

# **Factors Affecting the Transitioning to a Part Time Bench**

## **A Submission to the 2019 JCC**

**Judicial Justice G. Hayes**

**Administrative Judicial Justice for the Justice Centre**

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## Introduction

Please accept this rather rushed 11<sup>th</sup> hour submission but having reviewed the excellent submission of my colleague Judicial Justice Holmes, I felt compelled to add my own commentary. This will largely be based on my own experience as an Administrative Judicial Justice assigned to the Justice Centre. Having been appointed to the bench in 1996 and assigned to the Justice Centre since 2002, I will provide historical context relating to the creation of the Justice Centre and the eventual transition to a part time bench.

## Pre-2007 - The Transition to Shift Work

There was a time when Judicial Justices (then Sitting Justices of the Peace) worked from Monday to Friday, 9:00 am to 4:30 pm, hearing trials of Provincial violation tickets and municipal parking tickets. Court Service Branch Justices of the Peace dealt with search warrant applications and after hours police led bail, as well as Crown led bail on the weekends in Vancouver. This necessarily involved shiftwork on a 24/7 basis.

In 2001, the BC Supreme Court found in *R. v. Do*, that the CSB Justices of the Peace lacked the degree of judicial independence required for considering the liberty interests associated with the issuance of search warrants and bail. The government of the day chose not to appeal the decision which resulted in the immediate transfer of the aforementioned responsibilities to the newly named Judicial Justices. An immediate call for applications was made resulting in 11 new full time appointments within the next year

The transition was not without some discord as several Judicial Justices took exception to being assigned shiftwork which was not set out in their original terms of call to the bench. A compromise was eventually reached where the Judicial Justices who volunteered for assignment to the Justice Centre were offered a 4 on / 4 off schedule and the ability to trade shifts between themselves based on individual preferences.

Each Judicial Justice was assigned by the OCJ to rotate through all of the shifts – days, afternoons, evenings, and graveyard; the latter being worked on an on-call basis from the Judicial Justices home.

No part-time Judicial Justices were involved in Justice Centre operations at that time. Between 2001 and 2007, several more full time appointments were made to our component of the bench. This included lawyers, Justices of the Peace from Court Services Branch, and individuals with educational and legal experience to the satisfaction of Judicial Council.

### Post 2007 – The Transition to a Part Time Bench

In 2007, a decision was made to transition to a part time bench comprised only of Judicial Justice who held law degrees. The *Provincial Court Act* was amended to create part time and full time ten year term appointments for Judicial Justices.

As part time Judicial Justices they would be permitted to remain in active practice, other than criminal law. In order to maintain their status as independent contractors, they could not be “assigned” to specific shifts and we relied on their expressed availability as a group, to cover all shifts at the Justice Centre.

To facilitate the transition to a part time bench, buyout packages were offered to the full time Judicial Justices of whom 13 accepted offers. At the same time, the new part time position was advertised in The Advocate ( circulation 11,000 + ) which resulted in only 7 part time appointments, initially.

The retirement of 13 full time Judicial Justices created a shortfall of approximately 2,600 shifts to be filled, which could not be covered by 7 part time appointments. Subsequently 3 retired non-lawyer Judicial Justices were re-appointed to ten year terms as part time Judicial Justices to address the gap in coverage while further part time appointments were approved.

### Other Factors Influencing Justice Centre Operations

For the next several years there was adequate coverage for all shifts at the Justice Centre but gradually more and more non-preferred shifts began to appear on the Rota as “vacant”. This can be traced to a variety of factors.

The Saturday, Sunday, and statutory holiday shifts were considered the “non-preferred” ones due to the very heavy workload. In addition, set break times were unavailable unlike colleagues in the trial division where the courts close for a set lunch period. Subsequently, some Judicial Justices simply made themselves unavailable for those shifts, similar to others who had opted to only work Monday to Friday dayshifts from the time of their appointment.

The Supreme Court of Canada decision in ***R. v. Jordan*** created pressure on the trial portion of our bench to take steps to deal with a serious backlog in those courts. A number of part time

Judicial Justices moved from Justice Centre shifts to the Monday to Friday traffic courts.

New appointments of part time Judicial Justices have been few and far between to the point where one could call it a “negative replacement rate” when one looks at the 7 departures from our ranks in that time period ( 4 due to illness, 1 retirement, 2 to other employment opportunities )

Over time the coverage of non-preferred shifts fell upon a smaller and smaller group of volunteers who now demonstrate an unwillingness to shoulder the prospect of working so many weekends and statutory holidays.

“Capacity” is a term used to capture the average number of shifts per month / year that a part time Judicial Justice is prepared to volunteer for. Unlike fulltime Judicial Justices with a set capacity of 200 + days, part time capacity ranges from a few days per month to others who are almost at full time capacity.

The constant need to recruit Provincial Court Judges or cancel shifts outright, supports the argument that the part time bench has reached maximum capacity. There are clearly not enough Judicial Justices on our bench to create a more competitive element to shift selection to the point where the non-preferred shifts would also be filled.

Perhaps the clearest demonstration of the inability to attract qualified candidates can be shown by the need to extend the 10 year terms of appointment to 12 years. The extension allowed for the retention of 6 part time Judicial Justices who otherwise would have seen their terms of appointment expire in June of 2018. The next milestone for these Judicial Justices is June 2020.

It is also worth noting that 5 part time Judicial Justices will cease to hold office by 2023 when they reach the statutory limit of age 75. There are also 3 full time Judicial Justices who will likely transition to part time status within the next year.

Amongst the full time component of the bench there are a number of Judicial Justices with ongoing health concerns which could lead to Long Term Disability applications or outright retirements.

## Conclusion

All of us at the Justice Centre have worked cooperatively with Crown counsel, police agencies, Court Services Branch, Legal Services Society, and the Office of the Chief Judge to facilitate the implementation of “hub courts” throughout the Province of British Columbia.

This innovative program has effectively extended the standard Monday to Friday operations of the Provincial Court to weekends and statutory holidays to the benefit of the liberty interests of accused persons, as well as the taxpaying public. We hope to see an expansion of this program to cover weekday evenings as well.

In order to maintain this evolving, state of the art program, we must attract far more qualified candidates for appointment as Judicial Justices. Perhaps the salary and shift differential between justices having similar jurisdiction, such as Alberta and Ontario, might explain why the “negative replacement rate” persists in British Columbia.

Ultimately, I look forward to a day when most weekends are no longer a struggle to maintain the current level of service and avoid having the “wheels fall off”.

I will close with the comments of my colleague Holmes when the question was put to him as to why “the pool of the willing” soldiers on with weekend and statutory holiday assignments.

*Well, I think the answer is that the job attracts people who are service oriented. What we do is attractive to us because it is useful, interesting and important work. It also satisfies an urge to give oneself to public service. People who put themselves up for such work/office can be taken advantage of, which is what I think, in part, is happening with us.*

*We are stuck between the desire to deliver, fulfil the pact to provide an essential service, derive satisfaction from the knowledge of a job well done, and the gathering resentment that the organization responsible for our welfare is getting a bargain deal because it relies upon our good nature, our commitment to the cause and deep sense of service.*

Respectfully submitted

Judicial Justice Gerry Hayes,  
Administrative Judicial Justice assigned to the Justice Centre