

**Submission of Canadian Bar Association, BC Branch
to the
2022 Judicial Compensation Committee**

January 23, 2023



**THE CANADIAN
BAR ASSOCIATION**
British Columbia Branch

Canadian Bar Association, BC Branch

The Canadian Bar Association (CBABC) represents over 7,600 lawyers, students, and judges in B.C. as a branch of the Canadian Bar Association (CBA), the largest national, legal professional association. Members of CBABC are dedicated to protecting the rule of law, the independence of the judiciary and the Bar, and improving laws, justice and legal systems and access to justice. We believe in equality, diversity and inclusiveness in the profession and in justice and legal systems and are committed to the process of reconciliation with Indigenous peoples.

CBABC members have unique insight into the B.C. justice system and the impact laws have on people. We are committed to the steady progress of our legal and justice systems and improved access for all British Columbians. Strategic and efficient operations in those systems can be achieved through careful analysis and innovation. Fair access to justice can be achieved by acting with sensitivity and courage to meet the needs of those who suffer most under those systems today.

Through a Board of Directors, 65 Sections, 20 committees and working groups, and member service programs, CBABC:

- Improves and promotes the knowledge, skills, ethical standards and well-being of members of the legal profession.
- Provides opportunities for members to connect and contribute to the legal community.
- Advocates on behalf of the profession based on members' professional, front-line experience.

Executive Summary

CBABC welcomes the 2022 Judicial Compensation Commission's invitation to make a submission regarding the issue of reasonable compensation for Provincial Court judges and judicial justices.

CBABC has long advocated for judicial salaries to be competitive so as to attract the most exceptional and capable applicants for appointment, as evident in our previous submissions to the Judicial Compensation Commission in 2013, 2016, and 2019.

The proper and efficient operation of the judicial system depends on a high level of judicial competence. Provincial Court judges and judicial justices have faced tremendous challenges since the outbreak of the COVID-19 pandemic in March 2020. They have handled these challenges with aplomb, quickly adapting to new technologies, overseeing proceedings remotely, and interacting with individuals virtually, along with a multitude of other responsibilities, which have increased due to factors such as the expansion of desk orders and the continued pressure of *R v Jordan*.

Despite this, B.C. pays its Provincial Court judges among the lowest salaries in all judges in all courts in the country, higher only than Nova Scotia, New Brunswick and Newfoundland and Labrador. They have been forced still to undergo constant litigation for ten years to attain their current earnings.

It is CBABC's great concern that, knowing the difficulties that come along with being a Provincial Court judge or judicial justice, without more competitive compensation for the provincial judiciary, highly qualified lawyers will be deterred from applying to join their ranks, as already evidenced by the significant decrease in applicants in 2021. Should this continue, British Columbians face serious risk to the administration of justice and to the quality of B.C.'s justice system.

To attract more highly qualified candidates, CBABC recommends a significant increase to BC Provincial Court judges' and judicial justices' base salary to better reflect the increased demands they face, and align more closely with salaries of their counterparts across Canada and lawyers in private practice.

Discussion

The Commission is guided by Section 5 of the [Judicial Compensation Act](#) and considers the following factors in recommending compensation for Provincial Court judges and judicial justices:

1. The need to maintain a strong court by attracting highly qualified applicants
2. Changes, if any, to the jurisdiction of judges or judicial justices
3. Compensation provided in respect of similar judicial positions in Canada, having regard to the differences between those jurisdictions and B.C.
4. Changes in the compensation of others paid by provincial public funds in B.C.
5. The generally accepted current and expected economic conditions in B.C.
6. The current and expected financial position of the government over the four fiscal years that are the subject of the report

CBABC has long advocated for judicial salaries to be competitive so as to attract the most exceptional and capable applicants for appointment, as evident in our previous submissions to the Judicial Compensation Commission in 2013, 2016, and 2019. The proper and efficient operation of the judicial system depends on a high level of judicial competence.

In this submission, CBABC focuses on the first factor, the need to maintain a strong court by attracting highly qualified applicants.

The Impact of Changing Responsibilities

When considering the judiciary's responsibilities, particular attention must be paid to the context in which Provincial Court judges and judicial justices are currently operating, with particular regard to the continuing reality of the COVID-19 pandemic. The Provincial Court of B.C.'s swift response to the crisis, as described within its [2020-2021 Annual Report, "Finding New Pathways: Learning from experience while keeping courts open and safe"](#) and its [2021-2022 Annual Report](#), began in March 2020 with a forced pivot to virtual proceedings using web-based video-conferencing technology and telephone. Certain matters had to be adjourned and Provincial judges and judicial justices have been working hard ever since to hear these rescheduled cases.

B.C.'s Provincial Court has 84 court locations within five administrative regions. Many Provincial Court judges are required to travel to the court locations to which they are assigned throughout the province. The amount of travel required is significant, particularly in the Northern and Interior regions of B.C. The northern region covers 670,000 square miles, an area larger than Alberta or France. It is not unusual for a judge in the Northern region to live in one community and drive to a courthouse in another community one or two hours away, including in the middle of winter on treacherous roads.

Provincial Court judges lose the autonomy they previously enjoyed over their schedules in private practice. They must operate largely in isolation.

As well, due to the COVID-19 pandemic, Provincial Court judges were forced to adapt to the exponential growth of technological use in Court very suddenly. Excluding traffic and bylaw matters, approximately 79% of all Provincial Court appearances saw at least one participant appearing remotely, enabled by

technology, in 2021-2022. While in-person hearings have now resumed, virtual hearings remain a popular option for conferences, remand lists, bail hearings, sentencing, and witness testimony, among other proceedings.

Adapting to operating virtual courtrooms and interacting with individuals online (accused, counsel, witnesses and self-represented litigants (who in 2020-2021 made 40% of appearances in family law matters; 63% of appearances in small claims matters and 10% of appearances in criminal matters) alike) has proved challenging for Provincial Court judges and judicial justices. This rapid technological innovation amid a global pandemic was not anticipated by the judiciary when they began their careers on the bench – and still requires a high level of flexibility and adaptability three years into this digital transformation.

Further to the ongoing modernization of the courts and the continuing reality of COVID-19 (as set out in the [BC Provincial Court's December 19, 2022 Notice to the Profession and Public](#)), the jobs of a judge and judicial justice have also changed due to the expanded use of desk orders (see, for instance, [Key Changes to Small Claims Rules on October 3, 2022](#)). While desk orders reduce parties' in-person attendance, judges are responsible for their completion. As judges must still spend the same time in court as prior to the expanded use of desk orders, desk orders are often completed during lunch breaks, evenings, and weekends, along with the work they were already doing on what is meant to be their personal time.

As well, judges' tasks need to be completed in the context of the continued time pressures they face from [R v Jordan](#), which sets deadlines of 18 months for provincial court trials.

Also emphasized is the impact that certain matters – in particular, within criminal and family law - have on Provincial Court judges in the course of their roles. For instance, Provincial Court judges deal with all child protection matters, which generally involve questions of whether a child should be removed from their parents' care because of abuse or neglect. This is no easy task. On the criminal law side, hearing evidence concerning offences such as sexual assault, child pornography, armed robberies; hearing victim impact statements; and making decisions that affect the lives and liberty of others day after day within reduced time periods, and then undergoing public scrutiny for them — this all takes a toll on the judiciary's emotional and mental health.

Nonetheless, they must remain compassionate towards everyone involved, even when dealing with the most difficult of offences and the individuals who commit them. To treat individuals with respect when they are at their most vulnerable, and at times their most unpleasant, requires a special kind of empathy. This role is not for the faint of heart.

Financial Disparity

When discussing the issue of attracting highly qualified applicants to the bench, we must recognize that the salaries of lawyers in private practice are far more lucrative than the salaries of Provincial Court judges and judicial justices. Although we do not expect judges to be paid the same wages as the highest earning private sector lawyers, it does not serve the court (nor public confidence in the court) to have a disproportionate number of applicants and appointments to the bench who come from the public sector, as is currently the case. Public sector lawyers (namely, Crown counsel) are vital to the justice system, however British Columbians also require judges with diverse practice areas to bring new ideas and ways of thinking to the bench. Appointing lawyers with private practice backgrounds to the Court is integral.

The Canada Revenue Agency discloses, in [The Lawyers' Daily](#), that in 2019, self-employed lawyers working in Canada's ten largest cities (including Vancouver) earned on average:

- \$1,585,160 at the 95th to 100th percentile
- \$415,340 at the 70th to 75th percentile
- \$258,580 at the 50th to 55th percentile
- \$140,400 at the 20th to 25th percentile

Overall, lawyers in these cities earned on average \$368,300 in 2019. Adjusting for inflation, this equates to \$414,674.52 using the [Royal Bank of Canada's inflation calculator](#). This figure far exceeds the annual earnings of BC Provincial Court judges which, as of April 1, 2022, were \$288,500.18.

Furthermore, the income information provided by the Canada Revenue Agency does not include the earnings of nearly 18,000 self-employed lawyers across Canada practicing through professional corporations. It is likely then that lawyers' average income would be even higher with this additional information.

CBABC is not recommending that Provincial Court judges' remuneration be equal to that of many lawyers in private practice. However, the pay should be competitive enough to attract applicants from the private sector (or at least not dissuade them from applying), which is not reflected in the current reality.

CBABC notes that at \$288,500 per year, the remuneration of BC Provincial Court judges is amongst the lowest of all judges of any court in the country. This is clearly illustrated in data compiled by the Provincial Court Judges' Association of BC and data regarding the salaries of Canadian Federal Court judges and BC Supreme Court judges as per the [Judges Act](#), R.S.C., 1985, c. J-1, as well as private practice salaries as set out above.

Relevant findings are set out in the following table:

Jurisdiction/Practice	Annual Salary, 2022-2023
Private Practice, Top 70-75% Percentile	\$415,340
Federal Court Judge	\$372,200
BC Supreme Court Judge	\$372,200
Provincial Court Judge, Ontario	\$350,212
Provincial Court Judge, Saskatchewan	\$343,045
Provincial Court Judge, Alberta	\$318,500 (as at 2020-21)
Provincial Court Judge, Northwest Territories	\$311,723

Provincial Court Judge, Quebec	\$310,000
Provincial Court Judge, Yukon	\$307,722 (as at 2021-22)
Provincial Court Judge, Prince Edward Island	\$302,009
Provincial Court Judge, Manitoba	\$301,345
Provincial Court Judge, British Columbia	\$288,500
Provincial Court Judge, Nova Scotia	\$283,075
Provincial Court Judge, New Brunswick	\$263,920
Provincial Court Judge, Newfoundland & Labrador	\$260,560

Further, as discussed in the Provincial Court Judges' Association of BC's submission to the 2019 JCC, we note the discrepancy between BC Superior Court judges' annuity and BC Provincial Court judges' pension. BC Superior Court judges are entitled to their maximum annuity after 15 years of service, while BC Provincial Court judges' pension requires 23.3 years before maximum pension is reached. Thus, a Provincial Court judge has to serve approximately 55% longer than a Supreme Court judge to get their full pension. We expect that there is likely a fair amount of overlap in the potential pool of candidates for the BC Superior and Provincial Courts. Between BC Superior Court judges' higher salaries and better annuity/pension, the BC Provincial Court bench would be a less appealing choice to many applicants.

There is no economic reason why B.C. cannot pay its judicial justices and Provincial Court judges wages competitive with other large provinces, in light of B.C.'s strong economy and high cost of living. A government [news release](#), issued in December 2022, noted that B.C.'s [Second Quarterly Report](#) projected a revised operating surplus of \$5.7 billion in the 2022-2023 fiscal year. This is significantly higher than, for example, Ontario's \$0.1 billion projected surplus for 2022-2023 (see the Financial Accountability Office of Ontario's [Economic and Budget Outlook, Fall 2022](#)). Saskatchewan, alternatively, does not project a surplus in 2022-2023, only a [reduced deficit](#). Yet Provincial Court judges in Saskatchewan and Ontario are paid \$55,000 and \$62,000 higher per year, respectively, than those in B.C.

It is also predicted that B.C.'s economic forecast will remain steady through 2027. Like other jurisdictions, the province is expected to see slower economic growth in 2023 due to global inflation and higher interest rates, but then steady growth will resume. B.C.'s gross domestic product is expected to increase by 1.6% in 2024, then 2.3%, 2.3% and 2.1% in 2025, 2026 and 2027 respectively.

Increase through Litigation

In order to attain their current, insufficient, salary, BC Provincial Court judges have been forced to endure constant litigation for a decade. The list of cases involving Provincial Court judges' remuneration include:

- [*Provincial Court Judges' Association of British Columbia v. British Columbia \(Attorney General\)*](#) 2012 BCSC 1022
- [*Provincial Court Judges' Association of British Columbia v. British Columbia \(Attorney General\)*](#) 2014 BCSC 336
- [*Provincial Court Judges' Association of British Columbia v. British Columbia \(Attorney General\)*](#) 2015 BCCA 136
- [*Provincial Court Judges' Association of British Columbia v. British Columbia \(Attorney General\)*](#) 2016 BCSC 1420
- [*Provincial Court Judges' Association of British Columbia v. British Columbia \(Attorney General\)*](#) 2017 BCCA 63
- [*Provincial Court Judges' Association v British Columbia \(Attorney General\)*](#) 2020 BCSC 1264
- [*Provincial Court Judges' Association of British Columbia v. British Columbia \(Attorney General\)*](#) 2021 BCCA 295

The reality of being forced to engage in litigation to achieve any compensation increase is not an attractive prospect for potential applicants. Combined with the fact that B.C. judges are among the lowest paid in the country and the fact that those in private practice will experience a reduction in income as a result of this public service, it is not surprising that fewer lawyers are applying for this position.

The honour that being appointed to the bench confers to members of the judiciary should not be overlooked. Provincial Court judges and judicial justices' work for the well-being of society and the rule of law is invaluable. However, accepting a significant reduction in income and enduring continuous litigation regarding salary in exchange for a demanding workload, loss of autonomy, increased travel and isolation, and public scrutiny is not conducive to attracting outstanding candidates to apply for the bench.

This reality is reflected in the low numbers of highly qualified lawyers applying to become Provincial Court judges. In 2021, only 24 lawyers applied to the Judicial Council (p. 15, [Judicial Council of British Columbia's Annual Report 2021](#)), which is a significant decrease from the ten-year average of 38 applicants per year. Additionally, in 2021 the number of female applicants fell below the number of male applicants and decreased compared to the average.

The bench has slowly but surely become more diverse in terms of judges' ethnicities and cultures, though increased diversity is needed. However, historically marginalised communities —particularly visible minorities and members of the LGBTQ2I community— continue to face challenges to achieving prominence in the legal profession. Asking these individuals to take a large pay cut to become judges or judicial justices when they have already had to overcome adversity to achieve success as counsel will deter many from applying to the bench.

In the absence of adequate compensation, the number, quality, and diversity of applications to the Provincial judiciary will continue to decline, which would detrimentally affect the justice system and consequently all British Columbians.

Conclusion

In conclusion, CBABC recommends a significant increase to BC Provincial Court judges' and judicial justices' base salary so as to be comparable to their counterparts in Federal Court and Provincial Courts across Canada and be more proximate to those of lawyers in private practice.

A significant increase will assist in ensuring high quality applicants and appointments to the bench which is necessary to maintain public confidence in the Court.

Appendix

1. [BC Provincial Court's December 19, 2022 Notice to the Profession and Public.](#)
2. [Submissions of CBACBC to the 2013 Judges Compensation Commission](#), issued June, 2013.
3. [Submissions of CBABC to the BC 2016 Judicial Compensation Commission](#), issued June, 2016.
4. [Submissions of CBABC to the BC 2019 Judicial Compensation Commission](#), issued June, 2019.
5. [Final Report of the Judicial Compensation Commission, 2019](#), dated October 24, 2019.
6. Ian Mulgrew, ["Judges' pay becomes decade-long saga"](#) *Vancouver Sun* (July 31, 2021).
7. Cristin Schmitz, ["Federal judges say pay package is getting too low to attract 'outstanding' private bar lawyers"](#) *The Lawyer's Daily* (August 4, 2021).
8. Cristin Schmitz, ["Canada Revenue Agency discloses latest earnings of self-employed lawyers; top tier at \\$1.5 million-plus"](#) *The Lawyer's Daily* (August 9, 2021).
9. [Provincial Court of British Columbia's Annual Report 2020-2021: Finding New Pathways: Learning from experiences while keeping courts open & safe.](#)
10. [Provincial Court of British Columbia's Annual Report 2021-2022.](#)
11. Cristin Schmitz, ["SCC won't hear B.C. judges' challenge to government's rejection of pay panel's advice on salary"](#) *The Lawyer's Daily* (March 10, 2022).
12. The Honourable Judge Shannon Keyes, ["The Transition from a Lawyer to a BC Provincial Court Judge"](#) *BarTalk* (June 2022).
13. [Judicial Council of British Columbia's Annual Report 2021](#), dated June 17, 2022.
14. Provincial Court of BC, ["Key Changes to Small Claims Rules on October 3, 2022"](#), dated October 3, 2022.
15. Provincial Court of BC, ["Five unique regions in the BC Provincial Court"](#) (October 25, 2022).
16. [Submission of the Provincial Court Judges Association of British Columbia to the 2019 Judicial Compensation Commission](#), issued May, 2019.
17. [Provincial Court Judges' Association of British Columbia v. British Columbia \(Attorney General\)](#) 2012 BCSC 1022.
18. [Provincial Court Judges' Association of British Columbia v. British Columbia \(Attorney General\)](#) 2014 BCSC 336.
19. [Provincial Court Judges' Association of British Columbia v. British Columbia \(Attorney General\)](#) 2015 BCCA 136.
20. [Provincial Court Judges' Association of British Columbia v. British Columbia \(Attorney General\)](#) 2016 BCSC 1420.
21. [Provincial Court Judges' Association of British Columbia v. British Columbia \(Attorney General\)](#) 2017 BCCA 63.

22. [*Provincial Court Judges' Association v British Columbia \(Attorney General\)*](#) 2020 BCSC 1264.
23. [*Provincial Court Judges' Association of British Columbia v. British Columbia \(Attorney General\)*](#), 2021 BCCA 295.
24. Provincial Court Judges' Association of British Columbia Chart of Judges' Salaries Across Canada.