

2016 Judicial Compensation Commission

Submission of Anna-Maya Brown
(Judicial Justice)

I. Compensation Sought

1. *Per diem* between \$800-875, with annual increases of 2%;
2. Amount equivalent to \$2500 per year for PDA to be added to *per diem*, or continuation of PDA to all judicial justices at a rate of \$2500 per year;
3. Additional shift differential as follows:
 - a. 10% *per diem* for any day shift or afternoon shift that falls on a statutory holiday or long weekend;
 - b. Double time for any day shift or afternoon shift that falls on Christmas Day.

II. Framework and Background

I am a part time judicial justice, and I am currently paid a *per diem* rate of \$692.50. I am entitled to a Professional Development Allowance of \$1500 per year as well as 2 paid days per year for educational leave. I participate in biannual judicial justice conferences for which I am compensated 3.0 days at the *per diem* rate.

I do not receive benefits, or a pension, or sick days, or lieu days, or paid vacation days, or chambers days.

My compensation is calculated as a function of a full time judicial justice's salary on the basis of the following formula: Full time judicial justice's salary/207 (working days --- vacation and chambers days are also factored into this number) + 20% (in lieu of benefits) + \$80 (overhead).¹

I was appointed in 2007 as part of the initial pool of judicial justices requiring a law degree and a minimum of 5 years legal experience as criteria for appointment. (I am not aware of any *per diem* legally trained judicial justice with less than 10 years legal experience.) I underwent an application and interview process before judicial council that mirrored, and continues to mirror, the application and interview process for the appointment of provincial court judges. Since my appointment, I have presided at the Justice Centre.

My understanding, unofficially, of the current complement of the judicial justices division is as follows:

-22 part time judicial justices, 19 of whom are legally trained *per diem* judicial justices (one of whom is a former provincial court judge and scheduled to resign as a judicial justice at the end of July 2016 to embark upon full retirement)

-10 full time judicial justices, one of whom works at the Office of the Chief Judge and is currently on a leave of absence to pursue education, one of whom is on long term disability, and, as I understand from the JJA submission, one of whom is on long term disability and works one day per week.

The current legislative basis of my remuneration is found in section 9 of the *Judicial Compensation Act*, SBC [2003] c.59 (“the *Act*”), which provides, in part, as follows:

Remuneration of Judicial Justices

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(2) A part time judicial justice must be paid, out of the consolidated revenue fund, a salary

(a) recommended by a report laid before the Legislative Assembly under section 6(1), or

(b) if a resolution is passed by the Legislative Assembly under section 6(2), set by the resolution.

Further to that, section 6 of the *Act* provides, in part, as follows:

Reports before the Legislative Assembly

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(2) The Legislative Assembly may, by a resolution passed within 16 days after the date on which a report is laid before the Legislative Assembly under subsection (1),

(a) reject one or more of the recommendations made in the report, and

(b) set the remuneration, allowances or benefits that are to be substituted for the remuneration, allowances or benefits proposed by the rejected recommendations.

(3) If a recommendation is not rejected by the Legislative Assembly within the time limited by (2), the judges or judicial justices are entitled to receive the remuneration, allowances and benefits proposed by that recommendation beginning on April 1 of the year following the year referred to in, or applicable under, section 2(1).

(7) A resolution referred to in subsection (2) or a recommendation referred to in subsection (3) may set different salaries for different responsibilities.

On December 18, 2015, the *Act* was amended to provide for one commission to make recommendations regarding the remuneration of judges and judicial justices, and to establish the factors the commission is to be guided by in making such recommendations.

Subsections 5(1) and 5(5) to (5.2) of the *Act* provide as follows:

Report and Recommendations

5(1) Not later than October 1 following its formation, the commission must, in a preliminary report to the minister and chief judge,

(a) report on all matters respecting the remuneration, allowances and benefits of judges and judicial justices, and

(b) make recommendations with respect to those matters for each of the next 3 fiscal years.

...

5(5) In preparing a report, the commission must be guided by the need to provide reasonable compensation for judges and judicial justices in British Columbia over the 3 fiscal years that are the subject of the report, taking into account all of the following:

(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;

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

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

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

The goal of my submission is to respectfully inform this commission of what judicial justices actually do, the importance of what judicial justices do, and any changes to what judicial justices do. Consistent with that, I will address each of the above factors in the required context of the need to provide reasonable compensation for judicial justices and in accordance with the overarching principle of judicial independence.

III. Factors in 5(5) to 5(5.2) of the Act

(a) The Need to Maintain a Strong Court by Attracting Highly Qualified Applicants

The filling of the part time judicial justice position presents unique circumstances that may limit the numbers of applicants for several reasons. Firstly, all new appointments to the part time judicial justice position must be lawyers. Secondly, those lawyers are not permitted to practice criminal law. Thirdly, lawyers with a non-criminal law practice must not permit their practice of law to interfere or conflict with their duties as judicial justice - the expectation is that they devote their time exclusively to their judicial duties when on shift. Fourth, the position of judicial justice is not one that is best served, in my respectful submission, by a peppered approach in filling the minimal amount of shifts here and there --- a solid understanding of the current law, procedure and jurisprudence coupled with some rhythm/regularity in considering applications for judicial authorization as well as judicial interim release is essential. Fifth, the position of judicial justice at the Justice Centre typically requires availability not only during business hours but also during evenings, weekends and statutory holidays.

It is my understanding, from anecdotal observations only, that there are very few applicants for *per diem* judicial justice who succeed to the point of an interview before judicial council. As far as I am aware, since the last compensation hearings, two lawyers and one retired provincial court judge have been appointed. Prior to that time, one lawyer appointee left service as a judicial justice to return to work as counsel elsewhere, and one intends to leave service as a judicial justice at the end of July 2016 to embark upon full retirement. Some full time and part time judicial justices have left service since the last compensation hearings as well.

That being said, it is acknowledged that the attraction of highly qualified applicants is not influenced by compensation alone. There are likely many other factors that contribute to an individual's application for position of part time judicial justice. It is further acknowledged that the need to maintain a strong court is not satisfied simply by attracting and appointing highly qualified applicants. What is required, in my respectful submission, is a level of compensation that

a. attracts highly qualified applicants who will also demonstrate commitment, dedication, availability and energy to fulfill their judicial duties and thereby contribute to the maintenance of a strong court; and

b. retains the experienced and committed judicial justices who currently serve and contribute to the maintenance of a strong court.

Indeed, in my respectful submission, an appropriate balance between attraction and retention should always be considered in assessing the need to maintain a strong court. In the context of the *per diem* model, too many new appointees could lead to a dilution of the amount of shifts available to judicial justices (some of whom prefer to work a fairly large amount of shifts), whereas too few new appointments could lead to stress and overwork for current judicial justices as well as challenges at the scheduling level. [As I will detail later, my sense is that the most significant challenges at the scheduling level are filling less desirable shifts such as statutory holidays, long weekends, and Christmas Day.]

The retention of current judicial justices contributes to the need to maintain a strong court in the following ways:

1. Experienced judicial justices readily understand and apply legal and constitutional principles to judicial decision-making;
2. Experienced judicial justices identify areas where challenges are occurring and problem-solve to meet those challenges;
3. Experienced judicial justices possess confidence and skill in recognizing and dealing with new legislation and emerging jurisprudence;
4. Experienced judicial justices are efficient;
5. Experienced judicial justices are adaptable to different types of courts (for example, bail hearings, traffic, integrated court and small claims payment hearings) and different types of decision making (for example judicial interim release, consideration of applications for judicial authorization; trials of provincial offences);
6. Experienced judicial justices can multi-task in impressive and efficient ways beyond decision-making, such as recording and clerking proceedings and preparing documents. They are capable of working on their own and possess the necessary confidence and expertise to manage an entire province during those hours when only one judicial justice is on shift.
7. Educational opportunities for experienced judicial justices can (and should) go well beyond “the basics” and provide even more expertise to the court. In turn, experienced judicial justices can teach one another and also mentor new judicial justices.

In my respectful submission, a *per diem* amount of \$800 - \$875 with additional shift differential would serve to attract qualified applicants who were committed to the challenging role as well as working off hours, and would also serve to retain current judicial justices who are committed to their position and willing to work off hours.

(b) Changes, if any, to the Jurisdiction of Judges and Judicial Justices

This newly legislated factor focuses on any changes to the jurisdiction of judges and judicial justices. Of course, the jurisdiction of judges and judicial justices, even absent any *change* of jurisdiction, remains central to any consideration of the constitutional requirement to provide reasonable compensation. Indeed, the *Judicial Compensation Act* itself prefaces all of the enumerated factors in section 5(5) by the requirement that the commission must be guided by the need to provide reasonable compensation for judges and judicial justices. The *Act* also sets out in section 5(5.2) that the commission may consider other factors it considers relevant but their report must explain the relevance of the factor. In my respectful submission, before the commission considers any *changes* to jurisdiction of judicial justices, the commission must consider what the jurisdiction of judicial justices actually is, and what meaning to be given to the word “jurisdiction” in the context of this particular legislation and the commission’s constitutional role.

The word “jurisdiction” is not defined in the *Judicial Compensation Act*, nor in the provincial *Interpretation Act*. However, the word “jurisdiction” is used in various sections of the *Provincial Court Act*, most notably for these purposes, in section 2(3) and section 31 as follows:

2(3) The court and every judge have jurisdiction throughout British Columbia to exercise all the power and perform all the duties conferred or imposed on a judge of the Provincial Court, a magistrate, justice, or 2 or more justices sitting together, under an enactment of British Columbia or of Canada.

31(1) Subject to section 2.1 [*exclusive jurisdiction of judge*], if a justice is hearing

- (a) a case or matter, or
- (b) a case or matter within a class of cases or matters

for which the justice is designated to act by the chief judge under section 11(1), the justice may exercise all the powers and jurisdiction of the court under an enactment respecting the case or matter.

These sections recognize the concept of territorial jurisdiction (throughout British Columbia) as well as jurisdiction in the sense of exercising the power and performing

the duties conferred on the justice under an enactment (for example, under the *Criminal Code*). Judicial justices (like provincial court judges) are, of course, creatures of statute.

Under s. 2 of the *Criminal Code*, a “justice” means a justice of the peace or a provincial court judge. Therefore, a “justice” under the *Criminal Code* has, potentially speaking, considerably broad jurisdiction. However, a judicial justice’s jurisdiction is subject to the designation of cases or matters by the chief judge under section 31 of the *Provincial Court Act*, which is evidenced by the Assignment of Duties² pertaining to judicial justices. In simple terms, the Assignment of Duties pertaining to judicial justices defines what powers judicial justices may exercise within the framework of their statutory jurisdiction.

I respectfully suggest that in the context of the *Judicial Compensation Act* and in accordance with the principle of judicial independence, a rather flexible interpretation of the word “jurisdiction” may be appropriate. Black’s Law Dictionary (5th edition) provides, in part, the following definition:

“The word is a term of large and comprehensive import, and embraces every kind of judicial action.”

Black’s also includes the following translated Latin maxim:

“Jurisdiction is a power introduced for the public good, on account of the necessity of dispensing justice.”

In other words, what do judicial justices actually do when dispensing justice, and what has changed about what they actually do? That is what I respectfully ask you to consider in assessing changes to the jurisdiction of judicial justices.

I pause here to add that even if this commission is not inclined to adopt a rather flexible meaning of the word “jurisdiction”, then I respectfully refer to section 5(5.2) of the *Act* which permits the commission to consider any other factor it considers relevant. Surely, what judicial justices do on a daily basis, and how that work has changed, are relevant and necessary factors for consideration. Moreover, from a purely constitutional perspective, as I alluded to earlier, what judicial justices actually do must lie at the heart of any consideration of reasonable compensation.

Just what judicial justices actually do is also instructive because sometimes the role of a judicial justice, and its importance, are not well understood or recognized. This is probably largely because much of the work of judicial justices occurs somewhat behind the scenes --- for example, applications for judicial authorization are considered *ex parte* (for obvious reasons, given the nature of police investigations), and some of those may be sealed or denied and therefore not available for subsequent public view. Indeed, the judicial denial of a search warrant on the basis that the police do not possess reasonable grounds serves an extremely valuable preventative function, and yet that denied application will, quite properly, not be publicly available. As a corollary to

that reality, if a search warrant *is* granted because the judicial justice is satisfied as to reasonable grounds, that search warrant might never become an issue at trial, and therefore the judicial assessment of the justice may go largely unnoticed. As for bail hearings, the majority are conducted by telephone in a virtual courtroom, unlike a physical courtroom with a public gallery (although persons can be connected in by teleconference and proceedings are recorded and available for public scrutiny). Exceptions to the background nature of a judicial justice's role include traffic court and integrated court, where the judicial justice presides front and centre and directly engages with the participants, and videobail appearances where the judicial justice can see, and be seen, by the accused as well as by counsel/or the prosecuting police officer. In those circumstances, the judicial justice is far more readily recognizable as the face of justice.

As has been the case for many years, judicial justices (under the *Criminal Code* and in conjunction with their Assignment of Duties) and judges share the same formal jurisdiction in the vast majority of bail applications, from minor to very serious offences. Not only do judicial justices consider judicial interim release on weekends and evenings, but judicial justices also preside over bail hearings during business hours when provincial court judges are not available, such as when:

- court is not sitting on certain days in certain areas of the province (a common occurrence);
- sheriffs are not able to transport the accused to the courthouse (a common occurrence, be it due to weather, or lack of resources, or timing issues such as missing that courthouse's cutoff times for custodies, or other factors);
- the presiding judge is in transit to the next courthouse in the circuit;
- the judge is ill;
- the local court is dealing with civil files only on that day;
- the local court is dealing only with a major criminal trial that day;
- the local court list is too heavy and cannot be completed;
- the judge is in a conflict of interest; or
- judges are away at their biannual conferences.

(This is not an exhaustive list.)

Further, judicial justices (under the *Criminal Code* and other statutes and in conjunction with their Assignment of Duties) and judges share jurisdiction in applications for judicial authorization, including but not limited to search warrants, production orders, tracking warrants, transmission data recorder warrants (TDRWs), Feeney warrants, section 117.04 weapons warrants, bodily impression warrants, and section 256 blood warrants (this is not an exhaustive list). However, by virtue of their Assignment of Duties, the Daytime Search Warrant Practice Direction, and the reality that judicial justices are available 24/7, 365 days a year, both in person and by telecommunication, judicial justices consider the majority of warrant applications in the province. This makes sense because only judges hear criminal trials (and must be available to do so) and therefore judges can independently and without conflict adjudicate any warrant issues

that arise during trial. Judicial justices and provincial court judges might more frequently share jurisdiction (in this context I mean the actual workload) with respect to applications for production orders/tracking warrants/TDRWs/117.04 weapons warrants because those applications must be made in person and not by telecommunication, and a local judicial justice is not always available, especially in more remote locations in the province.

In essence, however, provincial court judges have a broad and general jurisdiction, including but not limited to trial/sentencing on criminal cases, and the adjudication/mediation of family law, child protection and small claims cases (although in Vancouver and Richmond, JP adjudicators hear and decide expedited small claims cases of \$5000 and under³).

Further, unlike provincial court judges, judicial justices do not have legal authority to consider general warrants, one-party consents, or applications for DNA warrants under section 487.05 of the *Code*. In terms of bail, judicial justices cannot make assessment orders under section 672.11 of the *Code* because the Chief Judge has formally excluded that power from judicial justices. Further, under the *Code per se*, judicial justices do not have jurisdiction to consider bail for a youth charged with a section 469 offence (including murder) --- only a youth court judge (PCJ) can release such accused.

However, when an adult accused is charged with a section 469 offence (including murder), neither a judicial justice nor a provincial court judge can release the accused – the accused must be detained by the judicial justice or provincial court judge under section 515(11) of the Criminal Code. That being said, a fair number of persons accused of murder come before judicial justices for their first appearance when they are in custody of the police. While section 515(11) is engaged in those circumstances, judicial justices are also sometimes required to manage and adjudicate challenging tangential issues that arise during the course of that initial appearance while the accused is in police custody, and which may have a significant legal impact in due course.

Indeed, a significant number of accused persons who come before judicial justices are in the custody of police, and most of those accused are unrepresented. In those scenarios, the Crown is typically represented by the police. Despite the lack of submissions from counsel on either side, the judicial justice must provide a constitutionally valid and fair hearing. Judicial justices must respect the presumption of innocence, the right to reasonable bail, and the right not to be arbitrarily detained. They must fully understand where the legal onus lies, and the basis for detention on the primary, secondary or tertiary grounds under the *Code*. They must understand and be able to assess an application for a remand under section 516 of the *Code*, or an application for revocation of bail under section 524. They must be alive to, and consider, bans on publication under section 517, or 486.4, or other sections of the *Code*. They are required to consider the safety and security of any alleged victim and so state. They regularly deal with cases involving domestic or other violence, mental health issues,

substance abuse issues, and youth matters where the accused 's parent or guardian is absent. They must do all of this, and more, without the assistance of counsel, nor the assistance of a court clerk or court recorder.

In light of this background outlining what judicial justices actually do, I turn now to the legislated compensation factor to be addressed in this section, ie. changes, if any, to the jurisdiction of judicial justices. As I mentioned earlier, I am respectfully using a liberal interpretation of the word "jurisdiction" in order to explain the changes regarding what judicial justices actually do.

1. **Bill C-13**

On March 9, 2015, the *Protecting Canadians from Online Crime Act* came into force, a significant portion of which deals with access to information by law enforcement. Bill C-13 has significantly modified the *Criminal Code* in relation to production orders⁴ [providing for new types of production orders and modifying legal criteria in relation to standards and tests for issuance] as well as warrants for transmission data recorders (formerly dial number recorders) and tracking warrants [whereas previously there was only one type of tracking warrant, now there are two types, each with a different legal standard for issuance]. Additionally, there are new orders available in relation to the preservation of data. Jurisprudence is developing nationally in relation to Bill C-13 and judicial justices must be fully alive to new issues and how, if at all, courts have responded across the nation.

The impact of Bill C-13 on the Justice Centre has been significant, including:

- (i) Multiple education sessions being made available to judicial justices and also being delivered by judicial justices in relation to Bill C-13

In my respectful submission, judicial justices in BC were well prepared for Bill C - 13 . Part of that preparation involved participation by judicial justices in educational sessions devoted specifically to Bill C-13 both before and after it came into force. This was especially important because the implementation and application of Bill C-13 directly and significantly affected, and continues to significantly affect, judicial justices' duties on a daily basis. Given the high value that we as a society attach to the protection of privacy interests (including informational privacy), judicial justices are viewed as performing a gatekeeper role in preventing unreasonable infringement on such privacy interests. While there is nothing novel about that important role *per se*, it is critical that judicial justices understand the formal and substantive requirements, as well as the background, philosophy and intention of this detailed new legislation in order to properly assess the privacy interests that may be impacted by it. I am confident in stating that educational exposure both before and after Bill C-13 came into force has served to enhance the abilities of judicial justices to fairly and capably consider applications pursuant to it.

The Office of the Chief Judge has been supportive of judicial justices' educational pursuits in relation to Bill C-13. I know that several judicial justices have attended national educational conferences that have addressed Bill C-13 and that those judicial justices (including myself) have, in turn, presented educational sessions on Bill C-13 to their colleagues.

(ii) A large number of new forms, both for applications and draft orders, being utilized and judicially considered in light of formal requirements associated to Bill C-13;

Prior to the coming into force of Bill C-13, the *Criminal Code* provided for two types of production orders and did not specify particular forms for those applications or orders. There was no provision in the *Code* that provided for the backing of a production order outside of BC.

Following the coming into force of Bill C-13, there are now five types of production orders for judicial consideration, and new forms in the *Code* for each type of application and order. Additionally, the *Code* now provides that a production order has effect throughout Canada and need not be backed in the other province (s. 487.019(2)). The practical effect of the latter provision is that judicial justices can (and do) make enforceable production orders vis-à-vis persons located in provinces outside of British Columbia.

There are also new forms associated with applications for preservation orders as well as non-disclosure orders (these are also new types of orders under Bill C-13 that judicial justices have jurisdiction to consider).

(ii) Increased volume of certain types of applications such as production orders for subscriber information given jurisprudence acknowledging privacy interests in that regard;

The law continues to develop in relation to the recognition of protected privacy interests, including informational privacy. Whereas police may have been able to obtain some types of information in the past without judicial authorization, jurisprudence continues to evolve in relation to whether a reasonable expectation of privacy exists in certain types of information. This is particularly noticeable when dealing with data obtained and retained in electronic format by a third party, such as an internet service provider.

As an example, following the Supreme Court of Canada decision in *R. v. Spencer*⁵, a substantially larger number of applications for production orders for subscriber information in relation to internet accounts/IP addresses are being judicially considered.

(iv) Judicial consideration of applications in the new legal context and communication of reasons to applicants in the new legal context;

As stated above, Bill C-13 introduced new formal requirements for new types of judicial authorizations. Of further substantive significance, the new legislation altered the legal standard for issuance for various types of orders (for example, providing for distinct legal standards of reasonable grounds to *believe* vs. reasonable grounds to *suspect*, depending on the type of order sought).

As an example, following the coming into force of Bill C-13, the *Code* now provides for two types of tracking warrants: one for things, such as a vehicle, the other for individuals (by tracking a thing usually carried or worn by an individual, such as a cell phone). However, the privacy interest that attaches to the location of an individual attracts a higher legal standard for issuance than does the privacy interest that may attach to the location of a thing such as a vehicle. Judicial justices must be alive to that change.

Judicial justices were called upon, and continue to be called upon, to judicially assess whether the applicant has even applied under the new legislation as opposed to the repealed legislation, and whether the requisite legal standards/tests have been met under the particular application. This can be challenging when dealing with novel applications under new legislation without the benefit of any jurisprudence on point. As in any case, where the application falls short, judicial justices communicate why the application has been rejected, most often by written reasons.

(v) Significant numbers of applications related to cell phones and computers that may fall within Bill C-13 [such as tracking a cell phone or obtaining transmission data from a third party telco] or the existing search warrant regime [such as searching a cell phone device itself for data therein].

As I mentioned when I made my past submission at the 2013 JJ Compensation Commission hearings, my sense is that the greatest change in relation to the consideration of judicial authorizations is due to the virtual explosion of technology. Technology affects how crimes are committed and how crimes are investigated. Computers and data are everywhere: in private residences, cell phones, businesses, telephone and internet service providers, government and government agencies, banks, correctional facilities, hospitals and other medical facilities, cameras, memory cards, surveillance equipment, gaming systems, airbag control modules, vehicle event data recorders --- the list is seemingly endless. Privacy considerations unique to electronic information are being recognized by the courts in a process of emerging jurisprudence. These remain challenging but interesting times.

A further example, independent of Bill C-13, involves the search of a computer or cell phone itself for data therein. In the case of *R. v. Vu*⁶, which concerned execution of a search warrant issued by a judicial justice in British Columbia, the Supreme Court of

Canada pronounced new law and guidance regarding the search of computers, recognizing the important and unique privacy interest in computers and the potentially infinite amount of personal information they may contain. The law continues to evolve as new issues emerge regarding the search of computers. For instance, judicial justices regularly consider whether minimizing conditions regarding a particular search are required (for example, restricting a search of email to a certain time frame).

To conclude this section on how Bill C-13 and technology have impacted the work of judicial justices, I offer this: Bill C-13 is colloquially known as Canada's anti-bullying legislation, partially in response to the abuse of technology facilitating that type of offensive behavior. It provides for new offences in relation to cybercrime and unauthorized distribution of intimate images. But it also creates a new framework regarding law enforcement's search and seizure of information, which must be judicially considered in light of the *Charter* requirement that everyone has the right to be secure against unreasonable search or seizure. That is exactly what judicial justices are regularly called upon to do – to properly balance the needs of law enforcement and investigation with the constitutional right to be secure against unreasonable search or seizure. Judicial justices were prepared for this new legislation, remain diligent and enthusiastic about emerging jurisprudence, and regularly apply their legal skills in considering the large numbers of applications that come before them. It is not simple. It is challenging, timely, and important work that takes significant legal skill and experience.

2. Section 515(13) of the *Criminal Code*

On July 22, 2015, section 515 of the *Criminal Code* was amended to provide the following additional subsection:

(13) A justice who makes an order under this section shall include in the record of the proceedings a statement that he or she considered the safety and security of every victim of the offence when making the order.

While it goes without saying that judicial justices (and judges) have always considered the safety and security of alleged victims when assessing bail during formal hearings under section 515, this amendment has affected how consent releases are implemented in British Columbia. Whereas consent releases were previously processed by court services justices of the peace (and judicial justices when court services justices of the peace were not working) on the basis of written conditions filed by Crown counsel and duty counsel, the new direction from the Chief Judge requires that all files (including consent releases) raising considerations under s. 515(4.1) [violence, firearms, etc.] be spoken to in front of a judge or judicial justice. As such, those consent releases are now being brought before judges and judicial justices instead of court services JPs.

This new practice provides the presiding judicial officer the opportunity to hear the circumstances of the allegations and any history, to ask questions of counsel, to

consider the safety and security of any alleged victim and so state, and to judicially consider the release of the accused and any conditions of release, consistent with the principle of judicial independence and the degree of judicial independence necessarily possessed by judges and judicial justices.

3. **Missing Persons Act** [SBC 2014] c.2

On June 8, 2015, the provincial *Missing Persons Act* came into force, providing for applications before judges or judicial justices [in accordance with the definition of “justice”] for orders requiring a person to give access to a record in respect of a missing person or third party (records such as cellphone/text message records, financial records, etc.), orders to enter and search for a missing person, or an order requiring compliance with an emergency demand for records that had previously been made by police.

By regulation, applications may be made in person, by fax, or by telephone, and, as such, the Justice Centre is in an ideal position to consider such applications given its 24/7 availability.

While the legislation grants jurisdiction to judges or judicial justices, by virtue of Provincial Court Practice Direction **CRIM 09**, *Missing Persons Act* applications are heard by judicial justices, and applications may not be referred to a judge without approval of the Regional Administrative Judge.

Judicial justices have both delivered and received education and instruction on this new legislation, including its background, purpose and context, formal requirements, as well as substantive content. They have also judicially considered applications under this new legislation.

To conclude this factor overall, while the jurisdiction of judicial justices in its narrowest sense has not formally changed, the daily work of judicial justices has changed in a very real and important way by virtue of significant changes to the *Criminal Code* under Bill C-13, the effect of the new provision under section 515(13) on consent releases, as well as the new *Missing Persons Act*, and the remuneration of judicial justices should reflect that.

(c) Compensation Provided in respect of Similar Judicial Positions in Canada, having regard to the differences between those jurisdictions and British Columbia

A narrow reading of this factor suggests that it applies only to similar Canadian judicial positions outside of British Columbia. This is because the clause “having regard to the differences between *those* jurisdictions and British Columbia” [emphasis added] suggests that the opening words “similar judicial positions in Canada” refer only

to those outside of BC. I respectfully submit, however, that such a narrow reading is not appropriate for the following reasons:

1. Subsection 5(5)(c) is preceded in the opening section 5(5) by the requirement that the Commission “must be guided by the need to provide reasonable compensation to judges and judicial justices”. Surely comparators within the province must be considered in order to meet that need.
2. Even more strongly, from a purely constitutional perspective, comparators within the province must be considered. Given the unique nature of the *per diem* judicial justice position, consideration of the best comparators both within and outside of the province assists in the commission meeting its constitutional mandate.
3. Even if the commission adopts a narrow reading of section 5(5)(c) of the *Act*, similar judicial positions within BC can be considered pursuant to section 5(5.2).

I am therefore going to proceed with my submission addressing similar judicial positions in BC; followed by similar judicial positions outside of BC.

1. Similar Judicial Positions within BC

a. Provincial Court Judges

BC Provincial court judges are good comparators to judicial justices for the following reasons:

- PCJs are appointed pursuant to the same process;
- Like *per diem* JJs, PCJs must be lawyers and must meet minimum qualification requirements;
- PCJs and JJs are judicially independent;
- PCJs and JJs exercise the same jurisdiction in bail hearings, and consideration of s.487 warrants, CDSA warrants, production orders, tracking warrants, transmission data recorder warrants, bodily impression warrants, and Feeney warrants, amongst others;
- PCJs and JJs are the embodiment of justice to the public when they preside in Court. They appear in judicial robes, control the process, hear submissions and make the decisions.
- Both PCJs and JJs must adhere to personal and professional codes of conduct and abide by rules of ethics

Indeed, I note in reviewing commission recommendations back to 2007, every Judicial Justices Compensation Commission has considered provincial court judges to

be comparators, and every commission has commented on the compensation disparity between the two types of judicial officers.

In 2007, when judicial justices made 39% of a judge's salary, the Taylor Commission expressed the view that judicial justices' remuneration was unreasonably low, citing, in part, "the widening disparity between their pay and that of judges of the Provincial Court, the only other persons who can to [sic] perform their function." (page 38) They further pointed out "in regard to the importance attached to the work of JJPs it is notable that qualifications for appointment have now been raised to those of Provincial Court judges." (page 39)

In 2010, when judicial justices made 43% of a judge's salary, the Neilson Commission commenced its report by noting that "the work of JJs could otherwise only be done by Provincial Court Judges; as such, JJs provide a great service to the efficient and effective functioning of the Provincial Court." (page 1, paragraph 2) While the 2010 Commission did not accept a fixed relationship between JJ compensation and PCJ compensation levels, they did conclude, "like the 2007 JJPCC...that the disparity in those levels should not be unfairly widened to the prejudice of the JJs." (page 37, paragraph 103(h))

Finally, in 2013, when judicial justices made 42% of a judge's salary, the Clemens Commission stressed the fact that "Judicial Justices performs [sic] their responsibilities working closely with members of the Provincial Court Bench, as well as with members of the bar, representing the Crown or individuals engaged in the juridical process. Reasonable remuneration should reflect the similarities to comparators such as Provincial Court judges and Crown Counsel qualifications. Any perceived difference in the importance and complexity of the work performed by and the qualifications of Judicial Justices does not justify all of the current gap in remuneration, particularly as compared to the Provincial Court Judges. A reasonable salary should reflect the common qualifications and hard work of the individuals and the common importance of their endeavours. A reasonable compensation requires some closing of these financial gaps in recognition of the importance of the work done by the JJs." (pages 28-29, paragraph 89)

Currently, comparing the full time judicial justice salary of approximately \$105,000 with the PCJ salary of \$244,112, the remunerative gap persists: judicial justices make about 43% of a PCJ salary. I respectfully request that this commission adopt the reasoning of the past 3 commissions and make a recommendation that reduces that disparity in a manner that provides for reasonable compensation.

2. Similar Judicial Positions outside BC

The table produced in Appendix A sets out compensation levels for similar judicial positions in various provinces in Canada that I have been able to access. The information I have set out in Appendix A is distilled from the various sources noted and should I be in error I invite and accept any correction.

The legislated factor in section 5(5)(c) of the *Act* requires the commission to consider *similar* judicial positions in other jurisdictions “having regard to the *differences* between those jurisdictions and British Columbia”.

In my respectful submission, a fair assessment of this factor should include, at a minimum, an examination of the following similarities, or differences, in each jurisdiction:

1. The remunerative scheme in place for the judicial officer;
2. The jurisdiction and actual duties of the judicial officer;
3. Qualifications for appointment of the judicial officer;
4. The size of the province and its needs for the judicial officer;
5. The economic strength of the province.

With that backdrop in mind, I submit that the Alberta *per diem* rate provides the most useful comparator for the following reasons:

1. The method of remuneration of the *per diem* judicial justice is very similar for both provinces;
2. The jurisdiction of judicial justices in both provinces is very similar;
3. Both provinces require legally trained judicial officers as a condition of appointment;
4. Both are large provinces with significant populations requiring timely justice in many locations;
5. Both provinces possess considerable economic prowess. However, in recent times, BC’s economic growth has been extremely positive while Alberta’s has plummeted.

Given those similarities, the disparity in compensation rates appears grossly disproportionate: in 2012-2013 the compensation rate for BC *per diem* judicial justices was \$625, as compared to \$877 for Alberta justices of the peace. Even without factoring in the shift differential which is paid to Alberta justices, for 2012-2013 Alberta justices were paid more than what I am seeking in 2016. While it is likely that in 2012-2013 Alberta fared better economically than BC, the reality is that BC’s current economic health appears to substantially outrank that of Alberta (see submission in relation to sections 5(5)(e) and 5(5)(f) of the *Act*). Today, there appears to be no legitimate reason to compensate BC judicial justices lower than their Alberta counterparts.

Turning now to Saskatchewan, the following comparisons are noted:

1. The method of remuneration of the *per diem* judicial justice is similar in that Saskatchewan also applies a working day divisor, but it is unclear from the balance of the report what additional remuneration or benefits are provided to *per diem* judicial justices;
2. Overall jurisdiction appears similar to BC but actual duties within Saskatchewan are distinguishable between their junior JPs and senior JPs; in BC, however, judicial justices can share duties and a number of judicial justices (both full time and part time) preside at the Justice Centre and in Traffic Court and/or in Integrated Court;
3. There is no requirement in Saskatchewan that their JPs be lawyers; however, in practice, their senior JPs are lawyers. In this regard, the Report of 2013 Saskatchewan Compensation Commission concludes as follows at paragraph 316:

“A further point on this issue is that this Commission is not mandated to make distinctions between junior and senior JPs in terms of salary. As such, senior JPs should not earn less than they deserve simply because the Act does not contemplate this distinction. That is, it is preferable for junior JPs to earn a higher salary by default rather than for senior JPs to be penalized. If a recruitment goal is to attract the best and brightest to judicial decision-making positions, compensation must be comparable to other positions requiring a legal education.”

4. Saskatchewan is also a physically large province but it has a substantially lower population than BC;
5. BC showed impressive economic growth for 2015 but Saskatchewan showed negative growth.

With those similarities and differences in mind, again it appears that the rate of remuneration for Saskatchewan JPs outranks that of British Columbia: At 49% of a PCJ's salary, Saskatchewan full time JPs make \$127,000 compared to the \$106,000 for BC full time Judicial Justices. It is difficult to compare the *per diem* rates because it is unknown what other benefits/remuneration are given to Saskatchewan part time JPs.

As for Ontario, I submit the following comparisons for your consideration:

1. The Ontario model is largely full time;
2. Ontario justices of the peace share similar jurisdiction with BC judicial justices although in practice it appears Ontario JPs have very broad duties including presiding over all bail hearings;

3. There is no requirement that Ontario JPs be lawyers;
4. Both BC and Ontario are large provinces with needs for justice in many areas, but Ontario has a significantly larger population than BC;
5. Ontario showed respectable economic growth in 2015, just behind BC's impressive economic growth.

With those factors in mind, again Ontario justices' salaries significantly outrank those of BC judicial justices: \$128,000 versus \$106,000. This appears grossly disproportionate given that Ontario justices need not be legally trained and that their general jurisdiction is similar. Like Ontario, BC appears to be in a similar economic position to compensate their justices accordingly.

It is difficult to compare BC *per diem* salaries with part time salaries in Ontario because the part time model is being phased out in Ontario. I note that the 2007 Taylor Commission in BC also struggled in comparing BC part time remuneration with that in Ontario, because no guidance was given as to how the *pro-rata per diem* rate in Ontario was to be derived. Thus I restrict my submission to a comparison between the full time rates.

(d)Changes in the compensation of others paid by provincial public funds in British Columbia

At the outset, I note that provincial court judges, who have consistently been recognized by past commissions as relevant comparators to judicial justices, are paid by provincial public funds in British Columbia. While provincial court judges ought to be paid more than judicial justices, changes (ie relatively greater increases) in their compensation over time as compared with judicial justices have resulted in a widening of the remuneration gap between the two types of judicial officers. I ask the commission to consider that history when applying this factor.

Further, while I recognize the necessary caution in rationalizing compensation of judicial justices on the basis of changes, or lack thereof, to the compensation of civil servants (who do not possess judicial independence, do not resort to a commission process, and whose compensation is established by other processes including collective bargaining and negotiation), where a constitutional anomaly exists in relation to the compensation of others paid by provincial public funds in British Columbia, then in my respectful submission a commission ought to consider that under this section or under section 5(5.2) of the *Act*.

In my submission, such a constitutional anomaly continues to exist in relation to the rate of compensation of provincially paid Crown Counsel. Crown Counsel regularly appear before judicial justices by video for Vancouver and Surrey matters, by telephone during business hours when a provincial court judge is not available, and by video from their courtroom to the Justice Centre during the judges' biannual conferences.

I have viewed the Legal Counsel Salary Schedule for 2013, 2014, 2015, 2016 (copies are attached as Appendix B). Regarding the 2013 schedule, Crown Counsel initially received a 2.77% increase for 2013. Following the provincial court judges' litigation, a 6.17% increase was retroactively applied to the 2013 salary schedule only. From 2014 to 2016, Crown salaries have continued to change by way of consistent increases as set out on the respective salary schedules.

Like *per diem* judicial justices, Crown Counsel are all lawyers. Crown Counsel are compensated by "levels" which are defined by years of call to the bar and other performance criteria⁷. Level 1 applies to lawyers with less than 5 years of call; Level 2 (entry level) applies to lawyers with 6 or more years of call; Level 3 requires a minimum of 8 years of call and requires performance exceeding the working level such as accepting responsibilities, demonstrating exceptional interpersonal skills when dealing with victims, witnesses, and the public, performing duties with minimal direction, demonstrating sound judgment and effective problem solving and interpersonal skills; Level 4 requires a minimum of 10 years call and covers recognized leaders demonstrating superior abilities with appointment to the latter level being at the discretion of the Deputy Attorney General.

It remains my understanding that Crown Counsel are also entitled to benefits.

In my respectful submission, Level 3 represents a decent general comparator to *per diem* judicial justices when assessing whether a constitutional anomaly exists. Judicial justices must accept responsibilities (including the ultimate responsibility for any decision including those on very serious criminal matters in relation to bail and judicial authorizations); demonstrate exceptional interpersonal skills when dealing with adult and youth accused persons, police officers, counsel, parents and guardians, witnesses, interpreters, prospective sureties, and jail guards; perform duties with minimal direction or assistance (work without a clerk in the physical or virtual courtroom; record proceedings, schedule dates and locations, document the record of proceedings, hear submissions, control the process and make the ultimate decision), and demonstrate sound judgment and effective problem solving and interpersonal skills.

On bail matters, one party is always the Crown, and on Vancouver and Surrey bail lists (which are oftentimes extensive) as well as on bail matters throughout the province during business hours, the Crown representative generally is Crown Counsel. In my respectful submission, an obvious constitutional anomaly exists when Crown Counsel at the comparable Level 3 range are paid significantly more than judicial justices who render the bail decision. At the very least, the appearance of judicial independence is compromised when this constitutional anomaly exists. The judicial

justice should be paid more than the publicly paid Crown representative who appears before him or her. Quite frankly, in my respectful submission, given the nature of judicial independence overall, a judicial justice should in general be paid more than a level 3 Crown Counsel, whether or not that Crown Counsel appears before judicial justices.

According to the Legal Counsel Salary Schedule effective April 1, 2016, the current hourly rate of remuneration for Level 3 Crown Counsel ranges between \$79 and \$91. Factoring in benefits for Crown Counsel at 24.5%, this equates to an hourly range between \$98 and \$113. Compared to the hourly rate of \$86 for *per diem* judicial justices, Crown Counsel make between 114% and 131% of the judicial justice rate (even higher if you don't include the allowance for overhead in *per diem* remuneration). I respectfully ask this Commission to correct this anomaly by recommending a *per diem* rate of compensation that exceeds the effective Crown Counsel rate by an amount that reestablishes the appropriate position of the independent judicial justice in the constitutional landscape.

I have received confirmation⁸ as to the *ad hoc* rates for Crown Counsel in British Columbia. My understanding is that *ad hoc* Crown Counsel are practicing lawyers who are retained to provide their services to the Crown (for example, attendance in court on behalf of the Crown on a certain date or dates). The *ad hoc* Crown Counsel daily rates range between \$600 (regular assignment) - \$800 (special assignment) per day in Provincial Court, based on the following general criteria: regular assignment *ad hoc* Crown Counsel are retained to appear in a courtroom for a day's work; special assignment *ad hoc* Crown Counsel are retained to work on a specific file, normally over an extended period of time.

Admittedly, *ad hoc* Crown Counsel rates do not appear to have changed since the last judicial justice compensation hearings. In fairness, I do note that the 2007 Judicial Justices of the Peace Commission considered *ad hoc* Crown Counsel rates in assessing reasonable compensation for *per diem* legally trained judicial justices. But I also point out the following: In 2007, the *per diem* judicial justice was a new kind of judicial officer, and comparables such as *ad hoc* Crown counsel rates made sense in order to initially fairly gauge the appropriate rate of *per diem* remuneration. As of 2016, however, *per diem* judicial justices are firmly entrenched in the provincial court judiciary, and they now constitute the majority of the judicial justice bench. Their commitment to service, not only over past years, but in their regular daily duties and assignments, as well as into the mandate of this commission, is (and constitutionally speaking, must be) significantly greater than that of *ad hoc* Crown Counsel. In that regard, therefore, I respectfully ask that this commission not provide great weight to the lack of change in *ad hoc* Crown Counsel remuneration, and that this commission recommend a rate of remuneration for *per diem* judicial justices that exceeds that of *ad hoc* Crown Counsel.

(e)The generally accepted current and expected economic conditions in British Columbia

At the outset, I acknowledge that any assessment I provide in this submission in relation to the generally accepted current and expected economic conditions in British Columbia is one based on a common perception of our current and expected economic conditions. I am not in a position to provide expert evidence.

To that end, I note that the business council of British Columbia, in an online article posted February 9, 2016⁹, offered the following insight, in part:

“Against the backdrop of diverging growth prospects across the developed and emerging economies and substantial declines in the prices of many commodities, British Columbia is poised for another year of respectable economic performance in 2016. The province’s economy is being held back by low prices for many commodities, but non-resource merchandise and service exports are kicking into gear, aided by the low Canadian dollar. The housing market remains active, supported by continued rock-bottom interest rates, stronger job creation and inflows of foreign money. The current economic downturn in Alberta means that BC will see a surge in interprovincial migration, which should further bolster housing markets and retail sales in the province...”

Notwithstanding slow global growth and a struggling Canadian economy, BC is holding up surprisingly well. Conditions in the province’s export sector are mixed: commodities are weighing on growth, while service exports and non-resource merchandise shipments are benefitting from the low Canadian dollar and ongoing US expansion. A diversified industrial and export base is helping BC...”

Regarding economic growth, in BCBC blog posted May 16, 2016¹⁰ and entitled “BC Tops the Provinces in Economic Growth in 2015”, Ken Peacock reported the following:

“Bolstered by the lower dollar, inward migration, and a hot housing market, BC’s economy grew by a solid 3.0% (after adjusting for inflation) in 2015. This was the strongest expansion since 2006, although just slightly above 2014’s healthy gain.

BC also recorded the fastest growth of any province. Ontario was second, with a respectable 2.5% gain in GDP last year. Manitoba’s economy grew by 2.3%. After that, growth patterns were very divergent. Plummeting oil prices hit the oil producing provinces hard. Alberta’s economy contracted by a painful 4.0%, Newfoundland by 2.2%, and Saskatchewan by 1.4%...

Overall, this is impressive growth for the BC economy, especially considering the still soft global backdrop. It is also noteworthy that last year’s solid growth follows a similar expansion in 2014. The industry GDP data released by Statistics Canada provide further support for the Business Council’s contention that BC is benefitting from a diverse industrial base, healthy consumer sentiment and a very robust housing

market. The Business Council is projecting economic growth of 2.8 % for 2016. But in light of 2015's performance, we may be revising our 2016 outlook upwards.”

From the foregoing, I respectfully distill the following:

1. The current economic conditions in British Columbia are good. This is in contrast to 2013 when the economy was perhaps decent but fragile.
2. The projection in 2013 was one of cautious optimism. Now, with the benefit of hindsight, 2014 and 2015 have proven to be good economic years. Solid performances in those years add credence to the projection of continued economic growth in 2016 and onwards.
3. Compared to other provinces, BC is the leader in economic growth. In particular, as compared to Alberta, where judicial justices are paid significantly higher, BC performed extremely well economically, while Alberta suffered.

Finally, regarding any projections in relation to the cost of living, RBC Economics¹¹ offers the following Consumer Price Index forecast: 1.8% increase for 2016; 2.1% increase for 2017.

(e)The current and expected financial position of the government over the 3 fiscal years that are the subject of the report

The Business Council of British Columbia, in an online article dated February 17, 2016¹² following the release of the provincial budget, made the following comments regarding the current and expected financial position of the government:

“Budget 2016 tells a generally upbeat story of British Columbia’s economic performance and fiscal health. Economic and job growth are running above the national average, and BC is one of only two provinces to post a balanced operating budget (or surplus) both this year and in 2016-17...”

...the province is doing better than Canada as a whole on several commonly-cited metrics – including economic growth, job creation, retail sales, and housing-related investment.

...government is committed to avoiding budget deficits. For 2015-16 and the following three years, it plans to run modest operating surpluses, in the range of 600-700 million. These surplus projections include an annual forecast allowance of 350 million for the period 2016-17 through 2018-19. The government may beat its fiscal targets if the economy continues to grow...

...government has earmarked \$100 million from this year`s budget surplus to establish a new Prosperity Fund”

Overall, it would appear that the positive economic situation in BC has translated to a budget with some flexibility. Even if a fairly disciplined budgetary approach is maintained in these healthy economic circumstances, in my respectful submission a significant increase to judicial justice compensation is justified, affordable, reasonable, and constitutionally necessary.

IV. Shift differential

Per diem judicial justices are expected to work variable shifts in accordance with their individual memoranda of understanding. The reality remains that a memorandum of understanding will vary as between judicial justices. The further reality is that availability will vary as between judicial justices.

Some judicial justices, full time or part time, only work day shift, Monday through Friday. Some judicial justices only work the midnight shift. Yet other judicial justices offer wider availability and work a combination of days (typically 8am or 9am shifts but there may be other day shifts), weekends, afternoons (typically 4pm to midnight but there may be other afternoon shifts) , and statutory holidays.

I am confident in conveying from years of experience working at the Justice Centre that weekend day and afternoon shifts typically require heavy lifting, as do many statutory holidays, especially on long weekends. In addition to the increased work load during these shifts, judicial justices miss and are missed by their families, and they often must forego other social opportunities. They must readjust sleep/wake schedules and meals. Judicial justices who commit to these shifts witness the value their service provides, and their contribution is part of a team effort. Shift differential would be a step to confirm that.

In my respectful submission, reasonable compensation is better met by an approach that acknowledges that some shifts may merit enhanced compensation. I respectfully ask this commission to consider the following:

1. The comparable Alberta *per diem* model provides shift differential, acknowledged in detailed legislation following their compensation commission process;
2. Under section 5(1) of BC’s *Judicial Compensation Act*, this commission must report and make recommendations on “all matters” respecting the remuneration of judicial justices. Arguably, shift differential is “a matter” respecting the remuneration of judicial justices.

3. Further, section 6(7) of the *Judicial Compensation Act* provides as follows:
6...

(7) A resolution referred to in subsection (2) or a recommendation referred to in subsection (3) may set different salaries for different responsibilities.

The latter provision appears to have originated in past versions of British Columbia's *Provincial Court Act*, having later migrated to its current location in the *Judicial Compensation Act*. While this subsection was, admittedly, probably not originally intended to provide the basis for shift differential, it now finds itself in legislation designed to meet the constitutional obligation to provide reasonable compensation, and thus its purpose may have broader scope. Quite simply, it may be argued that with different shifts come different responsibilities.

I suggest a simple approach to shift differential would be appropriate, at least as a starting point. My sense is that typically the hardest shifts to fill are statutory holidays and long weekends. A shift differential for those shifts could achieve the following mutually beneficial result: remunerative recognition for judicial justices who commit to service during less desirable hours would encourage judicial justices to offer availability, which would, in turn, hopefully assist with scheduling at the OCJ end. In my respectful submission, a shift differential of 10% would be a modest but reasonably attractive amount, easy to calculate and administer for a limited number of long weekend and statutory holiday shifts.

Lastly, I would ask for a shift differential of double time for Christmas Day. Christmas is a unique holiday and it appears to be the most difficult shift of all to fill, even for half a day. I understand that full time judicial justices are compensated by 2 lieu days if they work Christmas Day, and even then it remains a difficult shift to cover. In my respectful submission, double time for Christmas day would:

1. encourage and recognize judicial justices who commit to working Christmas Day;
2. provide incentive to judicial justices to work a half shift (because they would essentially receive their full *per diem* for working a half shift);
3. be easy to calculate and administer for one day a year.

For greater certainty, I am not seeking shift differential for any midnight shift.

V. Summary in relation to *Per Diem* Rate

In my submission, a *per diem* rate of \$800 - \$875 with additional shift differential for statutory holidays, long weekends, and Christmas Day is reasonable and constitutionally necessary for the following reasons:

1. The *per diem* model requiring legally trained judicial justices has been successful and a rate of \$800 - \$875 per day would serve to attract and retain legally trained judicial justices;
2. In comparison to other provinces, especially Alberta where the remuneration scheme, qualifications, and economic potential of the provinces is similar, BC's compensation rate is too low. A *per diem* of \$800 - \$875 would bring BC judicial justices' remuneration closer to that of their Alberta counterparts;
3. In comparison to BC provincial court judges, the salary gap between judicial justices and PCJs is too wide, given their common jurisdiction in significant areas of bail and judicial authorizations. A *per diem* rate of \$800 - \$875 would serve to diminish that disparity.
4. In comparison to Crown Counsel, the current *per diem* rate is unreasonably low. A *per diem* rate of \$800 - \$875 would serve to ameliorate that constitutional anomaly.
5. In my respectful submission, a constitutionally appropriate *per diem* rate of remuneration for judicial justices must fall between the effective Crown Counsel and PCJ rates.
6. Additional shift differential is reasonable given the need to attract new applicants, encourage availability, and reasonably compensate those who commit to providing service during off hours.
7. BC's current economy is healthy and a positive future economic prognosis is credible and justified given solid economic performances over the past two years as well as multiple encouraging economic predictors.
8. Annual increases of 2% are consistent with anticipated increases in the cost of living based on projected percentage increases to the consumer price index.

VI. Professional Development Allowance ("PDA"):

I maintain the same submission I made in the 2013 compensation hearings that any equivalent amount for professional development allowance should be factored into the *per diem* rate, as this is consistent with the *per diem* model of remuneration. However, I do recognize that one of the risks of this approach is that the amount simply would simply become income without any guarantee that it would be used to further professional development.

I strongly believe that education is crucial for all judicial justices. I have already explained the importance of staying current with new legislation and emerging jurisprudence, especially in relation to judicial authorizations. Further, while education

has the immediate benefit of contributing to the qualifications and abilities of judicial justices, it also has the significant advantage of enhancing collaboration and debate, collegiality and professionalism, and understanding and respect between judicial justices themselves, as well as with other judicial officers and justice system participants within and outside of BC. I am thankful that PDA was extended to *per diem* judicial justices in the 2013 Commission's recommendations and that government adopted that recommendation.

To that end, I have used all of my available PDA (and some of my own resources) for educational opportunities over the past commission's mandate. This has included the following:

- attendance at the 2014 National Criminal Law Program in Halifax;
- attendance at the 8th National Symposium on Tech Crime and Electronic Evidence in Calgary in 2015;
- attendance at the upcoming National Criminal Law Program in Charlottetown in July 2016 (I will be there during these commission hearings);
- attendance at the upcoming Western Symposium on Search and Seizure in Vancouver in September 2016 (I know that nine per diem judicial justices from BC are attending that conference)

Many of the educational conferences of interest to me are available outside of BC. National conferences attract influential speakers whose presence may not be affordable in a less central province. The reality is, of course, that out of province conferences are more expensive than local ones because of travel and accommodation expenses. I would ask for consideration of a PDA in the amount of \$2500 to assist in this regard.

On a final note, I do point out that *per diem* access to PDA is more limited than full time access, given that the *per diem* formula already incorporates an amount to cover overhead expenses. As I understand the policy, *per diem* judicial justices may use their PDA for books or conferences that are approved by the Office of the Chief Judge.

VII. Oral Submission

Further to the protocol set out in this commission's letter of June 2, 2016, I wish to advise that I would have made a formal request for an oral submission and I would have considered it a privilege to appear before the commission were I granted leave. As I will be at the National Criminal Law Program in Charlottetown during the hearings (to which I committed in advance of the hearing dates being set), I regrettably will not be able to be present at the hearings. I would respectfully ask, however, that should this commission be contemplating a recommendation which impacts me and which has not been addressed in my submission, that I be given a reasonable opportunity to reply electronically. With permission of commission counsel, I will leave my contact information with her. Thank you for your consideration.

All of which is respectfully submitted and filed (electronically) this 20th day of June, 2016.

Anna-Maya Brown

Notes

¹The genesis of the formula is found in the 2007 commission's report which set out a divisor of 219, 20% for benefits, and \$75 for overhead. That commission then specified actual salary amounts and *per diems* for their 3 year mandate as follows: \$94,730; \$97,100; and \$99,525; with corresponding *per diems* of \$600; \$615; and \$625. Doing the calculations one can see they appear to have rounded up the *per diems* and in effect the overhead seems more accurately reflected as \$80.

The most recent commission (2013) did not specify actual salary amounts and *per diems* but used percentages, which were ultimately altered by the government response to be 1.5%; 2%; and 2%. In its original report, the 2013 commission originally used what it perceived to be the formula of the day, reduced the divisor to 207 to account for chambers days, added 24.5% for benefits and \$80 for overhead. However, in its final report, following clarification, the benefits portion was reduced to 20% and the overhead to \$75. In essence though, my current remuneration seems to reflect the fact that the original amounts from 2007 appeared to incorporate an overhead of \$80.

Thus my *per diems* over the last three years have been as follows:

\$665.61 (reflects a formula of 101018/207 plus 20% plus 80)

\$678.92 (reflects a 2% increase)

\$692.50 (reflects a further 2% increase)

Regarding calculation of my effective hourly rate, Justice Centre shifts are based on an 8 hour day. One calculation would be as follows: $\$692.50/8 = \mathbf{\$86.56 \text{ per hour}}$.

However, this may be perceived as an artificially inflated hourly rate because it factors in the constant of \$80 per shift for overhead as well as a percentage for benefits.

Without considering the 20% benefits portion and \$80 constant, the effective *per diem* hourly rate would be \$692.50 less the \$80 constant per shift which would equal 612.50; deducting 20% value of benefits [20% of 105098 = 21020, divided by 207= \$101.50] from 612.50 would result in \$511; \$511 divided by 8 would result in an effective *per diem* hourly rate of approximately **\$63.88**.

I am assuming, using the percentages set by government following the last commission, that the actual full time salaries over the past three years were as follows:

101018 (reflects the 1.5% increase)

103038 (reflects a 2% increase)

105098 (reflects a further 2% increase)

² <http://www.provincialcourt.bc.ca/about-the-court/judicial-officers/justices-peace/judicial-justices/assignment-of-duties>

³ I have been advised by my Chief Judge that there are currently 9 JP adjudicators who receive approximately two assignments per month at Robson during the day, and

Richmond in the evening. They were appointed as JPs, are senior members of the Bar and well-respected civil lawyers who all have either extensive arbitrator or mediator experience. Most are QCs. Since the inception of the program regarding Civil Expedited Cases \$5000 and under, they are paid the same as the *per diem* Judicial Justices.

⁴A production order is, in simple terms, a court order compelling a third party to produce documents or data.

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<http://www.canlii.org/en/ca/scc/doc/2014/2014scc43/2014scc43.html?autocompleteStr=.%20v.%20spencer&autocompletePos=2>

⁶ <http://www.canlii.org/en/ca/scc/doc/2013/2013scc60/2013scc60.html?resultIndex=2>

⁷ http://www.bccrowncounselassociation.bc.ca/upload/docs/schedule_A_revised.pdf

⁸ pursuant to a Freedom of Information request made by myself

⁹ <http://www.bcbc.com/publications/2016/bcs-growth-story-remains-intact...despite-an-uninspiring-global-backdrop>

¹⁰ <http://www.bcbc.com/bcbc-blog/2016/bc-tops-the-provinces-in-economic-growth-in-2015>

¹¹ <http://www.rbc.com/economics/economic-reports/pdf/provincial-forecasts/bc.pdf>

¹² <http://www.bcbc.com/publications/2016/the-2016-bc-budget-high-marks-for-fiscal-management...but-bc-must-do-more-to-improve-competitiveness>

Appendix A

Province	Salaried Full Time	Part Time Per Diem	Must possess legal qualifications?	Jurisdiction
British Columbia	105,099	692.50	Yes for new appointments since 2007	-Judicial authorizations -Bail hearings -Traffic Court trials including motor vehicle and other provincial offences and bylaws -Small Claims Payment Hearings -No Charter
Alberta	139,932 (2012/2013) ^a	877 (2012/2013) Plus shift differential ^b	Yes ^c	- Provincial offences trials -Bail hearings -Judicial authorizations -Family protection orders ^d -No death or Charter cases ^e
Saskatchewan	49% of PCJ (49% of 260,819) = 127,801(2014-2015) ^f -actual current salary may be higher	1/220 of annual <i>salary</i> for each day: 127,801/220 = 580 (but further amounts to be calculated in)(2014-2015) ^g	No but certain senior JPs only appointed in practice if have law degree ^h	-JP-type duties -trials for provincial statutes and bylaws -search warrants -bail hearings -small claims trials -emergency protection orders ⁱ

Manitoba	43% of PCJ ^l (43% of 239,000 ^k) = 102770	?	No ^l	?
Ontario	128,426 ^m	-Part time pro-rated salary ⁿ but vast majority is full time	No ^o	-Judicial authorizations -Virtually all Bail hearings -trials on some non criminal code federal offences -Provincial regulatory offences and bylaws -overall relatively wide jurisdiction ^p
Quebec	124118 ^q	?	Yes ^r	Under Schedule V of the Courts of Justice Act ^s
Nova Scotia	No full time	203000 (PCJ salary)/219 = \$927 /8 = \$116 per hour ^t	No requirement but all are currently lawyers	Judicial authorizations Provincial trials Uncontested bail

^a S.6 Alberta Regulation 6/1999 at http://www.qp.alberta.ca/documents/Regs/1999_006.pdf

^b S. 8 and s.8.1 Alberta Regulation 6/1999 at http://www.qp.alberta.ca/documents/Regs/1999_006.pdf

^c Report and Recommendations of the 2009 Justices of the Peace 2009 Compensation Commission, https://www.justice.alberta.ca/programs_services/courts/Documents/JP-CompensationCommissionReport-2009.pdf at pages 3 and 4

^d Report and Recommendations of the 2009 Justices of the Peace 2009 Compensation Commission, https://www.justice.alberta.ca/programs_services/courts/Documents/JP-CompensationCommissionReport-2009.pdf at pages 4 and 5

^e S. 3(2) Alberta Regulation 6/1999 at http://www.qp.alberta.ca/documents/Regs/1999_006.pdf

^f S.3 The Provincial Court Compensation Regulations, Chapter P-30.11 Reg 2 at <http://www.qp.gov.sk.ca/documents/English/Regulations/Regulations/P30-11R2.pdf> and s.3(2) of The Justices of the Peace (Commission) Regulations at <http://www.qp.gov.sk.ca/documents/English/Regulations/Regulations/J5-1R2.pdf>

^g S.4 of the Justices of the Peace (Commission) Regulations at <http://www.qp.gov.sk.ca/documents/English/Regulations/Regulations/J5-1R2.pdf> as well as Report and Recommendations of the 2013 Saskatchewan Justice of the Peace Compensation Commission at <http://www.jpcompensationcommission.ca/reports/2014-report-recommendations-2013-sk-jJustice-peace-compensation-commission.pdf> at paragraphs 328 to 383

^h Report and Recommendations of the 2013 Saskatchewan Justice of the Peace Compensation Commission at <http://www.jpcompensationcommission.ca/reports/2014-report-recommendations-2013-sk-jJustice-peace-compensation-commission.pdf> at page 18

ⁱ Report and Recommendations of the 2013 Saskatchewan Justice of the Peace Compensation Commission at <http://www.jpcompensationcommission.ca/reports/2014-report-recommendations-2013-sk-jJustice-peace-compensation-commission.pdf> at page 20

^j S.3 of Justices of the Peace Regulation at http://web2.gov.mb.ca/laws/regs/current/_pdf-regs.php?reg=117/2006

^k <http://www.winnipeg.sun.com/2015/05/19/being-a-judge-nice-work-if-you-can-get-it>

^l http://www.manitobacourts.mb.ca/site/assets/files/1072/jjp_bulletin.pdf

^m <http://www.ontariocourts.ca/ocj/jpaac/frequently-asked-questions> at paragraph 15

ⁿ s.2 and s.3 Ontario Regulation 247/94 Salary and Benefits of Justices of the Peace at <https://www.ontario.ca/laws/regulation/940247>

^o <http://www.ontariocourts.ca/ocj/jpaac/qualifications/>

^p <http://www.ontariocourts.ca/ocj/paac/role/>

^q as per JJABC submission

^r S.162 of Courts of Justice Act at <https://www.canlii.org/en/qc/laws/stat/rsq-c-t-16/latest/rsq-c-t-16.html>

^s <https://www.canlii.org/en/qc/laws/stat/rsq-c-t-16/latest/rsq-c-t-16.html>

^t I received the information regarding Nova Scotia from my Chief Judge

Appendix B

BRITISH COLUMBIA
PUBLIC SERVICE AGENCY

LEGAL COUNSEL SALARY SCHEDULE ANNUAL, BI-WEEKLY AND HOURLY RATES EFFECTIVE APRIL 1, 2013

CLASS CODE	CLASSIFICATION TITLE	Grade	Year of Call	Annual	Monthly	Biweekly	Hourly	
Salary Plan = LGL Bargaining Unit Code = 0 Percentage Increase = 6.17%								
441001	Legal Counsel Level 1	01	1	75,062.57	6,255.21	2,877.14	41.1020	
			2	80,602.89	6,716.91	3,089.50	44.1357	
			3	86,143.74	7,178.65	3,301.88	47.1697	
			4	91,685.11	7,640.43	3,514.28	50.2040	
			5	97,223.86	8,101.99	3,726.58	53.2369	
441002	Legal Counsel Level 2	02	6 (Step 1)	103,689.05	8,640.75	3,974.39	56.7770	
			7 (Step 2)	110,152.94	9,179.41	4,222.15	60.3164	
			8 (Step 3)	116,614.74	9,717.90	4,469.83	63.8547	
			9 (Step 4)	123,083.84	10,256.99	4,717.79	67.3970	
			10 (Step 5)	128,211.43	10,684.29	4,914.33	70.2047	
			11 (Step 6)	134,471.30	11,205.94	5,154.27	73.6324	
				Step	Annual	Monthly	Biweekly	Hourly
441103	Legal Counsel Level 3	03A	1	138,468.70	11,539.06	5,307.49	75.8213	
			2	141,888.22	11,824.02	5,438.56	77.6937	
			3	145,305.92	12,108.83	5,569.56	79.5651	
			4	148,726.23	12,393.85	5,700.66	81.4380	
			5	152,511.26	12,709.27	5,845.74	83.5106	
			6	156,298.13	13,024.84	5,990.89	85.5841	
			7	159,010.89	13,250.91	6,094.87	87.0696	
441004	Legal Counsel Level 4	04	1	160,083.94	13,340.33	6,136.00	87.6571	
			2	166,754.72	13,896.23	6,391.69	91.3099	
			3	173,424.71	14,452.06	6,647.35	94.9621	
			4	180,094.18	15,007.85	6,902.99	98.6141	
			5	186,764.43	15,563.70	7,158.66	102.2666	
			6	193,435.98	16,119.67	7,414.38	105.9197	
441104	Legal Counsel Manager <i>Up to 7% greater than LC 4 level</i>	05		206,976.59	17,248.05	7,933.39	113.3341	
Grandfathered Salary Scale:								
441203	Legal Counsel Level 3B	03B	1	148,727.01	12,393.92	5,700.69	81.4384	
			2	152,511.26	12,709.27	5,845.74	83.5106	
			3	156,298.13	13,024.84	5,990.89	85.5841	
			4	160,082.90	13,340.24	6,135.96	87.6566	
			5	165,845.77	13,820.48	6,356.85	90.8121	
			6	171,815.52	14,317.96	6,585.67	94.0810	

Note: Legal Counsel initially received a 2.77% increase for 2013. A 6.17% increase was retroactively applied to the 2013 salary schedule but only applies to the time period April 1, 2013 to March 31, 2014. The salary schedules for 2014 and beyond are not being amended to reflect the additional 3.4% increase made in 2013.

LEGAL COUNSEL SALARY SCHEDULE
ANNUAL, BI-WEEKLY AND HOURLY RATES
EFFECTIVE APRIL 1, 2014

CLASS CODE	CLASSIFICATION TITLE	Grade	Year of Call	Annual	Monthly	Biweekly	Hourly
Salary Plan = LGL Bargaining Unit Code = 0 Percentage Increase = 2.27%							
441001	Legal Counsel Level 1	01	1	74,308.33	6,192.36	2,848.23	40.6890
			2	79,793.08	6,649.42	3,058.46	43.6923
			3	85,277.83	7,106.49	3,268.69	46.6956
			4	90,763.63	7,563.64	3,478.96	49.6994
			5	96,246.56	8,020.55	3,689.12	52.7017
441002	Legal Counsel Level 2	02	6 (Step 1)	102,646.79	8,553.90	3,934.44	56.2063
			7 (Step 2)	109,045.71	9,087.14	4,179.71	59.7101
			8 (Step 3)	115,442.80	9,620.23	4,424.91	63.2130
			9 (Step 4)	121,846.68	10,153.89	4,670.37	66.7196
			10 (Step 5)	128,242.88	10,686.91	4,915.82	70.2262
			11 (Step 6)	134,639.07	11,220.32	5,161.27	73.7328
441103	Legal Counsel Level 3	03A	1	137,076.83	11,423.07	5,254.14	75.0591
			2	140,461.92	11,705.16	5,383.89	76.9127
			3	143,845.44	11,987.12	5,513.58	78.7654
			4	147,231.31	12,269.28	5,643.36	80.6194
			5	150,978.52	12,581.54	5,786.99	82.6713
			6	154,727.03	12,893.92	5,930.67	84.7239
			7	158,475.54	13,206.30	6,074.33	86.7761
441004	Legal Counsel Level 4	04	1	158,475.02	13,206.25	6,074.33	86.7761
			2	165,078.48	13,756.54	6,327.44	90.3920
			3	171,681.42	14,306.79	6,580.53	94.0076
			4	178,284.10	14,857.01	6,833.61	97.6230
			5	184,887.30	15,407.28	7,086.71	101.2387
			6	191,491.81	15,957.65	7,339.86	104.8551
441104	Legal Counsel Manager <i>Up to 7% greater than LC 4 level</i>	05		204,896.23	17,074.69	7,853.65	112.1950
Grandfathered Salary Scale:							
441203	Legal Counsel Level 3B	03B	1	147,232.09	12,269.34	5,643.39	80.6199
			2	150,978.52	12,581.54	5,786.99	82.6713
			3	154,727.03	12,893.92	5,930.67	84.7239
			4	158,473.97	13,206.16	6,074.29	86.7756
			5	164,178.92	13,681.58	6,292.96	89.8994
			6	170,088.67	14,174.06	6,519.48	93.1354

LEGAL COUNSEL SALARY SCHEDULE
ANNUAL, BI-WEEKLY AND HOURLY RATES
EFFECTIVE APRIL 1, 2015

CLASS CODE	CLASSIFICATION TITLE	Grade	Year of Call	Annual	Monthly	Biweekly	Hourly
Salary Plan = LGL Bargaining Unit Code = 0 Percentage Increase = 2.77%							
441001	Legal Counsel Level 1	01	1	76,366.77	6,363.90	2,927.13	41.8161
			2	82,003.37	6,833.61	3,143.18	44.9026
			3	87,639.96	7,303.33	3,359.23	47.9890
			4	93,277.86	7,773.16	3,575.33	51.0761
			5	98,912.62	8,242.72	3,791.31	54.1616
441002	Legal Counsel Level 2	02	6 (Step 1)	105,490.00	8,790.83	4,043.42	57.7631
			7 (Step 2)	112,066.33	9,338.86	4,295.49	61.3641
			8 (Step 3)	118,640.57	9,886.71	4,547.48	64.9640
			9 (Step 4)	125,221.86	10,435.16	4,799.74	68.5677
			10 (Step 5)	130,438.67	10,869.89	4,999.70	71.4243
			11 (Step 6)	136,807.33	11,400.61	5,243.81	74.9116
Step Annual Monthly Biweekly Hourly							
441103	Legal Counsel Level 3	03A	1	140,873.87	11,739.49	5,399.68	77.1383
			2	144,352.62	12,029.39	5,533.02	79.0431
			3	147,830.06	12,319.17	5,666.31	80.9473
			4	151,309.59	12,609.13	5,799.68	82.8526
			5	155,160.63	12,930.05	5,947.29	84.9613
			6	159,012.98	13,251.08	6,094.95	87.0707
			7	161,772.97	13,481.08	6,200.74	88.5820
441004	Legal Counsel Level 4	04	1	162,864.80	13,572.07	6,242.59	89.1799
			2	169,651.15	14,137.60	6,502.71	92.8959
			3	176,436.98	14,703.08	6,762.81	96.6116
			4	183,222.54	15,268.55	7,022.90	100.3271
			5	190,008.63	15,834.05	7,283.01	104.0430
			6	196,796.03	16,399.67	7,543.17	107.7596
441104	Legal Counsel Manager <i>Up to 7% greater than LC 4 level</i>	05		210,571.70	17,547.64	8,071.19	115.3027
Grandfathered Salary Scale:							
441203	Legal Counsel Level 3B	03B	1	151,310.37	12,609.20	5,799.71	82.8530
			2	155,160.63	12,930.05	5,947.29	84.9613
			3	159,012.98	13,251.08	6,094.95	87.0707
			4	162,863.76	13,571.98	6,242.55	89.1793
			5	168,726.55	14,060.55	6,467.27	92.3896
			6	174,800.14	14,566.68	6,700.07	95.7153

LEGAL COUNSEL SALARY SCHEDULE
ANNUAL, BI-WEEKLY AND HOURLY RATES
EFFECTIVE APRIL 1, 2016

CLASS CODE	CLASSIFICATION TITLE	Grade	Year of Call	Annual	Monthly	Biweekly	Hourly
Salary Plan = LGL Bargaining Unit Code = 0 Percentage Increase = 2.77%							
441001	Legal Counsel Level 1	01	1	78,482.09	6,540.17	3,008.21	42.9744
			2	84,274.96	7,022.91	3,230.25	46.1464
			3	90,067.57	7,505.63	3,452.28	49.3183
			4	95,861.74	7,988.48	3,674.37	52.4910
			5	101,652.52	8,471.04	3,896.33	55.6619
441002	Legal Counsel Level 2	02	6 (Step 1)	108,412.00	9,034.33	4,155.42	59.3631
			7 (Step 2)	115,170.69	9,597.56	4,414.48	63.0640
			8 (Step 3)	121,927.04	10,160.59	4,673.45	66.7636
			9 (Step 4)	128,690.43	10,724.20	4,932.69	70.4670
			10 (Step 5)	134,051.78	11,170.98	5,138.19	73.4027
			11 (Step 6)	140,596.80	11,716.40	5,389.06	76.9866
Step Annual Monthly Biweekly Hourly							
441103	Legal Counsel Level 3	03A	1	144,776.05	12,064.67	5,549.25	79.2750
			2	148,351.06	12,362.59	5,686.28	81.2326
			3	151,925.04	12,660.42	5,823.27	83.1896
			4	155,500.84	12,958.40	5,960.33	85.1476
			5	159,458.58	13,288.22	6,112.03	87.3147
			6	163,417.64	13,618.14	6,263.78	89.4826
			7	166,254.06	13,854.51	6,372.50	91.0357
441004	Legal Counsel Level 4	04	1	167,376.17	13,948.01	6,415.51	91.6501
			2	174,350.62	14,529.22	6,682.84	95.4691
			3	181,324.29	15,110.36	6,950.14	99.2877
			4	188,297.70	15,691.48	7,217.43	103.1061
			5	195,271.89	16,272.66	7,484.75	106.9250
			6	202,247.38	16,853.95	7,752.12	110.7446
441104	Legal Counsel Manager <i>Up to 7% greater than LC 4 level</i>	05		216,404.74	18,033.73	8,294.77	118.4967
Grandfathered Salary Scale:							
441203	Legal Counsel Level 3B	03B	1	155,501.62	12,958.47	5,960.36	85.1480
			2	159,458.58	13,288.22	6,112.03	87.3147
			3	163,417.64	13,618.14	6,263.78	89.4826
			4	167,375.12	13,947.93	6,415.47	91.6496
			5	173,400.18	14,450.02	6,646.41	94.9487
			6	179,642.05	14,970.17	6,885.66	98.3666

