



THE PROVINCIAL COURT
OF BRITISH COLUMBIA

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

to the

2022 JUDICIAL COMPENSATION
COMMISSION
(January 25, 2023)

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I. Summary of Recommendations

Judges

[1] *Remuneration for Judges*

I support the Provincial Court Judges Association of British Columbia (PCJABC) submission with respect to remuneration as being consistent with what is necessary to attract qualified applicants and retain existing judges.

[2] *Remuneration for Administrative Judges*

It is submitted that the Chief Judge's salary remain at the puisne judge salary plus 12%; the Associate Chief Judge's salary remain at a puisne judge salary plus 8%; a Regional Administrative Judge's salary remain at a puisne judge salary plus 6%.

[3] *Long Term Disability Plan (Age 65-75)*

It is submitted that government base budget funding to the Court be increased to one million dollars per fiscal year (based on historical costs noted in the Appendix) for long term disability benefits for judges and full time judicial justices age 65 to 75 with access to contingency funds should LTD costs exceed that amount. This would fully fund all LTD benefits for judges and full time judicial justices age 65 to 75 and provide increased budget stability.

Judicial Justices

[4] *Remuneration for Judicial Justices*

I support the Judicial Justices Association of British Columbia (JJABC) submission with respect to remuneration as being consistent with what is necessary to attract qualified applicants and retain existing judicial justices.

[5] *Remuneration for Administrative Judicial Justices*

It is submitted that the Administrative Judicial Justice's remuneration remain at the judicial justice's remuneration plus 6%.

[6] *Long Term Disability Plan (Age 65-75)*

See paragraph 3 (for full time judicial justices) above.

[7] *Shift Differentials*

I support the JJABC submission in principle regarding shift premiums as being consistent with what is necessary to attract qualified applicants and retain existing judicial justices.

II. Introduction

A. Chief Judge

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

- (a) Supervision of judges, judicial justices, and justices of the peace¹;
- (b) Designating the case or matter, or class of cases or matters, in which a judge, judicial justice or justice of the peace is to act;
- (c) Designating the court facility where a judge, judicial justice or justice of the peace is to act;
- (d) Assigning a judge, judicial justice or justice of the peace to the duties the Chief Judge considers advisable;
- (e) Establishing administrative standards and procedures to which judges, judicial justices or justices of the peace must conform;
- (f) Revoking or changing any designation or assignment made, or standard or procedure established;
- (g) Exercising other powers and performing other duties prescribed by the Lieutenant Governor in Council;
- (h) Chairing the Judicial Council;
- (i) Addressing complaints made against the judiciary; and
- (j) Serving as a major support for judges.

[9] The Chief Judge is also responsible for overseeing and administering the Court to ensure the equitable, effective and efficient use of judges, judicial justices, and other

¹ In addition to the judges and judicial justices of the Court, there are three other categories of justices holding Justice of the Peace commissions who are members of the Provincial Court and who are administered by the Chief Judge: 1. Justice of the Peace Adjudicators who are senior lawyers who, on a part time basis, adjudicate civil claims from \$5,001 to \$10,000 in the Vancouver and Richmond Court locations; 2. Judicial Case Managers who are responsible for court scheduling, coordination of judges' sittings, conducting initial criminal appearances, and managing the flow of cases (as of July 2022 there were 37 full time, 9 part time, 6 auxiliary JCMs); and, 3. Court Services Branch Justices of the Peace. [In addition, the Court complement includes Judicial Administrative Assistants who provide administrative services to the Court's judges including typing and proofreading judgments, diarizing judicial calendars, as well as managing travel arrangements and financial claims (as of Sept 30, 2022 there were 13 full time, 6 part time, and 1 full time temporary assignment JAA). There are also staff at the Office of the Chief Judge that provide assistance and support with respect to the administration of the Court.]

resources in accordance with standards and policies of the Court and in the best interests of the Court and the public it serves. The responsibilities of administration and oversight include matters such as:

- (a) Oversight of those that directly report to the Chief Judge including the Executive Director of Organizational Services, Senior Legal Officer, and the Judicial Coordinator to the Chief Judge;
- (b) Ensuring the existence and effective operation of both judicial and organizational services, resources and systems;
- (c) Chairing the Executive and Governance Committees;
- (d) Representing the Court in liaising with all levels of government;
- (e) Attending ceremonial functions on behalf of the Court;
- (f) Engaging in community outreach activities to ensure the profile of the Provincial Court is maintained and that the court is responsive to access to justice concerns arising in the community;
- (g) Building and maintaining relationships with external stakeholders such as the Canadian Bar Association (CBA) and local Bar Associations;
- (h) Participating in educational programs through organizations like the Continuing Legal Education Society of BC (CLEBC), CBA, Advocates' Society and others;
- (i) Planning for the judicial resources needed by the Court;
- (j) Overseeing specific initiatives that the Court undertakes; and
- (k) Participating on Court committees and justice sector committees², as required.

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

² Committees include for example: Executive Committee; Judicial Administration Committee; Governance Committee; Education Committee; Criminal Law Committee; Family Law Committee; Civil Law Committee; Judicial Justice Administration Committee; A2J Committee; Canadian Association of Provincial Court Judges; Canadian Council of Chief Judges; and Court Technology Board. The Court relies on the Civil, Family and Criminal Law Committees to provide feedback on issues and initiatives in each division of the Court.

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

B. Court Mission, Vision Statement, Core Values and Goals

[11] The Provincial Court's primary asset in the discharge of its day-to-day work in managing and determining cases, in improving existing processes, and implementing new initiatives, is its judges. It is the quality of the Court's judges, as evidenced by their professional experience, skill, energy, work ethic, commitment, community engagement, and their desire to seek change and innovation to benefit the public they serve, that provides the foundation of the Court.

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

[13] The mission and vision statement that guides the Court is:

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

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

[14] The Court is also guided by four core values which are independence, integrity, fairness and excellence. The goals of the Court are:

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

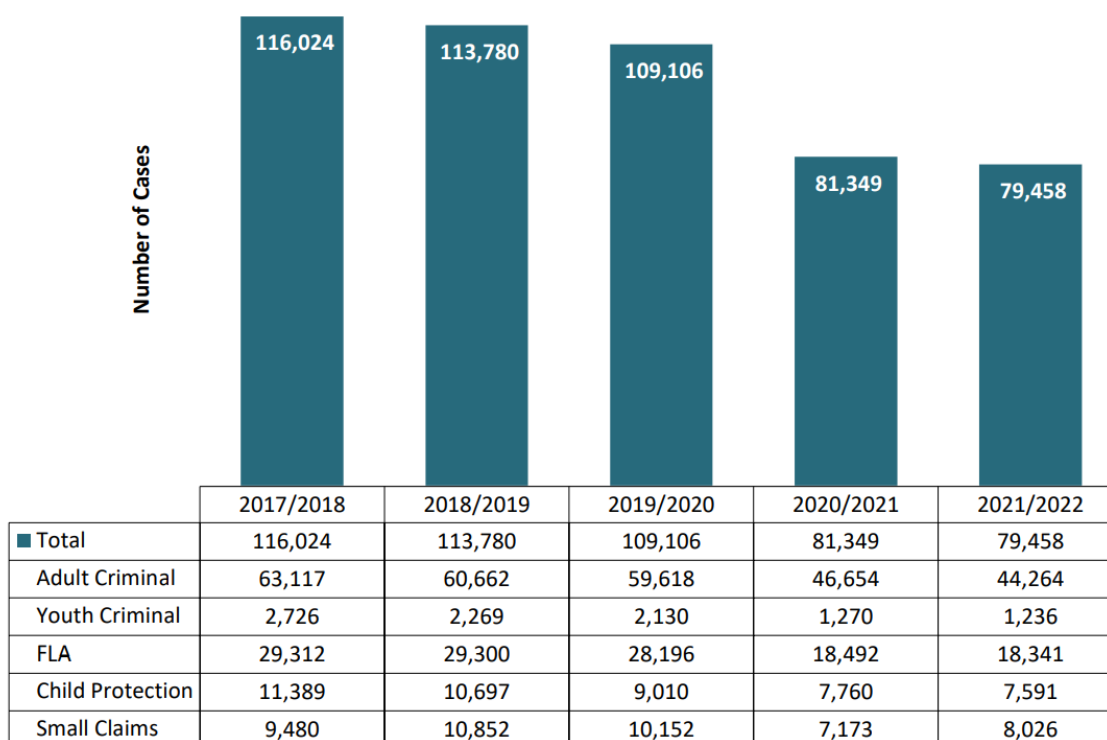
III. Provincial Court Judges

A. The Work of Provincial Court Judges

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

[16] The Figure below provides the total and a breakdown by division of the new or incoming cases in each for the past five years reported on a fiscal basis.³ (It does not include new traffic and bylaw cases, which are shown in paragraph 150.) Statistical changes from 2020 onward should be interpreted with caution due to the impact of the COVID-19 pandemic.

Figure 1



³ For the reduction in criminal cases, please note this is in part because the Administration of Justice offences, such as failure to comply with bail/probation conditions and failure to appear in court, have decreased. In 2019 amendments to the *Criminal Code* in Bill C-75 were made to allow for options other than laying new charges for these offences. See for example Crown Counsel Policy Manual, [Bail-Adults](#) (pages 4 and 5) about breaches of bail which states in part “justice does not require that every provable offence must be prosecuted... When it is alleged that an accused has breached a condition of bail, Crown Counsel should consider all available alternatives before approving the laying of an Information charging a breach of bail.”

[17] In the criminal jurisdiction, the Provincial Court handles in excess of 95% of the criminal cases, by volume, in the province. The Court's jurisdiction extends to all matters, except for a limited few over which the Supreme Court has exclusive jurisdiction (such as trials of adults charged with murder under s. 469 of the *Criminal Code*). In some criminal matters, a preliminary inquiry may be held in the Provincial Court before a trial which would be held in the Supreme Court. The Provincial Court has exclusive jurisdiction in all summary conviction trials and hears all indictable matters where the accused does not elect to have their matter heard in the Supreme Court.

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

[19] Under the *Family Law Act*, the Court has concurrent jurisdiction with the Supreme Court in guardianship, parenting arrangements, and child and spousal support.

[20] The Court also has broad civil jurisdiction with some exceptions. Civil claims from \$5,001 to \$35,000 are heard in Provincial Court. This includes claims involving debt or damages, issues involving personal property, and performance of agreements about personal property or services. The Provincial Court also hears: (1) applications for exemption to the Civil Resolution Tribunal (CRT) process; (2) matters where the CRT refuses to resolve a claim; and, (3) enforcement of CRT orders.

B. Workload of Judges

[21] The workload of the Court is the product of a number of inter-related factors. It is the combination of these factors that impacts the workload of judges:

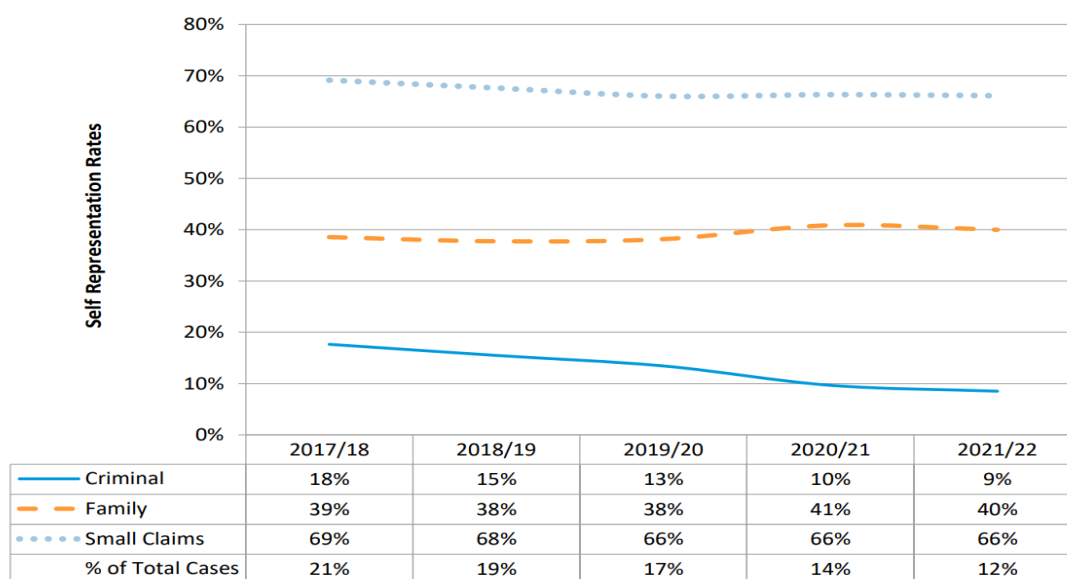
- Volume of new cases;
- Legislative activity at the federal and provincial levels;
- Increasing complexity of the law;
- Judicial non-sitting work functions including: case management; decision writing; reviewing judicial authorizations; [judicial education](#)⁴; and committee work, including volunteering for the Education Committee, Criminal Law Committee, Family Law Committee and Civil Law Committee;

⁴ The Court is committed to continuing education and our judges engage in extensive ongoing education throughout their careers. For more information about [Judicial Education](#) see our website.

- Economic growth of the province;
- Changing demographics and population;
- Level of Legal Aid funding;
- Number of self-represented litigants;
- Specialized courts sitting in diverse areas of the province, for example Indigenous and Integrated courts;
- Technological innovations; and
- Level of support services provided to the judiciary.

[22] As noted above, one critical factor in assessing the workload relative to a judicial officer is whether the litigants appearing before the Court are represented by counsel or not. A self-represented litigant adds a degree of complexity to the cases heard by the Court and increases the workload of the judge hearing the case. The Court records data with respect to self-represented litigants. A self-represented appearance is one at which at least one party is not represented by counsel or an agent. The Court oversaw a total of 69,408 self-represented appearances in 2021/22, representing a 7% increase compared to 2020/21. The chart below shows the self-representation rate by division for the past five fiscal years. The highest percentages of self-representation occurs in small claims and family matters.

Figure 2 Self-Representation Rates by Division (2017/18 to 2021/22)



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

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

[25] The Doust Report noted at p. 21 that: “an unrepresented bully can also wreak havoc inside and outside the courtroom.” The increased frustration and, consequently, increased likelihood of aggression or risk of violence that may accompany self-represented proceedings can be exacerbated by the limited number of sheriffs available to ensure safety and security in courthouses.

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

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

...

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

[27] In summary, the information available would suggest that the Provincial Court deals with a significant number of self-represented litigants and this has consequences for the workload of Provincial Court judges. It is respectfully submitted that the number of self-represented litigants has an impact on every step of the court process and on the judge in particular.

[28] At the same time, long lists and serious cases, including sexual assault trials and related applications, dangerous offender applications, and child protection cases, require judges to render decisions in a timely fashion.

[29] The COVID-19 pandemic and the rapid increase in the use of technology has also altered judicial functions. Judges are responsible for their day to day judicial functions, as well as learning to use new audio and video conferencing technology while adapting to rapid technological change. The Court is working on developing a judicial desktop for

judges to access electronic files, view court documents and picklists, and view pending work which will further increase the use of technology by judges.

[30] In the Provincial Court, decisions are often delivered orally at the end of the case, following a short opportunity to consider the material. Longer matters may result in a judge reserving and, as required, reading in their decisions and in some cases publishing decisions in criminal, civil and family matters. In those few cases which are appealed to the Court of Appeal, the decisions of our Court are subject to the same appellate review and standard as decisions of the Supreme Court. While this is entirely appropriate, it creates a tension between the volume of the work and the desire to serve the public in a timely manner and to “get it right”. This tension, along with the requirement that all judges of the Court must be able to hear matters in all the divisions of the Court, places an enormous burden on the judges of the Court.

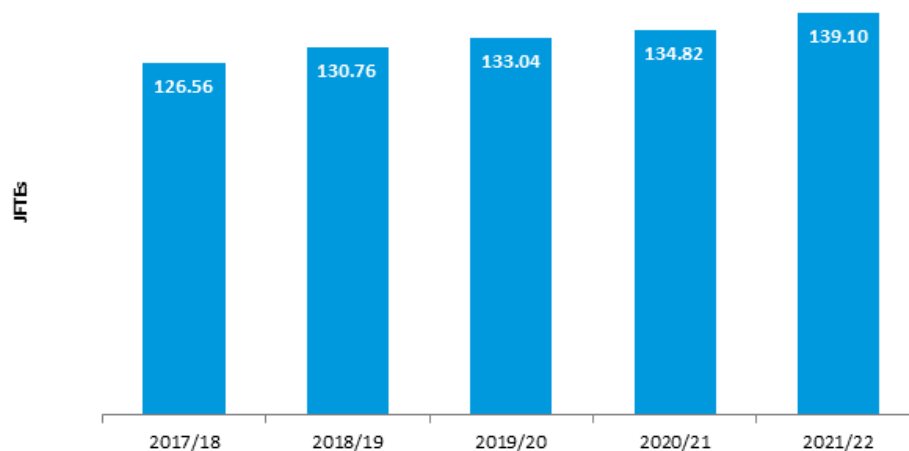
C. Current Complement of Judges

[31] As of January 1, 2023, the full time sitting complement of the Provincial Court was 138.08⁵ judicial full time equivalent positions, consisting of:

- 131 full time Provincial Court judges, and,
- 15 senior judges (calculated at 0.45 of a full time judge)

The Court complement is dynamic and fluctuates over the course of the year. The Figure below depicts the average complement of Provincial Court judges from 2017/18 to 2021/22.

Figure 3
Average Judicial Complement, 2017/18 - 2021/22



⁵ This total does not include judges currently on long term disability.

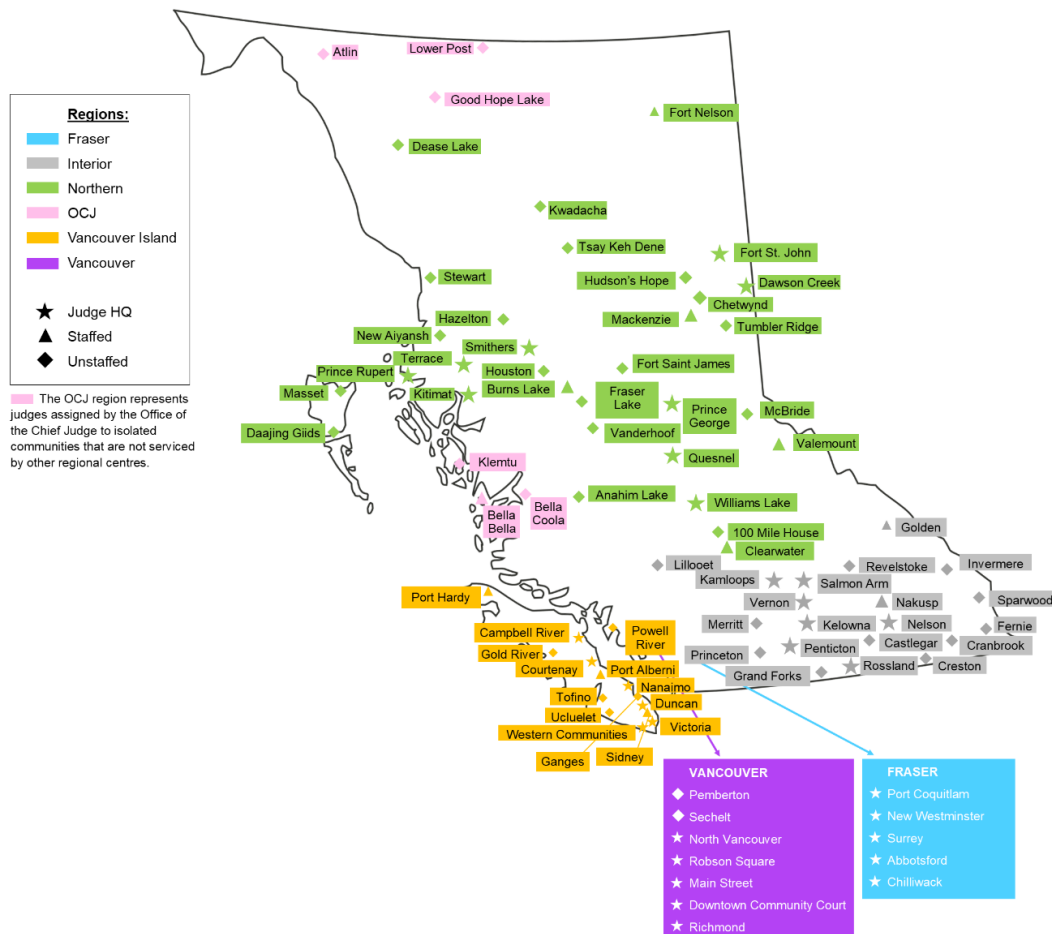
[32] The issue of judicial complement was an important piece of the presentation to the 2010 Judicial Compensation Commission. At the time, the Court had experienced a significant reduction in the total complement from 143.65 to 126.3. The reduction in judicial resources had contributed to significant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

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

[34] Since the publishing of the original report, an update on the Court's [complement](#) is published on the Court website every six months. As well, delay or the "[Time to Trial](#)" in each area of our jurisdiction is developed and published on the Court website every six months.

[35] The judges and judicial justices of the Court serve the people of British Columbia in over 80 locations throughout the province, which are depicted on the map in the Figure below.

Figure 4



D. Regional Administrative Judges

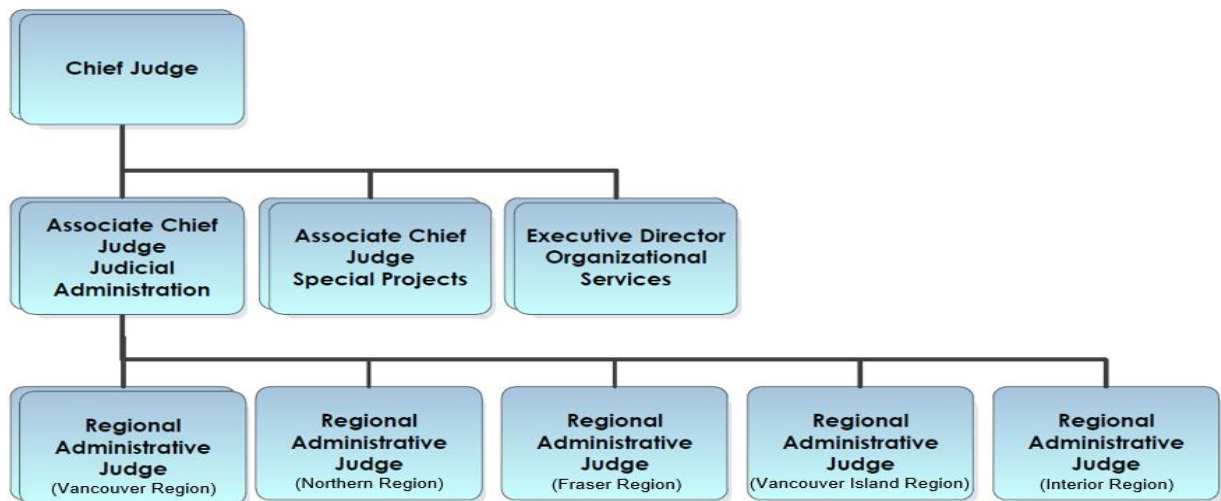
[36] Under the current administrative structure, the province is divided into the following five administrative regions: Fraser; Interior; Northern; Vancouver Island; and Vancouver. Each region is administered by a Regional Administrative Judge. The Regional Administrative Judges sit on the Judicial Administration and Governance Committees of the Court.

[37] The Governance Committee is led by the Chief Judge and the Judicial Administration Committee is chaired by an Associate Chief Judge. The Regional Administrative Judge may be assisted, where necessary, by a Local Liaison Judge in a particular court facility. The Local Liaison Judge performs their duties in the course of a regular sitting schedule.

[38] The current administrative structure is depicted below.

Figure 5

Court Administrative Structure



[39] As recommended by the 2013, 2016 and 2019 Judges' Judicial Compensation Commissions, the current remuneration for the judges involved in the judicial administration of the Court is as follows:

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

[40] The additional remuneration paid to the administrative judges is limited to the term of office. The increased salary for any administrative judge does not continue, as in other jurisdictions, once the term of office is completed.

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

- Spend more time involved in matters of court administration within their geographic region, with each region having numerous court locations, in order to facilitate and support effective judicial administrative performance;
- Ensure compliance with standards and policies, and participate in the drafting and reviewing of the court's policies;
- Address any facilities issues or court closures due to weather or other emergencies;
- Act as the informational link between the judges of the region and the Chief Judge; and
- Liaise with stakeholders and the justice system community including CSB, Crown counsel, defence counsel and sheriffs to ensure the Court is aware of and responsive to any regional and local issues and concerns.

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

E. Initiatives to Enhance Effectiveness and Access to Justice

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

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

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

i. Court Data

[46] The Court has developed key performance measures and the ability to retrieve court data to provide the Court with better management information and business intelligence. Through this initiative, the types of data obtained and the reports generated include: on-time case processing information; case completion rates; case age; next date surveys; a number of trial scheduling reports; and, information about our specialized courts. This information assists the Court to monitor time to trial and pending case data, consistent with the statements in *R. v. Jordan*, 2016 SCC 27 for criminal matters, and generally for family, civil and traffic matters.

[47] The Court also has a Provincial Court Scheduling Program and the Balanced Rota Template to ensure that we are utilizing judicial resources in the most effective way possible.

[48] The Court publicly reports court information and data in its Annual Reports, Time to Trial Reports and Judicial Complement Reports available [here](#).

ii. Family Law

1. Victoria and Surrey Early Resolution Process

[49] In May 2019, the Court and the Ministry of Attorney General launched the Victoria Early Resolution Prototype for family matters in Provincial Court.⁶ In December 2020, the same process was implemented in Surrey.

[50] The early resolution model is a front-end process designed to assist families in the early resolution of their issues before any court appearances. Except for urgent matters, parties are required to meet with a Family Justice worker as a first step. There is early assessment, mediation, access to resources such as legal advice, and parenting education services. The goal is to help parents achieve collaborative resolutions without having to go to court.

[51] Parties who complete the front-end process but do not resolve all issues can then file an application with the Court.

[52] In addition to the early resolution models in Victoria and Surrey, the new *Provincial Court Family Rules* were implemented across the province in May 2021. Based on extensive research, consultation and experience gained from the early resolution models, the rules take a holistic approach to family disputes. The Rules aim to help litigants with language and forms that are easier to understand and streamlined procedures. They encourage people to use community resources to help with non-legal impacts and try to resolve legal issues by agreement before going to court, unless court action is needed. The new Rules replaced first appearances, which were often the

⁶ Final evaluation is available [here](#).

judge directing parties to set a date for a future court appearance, with a Family Management Conference with a judge. The judge conducting the Family Management Conference will try to resolve the issues and may make orders to help clarify issues and ensure the matter is ready for trial.

2. Family Informal Trial Pilot Project

[53] As part of the new *Provincial Court Family Rules*, the Informal Trial Pilot Project launched in May 2022 in Kamloops. The pilot project offers people the option of an informal trial where the judge adapts trial procedures to meet the needs of the parties and help resolve their issues. The process is also designed to be less formal.

[54] Parties must agree to use the informal trial process and the trial judge must determine that an informal trial is appropriate. As part of the process, the judge can allow evidence that is relevant, material and reliable, even if the evidence might not be allowed under the strict rules of evidence. The judge may also try to help the parties settle some or all of the issues. At an informal trial, the judge will be more involved than at a regular trial, asking the questions and guiding the process. If no resolution is reached, the judge will decide the matter.

3. Other Family Law Initiatives

[55] *Videoconference Appearances*: Videoconference technology is utilized in many court locations throughout the province to accommodate pre-trial family court appearances such as Family Management Conferences. With the pandemic, the Court experienced a substantial shift in volume of remote appearances and in types of appearances enabled by technology. For example, excluding traffic and bylaw matters, approximately 79% of all Provincial Court appearances were technology-enabled (had at least one participant appearing remotely) in 2021/22.

[56] *Desk order process*: In order to increase access to justice, certain *Family Law Act* applications that use to require a court appearance are now dealt with by judges in Chambers through a desk order process. These applications under the new Rules are called "Applications for a case management order without Notice or Attendance". The new desk order process provides litigants with an expedient way to apply for an order without having to make a court appearance and these applications are processed within two business days. This new process does add to the workload of judges outside of their work sitting in court. The number of applications for the first 8 months of 2022 for the entire province was 2,513 which is 314 per month, or 3,769 per year (minimum). Some can be dealt with quickly by simply reading the application and preparing a response. Reasons are required if rejecting an application. Others require more time to assess and determine due in part to the complexity of the file. The result of these new desk orders is that there is less time for judges on a court day to work on judgments and other non-sitting court tasks.

[57] *Online smart forms*: Creating online smart forms that assist people in completing forms is work being done by Court Services Branch and Justice Services Branch but also involves input from the court.

[58] *CFCSA Rules amendments*: Recent amendments to the *Provincial Court (CFCSA) Rules* were made to support virtual proceedings, remote attendance, e-filing, and removal of the requirement for mandatory case conferences. See the related practice direction [FAM12 Default Method of Attendance for Court Appearances Under the Provincial Court \(CFCSA\) Rules](#) and [Application to Change Method of Attendance Form](#).

[59] *Electronic access to family court documents*: There is currently a pilot project that provides family duty counsel with electronic access to family court documents by way of verifiable credentials issued by the BC Law Society. This is currently being piloted with duty counsel but the goal is that it will ultimately be available for all lawyers.

[60] Significant work was undertaken by the Court's Family Law Committee, made up of judges who volunteer their time, to create a family law bootcamp which launched in 2021. This is a multi-day program that delivers substantive and procedural education from a judicial perspective in family law matters to newly appointed judges. The Committee also provided multiple training sessions to all judges when the Provincial Court Family Rules were significantly updated in 2021, and when the family picklists were revised (picklists provide judges with standard wording for court orders.) In addition, several times a year, the Family Law Committee provides a family law newsletter to the Court with templates, case law and other tips for our judges.

iii. Criminal Law

1. Videoconferencing and Remote Attendance

[61] Videoconference technology is utilized in many court locations throughout the province to accommodate remand appearances, bail hearings, and some sentencing proceedings.

[62] The Court continues to use video technology:

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

[63] The Court continues to expand its use of video technology where appropriate particularly in some pre-trial hearings, but as this technology is not always available or

may not be an appropriate way to conduct a hearing, in person hearings are still the default method of appearance in many cases.

2. Virtual bail model for the North, Interior and Island Regions

[64] In the fall of 2020, the court developed the Northern Bail Pilot Project, a virtual bail initiative, as a way to create more efficient bail practices in the Court's Northern Region. The pilot project has since expanded to the Interior and Island Regions. (See [CRIM 14 Northern, Interior and Island Bail Pilot Project](#)) Under the pilot, criminal bail hearings during court sitting hours in these regions are conducted by judges in virtual courtrooms using the Microsoft Teams videoconference platform. Some of the goals of the pilot include:

- reducing time spent in-custody awaiting a bail hearing;
- reducing displacement of accused people from the housing, employment, health, and other support in their own communities;
- reducing or eliminating interruptions to previously scheduled trials due to unscheduled bail hearings for newly arrested people;
- increasing access to duty counsel and Crown resources (for example, break out rooms allow legal counsel and clients to be moved into separate MS Teams meetings to have private conversations and then return to the 'main' courtroom.); and,
- increasing efficiency through standardized, centralized operations for scheduling and documentation.

[65] Discussions are ongoing with the First Nations Justice Council on how Indigenous Justice Centres can be involved virtually at the earliest possible stage in bail.

[66] For the Fraser Region, in order to increase capacity and reduce interruptions of other matters, since 2021 some Chilliwack matters are heard virtually in Abbotsford when the Chilliwack courthouse is at capacity, and as well, an additional virtual courtroom was created in Chilliwack for bail hearings once a week (see [NP 26 Chilliwack Provincial Court Bail Pilot Project](#)). Port Coquitlam similarly hears some New Westminster matters.

[67] For the Vancouver Region we continue to examine court locations and workload to maximize the efficiency of bail courts.

3. Other Criminal Law Initiatives

[68] Beginning in May 2020, the Court instituted mandatory pre-trial conferences for longer criminal matters, and directed that they be held by video-conference. These conferences serve to identify cases that could be settled, trial estimates that could be shortened through admissions of undisputed facts, and whether parts of a trial could be completed virtually (see [Crim 12 Criminal Pre-Trial Conferences.](#))

[69] Significant work was undertaken by the Criminal Law Committee, made up of judges who volunteer, in their development of criminal picklists and in 2018 of a three-day criminal law bootcamp that is regularly updated and provided each year to newly appointed judges. The program delivers in-depth, interactive and practical education about criminal law and procedure. In 2021, the Committee also delivered a multi-day educational workshop to new judges on sexual assault trials.

iv. Civil Law

[70] *Videoconference Appearances*: Videoconference technology is utilized in many court locations throughout the province to accommodate small claims trial conferences and settlement conferences.

[71] The *Small Claims Rules* were [amended](#) effective October 2022 to allow for greater flexibility in the methods of attendance in small claims matters which can be in person, by telephone, video conference or other means of electronic communication. This creates more accessible options that enable different ways for people to attend pre-trial matters and hearings. The amendments also revised requirements and timelines for submitting documents to the registry before a hearing and serving documents and reports on the other parties, and updated the rules regarding payment hearings. These amendments improve access to justice, but do also create more work for judges as it can be more challenging to manage a hearing and documents when conducted remotely.

v. Specialized Courts

1. Vancouver's Downtown Community Court

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

[73] DCC attempts to prevent criminal activity and to address the risks posed by offenders, while also supporting their health and social needs, through a partnership of justice, social and health care services. Together, they provide a timely, coordinated and meaningful response to treating and sentencing offenders. The needs of victims of crime

are also addressed with an onsite victim support worker available to provide information, support and referrals to programs and services.

[74] The Court has hosted individuals and groups interested in the innovative way in which DCC operates. These include Canadian Senators, delegations from countries such as New Zealand, Guyana and the Ukraine, and from students attending secondary schools and post-secondary institutions.

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

2. Victoria's Integrated Court

[76] The Victoria Integrated Court (VIC) focuses on addressing the health, social and economic needs of chronic offenders; improving public safety; and holding offenders accountable for their actions in a timely manner.

[77] In 2010, the Provincial Court responded to a community-led initiative to address street crime in Victoria by adopting an integrated approach to chronic offenders with mental health and substance abuse issues. A small number of homeless people with mental health and substance abuse issues were responsible for many police encounters and court appearances. Integrated teams of police, health, social workers and community corrections service providers began to deliver emergency and health services to these people. VIC deals with people supported by one of these teams.

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

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

[80] In 2014, a master's thesis by two students of the School of Public Administration at the University of Victoria concluded that VIC provided benefits to the health care system and the administration of justice, including lowered costs and reduced recidivism. However, it noted the strain of a high case load as well as the difficulty of drawing conclusions from the statistics available. A *program report* includes several stories of individuals who have benefited from the program, found housing and treatments, and

ended criminal activities. More information is available on the Court's website: [Victoria Integrated Court](#)

3. Drug Treatment Court of Vancouver

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

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

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

- Abstinence from drug use;
- Reduced or eliminated future contact with the criminal justice system;
- Improved overall well-being, including improved housing;
- Employment and education; and
- Pro-social use of their time.

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

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

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

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

4. Indigenous Courts

[87] The Provincial Court has eight Indigenous Courts that operate in the following locations: New Westminster (established 2006); North Vancouver (2012); Kamloops (2013); Duncan (2013); Merritt (2017); Prince George (2018); Williams Lake (2020); and Hazelton (2021).

[88] These courts are developed in consultation with local Indigenous communities, the community at large, the police, community corrections, Crown counsel, the defence bar, and many other support service groups such as the Native Courtworker and Counselling Association of British Columbia.

[89] The approach of these courts is holistic, recognizing the unique circumstances of Indigenous offenders within the framework of existing laws. The ongoing intent in the restorative approach is to address criminal matters for offenders with an Indigenous background.

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

[91] The success of these initiatives is due in large part to the effort of a number of stakeholders, including the community as a whole and the Legal Services Society. The Court continues to work with stakeholders in the hope that these initiatives will continue to evolve and the restorative approach will be adopted when appropriate to meet the needs of the communities.

[92] Additional information regarding these can be found on the Provincial Court website: [Indigenous Courts](#).

5. Aboriginal Family Healing Court Conference

[93] The Aboriginal Family Healing Court Conference (AFHCC) in New Westminster launched in 2016 and is designed to reduce the over-representation of Aboriginal children in foster care. The goals are to: provide cultural interventions that increase the effectiveness of court processes for child protection cases; reduce the number of cases that proceed to trial; and improve health, social and justice outcomes for Aboriginal children and families who come into contact with the child protection system.

[94] The AFHCC is an expansion of Family Case Conferences into a healing circle to allow for a more culturally appropriate process. A family can tell their stories in an environment that is attentive to both their cultural practices and their unique personal

situation. Families work with Elders to develop a Healing and Wellness Plan. Where appropriate, aspects of the Healing and Wellness Plan may be included in any consent order that a Judge makes at the case conference. More information about the AFHCC is available on the Court's website: [Family Healing](#).

6. Domestic Violence Courts

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

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

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

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

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

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

[101] From a court users' perspective, counsel, victim service workers, court interpreters and others have expressed higher levels of satisfaction due to a perception of increased access to justice. This is reflected in fewer delays waiting for other courtrooms to become available to assist processing files on busy court dates and more timely judicial interim release hearings for in custody adults charged with domestic violence offences.

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

7. Kelowna Integrated Court

[103] Opened May 6, 2021, the Kelowna Integrated Court is the result of years of work by groups and individuals in Kelowna seeking to reduce crime and improve public safety by integrating health and social services with the justice system in order to address the root causes of criminal behaviour.

[104] Like Vancouver's Downtown Community Court and the Victoria Integrated Court, the Kelowna Integrated Court focuses primarily on offenders struggling with addiction, living with mental health issues, or experiencing homelessness. The Kelowna Integrated Court is not a trial court but eligible individuals may have bail hearings or plead guilty and be sentenced there.

[105] A variety of government and community organizations offering mental health and other services provide support and supervision for offenders bound by bail or sentencing orders.

[106] The Kelowna Integrated Court's goals include improving access to health, social, and economic services for the offenders it deals with; improving public safety by reducing recidivism; and holding offenders accountable for their actions in a timely manner.

vi. Communications Initiatives

[107] The Provincial Court of BC is recognized as a leader among Canadian courts for its active and engaging online communications, including [eNews](#) which are informal articles posted weekly or bi-weekly on the Court's website. The Court's website analytics for January to August 2022 showed 876,485 page views by 380,659 visitors. The Court's twitter account has 3,447 followers as of September 2022.

[108] In 2016, 2017 and 2019, the Court hosted live Twitter Town Halls as a way to share information and engage with the public. In 2019, the live Twitter Town Hall focused on access to justice and was held in conjunction with Access to Justice BC and the BC Court of Appeal.

vii. Peter A. Allard School of Law at UBC Intern Program

[109] Since January 2007, the Court and the Peter A. Allard School of Law at UBC have partnered in the delivery of a judicial internship program for third-year law students. The program provides an opportunity for students to spend a law school term working with the Provincial Court judiciary throughout the province on an array of legal subject areas and issues and observing trials and other court processes. The students earn credit towards their academic law degrees from their work with the Court.

[110] Part of the program for student interns is that each student accompanies a presiding judge and the court party to a remote circuit court in British Columbia in order

to witness the delivery of justice first-hand throughout the province.⁷ The circuit court program broadens the students' education, exposes them to legal practice outside the Lower Mainland and offers insight into the Court as a "problem-solving" court that operates in geographic areas with significant variations in its extra-legal resources.

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

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

viii. COVID-19 Initiatives

[113] To comply with the advice of public health officials to minimize the number of people physically in courthouses due to COVID-19, the Court developed procedures to expand the types of cases that could be heard remotely using video-conferencing or other means of telecommunication.

[114] Some of these processes were limited in time. For example, the Court established a temporary [two-step process](#) for COVID-related family support order variations between July 2, 2020 and May 17, 2021, offering mediation followed by an expedited hearing by telephone or video conference, if necessary. (For our judicial justices, the Court adopted staggered trial times, different operating hours such as evening and weekend sittings, and alternate larger locations for Traffic Court to operate safely during the pandemic.)

[115] Many developments, however, continue in place today. For example, the Court introduced mandatory virtual pre-trial conferences for some adult and youth criminal trials and preliminary inquiries. As well, some family hearings (family management conferences, family settlement conferences) and small claims hearings (settlement conferences and trial conferences) are heard by telephone or videoconference.

[116] The Court remains committed to using technology in appropriate cases to better serve court users and improve access to justice. Remote attendance options provide the flexibility to support greater access to justice, including for those living in remote communities, vulnerable people served by the Court, and those who may be unable to attend court.

[117] In this respect the Court anticipates that developments during COVID-19 will endure so that some court appearances will continue to be remote, others by default will be in-person such as trials, and some hearings will be "hybrid", meaning participants may choose to attend court either in person or remotely.

⁷ Interns did not go on circuit during COVID-19 to protect the health and safety of the students and the communities until it was safe to do so in the fall of 2022.

[118] A sampling of some of the notices, guides and information created during COVID-19 that judges and the public needed to be aware of and that are still applicable today include: [NP 21 Remote Attendance in the Provincial Court](#); [Guide for appearing in the Provincial Court using Microsoft Teams](#); [Webinar on Court's use of MS Teams](#); [Attending Court Remotely webpage](#); [Guidance for Courthouse Users During the COVID-19 Pandemic](#); [Public Health Incident and Communication Response Protocol](#); [NP 28 Court Operations During Communicable Disease Phase of COVID-19](#) (and its precursor [NP 19 Court Operations During COVID-19](#)); [FAM 11 Default Method of Attendance for Court Appearances Under the Provincial Court Family Rules](#); [FAM 12 Default Method of Attendance for Court Appearances under the Provincial Court \(CFCSA\) Rules](#); and, [SM CL 02 Default Method of Attendance for Court Appearances Under the Small Claims Rules](#).

F. Attracting and Retaining Judges

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

[120] Between 2012 and 2021 there have been, on average, approximately 10 judges appointed each year to fill vacancies. I expect that we will continue to see a similar number of annual appointments. On this basis, there is a need to ensure that the remuneration is reasonable and sufficient enough to attract the most qualified applicants from which to draw new judges, and to retain those already on the Court.

[121] In terms of attracting new judges, in 2022 there were only 23 applications for appointment as a judge received by the Provincial Court. Below you will see the historically higher number of applicants:

Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
No. of Applicants	35	46	50	27	43	63 ⁸	27	37	30	24	23

[122] This low number of applications is extremely concerning for the Court in terms of what impact it may have on our ability to attract and fill upcoming judicial vacancies. This concern is even more pronounced in the Northern Region where the Court has significant difficulties attracting judges who want to remain in the region long term.

⁸ The number of applicants in 2017 was significantly higher due to the influx of paper applications being submitted before the launch of a new online application system.

G. Recommendations

i. Remuneration for Judges

[123] I have read the 2022 Submission to the Judicial Compensation Commission from the PCJABC. I adopt their submission as being consistent with what I believe is necessary to attract qualified applicants and retain existing judges.

ii. Remuneration for Administrative Judges

[124] Further to the information provided above regarding administrative judges, I respectfully request the following recommendations be made by this Commission, consistent with past Commissions, to reflect the increased demands associated with these positions:

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

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

[125] The government provides long term disability benefits for judges and full time judicial justices under the age of 65 through Great West Life. From age 65 onward, the Office of the Chief Judge pays the equivalent amount of money which the judge or judicial justice would have received for long term disability benefits through Great West Life out of the Court's budget.

[126] The 2019 Judicial Compensation Commission Final Report noted at p. 35:

The Chief Judge asks us to recommend that Government fully fund the Provincial Court's long-term disability plan (ages 65-75) for judges and full-time judicial justices on an ongoing basis.

Long-term disability for judicial officers aged 65 to 75, comes out of the Provincial Court's operating budget. In 2018/2019, the cost of long-term disability was approximately \$1,400,000 and Government provided \$408,000 in funding earmarked for that purpose. In 2019/2020, the projected cost for long-term disability is about \$1,200,000 and the Government is providing \$408,000 in earmarked funding. This funding discrepancy reduces the money available to the Provincial Court for other needed expenditures and creates budgetary uncertainty. It means that the Office of the Chief Judge does not have funding to pay judges or judicial justices to replace those on long-term disability.

The 2010 Judges Compensation Commission recommended that the cost of long-term disability benefits should be fully funded by Government outside of the Office of the Chief Judge. The government and the Legislature rejected this recommendation, but in 2015, the Court of Appeal declared that judges were entitled to the 2010 Judges Compensation Commission recommendations and that Government should act in accordance with those recommendations.

At our hearing, Government acknowledged that the result of the 2015 Court of Appeal judgment was that Government must fund all long-term disability for judicial officers. It committed to working with the Chief Judge to rectify the shortfall in her budget. Based on this, we conclude that it would be superfluous for us to make a recommendation about this issue. We urge the Government to meet its admitted legal obligation without further delay.

[127] Detailed descriptions of the history of long term disability payments is found in:

- *Craig v. The Province of British Columbia* (1997) 40 B.C.L.R. (3d) 289.
- 2010 submission by the PCJABC to the JCC.
- 2010 Judges Judicial Compensation Commission Report at p. 35.
- [*Provincial Court Judges' Association of British Columbia v. British Columbia \(Attorney General\)*](#), 2015 BCCA 136, (application for leave to appeal to [SCC dismissed](#)) (Found no basis on which the recommendations of the 2010 JCC report can be rejected and declared that the PCJs are entitled to the recommendations in the 2010 JCC report – paras 86-89.)

[128] Long-term disability costs for judicial officers aged 65 to 75, come out of the Provincial Court's operating budget. In 2019/20, the cost for long-term disability was about \$1.229 M, in 2020/21 it was \$1.063 M, and in 2021/22 it was 0.976M. Government-provided base budget funding has remained at \$0.408 M since 2013/14.

[129] In 2020/21 and 2021/22, notional contingency access in the amount of 0.700M and 0.860M respectively, was approved-in-principle to pay for the LTD costs. (See the **Appendix**).

[130] During the 2019 JCC, the government acknowledged that as a result of a 2015 Court of Appeal judgment the government must fully fund all LTD for judicial officers.

[131] There are currently four judges (3 full time and 1 part time) and one judicial justice on long term disability paid by the Court. As noted above, the Office of the Chief Judge does now receive contingency funding to cover long term disability costs for judges and full time judicial justices from age 65 to age 75. However, the funding is discretionary and can be terminated at any time. The current situation creates budget uncertainty as it is unknown from year to year how many individuals will require these payments and whether contingency funding will continue to be available.

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

[133] It is submitted that government base budget funding to the Court⁹ be increased to one million dollars per fiscal year (based on historical costs noted in the Appendix) for long term disability benefits for judges and full time judicial justices age 65 to 75 with access to contingency funds should LTD costs exceed that amount. This would fully fund all LTD benefits for judges and full time judicial justices age 65 to 75 and provide increased budget stability.

IV. Judicial Justices

A. Introduction

[134] The Judicial Justice division is an integral and indispensable part of the Provincial Court of British Columbia. The division is currently made up of a combination of full time and part time judicial justices.

[135] As of December 31, 2022, a total of 33 judicial justices comprised the complement of the division. Of these, 5 are full time judicial justices and 28 are part time judicial justices. This does not include any judicial justices on long-term disability. The current full time judicial justices have been in the position for more than 17 years. Of the current part time judicial justices the majority have law degrees.

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

B. The Work of the Judicial Justices

i. Criminal

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

1. All matters to which Court Services Justices of the Peace and Judicial Case Managers are assigned;
2. All matters in which there is a judicial determination affecting the liberty of a person taken into custody other than such matters as are assigned exclusively to or are under the exclusive jurisdiction of Provincial Court judges;
3. All applications pursuant to federal or provincial enactments for search warrants, orders for access to records and data, and warrants or authorizations to enter a

⁹ In budget estimates the Provincial Court is referred to as "Judiciary/Provincial Courts".

dwelling house, premises or other place, whether application is made in person or by telephone or other means of telecommunication, and where authorized by law. With respect to telewarrants, in addition to s. 11(1) of the *Provincial Court Act*, this assignment constitutes a designation pursuant to s. 487.1 of the *Criminal Code* and s. 22 of the *Offence Act*¹⁰;

4. Payment hearings pursuant to the *Small Claims Act* and *Small Claims Rules*;
5. (a) Hearings in respect of all provincial offences [except designated COVID-related offences with a total ticketed amount of at least \$2,300 (\$2,000 fine plus \$300 victim surcharge levy) which are assigned to be heard by Provincial Court Judges], and federal Contraventions Act offences [except designated COVID-related offences under the Quarantine Act with a total fine amount of at least \$3450 which are assigned to be heard by Provincial Court Judges], in which proceedings are commenced by violation ticket;

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

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

[138] Using telephone and video conferencing, judicial justices at the Justice Centre preside over bail hearings in the evenings on weekdays and on weekends and statutory holidays. Judicial justices also consider informations to obtain federal and provincial search warrants and other judicial authorization applications 24 hours a day, seven-days-a-week. Twenty-three judicial justices work through the Justice Centre, either on site or remotely.

[139] We live in a society that values individual liberty and freedom and a criminal justice system based on the presumption of innocence. When that liberty is at issue due to a police investigation resulting in an individual being taken into police custody, it is important that the individual be brought before a judicial justice as soon as is practical and, in any event, not later than 24 hours from the time of arrest, for a determination of whether their continued detention, pending the adjudication of the matter, is justified. It is accepted that outstanding criminal charges and any accompanying deprivation of liberty can have enormous consequences upon the lives of individuals, impacting their personal lives, their family and their employment, often in a very public way.

[140] In 2020/21, the judicial justices at the Justice Centre considered 24,803 applications for search warrants and production orders and conducted 17,682 bail hearings. In 2021/22, there were over 18,000 bail hearings conducted, and over 18,000 search warrant and production orders considered. The below table includes the total amount of bail hearings and Search Warrants and Production Orders

¹⁰ This was updated in 2023 consequent to Bill S-4 taking effect in the [Assignment of Duties Pursuant to S. 11 of the Provincial Court Act \(NP 16\)](#)."

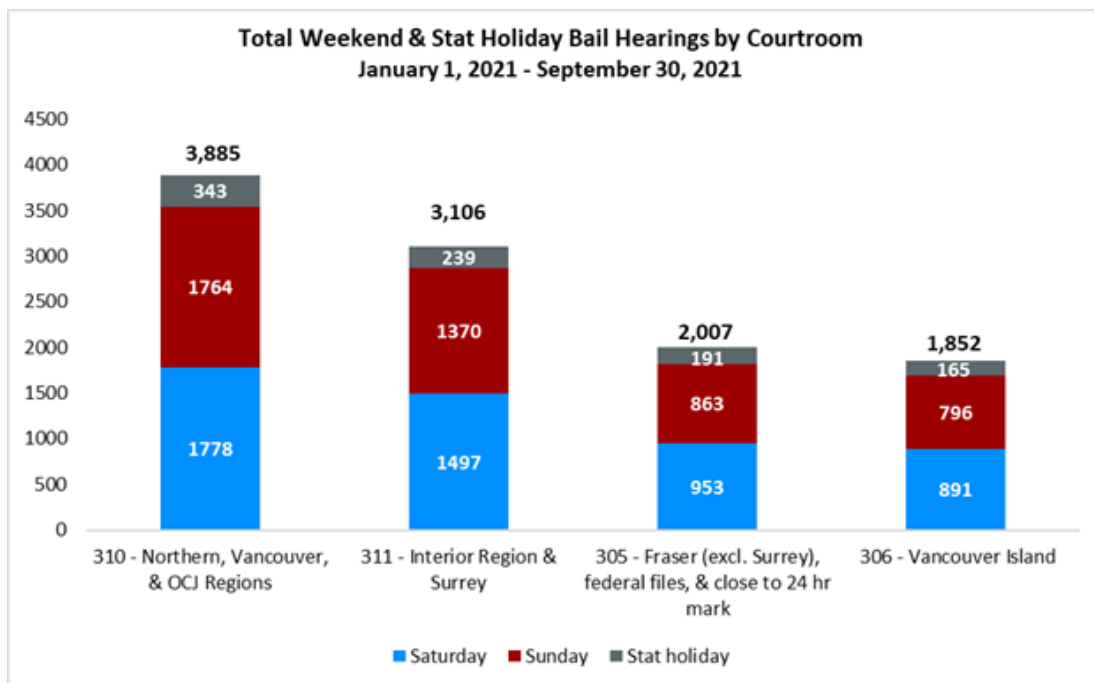
conducted/considered at the Justice Centre for each fiscal year, ranging from 2015/16 to 2021/22.

Figure 6

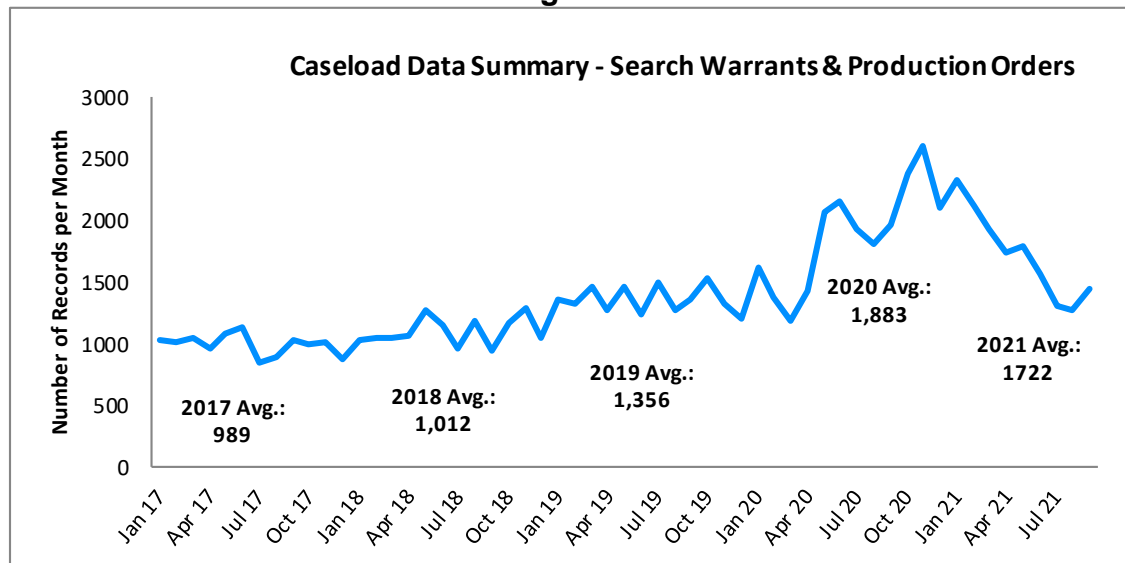
Fiscal Year	Bail Hearing Totals	Search Warrant /Production Order Application Totals
2015/2016	22,652	8,909
2016/2017	23,129	10,604
2017/2018	21,740	11,928
2018/2019	20,780	14,211
2019/2020	22,335	16,297
2020/2021	17,682	24,803
2021/2022	18,068	18,711

[141] The following table shows the total of weekend and statutory holiday bail hearings for January 1, 2021 to September 30, 2021.

Figure 7



[142] The Chart below shows the number of search warrant and production order records per month from January 2017 to July 2021.

Figure 8

[143] When the Justice Centre is under-resourced by judicial justices, Provincial Court judges are called upon to fill those shortfalls. Judges receive two vacation days for working an eight hour shift at the Justice Centre. Initially during COVID-19 the judicial justices were able to cover the shifts, however prior to COVID-19 judges were called upon to work some shifts and we are seeing this occur again in 2022.

[144] Some of the evening bail hearings are conducted by judicial justices using video technology. This enables simultaneous visual participation by the judicial officer, the accused, the prosecutor and the defence lawyer. However, this technology is not yet available in all cases or from all communities in the province. The Court continues to engage with government to have video units installed in police detachments in order to facilitate virtual appearances in remote locations on evenings and weekends. Weekend bail is implemented in all regions, and weekday evening bail is implemented in the Northern Region, Vancouver Region, Island Region, and Interior Region.

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

[146] As noted above, judicial justices also hear many judicial authorization applications. Many of the investigative tools used by police agencies have the potential to infringe on the privacy rights of individuals who may not ultimately be charged with any offense or, if charged, may be determined not guilty. It is for this reason and given the nature of the intrusion, many of these investigative measures require prior judicial authorization to ensure the existence of a proper legal foundation for their approval and to ensure that any approvals be accompanied by any appropriately limiting terms and conditions.

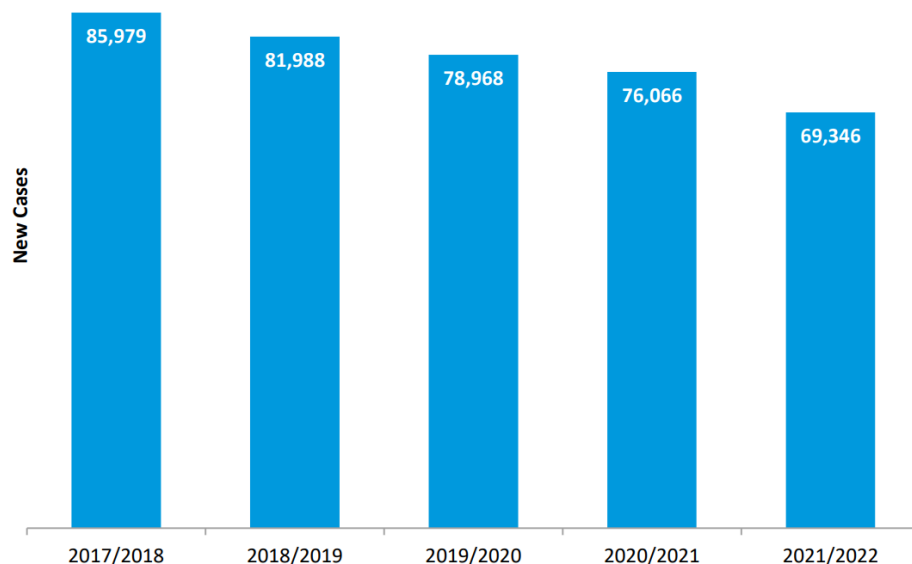
[147] Police investigations can be accompanied by a degree of urgency. Often the underlying investigations are lengthy and complex and the applications are time-sensitive. Under these circumstances, judicial justices can be called upon to assess applications sent to them during late hours in the evening.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

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

ii. Traffic, Ticket and Bylaw

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

[150] In the last five fiscal years, the number of new traffic and bylaw matters filed with the Court are:



[151] Performing this work in a public courtroom setting means that, for the most part, judicial justices constitute the face of justice in this province. This is because citizens – who may otherwise have no interaction with the justice system – will possibly have to deal with a traffic or bylaw infraction and, in doing so, will form a lasting impression about our justice system and the principles of independence, impartiality and other values under

which it operates. This work can be very demanding, comprising court lists in the range of 60 matters per day, all of which are expected to be conducted in a fair and courteous manner.

[152] The volume of cases is significant and represents a considerable workload for the judicial justices. This work occurs in circumstances where the judicial officer is in the courtroom without the assistance of support staff, a court clerk, or a sheriff.

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

iii. Civil

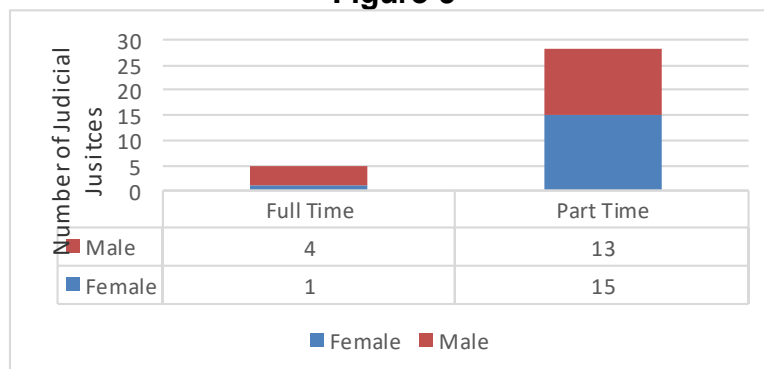
[154] Judicial justices also provide significant assistance with work arising out of the Court's civil division, specifically in the conduct of payment hearings held pursuant to the *Small Claims Act* and *Small Claims Rules*. The purpose of these hearings is for the presiding judicial officer to determine the timely payment of judgments awarded to litigants under civil proceedings by a Provincial Court judge. Conducted under circumstances where the judgment debtor may often have very little in the way of available financial resources, but is nonetheless legally obligated to satisfy the judgment, these hearings can be stressful for all concerned.

[155] In addition, the *Small Claims Rules* were [amended](#) effective October 2022 and included revising the rules regarding payment hearings. As a result, judicial justices also have a new electronic workflow related to desk orders.

C. Current Complement of Judicial Justices

[156] Judicial justices are appointed under s. 30.2 of the *Provincial Court Act*. The complement of full time and part time judicial justices is illustrated in the following Figure.

Figure 9



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

[158] Mechanisms to avoid real or perceived conflicts of interest have been established for part time judicial justices who continue to maintain a law practice.

[159] Part time judicial justices sign a Memorandum of Understanding (MOU), which sets out the hours or shifts they would work. The Act guarantees part time judicial justices at least 40 working days per year to ensure their independence, which is reflected in the MOU as well.

[160] The majority of the part time judicial justices have law degrees and prior experience practicing law. They provide important adjudicative services to the people of British Columbia in a very cost-effective manner compared to judges doing this work.

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

[162] Judicial justices engage in on-going education designed to maintain and keep current on new advancements in the law while ensuring they are sensitive to the social and cultural context of the communities in which they work. For more information see our [judicial education](#) webpage.

[163] In 2017, the *Provincial Court Act* was amended to extend the terms of judicial justices to 12 years for those who had been appointed for 10 year terms ([Provincial Court Amendment Act, 2017](#)). In 2019¹¹, this amendment was replaced with an amendment that allowed full time judicial justices to apply to be part time judicial justices, and for part time judicial justices to apply for re-appointment for a second 10 year term.

D. Administrative Judicial Justices

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

[165] The Administrative Judicial Justices sit as judicial justices and receive non sitting time to attend to administrative matters. They receive a judicial justice's remuneration plus 6%. Administrative duties include:

- Membership on the Judicial Justice Administration Committee, chaired by the Court's Executive Director of Organizational Services. This Committee is tasked

¹¹ [Miscellaneous Statutes Amendment Act \(No. 2\), 2019](#) updated the *Provincial Court Act*.

with identifying and promoting the efficient management of issues and practices impacting judicial justices.

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

E. Initiatives to Enhance Effectiveness and Efficiency

i. Daytime and After Hours Justice Centre

[166] There has been much innovation in the judicial justice division, including the establishment of the daytime and after-hours Justice Centre and its related use of technology, and the move to Crown-led bail hearings at the Justice Centre. Further information about these initiatives is provided below.

[167] Changes to the bail system at the Justice Centre were put in place as part of a "Crown-led bail" initiative. Previously, police represented the Crown in bail hearings at the Justice Centre. However, since 2018 those hearings have been transitioned to be Crown-led only in almost all cases.

[168] Significant work and inter-agency collaboration was necessary to effect this change. In short, CSB, BC Prosecution Service, Legal Services Society, Sheriff Services, RCMP and municipal policing agencies, and the Court came together to create a process where all bail matters are heard in courts that are clerked. The Crown conducts the charge assessment on all matters submitted to them by the police agencies and duty counsel is

retained and available to assist all people who are in custody and charged with criminal offences.

[169] Prior to this model, duty counsel assistance was unavailable to most people who were in custody charged with criminal offences in locations outside of the Lower Mainland. As a result of this initiative, there has been an increase in consent releases because Crown and defence counsel have an opportunity to discuss reasonable release terms for people in custody charged with criminal offences. This collaborative effort improves access to justice, as fewer people remain in custody awaiting a Monday bail hearing and are not transported from remote locations in the province to regional correctional facilities to await a bail hearing.

[170] CSB provided training to the Justice Centre court staff to ensure that the judicial justices would no longer be required to clerk their own hearings. Additionally, court orders were created in the court rooms rather than court staff being required to type up court orders from written records of proceedings.

[171] This system has shown to be more efficient, with fewer overall charges being approved, and an increase in consent releases where bail hearings are being held. Those hearings are significantly shorter than they were before this transformation.

[172] It is anticipated now that [Bill S-4](#) "*An Act to amend the Criminal Code and the Identification of Criminals Act and to make related amendments to other Acts (COVID-19 response and other measures)*" has come into effect, that the workload of judicial justices will be substantially increased. This Bill replaces the telewarrant provisions, which were quite narrow, with a process that permits almost all judicial authorizations under the Code to be applied for and issued by a means of telecommunication. The practice direction "[Judicial Authorization Applications](#)" (CRIM 03) previously addressed the process for daytime judicial authorizations. Consequential to Bill S-4 taking effect it was revised to set out the process for judicial authorizations at any time.

ii. Court Record

[173] Work is underway to integrate MS Teams with For the Record (FTR) software to capture the official court record for virtual court proceedings. This would allow a Clerk/JJ to record from anywhere there is internet and still capture a high-quality recording. This is currently being piloted in Traffic Court (as well as by some judges in Settlement Conferences and Family Management Conferences) in select locations.

iii. Traffic Court

[174] In 2021 an online information tool for traffic and violation tickets called "[Understand Your Ticket](#)" was created by the government and launched. It provides information for disputants to learn about dispute options related to a ticket. The Court and judicial justices were involved in the creation of this tool.

[175] Currently initiatives are underway to:

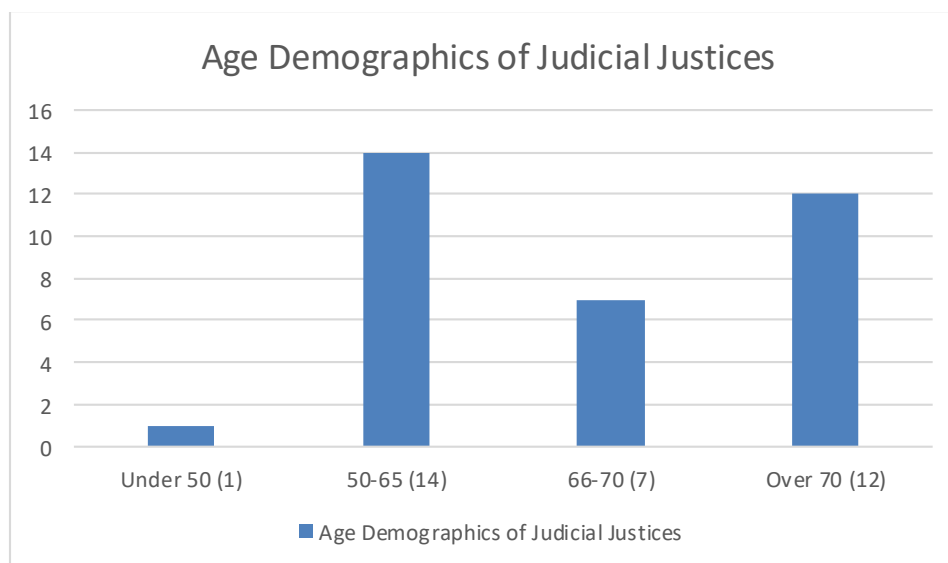
- create an online option for initiating traffic disputes (as another option to initiating a dispute in person or otherwise),
- creating the ability for a digital case file for traffic and ticket matters (versus just a paper file),
- creating a judicial justice desktop allowing judicial justices to electronically adjudicate requests for time to pay and fine reductions that do not require an in-person hearing and push out the decision to the parties and the file, and
- notifying parties of scheduled hearings by email.

[176] A separate pilot project underway at the Court involves parties volunteering to attend remote traffic hearings at select court locations.

F. Attracting and Retaining Judicial Justices

[177] At present, based on the workload of the division, appointments of judicial justices to the Court are urgently needed. The need for appointments will continue as long-serving, full time judicial justices reach the maximum contribution to their pension and retire or move to part time status until they reach retirement age, and as part time judicial justices arrive at their term limit or the age of 75. **There are 12 judicial justices that will be reaching age 75 between now and 2027 (36% of the judicial justice division).** These factors create the need to attract qualified candidates for future appointments. The Chart below shows the age demographics of the complement of judicial justices, including those on long term disability:

Figure 10



[178] The Court accepts applications for the position of judicial justice year round. In addition, on September 13, 2021, Judicial Council issued a [Notice to the Profession Calling for Judicial Justice Applications](#), which was sent to:

- All Provincial Court judges and judicial justices;
- The Trial Lawyers Association of BC;
- The Advocate;
- The Canadian Bar Association, BC Branch;
- The Law Society of BC; and
- Courthouse Libraries BC.

[179] Despite that dissemination, in 2021 Judicial Council received only eight applications and three appointments. In total since 2015, only ten judicial justices have been appointed. Another [Notice](#) was issued on November 18, 2022 again calling for applications. The court is very concerned with the age demographic of the existing complement in terms of retirement. While there is a very real, current need to attract qualified candidates, the Court's attempts to do so, as noted above, have had limited success. We need to urgently both retain existing judicial justices and recruit new judicial justices to meet operational needs.

G. Recommendations

i. Remuneration for Judicial Justices

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

[181] The remuneration of judicial justices must, it is submitted, be increased to a level that will encourage existing judicial justices to continue in their public service and urgently attract outside applicants with significant professional and adjudicative experience. I have read the 2022 submission of the JJABC to the Judicial Compensation Commission and I support their submission regarding remuneration as being consistent with this need to attract and retain judicial justices.

ii. Remuneration for Administrative Judicial Justices

[182] Further to the information provided above regarding Administrative Judicial Justices, I respectfully request that the Administrative Judicial Justice's remuneration remain at the judicial justice's remuneration plus 6%.

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

[183] Adopting the submissions set out above, it is respectfully submitted that government base budget funding to the Court be increased to one million dollars per fiscal year (based on historical costs noted in the Appendix) for long term disability benefits for judges and full time judicial justices age 65 to 75 with access to contingency funds should LTD costs exceed that amount. This would fully fund all LTD benefits for judges and full time judicial justices age 65 to 75 and provide increased budget stability.

iv. Shift Differentials

[184] I have read the 2022 Submission from the JJABC regarding shift premiums. I support their submission in principle as being consistent with what I believe is necessary to attract and retain qualified applicants, encourage availability, and reasonably compensate those who commit to serving the needs of the citizens of British Columbia outside of regular business hours. The shift differentials must be high enough to attract and retain qualified applicants and ensure the positions are filled by judicial justices rather than judges, as filling the positions with judges results in high leave liability which creates a burden for the court.

[185] Amendments to the *Judicial Compensation Act* would be required to allow for additional shift premiums.

V. Conclusion

All of which is respectfully submitted to the Commission.



Melissa Gillespie
Chief Judge, Provincial Court of British Columbia
January 25, 2023

Appendix - In House LTD Historical and Projected Expenditures (2019-2026)

In-House LTD Historical and Projected Expenditures - 2018/19 to 2025/26
August 22, 2022

Name	Status	Start Date	End Date	Actual Expenditures				Projected Expenditures				Total
				2018/2019	2019/2020	2020/2021	2021/2022	2022/2023	2023/24	2024/25	2025/26	
Judge 1	FT	01-Jul-11	30-Jun-21	\$ 217,934	\$ 219,428	\$ 193,279	\$ 49,225					\$ 2,032,208
Judge 2	FT	01-Jun-12	27-Aug-13									\$ 235,446
Judge 3	FT	01-Jul-14	01-Jan-19	\$ 165,171								\$ 936,300
Judge 4	PT	02-Mar-15	31-Jan-19	\$ 62,520								\$ 282,185
Judge 5	PT	11-Dec-15	31-Mar-19	\$ 81,158								\$ 229,289
Judge 6	FT	01-Sep-16	31-Aug-26	\$ 217,934	\$ 219,428	\$ 193,279	\$ 197,656	\$ 202,033	\$ 210,509	\$ 223,595	\$ 233,878	\$ 2,026,205
Judge 7	FT	16-Oct-17	31-Oct-18	\$ 93,895								\$ 165,498
Judicial Justice 1	FT	01-Feb-18	31-Jan-28	\$ 96,009	\$ 97,286	\$ 74,535	\$ 90,687	\$ 93,489	\$ 97,411	\$ 103,466	\$ 108,225	\$ 776,265
Judge 8	FT	01-Jun-18	31-May-28	\$ 200,556	\$ 242,940	\$ 193,279	\$ 197,656	\$ 202,033	\$ 210,509	\$ 223,595	\$ 233,878	\$ 1,704,445
Judge 9	FT	01-May-19	10-Apr-29		\$ 194,587	\$ 193,279	\$ 160,548					\$ 548,415
Judge 10	PT	01-Nov-19	31-Dec-19		\$ 6,711							\$ 6,711
Judge 11	PT	04-Jul-22	30-Mar-31					\$ 63,474	\$ 84,204	\$ 89,438	\$ 93,551	\$ 330,667
Judge 12	FT	01-Nov-21	31-Oct-31				\$ 82,546	\$ 202,033	\$ 210,509	\$ 223,595	\$ 233,878	\$ 952,560
Judicial Justice 2	FT	01-Oct-22	30-Sep-32					\$ 46,565	\$ 97,411	\$ 103,466	\$ 108,225	\$ 355,667
Judge 13	FT	01-Apr-23	31-Mar-33						\$ 210,509	\$ 223,595	\$ 233,878	\$ 667,982
Judicial Justice 3	FT	14-Aug-24	13-Aug-34							\$ 65,555	\$ 108,225	\$ 173,780
Benefits @				\$ 1,135,177	\$ 980,381	\$ 847,652	\$ 778,318	\$ 809,626	\$ 1,121,061	\$ 1,256,303	\$ 1,353,739	\$ 11,423,623
				24.80%	25.40%	25.40%	25.40%	25.40%	25.40%	25.40%	25.40%	
				\$ 281,524	\$ 249,017	\$ 215,304	\$ 197,693	\$ 205,645	\$ 284,749	\$ 319,101	\$ 343,850	\$ 2,858,242
Total				\$ 1,416,701	\$ 1,229,397	\$ 1,062,956	\$ 976,011	\$ 1,015,271	\$ 1,405,810	\$ 1,575,404	\$ 1,697,588	\$ 14,281,865
In-House LTD Funding Included in Baseline Budget				\$ 408,000	\$ 408,000	\$ 408,000	\$ 408,000	\$ 408,000	\$ 408,000	\$ 408,000	\$ 408,000	
Unfunded Pressure				\$ (1,008,701)	\$ (821,397)	\$ (654,956)	\$ (568,011)	\$ (607,271)	\$ (997,810)	\$ (1,167,404)	\$ (1,289,588)	
Budget (excluding Contingencies)				\$ 61,232,000	\$ 61,445,000	\$ 63,503,000	\$ 68,469,000	\$ 71,325,000	\$ 71,241,000	\$ 71,241,000	\$ 71,241,000	
Unfunded Pressure as Percentage of Budget				1.65%	1.34%	1.03%	0.83%	0.85%	1.40%	1.64%	1.81%	
Estimate of Unfunded Pressure in Judge FTEs				2018/2019	2019/2020	2020/2021	2021/2022	2022/2023	2023/2024	2024/2025	2025/26	
Base Salary adjusted for JCC and related lawsuits				266,000.24	270,000.25	276,000.01	282,250.00	288,500.00	302,925.00	318,071.25	333,974.81	
Salary including benefits				\$ 331,968.30	\$ 338,580.31	\$ 346,104.01	\$ 353,941.50	\$ 361,779.00	\$ 379,867.95	\$ 398,861.35	\$ 418,804.41	
Unfunded Pressure in Judge FTEs*				3.0	2.4	1.9	1.6	1.7	2.6	2.9	3.1	

* This is the number of Judges by which the Court's working complement is reduced because the funds are consumed by the In-house LTD program.

Notes

- (1) The projections for fiscal 2020/21 to fiscal 2022/23 reflect increased salaries resulting from government's decision on the 2019 JCC. A 5% YoY increase is projected for out years
- (2) In addition to base budget funding, contingency access of \$700,000 was provided for fiscal 20/21, \$860,000 for 21/22 and \$1,000,000 for 22/23. The availability of contingency access for in-house LTD in future years is unknown.
- (3) The figures presented are not audited. Actual expenditures for fiscal 2011/2012 to fiscal 2021/2022 are based on payroll reports. Retroactive payments related to JCC have been included where paid.
- (4) The following assumptions have been made related to In-House LTD projections for fiscal 2022/23 to fiscal 2025/2026:
 - Bi-weekly salaries are based on 2022/23 payroll reports where available or estimates have been obtained from HR.
 - Bi-weekly salaries have been multiplied by the number of pay periods (full and partial) to arrive at a figure for the relevant fiscal year.
 - It is assumed that any new Judges entering the In-House LTD program will be full-time Judges. One additional Judge subscriber is projected for 2023/24.
 - The actual number of program subscribers in future years is difficult to estimate because Judges and JJ's over 65 may join or leave the program without any warning.
- (5) Information regarding In-House LTD subscribers, including names and months of birth have been obtained from HR. Certain start and end dates have been projected based on available information.
- (6) The benefits chargeback has been estimated based on the Ministry's three-year estimates.
- (7) Detailed estimates material provided February 2019 indicates historical baseline funding for In-House LTD totals \$408,000.
- (8) The Budget figure is based on Restated Budget Estimates provided by Ministry, consistent with the budget delegation letters.

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