

May 2019
Box 730
Rossland, British Columbia

The 2019 Judicial Compensation Commission,

Re: An Independent Perspective

I write this letter to you to express my independent perspective on the current status of, and the near-future prospects of the Judicial Justice Division of the Provincial Court of British Columbia. The letter is addressed to the Commission but it is sincerely hoped that the Government representatives within the process will convey the message back to the political arena in Victoria.

One of my colleagues expressed the current situation as: "The wheels are falling off the wagon!" That is an apt description. The average age of the current cohort of Judicial Justices is comfortably beyond normal retirement age. Bodies are slowing down and wearing out. Disease and disability are depleting our numbers. A normal reality in any older workforce, but with one troubling distinction: there are notably fewer bodies being added to the team than are being subtracted. It is now routine at the Justice Centre on holidays and long weekends for us to be working alongside Provincial Court Judges as there are not enough Judicial Justices to cover the shifts. The issue to be considered is why the number of Judicial Justices is steadily declining.

The selection process seeks candidates from the higher end of the legal profession. Although technically only five years of legal experience are required, in reality, those selected by the Judicial Council for interviews have 20 years plus at the bar. The selection

process also stipulates that candidates must have a “Superb legal reputation and a professional record review from the Law Society of British Columbia”. In effect, the criteria are the same as for the selection as a Provincial Court Judge: seeking highly qualified and motivated lawyers, normally in the last third of their working careers.

At first blush, one might consider that younger lawyers with family obligations might be tempted to apply for the part-time appointments. Yet the reality of a Judicial Justice’s work is a career killer for a lawyer. One is clearly outside of the mainstream of the legal world. One never appears in front of other Courts to hone litigation skills. Most parties before the Court (especially in the traffic, small claims and bylaw divisions of the Court) are self-represented. Other than duty counsel, lawyers rarely appear. After ten or twelve years as a Judicial Justice, one has lost the contacts and networking that are so useful to advancing a lawyer’s career.

Judicial Justices routinely deal with the same issues as Provincial Court Judges, with dramatically less pay and markedly poorer working conditions. Working at the Justice Centre, Judicial Justices regularly handle contested and uncontested bail hearings from across the Province. Judicial Justices working steadily at the Justice Centre probably do more bail hearings than the average Provincial Court Judge. They are also more knowledgeable than most Provincial Court Judges on the requirements for the multiple types of financial disclosure, production orders and warrants under both Federal and Provincial Statutes.

In Traffic Court, Judicial Justices routinely deal with trial lists of 50+ files per day, often with multiple contested matters going to hearing. There is the added challenge of assisting self-represented litigants. In each trial, the same evidentiary issues

and credibility issues arise as would be encountered in other divisions of the Provincial Court.

Working conditions for per diem Judicial Justices are markedly inferior to those for Provincial Court Judges. We are expected to work weekends, evenings, and holidays with no additional compensation. We get no fringe benefits. Our shifts can be cancelled at a moment's notice, with no regard for the reality that we have scheduled other events in our lives to accommodate those shifts. We are not even covered by WorkSafe BC if we are injured at work.

It is also particularly galling to be working a weekend or holiday shift at the Justice Centre alongside a Provincial Court Judge, knowing that they are effectively paid at least four times as much as we are, for doing exactly the same work. The fundamental principle of equal pay for equal work appears to have no application in the Provincial Court.

So... what financial incentive is currently offered to entice senior legal practitioners with a "superb legal reputation" to apply to become Judicial Justices? Less than \$800 per day, and no benefits. Let's be serious: any lawyer in that target group would already be earning a quantum leap above that rate per day.

The choice is very simple: either the Government is going to have to offer a dramatic increase in compensation to attract and hold qualified applicants, or the Judicial Justice Division of the Court is going to disappear by attrition. Then the same work will be done by Provincial Court Judges, who get paid much more, and who, collectively, are far less flexible in scheduling.

A dramatic increase does not mean 10% or 15%. A 100% increase would still result in a compensation package comfortably below that currently paid to a Provincial Court Judge. (For

example, on weekends at the Justice Centre, the Provincial Court Judge would still be receiving more than 2 ½ times the Judicial Justice pay!)

I appreciate that the Office of the Chief Judge appears to be aware of the situation, and has stepped up advertising efforts. I don't believe there has been much response. It would very much appear that it is up to the Provincial Government to decide whether or not they want this qualified, economical and flexible division of the Provincial Court to continue.

Yours truly,

A handwritten signature in blue ink, appearing to read 'D. Brent Adair', with a long horizontal flourish extending to the right.

D. Brent Adair, Q.C.,
Judicial Justice