

**Reply Submission of the Government of British Columbia
to the 2022 Judicial Compensation Commission**

Submitted February 3, 2023

INDEX to SUBMISSIONS

	<u>Page</u>
INTRODUCTION AND OVERVIEW	1
EXECUTIVE SUMMARY	2
ISSUES COMMON TO PROVINCIAL COURT JUDGES AND JUDICIAL JUSTICES ..	4
THE “STARTING POINT” FOR THIS COMMISSION ARE THE LEGISLATURE’S JULY 8, 2020	
RESOLUTIONS	4
CHANGES IN THE COMPENSATION OF OTHERS PAID BY PROVINCIAL PUBLIC FUNDS.....	6
<i>Collective bargaining mandates generally and the 2022 Shared Recovery Mandate</i>	<i>6</i>
<i>Step-increases, changes to maximum allowable salaries and changes to non-wage</i>	
<i>compensation are not appropriate considerations under this factor.....</i>	<i>10</i>
<i>Departures from a collective bargaining mandate and “extra increases” are uncommon</i>	<i>11</i>
THE PROVINCE’S ECONOMIC AND FINANCIAL POSITION.....	14
GOVERNMENT’S POSITION RE: INTEREST ON ANY RETROACTIVE PAYMENTS AND	
PARTICIPATION COSTS	17
<i>Interest on any Retroactive Payments</i>	<i>17</i>
<i>Participation Costs.....</i>	<i>18</i>
GOVERNMENT’S PROPOSAL ON FLEXIBLE BENEFITS	19
GOVERNMENT’S RESPONSE REGARDING JUDICIAL JUSTICES.....	19
REQUESTS FROM THE JUDICIAL JUSTICES RE: NON-SALARY ELEMENTS OF COMPENSATION	20
<i>Per Diem Formula.....</i>	<i>20</i>
<i>Shift Premiums.....</i>	<i>21</i>
<i>Travel Policy</i>	<i>22</i>
<i>Professional Development Allowance.....</i>	<i>22</i>
<i>Linkage to Provincial Court Judges.....</i>	<i>23</i>
<i>Salary Differentials</i>	<i>24</i>
SALARY PROPOSAL AND ASSESSMENT OF CERTAIN STATUTORY FACTORS	24
<i>Maintaining a Strong Court</i>	<i>25</i>
<i>Changes to the Jurisdiction of Judicial Justices</i>	<i>27</i>
<i>Compensation provided in respect of other similar judicial positions.....</i>	<i>28</i>
GOVERNMENT’S RESPONSE TO THE PROVINCIAL COURT JUDGES.....	29
NON-SALARY ELEMENTS OF COMPENSATION	29
SALARY PROPOSAL AND ASSESSMENT OF CERTAIN STATUTORY FACTORS	30
<i>Maintaining a Strong Court</i>	<i>31</i>
<i>Compensation provided to other similar judicial positions in Canada</i>	<i>32</i>
GOVERNMENT’S RESPONSE TO OTHER SUBMISSIONS.....	36
FUNDING FOR LONG-TERM DISABILITY PLAN (AGE 65-75) FOR PROVINCIAL COURT JUDGES	
AND JUDICIAL JUSTICES.....	36
APPENDICES TO THE REPLY SUBMISSIONS.....	39

Introduction and Overview

1. These are the written reply submissions of the Government of British Columbia (the “Government”) to the 2022 Judicial Compensation Commission (the “Commission”) in respect of remuneration, allowances and benefits for Provincial Court Judges and Judicial Justices for the period of April 1, 2023 to March 31, 2027 (the “2022 cycle”).
2. These submissions respond to the written submissions of the Provincial Court Judges’ Association (“Provincial Court Judges”), the Judicial Justices’ Association (“Judicial Justices”), the Chief Judge of the Provincial Court of British Columbia (“Chief Judge”) and the Judicial Council of British Columbia (“Judicial Council”). The Government will not repeat points already addressed in its original submissions, nor respond to every point with which the Government disagrees.
3. At a high-level, the Government’s reply submissions address the following four points:
 - a. this Commission must take the compensation implemented by the Legislature for the 2019 cycle¹ as its starting point, rather than beginning from the 2019 Commission’s recommendations;
 - b. the Provincial Court Judges and the Judicial Justices advocate for comparisons that are not appropriate – both in terms of the compensation paid to others from public funds and the salaries paid to similar judicial positions in Canada;
 - c. the salary proposals made by the Provincial Court Judges and the Judicial Justices exceed what is necessary to provide “reasonable compensation”; and
 - d. the Government supports some, but not all, of the requests in relation to non-salary elements of compensation.
4. In respect of salaries, the Government has recognized a need to increase the compensation paid to Provincial Court Judges and Judicial Justices over the 2022 cycle.² Two separate

¹ The “2019 cycle” is the period from April 1, 2020 to March 31, 2023. The Legislature implemented compensation for Provincial Court Judges and Judicial Justices by resolutions on July 8, 2020.

² Submission of the Government of British Columbia [Government Original Submission], January 12, 2023, at paras. 6-9, 208-223.

- elements warrant an increase: 1) factual changes between the Legislature’s implementation of compensation for the 2019 cycle and today; and 2) a global assessment of the statutory factors that must inform the determination of reasonable compensation over the 2022 cycle.
5. The salary proposals advanced by the Government in its original submissions addressed the increases required by both elements.³ The Government maintains its salary positions of a 16.4% increase for Provincial Court Judges and a 13.9% increase for Judicial Justices provide for reasonable compensation over the 2022 cycle.
 6. These reply submissions:
 - a. summarize the requests for recommendations of the judiciary and the Government;
 - b. address common issues raised by the Provincial Court Judges and Judicial Justices, including their treatment of the fourth, fifth and sixth statutory factors;
 - c. address matters specific to the Judicial Justices, including requests on non-salary compensation elements;
 - d. address matters specific to the Provincial Court Judges; and
 - e. address the Chief Judge’s request for long-term disability plan funding.
 7. As with its original submissions, these reply submissions are anchored by the Government’s recognition and respect for the critical role that Provincial Court Judges and Judicial Justices play in this province’s justice system, by the Government’s appreciation and respect for the work of this Commission and all its participants, and by the statutory framework set out in the *Judicial Compensation Act* (the “Act”)⁴ that must guide this process.

Executive Summary

8. The table below summarizes the proposed recommendations of the Provincial Court Judges and the Judicial Justices, and the Government’s corresponding recommendations:

³ See, for example, Government Original Submission, at paras. 8-9.

⁴ S.B.C. 2003, c. 59.

Recommendations of the Judiciary	Government Recommendations
Provincial Court Judge Recommendations	
Salary:	
2023-24 (Y1): \$350,860	2023-24 (Y1): \$311,000
2024-25 (Y2): \$364,547	2024-25 (Y2): \$323,000
2025-26 (Y3): \$373,296	2025-26 (Y3): \$332,000
2026-27 (Y4): \$381,509	2026-27 (Y4): \$338,000
Total increase over 2022 cycle: \$93,009 (30.1%)	Total increase over 2022 cycle: \$55,500 (16.4%)
Common Recommendations	
Interest on Retroactive Salary Payments:	
Government to pay interest on retroactive payment.	Do not oppose.
Participation Costs:	
Government to pay 100% of reasonable legal costs (including any expert evidence). In the alternative (<i>Judicial Justices only</i>), significant increase to reimbursed costs through regulation or amendment.	Continue to take no position in anticipation of Supreme Court guidance.
Judicial Justice Recommendations	
Salary:	
2023-24 (Y1): \$175,000	2023-24 (Y1): \$141,000
2024-25 (Y2): \$180,000	2024-25 (Y2): \$146,000
2025-26 (Y3): \$185,000	2025-26 (Y3): \$150,000
2026-27 (Y4): \$190,000	2026-27 (Y4): \$153,000
Total increase over 2022 cycle: \$56,499 (39.43%)	Total increase over 2022 cycle: \$19,499 (13.9%)
Per Diem Formula:	
a. increase percentage received in lieu of benefits from 20% to 25.4%; and	a. support an increase to 22% in lieu of benefits; and
b. increase overhead amount from \$75 to \$100.	b. support an increase to overhead rate to \$100.
Shift Premiums:	
a. add \$245 shift premium for Easter Monday, National Day for Truth and Reconciliation, and Boxing Day;	a. add \$245 shift premium for Easter Monday and Boxing Day; premium for National Truth and Reconciliation Day contingent on recognition as a formal or informal statutory holiday in BC;
b. add \$75 weekend premium; and	b. add weekend premium of \$25; and
c. increase Christmas Day shift premium to \$320.	c. increase Christmas Day shift premium to \$320.
Travel Policy:	
Any changes to the travel policy of Provincial Court Judges be mirrored for Judicial Justices.	As no changes sought by Provincial Court Judges or Chief Judge, maintain current policy.
Professional Development Allowance:	
Increase to \$4,500 per fiscal year	Do not support an increase.
Salary linkage to Provincial Court Judges	
Linkage between the salaries of Judicial Justices and Provincial Court Judges.	Do not support any linkage.
Government Recommendations on Flexible Benefits	
Provincial Court Judges and Judicial Justices have not proposed any changes to flexible benefits plans.	a. some enhancements for Provincial Court Judges; b. align Judicial Justices' flexible benefits plan with Provincial Court Judges; and c. automatically implement future enhancements to excluded employees' flexible benefits for the judiciary (contingent on agreement).

Issues common to Provincial Court Judges and Judicial Justices

9. Several issues are common to the Provincial Court Judges and Judicial Justices. To avoid repetition, this section outlines the Government’s response to the following issues:
- a. the proper starting point for this Commission;
 - b. how to interpret changes in compensation paid to individuals from the public purse, in particular, with respect to the 2022 Shared Recovery Mandate;
 - c. the Province’s economic and financial position;
 - d. the requests for interest on any retroactive salary payment and costs; and
 - e. the Government’s proposal in respect of Flexible Benefits.

The “starting point” for this Commission are the Legislature’s July 8, 2020 resolutions

10. The Judicial Justices submit that, viewed in light of British Columbia’s economic situation from 2021-2023, the failure of the Legislature to adopt the 2019 Commission’s recommendations resulted in unreasonably low salaries for the 2019 cycle.⁵ As such, there is a need for “catch-up”.⁶ The Judicial Justices calculate their requested percentage of increase based on the 2019 Commission’s recommendations.⁷
11. The Provincial Court Judges submit this Commission should assess the Government’s economic and fiscal position not only over the 2022 cycle, but with regard to what occurred during the 2019 cycle.⁸ The Provincial Court Judges also submit this Commission need not only “rely on reasonable forecasts and predictions about all the relevant factors” but must “take into account the differences, if any, between the forecasts that were relied upon by the prior JCC (or the Government in its response) and the actual facts of what occurred”.⁹

⁵ Submission of the Judicial Justices Association of British Columbia [JJABC Submission], January 12, 2023, at para. 10.

⁶ JJABC Submission, at para. 21.

⁷ JJABC Submission, at para. 129.

⁸ Submission of the Provincial Court Judges’ Association of British Columbia, January 12, 2023 [PCJA Submission], at paras. 71-72.

⁹ See PCJA Submission, at paras. 148-149.

12. The starting point for this Commission is the compensation implemented by the Legislature following the 2019 Commission’s report.¹⁰ While the reports and recommendations of previous commissions form part of the background and context for this Commission, each commission inquiry is a discrete event.¹¹
13. Further, the Court of Appeal has expressly recognized the forward-looking nature of a commission’s inquiry into the economic and fiscal position of the Province when setting reasonable compensation: the “JCC process allows the parties to put forward their positions in the context of stated financial circumstances based on projections”.¹²
14. The Supreme Court of Canada in *Bodner* also supported a forward-looking approach. The Court recognized that, while the temporal starting point for any commission should typically be the date of the previous commission’s report, the purpose of the commission process is “not simply to ‘update’ the previous commission’s report”.¹³
15. Past Commissions have recognized that a focus on prior rejected recommendations can have unintended results. The 2016 Commission wrote:¹⁴

[...] Past reports have no binding precedent on this Commission. [...] [W]e know that each commission must look at what is reasonable in the unique facts and context before it. Three years have passed since the last commission; the global, national and international contexts have changed. [Emphasis added].
16. These comments are of considerable relevance in this period of recovery from the ongoing COVID-19 pandemic. The report of 2019 Commission was consultative. The Legislature retained, and exercised, the power to depart from those recommendations and was permitted to do so as long as it justified its decision with rational reasons.¹⁵ The Government relied on

¹⁰ *Provincial Court Judges’ Association of British Columbia v. British Columbia (Attorney General)*, 2015 BCCA 136 [2015 BCCA Decision], at para. 35.

¹¹ 2015 BCCA Decision, at para. 36; see also *Provincial Court Judges’ Assn. of New Brunswick v. New Brunswick (Minister of Justice)*; *Ontario Judges’ Assn. v. Ontario (Management Board)*; *Bodner v. Alberta*; *Conférence des juges du Québec v. Québec (Attorney General)*; *Minc v. Québec (Attorney General)* [*Bodner*], at para. 15.

¹² 2015 BCCA Decision, at para. 34.

¹³ *Bodner*, at para. 14.

¹⁴ Report of the 2016 Judicial Compensation Commission, pp. 59-60: Joint Book of Documents of the Parties [JBD], Vol. 1, Tab 21. All references to page numbers of documents in the JBD are to the original numbers on the documents unless otherwise indicated.

¹⁵ *Bodner*, at para. 21.

new facts and circumstances that arose after the release of the 2019 report, namely, the global upheaval caused by the COVID-19 pandemic, in varying the 2019 commission's recommendations. It was entitled to do so.¹⁶

17. The Provincial Court Judges have challenged the resolution of the Legislature; the decision remains under reserve at the British Columbia Supreme Court. Until the Court decides otherwise, the starting point for this Commission is the compensation for the Provincial Court Judges implemented by the Legislature on July 8, 2020. Further, as the Judicial Justices did not seek judicial review, there is no question that the resolutions govern.
18. The Government accepts this Commission must consider that British Columbia's economic and fiscal positions reflect the early stages of recovery from the COVID-19 pandemic. However, the determination of reasonable compensation should not be conducted as a backward-looking analysis of the accuracy of financial and economic projections made amid unexpected global disruption. Whether the judiciary requires additional increases in compensation above what was implemented by the Legislature for the 2019 cycle is best answered with reference to what is fair and reasonable over the 2022 cycle.

Changes in the compensation of others paid by provincial public funds

19. In their submissions on the statutory factor of "changes in the compensation of others paid by provincial public funds",¹⁷ both the Provincial Court Judges and the Judicial Justices suggest that the Government consistently provides compensation to various groups above and beyond the terms of collective bargaining mandates. Their arguments highlight a need to clarify how collective bargaining mandates operate.

Collective bargaining mandates generally and the 2022 Shared Recovery Mandate

20. As previously acknowledged, it is not appropriate to determine changes in the overall compensation for the judiciary based on a strict application of the public sector bargaining mandate.¹⁸ However, given the relative size of the unionized workforce within the public

¹⁶ *Bodner*, at para. 26; 2015 BCCA Decision, at para. 30.

¹⁷ *Act*, s. 5(5)(d).

¹⁸ Government Original Submission, at para. 162.

sector, the collective bargaining mandate for unionized employees is the best starting point for the analysis of this statutory factor.

21. The Provincial Court Judges assert that unionized employees may receive greater increases than the wage mandate under the 2022 Shared Recovery Mandate. In support, they cite an additional amount included in the first and second years of the 2022 Shared Recovery Mandate (the “Flexibility Allocation”) and changes to other compensation elements negotiated by the parties during collective bargaining.¹⁹
22. Employer bargaining agents utilize a fixed mandate envelope, expressed as a percentage increase on total compensation, for each bargaining unit in each year of the mandate. The assigned mandate envelope must fund any changes to compensation agreed to by the parties, including general wage increases or benefit improvements.
23. The mandate envelope applicable to the 2022 Shared Recovery Mandate includes both a percentage general wage increase, and a flat rate general wage increase in the first year of the agreement. The flat rate general wage increase provides employees with an identical increase in their annual pay, assuming those employees all work the same number of hours. How the flat rate increase is applied depends on whether employees are paid an hourly wage or an annual salary. Employees paid an hourly wage receive a \$0.25/per hour increase. For salaried employees, the flat rate increase is expressed as an increase to the annual salary, which, for instance, amounts to \$455 for a salaried employee at Legal Aid BC (“LABC”).
24. The 2022 Shared Mandate also includes the Flexibility Allocation – an additional 0.25% of total compensation in the first and second years of the mandate for the parties to address issues of mutual concern. The Flexibility Allocation funding may not be used for a general wage increase but is available for targeted wage adjustments to address specific recruitment and retention challenges, benefit improvements, other compensation items, or other cost items as agreed to by the parties. For example, staff lawyers at LABC represented by the Professional Employees Association (“PEA”)²⁰ negotiated an additional \$450 increase to the

¹⁹ See, for example, PCJA Submission, at paras. 222, 224 and 242.

²⁰ Note: staff lawyers at LABC are distinct from lawyers who are contracted to LABC to provide tariff-based legal aid services. The latter are represented by the Association of Legal Aid Lawyers (“ALL”). The PCJA Submission conflates the two groups.

salary grid for lawyers with 5-10 years of call beginning in 2024/25 to help address recruitment and retention concerns.²¹ This targeted wage adjustment is not a general wage increase, as it does not apply to everyone in the bargaining unit.

25. The 2022 Shared Recovery Mandate was designed, in part, so that the general wage increase in each year would respond to the actual inflation level in the immediately preceding fiscal year.²² The mandate's approach to inflation is backward-looking.
26. In contrast, the Government's position on salaries before this Commission is designed, in part, to respond to actual inflation over the 2019 cycle and forecasted levels of inflation in each year of the 2022 cycle.²³ It is both forward- and backward-looking in its approach.
27. The table below contrasts the previous and current collective bargaining mandates with the salary for Provincial Court Judges and Judicial Justices from the 2019 cycle, and the Government's position on salary for the 2022 cycle. It also shows the actual and forecasted calendar year BC CPI that correspondence most closely to each fiscal year:²⁴

²¹ PCJA Submission, at para. 223. Note: this paragraph references the JBD, Vol. 2, Tab 45, but the materials at Tab 45 address a separate agreement ratified by ALL. The details of the tentative agreement for staff lawyers at LABC are found here: https://pea.org/system/files/LABC%20Tentative%20Agreement%20Highlights%202022_9.pdf. See the attached Appendices to this reply submission [Reply Appendices], Tab 1.

²² For example, the General Wage Increase ("GWI") in year two of the 2022 Shared Recovery Mandate (2023/24) will be a minimum of 5.5% and a maximum of 6.75%, with the actual amount subject to determination based on the BC Consumer Price Index ("CPI") for the reference period (March 2022 – February 2023).

²³ For example, for Provincial Court Judges, the proposed increase in the first year of the cycle (2023/24) is 7.8%. This comprises an increase of 3.9% representing the difference between actual CPI over the three years of the 2019 JCC cycle (10.6%) and the actual salary increases received by judges over the same period (6.7%), plus an additional 3.9% representing the forecasted BC CPI for 2023/24. The increase in the first year for Judicial Justices is less because the Judicial Justices received a larger increase in the 2019 cycle (9.2%), resulting in a smaller difference (1.4%) when compared to actual CPI (10.6%).

²⁴ BC CPI figures are calculated on a calendar year basis (January to December). All other figures in the table are calculated on a fiscal year basis (April to March).

	2019 JCC Cycle			2022 JCC Cycle			
	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
BC CPI	0.8%	2.8%	7.0%	3.9%	2.4%	2.2%	2.0%
Government’s salary position for Provincial Court Judges	2.2%	2.3%	2.2%	7.8%	3.9%	2.7%	2.0%
Government’s salary position for Judicial Justices	3.1%	3.0%	3.1%	5.3%	3.9%	2.7%	2.0%
Bargaining Mandate GWI (maximum)	2.0%	2.0%	4.0%	6.75%	3.0%	TBD*	TBD*

*Any GWIs after 2024/25 will be as negotiated in the next provincial bargaining mandate.

BC CPI
2019 JCC Cycle (as implemented by the Legislative Assembly)
2022 JCC Cycle (Government position)
2019 Sustainable Services Negotiating Mandate
2022red Recovery Mandate

28. As the table above demonstrates, the term of the 2022 Shared Recovery Mandate overlaps to some extent, but does not align completely with the 2022 cycle for which this Commission must make recommendations.
29. Since the 2022 Shared Recovery Mandate covers the years 2022/23 to 2024/25, any changes to compensation for unionized employees in the 2025/26 and 2026/27 years will not be known until the next bargaining mandate is set through negotiations. They are unlikely to begin prior to 2024/25.
30. For excluded employees, changing economic conditions, the fiscal position of the Government, other competing priorities for public funds and the 2022 Shared Recovery Mandate, among other factors, all inform changes to compensation. As a result, the magnitude of any further performance-based increases beyond 2022/23 and over the full period of 2022 cycle are not yet known.
31. As a result of the realities of how bargaining mandates operate and inform compensation for excluded employees, there is no merit to the Provincial Court Judges’ assertion that there are “gaps in the evidence put forward by the Government” with respect to changes in the

compensation of others paid for the later years of the 2022 cycle. While the Provincial Court Judges did not raise concerns about alleged deficiencies in the information provided, or request additional information, there is no evidence that can be offered at this time.

Step-increases, changes to maximum allowable salaries and changes to non-wage compensation are not appropriate considerations under this factor

32. The Provincial Court Judges assert this Commission should treat annual step increases for some unionized staff as additional changes to compensation that must be considered under this factor.²⁵ The Judicial Justices make similar arguments with respect to increases in compensation provided to Crown Counsel and Legal Aid lawyers.²⁶
33. Employees eligible for annual step increases are generally hired below the “job rate”, which is the top step of the salary range for that position. As they acquire experience in the role, they progress through the range on a scheduled basis until they reach the job rate. Excluded employees are not eligible for step-increases, but are also generally hired below the salary range maximum. Excluded employees can progress through the salary range toward the job rate based on merit-based increases that may be provided in accordance with the excluded employee compensation policy in place for that year; such increases are not automatic.
34. Step increases are not relevant to this Commission’s consideration of the “changes in compensation” paid to other out of public funds. Members of the judiciary receive the “job rate” or maximum salary for their position from the outset; they do not progress through various “steps” in a salary range. The same is true for 60,000 unionized health care workers in the Facilities sub-sector who do not receive step increases as they are hired at the job rate. It would be inappropriate to include unionized step increases when considering this factor. It would ignore the reality that Provincial Court Judges do not need to move to the job rate over time. For the same reason, it would be inappropriate to consider the portion of any “progress through the range” increases for excluded employees that move them closer to the job rate.

²⁵ PCJA Submission, at paras. 225, 237, 245 and 336.

²⁶ JJABC Submission, at paras. 116-124.

35. The Provincial Court Judges mistakenly assert that public service excluded staff received increases totalling 8% in 2022/23.²⁷ This is inaccurate. Some public service excluded staff received performance-based “progress through the range” increases of up to 4%. While the salary range maximums were also increased by 4%, changing the maximum allowable salary for a position does not increase the actual salaries of employees in that position.
36. The Provincial Court Judges also suggest that this Commission should consider changes to non-wage compensation for public sector employees (e.g. pensions; statutory, health and disability benefits; and professional development allowances) when determining reasonable compensation.²⁸ However, the value of the non-wage compensation changes provided to public sector employees should not be considered when determining reasonable salary increases for the judiciary in circumstances where the judiciary is not seeking similar non-wage compensation changes for themselves. Moreover, under the 2022 Shared Recovery Mandate, if the changes to such benefits are not funded by savings found elsewhere in collective agreements, they are funded by the Flexibility Allocation in the first two years of the mandate. To consider them separately would result in double-counting.

Departures from a collective bargaining mandate and “extra increases” are uncommon

37. The Provincial Court Judges have highlighted two examples where the Government has provided increases in excess of the bargaining mandate. While accurate, the examples demonstrate the exceptional circumstances where deviating from the bargaining mandate is appropriate:
 - a. Following 13 years without *any* increase to the legal aid tariffs, in February 2019, ALL lawyers voted to withdraw their legal aid services as of April 1, 2019 unless their compensation concerns were addressed. In recognition of ALL’s legitimate concerns and the threat that a withdrawal of legal aid services would pose, the Government reached a three-year agreement with ALL to provide “catch-up” increases to the tariff rates approximately equal to the increases in public service

²⁷ PCJA Submission, at para. 230.

²⁸ PCJA Submission, at paras. 241-244

wages over the previous 13 years. This translated into increases to legal aid tariff rates of up to 35% by 2022.²⁹

- b. The health system in British Columbia is in crisis. One of the main contributing factors is that it is increasingly difficult to recruit and retain family physicians. As a result, almost one million people in the province have no family doctor.³⁰ Government addressed this acute recruitment and retention issue through a new payment model that was agreed to in October 2022. Acknowledging that family doctors were underpaid compared to equivalent positions in a hospital setting, and that their take home pay was being significantly reduced as a result of the increasing overhead costs of running a practice, the new payment model ensures that the actual take home pay of family doctors will be roughly comparable to equivalent hospital physicians going forward.

38. To the extent the Commission wishes to draw any comparison to Legal Aid lawyers, the relevant timeframe for comparison should begin in 2007, after ALL lawyers last received an increase to the tariff rates. Between 2007 and 2022, the Provincial Court Judges and the Judicial Justices both received greater increases than ALL lawyers subject to the legal aid tariffs, despite the up to 35% increase to the tariffs that resulted from the 2019-2022 agreement. Over the same period, PEA staff lawyers at LABC only received general wage increases of 23.5%. The table below shows increases for these groups from 2007 to 2022:

Group	% Wage Increases (2007-2022)
Provincial Court Judges	36.2%
Judicial Justices	54.3%
Legal Aid tariff rates	35%
LABC staff lawyers	23.5%

²⁹ See BC News Release, October 15, 2019: “Greater stability for legal aid”: <https://news.gov.bc.ca/releases/2019AG0113-001973>; Reply Appendices, Tab 2; Vancouver Sun, February 25, 2019: <https://vancouverisland.ctvnews.ca/b-c-health-minister-adrian-dix-says-system-in-crisis-since-2020-must-be-transformed-1.6067128>; Reply Appendices, Tab 3.

³⁰ See CTV News, September 13, 2022: <https://vancouverisland.ctvnews.ca/b-c-health-minister-adrian-dix-says-system-in-crisis-since-2020-must-be-transformed-1.6067128>; Reply Appendices, Tab 4.

39. The Provincial Court Judges also ask the Commission to consider “extra increases” received by some non-bargaining unit groups of employees. They reference:
- a. A stipend for Assistant Deputy Attorney Generals (“ADAG”) that was implemented in 2017 as a temporary solution to a legacy issue resulting from the linkage between salaries for Crown Counsel and Provincial Court Judges. That legacy issue resulted in salaries earned by the Legal Counsel staff who report to the ADAGs exceeding the maximum public service compensation levels for ADAGs. The \$25,000 annual stipend was continued in 2019/20 and 2020/21, and increased to \$55,000 in 2021/22 when Crown Counsel and Legal Counsel salary increases again surpassed those of the ADAGs.
 - b. The fact that many of the statutory Officers of the Legislature in British Columbia are compensated at rates higher than most of their counterparts in other Canadian jurisdictions. This is because of historical decisions of the Legislative Assembly to tie the salaries of six of the nine Officers to the salary of the Chief Judge through statutes. The higher compensation for these Officers reflects that Provincial Court Judges’ salaries have increased at a faster rate through the commission process than the increases for the broader public sector.
40. Further, and contrary to the Provincial Court Judges’ suggestion,³¹ the Government is taking steps to reduce linkages like those outlined above. As of April 1, 2019, the linkage between Legal Services Branch counsel and Crown Counsel no longer applies. Government has also attempted to negotiate the removal of the linkage between Crown Counsel and the Provincial Court Judges through bargaining.
41. All of the above considerations militate against the exceptional compensation increases requested by the Provincial Court Judges and Judicial Justices.
42. Recognizing the unique role played by the judiciary, the Government’s position on salary addresses the need to set reasonable compensation. It does not mirror the 2022 Shared Recovery Mandate model, despite the mandate’s proportional significance in terms of

³¹ PCJA Submission, at para. 251.

compensation paid to other from public funds. The Government's position on salary differs from the mandate by not including a flat rate increase, and by providing greater guaranteed protections against forecasted inflation over the 2022 cycle, than for employees subject to the bargaining mandate.

The Province's economic and financial position

43. The Government agrees that the 2021/22 and 2022/23 years showed the beginning of the economic recovery from the impacts of the COVID-19 pandemic.³² However, data reveals that this economic recovery has slowed in recent months; financial projections suggest the economic slowdown will continue over the next few years and there may be a recession. This is necessary context that the *Act* requires this Commission to consider in making recommendations on reasonable compensation.
44. There is inherent uncertainty in economic forecasting. It depends on factors outside British Columbia's control, for example, commodity prices, the economic performance of other countries, interest rates, and geopolitical events. Both private and public sector forecasts share these challenges. While the Government has taken a conservative approach in its budget estimations and reporting practices in recent years,³³ improvements in fiscal and economic position result from a combination of factors, including unpredicted economic changes.
45. British Columbia was not unique in terms of its unexpected recovery from the impacts of the COVID-19 pandemic.³⁴ Data with respect to Canada's economic performance does not necessarily indicate the degree to which each jurisdiction benefitted or, alternatively, how British Columbia compared to those other jurisdictions.³⁵ Indeed, all provinces outperformed earlier economic and fiscal projections regarding the labour market, nominal GDP and real GDP. While British Columbia fared better than Ontario, Quebec and Alberta in terms of real

³² PCJA Submission, at para. 252, 305; JJABC Submission at para. 21.

³³ PCJA Submission, at paras. 274-276.

³⁴ JJABC Submission, at paras. 109, 126.

³⁵ PCJA Submission, at paras. 255/256.

GDP growth, it was behind Prince Edward Island and New Brunswick in 2020, and behind Prince Edward Island and Nova Scotia in 2021.³⁶

46. In terms of unemployment rates, and in response to the Provincial Court Judges' submissions at para. 259, except for 2003, 2004, and 2011, British Columbia's unemployment rate has been below that of Canada for the past 20 years.³⁷ However, the labour market in British Columbia remains tight. While employment growth has been strong and the unemployment rate near historic lows, job vacancies in some sectors remains high.³⁸ Further, there have been recent reports of layoffs in the forestry and technology sectors.³⁹
47. Nor have debt levels returned to the pre-pandemic range, as the Judicial Justices stated.⁴⁰ British Columbia's debt levels are also not the lowest in the country on absolute terms, but the lowest as a percentage of GDP.⁴¹ The COVID-19 pandemic significantly impacted British Columbia's debt metrics;⁴² debt-to-GDP increased from 14.9 to 19.3 during the 2020/21 year.⁴³ Debt levels in 2022-23, totalling some \$60 billion, are significantly higher than the mid-\$40 billion level in 2019 before the COVID-19 pandemic. Forecasting calls for these debt levels to increase in short- and medium-term.⁴⁴ While increases in capital spending demonstrate a certain confidence in Government's fiscal situation,⁴⁵ such increases

³⁶ Statistics Canada, Table 36-10-0222-01, Gross domestic product, expenditure-based, provincial and territorial, annual (x 1,000,000): <https://www150.statcan.gc.ca/t1/tbl1/en/cv.action?pid=3610022201>: Reply Appendices, Tab 5.

³⁷ Statistics Canada, Table 14-10-0018-01 Labour force characteristics by sex and detailed age group, annual, inactive (x 1,000): <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410001801#tables>: Reply Appendices, Tab 6; Statistics Canada, Table 14-10-0393-01 Labour force characteristics, annual: <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410039301#tables>: Reply Appendices, Tab 7.

³⁸ Statistics Canada, Table 14-10-0325-01 Job vacancies, payroll employees, job vacancy rate, and average offered hourly wage by provinces and territories, quarterly, unadjusted for seasonality: <https://www150.statcan.gc.ca/n1/en/type/data?text=job+vacancy+statistics>: Reply Appendices, Tab 8.

³⁹ See various reporting on layoffs in the technology sector, online: <https://globalnews.ca/news/9424316/google-layoffs-tech-sector/>: Reply Appendices, Tab 9; <https://www.cbc.ca/news/business/tech-jobs-layoffs-google-amazon-microsoft-1.6721163>: Reply Appendices, Tab 10. See also various reporting on layoffs in the forestry sector, online: <https://www.cbc.ca/news/canada/british-columbia/canfor-shuts-down-chetwynd-bc-operations-cuts-jobs-forestry-industry-1.6726399>: Reply Appendices, Tab 11; <https://www.cbc.ca/news/canada/british-columbia/canfor-shuts-down-chetwynd-bc-operations-cuts-jobs-forestry-industry-1.6726399>: Reply Appendices, Tab 12.

⁴⁰ JJABC Submission, at para. 125.

⁴¹ PCJA Submission, at para. 270; JJABC Submission, at para. 110.

⁴² First Quarterly Report, Table A13, p. 72; JBD, Vol. 2, tab 47(a).

⁴³ First Quarterly Report, Table A15, p. 74; JBD, Vol. 2, tab 47(a).

⁴⁴ First Quarterly Report, p. 1; JBD, Vol. 2, tab 47(a).

⁴⁵ JJABC Submission, at para. 126.

equally reflect major deficiencies the Government must address going forward. Contrary to the assertions,⁴⁶ there has not been a “rapid restoration” of the Government’s fiscal position.

48. British Columbia, like Ontario and Quebec, benefits from diversification of its economy.⁴⁷ British Columbia has a competitive advantage in exports, largely due to its diversified export market relative to other provinces. This does help the province to weather global economic uncertainty, including global trade policies, slowdowns in demand in specific external markets, commodity price fluctuations, and exchange rate uncertainty.
49. However, diversification cuts both ways. British Columbia feels the impact of over- or under-performance of the economies with which it trades. Forecasters have revised their economic outlook for many jurisdictions to reflect expectations of declining global economies.⁴⁸ When all countries face similar pressures and with a slowing global economic outlook, British Columbia might not be able to pivot as easily to other jurisdictions. The Government cannot diversify its way out of a global slowdown.
50. Updated data suggests this Commission should pay particular attention to what, if any, jurisdictions it considers to be appropriate comparators for British Columbia. For example:
 - a. The Judicial Justices have pointed to average house prices as one metric to be considered.⁴⁹ While it is true that British Columbia and Ontario have the highest average home prices, generally speaking, most housing markets across Canada saw a decline in home sales in 2022 in response to rising interest rates.⁵⁰ As well, to the extent it was suggested that Quebec be considered in the same “higher priced” bracket as British Columbia and Ontario, this is inaccurate. The average home price in Quebec in December 2022 was substantially less than the price in Ontario, and only about \$29,000 higher than in Alberta. In truth, all other Canadian

⁴⁶ PCJA Submission, at para. 267.

⁴⁷ See JJABC Submission, at para. 111; PCJA Submission, at paras. 261-262

⁴⁸ Point in Time Report on the Current and Expected Economic Conditions in British Columbia and the Current and Expected Financial Position of Government as of December 2022, at paras. 11, 19, 20.

⁴⁹ See JJABC Submission, at para. 107

⁵⁰ Canadian Real Estate Association, January 16, 2023, National Statistics, online: <https://stats.crea.ca/en-CA/>: Reply Appendices, Tab 13.

jurisdictions have home prices that are a fraction of those in Ontario and British Columbia.⁵¹

- b. Provincial budgets do not remain static and have changed since the data available at the time of original submissions. Ontario and Quebec do not have budget surpluses; they are in deficits this year.⁵² Ontario is forecasted to move towards a balanced budget in the medium-term. Quebec is forecasted to return to a surplus next year. Alberta, which has a resource-based, rather than tax-based, economy, is presently in a large surplus, with surpluses forecasted to continue in the near future.

- 51. The Government's economic and fiscal recovery from the COVID-19 pandemic must be tempered by consideration of the current and best available data. That data reveals a global economic slowdown that will continue in the near-term. The position on salaries advanced by the Government incorporates these realities to ensure that reasonable judicial compensation reflects current and expected economic and fiscal positions.

Government's Position re: Interest on any Retroactive Payments and Participation Costs

Interest on any Retroactive Payments

- 52. Both the Provincial Court Judges and the Judicial Justices seek a recommendation that the Government pay interest on any retroactive salary payment. Specifically, they request a recommendation that the amount of any retroactive payment of salary "bear interest at the prejudgment interest rate from April 1, 2023 until the date on which the increased remuneration is established and at the post-judgment rate from that date until the date of the retroactive payment."⁵³

⁵¹ Canadian Real Estate Association National Price Map, online: <https://www.crea.ca/housing-market-stats/canadian-housing-market-stats/national-price-map/>; Reply Appendices, Tab 14.

⁵² This is contrary to the suggestion in the JJABC Submission, at para. 107.

⁵³ PCJA Submission, at paras. 348-354; JJABC Submission, at paras. 23(e) and 190.

53. The Provincial Court Judges made a similar request before the 2019 Commission; that Commission's recommendation was formulated on the same terms now sought from this Commission.⁵⁴ The Government accepted the recommendation respecting interest.⁵⁵
54. The Government does not oppose this request.

Participation Costs

55. The Provincial Court Judges and Judicial Justices also seek recommendations on costs of their participation in this process. The Provincial Court Judges seek a recommendation that the Government pay 100% of their reasonable legal fees and disbursements, including 100% of the cost of any expert evidence.⁵⁶ The Judicial Justices seek full indemnity for their reasonable costs, or a significant increase to the ceiling of reimbursed costs by way of a regulation made pursuant to the *Act*, or an amendment to the *Act* itself.⁵⁷ Each offers arguments in support of their proposed recommendations.
56. In its original submissions, the Government referenced the outstanding judicial review of its response to the report of the 2019 Commission, noting that the issue of participation costs, including the constitutionality of the statutory costs formula in s. 7.1 of the *Act*, is a matter directly in issue before the British Columbia Supreme Court.⁵⁸ As a result, the Government declined to take any position with respect to participation costs.⁵⁹ The Government continues to take no position in these reply submissions, in anticipation of the Supreme Court's guidance.
57. If the decision of the Supreme Court has not been rendered by the end of February 2023, the Government intends to make submissions on participation costs as part of its submissions for the March 11, 2023 virtual hearing date.

⁵⁴ Report of the 2019 Judicial Compensation Commission, p. 34: JBD, Vol. 1, Tab 18.

⁵⁵ Government's Proposed Response to the Judicial Compensation Commission 2019 Final Report in Respect of Provincial Court Judges, July 6, 2020, p. 15: JBD, Vol. 1, Tab 19; Government's Proposed Response to the Judicial Compensation Commission 2019 Final Report in Respect of Judicial Justices, July 6, 2020, p. 14: JBD, Vol. 1, Tab 20.

⁵⁶ PCJA Submission, at paras. 355-399.

⁵⁷ JJABC Submission, at paras. 23(d), 182-189.

⁵⁸ Government Original Submission, at paras. 67-70.

⁵⁹ Government Original Submission, at para. 71.

Government's Proposal on Flexible Benefits

58. The Provincial Court Judges and Judicial Justices have not proposed any changes to their flexible benefits plans.⁶⁰
59. The information about compensation for non-unionized employees and appointees provided by the Government noted that modest enhancements were made to the flexible benefits plan for public service excluded employees on January 1, 2023.⁶¹ To ensure the judiciary can benefit from those enhancements, the Government would support implementing those modest enhancements for Provincial Court Judges and aligning the flexible benefits plan for full-time Judicial Justices with that of Provincial Court Judges, if agreed to by the Provincial Court Judges and the Judicial Justices.
60. Further, to ensure that Provincial Court Judges and full-time Judicial Justices can access the same enhancements to flexible benefits that are provided to excluded employees going forward, if the Provincial Court Judges and Judicial Justices agree, the Government proposes a recommendation that future enhancements to the flexible benefits plan for excluded employees and appointees be automatically implemented for the judiciary at the same time. This would, of course, not preclude either the Provincial Court Judges or the Judicial Justices from seeking other changes to their flexible benefits through the Commission process, but will ensure there is no lag before the judiciary can access benefit enhancements to which other excluded employees become entitled.

Government's Response regarding Judicial Justices

61. This section of the Government's reply addresses select points raised in the submissions provided by the Judicial Justices, as well as points raised about Judicial Justices by the Chief Judge and the Judicial Council.

⁶⁰ PCJA Submission, at page 5.

⁶¹ See Information relating to changes in compensation for excluded employees for the specifics of the enhancements, p. 4 and Appendix "A": JBD, Vol 2, Tab 46.

Requests from the Judicial Justices re: non-salary elements of compensation

62. The Judicial Justices seek recommendations from this Commission in relation to certain non-salary elements of compensation, as well as one element connected to their salary proposal. The Chief Judge seeks one recommendation in relation to salary differentials for Judicial Justices. The Government addresses each in turn.

Per Diem Formula

63. The Judicial Justices ask this Commission to recommend two changes to the current per diem formula⁶² that governs salaries for part-time Judicial Justices:

- a. an increase in the percentage received in lieu of benefits from 20% to 25.4%; and
- b. an increase in the overhead amount from \$75 to \$100.⁶³

64. There has been no change to the per diem formula since it was first implemented in 2007. Recognizing the need for an update, the Government agrees in principle with the Judicial Justices' request that this Commission recommend changes to the formula.

65. More specifically, the Government supports the Judicial Justices' request for a recommended increase in the overhead rate from \$75 to \$100. This is an appropriate adjustment in light of the logical increase in overhead costs that Judicial Justices will have incurred since the rate was implemented in 2007.

66. With respect to the percentage in lieu of benefits, the Government submits it would be appropriate for this Commission to recommend an increase from 20% to 22%. The value of the benefits provided to Judicial Justices has increased since 2007 due to factors such as the increasing value of employer pension contributions and the change from MSP premiums to the Employer Health Tax. An increase to 22% better reflects the current value of benefits that full-time Judicial Justices receive. The Government submits that 25.4% is not appropriate; that figure was established so that it could be applied to all public service

⁶² See Government Original Submission, at para. 75, for the current *per diem* formula.

⁶³ JJABC Submission, at paras. 150-163.

employee groups for cost-recovery purposes; it does not reflect the value of the benefits provided specifically to Judicial Justices.

Shift Premiums

67. The Judicial Justices seek recommendations for changes to shift premiums, including:
- a. adding a \$245 shift premium for Easter Monday, National Day for Truth and Reconciliation, and Boxing Day;⁶⁴
 - b. a \$75 weekend premium; and
 - c. increasing the shift premium for Christmas Day to \$320 (an additional \$75).
68. In principle, the Government supports increases to Judicial Justices' shift premiums to address demonstrated challenges in staffing outside of traditional hours and on holidays.
69. The Chief Judge also supports shift premiums in principle.⁶⁵ The Government's support in principle responds to submissions that indicate Provincial Court Judges are again covering shifts for Judicial Justices at the Justice Centre.⁶⁶ This trend existed before the COVID-19 pandemic, lessened somewhat during the height of the pandemic, but has risen again during the ongoing recovery from the pandemic, particularly in the summer months, and on weekends and statutory holidays.⁶⁷
70. It is not clear to the Government, however, that amendments to the *Act* would be required, as the Chief Judge suggests.⁶⁸ The *Act* was not amended when Government accepted the 2019 Commission's recommendations to implement shift premiums.
71. With respect to holidays premiums, the Government supports a recommendation for a shift premium of \$245 for Easter Monday and Boxing Day. The Government also supports a recommendation for an additional \$75 increase to the existing shift premium for Christmas

⁶⁴ The \$245 shift premium is currently only paid on legally-recognized statutory holidays in British Columbia: JJABC Submission, at para. 165.

⁶⁵ Submission of the Chief Judge of the Provincial Court of British Columbia, January 25, 2023 [OCJ Submission], at paras. 7, 184.

⁶⁶ OCJ Submission, at para. 143.

⁶⁷ JJABC Submission, at paras. 93-94, 169-173.

⁶⁸ OCJ Submission, at para. 185.

Day, resulting in a \$320 shift premium that day. The Government proposes this Commission recommend a conditional shift premium for National Truth and Reconciliation Day, provided it is formally or informally recognized as a statutory holiday in British Columbia.

72. The Government supports a modified weekend premium to address the evidence of challenges in staffing the Justice Centre. The evidence shows that on occasion, a limited number of Provincial Court Judges are required to cover weekend shifts for Judicial Justices. The Government proposes a recommendation for a standard weekend premium of \$25 per shift. On an hourly basis, that level of premium is higher than, but proportionate to, weekend shift premiums paid elsewhere in the public sector.⁶⁹

Travel Policy

73. The Judicial Justices seek a recommendation that any changes made to the travel policy of Provincial Court Judges be mirrored for the Judicial Justices.
74. Neither the Provincial Court Judges nor the Chief Judge seek any changes to the travel policy. The Government supports the travel policy remaining the same.

Professional Development Allowance

75. The Judicial Justices asks this Commission to recommend an increase to the Professional Development Allowance (“PDA”) for Judicial Justices to \$4,500 per fiscal year. The Judicial Justices also ask that \$2,100 of the annual allotment be permitted to be used towards general office expenses. The Judicial Justices do not seek changes to other aspects of their PDA.
76. The Government recognizes that Judicial Justices received a fairly modest PDA for several years. The PDA remained at \$1,000 as of April 1, 2011, after the Government rejected recommendations for an increase.⁷⁰ Government accepted a recommendation of the subsequent 2013 Commission, resulting in an increase to \$1,500 effective April 1, 2014.⁷¹

⁶⁹ The Provincial Collective Agreement between the HEABC and the Nurses’ Bargaining Association provides a weekend shift premium of \$2.30 per hour. See Article 28.02, on p. 77, online: https://www.bcnu.org/sites/default/files/2022-10/nba_provincial_collective_agreement_2019_2022.pdf: Reply Appendices, Tab 15.

⁷⁰ Government Response to the 2010 Judicial Justices Compensation Report (May 2011), pp. 8-9: JBD, Vol. 2, Tab 33.

⁷¹ Government Response to the 2013 Judicial Justices Compensation Report, p. 6: JBD, Vol. 1, Tab 28.

77. This amount has more than doubled in the last two commission cycles. The Government accepted the recommendation of the 2016 Commission that, effective April 1, 2017, Judicial Justices be entitled to a PDA of \$2,500 per fiscal year.⁷² The Government also accepted the recommendation of the 2019 Commission; since April 1, 2020, Judicial Justices have been entitled to a PDA of \$3,250, and may carry over any unused portion for one year for use towards educational conferences and associated expenses.
78. The Government does not support a recommendation for an increase to the PDA for Judicial Justices in this cycle or a change to the amount that can be used for general office expenses.
79. The Judicial Justices have communicated that their attendance at educational conferences and their other PDA-related expenses were significantly impacted during the height of the COVID-19 pandemic. In turn, the amount of PDA used by Judicial Justices over the period covered by the 2019 cycle is understandably not indicative of normal use.
80. As a result, there is no evidence to demonstrate that the most recent increase to the PDA or current allotment to general office expenses is insufficient to permit Judicial Justices to meet their professional development needs. As such, there is no basis for a change at this time.
81. Once evidence of the Judicial Justices' post-COVID-19 demand for PDA becomes available, Government is open to considering if the evidence suggests further changes are necessary.

Linkage to Provincial Court Judges

82. The Judicial Justices submit this Commission should recommend a linkage between the salaries of Judicial Justices and Provincial Court Judges. However, the Judicial Justices indicate they will withdraw this proposal if it is not universally supported.⁷³

⁷² Government Response to the 2016 Judicial Compensation Commission – Judicial Justices, p. 13: JBD, Vol. 1, Tab 23; Government Supplemental Submission and Response to the 2016 Judicial Compensation Commission, June 23, 2016, online: <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/judicial-compensation-commission/judicial-compensation-commission/government-submission-supplement-2016.pdf>: Reply Appendices, Tab 16.

⁷³ JJABC Submission, at paras. 143-147.

83. Government does not support any linkage between the salaries of Provincial Court Judges and Judicial Justices, as it assumes the scope of work performed by the Judicial Justices relative to that of Provincial Court Judges will remain constant.

Salary Differentials

84. The Judicial Justices have not proposed any change to the current salary differential of 106% for Administrative Judicial Justices. The Chief Judge supports the salary differential remaining the same.⁷⁴ The Government also supports maintaining the salary differential at its current level.

Salary proposal and assessment of certain statutory factors

85. The Judicial Justices ask this Commission to recommend a very significant salary increase in the first year of the 2022 cycle, with further smaller increases in each of years two through four. As set out above, the starting point for assessing the requested increases is not the recommendations of the 2019 Commission, but the salary implemented by the Legislature.
86. The following table summarizes the magnitude of the requested increases in concrete dollars and percentages based on the current salary of \$133,501 for full-time Judicial Justices:

Year	Salary	Dollar Increase from Previous Year	Percentage Increase from Previous Year
2022-23 (current)	\$133,501	--	--
Proposed 2023-24 (Y1)	\$175,000	\$41,499	~31.09%
Proposed 2024-25 (Y2)	\$180,000	\$5,000	~2.86%
Proposed 2025-26 (Y3)	\$185,000	\$5,000	~2.78%
Proposed 2026-27 (Y4)	\$190,000	\$5,000	~2.7%
	Total Increase over 2022 cycle:	\$56,499	~39.43% (nominal total)

⁷⁴ OCJ Submission, at paras. 5 and 182.

87. With respect, and for the additional reasons noted below, the Government cannot support a total increase of 39.43% above the current salary approved by the Legislature as being required to provide “reasonable compensation” within the meaning of the *Act*.

Maintaining a Strong Court

88. The Judicial Justices, the Chief Judge and the Judicial Council have provided information regarding recent recruitment efforts, the number of applications received, anticipated retirements and the need for appointments – both at present and continuing into the future.⁷⁵

89. While the Government provided information regarding recruitment efforts and applicants in its original submissions,⁷⁶ the annual reports of the Judicial Council and the Office of the Chief Judge do not provide demographic information about Judicial Justices. The information currently before the Commission is that either 11 or 12 Judicial Justices will reach the age of 75 between now and 2027.⁷⁷ The Government recognizes that under s. 33(1.1) of the *Provincial Court Act*,⁷⁸ a Judicial Justice ceases to hold office at the end of the month they reach 75 years of age.

90. The Chief Judge notes that, despite a recruitment call in September 2021, the Judicial Council only received eight applications that year, and issued a further recruitment call in November 2022. The Chief Judge and the Judicial Council each characterize the recruitment efforts as having had “limited success.”⁷⁹ However, it is unclear when the eight applications in 2021 were received relative to the recruitment call, the number of applications for 2022 has not yet been made available, and, given the appropriately rigorous application, it is too early to assess the response to the November 2022 recruitment call.

91. The Judicial Justices submit the current complement of 33 is “not sufficient to meet the needs of the Provincial Court”;⁸⁰ the Chief Judge speaks of the need to recruit new judicial justices

⁷⁵ JJABC Submission, at paras. 85-96; OCJ Submission, at paras. 177-179; Submission of the Judicial Council of British Columbia, January 25, 2023 [JC Submission], at paras. 27-34.

⁷⁶ Government Original Submission, at paras. 102-110.

⁷⁷ OCJ Submission, at para. 177 (indicates 12); JC Submission, at para. 33 (indicates 11); JJABC Submission, at para. 90 (indicates 11).

⁷⁸ R.S.B.C. 1996, c. 379.

⁷⁹ OCJ Submission, at paras. 178-179; JC Submission, at para. 34.

⁸⁰ JJABC Submission, at para. 37.

“to meet operational needs”;⁸¹ and the Judicial Council addresses the need to “maintain a strong complement”.⁸² However, there is no concrete indication of the number of Judicial Justices said to constitute a “sufficient contingent”. This makes it difficult to assess if there will be actual challenges in meeting the requisite complement.

92. The available evidence is that the 15 applications received in 2019 was almost double the Judicial Council’s reported average of eight. The eight applications in 2021 is consistent with that average, and the five applications in 2020 is consistent with the numbers of applications in “most years” between 2002 and 2020. As well, the three appointments per year in each of 2019, 2020 and 2021 are higher than the usual average of two.⁸³
93. In their submissions, the Judicial Justices compare the upcoming 11 retirements to the number of applications received, applicants interviewed and applicants appointed to suggest that there is not enough interest in the Judicial Justice position to “maintain a sufficient number” to service the Provincial Court.⁸⁴ With respect, this is the wrong comparison.
94. At paragraph 111 of its original submissions, the Government included a table of applications and appointments for Judicial Justices since 2017. That table demonstrates that over the last four years, 11 applicants were recommended for appointment. Those who are recommended remain on a list as eligible to be appointed for three years from the date of their interview.⁸⁵ Unlike for Provincial Court Judges,⁸⁶ the Judicial Council does not provide statistics of the average number of candidates on the list for potential appointment at any given time, but the number of applicants recommended by the Judicial Council over the past four years exceeded the number of actual appointees. If these trends continue, it should be possible to address the upcoming retirements over the next four years.

⁸¹ OCJ Submission, at para. 179.

⁸² JC Submission, at para. 44.

⁸³ Judicial Council of British Columbia Annual Report 2020, 50th Anniversary Edition, p. 13: JBD, Vol. 1, Tab 3. See also Government Original Submission, at paras. 104-106, 111 (including table), 113. Note that the actual number of applications received between 2010 and 2019 dwarfs the statistics relied on by the 2019 Commission in making its recommendations for significant salary increases: Government Original Submission, at para. 106-108.

⁸⁴ JJABC Submission, at paras. 89-91.

⁸⁵ Judicial Council of British Columbia Annual Report 2021, p. 21: JBD, Vol. 1, Tab 2.

⁸⁶ Judicial Council of British Columbia Annual Report 2021, p. 16: JBD, Vol. 1, Tab 2.

95. Further, the Government’s position on salary would provide a greater salary increase to the Judicial Justices over the 2022 cycle than was provided over the 2019 cycle. To the extent compensation is one factor in recruitment, the proposed increase, as well as the Government’s support for recommendations on certain other non-salary elements of compensation (outlined above), can reasonably be expected to continue the trend of improvements seen following the 2019 Commission.

Changes to the Jurisdiction of Judicial Justices

96. The Judicial Justices, the Chief Judge and the Judicial Council all reference the changes to the *Criminal Code* that came into force on January 14, 2023 as a result of Bill S-4. In particular, they submit that almost all judicial authorizations can now be sought and issued by telecommunication. The submission is that this changes the jurisdiction of Judicial Justices and is expected to result in increased workload.⁸⁷
97. The available information indicates that, prior to these changes coming into force, judicial authorizations that were not permitted to be sought by telecommunication were “considered locally across all areas of the province, either by judicial justices who are locally available, or by provincial court judges.”⁸⁸ Given that many of these authorizations could already be heard by local judicial justices in-person, the fact that they will now be able to be considered by telecommunication does not constitute a change in *jurisdiction per se*.
98. The increased availability of the telewarrant process will likely result in a shift in the way judicial authorizations are sought, with a corresponding shift in the way Judicial Justices handle them. However, based on the available information, and recognizing the significant efforts that were required at that time, when the COVID-19 pandemic necessitated similar adaptations, the Judicial Justices demonstrated that these types of changes can be facilitated through the Justice Centre.⁸⁹
99. The Government acknowledges that these changes may have an impact on the workload of Judicial Justices and should be monitored over the 2022 cycle. The Government is

⁸⁷ JJABC Submission, at paras. 64-69, 97; OCJ Submission, at para. 172; JC Submission, at para. 35.

⁸⁸ JJABC Submission, at paras. 65, 97.

⁸⁹ JJABC Submission, at para. 67-69.

committed to working with the Chief Judge to do so. Given that these changes were only implemented a few weeks ago, the Government submits it would be premature to recommend any significant adjustments until there is concrete evidence over a sufficient duration to determine the magnitude of the change.

Compensation provided in respect of other similar judicial positions

100. The Judicial Justices take the position that Manitoba is a less appropriate comparator under this factor because the salaries for its justices of the peace are not set through a judicial compensation commission process.⁹⁰ In its original submissions, the Government acknowledged that differences in the process by which salaries are set in other jurisdictions is one type of difference this Commission should consider when examining the compensation provided in respect of similar positions across Canada.
101. Manitoba has chosen to create a statutory percentage link between the salaries paid to its provincial court judges and its justices of the peace. Ontario – one of the two jurisdictions (with Alberta) the 2019 Commission considered most comparable – has also enshrined in legislation a percentage link between salaries for justices of the peace and provincial court judges.⁹¹ These decisions reflect policy choices that impact on the extent to which this Commission can draw useful comparisons to their salary levels.
102. Further, while the Judicial Justices remark that the lack of a commission process is “of concern”, there is no evidence regarding any negative impact for Manitoba justices of the peace, particularly where there is a constant statutory percentage link to salaries that *are* set through a commission process. In fact, as part of the Judicial Justices’ rationale for requesting this Commission to recommend a link to Provincial Court Judge salaries, the Judicial Justices note that it would “simplify future commission processes”. It is difficult to understand what meaningful role a commission could play *in respect of salaries* where judicial justice salaries are automatically determined through a statutory linkage.
103. The Judicial Justices’ comments regarding the economic conditions and financial positions in other jurisdictions and in British Columbia are addressed above. In any event, the

⁹⁰ JJABC Submission, at para. 103.

⁹¹ See Government Original Submission, at para. 155.

Government agrees Alberta is an appropriate comparator. While the Judicial Justices predict that Alberta's justices of the peace will receive a significant increase in salary for 2021-22 through 2024-25, as of right now, there is no evidence to support that assertion. Further, the Government's position on salaries will improve the salaries of Judicial Justices relative to Alberta, and their total compensation will be ameliorated by the Government's support for certain non-salary compensation recommendations, as outlined above.

Government's Response to the Provincial Court Judges

104. This section of the Government's reply addresses select points raised in the submissions provided by the Provincial Court Judges, as well as points raised in relation to Judicial Justices by the Chief Judge and the Judicial Council.

Non-salary elements of compensation

105. The Provincial Court Judges have proposed that no changes be made to the non-salary components of their compensation. In particular, in the Executive Summary to their submissions, the Provincial Court Judges propose that:

- a. the existing salary differentials for the Chief Judge, Associate Chief Judges and the Regional Administrative Judges remain at 112%, 108% and 106% respectively (the Office of the Chief Judge supports this request⁹²);
- b. the current 3% accrual rate for judges' pensions be maintained;
- c. there be no change to the PDA overall or to health and wellness-related expenditures allowed under the PDA for the 2022 cycle;
- d. Provincial Court Judges continue to receive the same *per diem* travel reimbursement as Members of the Legislative Assembly; and
- e. there be no change to the flexible benefits plan.

⁹² OCJ Submission, at paras. 2 and 124.

106. Except for the Government’s proposal (outlined above) to provide certain modest enhancements to flexible benefits to the Provincial Court Judges, if they agree, the Government supports these matters remaining the same.

Salary proposal and assessment of certain statutory factors

107. The Provincial Court Judges ask this Commission to recommend a significant salary increase in the first year of the 2022 cycle, with increases in each of years two through four based on the previous year’s CPI increases. The Provincial Court Judges have confirmed that, for years two through four, they propose the April 1st salary increase be based on the increase to the CPI for the 12-month period ending December 31st of the previous year.

108. For the reasons set out above, the starting point for assessing the requested increases is the salary implemented by the Legislature.

109. The following table summarizes the magnitude of the requested increases in concrete dollars and percentages based on the current salary of \$288,500⁹³ for Provincial Court Judges:

Year	Salary	Dollar Increase from Previous Year (est.)	Percentage Increase from Previous Year (est.)
2022-23 (current)	\$288,500	--	--
Proposed 2023-24 (Y1)	\$350,863	\$62,363	~21.6%
Proposed 2024-25 (Y2)	Prior year’s CPI increase (est. 3.9% = \$364,547) ⁹⁴	\$13,684	~3.9%
Proposed 2025-26 (Y3)	Prior year’s CPI increase (est. 2.4% = \$373,296)	\$8,749	~2.4%
Proposed 2026-27 (Y4)	Prior year’s CPI increase (est. 2.2% = \$381,509)	\$8,213	~2.2%
	Total Estimated Increase over 2022 cycle:	\$93,009	~30.1% (nominal total)

⁹³ Note: there is a typographical error in the table at para. 8 of the Government Original Submission. The table indicates the 2022/23 salary for Provincial Court Judges is \$282,500. The correct salary for the 2022/23 fiscal year is \$288,500, as reflected in para. 7 of those submissions.

⁹⁴ As the CPI increases for years one through three (2023-24, 2024-25 and 2025-26) are not known, the salary figures in the table have been calculated based on the Government’s forecasted CPI levels of 3.9%, 2.4% and 2.2% respectively. As a result, the figures for the dollar and percentage increases for years two through four are estimates, as are the totals.

110. With respect, the Government cannot support an estimated total increase of 30.1% above the current salary approved by the Legislature as being required to provide “reasonable compensation” within the meaning of the *Act*.

Maintaining a Strong Court

111. The statutory factor under s. 5(5)(a) of the *Act* requires the Commission to consider the need “to maintain a strong court by attracting highly qualified applicants”. At times, the submissions of the Provincial Court Judges and the Chief Judge advocate for a higher standard – both in terms of candidates and what the factor requires be maintained. The statutory factor does not require compensation that is “sufficiently generous” to attract “the best available potential candidates”; the standard is what is needed to “maintain a strong court”. Nor must the candidates be “the most qualified” or “superior”; the statutory standard under the *Act* is “highly qualified applicants”.⁹⁵

112. The Judicial Council has been specifically given responsibility for vetting candidates. The Judicial Council describes its process as a “rigorous” one, designed “to ensure that only *the most exceptional applicants* are recommended.”⁹⁶ There is no evidence that the candidates that continue to be recommended by the Judicial Council fail to meet those standards.

113. The Government has acknowledged that the number of applicants in 2021 was lower than in the previous ten years. The Government also recognizes that the Chief Judge and Judicial Council have provided information that the number of applicants in 2022 further declined by one, to 23 applicants.⁹⁷ The Government accepts that the number of applicants is a trend that needs to be monitored.

114. However, with respect, that trend is not cause for alarm. As the Provincial Court Judges recognize, application levels fluctuate over time and while certain fluctuations may be able to be traced to identifiable events, in most cases, the reasons are not easily discernable.⁹⁸

⁹⁵ See, for example: PCJA Submission, at paras. 162, 166-170; OCJ Submission, at paras. 10, 120.

⁹⁶ Annual Report of the Judicial Council of British Columbia 2021, p. 14: JBD, Vol. 1, Tab 2, emphasis added.

⁹⁷ OCJ Submission, at para. 121; JC Submission, at para. 12.

⁹⁸ PCJA Submission, at para. 165. See also Judicial Council of British Columbia Annual Report 2020, 50th Anniversary Edition, p. 7: JBD, Vol. 1, Tab 3.

Further, the reports produced by the Chief Judge and the Judicial Council over the last few years urge caution in interpreting statistical trends as a result of the various impacts of the COVID-19 pandemic. It is entirely plausible that the COVID-19 pandemic may also have impacted applications for judicial appointments.

115. The Government submits that on the metrics that matter the most, the trends demonstrate that the Provincial Court is still attracting a sufficient number of highly qualified applicants to allow ten appointments per year, as the Chief Judge anticipates will continue.⁹⁹ In 2021, there were 11 appointments. In 2022, there were 12 appointments (13 if the judge appointed November 28, 2022 but sworn in January 3, 2023 is counted).¹⁰⁰ In both years, the number of appointments exceeded the ten-year average despite a lower number of applications.
116. Further, in 2021, the Judicial Council recommended 15 applicants, which is a significant increase from the previous year (when only five were recommended), and higher, albeit only slightly, than the ten-year average. It is incorrect to suggest that “every measurable outcome except appointments was low in 2021”;¹⁰¹ the number of recommendations was higher, which directly feeds into the candidates eligible to fill necessary appointments. The Government acknowledges that the Judicial Council only recommended nine applicants in 2022,¹⁰² but notes that since recommended applicants remain on the list for 3 years, and the Judicial Council reported an average of 20 people each month on the list of those eligible for appointment,¹⁰³ there is no reason to believe that these two years of lower applications will result in the Provincial Court being unable to fill upcoming vacancies.

Compensation provided to other similar judicial positions in Canada

117. The Provincial Court Judges place significant focus on the third factor under the *Act* – compensation provided in respect of similar judicial positions in Canada. While this factor is an “important consideration” in determining reasonable compensation,¹⁰⁴ all six statutory

⁹⁹ OCJ Submission, at para. 120. This is consistent with the 10-year average noted by the Judicial Council: Annual Report of the Judicial Council of British Columbia 2021, p. 15: JBD, Vol. 1, Tab 2.

¹⁰⁰ Government Original Submission, at para. 82.

¹⁰¹ PCJA Submission, at para. 173.

¹⁰² JC Submission, at para. 12.

¹⁰³ Judicial Council of British Columbia Annual Report 2021, p. 16: JBD, Vol. 1, Tab 2.

¹⁰⁴ PCJA Submission, at para. 188

factors under the *Act* are important considerations for this Commission. What is fair and reasonable will depend on a global consideration of all statutory factors.

118. Consistent with their submissions before the 2019 Commission, the Provincial Court Judges suggest their salary proposal would “restore the base salary for BC judges to a reasonable relationship with federal salaries and thereby reduce the financial disincentive for potential applicants to the Provincial Court.”¹⁰⁵ There is no evidence before this Commission that current superior court remuneration serves as a “financial disincentive” for potential applicants to the Provincial Court, or hurts retention.
119. As noted in its original submissions,¹⁰⁶ the Government does not consider federally-appointed judges to be a useful comparator under this factor. While the Provincial Court Judges maintain that the two courts compete for applicants, there is no recent empirical evidence of the number of applicants who apply to both the federal superior courts and the Provincial Court of British Columbia. Instead, the Provincial Court Judges rely on the views of and dated evidence before previous commissions.¹⁰⁷
120. Despite there being appointments from the Provincial Court to the Supreme Court at the relevant times, the 2016 and 2019 Commissions were not prepared to conclude that the Provincial Court was not attracting a sufficient number of highly qualified applicants.¹⁰⁸ As there have not been any appointments from the Provincial Court to the Supreme Court since the 2019 Commission,¹⁰⁹ there is a stronger basis for reaching the same conclusion.
121. Recognizing the 2019 Commission’s view that there are markers of similarity between the two judicial positions, such as necessary qualifications, core qualities and the nature of the judicial work,¹¹⁰ there are sufficient enough differences¹¹⁰ in the substantive legal work and the

¹⁰⁵ PCJA Submission, at para. 196. See also Government Reply Submission to the 2019 Judicial Compensation Commission, at para. 10, online: <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/judicial-compensation-commission/judicial-compensation-commission/government-bc-reply-2019.pdf>; Reply Appendices, Tab 17.

¹⁰⁶ Government Original Submission, at paras. 128-135.

¹⁰⁷ PCJA Submission, at paras. 193-194, 201-207.

¹⁰⁸ Report of the 2016 Judicial Compensation Commission, at pp. 44-45: JBD, Vol. 1, Tab 21; Report of the 2019 Judicial Compensation Commission, at p. 17: JBD, Vol. 1, Tab 18; PCJA Subs at paras. 201, 205-206.

¹⁰⁹ Government Original Submission, at para. 97.

¹¹⁰ Report of the 2019 Judicial Compensation Commission, at pp. 19-20: JBD, Vol. 1, Tab 18.

procedural environments of the two courts that it is not reasonable to assume every applicant for a Provincial Court appointment will also be interested in a superior court appointment and vice versa.

122. Further, the Provincial Court Judges’ salary proposal would bring Provincial Court Judges’ salaries up to 91% of federal superior court judges’ salaries.¹¹¹ As reflected in the following table, this would increase Provincial Court Judges’ salaries to a significantly higher level relative to federal judicial salaries than at any other point in time since 2004/2005.

Year	B.C. Salary as % of Federal Salary	Applicants appointed / recommended ¹¹² to the Provincial Court*	Provincial Judges appointed ¹¹³ to BC Supreme Court*
2004/2005	69	10	0
2005/2006	68	17	1
2006/2007	81	9	1
2007/2008	80	9	0
2008/2009	85	12	0
2009/2010	84	7	2
2010/2011	85	17	2
2011/2012	82	12	2
2012/2013	80	11	2
2013/2014	82	10	1
2014/2015	81	6	0
2015/2016	81	13	0
2016/2017	80	9	1
2017/2018	83	14	1
2018/2019	83	15	1
2019/2020	82	6	0
2020/2021	81	6	0
2021/2022	78	11	0

* These figures are reported on a calendar year basis.

¹¹¹ PCJA Submission, at para. 196.

¹¹² Judicial Council of British Columbia Annual Report 2021, p. 29: JBD, Vol. 1, Tab 2 (for the years 2012 to 2021, individual Judicial Council of British Columbia annual reports for 2011 and earlier). Note that from 2012-2021, the Judicial Council reports actual appointments; from 2004-2011, the annual reports only reported “approved” or “recommended”, rather than appointed.

¹¹³ Supreme Court of British Columbia 2021 Annual Report, pp. 38-45, online: https://www.bccourts.ca/supreme_court/about_the_supreme_court/annual_reports/2021_SC_Annual_Report.pdf: Reply Appendices, Tab 18 (for the years 2010 to 2021, individual Supreme Court of British Columbia annual reports for 2009 and earlier).

123. With respect, the Government submits that the Provincial Court Judges' persistent focus on federal judicial salaries distorts the proper comparisons under this factor, which should be to other provincial court judges as an overall comparator group, and to the extent any narrowing of analysis is appropriate, to Alberta and Quebec, as set out in the Government's original submissions.
124. The Provincial Court Judges also submit this Commission should consider where they stand relative to their provincial counterparts and superior court judges based on "total compensation" (referring to salary and pension combined).¹¹⁴ In this regard, they submit the features of the federal judicial annuity plan heighten the gap between Provincial and superior court judges.¹¹⁵ However, as total compensation is higher for superior court judges due to their salaries, one would expect the benefits, including pension entitlements based on salaries, are likely to be more favourable.
125. The primary flaw is that the Provincial Court Judge's definition of "total compensation" fails to capture other benefits that the Provincial Court Judges recognize form part of total compensation. Such other benefits include statutory, health and disability benefits.¹¹⁶
126. Any consideration of differences in the "total compensation" between jurisdictions in Canada must be based on an accurate comparison of *all* elements that comprise total compensation. An analysis that only considers selected benefits, such as pensions, may distort the overall picture.
127. More critically, there is an inherent disconnect in the Provincial Court Judges' approach of using comparisons of "total compensation" to seek only an increase in salary. This Commission should consider any difference in "total compensation" on an "apples to apples" basis. Where non-salary elements present differences in "total-compensation" as between British Columbia and other jurisdictions, they should be accounted for in changes to non-salary compensation, not subsumed within arguments for higher salaries.

¹¹⁴ See, for example, PCJA Submission, at para. 323.

¹¹⁵ PCJA Submission, at paras. 197-200.

¹¹⁶ PCJA Submission, at para. 241.

128. Finally, the Provincial Court Judges say they do not rely on data concerning private lawyers' incomes but, instead, focus on federal appointments. They argue that, “[g]iven the fact that s. 96 courts and provincial courts compete for candidates, the income of self-employed lawyers is subsumed to some extent in the remuneration of federally appointed judges and how it is more attractive than that of provincially appointed judges”.¹¹⁷ For clarity, superior court judges' compensation depends, in part, directly on the income of self-employed lawyers in the private sector. As a result, were this Commission to consider federal judicial salaries, private sector salaries would be considered indirectly.
129. The Provincial Court Judges' arguments regarding the relevant economic and financial comparators are addressed earlier in these submissions.

Government's Response to Other Submissions

Funding for Long-term Disability Plan (age 65-75) for Provincial Court Judges and Judicial Justices

130. The Chief Judge asks the Commission to recommend that the Government increase the base budget funding for the Office of the Chief Judge to \$1M per fiscal year for long-term disability benefits for Provincial Court Judges and full-time Judicial Justices aged 65 to 75, with access to contingency funds should long-term disability costs exceed the base budget amount.¹¹⁸ The Chief Judge cites a need to “fully fund” long-term disability and “provide increased budget stability”.¹¹⁹
131. The Chief Judge made a similar request before the 2019 Commission. The Government asked the Commission to refrain from making a recommendation on what it characterized as a “budgetary matter” that should be addressed between the Government and the Chief Judge outside of the commission process.¹²⁰ The 2019 Commission declined to make a recommendation, citing the Government's commitment at the hearing to work with the Chief

¹¹⁷ PCJA Submission, at paras. 182-183

¹¹⁸ OCJ Submission, at paras. 125-133, 183.

¹¹⁹ OCJ Submission, at para. 133.

¹²⁰ Government Reply Submission to the 2019 Judicial Compensation Commission, June 14, 2019, at para. 64: Reply Appendices, Tab 17.

Judge to address its legal obligations flowing from the British Columbia Court of Appeal's decision in 2015.¹²¹

132. In accordance with its accepted legal obligations and the commitment made in 2019, the Government has addressed the issue. The long-term disability plan for Provincial Court Judges and Judicial Justices aged 65 to 75 is fully funded. As the Chief Judge acknowledges,¹²² and in recognition of the variable nature of the costs from year to year, the Government has chosen to fund some of the expenditures associated with the plan through contingencies rather than an increase to base budget funding.
133. The base budget funding to the Office of the Chief Judge for the long-term disability plan remains at \$0.408M. The Government has provided contingency funding to backstop any long-term disability costs that exceed that base budget funding. Contingencies can be provided as an approval in principle or as a formal approval. Approvals in principle are not formally earmarked for a specific purpose or recognized by the Office of the Comptroller General; formal approvals are earmarked for a specific purpose and recognized by the Office of the Comptroller General. In other words, formal contingency approvals are guaranteed if required; they are not uncertain.
134. In fiscal year 2020-21, the Government provided formal contingency approval of \$0.700M for the long-term disability plan. The Office of the Chief Judge did not access that contingency funding. In fiscal year 2021-22, the Government provided formal contingency approval of \$0.860M; again, the Office of the Chief Judge did not access that funding. In fiscal year 2022-23, the Government provided formal contingency approval of \$1M for the plan. The Office of the Chief Judge has confirmed that it will not need to access that contingency funding to cover the costs of the plan for this fiscal.
135. Rather than access the available contingency funds, since at least fiscal year 2020-21, the Office of the Chief Judge has been able to absorb the costs of the long-term disability plan that exceed the base budget amount in a different way through its overall budget – likely to some extent through cost savings in other areas, such as reduced travel. The Appendix

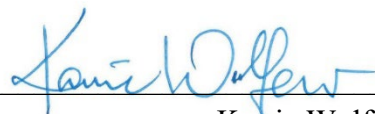
¹²¹ Report of the 2019 Judicial Compensation Commission, p. 35: JBD, Vol. 1, Tab 18.

¹²² OCJ Submission, at paras. 129, 131.

attached to the Chief Judge's submissions cannot be viewed in isolation; it addresses the estimated expenditures for the long-term disability plan separate from the rest of the budget for the Office of the Chief Judge. The Public Accounts in relation to the courts of British Columbia (which includes the Provincial Court, the Supreme Court and the Court of Appeal) do not reflect a shortfall.

136. The Government commends the Office of the Chief Judge for having managed its budget in a manner that meant it was not necessary to access the available contingency funds. The Government also recognizes that the circumstances that permitted the Office of the Chief Judge to do so in recent years may not continue. For example, as recovery from the pandemic continues, certain costs that were temporarily foregone may increase. In that event, it will be open to the Office of the Chief Judge to access the contingencies made available.
137. The Government is entitled to choose how to fully fund the long-term disability plan, as long as its choices do not result in actual budgetary shortfalls that cannot be addressed. There is no evidence of an unaddressed shortfall for the Office of the Chief Judge. The Office of the Chief Judge has not demonstrated any need to access the available contingencies earmarked for long-term disability expenditures for the last three fiscal years.
138. In the circumstances, the Government respectfully requests the Commission refrain from making any recommendations on this matter.

All of which is respectfully submitted this 3rd day of February, 2023.



Karrie Wolfe
Counsel for the Government of British Columbia



Steven Davis
Counsel for the Government of British Columbia

Appendices to the Reply Submissions

INDEX

Tab	Description
1.	Professional Employees Association: LABC Tentative Agreement Highlights
2.	BC News Release, October 15, 2019: “Greater stability for legal aid”
3.	Vancouver Sun, February 25, 2019, “Lawyers threaten strike over ‘crippled legal aid system in B.C.’”
4.	CTV News, September 13, 2022: “B.C. Health Minister Adrian Dix says system in crisis since 2020 must be transformed”
5.	Statistics Canada Table 36-10-0222, Gross domestic product, expenditure-based, provincial and territorial, annual (x1,000,000), 8 Nov 2022
6.	Statistics Canada Table 14-10-0018, Archived – Labour force characteristics by sex and detailed age group, annual, inactive (x1,000), 04 Jan 2019
7.	Statistics Canada Table 14-10-0393, Labour force characteristics, annual, 06 Jan 2023
8.	Statistics Canada Table 14-10-0325, Job vacancies, payroll employees, job vacancy rate, and average offered hourly wage by provinces and territories, quarterly, unadjusted for seasonality, 19 Dec 2022
9.	Global News, January 20, 2023, “Google laying off 12,000 workers as tech sector job cuts expand.”
10.	CBC News, January 21, 2023, “Tech layoffs mount – but skilled workers are still hard to find.”
11.	CBC News, January 25, 2023, “Canfor shuts down operations in Chetwynd and Houston, B.C., affecting 490 jobs.”
12.	Toronto Star, January 25, 2023, “Sawmill permanently closing as Canfor restructures B.C. operations.”
13.	Canadian Real Estate Association, January 16, 2023, National Statistics
14.	National Price Map, Canadian Real Estate Association

15.	<u>Provincial Collective Agreement, Nurses' Bargaining Association, 01 Apr 2019 – 31 Mar 2022 (excerpts – Article 28.02)</u>
16.	<u>Government Supplemental Submission and Response to the 2016 Judicial Compensation Commission, June 23, 2016</u>
17.	<u>Government Reply Submission to the 2019 Judicial Compensation Commission, June 14, 2019</u>
18.	<u>Annual Report 2021, Supreme Court of British Columbia (excerpts – pp. 38-45)</u>