



THE PROVINCIAL COURT  
OF BRITISH COLUMBIA

**SUBMISSION OF**

**THE JUDICIAL COUNCIL OF  
BRITISH COLUMBIA**

**to the**

**2019 JUDICIAL COMPENSATION  
COMMISSION**

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## I. Introduction

[1] The Judicial Council of the Provincial Court of British Columbia (the “Judicial Council” or the “Council”) is an independent statutory body constituted under s. 21 of the *Provincial Court Act*, R.S.B.C. 1996, c. 379. The membership of the Judicial Council is prescribed by statute to include:

- (a) the Chief Judge as presiding member;
- (b) an Associate Chief Judge as alternate presiding member;
- (c) the President of the Law Society of British Columbia or her/his designate;
- (d) the President of the British Columbia Branch of the Canadian Bar Association or her/his designate;
- (e) the President of the Provincial Court Judges Association of British Columbia or a judge nominated by the President; and
- (f) “four other persons”:
  - i. by long-standing convention, one is a judicial justice; and
  - ii. three other persons (during many years of the Council’s tenure, all three have been laypersons).

[2] Judicial Council receives and considers applications from lawyers seeking appointment to the Provincial Court as judges and judicial justices. This is an extremely important role of the Judicial Council as it interposes between the candidates and the Executive Branch of Government, an independent body whose clear responsibility is to assess candidates solely on the basis of merit, thereby ensuring that appointments cannot be based on political favour or other inappropriate considerations, nor that there can even be a reasonable perception of that occurring.

[3] In addition to its important role in the appointment process, the stated statutory object of the Council is “to improve the quality of judicial service,” and in particular to:

- (a) prepare and revise, in consultation with the judges, a Code of Ethics for the judiciary - see the [\*Ethical Principles for Judges\*](#), which applies to both judges and judicial justices;
- (b) consider proposals for improving judicial services of the Court;

- (c) continue the education of judges and organize conferences of judges; and
- (d) conduct judicial inquiries respecting judges or justices following a preliminary examination and investigation of complaints conducted by the Chief Judge.

[4] Having regard to the statutory objects of the Council, one can see the clear interest of the Judicial Council in ensuring that the very best available persons will apply as candidates for appointment to judicial office in the Provincial Court - persons who will be acutely attuned to ethical issues, committed to continuing education, and generally committed to achieving judicial excellence in the quality of judicial services provided by the Provincial Court.

[5] Thus, the Judicial Council has a vested interest in the subject of judicial compensation in terms of the Court's capacity to recruit the best lawyers in the province, and to retain the judicial officers who have been previously appointed.

[6] The *Judicial Compensation Act* prescribes the following matters for the consideration of the Judicial Compensation Commission in preparing its report:

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

[7] The need to provide reasonable compensation to judges and judicial justices and the need to maintain a strong Court by attracting qualified applicants are particularly

critical to the Judicial Council's statutory object of improving the quality of judicial service and its function of recommending qualified judicial candidates for appointment.

## **II. Provincial Court Judges**

### **A. Application and Approval Process for Provincial Court Judges**

[8] The Court's appointment process is initiated by the candidate through an application available on the Court's [website](#), found at:

<http://www.provincialcourt.bc.ca/about-the-court/judicial-officers/judges-court#cp01>.

Care is taken to ensure applicants understand the process and consent to the extensive scrutiny that will be initiated with the making of an application.

[9] The Judicial Council relies upon applicants to apply for the position, although the Chief Judge often makes presentations to groups encouraging applications. The Judicial Council also circulates its Annual Reports and requests that they be posted on the Court's [website](#), with the hope of reaching a broad cross-section of the legal profession. The Council is aware, anecdotally from comments made frequently at interviews of candidates, that many candidates have been encouraged to apply by a judge or judges by whom they are known.

[10] Upon receipt of an application, a Bar report is requested regarding every new applicant from the Judicial Advisory Committee of the BC Branch of the Canadian Bar Association. Generally, updated reports are also sought in respect of re-applicants. In preparing the Bar report, members of the CBA committee make thorough and discreet inquiries of members of the legal community regarding the applicant's reputation and suitability.

[11] The Judicial Council also requests, from the Law Society, a report on the applicant's standing and comments from judges who are familiar with the applicant or who preside in the area in which the applicant practices.

[12] Once the inquiries are complete and the report of the Judicial Advisory Committee is received, the Judicial Council reviews all the information and determines whether to

interview the applicant. If at least three members vote in favour, the applicant is approved for an interview.

[13] Candidates who are approved for an interview are generally interviewed within eight to 10 months following the date of their application.

[14] Interviews are conducted at the Office of the Chief Judge. At least five members of Judicial Council must be present, although all nine members usually participate. Applicants are asked a series of questions designed to assess their suitability for judicial appointment, and to address any issues raised as a result of the inquiries made concerning the application. Following the interview, Council decides whether to approve the candidate. If at least two members vote against an applicant, the application is not approved. Reasons are not provided, nor are applicants notified of the outcome of their applications.

[15] Approved applicants are added to a roster where they remain for a period of up to three years from the date of their interview. If a vacancy occurs, the Attorney General may select candidates from the roster and submit their names to the Lieutenant Governor of British Columbia for appointment. Applicants not interviewed may reapply three years from the date of their previous application; applicants interviewed but not appointed may also reapply, and may do so 2.5 years from the date of their previous interview. Many applicants reapply at least once before receiving an appointment.

[16] In 2009, Judicial Council adopted new criteria and skills for judicial excellence. What follows are the criteria; the skills are appended as **Appendix 1** to these Submissions.

1. At least 10 years in the practice of law. Those with less legal practice experience are considered if they have a range of related experience.
2. Superb legal reputation and a professional record review from the Law Society of British Columbia.

[17] The Judicial Council has been consistently revising its approval process since

2000 in a very intentional “raising of the bar,” in recognition of the increasingly complex and varied nature of the Court’s work, the accelerating workloads, and expanding case management and other administrative demands placed upon judges of the Court.

[18] Given the Council’s statutorily-prescribed object of improving the quality of judicial service, the approval process seeks to ensure that exceptional applicants be recommended for appointment.

## **B. Demographics and Statistics**

[19] The following chart shows the history of applications, interviews and appointments over a 10-year period, providing an indication of trends in application rates and a comparison of candidate approval rates before and after the change in the approval process. These figures reflect the Council’s activities in the year specified, which include reviews and interviews of applicants from the prior year, and do not necessarily reflect the results of applications made in a particular year.

### **Applicants for Appointment as Provincial Court Judge (2009 - 2018)**

Year	Applications Received			Applications Reviewed			Applicants Approved for Interview			Applicants Interviewed			Applicants Appointed		
	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F
2009	61	41	20	67	39	28	24	14	10	21	13	8	4	2	2
2010	49	33	16	33	24	9	15	13	2	28	19	9	8	6	2
2011	44	26	18	52	35	17	25	16	9	21	17	4	6	5	1
2012	35	19	16	47	24	23	24	10	14	21	9	12	11	8	3
2013	46	33	13	48	33	15	33	20	13	24	11	13	10	5	5
2014	50	24	26	47	28	19	34	18	16	33	23	10	6	2	4
2015	27	13	14	35	13	22	23	9	14	27	9	18	13	6	7
2016	43	23	20	30	19	11	24	14	10	24	15	9	9	6	3
2017	63	41	22	57	31	26	36	20	16	27	14	13	14	4	10
2018	27	14	13	46	25	21	29	12	17	34	19	15	15	7	8

[20] The average number of applications received per year for the last 10 years was 44.5. The three years with the highest application rates were 2017 with 63 applications; 2009, with 61 applications; and 2014, with 50 applications. It is important to note that in 2007 a significant salary increase was recommended for 2009, and 2009 was when that salary increase was implemented. 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.

[21] In the most recent years, the average number of applicants received has markedly decreased from 43 and 63 (in 2016 and 2017, respectively) to 27 in 2018. This should be compared to the total number of practicing BC lawyers which has steadily increased in the past five years from 11,153 in 2014 to 12,280 in 2018.<sup>1</sup>

[22] Throughout the years 2016, 2017 and 2018, Judicial Council had an average pool of 44.3 recommended applicants. At the end of December 2018, this pool consisted of 27 candidates, of whom 14 were men and 13 were women. Seventeen of the approved candidates are located in the Lower Mainland and 10 are located in other parts of the province.

[23] While some of the applicants from populous areas were willing to relocate, many Court locations were not represented by resident candidates or candidates willing to relocate to that location. Candidates who were willing to relocate were more often male than female.

[24] It is the policy of the Council to assess all applicants equally in relation to the appointment criteria, and not to allow the decision to interview or approve an applicant to be affected by a candidate's willingness to relocate to a hard-to-fill area. However, the application process may be expedited for a candidate in a hard-to-fill area with an upcoming vacancy or urgent need.

[25] The average age of applicants to the Court in the last 10 years (2009 to 2018) was 51.8, with an average of 22.1 years in practice.

[26] The average age of applicants has increased over time, as shown in the following chart of applicants by age and gender between 2009 and 2018. The year 2012 saw the highest average age of male applicants over the previous 10 years, at 56, as opposed to an average age of 53 from in 2016 to 2018. For female applicants, the average age has

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<sup>1</sup> The number of practicing BC lawyers was taken from the 2014 and 2018 Law Society of British Columbia's Annual [Report on Performance](#).



increased steadily from 47 years in 2009 to 53 in 2017 and 51 in 2011, 2012, 2013, 2015, 2016 and 2018.

### Applicants to Judicial Council by Age and Gender (2009 - 2018)

Year	Total	Male	%	Average Age	Female	%	Average Age
2009	61	41	67%	52	20	33%	47
2010	49	33	67%	53	16	33%	50
2011	44	26	59%	52	18	41%	51
2012	35	19	54%	56	16	46%	51
2013	46	33	72%	53	13	28%	51
2014	50	24	48%	52	26	52%	48
2015	27	13	48%	55	14	52%	51
2016	43	23	53%	53	20	47%	51
2017	63	41	65%	53	22	35%	53
2018	27	14	52%	53	13	48%	51

[27] According to the 2018 Law Society [Annual Report](#), the profession is made up of 40.7% women.

[28] In 2018, the number of male and female applicants was roughly the same.

[29] The number of female applicants in 2018 (13) decreased from 2017 and fell below the 10-year average of 17.8. Although the number of female applicants decreased, the number of females approved for interviews, interviewed, recommended, and appointed all remained above the 10-year averages.

[30] The number of male applicants in 2018 (14) decreased significantly from the previous year and the 10-year average of 26.7. The number of males reviewed and approved for interviews also decreased. The number interviewed, recommended for appointment, and appointed all increased slightly and were above the 10-year averages.

[31] In 2017, 4 males and 10 females were appointed to the bench. In 2018, eight females and seven males were appointed. The below Figure shows applicants and outcomes by gender in 2018.

### Applicants by Gender and Area of Practice

	2016			2017			2018		
	Total	M	F	Total	M	F	Total	M	F
Private Practice	26	13	13	31	20	11	14	6	8
Crown Counsel	12	6	6	20	11	9	10	7	3
Other Areas of Practice	4	3	1	9	7	2	3	1	2

[32] The Judicial Council recognizes the need for the judiciary to reflect the diverse makeup of British Columbia. Not only does diversity on the bench eliminate an implicit barrier to under-represented groups applying for a recommendation to a judicial appointment, but it strengthens the bench itself and enhances public confidence in the administration of justice. The Council believes that appropriate communication and working relationships among diverse cultures on the bench encourages mutual respect, sensitivity to and understanding of the individuals who will appear before judicial officers.

[33] In 2012, the Chief Judge, as Presiding Member of the Judicial Council, requested the assistance of the Canadian Bar Association, BC Branch, and the Law Society of British Columbia in encouraging a broad range of applicants for judicial office on the Provincial Court of British Columbia. The Judicial Council's goal was to strengthen the court by ensuring that there was a diverse pool of highly qualified applicants, reflective of the general population in the province, from which the LGIC could appoint judges to the Court.

[34] The Council's first step in encouraging a diverse range of applicants was to be as transparent and open as possible about the process while preserving needed confidentiality. Its second step was to invite the CBA and the Law Society to promote those from among their ranks to apply. In support, the Chief Judge has addressed information sessions for the BC bar on building diversity on the bench, and other judges have also made presentations on the importance of diversity. The Council's third step, which is ongoing, is to publicly report the results in terms of the gender and background of the applicants.

[35] In June 2013, the Judicial Council of British Columbia amended its judicial application forms to include, on a voluntary basis, the applicant's ethnic or cultural

information. In 2014, the collection of this information commenced, and 15 applicants answered the three questions on the application. Two out of the 15 identified themselves as Aboriginal, 12 as part of an ethnic or minority group, and four as belonging to another “diverse group”.

[36] In 2018, 22 of the 27 new applicants included ethnic and cultural information. Of these, 11 indicated that they were members of an ethnic or minority group, eight indicated that they were members of a diverse group, and three indicated Aboriginal heritage in 2018.

### **Applicants by Diversity**

	2014			2015			2016			2017			2018		
	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F
Aboriginal	2	0	2	0	0	0	4	3	1	3	3	0	3	1	2
Ethnic/Visible Minority	11	3	8	5	2	3	9	4	5	10	5	5	11	5	6
Diverse Group	5	2	3	6	3	3	4	1	3	7	4	3	8	4	4

[37] Minority and diverse groups self-identified by applicants included: Indo-Canadian, West Indian, Chinese, Iranian, Tanzanian, Czech, mixed-race, atheist, Muslim, Jewish, Francophone, lesbian and gay. The Judicial Council notes these identities in its overall assessment of applicants, but does not assign any particular weight to any of them.

### ***Comparison of New and Renewed Applications***

[38] As stated, applicants who are not appointed may reapply after three years (or 2.5 years, in the case of those who were interviewed), and often do. The breakdown of applications, based upon the number of new and renewed applicants, is shown in the following chart. The figures shown in each column reflect the outcome of applications received in the year noted.

### New and Renewed Applications by Year and Sector

	2013	2014	2015	2016	2017	2018
<b>New Applications:</b>	22	34	19	22	36	18
Private practice	17	20	11	12	21	10
Approved after an interview	4	9	4	8	6	7
Public sector and other areas	5	14	8	10	15	8
Approved after an interview	5	1	7	1	3	5
<b>Renewed Applications:</b>	24	16	7	20	24	9
Private practice	17	8	1	14	10	4
Approved after an interview	1	6	3	1	2	5
Public sector and other areas	7	8	6	6	14	5
Approved after an interview	1	4	2	2	3	1

[39] As detailed above, the annual number of new applicants between the years 2013 and 2018 has fluctuated from 34 in 2014 to 18 in 2018.

#### C. The Need to Maintain a Strong Court by Attracting Qualified Applicants

##### ***Approval Rates***

[40] Between 2013 and 2018, an average of 40.2% of applicants were approved after the interview. Over the last three years (2016 to 2018) the average rate of approval for applications received was 38.2%.

##### ***The Provincial Court Competes with the Supreme Court***

[41] In the past, a number of Provincial Court judges have applied to, and subsequently accepted, an appointment to the Supreme Court. The table that follows documents this occurrence since 1981.

**Provincial Court Judges Appointed to the Supreme Court**  
(listed chronologically, by date appointed to Supreme Court)

<b>Name</b>	<b>Date Appointed to Provincial Court</b>	<b>Date Appointed to Supreme Court of BC (or other Court, as noted)</b>
Justice R. Wong	1974	September 1981 (County Court) July 1990 (Supreme Court)
Justice G. Coultas	11/21/1977	April 1988
Justice I. Josephson	02/01/1975	October 1989 (County Court) July 1990 (Supreme Court)
Justice S. Romilly	11/15/1974	November 1995
Justice S. Stromberg-Stein	04/12/1989	February 1996
Justice A. MacKenzie	07/16/1990	June 1996
Justice R. Metzger	04/21/1980	June 2000
Justice E. Arnold-Bailey	07/23/1990	April 2005
Justice C. Bruce	05/29/1998	September 2006
Justice K. Bracken	02/19/1991	March 2007
Justice G. Bowden	05/14/2004	October 2009
Justice B. MacKenzie	10/30/1990	October 2009
Justice D. Dley	06/23/2008	March 2010
Justice J. Watchuk	10/03/1994	October 2010
Justice D. Betton	03/19/2007	June 2011
Justice R. Tindale	02/15/2010	October 2011
Justice R. Baird	08/22/2011	October 2012
Justice K. Ball	01/06/2003	November 2012
Justice S. Donegan	10/04/2010	June 2013
Justice M. Church	08/29/2011	June 2016
Justice L. Marchand	03/09/2013	June 2017
Justice T. Crabtree	15/02/1999	May 2018

**Judicial Appointments between April 30, 2016 and June 12, 2019**

[42] The following table sets out the judicial appointments in the past four years.

<b>Provincial Court Judge</b>	<b>Practice History</b>	<b>Appointed</b>	<b>Region Assigned</b>
MILLER, Rick	Public	03/06/2019	OCJ
LEE, Glenn	Private	12/06/2019	Vancouver
SILVERMAN, David	Public	29/05/2019	Fraser
DION, Tina	Private	29/05/2019	Fraser
BURNETT, Clarke	Private	25/02/2019	Interior
PHILLIPS, Raymond	Private	14/01/2019	Interior
SICOTTE, Craig	Private	29/10/2018	Fraser
DOCOLAS, Georgia	Private	25/10/2018	Fraser
ALBERT, David	Private	25/10/2018	Fraser
LOPES, Jennifer	Public	22/10/2018	Fraser
THOMAS, Linda	Private	05/07/2018	Northern
MACDONALD, Trudy	Private	03/07/2018	Fraser
BROWN, Anja	Private	03/07/2018	Fraser

DOREY, Diana	Private	09/04/2018	Fraser
MCDERMICK, Peter	Private	09/04/2018	Northern
TAM, Andrew	Private	03/04/2018	Interior
LEVEN, George	Private	27/03/2018	Northern
MUNDSTOCK, Kristen	Private	12/03/2018	Fraser
GUILD, Jeremy	Private	12/03/2018	Interior
WHYTE, Peter	Public	02/01/2018	Northern
JAHANI, Delaram	Private	02/01/2018	Fraser
JETTÉ, Mark	Private	10/11/2017	Fraser
ORMISTON, Andrea	Public	06/11/2017	Fraser
BOBLIN, Dawn	Public	06/11/2017	Fraser
DANELIUK, Michelle	Private	06/09/2017	Interior
ARMSTRONG, Mariane	Public	06/09/2017	Interior
MCPARLAND, Monica	Private	28/08/2017	Interior
MACDONALD, William <sup>2</sup>	Public (Senior Judge)	21/08/2017	OCJ
KLINGER, Wilfred <sup>3</sup>	Public (Senior Judge)	21/08/2017	OCJ
ADAMS, Nancy	Private	21/03/2017	OCJ
STARK, Patricia	Private	30/01/2017	Fraser
DOERKSEN, Lynam	Public	30/01/2017	Interior
LA PRAIRIE, Peter	Public	16/01/2017	Fraser
HUTCHESON, Brian	Private	16/01/2017	Vancouver Island
MENGERING, Susan	Public	09/01/2017	Northern
MALFAIR, Cassandra	Public	09/01/2017	Northern
HEINRICHS, Cathie	Private	03/01/2017	Interior
McQUILLAN, Robin	Private	15/08/2016	Fraser
WHONNOCK, Karen	Private	08/08/2016	Northern
GUNNELL, Robert	Private	27/06/2016	Fraser
BARRETT, Jennifer	Private	20/06/2016	Vancouver Island
KLINGER, Wilfred	Public	13/06/2016	Interior
HARVEY, Brian	Private	02/05/2016	Vancouver Island
CROCKETT, Catherine	Public	02/05/2016	Vancouver Island

[43] Of the applicants who were appointed between April 30, 2016 and June 12, 2019, 21 were male and 22 were female. Of these same applicants who were appointed, 29 were from private practice and 14 were from public practice.

[44] The Council perceives it to be likely that the Court is losing applicants to the Supreme Court, possibly due to the lower remuneration, the shorter pension accrual period, the greater prestige associated with the Supreme Court in traditional legal circles, or because the candidate is simply attracted to the different work and judicial “style” in the Supreme Court. This likelihood would also seem to be supported by the fact that it does

<sup>2</sup> Reappointed for one-year terms after completing the senior judge program.

<sup>3</sup> Reappointed for one-year terms after completing the senior judge program.

occur that members of the Provincial Court have outstanding applications to the Supreme Court. As to the latter category, while some applicants are motivated by a simple desire for change, increased remuneration is considered to be a significant factor.

[45] A significant widening of the gap in remuneration levels can only intensify the problem. If it is in the public interest for the Court to attract and retain outstanding applicants, and to compete with the Supreme Court in doing so, there must be competitive earnings and benefits. That is particularly so, given the view held by some of the relative prestige of the two judicial offices.

#### **D. The Need to Provide Reasonable Compensation to Judges**

[46] The role of Provincial Court judge is a crucial one, requiring talented, creative and resilient individuals who are at the peak of their legal careers. Judicial compensation must be reasonable not only in order to attract such people, but to maintain their commitment and enthusiasm, and to reinforce the dignity and importance of the office.

[47] Judicial Council has set high standards for approval of those wishing to be Provincial Court judges. These standards are not arbitrary, but reflect the qualities required if applicants are to meet the increasing demands of the office successfully.

[48] The Court requires lawyers with a wide breadth of skills, or the capacity and will to learn. Provincial Court judges must spend sufficient time on each case to render high quality justice, and still manage to get through an often overwhelming Court list for the day. Judges must preside with compassion and attempt to understand the experiences of those before them, even though their own lives may be vastly different. Judges must be team players and maintain the respect of their colleagues, yet be independent; they must be passionate about injustice, yet impartial in the administration of justice; they must be knowledgeable, but keen to keep learning.

[49] The Council looks for applicants who are leaders in their field, but who have also practiced in the broad areas covered by the Court. They must be capable of listening to changing public values and views, and yet not be influenced by public opinion in making individual judgments. They must be attuned to the challenges of diversity and adversity,

even though they may themselves have experienced relatively little of either.

[50] Other requirements of the position are not explicitly set out in the appointment criteria. With longer cases and a greater variety of cases, judges are increasingly required to spend evenings and weekends researching and writing decisions without research assistance. Many Provincial Court judges are required to take a considerable amount of personal time away from home, travelling on circuit or providing coverage in other regions.

[51] Changes in legislation, expansion of the Court's jurisdiction, and developments in case law require ongoing education. Judges produce and attend their own semi-annual education conferences, and also often attend and/or present at outside conferences. Many judges participate in Court or outside committees, including the Judicial Council, in order to assist in improving the quality of justice delivered by the Court. Many judges teach, speak or provide public legal education to enhance the public's knowledge of the Court and the legal system.

[52] The Council looks for applicants who are willing to commit to these kinds of activities, in addition to their presiding duties - those who are interested in continuing to improve the quality of their own judgments and to contribute to the improvement of the judicial service of the Court. The Court must therefore continue to attract and motivate keen, dynamic and enthusiastic individuals who have the drive, energy and interest to perform at a high level, both in and out of Court. For these reasons, the Council is particularly attracted to candidates who have demonstrated in their practices, in continuing legal education, and in their communities, that they are leaders and persons who have demonstrated a willingness and capacity to contribute at a level which is substantially beyond the norm.



### ***The Changing Demands of the Office***

[53] The Submissions of the Provincial Court Judges Association of B.C. and the Chief Judge make the case for assessing the salaries of judges based upon the increasing complexity of the cases coming before the Court, expanded civil jurisdiction, the sheer volume of work, and the successful professional responses by judges to these challenges, including the development of highly effective case management and mediation approaches and many other recent initiatives which are canvassed in some detail by the Chief Judge. Judicial Council strongly supports this argument and believes that the people of British Columbia should take great pride in the Court's achievements and in its future prospects.

[54] Judges are under increasing media scrutiny and yet must maintain their dignity, serenity and independence. They must remain current in public affairs, yet unswayed, undeterred and silent in the tide of public opinion. They must be circumspect in their personal lives.

[55] It is not uncommon for judges in rural and northern areas to drive many miles after dark, and frequently in poor weather, in order to preside in the more remote locations of the Court. Those who live in small communities also have a greater challenge maintaining the distance from the community that is required of a judge, and may come under greater media scrutiny without the cloak of anonymity that prevails in metropolitan areas.

[56] These changing conditions, together with the burden of an increasingly challenging workload, all place additional demands on judges and may potentially affect their motivation levels and the quality of their performance. Remuneration cannot directly address these concerns, but to the extent that judges perceive that they are reasonably remunerated in the face of increasing demands and stresses, it is somewhat less likely that these significant kinds of challenges will affect the quality of their work. Again, the Council's interest in advancing this point is to minimize any potentially detrimental effects on the high quality of justice in the Provincial Court.

## **E. Maintaining Stamina, Enthusiasm and Challenge During a Long Career**

[57] Judges are appointed to their positions during the midpoint of their careers and are in a position to work until they are 75. Often, judges sit for more than 20 years. This is a long time to spend in a demanding job, performing daily under public scrutiny, dealing with emotionally-draining issues, and hearing lengthy and complex cases juxtaposed against shorter matters that may seem repetitive or routine. It is important to maintain enthusiasm and vitality, in whatever ways that may be done.

## **III. Judicial Justices**

### **A. The Nature of the Office of Judicial Justice**

[58] Judicial justices are currently appointed under s. 30.2 of the *Provincial Court Act*. There are two types of judicial justices - full time and part time. In this submission, we will refer to full time judicial justices and part time judicial justices and collectively the two categories shall be referred to as "judicial justices".

[59] Under the *Provincial Court Act* and the *Judicial Compensation Act*, all judicial justices are accorded security of tenure through appointment during good behaviour, and financial security through the vehicle of a judicial compensation commission. More than half of the part time judicial justices have 12-year terms. Some, who were appointed before the 2008 legislative amendments, have no fixed term and, although part time, can sit until age 75.

[60] Judicial justices are assigned duties by the Chief Judge under s. 11 of the *Provincial Court Act*. In this respect, their jurisdiction and authority derive from their office as justices of the peace: the statutes under which the Chief Judge assigns them authorized "justices" to hear the matters to which they are assigned. Case law dictates, however, that duties which engage liberty and privacy interests, such as judicial interim release (bail), search warrants, and production orders, and adjudication of disputes between individuals and the state which engage legal principles, such as traffic disputes, require a hearing before an independent tribunal under s. 11(d) of the *Canadian Charter*

*of Rights and Freedoms.*

[61] Judicial justices are the only judicial officers under the *Provincial Court Act*, other than judges, who have sufficient independence to hear matters which require the constitutional safeguards of security of tenure and financial security provided by the 2001 amendments in compliance with the decision of *R. v. Do*, 2001 BCSC 1088. The BC Supreme Court, in *R. v. Do*, ruled in a *voir dire* that the Court Services Justice of the Peace who authorized a search warrant under the *Controlled Drugs and Substances Act* had insufficient independence for such a task. This led to changes in who had authority to exercise this crucial judicial function, removing judicial authorization from Court Services Justices of the Peace and assigning it to judicial justices. Judicial justices are accordingly assigned by the Chief Judge to preside over matters within their statutory jurisdiction and which require the safeguards of independence accorded to their office in the legislation. These assignments currently include traffic and other provincial and federal statute offences initiated by way of a violation ticket, bylaw offences, applications for bail, search warrants, applications to access records or data, and payment hearings.

[62] Judicial justices are assigned to sit various "shifts" at the 24-hour Justice Centre, hearing applications for after-hours bail and search warrants by fax, telephone and telecommunication from across the province. Judicial justices also preside in "Traffic Court," where they sit regular court hours. There is some rotation of assignments of existing judicial justices between duties at the Justice Centre and Traffic Court sittings, and all judicial justices are assigned to hear in-person search warrant applications, other *ex parte* applications and bail hearings, in their sitting locations.

[63] On July 1, 2003, an amendment of the *Provincial Court Act* was brought into force that removed the jurisdiction of judicial justices to hear certain matters, including applications under the *Canadian Charter of Rights and Freedoms*, and offences that may result in imprisonment<sup>4</sup>. The result is that in traffic or other provincial or federal disputes where a *Charter* issue is raised, the matter is referred to a judge. Matters where the

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<sup>4</sup> See *Provincial Court Act*, R.S.B.C. 1996, c. 379, s. 2.1.

prosecution is seeking jail are commenced before a judge.

[64] The judicial justices sitting complement is currently comprised of 11 full time and 21 part time judicial justices. An Associate Chief Judge oversees the division and two Administrative Judicial Justices assist in the judicial administration of day-to-day operational matters for the Court's Traffic Division and the Court's Justice Centre.

## **B. Judicial Justice Appointment Process**

[65] Judicial justices are appointed by the Lieutenant Governor in Council on the recommendation of the Judicial Council. The judicial justice appointment process, which has been in place for some time, is similar to that for judges. The criteria for appointment is the same for both components of the judicial justice office (i.e., the Justice Centre and sitting duties) and judicial justices are appointed to perform both categories of duty.

[66] In the past, a law degree or post-secondary education was not a prerequisite for appointment as a judicial justice, although many existing judicial justices have university degrees and several have law degrees.

[67] On October 27, 2006, Judicial Council passed a resolution changing the minimum qualifications required for recommendation for appointment as a judicial justice to include:

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

[68] Judicial Council's decision was reflected in the 2008 amendments to the *Provincial Court Act*, which provided for the appointment of lawyer part time judicial justices. The legislation also provided for a minimum of 40 working days per year and for one 10-year term. A Bill introduced in 2017 amended the *Provincial Court Act*, s. 30.2(3), to extend this to a 12-year term.

[69] What follows are the current statistics reflecting applications received and applicants interviewed for the last six years.

### Applications for Appointment as Part Time Judicial Justices

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

[70] On March 22, 2013, Judicial Council amended the procedure requiring a report to be prepared by the CBA Judicial Advisory Committee for each applicant. Judicial Council also adopted the core abilities and skills criteria used for the position of Provincial Court judge to assess those applying for the position of judicial justice (see **Appendix 1**).

[71] The application process requires Judicial Council to review the applications received, together with any reports prepared, in order to determine whether to grant an interview to the applicant. Judicial Council interviews those applicants selected for interview. Following the interview Judicial Council determines whether the applicant is approved as a candidate for appointment as a judicial justice. If the applicant is recommended, he or she is placed in the approved candidate "pool" and it is from this "pool" that government selects when appointing a judicial justice.

[72] Since 2001, the Judicial Council has accepted applications at any time, in addition to those submitted in response to a specific recruitment, and has maintained a pool of approved applicants similar to the pool for judges, since 2008. Once an application has been approved, the approval remains valid for three years. Applicants are eligible to reapply three years from the date of their previous application, or 2.5 years from the date of their interview.

[73] As noted in the Chief Judge's submission 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.

[74] 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 8 applications and two appointments.

[75] 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. Over 4% of all the shifts at the Justice Centre were covered by judges in 2018, and approximately 10% of the weekend shifts were covered by judges in 2018.

[76] Judicial Council approved a motion (minutes to be approved at next meeting) to recommend to the Ministry of Attorney General amendments to the *Provincial Court Act* to allow existing full time judicial justices with a law degree or the requisite experience to apply to be part time judicial justices and, as noted in para. 150 of the Government's Submission, to allow part time judicial justices subject to a fixed term to seek a subsequent term. Judicial Council also approved a motion to allow for applicants from across Canada to apply by revising the criteria for appointment as a judicial justice to state that applicants have: (a) at least five years having practiced law in Canada (those with less legal practice experience may be considered if they have a range of related experience); and (b) superb legal reputation and applicable professional record review(s), including from applicable Law Society.

[77] There are nine judicial justices that will be reaching age 75 in the next five years, and a total of 19 judicial justices that will reach age 75 in the next 10 years. It is anticipated

that as judicial justices contemplate retirement, or part time judicial justices approach the end of their term, Judicial Council will need to attract qualified candidates for future appointments.

### **C. The Need to Provide Reasonable Compensation to Judicial Justices**

[78] The role fulfilled by the judicial justice is of fundamental importance to the justice system and in maintaining confidence in our public institutions. The work is demanding and challenging and requires, at its foundation, a legally grounded, professional approach. In hearing the matters to which they are assigned, judicial justices must apply principles of natural justice, procedural fairness, legislation, rules of criminal evidence, and common law. They must also apply all the same sentencing principles as those applied by judges to sentences other than those of imprisonment. They must present their reasons for judgment or sentence to those who are accused or convicted in plain language. They must be able to articulate their reasons for decision on a judicial interim release that is proceeding or for rejecting an application for a warrant or production order, in a timely manner.

[79] Judicial justices, like Provincial Court judges, are bound by the [CJC Ethical Principles for Judges](#). They must be similarly circumspect in their public expressions and in their associations with individuals and organizations.

[80] Judicial Council is proud of the work being done by the existing judicial justices. Ensuring that they continue to be invigorated and engaged on the bench is important given the nature of the work and service provided. While remuneration is only one factor in motivation levels, it is a key one.

[81] It is submitted that the issue for consideration by this Commission, that of reasonable remuneration for judicial justices, must be considered for the existing judicial justices in the context of the recent history of the office of judicial justice and the duties performed.

[82] Morale is related to the ability of the Court to maintain a high quality of justice in the Provincial Court and is a concern of the Judicial Council. While remuneration levels

are not the only contributing factors to positive morale, feeling adequately compensated is an important component of morale.

#### **D. Nature and Scope of the Position**

[83] Judicial justices reflect the face of the Court for many citizens in the proceedings to which they are assigned. For many people who come to the Provincial Court to address matters under the jurisdiction of judicial justices, this will be their one opportunity to participate in a court proceeding.

[84] The requirement that judicial justices may need to deal with liberty and privacy issues at any time must be properly recognized through appropriate compensation. These individuals work eight-hour "shifts" on statutory holidays, overnight and on weekends. While they readily accept these assignments, their schedules may be disruptive to their personal lives and they require a willingness and commitment to serve the public in this fashion. There is perhaps no greater pre-trial proceeding as important as the determination of a person's liberty and this work is conducted with great care and understanding by the judicial justices who are committed to sitting at the Justice Centre.

[85] Judicial justices' jurisdiction also includes hearing matters in court such as traffic offences, offences under other provincial and federal statutes, municipal bylaw charges, and small claims payment hearings. Each of these processes is extremely important to the litigants who must each be accorded respect and be treated with dignity. The image of the "judge" they see will forever shape their perceptions of the British Columbia justice system.

[86] Judicial justices preside in hearings in which litigants are frequently unrepresented and where the Court does not always have the service of prosecutors or court clerks. Under these circumstances, judicial justices must take the time to explain procedures and the law, and at the same time ensure that they remain impartial and meet a demanding court schedule. This adds a layer of complexity to the work that judicial justices undertake.

[87] Judicial justices must personify the judicial traits of dignity, patience and



understanding to the public, while under constant scrutiny. All of this must be accomplished professionally, while managing large caseloads and in a number of cases without support staff in court and without assistance from counsel with legal or procedural issues.

## **IV. Summary**

### **A. Provincial Court Judges**

[88] In summary, the Judicial Council submits that:

1. The total compensation package for a Provincial Court judge be set at a level which supports Judicial Council's efforts to recruit exceptional candidates; and
2. The total compensation package for Provincial Court judges be set at a level sufficient to maintain a strong complement of judges and retain those appointed.

### **B. Judicial Justices**

[89] The Judicial Council submits that:

1. The compensation of all judicial justices affords reasonable recognition of the important and valuable work performed by the judicial justices.
2. The compensation of judicial justices be comparable to those with similar independent adjudicative responsibilities in other fields.
3. The remuneration of judicial justices be maintained at a level that will encourage existing judicial justices to continue in their public service and better attract outside applicants with significant professional and adjudicative experience.
4. All judicial justices, whether full time or part time be compensated on an

equal footing.

All of which is respectfully submitted.

A handwritten signature in blue ink, appearing to read 'M. Gillespie', with a stylized flourish at the end.

Melissa Gillespie  
Chief Judge, Provincial Court of British Columbia  
Presiding Member, Judicial Council of British Columbia  
June 5, 2019

## V. Appendix 1

### Skills for Judicial Excellence

#### A. Knowledge and Technical Skills

- Sound knowledge of the law and its application
- Sound knowledge of procedure and appropriate application
- Excellence in chosen area of the law
- Experience in mediation or alternative dispute resolution
- Commitment to professional development

#### B. Decision Making

- Sound judgment and independence of mind
- Appropriate exercise of discretion
- Patient
- Decisive
- Objective

#### C. Communication and Authority

- Ability to establish and maintain the authority of the Court
- Communicates effectively
- Explains the procedure and any decisions reached clearly and succinctly to everyone involved
- Inspires respect and confidence

#### D. Professionalism and Temperament

- Maintains personal independence and integrity at all times
- Demonstrates personal discipline, an open mind and self-awareness
- Promotes the highest standards of behaviour in court
- Experience with cultural and ethnic diversity
- Encourages and facilitates teamwork
- Accepts and implements change

## E. Efficiency

- Actively organizes time and manages cases to promote a timely and just conclusion
- Strategically plans and organizes
- Able to work at speed and under pressure