time” and “full time” judicial justices.

The total number of judicial justice sitting days for 2018 was:

Full time	1196.5
Part time	2735
Total	3931.5

[178] While some of the part time judicial justices continue to maintain a private law practice, for many, a significant portion of their income is derived from their work as judicial justices.

[179] Mechanisms to avoid real or perceived conflicts of interest have been established for part time judicial justices who continue to maintain a law practice. Additionally, a protocol has been developed with the Law Society of British Columbia so that the appropriate governing body, whether that is the Law Society, the Court or both, can deal with any issues of discipline.

[180] Since the program for the part time judicial justices was first established, each part time judicial justice signs a Memorandum of Understanding (MOU), which sets out the hours or shifts they would work. It also sets out the Court's obligation to employ them for a minimum number of days to ensure their independence.

[181] In 2008, government amended the *Provincial Court Act* to provide in s. 30.2 for the appointment of judicial justices to work full time or part time for one 10-year term (which was changed to one 12-year term by a 2017 Bill). The amendments guaranteed per diem judicial justices at least 40 working days per year and made per diem judicial justices, appointed after June 1, 2007, part time judicial justices. A number of judicial justices appointed prior to the 2008 amendments were effectively grandfathered and able to work part time, on a per diem basis, until age 75. The amendment also provided for an extended retirement age of 75 for full time judicial justices. Eleven part time judicial justices are on a 12-year fixed term, and the balance of the sitting judicial justices can sit until age 75.

[182] The majority of the part time judicial justices have law degrees and prior

experience practicing law. They provide the Office of the Chief Judge with flexibility and allow for the provision of important adjudicative services to the people of British Columbia in a very cost-effective manner.

[183] When originally appointed, the current full time judicial justices were not required to have a law degree or experience in the practice of law, although some did. However many of them had valuable experience as former employees of the CSB, or employees of the Provincial Court, and therefore have developed considerable knowledge in issues relating to legal process.

[184] It is fair to say that the introduction of flexible and shift-based part time judicial justices, who are practicing lawyers, constituted a significant change to the makeup of the division. It is equally important to recognize the Court Registry-derived knowledge base and the valuable contribution made by those full time and part time judicial justices.

D. Initiatives to Enhance Effectiveness and Efficiency and Looking Forward

[185] There has been much innovation in the judicial justice division, including the establishment of the daytime and after-hours Justice Centre and its related use of technology, the move to Crown-led bail hearings before the Justice Centre and the creation of a Court Service Branch registry at the Justice Centre. Further information about these latter two initiatives is provided below.

[186] Changes to the bail system at the Justice Centre were put in place over the last year as part of a "Crown-led bail" initiative. Previously, police represented the Crown at bail hearings before the Justice Centre. However, since 2018 those hearings have been transitioned to be Crown-led only. This procedural change occurred in the Vancouver and Surrey locations first in early 2018. Other locations transitioned to this model on various dates from May to November, 2018.

[187] Significant work and inter-agency collaboration has been necessary to effect this change to the bail process at the Justice Centre. In short, CSB, BC Prosecution Service, Legal Services Society, Sheriff Services, RCMP and municipal policing agencies have

come together to create a process where all bail matters are now heard in courts that are clerked. The Crown conducts the charge assessment on all matters submitted to them by the police agencies and duty counsel is retained and available to assist all people who are in custody and charged with criminal offences.

[188] There are regional hubs located in each of the five judicial regions for these hearings. Initially five courtrooms were created, running on Saturdays and Sundays to manage the number of bail hearings. This number of courtrooms has since been reduced to four, but further discussions are ongoing about whether four courts are sufficient to meet the weekend demand. Prior to creating these virtual courtrooms on the weekend, duty counsel assistance was unavailable to most people who were in custody charged with criminal offences in locations outside of the Lower Mainland. Under the old system, bail matters were heard between 8:00 a.m. and 11:00 p.m. for all locations outside of the Lower Mainland. As a result of this initiative, there has been an increase in consent releases because Crown and defence counsel now have an opportunity to discuss reasonable release terms for people in custody charged with criminal offences. This collaborative effort improves access to justice, as fewer people remain in custody awaiting a Monday bail hearing and are not transported from remote locations in the province to regional correctional facilities to await a bail hearing.

[189] CSB provided training to the Justice Centre court staff to ensure that the judicial justices would no longer be required to clerk their own hearings. Additionally, using new CSB technological advances, court orders were created in the court rooms rather than clerks being needed to type up court orders from written records of proceedings. In fact, through this process CSB is in the process of taking over the clerical functions at the Justice Centre and creating a registry there. This will result in even greater efficiencies.

[190] Initial indications are that this system is more efficient with fewer overall charges being approved, and an increase in consent releases where bail hearings are being held, those hearing are significantly shorter than they were before this transformation (initial estimates in September 2018 indicated that police-led bail hearings were on average 15 minutes, whereas Crown-led bail hearings were on average five minutes). We are

watching to see if this results in busier court locations having fewer bail hearings and more time to hear other matters. This has also created increased capacity for Judicial Justices to review warrant and production order applications on weekends and statutory holidays at the Justice Centre.

Technology

[191] It is hoped that over the next several years, video technology can be enhanced to enable all bail hearings conducted at the Justice Centre to be via video link to the judicial officer, counsel and the accused. Further, the opportunity to use the “virtual” courtroom resources at the Justice Centre to assist with the workflow in remote communities will be enhanced now that CSB is responsible for that registry.

Retention and attracting new candidates

[192] There is and will continue to be a requirement for future appointments of judicial justices. At present, based on the workload of the division, appointments to the Court are urgently needed. The Court currently sends out requests for Judges to assist with coverage at the Justice Centre because it is under resourced. For each shift worked, a judge is compensated two additional vacation days, so this is not an efficient coverage model. For 2018 at the Justice Centre, Provincial Court judges worked 10% of all Saturday and Sunday shifts (including the weekend evening shifts) and 3 to 4% of all 4:00 p.m. to midnight shifts (including the weekend evening shifts). The need for appointments will continue as long-serving, full time judicial justices reach the maximum contribution to their pension and as part time judicial justices arrive at their term limit or the age of 75. There are nine judicial justices that will be reaching age 75 in the next five years (28% of the judicial justice division), and a total of 19 judicial justices that will reach age 75 in the next 10 years (59% of the judicial justice division). These factors create the need to attract qualified candidates for future appointments.

[193] On June 15, 2018, Judicial Council issued a Notice to the Profession Calling for Judicial Justice Applications, which was disseminated to:

- All Provincial Court judges and judicial justices;

- The Trial Lawyers Association of BC;
- The Advocate;
- The Canadian Bar Association, BC Branch;
- The Law Society of BC; and
- Courthouse Libraries BC.

[194] A link to the Notice is permanently on the Judicial Council webpage. It was also added to the Provincial Court website's News Box and RSS feed when it was uploaded last June: <http://www.provincialcourt.bc.ca/RSS-15-06-2018>, and it was tweeted out. Since Judicial Council issued the Notice last June, there have only been eight applications and two appointments. One appointment was of a retired Provincial Court judge who knew of the need for judicial justices through his work as a judge, the other of a judicial justice from another jurisdiction whose application was not due to this advertising. In total since 2010, aside from these two appointments, only three other judicial justices have been appointed. While there is a very real, current need to attract qualified candidates, the Court's attempts to do so, as noted above, have had limited success.

E. JJ Association Submission

[195] The compensation of all judicial justices must afford reasonable recognition of the important and valuable work performed by the judicial justices.

[196] The remuneration of judicial justices must, it is submitted, be increased to a level that will encourage existing judicial justices to continue in their public service and urgently attract outside applicants with significant professional and adjudicative experience. I have read the 2019 Submission to the Judicial Compensation Commission of the Judicial Justices Association of British Columbia (JJABC) and support their submission regarding remuneration and professional development allowance as being consistent with this need to attract and retain judicial justices.

[197] The court is very concerned with the age demographic of the existing complement in terms of retirement. The current efforts that we have taken to recruit new candidates has had very limited success. In the near future, a number of our judicial justices will be at retirement age, as noted at para. 192 of this submission. While efforts are underway to retain existing judicial justices, that alone is not enough to address the judicial justice shortages we are experiencing today. We need to both retain existing judicial justices and recruit new judicial justices to meet current operational needs.

F. Recommendations

i. Shift Differentials

[198] I have read the 2019 Submission to the Judicial Compensation Commission from the JJABC regarding shift premiums. I support their submission in principle as being consistent with what I believe is necessary to attract and retain qualified applicants, encourage availability, and reasonably compensate those who commit to serving the needs of the citizens of British Columbia outside of regular business hours. Although I do not specifically state an amount, the number must be high enough to attract and retain qualified applicants and ensure the positions are filled by judicial justices rather than judges, as filling the positions with judges results in high leave liability which creates a burden for the court.

[199] The following table shows the average number of bail hearings at the Justice Centre each year over three years (2015-2017) by day of the week, and the highest volume of bail hearings are on Saturday and Sunday:

Day of the week	#
Monday	5,258
Tuesday	3,471
Wednesday	3,957
Thursday	4,427
Friday	6,570
Saturday	19,097
Sunday	16,491

[200] The Justice Centre is regularly under-resourced by judicial justices, and Provincial Court judges are called upon to fill those shortfalls. Judges receive two vacation days in lieu of their extra hours worked.

[201] As illustrated in the tables included in Documents 10, 11 and 12 in the JJABC's Book of Documents, for 2018 at the Justice Centre, Provincial Court judges worked 10% of all Saturday and Sunday shifts (including the weekend shifts) and 3 to 4% of all 4:00 p.m. to midnight shifts (including the weekend evening shifts).

[202] The [Report and Recommendations](#)⁶ of the Alberta Justices of the Peace 2013 Compensation Commission (presented in 2017) summarizes the history of Justice of the Peace compensation in Alberta, and shift differentials have been recommended and implemented since 2006.

[203] Amendments to the *Judicial Compensation Act* and the MOU would be required to allow for shift premiums.

ii. Remuneration for Administrative Judicial Justices

[204] There are two Administrative Judicial Justices that oversee the judicial justice division - one at the Justice Centre and the other at Robson Square Traffic Division.

[205] The Administrative Judicial Justices sit as judicial justices and receive non sitting time to attend to administrative matters, but no additional remuneration. Administrative duties include:

- Membership on the Judicial Justice Administration Committee, chaired by the Court's Executive Director of Organizational Services. This Committee is tasked with identifying and promoting the more efficient management of issues and practices impacting judicial justices.

⁶ <https://open.alberta.ca/dataset/739eef69-b728-4c48-8241-c2c5c2b0fd0f/resource/3d2cfccf-bce4-48c1-bb79-c6704010c873/download/jpcc-2013-amended-report.pdf>

- Liaising with counsel, police, CSB and other users regarding issues that could include: operational issues; policies and procedures; facilities issues; support staff; security and disaster planning; and, emergency issues. The Traffic Court Administrative Judicial Justice also liaises with the Violation Ticket Centre.
- Assisting to deal with complaints to the limited extent of providing information where there is miscommunication or lack of awareness of procedures.
- Working with the Justice of the Peace Administrator to draft the Rota and revise the Rota as necessary (i.e. if changes are required due to illness).
- Assisting in drafting and delivering training to new judicial justices, and liaising with the Education Conference Coordinator about ongoing professional development for judicial justices.
- Ensuring information such as revised practices, etc., are distributed to judicial justices.
- Collecting or reviewing statistical data if required.
- Travelling as necessary.

[206] I respectfully request that the Administrative Judicial Justice's remuneration be set at the judicial justice's remuneration plus 6%. The Government and the Judicial Justices Association have advised of their support for this recommendation.

iii. Long Term Disability Plan (Age 65-75)

[207] Adopting the submissions set out above, it is respectfully submitted that the long term disability plan for judges and full time judicial justices be fully funded by the government.

iv. Reasonable Per Diem Travel Allowance

[208] Adopting the submissions set out above, it is respectfully submitted that fixing the

per diem travel reimbursement for the judges and judicial justices at the same rate as may exist from time to time as MLAs would be reasonable.

IV. Conclusion

All of which is respectfully submitted to the Commission.



Melissa Gillespie

Chief Judge, Provincial Court of British Columbia

June 5, 2019

Appendix 1

TREASURY BOARD DIRECTIVE

TO: Ministry of Attorney General

DIRECTIVE: 01/07

SUBJECT: Authorization of expenditures for the Judiciary.

AUTHORITY: This directive is issued pursuant to Sections 32.1(1)(d) of the *Financial Administration Act*.

APPLICATION: This directive applies to the following appropriations (referred to in this directive as "Judiciary Appropriations"):

- (a) the appropriation for operating expenses in Vote 16 (Ministry of Attorney General) entitled "Judiciary" in the 2006/07 Main Estimates presented to the Legislative Assembly on February 21, 2006;
- (b) the portion of the appropriation for capital expenditures of the Ministry of Attorney General in Schedule D of those Main Estimates which is allocated to the Judiciary; and
- (c) any appropriation (or portion of an appropriation) in a fiscal year after 2006/07 for the same or substantially similar purposes as those described in paragraphs (a) and (b).

DIRECTIVE: Treasury Board hereby authorizes:

- each of the Chief Justice of British Columbia, the Chief Justice of the Supreme Court and the Associate Chief Justice of the Supreme Court to authorize expenditures from Judiciary Appropriations that relate to the Superior Courts; and
- each of the Chief Judge of the Provincial Court of British Columbia and the Associate Chief Judges of the Provincial Court of British Columbia to authorize expenditures from Judiciary Appropriations that relate to the Provincial Courts

on the condition that those persons may only authorize expenditures in compliance with the applicable provisions of the *Financial Administration Act* and directives and policies made under that Act including the Government of British Columbia Core Policy and Procedures Manual.

EFFECTIVE DATE: May 1, 2006

Original signed by

Carole Taylor
Chair, Treasury Board

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Appendix 2

Chief Judge Submission

**2007
Judicial Justices of the Peace
Compensation Commission**

June 14, 2007

**Submission of the Honourable Hugh C. Stansfield,
Chief Judge of the Provincial Court of British Columbia
to the 2007 Judicial Justice Compensation Commission**

Introduction

[1] The Supreme Court of Canada jurisprudence is clear that it is the public interest which requires an independent commission to recommend appropriate levels of judicial compensation, and the public interest which should underlie not only the process, but the substantive recommendations of a commission:

". . . the underlying public interest in having a commission process, being the depoliticization of the remuneration process and the need to preserve judicial independence."

[para 25 - *Bodner v. Alberta*; [2005] 2 S.C.R. 286, 2005 SCC 44]

[2] The same public interest animates the duty and actions of a Chief Judge of a Court: subject only to the paramount duty to uphold the Canadian Constitution and the Rule of Law, the overarching duty of a Chief Judge of a court is to the public. It is from that perspective that I respectfully tender these submissions to the 2007 Judicial Justices of the Peace Compensation Commission.

[3] Throughout its history the Provincial Court has recognized a need for a class of judicial officer in addition to the judges of the court, judicial officers who would be assigned those categories of cases or matters which were least likely to raise complex issues of law, create the least potential jeopardy for citizens, and which should, in the interest of all of the public, be dealt with in a particularly expedited manner.

[4] The role of what is today the judicial justice of the peace (hereafter referred to as "JJP"), evolved in an ad hoc fashion over the last 35 years. While that ad hoc evolution has answered certain needs of the day, its legacy has been a certain vagueness of role

and jurisdiction, almost being determined by default, with the JJPs handling those cases that could not conveniently be handled by Provincial Court judges.

[5] That lack of clarity as to role and jurisdiction inevitably has resulted in a parallel lack of clarity as to the specialized skills required and developed by capable, experienced JJPs, their potential for contribution to the court, and ultimately their “value” to the court and to the public.

[6] The tendency to devalue the Office of JJP through lack of clear definition of role and function is compounded by the position of the office within the hierarchical structure of the justice system, which traditionally has tended to attach value to offices in accordance with their position within its vertical structure, notwithstanding the lay person’s perception that “a judge is a judge is a judge”.

[7] The fact that the court’s needs of the day from time to time have commended the continuation of the second category of judicial officer suggests there has been *value* in the creation and maintenance of the office, and it must be a different sort of value than the office of judge.

[8] Intuitively one recognizes that the key to defining the JJPs’ distinctive value and potential for the court is to be found in understanding their difference from judges, not their similarities. But exactly what are those differences? What are the specialized skills of JJPs? In what ways can the Provincial Court’s workload be discharged and the public served more effectively by ensuring that certain proceedings occur in the more simplified environment of the JJP’s court, rather than before a judge?

[9] Through the course of this evolution of 35 years the challenge consistently has been to determine how the Provincial Court should fulfil its mandate to deliver justice through a diverse, rationally justified range of services that are fair, accessible, timely and efficient, and proportional to the matters in issue.

[10] Public confidence in the justice system often is enhanced by the appropriate kind of justice process being applied to given circumstances.

Brief History of the Judicial Justice of the Peace

[11] On September 15, 1975 a new *Provincial Court Act* was proclaimed, restructuring the court to be one presided over by professionally trained judges. All but three of the lay judges terminated their service at that time. The new *Act* also amended the position of Justice of the Peace, bringing those persons under the Judicial Council for proposed appointments and discipline, and redefining their jurisdiction to be, within statutory limits, by assignment of the Chief Judge.

[12] Almost from the outset of the new “professional” court, it was recognized that the effective operation of the court and effective service to the public would be facilitated by including a second category of judicial officer to preside in proceedings whose subject matter warranted an especially expedited and summary process.

[13] What later became known as the sitting justice of the peace “program” began through a task force of the day deciding that relatively minor matters (initially parking violations), which were at that time being heard by provincial court judges, might more effectively be heard by justices of the peace in a more summary process. In due course moving-traffic offences were added to the process and there were 3 justices of the peace presiding, all in Vancouver.

[14] In 1978 additional justices of the peace (also appointed as “court referees”) assumed duties in Family Maintenance Enforcement proceedings, and Small Claims.

[15] Through the 1980s the bulk of the work of the sitting justices of the peace was in traffic matters. By the mid 1990s there were 11 sitting justices of the peace; in 1996 with the advent of photo radar, the complement increased to 18; and in 2000 to 21 full time sitting justices of the peace, and 5 part time.

[16] The jurisdiction of today's JJP ostensibly extends to all provincial and federal statutes and municipal bylaws in which jurisdiction is given to a “justice” but, like judges, the actual caseload for which they are responsible is determined by the authority of the Chief Judge to assign the work of the court. Their current assignments are essentially

limited to after-hours bail, warrants, and traffic/bylaw proceedings, but are described more thoroughly and effectively in the Judicial Justices Submission filed May 31, 2007.

The “new” JJP: part time, per diem lawyer/justices

[17] In late 2005 and early 2006 Associate Chief Judge Threlfall undertook a review of all of the work of the Court which was then assigned to JJPs with a view to determining, among other things, how effectively that jurisdiction was being discharged, whether other aspects of the work of the Court could appropriately be assigned to JJPs and, in either case, whether the Judicial Council should review the qualifications for the office. His review included a study through Canada of the different approaches being taken by different Provincial Courts to the consistently perceived need for a class of judicial officer in addition to provincial court judges, typically some variation of justices of the peace.

[18] Concurrently with that review, the court was undertaking a review of its criminal process in the whole of the court.

[19] From these 2 reviews emerged two conclusions which, together, commended a new approach being taken to JJPs in the Provincial Court of British Columbia:

- Judge Threlfall found in the provinces of Alberta and Nova Scotia that the public interest and the court's own administrative objectives were being served very effectively through certain functions - particularly bail and search warrants - being handled by part time *per diem* lawyers who typically maintained a part time practice as lawyer while also serving as a judicial officer;
- Associate Chief Judge Neal recommended that the criminal jurisdiction of the court could be discharged most effectively, and particularly that greater time and greater certainty could be given to criminal trials, if the always unpredictable and unscheduled matters of judicial interim release (bail) were removed from criminal trial courtrooms, and dealt with through a province-wide centralized and video-supported process for bail hearings.

[20] In addition to concluding that if bail were removed from courtrooms and assigned to a centralized system that the presiding judicial officers who were replacing provincial court judges in most substantive bail hearings should at a minimum be experienced lawyers, there was also an appreciation that the law relating to search warrants was becoming increasingly complex, and that the issue of the validity of search warrants was increasingly becoming central to the substantive disposition of serious criminal trials, particularly trials of serious drug charges.

[21] Having regard to all of those considerations, and upon the recommendation of the Chief Judge and Associate Chief Judge who are members of Judicial Council, on October 27, 2006 the Judicial Council passed a resolution changing the minimum standards required for recommendation for appointment as a judicial justice of the peace to include:

- (a) a degree in law, and
- (b) a minimum 5 years active practice as a member of the Law Society of British Columbia.

[22] This resolution formed the foundation of the planning which is now well underway in a collaborative initiative of the Court and the Ministry of Attorney General, to establish a new province-wide centralized bail system as contemplated above.

[23] The final important fact one must know in order to understand the current circumstances in the Court relating to JJPs is that in March 2007, 13 of the pre-existing complement of JJPs elected to take advantage of an opportunity for voluntary early retirement, all of whom terminated their delivery of judicial services on March 31, 2007.

Appointing new part time, per diem Judicial Justices of the Peace

[24] The unforeseen “uptake” on the early retirement opportunity created a significant shortage of JJP judicial resources on and after April 1, 2007, in terms of the court's capacity to address all of its needs at the centralized justice centre in terms of after hours bail and warrant applications, and in traffic and bylaw court.

[25] The court had expected to move expeditiously to the appointment of new part - time *per diem* JJPs who met the new qualifications for appointment. In the absence of a statutory amendment to the *Provincial Court Act* to contemplate expressly that appointments of these new JJPs pursuant to section 30.1 of the *Provincial Court Act* would be on a part time, *per diem* basis, extensive discussions were necessary between the Chief Judge and the court's legal officers, and the Deputy Attorney General and the Ministry's constitutional and other lawyers, regarding the details of the process through which Orders in Council will be secured for the new appointments. At the time of writing this submission (just prior to June 14, 2007) we have concluded a Protocol Agreement between the Court and the Law Society of British Columbia regarding the relative responsibility of each institution for oversight of this new category of legal professional, and just received word from the Deputy Attorney General that he agrees we have concluded all of the arrangements which needed to be made with Government. Arrangements will now be made to invite Cabinet to consider the applications and, if acceptable to them, to make the required Orders in Council.

[26] In the meantime, Judicial Council has approved 7 lawyer candidates as being appropriate candidates to recommend to government for appointment as part time, *per diem* JJPs. Accordingly, we are optimistic that within the next month or so, but subject of course to Cabinet and the Lieutenant Governor-in-Council and to the uncertainties of summer-time scheduling of the work of Cabinet, that these appointments can proceed.

Proposed approach to assignment of judicial duties to part time, per diem JJPs

[27] We perceive it to be a reasonable assumption that those JJPs who chose not to pursue early retirement foresee a continuing, active career within the court. They are a constituency of experienced judicial officers to whom we expect to continue to assign primary responsibility for presiding in traffic and bylaw court proceedings, although they remain competent to preside in bail hearings and to determine search warrant applications.

[28] Subject to securing the requisite Orders in Council, we plan to assign the "new" part time, *per diem* JJPs to primary responsibility at the Justice Centre for bail and

search warrant functions. We also plan to assign part time, *per diem* JJPs appointed in rural communities throughout the province to preside in traffic court which, in those rural locations, is only required to be scheduled infrequently.

Compensation

[29] It is the court's respectful submission that the Commission not only can, but reasonably should, take a separate approach to the 2 categories of JJP, focusing less on the different qualifications of the 2 constituencies (particularly given that several of the pre-existing JJPs have a law degree), and focusing more on the difference between full time employment as a JJP with all benefits and pension on the one hand, and on the other hand, lawyers who maintain a law practice while serving the public as a judicial officer on a part time *per diem* basis, without benefits or pension. While the latter category enjoys the same security of tenure as the former, in the sense that both are appointed during good behaviour and can only be removed from office by resignation, retirement or through *Provincial Court Act* section 11 disciplinary proceedings, the *per diem* "employment" is of a materially different nature.

a) full time existing JJPs

[30] While through its actions of the last year the Court clearly is asserting that certain functions of JJPs should at a minimum be performed by experienced lawyers and not a lay bench, that conclusion should not be taken to diminish the "value" which attaches to the existing constituency of experienced JJPs in terms of experience and skills, nor to the significance to the public of the traffic and bylaw matters to which they will be primarily assigned.

[31] In 2006 the court disposed of in excess of 90,000 traffic and bylaw matters. Close to 90,000 citizens will have had their greatest contact with the administration of justice through that traffic or bylaw proceeding.

[32] While the JJPs and the Court are committed to continuing education and training to support the JJPs' continuing competence to conduct hearings in a sophisticated manner consistent with all principles of justice, there is nonetheless a significant aspect

of their work which is in the nature of public relations. The JJPs typically deal with unrepresented litigants, a significant number of whom dispute the allegation because they are angry about something, whether that be the conduct of the officer, the state of the law, or whatever. The great challenge for JJPs is to conduct these hearings in a manner which not only is consistent with the law, but which also addresses the litigants' need for fairness and respect, and whatever it is the litigant imagines in her/his case will amount to "justice".

[33] It is not an easy task for the presiding judicial officer, but it is one which if performed well achieves a great deal in supporting public confidence in the administration of justice which is, after all, the very foundation of the administration of justice and the rule of law.

[34] Additionally, the existing trained and qualified JJPs are adept at "moving" very large numbers of cases through their courts. The recent development of a centralized, province-wide traffic court scheduling service, and new standards established by Associate Chief Judge Threlfall for lengthier lists, together will ensure that JJPs are carrying a consistent and substantial burden when presiding in traffic and bylaw hearings.

[35] Thus I respectfully submit that the Commission should assess the "value" of JJPs to the public somewhat differently than they might in respect of Provincial Court judges; the value lies in their differences. While JJPs become knowledgeable in the areas of law with which they deal, their primary function is as triers of fact, specialists in highly expedited processes, and specialists in dealing fairly with unrepresented, often difficult lay litigants.

[36] Because of those considerations, it is my respectful submission as Chief Judge, that the Submissions of the Judicial Justices of the Peace filed May 31, 2007 should be given favourable consideration by the Commission. I support those submissions.

b) "New" part time, per diem JJPs

[37] The Commission has very reasonably observed that there is a deficit in this year's Commission process in the absence of Submissions from the as yet not appointed constituency of part time, *per diem* JJPs. In a perfect world, the Commission would have the benefit of Submissions directly from those judicial officers.

[38] It is respectfully submitted, however, that the Commission should nonetheless proceed, in the public interest, to do its best to recommend a reasonable and appropriate level of compensation for the part time, *per diem* JJPs, recognizing that:

- a) the persons who accept these appointments will do so knowing that:
 - i. pending the Report and Recommendations of the 2007 Judicial Justice Compensation Commission they will be paid \$550 per diem by agreement between the Court and the Ministry of Attorney General, and through execution of a Memorandum of Understanding between the Court and the JJP that this amount cannot be reduced unless through the statutory judicial compensation commission process; and
 - ii. that there will be an opportunity to make specific submissions at the next round of judicial compensation hearings in 2010; and
- b) there exist various comparators from which the Commission reasonably can assess reasonable compensation for a lawyer who acts part time on a *per diem* basis in an adjudicative role.

[39] In undertaking our own internal assessment of what might constitute appropriate remuneration for a part time, *per diem* JJPs, the court was mindful that the *per diem* of an existing full time JJP after taking into account all benefits, would be \$464.00 dollars per day in accordance with the following analysis:

- JJPs' annual salary as of April 1, 2007: \$78,654
- Benefit costs, as a percentage of salary: 23.83%

- Total annual benefit cost: \$18,743
- Total annual compensation cost: \$97,397
- Standard length of JJP sitting day: 7 hours
- Number of actual sitting days each year: 210
(after deducting 30 vacation days, 11 stat holidays and 10 unassigned days)
- **Total compensation cost per sitting day: \$464**

[40] By another analysis, however, we determined that a per diem rate of \$550 reasonably could be justified:

Salaried JJP's (as at March 31, 2007 = 27.7 fte)

Salaries	\$2,136,002
Benefits	\$ 546,817
Travel	<u>\$ 115,000</u>
Total	\$2,797,819

Ad Hoc JJP's

Fees	\$163,170
Travel	<u>\$ 83,250</u>
Total	\$246,420

Grand Total **\$3,044,239**

JJP working days per year

	260	(52 weeks x 5 days per week)
Minus	30	Annual Leave
Minus	11	Stat holidays
Minus	<u>12</u>	Judgment Days
Equals	207	

Minus	4-6	conference days
Minus	XX	sick leave

Minus XX travel days
 Minus XX lieu days (for working stats)

Equals 200 (approximate working days)

Converted to FTE's @ \$550/day and 200 days/year = 27.7 (current level)

Converted to FTE's @ \$600/day and 200 days/year = 25.4

[41] The court also viewed as relevant the *per diem* rates currently being paid to Administrative Tribunal officers as follows:

Remuneration Framework for Part time Appointees:

TRIBUNAL GROUP	CHAIR	VICE CHAIR	MEMBER
Group 1	\$625	\$525	\$400
Group 2	Not applicable	\$625	\$525

Reference: Treasury Board Directive – April 1, 2007 – Subject: Remuneration Guidelines for Appointees to Administrative Tribunals

[42] The court is also of the view that the *per diem* amount paid to part time, *per diem* JJPs who are active members of the legal community, should be at least equal to or greater than the *per diem* paid to other lawyers being paid by Government. So, for example, we are advised by the Criminal Justice Branch that counsel acting for the Crown on an ad hoc per diem basis is paid between \$500 and \$750 *per diem*. The Ministry of Attorney General civil lawyer fee tariff effective January 2007 provides that lawyers with more than 7 years experience are to be paid between \$140 and \$200 per hour.

[43] While the issue of recruitment is not relevant to the full time JJs in the context of recent developments in the Court (although retention is a relevant concern with those JJPs), recruitment is a very real issue with the new part time *per diem* JJPs. One reasonably may assume that a qualified lawyer who may be interested in this judicial office may also consider other adjudicative offices, particularly administrative tribunals which also permit part time duties. Those lawyers also will need to assess the

attractiveness of the part time JJP position as against other *per diem* opportunities in the practice of law.

[44] In the result, the court respectfully submits that the lowest reasonable rate to be paid to part time, *per diem* JJPs would be \$550 as presently fixed by agreement with the Ministry of Attorney General, but reasonably could be fixed by the Commission at \$625.00 *per diem*, consistent with a Group 1 Tribunal Chair.

[45] By our analysis, a *per diem* JJP being paid a \$550.00 *per diem* who sat the same 220 days per year as a full time JJP would earn \$115,500 (gross). But as Chief Judge I do not expect to assign full time work to *per diem* JJPs, and as stated earlier, to the extent an annualized analysis of the proposed *per diem* exceeds what may become the new recommended salary compensation of a full time JJP, the Court believes that the benefit to the Court of scheduling flexibility inherent with an ad hoc program, and the realities for the part time JJP of not receiving benefits, not receiving Professional Development Allowance, and continuing to maintain a law practice, all commend the approach which is presented in this submission

Long term Disability

[46] As Chief Judge I support unconditionally the Judicial Justices' Submission filed May 31, 2007 regarding this issue.

[47] I cannot perceive any principled basis upon which the full time JJPs should be treated differently than the judges in respect of this very significant benefit.

Vacation

[48] The Judicial Justices' Submission filed May 31, 2007 proposes that the existing JJPs' annual vacation be increased from 30 to 35 days.

[49] Having regard to the stresses associated with full time sitting in a very high volume court and dealing consistently with unrepresented litigants, or handling challenging issues of bail and search warrants in a context which requires challenging "shifts", I acknowledge that reasonable allowance for vacation will provide opportunities

for relief and rejuvenation, and may in fact create some benefit for the court in reducing the incidents of illness-related absences.

[50] If 15 full time JJPs each receive 5 additional days of vacation, the operational impact on the court of 75 days lost service, is equivalent to approximately 37.5% of one judicial officer. That operational impact will either need to be addressed through increased efficiencies, or diversion of part time, per diem JJP services which might otherwise be assigned to additional cases, or an increase in judicial complement.

Professional Development Allowance

[51] The Judicial Justices' Submission of May 31, 2007 proposes that the existing JJPs' professional development allowance of \$500 per annum be increased to \$1,000 per annum.

[52] In my view this is a reasonable proposal, having regard to the educational issues canvassed in the submission, and recognizing that individual JJPs can encounter other expenses associated with the fit and proper execution of their office which are not covered by routine administrative policies of the court, nor contemplated and included in the court's budget.

[53] My only concern would be that any provision for expenditures within a professional development allowance provide that such expenditures are to be approved at the discretion of the Chief Judge, in order that there is a mechanism through which the Court and the public can be assured that all expenses are such as to be acceptable in the eyes of the Auditor General or the public.

Clarifying the Status of part time, per diem JJPs

[54] Earlier in this submission I alluded to the challenges we have faced in collaboration with the Deputy Attorney General in preparing for appointment and designation of judicial justices of the peace on a part time, per diem basis. The difficulty arises from an ambiguity in sec. 30.1 of the *Provincial Court Act* which provides that:

“The Lieutenant Governor-in-Council may, on the recommendation of the

Council, designate a justice appointed under sec. 30 as a judicial justice.”

The section is silent as to whether such appointments can be made on a part time, per diem basis, or on a full time basis, or both.

[55] It would be of assistance to the Court and to Government, and I anticipate it may be a matter of joint submission for that reason, if the Judicial Justice Compensation Commission would, in its final Report and Recommendations, recommend that sec. 30.1 of the *Provincial Court Act* be recognized as including appointments on a full time salaried, or part time, per diem basis.

All of which is respectfully submitted.

Hugh C. Stansfield

Chief Judge, Provincial Court of British Columbia

June 14, 2007