



THE PROVINCIAL COURT
OF BRITISH COLUMBIA

SUBMISSION OF

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

to the

**2016 JUDICIAL COMPENSATION
COMMISSION**

Index

I.	Introduction	3
II.	Provincial Court Judges	5
	A. The Provincial Court of British Columbia – Background	5
	B. The Workload of the Court	12
	C. The Court's Administrative Structure	17
	D. Initiatives and Innovation Undertaken to Enhance Effectiveness and Efficiency	20
	E. Understanding the Court's Challenges Moving Forward	34
	F. Retention of Judges in the Provincial Court	35
	G. Summary	36
	H. Reasonable Per Diem Travel Allowance	36
	I. Recommendations	39
III.	Judicial Justices	40
	A. Introduction	40
	B. The Work of the Judicial Justice Division	40
	C. Current Makeup of the Division	45
	D. Innovations and Future of the Division	47
	E. Education Leave	48
	F. Recommendations	49
IV.	Conclusion	51
V.	Appendices	
	1. Treasury Board Directive 01/07	52
	2. Chief Judge Submission - 2007 Judicial Justices of the Peace Compensation Commission	53

I. Introduction

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

- (a) Supervision of judges, judicial justices, and justices of the peace;
- (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.

[2] 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 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) Development, implementation and monitoring of a strategic plan for the Court;
- (b) Development of the Court's annual work plan;
- (c) Administration and oversight for specific priorities of the strategic plan;

- (d) Oversight of direct reports;
- (e) Ensuring the existence and effective operation of both judicial and organizational services, resources and systems;
- (f) Chairing the Governance Committee;
- (g) Representing the Court in liaising with all levels of government;
- (h) Attending ceremonial functions on behalf of the Court;
- (i) Relationships with external stakeholders such as the Canadian Bar Association (CBA), and local Bar Associations;
- (j) Participating in educational programs through organizations like the Continuing Legal Education Society of BC (CLEBC) and others;
- (k) Planning for the judicial resources needed by the Court;
- (l) Direct responsibility for specific initiatives that he/she wishes to undertake;
and
- (m) Participation on Court committees, as required, from time to time.

[3] 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 Provincial Court Judges Association of British Columbia and the Judicial Justices Association of British Columbia. 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 perspective regarding the following:

- 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 the litigant 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 Provincial Court judges.

II. Provincial Court Judges

A. The Provincial Court of British Columbia – Background

[4] The Provincial Court's primary asset in the discharge of its day-to-day work in managing and determining cases, in its focused attempt to reform existing processes and implement new initiatives, is its judges. It is the quality of the Court's judges, a combination of professional experience and skill, their high degree of energy, work ethic and commitment, and an openness to change and innovation, which provides the foundation of the Provincial Court of British Columbia.

[5] 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.

[6] The Court's mission and vision statement, adopted in 2006, guide the work and undertakings of the Court. The Court's mission and vision statements are as follows:

Mission

As an independent judiciary, we will impartially and consistently provide a forum for justice that assures equal access for all and enhances respect for the rule of law and 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.

[7] The Court is also guided by four core values and goals which are as follows:

Core Values

- Independence
- Integrity
- Fairness
- Excellence

Goals

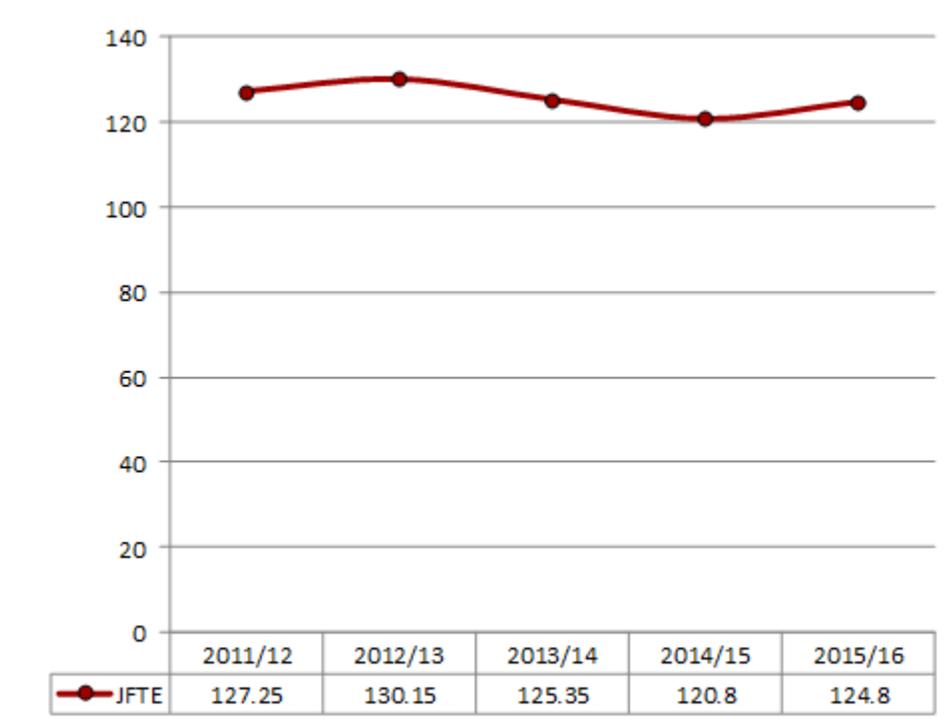
1. To excel in the delivery of justice.
2. To enhance meaningful public access to the Court, its facilities and processes.
3. To continue judicial innovation and reform to anticipate and meet the needs of society.
4. To ensure that the administration and management of the Court is transparent, fair,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

[8] As of June 24, 2016, the full time judicial sitting complement of the Provincial Court is 127.25 and consists of:

- 110 full time Provincial Court judges,
- 1 part time Provincial Court Judge (calculated at 0.60 of a full time judge), and
- 37 senior judges (calculated at 0.45 of a full time judge).

[9] Figure 1 depicts the average complement of Provincial Court judges for the last five fiscal years. As one can appreciate, the Court complement is a dynamic process which fluctuates over the course of the year. For example, the complement of the Court, as of June 24, 2016, is 127.25.

Figure 1



[10] The issue of judicial complement was an important piece of the presentation to the 2010 Judges 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.

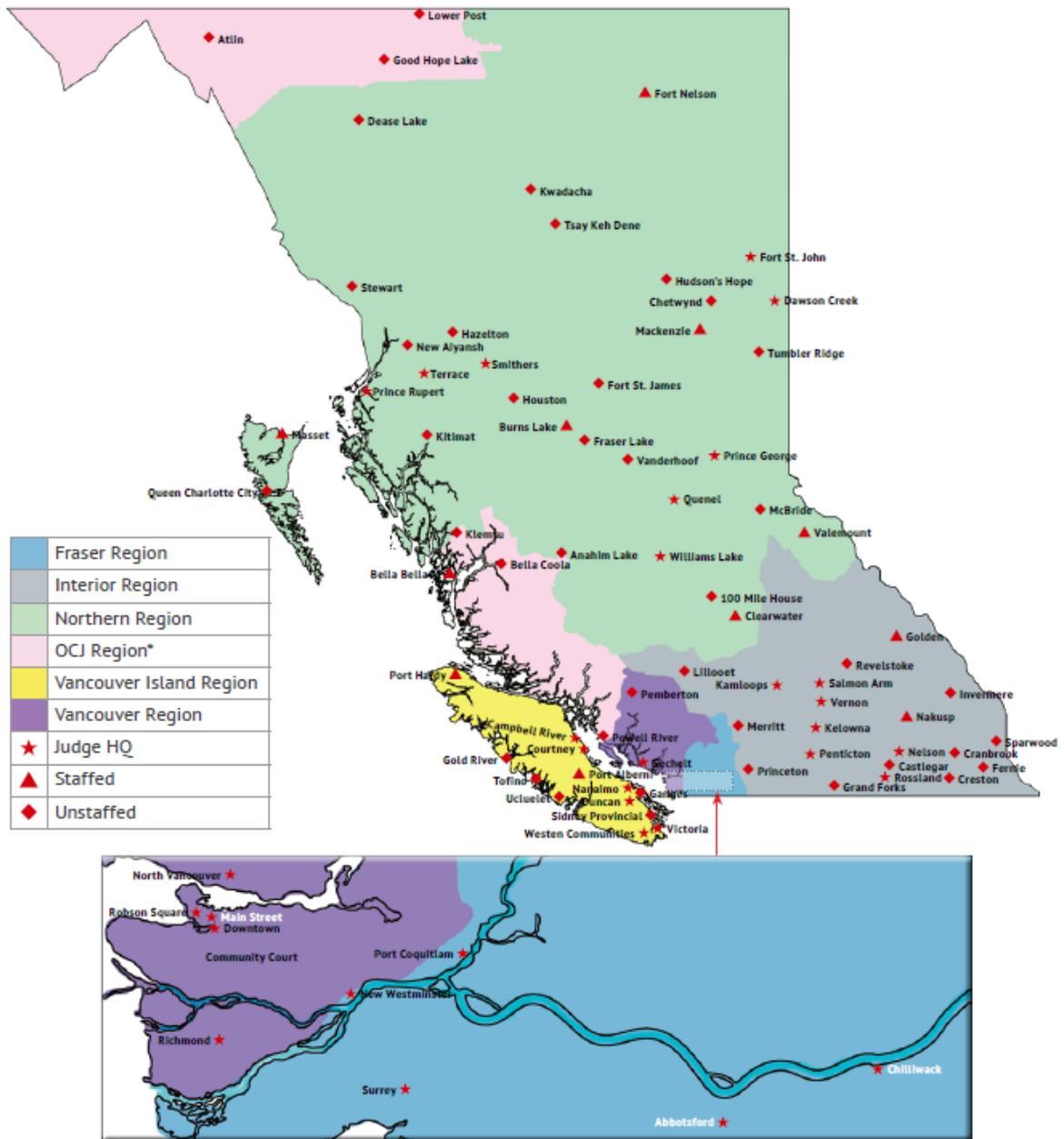
[11] An assessment was undertaken to evaluate the situation and to recommend a course of action, which would assist in addressing the litigants' inability to obtain timely court dates. This culminated in the report [Justice Delayed: A Report of the Provincial Court of British Columbia Concerning Judicial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

[12] Since the publishing of the original report, an update on the Court's delay or the "[Time to Trial](#)" in each area of our jurisdiction is developed and published on the Court website every six months. The delays have been reduced since the report was first issued, thanks to the efforts of the judges of the Court and a declining number of new cases over the past 12 months.

[13] 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's jurisdiction encompasses the following primary subject areas: adult criminal, youth, civil, family, child protection, traffic and bylaw matters.

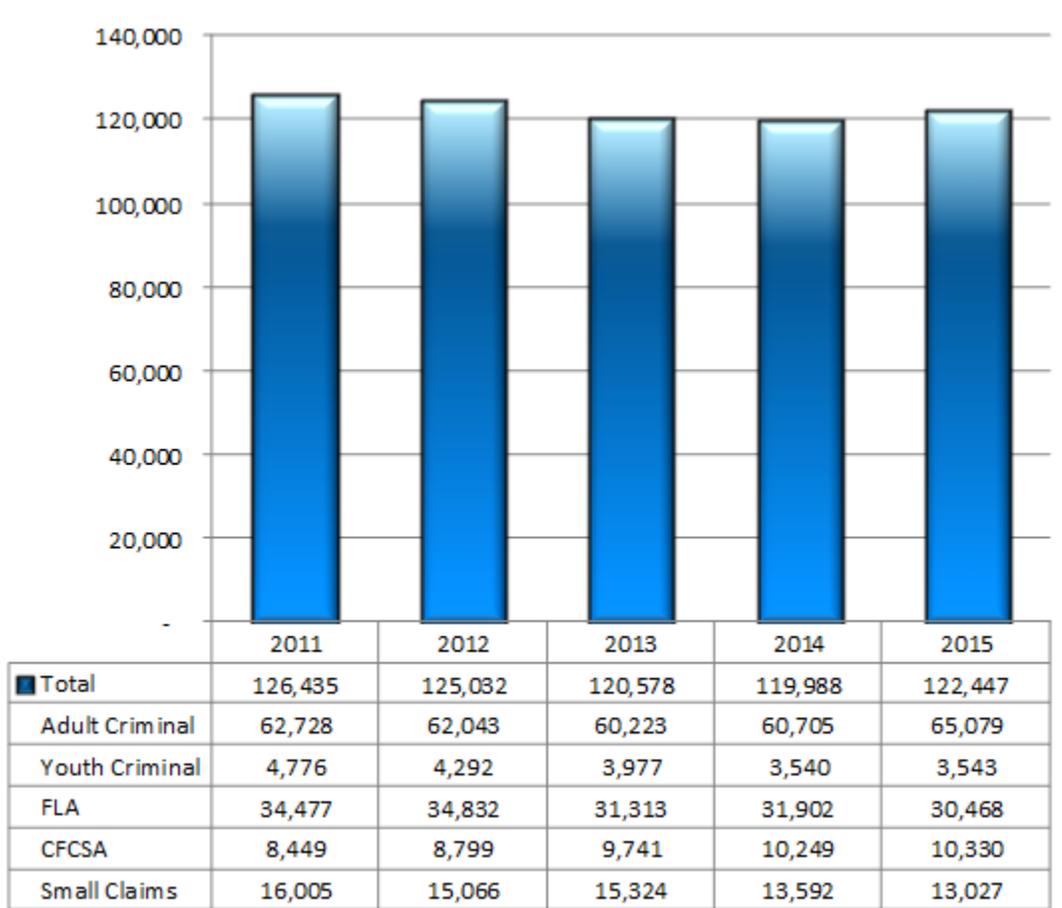
[14] The judges and judicial justices of the Court serve the people of British Columbia in 89 locations throughout the province, which are depicted on the map in Figure 2.

Figure 2



[15] Figure 3 provides the total and a breakdown by jurisdiction of the new or incoming cases filed in each for the past five years reported on a calendar year basis. The number of new cases levelled off in 2013 and 2014, and increased slightly in 2015. The most recent fiscal year end information will be provided when available.

Figure 3



[16] In criminal matters, the Court's general jurisdiction extends to all matters, except for a limited few over which the Supreme Court has exclusive jurisdiction. 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.

[17] In the criminal jurisdiction the Provincial Court handles in excess of 98% of the criminal cases, by volume, in the province. Our greatest challenge at this stage is to ensure that we are utilizing judicial resources in the most effective way possible. To that end, I refer the Commissioners to the discussion later in this document which identifies the Provincial Court Scheduling Program and the Balanced Rota Template as two court-initiated projects undertaken to accomplish our goal of effective administration.

[18] The Court has exclusive jurisdiction in matters pertaining to child protection proceedings, of which there are in excess of 1500 new cases each year. 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(ren) should be permanently removed from their parents and placed in the care of the State.

[19] Under the *Family Law Act*, the Court has concurrent jurisdiction with the Supreme Court in guardianship, parenting time, and child and spousal maintenance. In 2015 there were 30,468 new cases and applications initiated in this particular area of the Court's jurisdiction.

[20] The Provincial Court also has broad civil jurisdiction with a \$25,000 monetary limit. For some time it has been anticipated that the monetary limit will increase to \$50,000 (by Order in Council). Also, once the Government's Civil Resolution Tribunal (CRT) is fully operational and mandatory, the Provincial Court will hear: (1) applications for exemption to the CRT process and (2) appeals of CRT decisions as new trials.

[21] In addition to the judges of the Provincial Court, there are three other categories of judicial officers who are members of the Provincial Court and who are administered by the Chief Judge.

[22] The Judicial Justice Division of the Court consists of 10 full time, 19 per diem and 3 ad hoc judicial justices. The role and jurisdiction of the judicial justices will be

discussed later in this submission. The judicial complement of the Court also consists of 9 Justice of the Peace Adjudicators - senior lawyers holding a Justice of a Peace Commission who, on a part time (per diem) basis, adjudicate civil claims under \$5,000 in the Vancouver and Richmond Provincial Court locations.

[23] As well, the complement of the Court consists of judicial case managers who are responsible for court scheduling, coordination of judges' sittings, conducting initial criminal appearances, and managing the flow of cases. They are instrumental in ensuring that judicial resources are effectively allocated and utilized in a manner consistent with the rules and policies of the Court. Judicial case managers hold a Justice of the Peace Commission and exercise limited judicial functions as part of their duties. As of June 1, 2016, there were 29 full time, 12 part time and 5 auxiliary judicial case managers.

B. The Workload of the Court

[24] The workload of the Court is the product of a number of inter-related factors and it is the combination of these factors which determines how heavy the workload is. Without suggesting that this is the entire list of factors which constitute the workload of a judge and, in aggregation, that of the Court, they include:

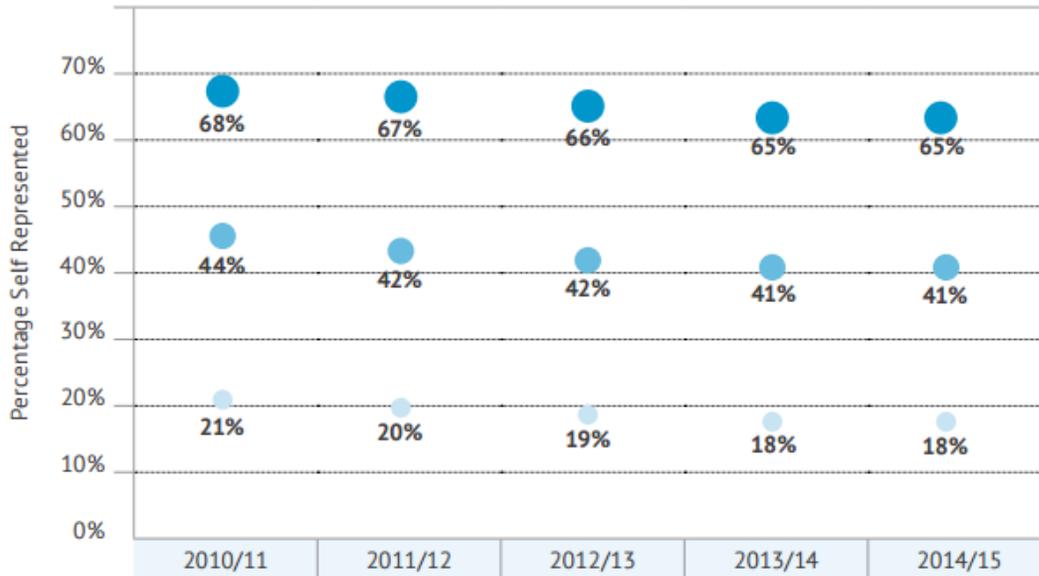
- Volume of new cases;
- Legislative activity at the federal and provincial levels;
- Increasing complexity of the law;
- Judicial non-sitting work functions, including case management, decision writing, reviewing applications, judicial education, administration, and important committee work;
- Administrative work functions;
- Economic growth of the province;
- Changing demographics and population;
- Number of locations at which the Court sits;

- Increased access in rural and remote areas and aboriginal communities;
- Level of Legal Aid funding; and
- Level of support services provided to the judiciary.

[25] Based on a number of recent studies, 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. An unrepresented litigant or litigants adds a degree of complexity to the cases heard by the Court and increases the workload of the judicial officer hearing the case.

[26] Historically, the Court had not recorded data, with respect to self-represented litigants, but the need to do so is now nearly universally recognized. A self-represented appearance is one at which at least one party is not represented by counsel or agent. The Court saw 130,351 self-represented appearances during the 2014/15 fiscal year, 211 fewer than in the 2013/14 fiscal year. While the number of new cases in Provincial Court declined by 0.1 per cent, the number of self-represented appearances declined by 0.2 per cent. Figure 4 shows the self-representation rate by division for the past five fiscal years. Self-representation rates declined between 2010/11 and 2013/14 and held constant between 2013/14 and 2014/15.

Figure 4
Self-Representation Rates by Division
(2010/11 to 2014/15)



		2010/11	2011/12	2012/13	2013/14	2014/15
Small Claims	Self-represented	14,276	13,340	12,983	12,479	12,150
	Total Appearances	21,095	19,966	19,709	19,258	18,619
Family	Self-represented	25,886	24,135	24,005	24,180	24,488
	Total Appearances	58,714	56,786	57,569	59,606	60,095
Criminal	Self-represented	130,687	111,871	102,475	93,903	93,713
	Total Appearances	627,968	566,623	532,574	523,351	523,815

[27] The following figures were provided to Professor Julie Macfarlane at the University of Windsor Law School by the BC Ministry of Justice as part of "[The National Self-Represented Litigants Project](#)":

- In 2011, 57% of all hearings held under the *Family Relations Act* included one or both self-represented litigants, while the rate of self-representation at the Supreme Court level is 35%.
- In 2011, 80% of small claims court litigants were self-represented, whereas only 21% of civil litigants in Supreme Court were unrepresented.

[28] Dr. Macfarlane explains on p. 33 of her report that “the actual number of SRLs is probably yet higher, because this data only reflects whether or not an individual is represented at the time of a hearing”. Due to the lack of historical data, it is difficult to “accurately pinpoint the timing of the rise in the percentage of SRLs, but many court staff stated in an interview that they believed that the steepest increase occurred up to ten years ago, reflecting the decline in provincial family Legal Aid budgets.”

[29] Due to a lack of data in Canada, Dr. Macfarlane also reviewed data from North America's highest volume jurisdiction, California, to examine the rise in self-representation. Figures are available for California's family court system going back to the 1970s. Dr. Macfarlane's analysis revealed the following on p. 34:

- In 1971, self-represented litigants constituted 1% of all litigants in California family court.
- By 1992, this had risen to 46% and to 77% by 2000.
- In 2004, 80% of all cases included at least one self-represented litigant by the time of judgment.

[30] 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 case law and its implications, raising arguments on their behalf before the Court, questioning witnesses and, *inter alia*, making referrals to legal advocacy organizations.

[31] 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](#).

[32] While the Doust Report does not contain statistics regarding the overall number

of self-represented persons in the BC court system, it references that “hundreds of thousands of BC residents struggling with a range of legal problems do so without the benefit of a lawyer or any qualified assistance” (p. 22). In addition to the significantly increased court time and resources spent assisting self-represented litigants in navigating a complex legal and procedural system, safety is also a rising concern. As the Report quoted at p. 21:

In both civil and criminal matters, self-represented accused tend to take matters much more personally, for obvious reasons, to be more emotional, to display poor judgment, and to feel that they have been unfairly treated by a system that is stacked against them. All of those things lead to a greater likelihood of unpredictable and disrupted behaviour, which slows down the court process, sometimes bringing it to a complete stop. And all of which leads to an increased likelihood of violence.

[33] The Report also noted 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 is exacerbated by budget cuts affecting the number of sheriffs available to ensure safety and security in courthouses.

[34] In summary, although statistical information about the increase in self-represented litigants in BC is not available, the information that is available would suggest that the Provincial Court deals with a significant number of self-represented litigants.

[35] Accordingly, the increase in self-represented litigants has consequences for the workload of Provincial Court judges. Two of these have been identified earlier in this document: first, judges have additional responsibilities ensuring equal access to justice for self-represented litigants, which increases the amount of court time and resources utilized; and, second, self-represented litigants tend to be more emotional and display poor judgment, which leads to a greater likelihood of unpredictable and disrupted behavior, which, in turn, slows down the court process.

[36] It is respectfully submitted that the rise in self-represented litigants has had a dramatic impact on every step of the court process and is increasingly being recognized as a serious issue that requires action. The additional burden that the self-represented litigant places on the process as a whole and on the judge in particular are significant.

C. The Court's Administrative Structure

[37] Based on discussions within the Court and with the input of experts in the field of organizational structures, the Court embarked upon a reorganization of its administrative structure. The reorganization was implemented on April 1, 2013. As an aside, I would note that in his report: [A Criminal Justice System for the 21st Century](#), Mr. Cowper, Q.C. supports the move toward a more modern governance structure. On p. 8 of his report, Mr. Cowper, Q.C. stated:

The Provincial Court's capacity to expertly manage its court, including use of modern information and communication systems, modern business process analysis and other modern management techniques should be enhanced through a more clear and modern governance structure within the court.

[38] The previous judicial administration consisted of a Chief Judge, two to four Associate Chief Judges (the number dependent on workload and projects), and 12 Administrative Judges representing the 12 administrative districts of the Court. The previous administrative structure of the Court consisted of an Executive Committee and a Management Committee. The Executive Committee was comprised of the Chief Judge, the Associate Chief Judges and the Executive Director. The Management Committee consisted of the Chief Judge, the Associate Chief Judges, 12 Administrative Judges and the Executive Director. The two committees comprised the Court's previous management/administrative structure.

[39] Under the previous administrative structure and based on the recommendation of the Judicial Compensation Commission, the Chief Judge received an additional 12% and the Associate Chief Judges 6% remuneration. The Administrative Judges received non-sitting time to attend to administrative matters, as well as additional annual leave, but no additional remuneration.

[40] As indicated earlier in this document, the reorganization was implemented on April 1, 2013, with a period of transition until June 2014. The new administrative structure is a more effective administrative model, providing a number of benefits including:

- Increased transparency;
- Simplified administrative structure; and
- Meaningful input into the decision-making process.

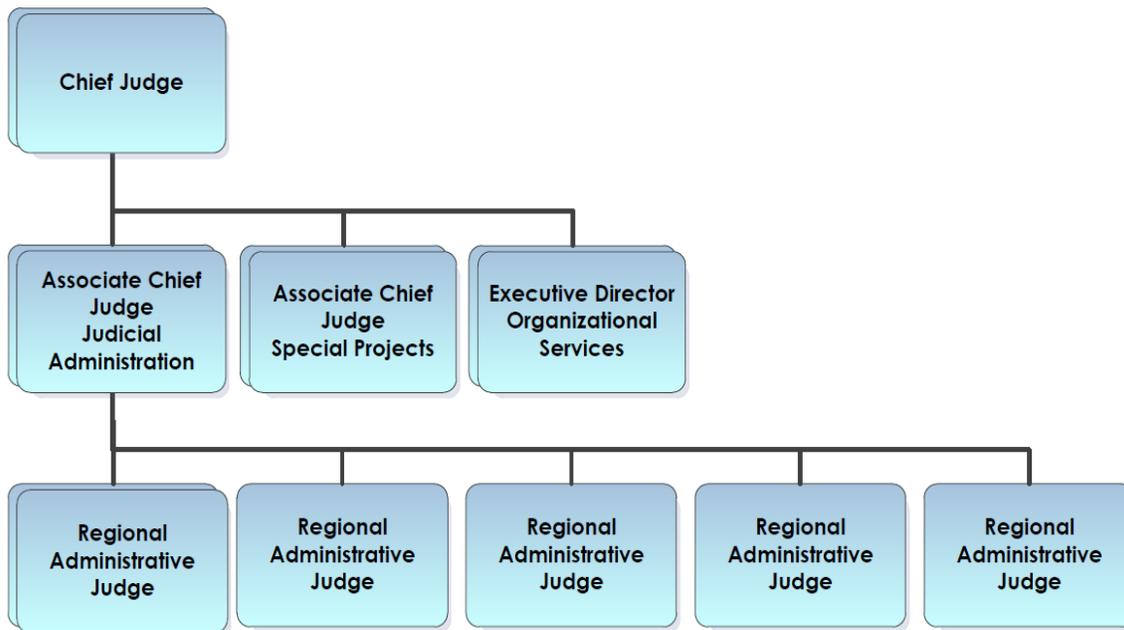
[41] Under the new administrative structure, the province is divided into five administrative regions, which are similar to the Court Services Branch regions. Each region is administered by a Regional Administrative Judge. The Administrative and Governance Committees of the Court have merged, with the Regional Administrative Judges serving on both committees.

[42] The Governance Committee is led by the Chief Judge and the Administrative Committee is chaired by the Associate Chief Judge. The regions are administered by a Regional Administrative Judge who may be assisted, where necessary, by a Local Liaison Judge in a particular court facility. The Local Liaison Judge performs his or her duties in the course of a regular sitting schedule. In addition, the Court will continue to rely on court committees, as the need arises, to facilitate the work of the Court.

[43] The new administrative structure is depicted in Figure 5.

Figure 5

Court Administrative Structure



[44] These changes were supported by Government, which made the necessary amendments to the *Provincial Court Act* and changes to judicial compensation. As recommended by the 2013 Judges Compensation Commission, 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.

[45] I note that the additional remuneration paid to the judicial officer is limited to the term of office. The increased salary for any administrative judge (CJ, ACJ or RAJ) does not continue, as in other jurisdictions, once the term of office is completed.

[46] The new 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 the region to which they are assigned, to facilitate and support effective judicial administrative performance;
- Ensure compliance with standards and policies;
- Act as the informational link between the judges of the region and the Chief Judge; and
- Liaise with stakeholders in the justice system.

[47] 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 sitting a modified schedule.

[48] The new administrative structure has resulted in a more effective administrative structure and an overall benefit with an increase in sitting time due to an overall reduction in administrative time and leave entitlements.

D. Initiatives and Innovation Undertaken to Enhance Effectiveness and Efficiency

[49] 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.

[50] Embracing innovation and making meaningful change is not a recent development. The Court's somewhat radical 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 over 25 years of an ongoing

commitment to better serve the public.

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

[52] In his report titled: [A Criminal Justice System for the 21st Century](#), Mr. Cowper, Q.C. had this to say about the Provincial Court's reform efforts:

Leaders of the Provincial Court have advanced farsighted and significant reforms over the past 15 years. These proposals and initiatives have included rules to promote early resolutions, the reduction of backlogs, the development of public performance measures for the court, the development of problem-solving and specialized courts such as the Downtown Community Court (DCC) and the Victoria Integrated Court (VIC), and the development of a vision and mission statement for the court. As discussed, the current leadership of the court has identified that a new approach to criminal process and trial scheduling is necessary. To better enable the Provincial Court to fulfill its important role, I recommend changes to the ways in which its judicial complement are determined and enhancements to its governance and managerial capacity.

[53] The Court, supported by the judicial officers and administrative staff, has continued to engage in exploring, assessing and, where appropriate, undertaking initiatives in an effort to enhance the effectiveness and the efficiency of the Provincial Court. The Court recognizes the need for an evidence-based approach to such initiatives, and in that regard continues to assess, re-evaluate and revise the initiatives undertaken in order that they will more effectively meet the needs of the public. The following are examples of the various initiatives and reforms undertaken by the judges of the Provincial Court.

Provincial Court Scheduling Project

[54] In 2012 the Court began to revamp judicial scheduling practices to make them more effective, equitable and efficient. The scheduling reforms also sought to take advantage of technology to assist with changes. To help foster success, the Court consulted extensively with members of the private bar (criminal, family and civil), the Criminal Justice Branch, the Public Prosecution Service of Canada, the Legal Services

Society, and the Court Services Branch. The Court also engaged a business process expert to help review existing scheduling practices and develop new ones.

[55] A new Practice Direction was issued by the Court in December 2013 amending a number of the Criminal Case Flow Management Rules (1999). The amended Rules aim to simplify the criminal front-end process with a goal of reducing administrative procedures and tasking counsel with case management responsibilities. The amended Rules have reduced the number of administrative tasks dealt with by judges thereby enabling judges to focus on complex and demanding adjudicative work.

[56] In addition to the front-end criminal process reforms, the Court has also implemented "delayed assignment" throughout the province in all divisions of the Court's work. Given the high rate by which cases scheduled for trial do not proceed, delayed assignment aims to have judges assigned to cases at or near the hearing date when counsel or the parties have confirmed that the matter requires judicial determination. Cases resolved without a trial (by consent order, guilty plea, stay of proceedings etc.) can be dealt with in a manner which has less impact on trial work allowing the Court to make more effective use of judge time and reducing delays to trial.

[57] In seven locations (Vancouver, Surrey, Port Coquitlam, Robson Square, Kelowna, Abbotsford, and Victoria) the Court now delays the assignment of judicial resources to trials until the morning cases are scheduled for hearing. Only when the parties confirm on the trial date that they have been unable to resolve the case without judicial adjudication are matters assigned to a judge and moved into a trial courtroom. Last minute case collapse can be dealt with more effectively so that judges can focus on important trial work. In these same seven locations, the court has also implemented Summary Proceedings Court where hearings of a brief duration can be heard in a more timely way.

[58] To support the new scheduling process, the Court designed and implemented new software which is now operating throughout the province. The software will enable the Court to obtain better management information to help monitor processes and make continuous improvements.

[59] The revised scheduling process has brought about efficiencies to help the Court to better keep pace with incoming workloads in all divisions, family, criminal and civil. The delayed assignment of the scheduling process has increased scheduling flexibility to better enable the Court to accommodate last minute developments on trials and changing resource capabilities, thereby making better use of court time and increasing access to justice.

The Balanced Rota Template

[60] In the summer of 2010, work was undertaken to design a template for the scheduling of judges to cases and cases to courtrooms. Upon the successful implementation of the Rota template in the North Island area, the analyst and other judicial staff were tasked by the Chief Judge with the creation of scheduling templates for other court locations. Since 2014, the balanced Rota templates have been in place throughout the province.

[61] In essence, the process of creating a balanced scheduling template involves judiciary and court staff objectively reviewing and analyzing the ongoing needs of the Court (in each courthouse and in every division of the Court) and using that information to build scheduling patterns of various types of court hearings and activities that are responsive to caseload and available resourcing. The design of local templates is informed by management information such as incoming file volume, court standards for times to trial in each division, and judicial resourcing. A process has been put in place to review the templates annually and to make revisions to them when changes to caseload or resourcing require.

[62] The balanced Rota template work has proven to be a valuable scheduling tool in that it enables the Court to more equitably meet caseload demands from courthouse to courthouse and within family, civil and criminal divisions. The repeating and balanced scheduling pattern allows others in the justice system, particularly Court Services, Sheriff Services and Crown Counsel, to be confident in the staffing requirements needed to operate and support the courts. Moreover, as part of the Rota template work, court schedules will be developed earlier, which will assist other organizations and

individuals to plan more effectively.

Management Information System

[63] In addition to the Court's ability to generate reports from the new scheduling and Rota programs, the Court is also developing key performance measures and the ability to retrieve advanced court data to provide the Court with better management information and business intelligence. Through this initiative, the types of data that will be obtained and the reports that will be generated will include: on-time case processing information, case completion rates, case age, next date surveys, reserve judgment reports, and a number of trial scheduling reports. The Court also intends to automate current management reports now generated, but in a more effective and organized fashion. Finally, the new management information system will be able to retrieve case information on files in the problem-solving courts. Through the collection of this data, the Court will be in a better position to assess and evaluate the various aspects of the operation of problem-solving courts.

The Backlog Reduction Project

[64] The Provincial Court Backlog Reduction Project (BRP) was a joint effort in the 2013/14 fiscal year between the Ministry of Justice and the Office of the Chief Judge to reduce current backlogs in criminal and child protection matters before the Provincial Court. The Chief Judge of the Provincial Court and the Ministry agreed to target specific court locations with 170 additional judge sitting days, divided equally between criminal and child protection matters (i.e., 85 days each).

[65] The project sponsors conducted an analysis of the project's outcomes in 2014/15. The analysis found that:

- Although changes in trial delay cannot be definitively or exclusively attributed to the BRP, the two test locations, Port Coquitlam and Surrey, reduced the backlog in criminal cases during and immediately after the period in which the project was active.
- The child protection project experienced more challenges and more mixed results than the criminal Backlog Reduction Project. In some locations, delay

was reduced during and after the project. In most cases, the reduction in delay was one month or less, and many locations showed no improvement. Factors such as the amount of notice needed for counsel to prepare for an early court date and the flexibility of scheduling court staff were key factors in reducing delays.

- Where many different parties are involved, as is the case with child protection matters, these factors present greater challenges. Where issues such as safe, permanent care of children are involved, case management can become particularly sensitive.
- In locations where the Court is less accessible by representatives who have to plan for travel to court, the Backlog Reduction Project had limited impact.

Vancouver's Downtown Community Court

[66] 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.

[67] The community court 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.

[68] In 2014, the Court received visits from a variety of individuals and groups interested in the innovative way in which DCC operates. This included a visit from the Chief Justice of the Supreme Court of Canada; delegations from countries such as China, Japan, Columbia and Scotland; and visits from students attending several local post-secondary institutions.

[69] DCC often collaborates with local agencies or businesses in creating a

supportive community. For example, a local business donated \$1,500 to help provide bedding for clients recently released from custody to live in single room occupancy buildings, which no longer provide bedding to new residents. A local hotel now regularly provides gently used bedding to DCC, which program participants receive when they are released from custody into the community.

[70] DCC continues to serve as a model from which specific innovations or programs may be adopted in other locations throughout the province.

[71] 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:

[Report from the DCC Executive Board on the Final Evaluation of the Downtown Community Court](#)

[Examining the Impact of Case Management in Vancouver's Downtown Community Court](#)

[Downtown Community Court in Vancouver: Efficiency Analysis](#)

[Compilation of Research on the Vancouver Downtown Community Court 2008 to 2012](#)

Victoria's Integrated Court

[72] Five years after being established, the Victoria Integrated Court (VIC) continues to focus 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.

[73] 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 for offenders with mental health and substance-abuse issues. A small number of homeless people with mental health and substance abuse problems 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.

[74] 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 the Integrated 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 service.

[75] 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 unique feature of VIC that contributes to its effectiveness.

[76] For 2014/15, VIC continues to operate well above its capacity. Community teams supported 82 people in the Court, including 13 who are developmentally delayed and five who are brain injured, similar to prior years. Aboriginal people were significantly overrepresented, with 11 participants.

[77] The high level of monitoring and support requires significant resources, including court time. As a result, VIC has been reducing the number of case reviews to focus on those where the greatest effect is expected. At the same time, the Court ordered a greater number of sentences (137) in 2014/15 than in 2013 (117).

[78] 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 and previous reports are

available on the Court's website:

[Victoria Integrated Court Report 2013](#)

[Victoria Integrated Court in Its Second Year - Report and Appendices](#)

First Nations Court

[79] Four First Nations Courts operate throughout British Columbia:

- New Westminster (established 2006)
- North Vancouver (2012)
- Kamloops (March 2013)
- Duncan (Fall 2013)

[80] A First Nations Court is developed in consultation with local First Nations, the community at large, the police, community corrections, Crown counsel, the defense bar, and many other support service groups such as the Native Court worker and Counselling Association of British Columbia.

[81] The approach of the First Nations Court is holistic, recognizing the unique circumstances of First Nations offenders within the framework of existing laws. The ongoing intent in the restorative approach is to address criminal matters for offenders with a First Nations background.

[82] 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 First Nations communities to contribute to the proceedings.

[83] Discussions are underway with several communities regarding the development of First Nations Courts. The success of this initiative is due in large part to the effort of a number of stakeholders, including the community as a whole and Legal Services Society. The Court continues to work with stakeholders in the hope that this initiative

will continue to evolve and the restorative approach will be adopted when appropriate to meet the needs of the communities.

[84] At present the Chief Judge is engaged with First Nation leaders and communities in a number of locations throughout the province to assess local needs and interest. Future steps could include the development of initiatives or pilot projects in both criminal and child protection areas of the Court's jurisdiction.

[85] Additional information regarding First Nations Courts can be found on the Provincial Court website: [First Nations Court](#).

Drug Treatment Court of Vancouver (DTCV)

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

[87] 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.

[88] 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.

[89] For a minimum of 14 months, DTCV participants undergo a drug addiction treatment, which 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.

[90] 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.

[91] In the 2014/15 fiscal year, the program received 62 new intakes. Monthly participation in the program totaled 50 to 52 people at a time.

[92] Additional information about the Drug Treatment Court of Vancouver can be found on the Provincial Court website:

[Drug Treatment Court of Vancouver \(DTCV\): An Empirical Evaluation of Recidivism](#)

Cowichan Valley Domestic Violence Court Project

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

[94] The Court is a blend of an “expedited case management” court and a “treatment or problem-solving” court. The goal is 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, to offer a less punitive approach for those willing to accept responsibility for their actions and seek treatment, and to ensure the

safety of victims and the public.

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

Video Technology

[96] Video technology is utilized in many court locations throughout the province to accommodate remand appearances, and bail hearings. In addition, sentencing proceedings and family and civil matters are conducted by video where appropriate. For example, in the fiscal year 2014/2015, the use of video technology resulted in almost 23,000 saved prisoner transports for persons required to appear in court for preliminary matters.

[97] Over the past year, video equipment was purchased in preparation for expansion at nine court locations and the replacement of one jail unit. Infrastructure appliances, software licenses, support and services were purchased to support the current videoconference network and increase its security. The Court continues to believe that video in all staffed courthouses and most circuit locations would enhance access to justice and save operational expenses by reducing prisoner and witness transport costs.

Justice Centre

[98] The Court initiated the Bail Reform Project in December 2007 in cooperation with the Ministries of Attorney General and Public Safety and Solicitor General and the Criminal Justice Reform Secretariat. The Project allows judicial interim release (bail) hearings to be scheduled before a judicial justice at the Justice Centre in Burnaby, BC. An accused person appears in custody from police cells or a correctional facility. A police officer (or Crown counsel and defence counsel) also appears, by video conference, from their respective location.

[99] Video and telephone bail hearings are conducted from the Justice Centre to Vancouver, Delta and Surrey during the evenings and on weekends.

[100] It is hoped that over the next several years, video technology can be enhanced to enable all bail hearings conducted at the Justice Centre to be through video, which would virtually link the judicial officer, counsel and the accused.

Civil Division

[101] In November 2007, the Court began piloting civil reforms at the Robson Square and Richmond courthouses. Small claims cases are tracked into one of three streams. In both locations, claims under \$5000 (other than personal injury and institutional debt) are scheduled for simplified trials, conducted by senior civil lawyers. At Robson Square, all small claims cases (regardless of monetary amount) involving an institutional debt are scheduled for a 30-minute summary debt trial. And, at Robson Square, civil claims over \$5000 proceed through a settlement conference and a trial conference before being set for trial. In 2015, a total of 13,027 small claims cases were heard in the Provincial Court.

Communications Initiatives

[102] The Court also launched several initiatives in the 2014/15 fiscal year to help meet its goals of accessibility and openness. These include:

- Redesign of the Court's website to provide simpler language and navigation as well as additional resources for users of the Court.
- An online news service, issuing short news bulletins and weekly articles at <http://www.provincialcourt.bc.ca/enews>.
- A Twitter feed with the username [@BCProvCourt](https://twitter.com/BCProvCourt) to provide updates about BC's justice system, recent judgments, education resources and other stories.

[103] On April 14, 2016, BC Law Day, the Court was the first court in Canada to hold a [Twitter Town Hall](#). For two hours, the public tweeted questions to the Chief Judge on a wide range of topics including mandatory mediation, First Nations Court, and trial scheduling reform.

Interjurisdiction Support Orders Act Reform

[104] Judges of the Provincial and the Supreme Courts and staff from the B.C. Ministry of Justice began implementing a process to help parents who live in different jurisdictions reach an agreement on child support. By ensuring that the applicant and the respondent present case materials in a consistent and thorough manner, fewer adjournments will be needed. Under the new process, when new incoming ISO cases are received, ISO workers, counsel and a registrar will be involved in organizing and submitting the material provided by the parties and in obtaining any additional material so that the Court has all the information needed. Standard form orders will help ensure timely preparation of child support decisions.

[105] Discussions on the ISO process began in 2013, with implementation beginning in 2014. A review process will monitor the outcomes of the project and identify any changes needed.

University of British Columbia (UBC) Peter A. Allard School of Law Intern Program

[106] Since January 2007, the Court and the University of British Columbia Allard School of Law have partnered in the delivery of a judicial internship program for third-year law students (eight students in each of the fall and winter terms). The program provides an opportunity unique among Canadian universities for students to spend an entire law school term working with the Provincial Court judiciary throughout the province on an array of legal subject areas and issues. The students earn credit towards their academic law degrees from their work with the Court.

[107] The program exposes students to all areas of the Court's work: criminal, family, youth, child protection and civil matters. The interns' work comprises not only legal research pertaining to issues at the judges' request, but also the observation of trials and other court processes and the discussion of issues with the judges of the Court.

[108] Of particular note, and a very rewarding part of the program for the student interns, is that each intern participates in a circuit court. Each student accompanies a

presiding judge and the court party to a remote registry in British Columbia in order to witness the delivery of justice first hand throughout the province. 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.

[109] The benefits of the intern program were described by Professor Sharon Sutherland in an article in *The Advocate*, Vol. 67, Part 3, May, 2009. 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.

E. Understanding the Court's Challenges Moving Forward

[110] 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 over the past three years provides some insight.

[111] In the last three years, there have been, on average, approximately 10 judges appointed each year. I expect that this will continue during the term of the Commission. 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, as new judges are appointed to the Court, and to retain those already in the Court.

[112] The world has changed dramatically and judges are under far more stress and pressures than they were 10 to 15 years ago. Longer lists and serious cases require judges to render decisions in a timely fashion.

[113] It is often the case that matters heard in the Provincial Court take less time than if heard in the Supreme Court. In the Provincial Court, decisions are often delivered orally at the end of the case, following a short opportunity to consider the material. Yet in those few cases which are appealed, the decisions of our Court are subject to the same appellate review and standard as 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 places an enormous burden on the judges of the Court.

[114] The reduction in funding of Legal Aid has meant a significant increase in unrepresented litigants, particularly in criminal and family cases, which adds to the trial judges' obligation to ensure that an individual's right to a fair trial is safeguarded.

[115] This is all by way of saying that at this crucial time, I believe it is the role of the Chief Judge to support its judges, recognizing the significant effort that judges have devoted to the Court. For the purpose of this document, we have focused specifically on the past three years, and on the great stress and burden that judges find themselves under each day as they strive to serve the public in an effective manner. That pressure is going to increase, not lessen. It is in these circumstances and for the forgoing reasons that this reasonable remuneration is an important factor in being able to attract well-qualified applicants to the BC Provincial Court and to retain those already appointed to the Court.

F. Retention of Judges in the Provincial Court

[116] The Provincial Court has experienced a loss of 20 judges to the Supreme Court over the past 35 years. As one might anticipate, a judge appointed to the Supreme Court and removed without notice from an existing schedule (which is assigned approximately 18 months in advance) is particularly problematic to the litigants, witnesses and more generally to members of the public. The loss of colleagues to the Supreme Court creates the potential for delay and inconvenience to those relying on the Court.

[117] The Chief Judge receives calls regarding Provincial Court judges who have applied to the Supreme Court and, through this process, is aware that a number of Provincial Court judges have made an application for an appointment to the Supreme Court. In other words, the Provincial and Supreme Courts are seeking applicants from the same general pool of potential candidates.

G. Summary

[118] I have read the 2016 Submission to the Judicial Compensation Commission from the Provincial Court Judges Association of British Columbia. I adopt and support their submission as being consistent with what I believe is necessary to attract and retain qualified applicants and to support the judges of the Provincial Court as they move forward to serve the needs of the citizens of British Columbia.

H. Reasonable per diem travel allowance

[119] Section 10 of the *Judicial Compensation Act* provides: "A judge or judicial justice must be reimbursed for reasonable travelling and out of pocket expenses incurred by the judge or judicial justice in discharging his or her duties."

[120] Present reasonable travelling and out of pocket expenses are reimbursed to judges and judicial justices in accordance with Treasury Board Directive 01/07, which is attached as **Appendix 1**.

[121] Treasury Board Directive 01/07 provides per diem reimbursement as follows:

1. Meal/Per Diem Allowances

- (1) Meal/per diem reimbursement when traveling on the Employer's business will be in accordance with Treasury Board Orders and Directives at the following rates:

Effective April 1, 2016									
Employee Group	Full Day \$	Half Day \$	Breakfast Only \$	Lunch Only \$	Dinner Only \$	B&L Only \$	L&D Only \$	B&D Only \$	Incidental Only \$
I	49.05	N/A	12.00	13.80	23.25	25.80	37.05	35.25	N/A
II	49.00	N/A	22.00	22.00	28.50	30.00	36.50	36.50	14.00
III	51.50	25.75	22.75	22.75	30.50	33.25	41.00	41.00	12.25

- (2) Unless otherwise provided for in this appendix, the reimbursement rates for Groups II and III cover meal and other out-of-pocket travel expenses.
- (3) Where travel is for a partial day, only meals that are applicable to that portion of the day spent on travel status are claimed.
- (4) Where a meal is provided without charge or is paid for from public funds, no claim for that meal can be made.
- (5) The meal/per diem allowances cover expenses arising from absences away from headquarters or geographic location over a meal period(s).
- (6) Meal expenses incurred within headquarters or geographic location due to job responsibilities, will be reimbursed as follows:

Group I and Group II	Group III
at the meal rate(s) specified in 1(1) for Group I, above	for all actual meal expenses incurred

[122] Judges and judicial justices of the Court spend a considerable number of days each year on travel status in order to fulfill their sitting duties. For example, judges assigned to chambers in Prince George, British Columbia spend on average approximately 50% of their sitting time in 2015 on travel status.

[123] It is submitted that the current per diem rates of reimbursement for meals is inadequate. Per diem rates of several other government-related organizations were canvassed.

[124] The daily meal and incidental allowances for travel within Canada for federal employees (including federal Crown counsel and the RCMP) covered under the

National Joint Council of the Public Service of Canada's Travel [Directive](#), are, effective April 1, 2016, a \$78.80 daily meal allowance plus a \$17.30 daily incidental allowance for a daily total allowance of \$96.10.

[125] The National Judicial Institute's Travel Expense Guidelines (effective October 1, 2015) similarly allows for a \$77.75 daily meal allowance plus a \$17.30 daily incidental allowance for a daily total allowance of \$95.05. The meal per diem for reimbursement is \$60.00 under the University of British Columbia's Policy and \$57.00 under Simon Fraser University's Policy.

[126] The per diem amount provided to sitting Members of the Legislative Assembly (MLAs) is set out by the Office of the Speaker as follows:

Full Day	Half Day	Breakfast Only	Lunch Only	Dinner Only	Breakfast & Lunch Only	Lunch & Dinner Only	Breakfast & Dinner Only	Incidentals Only
\$61.00	\$30.50	\$27.00	\$27.00	\$36.00	\$39.50	\$48.50	\$48.50	\$14.50

[127] It is submitted that judges and judicial justices of the Court should be reimbursed in an amount similar to that for a MLA to cover the cost of meals and incidental expenses while on travel status.

[128] At present, a MLA may claim up to \$61.00 per day to cover the cost of meals and incidental expenses while a Member is away from their home or constituency.

[129] It is submitted that fixing the per diem travel reimbursement for the judges and judicial justices at the same rate as may exist from time to time as MLAs would be reasonable.

I. Recommendations

Remuneration for administrative positions

[130] I respectfully request the following recommendations be made by the Commission:

- 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%.

[131] One way this could be accomplished is for the *Judicial Compensation Act* to be amended to add the following provision for the period from April 1, 2017 to March 31, 2020:

Further amounts for certain positions and duties

8.1(1) In addition to the annual salary for a judge determined in accordance with subsection 8(1), the chief judge is entitled to be paid annually a further amount equal to 12% of the annual salary determined in accordance with subsection 3(3).

(2) In addition to the annual salary for a judge determined in accordance with subsection 8(1), an associate chief judge is entitled to be paid annually a further amount equal to 8% of the annual salary determined in accordance with subsection 8(1).

(3) In addition to the annual salary for a judge determined in accordance with subsection 8(1), a regional administrative judge is entitled to be paid annually a further 6% of the annual salary determined in accordance with subsection 8(1).

Reasonable per diem travel allowance

[132] It is submitted that fixing the per diem travel reimbursement for the judges and judicial justices at the same rate as may exist from time to time as MLAs would be reasonable.

III. Judicial Justices

A. Introduction

[133] The judicial justice division continues to develop as an integral and indispensable part of the Provincial Court of British Columbia. The division is currently made up of a combination of full time, per diem, and ad hoc judicial officers. The judicial justice division underwent a reorganization following a review undertaken in 2005 and 2006. The Chief Judge Submission submitted to the 2007 Judicial Justices Compensation Commission by Chief Judge Stansfield provides a useful background to the current judicial justice program. It includes the rationale for the introduction of the per diem judicial justices, how their initial compensation was determined, and the important role that the judicial justices play overall within the Provincial Court of British Columbia. This document is attached as **Appendix 2**.

[134] A total of 19 judicial justices comprise the sitting complement of the division. Of these, 10 are full time judicial justices, 9 are part time per diem judicial justices and 3 are ad hoc judicial justices. One part time per diem judicial justice is scheduled to retire in July.

[135] It should also be noted that one judicial justice, by convention and in addition to assigned sitting duties, participates as a member of the Judicial Council of British Columbia, providing valuable insight into the screening of all judicial candidates, including those applying for the office of judicial justice.

[136] Judicial justices are committed to maintaining a high calibre of competency and professionalism in the execution of their judicial duties. The Court is currently engaged in a review of the work of the judicial justice division, with the objective of reviewing ways in which to more effectively deliver services to the litigants that appear before the Court and the public.

B. The Work of the Judicial Justice Division

[137] Subject to section 2.1 of the *Provincial Court Act* which sets out certain matters

that only a judge may hear, the current assignment of duties to judicial justices by the Chief Judge under s. 11 of the *Provincial Court Act* is as follows:

1. All matters to which Court Services justices of the peace and judicial case managers are assigned;
2. 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, and warrants or authorizations to enter a dwelling house, premises or other place, whether application is made in person or by telephone or other means of telecommunication. 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*;
4. Payment hearings pursuant to the *Small Claims Act* and *Small Claims Rules*;
5. Hearings in respect of all provincial offences and federal *Contraventions Act* offences, in which proceedings are commenced by ticket information;
6. Hearings in respect of all municipal bylaw offences; and
7. 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] The following portions of this submission set out the nature of the above-noted assignments and the important contribution of the judicial justices in the delivery of these vitally important public services in the administration of justice in greater detail.

[139] I will commence with a review of the division's work in the area of judicial interim release. 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 imperiled by virtue of a police investigation resulting in an individual being taken into police custody, it is important that this 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 the 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] Judicial justices provide 24-hours-a-day, 7-days-a-week service to British Columbians in specific areas of criminal justice. This work consists of judicial interim release (bail) hearings, as well as consideration of police applications for search warrants and production orders under the *Criminal Code*. The below table includes the total amount of Bail Hearings and Search Warrants and Production Orders conducted at the Justice Centre for each fiscal year, ranging from 2010/2011 to 2016/2017. Applications under various other statutes are also considered. While this work is done at various locations throughout the province, it is primarily performed at the Justice Centre—a dedicated facility located in Burnaby. This facility is resourced during both daytime and evening hours.

Fiscal Year	Bail Hearing Totals	SW/PO Application Totals
2010/2011	21998	4868
2011/2012	20543	4525
2012/2013	19467	4862
2013/2014	20185	6135
2014/2015	21981	7038
2015/2016	24111	8909
2016/2017*	3307*	1774*

*The numbers for 2016/2017 are only as of May 2016.

[141] A portion of the evening bail hearings is conducted by judicial justices using video technology. This enables simultaneous participation by the judicial officer, the accused, the prosecutor and the defense lawyer. However, this technology is not yet available in all cases or from all communities in the province. As a result, many evening hour bail hearings are held under challenging circumstances over the telephone and are presented to the judicial justice not by a Crown prosecutor from a courtroom, rather by a police officer at the detachment where the accused is being held.

[142] 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 that they do.

[143] As noted earlier in this submission, judicial justices also hear a great number of search warrant and production order applications. While police agencies require investigative tools in the course of their work, many of these tools 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 the nature of the intrusion involved that many of these investigative measures require prior judicial authorization to ensure the existence of a proper legal foundation for their approval and to assure that any such approvals be accompanied by any appropriately limiting terms and conditions.

[144] 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 faxed 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 it requires a swift balancing and consideration of an individual's security against unreasonable search or seizure, weighed against the legitimate interest of the state, to investigate crime.

[145] 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.

[146] Judicial administrative oversight at the Justice Centre and Robson Square Traffic Division is provided by an Administrative Judicial Justice, which is undertaken in addition to his or her sitting duties.

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

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

	2011	2012	2013	2014	2015
Traffic & Bylaw	85,988	88,062	76,881	95,849	84,297

[149] The work performed by the division in adjudicating traffic, bylaw and other offenses prescribed by statute is equally important. 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 absolutely 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.

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

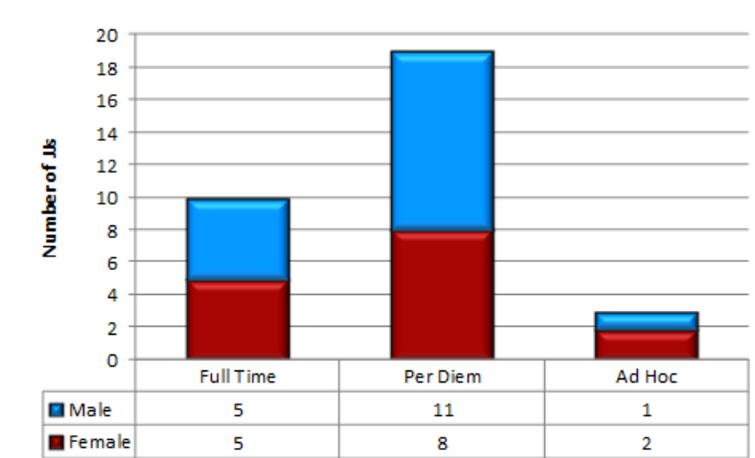
[151] Another contributing factor to the nature and intensity of the workload of judicial justices is the large number of self-represented litigants involved. While the Court has not historically collected data with respect to self-represented litigants, judicial justices hear cases where the litigants are unrepresented on a daily basis. The challenge of accommodating self-represented litigants 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 unrepresented litigants.

[152] 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 conducted 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.

C. Current Makeup of the Division

[153] The Court has a long history of providing innovation in the area of justice delivery and the judicial justice division has featured prominently in that regard. Service delivery innovations include the establishment of the aforementioned daytime and after-hours Justice Centre and its related use of technology, as well as in the appointment of part time per diem and ad hoc judicial justices to complement the division.

[154] Judicial justices are appointed under sections 30.2 and 30.3 of the *Provincial Court Act*, and there are three types of judicial justice appointment: full time, part time per diem, and ad hoc, the latter being retired full time judicial justices. The current complement of the judicial justice division is illustrated in the following Figure.



The total number of judicial justice sitting days for 2015 was 3938.

Full time	1515
Per diem	2050.5
Ad hoc	372.5
Total	3938

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

[156] Mechanisms to avoid real or perceived conflicts of interest have been established for per diem judicial justices who continue to maintain a law practice. Additionally, a protocol has been developed with the Law Society of British Columbia so that the appropriate governing body, whether that is the Law Society, the Court or both, can deal with any issues of discipline.

[157] When the program for the per diem judicial justices was first established, each per diem judicial justice signed a Memorandum of Understanding (MOU), which set out the hours or shifts they would work. It also set out the Court's obligation to employ them for a minimum number of days to ensure their independence.

[158] In 2008, government amended the *Provincial Court Act* to provide in s. 30.2 for the appointment of judicial justices to work full time or part time for one 10-year term. The amendments guaranteed per diem judicial justices at least 40 working days per year and made per diem judicial justices, appointed after June 1, 2007, part time judicial justices. A number of judicial justices appointed prior to the 2008 amendments were effectively grandfathered and able to work part time, on a per diem basis, until age 75. The amendment also provided for an extended retirement age of 75 for full time judicial justices. Eleven part time per diem judicial justices (including the one scheduled to retire in July 2016) are on a 10-year fixed term, and the balance of the sitting judicial justices (21) can sit until age 75.

[159] The per diem judicial justices have law degrees and prior experience practicing law. They provide the Office of the Chief Judge with flexibility and allow for the provision of important adjudicative services to the people of British Columbia in a very

cost-effective manner.

[160] When originally appointed, the current full time and ad hoc 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.

[161] It is fair to say that the introduction of flexible and shift-based per diem judicial justices, who are practicing lawyers, constituted a significant change to the makeup of the division. It is equally important to recognize the Court Registry-derived knowledge base and the valuable contribution made by the full time and ad hoc judicial justices.

[162] It should also be noted that there will be a requirement for future appointments of judicial justices. At present, based on the workload of the division, appointments to the Court are needed. The need for appointments will continue as long-serving, full time judicial justices reach the maximum contribution to their pension and as per diem judicial justices arrive at their 10-year term limit. These two factors will create the need to attract qualified candidates for future appointments.

D. Innovations and Future of the Division

[163] Several years ago, in co-operation with the provincial government, the Court initiated a bail reform project allowing judicial interim release hearings to be scheduled during the day, before a judicial justice at the Justice Centre. The objective was to address the demand for bail hearings that could not be accommodated by judges in court locations throughout the province. While this project is currently on hold, the concept of increasing the role of the judicial justices to hear bail cases during the day is worthy of ongoing review and consideration, particularly as the quality and availability of video technology increases.

[164] A related project is underway in Vancouver and Surrey in which bail hearings after normal court hours are heard utilizing video technology at the Justice Centre. In these locations, an accused person appears in custody from a police cell or a

correctional facility, and a police officer or Crown counsel and defence counsel appear by video—usually from a courtroom.

[165] It is hoped that over the next several years, this video technology can be enhanced to enable all bail hearings conducted at the Justice Centre to be via video link to the judicial officer, counsel and the accused.

[166] In 2011, following a consultation process in which the judicial justices were engaged, the Court established a new administrative structure for the division comprising a Judicial Justice Administration Committee. This committee, chaired by the Court's Executive Director of Organizational Services, includes membership by the Administrative Judicial Justice, the Justice Centre Registry Manager, and other managerial positions from the Office of the Chief Judge. The mandate of this committee is to meet regularly, to identify and better promote the more efficient management of issues impacting judicial justice administration, and to provide appropriate underlying organizational services.

[167] In 2012, the Court engaged the services of a private management consultant to examine issues relating to workflow capacity and management information systems to better utilize the underlying data relating to the work of the division so as to facilitate its more efficient and streamlined delivery, including through the use of better technology.

[168] In addition to the duties previously described, a judicial justice is also assigned to the Victoria Integrated Court. The duties include file management and presiding over initial appearances in the Court.

E. Education leave

[169] In the course of the 2013 Judicial Justice Compensation Commission (JJCC) process, judicial justices requested education leave in the course of their submissions to the Commission. At that time, the Chief Judge supported the submission that judicial justices should be provided education leave. However, it was submitted to the Commission that this was a matter within the assignment authority of the Chief Judge contained in section 11 of the *Provincial Court Act*. It was further submitted during the

course of the submissions made to the Commission by the Chief Judge that education leave would be instituted.

[170] The 2013 JJCC report contained the recommendation:

Acknowledging that the JJs are already attending five days of courses sponsored by the OCJ, the Commission recommends that an additional two days of education leave be available for all JJs and that they have the ability to roll over in the same fashion as the PDA.

(Paragraph 106, page 33, Report of the 2013 British Columbia Judicial Justices Compensation Commission)

The recommendation was adopted by the Legislature.

[171] It is submitted with respect that education leave is within the assignment authority of the Chief Judge and need not be addressed in the judicial compensation commission process. It is submitted that this should be remedied in the course of this current judicial compensation commission process.

[172] Judicial education is an important component of the support offered by the Chief Judge to all judicial officers of the Provincial Court.

[173] Judicial justices, as noted earlier, are provided with five days of judicial education organized by judicial justices with the support of the Office of the Chief Judge. These five days are provided by way of a Spring and Fall Conference each year. The Chief Judge supports the principle of education leave in addition to the two Judicial Justice Conferences provided each year. It is submitted that the appropriate manner in which Judicial justice education leave ought to be provided is by way of the Chief Judge assignment authority. It is further submitted that the education leave as contemplated by the 2013 Commission would continue, by way of the Chief Judge's assignment authority.

F. Recommendations

[174] The compensation of all judicial justices affords reasonable recognition of the important and valuable work performed by the judicial justices.

[175] The remuneration of judicial justices be maintained at a level that will encourage existing judicial justices to continue in their public service and continue to attract outside applicants with significant professional and adjudicative experience.

[176] Adopting the submissions set out above at paragraphs 119 to 129, it is respectfully submitted again that fixing the per diem travel reimbursement for the judges and judicial justices at the same rate as may exist from time to time as MLAs would be reasonable.

IV. Conclusion

All of which is respectfully submitted.

Thomas J. Crabtree
Chief Judge, Provincial Court of British Columbia
June 27, 2016

Appendix 1

TREASURY BOARD DIRECTIVE

TO: Ministry of Attorney General

DIRECTIVE: 01/07

SUBJECT: Authorization of expenditures for the Judiciary.

AUTHORITY: This directive is issued pursuant to Sections 32.1(1)(d) of the *Financial Administration Act*.

APPLICATION: This directive applies to the following appropriations (referred to in this directive as "Judiciary Appropriations"):

- (a) the appropriation for operating expenses in Vote 16 (Ministry of Attorney General) entitled "Judiciary" in the 2006/07 Main Estimates presented to the Legislative Assembly on February 21, 2006;
- (b) the portion of the appropriation for capital expenditures of the Ministry of Attorney General in Schedule D of those Main Estimates which is allocated to the Judiciary; and
- (c) any appropriation (or portion of an appropriation) in a fiscal year after 2006/07 for the same or substantially similar purposes as those described in paragraphs (a) and (b).

DIRECTIVE: Treasury Board hereby authorizes:

- each of the Chief Justice of British Columbia, the Chief Justice of the Supreme Court and the Associate Chief Justice of the Supreme Court to authorize expenditures from Judiciary Appropriations that relate to the Superior Courts; and
- each of the Chief Judge of the Provincial Court of British Columbia and the Associate Chief Judges of the Provincial Court of British Columbia to authorize expenditures from Judiciary Appropriations that relate to the Provincial Courts

on the condition that those persons may only authorize expenditures in compliance with the applicable provisions of the *Financial Administration Act* and directives and policies made under that Act including the Government of British Columbia Core Policy and Procedures Manual.

EFFECTIVE DATE: May 1, 2006

Original signed by

Carole Taylor
Chair, Treasury Board

\\shared\Finance_Internet_Dev\OC2006\Annual\TRDs\TRD\Archive\TRD-07.doc



Appendix 2 Chief Judge Submission

2007 Judicial Justices of the Peace Compensation Commission

June 14, 2007

**Submission of the Honourable Hugh C. Stansfield,
Chief Judge of the Provincial Court of British Columbia**

to the 2007 Judicial Justice Compensation Commission

Introduction

[1] The Supreme Court of Canada jurisprudence is clear that it is the public interest which requires an independent commission to recommend appropriate levels of judicial compensation, and the public interest which should underlie not only the process, but the substantive recommendations of a commission:

". . . the underlying public interest in having a commission process, being the depoliticization of the remuneration process and the need to preserve judicial independence."

[para 25 - *Bodner v. Alberta*; [2005] 2 S.C.R. 286, 2005 SCC 44]

[2] The same public interest animates the duty and actions of a Chief Judge of a Court: subject only to the paramount duty to uphold the Canadian Constitution and the Rule of Law, the overarching duty of a Chief Judge of a court is to the public. It is from that perspective that I respectfully tender these submissions to the 2007 Judicial Justices of the Peace Compensation Commission.

[3] Throughout its history the Provincial Court has recognized a need for a class of judicial officer in addition to the judges of the court, judicial officers who would be assigned those categories of cases or matters which were least likely to raise complex issues of law, create the least potential jeopardy for citizens, and which should, in the interest of all of the public, be dealt with in a particularly expedited manner.

[4] The role of what is today the judicial justice of the peace (hereafter referred to as "JJP"), evolved in an ad hoc fashion over the last 35 years. While that ad hoc evolution

has answered certain needs of the day, its legacy has been a certain vagueness of role and jurisdiction, almost being determined by default, with the JJPs handling those cases that could not conveniently be handled by Provincial Court judges.

[5] That lack of clarity as to role and jurisdiction inevitably has resulted in a parallel lack of clarity as to the specialized skills required and developed by capable, experienced JJPs, their potential for contribution to the court, and ultimately their “value” to the court and to the public.

[6] The tendency to devalue the Office of JJP through lack of clear definition of role and function is compounded by the position of the office within the hierarchical structure of the justice system, which traditionally has tended to attach value to offices in accordance with their position within its vertical structure, notwithstanding the lay person’s perception that “a judge is a judge is a judge”.

[7] The fact that the court’s needs of the day from time to time have commended the continuation of the second category of judicial officer suggests there has been *value* in the creation and maintenance of the office, and it must be a different sort of value than the office of judge.

[8] Intuitively one recognizes that the key to defining the JJPs’ distinctive value and potential for the court is to be found in understanding their difference from judges, not their similarities. But exactly what are those differences? What are the specialized skills of JJPs? In what ways can the Provincial Court’s workload be discharged and the public served more effectively by ensuring that certain proceedings occur in the more simplified environment of the JJP’s court, rather than before a judge?

[9] Through the course of this evolution of 35 years the challenge consistently has been to determine how the Provincial Court should fulfil its mandate to deliver justice through a diverse, rationally justified range of services that are fair, accessible, timely and efficient, and proportional to the matters in issue.

[10] Public confidence in the justice system often is enhanced by the appropriate kind of justice process being applied to given circumstances.

Brief History of the Judicial Justice of the Peace

[11] On September 15, 1975 a new *Provincial Court Act* was proclaimed, restructuring the court to be one presided over by professionally trained judges. All but three of the lay judges terminated their service at that time. The new *Act* also amended the position of Justice of the Peace, bringing those persons under the Judicial Council for proposed appointments and discipline, and redefining their jurisdiction to be, within statutory limits, by assignment of the Chief Judge.

[12] Almost from the outset of the new “professional” court, it was recognized that the effective operation of the court and effective service to the public would be facilitated by including a second category of judicial officer to preside in proceedings whose subject matter warranted an especially expedited and summary process.

[13] What later became known as the sitting justice of the peace “program” began through a task force of the day deciding that relatively minor matters (initially parking violations), which were at that time being heard by provincial court judges, might more effectively be heard by justices of the peace in a more summary process. In due course

moving-traffic offences were added to the process and there were 3 justices of the peace presiding, all in Vancouver.

[14] In 1978 additional justices of the peace (also appointed as “court referees”) assumed duties in Family Maintenance Enforcement proceedings, and Small Claims.

[15] Through the 1980s the bulk of the work of the sitting justices of the peace was in traffic matters. By the mid 1990s there were 11 sitting justices of the peace; in 1996 with the advent of photo radar, the complement increased to 18; and in 2000 to 21 full time sitting justices of the peace, and 5 part time.

[16] The jurisdiction of today’s JJP ostensibly extends to all provincial and federal statutes and municipal bylaws in which jurisdiction is given to a “justice” but, like judges, the actual caseload for which they are responsible is determined by the authority of the Chief Judge to assign the work of the court. Their current assignments are essentially limited to after-hours bail, warrants, and traffic/bylaw proceedings, but are described more thoroughly and effectively in the Judicial Justices Submission filed May 31, 2007.

The “new” JJP: part time, per diem lawyer/justices

[17] In late 2005 and early 2006 Associate Chief Judge Threlfall undertook a review of all of the work of the Court which was then assigned to JJPs with a view to determining, among other things, how effectively that jurisdiction was being discharged, whether other aspects of the work of the Court could appropriately be assigned to JJPs and, in either case, whether the Judicial Council should review the qualifications for the office. His review included a study through Canada of the different approaches being taken by different Provincial Courts to the consistently perceived need for a class of

judicial officer in addition to provincial court judges, typically some variation of justices of the peace.

[18] Concurrently with that review, the court was undertaking a review of its criminal process in the whole of the court.

[19] From these 2 reviews emerged two conclusions which, together, commended a new approach being taken to JJPs in the Provincial Court of British Columbia:

1. Judge Threlfall found in the provinces of Alberta and Nova Scotia that the public interest and the court's own administrative objectives were being served very effectively through certain functions - particularly bail and search warrants - being handled by part time *per diem* lawyers who typically maintained a part time practice as lawyer while also serving as a judicial officer;
2. Associate Chief Judge Neal recommended that the criminal jurisdiction of the court could be discharged most effectively, and particularly that greater time and greater certainty could be given to criminal trials, if the always unpredictable and unscheduled matters of judicial interim release (bail) were removed from criminal trial courtrooms, and dealt with through a province-wide centralized and video-supported process for bail hearings.

[20] In addition to concluding that if bail were removed from courtrooms and assigned to a centralized system that the presiding judicial officers who were replacing provincial court judges in most substantive bail hearings should at a minimum be experienced lawyers, there was also an appreciation that the law relating to search warrants was becoming increasingly complex, and that the issue of the validity of search warrants was increasingly becoming central to the substantive disposition of serious criminal trials, particularly trials of serious drug charges.

[21] Having regard to all of those considerations, and upon the recommendation of the Chief Judge and Associate Chief Judge who are members of Judicial Council, on October 27, 2006 the Judicial Council passed a resolution changing the minimum standards required for recommendation for appointment as a judicial justice of the peace to include:

- (a) a degree in law, and
- (b) a minimum 5 years active practice as a member of the Law Society of British Columbia.

[22] This resolution formed the foundation of the planning which is now well underway in a collaborative initiative of the Court and the Ministry of Attorney General, to establish a new province-wide centralized bail system as contemplated above.

[23] The final important fact one must know in order to understand the current circumstances in the Court relating to JJPs is that in March 2007, 13 of the pre-existing complement of JJPs elected to take advantage of an opportunity for voluntary early retirement, all of whom terminated their delivery of judicial services on March 31, 2007.

Appointing new part time, per diem Judicial Justices of the Peace

[24] The unforeseen “uptake” on the early retirement opportunity created a significant shortage of JJP judicial resources on and after April 1, 2007, in terms of the court’s capacity to address all of its needs at the centralized justice centre in terms of after hours bail and warrant applications, and in traffic and bylaw court.

[25] The court had expected to move expeditiously to the appointment of new part - time *per diem* JJPs who met the new qualifications for appointment. In the absence of a

statutory amendment to the *Provincial Court Act* to contemplate expressly that appointments of these new JJPs pursuant to section 30.1 of the *Provincial Court Act* would be on a part time, *per diem* basis, extensive discussions were necessary between the Chief Judge and the court's legal officers, and the Deputy Attorney General and the Ministry's constitutional and other lawyers, regarding the details of the process through which Orders in Council will be secured for the new appointments. At the time of writing this submission (just prior to June 14, 2007) we have concluded a Protocol Agreement between the Court and the Law Society of British Columbia regarding the relative responsibility of each institution for oversight of this new category of legal professional, and just received word from the Deputy Attorney General that he agrees we have concluded all of the arrangements which needed to be made with Government. Arrangements will now be made to invite Cabinet to consider the applications and, if acceptable to them, to make the required Orders in Council.

[26] In the meantime, Judicial Council has approved 7 lawyer candidates as being appropriate candidates to recommend to government for appointment as part time, *per diem* JJPs. Accordingly, we are optimistic that within the next month or so, but subject of course to Cabinet and the Lieutenant Governor-in-Council and to the uncertainties of summer-time scheduling of the work of Cabinet, that these appointments can proceed.

Proposed approach to assignment of judicial duties to part time, per diem JJPs

[27] We perceive it to be a reasonable assumption that those JJPs who chose not to pursue early retirement foresee a continuing, active career within the court. They are a constituency of experienced judicial officers to whom we expect to continue to assign primary responsibility for presiding in traffic and bylaw court proceedings, although they

remain competent to preside in bail hearings and to determine search warrant applications.

[28] Subject to securing the requisite Orders in Council, we plan to assign the “new” part time, per diem JJPs to primary responsibility at the Justice Centre for bail and search warrant functions. We also plan to assign part time, *per diem* JJPs appointed in rural communities throughout the province to preside in traffic court which, in those rural locations, is only required to be scheduled infrequently.

Compensation

[29] It is the court's respectful submission that the Commission not only can, but reasonably should, take a separate approach to the 2 categories of JJP, focusing less on the different qualifications of the 2 constituencies (particularly given that several of the pre-existing JJPs have a law degree), and focusing more on the difference between full time employment as a JJP with all benefits and pension on the one hand, and on the other hand, lawyers who maintain a law practice while serving the public as a judicial officer on a part time *per diem* basis, without benefits or pension. While the latter category enjoys the same security of tenure as the former, in the sense that both are appointed during good behaviour and can only be removed from office by resignation, retirement or through *Provincial Court Act* section 11 disciplinary proceedings, the per diem “employment” is of a materially different nature.

a) full time existing JJPs

[30] While through its actions of the last year the Court clearly is asserting that certain functions of JJPs should at a minimum be performed by experienced lawyers and not a

lay bench, that conclusion should not be taken to diminish the “value” which attaches to the existing constituency of experienced JJPs in terms of experience and skills, nor to the significance to the public of the traffic and bylaw matters to which they will be primarily assigned.

[31] In 2006 the court disposed of in excess of 90,000 traffic and bylaw matters. Close to 90,000 citizens will have had their greatest contact with the administration of justice through that traffic or bylaw proceeding.

[32] While the JJPs and the Court are committed to continuing education and training to support the JJPs' continuing competence to conduct hearings in a sophisticated manner consistent with all principles of justice, there is nonetheless a significant aspect of their work which is in the nature of public relations. The JJPs typically deal with unrepresented litigants, a significant number of whom dispute the allegation because they are angry about something, whether that be the conduct of the officer, the state of the law, or whatever. The great challenge for JJPs is to conduct these hearings in a manner which not only is consistent with the law, but which also addresses the litigants' need for fairness and respect, and whatever it is the litigant imagines in her/his case will amount to “justice”.

[33] It is not an easy task for the presiding judicial officer, but it is one which if performed well achieves a great deal in supporting public confidence in the administration of justice which is, after all, the very foundation of the administration of justice and the rule of law.

[34] Additionally, the existing trained and qualified JJPs are adept at “moving” very large numbers of cases through their courts. The recent development of a centralized, province-wide traffic court scheduling service, and new standards established by Associate Chief Judge Threlfall for lengthier lists, together will ensure that JJPs are carrying a consistent and substantial burden when presiding in traffic and bylaw hearings.

[35] Thus I respectfully submit that the Commission should assess the “value” of JJPs to the public somewhat differently than they might in respect of Provincial Court judges; the value lies in their differences. While JJPs become knowledgeable in the areas of law with which they deal, their primary function is as triers of fact, specialists in highly expedited processes, and specialists in dealing fairly with unrepresented, often difficult lay litigants.

[36] Because of those considerations, it is my respectful submission as Chief Judge, that the Submissions of the Judicial Justices of the Peace filed May 31, 2007 should be given favourable consideration by the Commission. I support those submissions.

b) “New” part time, per diem JJPs

[37] The Commission has very reasonably observed that there is a deficit in this year's Commission process in the absence of Submissions from the as yet not appointed constituency of part time, *per diem* JJPs. In a perfect world, the Commission would have the benefit of Submissions directly from those judicial officers.

[38] It is respectfully submitted, however, that the Commission should nonetheless proceed, in the public interest, to do its best to recommend a reasonable and appropriate level of compensation for the part time, *per diem* JJPs, recognizing that:

- a) the persons who accept these appointments will do so knowing that:
 - i. pending the Report and Recommendations of the 2007 Judicial Justice Compensation Commission they will be paid \$550 per diem by agreement between the Court and the Ministry of Attorney General, and through execution of a Memorandum of Understanding between the Court and the JJP that this amount cannot be reduced unless through the statutory judicial compensation commission process; and
 - ii. that there will be an opportunity to make specific submissions at the next round of judicial compensation hearings in 2010; and
- b) there exist various comparators from which the Commission reasonably can assess reasonable compensation for a lawyer who acts part time on a *per diem* basis in an adjudicative role.

[39] In undertaking our own internal assessment of what might constitute appropriate remuneration for a part time, *per diem* JJPs, the court was mindful that the *per diem* of an existing full time JJP after taking into account all benefits, would be \$464.00 dollars per day in accordance with the following analysis:

- JJPs' annual salary as of April 1, 2007: \$78,654
- Benefit costs, as a percentage of salary: 23.83%
- Total annual benefit cost: \$18,743
- Total annual compensation cost: \$97,397
- Standard length of JJP sitting day: 7 hours
- Number of actual sitting days each year: 210
(after deducting 30 vacation days, 11 stat holidays and 10 unassigned days)
- **Total compensation cost per sitting day: \$464**

[40] By another analysis, however, we determined that a per diem rate of \$550 reasonably could be justified:

Salaried JJP's (as at March 31, 2007 = 27.7 fte)

Salaries	\$2,136,002
Benefits	\$ 546,817
Travel	\$ 115,000
Total	\$2,797,819

Ad Hoc JJP's

Fees	\$163,170
Travel	\$ 83,250
Total	\$246,420

Grand Total \$3,044,239

JJP working days per year

	260	(52 weeks x 5 days per week)
Minus	30	Annual Leave
Minus	11	Stat holidays
Minus	12	Judgment Days
Equals	207	

Minus	4-6	conference days
Minus	XX	sick leave
Minus	XX	travel days
Minus	XX	lieu days (for working stats)

Equals 200 (approximate working days)
Converted to FTE's @ \$550/day and 200 days/year = 27.7 (current level)
Converted to FTE's @ \$600/day and 200 days/year = 25.4

[41] The court also viewed as relevant the *per diem* rates currently being paid to Administrative Tribunal officers as follows:

Remuneration Framework for Part time Appointees:

TRIBUNAL GROUP	CHAIR	VICE CHAIR	MEMBER
Group 1	\$625	\$525	\$400
Group 2	Not applicable	\$625	\$525

Reference: Treasury Board Directive – April 1, 2007 – Subject: Remuneration Guidelines for Appointees to Administrative Tribunals

[42] The court is also of the view that the *per diem* amount paid to part time, *per diem* JJPs who are active members of the legal community, should be at least equal to or greater than the *per diem* paid to other lawyers being paid by Government. So, for example, we are advised by the Criminal Justice Branch that counsel acting for the Crown on an ad hoc per diem basis is paid between \$500 and \$750 *per diem*. The Ministry of Attorney General civil lawyer fee tariff effective January 2007 provides that lawyers with more than 7 years experience are to be paid between \$140 and \$200 per hour.

[43] While the issue of recruitment is not relevant to the full time JJPs in the context of recent developments in the Court (although retention is a relevant concern with those JJPs), recruitment is a very real issue with the new part time *per diem* JJPs. One reasonably may assume that a qualified lawyer who may be interested in this judicial office may also consider other adjudicative offices, particularly administrative tribunals which also permit part time duties. Those lawyers also will need to assess the attractiveness of the part time JJP position as against other *per diem* opportunities in the practice of law.

[44] In the result, the court respectfully submits that the lowest reasonable rate to be paid to part time, *per diem* JJPs would be \$550 as presently fixed by agreement with the Ministry of Attorney General, but reasonably could be fixed by the Commission at \$625.00 *per diem*, consistent with a Group 1 Tribunal Chair.

[45] By our analysis, a *per diem* JJP being paid a \$550.00 *per diem* who sat the same 220 days per year as a full time JJP would earn \$115,500 (gross). But as Chief Judge I

do not expect to assign full time work to *per diem* JJPs, and as stated earlier, to the extent an annualized analysis of the proposed *per diem* exceeds what may become the new recommended salary compensation of a full time JJP, the Court believes that the benefit to the Court of scheduling flexibility inherent with an ad hoc program, and the realities for the part time JJP of not receiving benefits, not receiving Professional Development Allowance, and continuing to maintain a law practice, all commend the approach which is presented in this submission

Long term Disability

[46] As Chief Judge I support unconditionally the Judicial Justices' Submission filed May 31, 2007 regarding this issue.

[47] I cannot perceive any principled basis upon which the full time JJPs should be treated differently than the judges in respect of this very significant benefit.

Vacation

[48] The Judicial Justices' Submission filed May 31, 2007 proposes that the existing JJPs' annual vacation be increased from 30 to 35 days.

[49] Having regard to the stresses associated with full time sitting in a very high volume court and dealing consistently with unrepresented litigants, or handling challenging issues of bail and search warrants in a context which requires challenging "shifts", I acknowledge that reasonable allowance for vacation will provide opportunities for relief and rejuvenation, and may in fact create some benefit for the court in reducing the incidents of illness-related absences.

[50] If 15 full time JJPs each receive 5 additional days of vacation, the operational impact on the court of 75 days lost service, is equivalent to approximately 37.5% of one judicial officer. That operational impact will either need to be addressed through increased efficiencies, or diversion of part time, per diem JJP services which might otherwise be assigned to additional cases, or an increase in judicial complement.

Professional Development Allowance

[51] The Judicial Justices' Submission of May 31, 2007 proposes that the existing JJPs' professional development allowance of \$500 per annum be increased to \$1,000 per annum.

[52] In my view this is a reasonable proposal, having regard to the educational issues canvassed in the submission, and recognizing that individual JJPs can encounter other expenses associated with the fit and proper execution of their office which are not covered by routine administrative policies of the court, nor contemplated and included in the court's budget.

[53] My only concern would be that any provision for expenditures within a professional development allowance provide that such expenditures are to be approved at the discretion of the Chief Judge, in order that there is a mechanism through which the Court and the public can be assured that all expenses are such as to be acceptable in the eyes of the Auditor General or the public.

Clarifying the Status of part time, per diem JJPs

[54] Earlier in this submission I alluded to the challenges we have faced in collaboration with the Deputy Attorney General in preparing for appointment and designation of judicial justices of the peace on a part time, per diem basis. The difficulty arises from an ambiguity in sec. 30.1 of the *Provincial Court Act* which provides that:

“The Lieutenant Governor-in-Council may, on the recommendation of the Council, designate a justice appointed under sec. 30 as a judicial justice.”

The section is silent as to whether such appointments can be made on a part time, per diem basis, or on a full time basis, or both.

[55] It would be of assistance to the Court and to Government, and I anticipate it may be a matter of joint submission for that reason, if the Judicial Justice Compensation Commission would, in its final Report and Recommendations, recommend that sec. 30.1 of the *Provincial Court Act* be recognized as including appointments on a full time salaried, or part time, per diem basis.

All of which is respectfully submitted.

Hugh C. Stansfield
Chief Judge, Provincial Court of British Columbia
June 14, 2007