



THE PROVINCIAL COURT  
OF BRITISH COLUMBIA

**SUBMISSION OF**

**THE JUDICIAL COUNCIL OF  
BRITISH COLUMBIA**

**to the**

**2022 JUDICIAL COMPENSATION COMMISSION**

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### I. Introduction

[1] The Judicial Council of the Provincial Court of British Columbia (“Council”) is an independent statutory body constituted under s. 21 of the *Provincial Court Act*. The membership is prescribed by the statute.

[2] The Council considers applications from lawyers seeking appointment to the Provincial Court as judges and judicial justices. This is an extremely important role of the Council as it interposes between the candidates and the Executive Branch of Government, an independent body whose clear responsibility is to assess candidates solely on the basis of merit, thereby ensuring that appointments cannot be perceived as being based on political favour or other inappropriate considerations.

[3] The Council has a vested interest in the subject of judicial compensation and the need to provide reasonable compensation to judges and judicial justices in terms of the Court’s capacity to attract the best lawyers in the province, who are committed to continuing education and judicial excellence, and to retain the judicial officers who have been previously appointed. This is critical to Council’s statutory object of improving the quality of judicial service and its function of recommending qualified judicial candidates for appointment.

### II. Provincial Court Judges

#### A. Provincial Court Judges Application and Appointment Process

[4] The appointment process is initiated by the candidate through an application available on the Court’s [website](#). Applicants are advised of the extensive scrutiny that will be undertaken with the making of an application. Applications are accepted year round, and the Chief Judge presents

to lawyers and law related groups such as the Canadian Bar Association encouraging applications. The Council also circulates and posts its [Annual Reports](#) on the Court's website in order to reach a broad cross-section of the legal profession.

[5] Upon receipt of an application, a confidential Bar report is requested from the Judicial Advisory Committee of the BC Branch of the Canadian Bar Association. In preparing the Bar report, members of the CBA committee make thorough inquiries of members of the legal community regarding the applicant's reputation and suitability. Generally, updated reports are also sought in respect of re-applicants. The Council also requests a report from the Law Society on the applicant's standing and discrete inquiries are made by the Chief Judge to judges of the Provincial Court who are familiar with the applicant or who preside in the area in which the applicant practices. This confidential information is also shared with Council.

[6] Once the inquiries and the report are received, the Council reviews all the information and determines whether to interview the applicant. If at least three members vote in favour, the applicant is approved for an interview.

[7] Interviews are conducted by the Council: quorum is five, although all nine members usually participate. Applicants are asked a series of questions designed to assess their suitability for judicial appointment, and to address any issues raised as a result of the information acquired through the CBA report and discrete inquiries of judges. Following the interview, Council conducts a vote. If two or more members vote not to approve the application, the applicant's name is not placed on the approved list. Reasons are not provided, nor are applicants notified of the outcome of their applications.

[8] Approved applicants are added to a roster where they remain for a period of up to three years from the date of their interview. If a vacancy occurs, the Attorney General selects candidates from the roster and submits their names to the Lieutenant Governor of British Columbia for appointment. Applicants not interviewed may reapply three years from the date of their previous application; applicants interviewed but not appointed may also reapply, and may do so 2.5 years from the date of their previous interview.

[9] Information about the appointment process is available [here](#). The criteria and competencies for appointment are listed [here](#). The Council sets high standards for approval of those wishing to be Provincial Court judges. These standards reflect the qualities required if applicants are to successfully meet the increasingly complex and varied nature of the Court's work, the workloads, expanding case management, and other administrative demands placed upon judges of the Court.

## **B. Applicant's Statistics**

[10] The following chart shows the history of applications, interviews and appointments over a 10-year period from 2012-2021. These figures reflect the Council's activities in the year specified, which include reviews and interviews of applicants from the prior year, and do not necessarily reflect the results of applications made in a particular year.

Year	Applications Received			Applications Reviewed			Applicants Approved for Interview			Applicants Interviewed			Applicants Recommended			Applicants Appointed		
	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F
2021	24	14	10	15	11	4	10	7	3	22	12	10	15	8	7	11	4	7
2020	30	13	17	38	17	21	19	7	12	9	2	7	5	0	5	6	2	4
2019	37	18	19	26	15	11	16	9	7	21	10	11	17	9	8	6	5	1
2018	27	14	13	46	25	21	29	12	17	34	19	15	18	9	9	15	7	8
2017	63	41	22	57	31	26	36	20	16	27	14	13	14	7	7	14	4	10
2016	43	23	20	30	19	11	24	14	10	24	15	9	11	5	6	9	6	3
2015	27	13	14	35	13	22	23	9	14	27	9	18	17	7	10	13	6	7
2014	50	24	26	40	24	16	31	18	13	33	23	10	19	14	5	6	2	4
2013	46	33	13	39	28	11	29	18	11	24	11	13	11	4	7	10	5	5
2012	35	19	16	39	20	19	22	9	13	21	9	12	12	7	5	11	8	3
<b>Average</b>	<b>38</b>	<b>21</b>	<b>17</b>	<b>37</b>	<b>20</b>	<b>16</b>	<b>24</b>	<b>12</b>	<b>12</b>	<b>24</b>	<b>12</b>	<b>12</b>	<b>14</b>	<b>7</b>	<b>7</b>	<b>10</b>	<b>5</b>	<b>5</b>

*\*The number of applicants in 2017 was significantly higher due to the influx of paper applications submitted before the launch of a new online application system called the Judicial Application and Reporting System, which replaced all paper documents with an online system.*

[11] The above chart shows that for 2021 aside from the category of “applicants appointed”, all other categories (applications received, applications reviewed, applicants approved for interview and applicants interviewed) fall below the 10-year averages. Over the last decade:

- The average number of applications received per year is 38, well above the 2021 total of only 24 applications received.
- The average number of applications reviewed per year is 37, well above the 2021 total of 15.
- The average number of applicants approved for interview per year (an indicator of suitability) is 24, well above the 10 approved in 2021.

This should be compared to the total number of practising BC lawyers, which has steadily increased from 11,668 in 2016 to 13,487 in 2021.<sup>1</sup>

[12] The data for 2022 shows a continuing pattern of a lower number of applications received and applicants recommended.

Year	Applications Received			Applications Reviewed			Applicants Approved for Interview			Applicants Interviewed			Applicants Recommended			Applicants Appointed		
	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F
2022	23	16	7	24	12	12	13	6	7	12	6	6	9	5	4	12	5	7

<sup>1</sup> The number of practicing BC lawyers was taken from the 2014 and 2021 Law Society of British Columbia’s [Annual Reports](#).

[13] Judicial appointments will be a challenge if the number of qualified applicants remains low.

[14] The Court has over 80 court locations and it is already a challenge to fill vacancies in less populous areas if there are no resident candidates or candidates willing to move to a location. The Council assesses all applicants equally in relation to the appointment criteria, and the decision to interview or approve an applicant is not affected by a candidate's willingness to relocate to a hard-to-fill area. However, the application process may be expedited for a candidate in a hard-to-fill area with an upcoming vacancy or urgent need. The Court does have significant difficulties attracting judicial candidates resident in the Interior and the Northern regions and attracting new judges who are willing to relocate to and remain in the Northern Region long term.

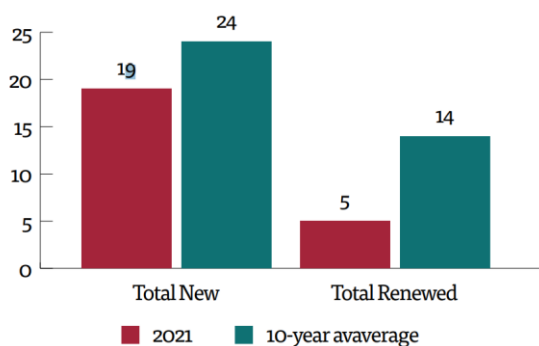
[15] The average age of applicants to the Court in the last 10 years (2012 to 2021) was 52, with an average of 22 years in practice. The average age of male applicants over the last 10 years is 54, and for female applicants is 51. See "Applicants by Age and Gender" chart and "Applicants by Gender and Area of Practice" chart in the [Annual Report](#) on pages 30 and 32.

[16] The Council encourages a diverse range of applicants recognizing the need for the judiciary to reflect the diverse makeup of British Columbia. Since 2013, the Council's judicial application forms include, on a voluntary basis, the applicant's ethnic or cultural information. The Council publicly reports the gender and diversity of the applicants in its [Annual Reports](#) and the Chief Judge and other judges speak at information sessions for the BC bar on building diversity on the bench. In 2021, applicants provided information that two applicants were of Indigenous heritage, four indicated an ethnic or visible minority background, and four identified themselves as being part of a diverse group. Visible minority and diverse groups identified by applicants included: First Nations, persons of colour, and LGBTQ+. Council notes these answers in its overall assessment of applicants but does not assign a specific weight to them. See "Diversity Responses" chart in the [Annual Report](#) on page 19.

### ***Comparison of New and Renewed Applications***

[17] Applicants who are not appointed may reapply after three years (or 2.5 years, in the case of those who were interviewed). The breakdown of applications, based upon the number of new and renewed applicants, is shown in the following chart.

### New and Renewed Applications (2021 and 10-Year Average)



[18] The number of renewed applications from previously unsuccessful applicants in 2021 (five) is less than half the number of renewed applications in 2020 (12), and almost a third lower than the 10-year average of 14. In 2022 there were also only 6 renewed applications.

### C. The Need to Provide Reasonable Compensation to Judges

[19] To move into the role of a Provincial Court judge requires lawyers with a wide breadth of skills (including effective case management and mediation skills) and the ability to render high quality justice in all divisions of the Court (family, civil, criminal, and youth). British Columbia is one jurisdiction where Provincial Court Judges have broad jurisdiction working in all these divisions. Not all other provincial courts preside in all these divisions, for example Ontario does not preside in small claims and some jurisdictions have unified family courts. This is a demanding job that must be carried out in a respectful and impartial manner, dealing with emotionally-draining issues, and still getting through an often overwhelming Court list for the day. The average judicial complement since 2017 has varied from 125.56 to 139.10 judges who were dealing with approximately 116,024 to 79,458 new cases a year (See Court’s [Annual Report](#) pages 24 and 31).

[20] Judges are dealing with longer cases (such as the changes arising out of Bill C51 related to sexual assault cases requiring additional applications), and a greater variety of cases with limited research assistance. Judges and judicial applicants are expected to be proficient with technology in order to, for example, hear and manage virtual proceedings, as well as access documents electronically and use electronic processes. While virtual hearings reduce the need to travel, many hearings must still be in-person and many Provincial Court judges are required to take a considerable amount of personal time away from home, travelling. For example, judges assigned to chambers in the Northern Region of British Columbia may spend up to 30% to 40% of their sitting time on travel status (away from their home location).

[21] Changes in legislation and developments in case law require ongoing education. Judges produce and attend their own semi-annual education conferences, and also often attend and/or present at outside conferences. (See [Judicial Education](#) webpage.) The Council also looks for applicants who are willing, in addition to their presiding duties, to participate in committees and present on topics to enhance the public’s knowledge of the Court and the legal system.

[22] The salaries of judges should take into account the increasing complexity of the Court's cases, the high volume of work and the degree of competence with technology needed for virtual hearings and electronic processes. Without increasing compensation the number of applicants for the position of judge who have all the required competencies to be a Provincial Court Judge will likely remain low. In turn, if the Court does not have enough judges this will impact the ability of the people of British Columbia to access justice in a timely manner before the Provincial Court.

### **III. Judicial Justices**

[23] Judicial justices are currently appointed under s. 30.2 of the *Provincial Court Act*. There are two types of judicial justices - full time and part time.

[24] Many of the part time judicial justices have 10-year terms. A judicial justice appointed for a 10 year term may be reappointed for one further term (s. 30.2(3.2) *Provincial Court Act*). Some judicial justices, who were appointed before legislative amendments in 2008, have no fixed term and can sit part time until age 75.

[25] Judicial justices are the only judicial officers under the *Provincial Court Act*, other than judges, who have sufficient independence to hear matters which require the constitutional safeguards of security of tenure and financial security in compliance with the decision of *R. v. Do*, [2001 BCSC 1088](#). These include matters that engage liberty and privacy interests, such as judicial interim release (bail), search warrants, and production orders, and adjudication of disputes between individuals and the state which engage legal principles, such as provincial and federal statute offences initiated by way of a violation ticket and other bylaw offences, as well as payment hearings. In accordance with the *Provincial Court Act* judicial justices do not have jurisdiction over applications under the *Canadian Charter of Rights and Freedoms*, and offences that may result in imprisonment.<sup>2</sup> Consistent with this, judicial justices are assigned duties by the Chief Judge as set out in [NP 16 Assignment of Duties Pursuant to s. 11 of the Provincial Court Act](#).

[26] Judicial justices are assigned to sit various shifts at the 24-hour Justice Centre, hearing applications for after-hours bail and search warrants by fax, telephone and video from across the province. Judicial justices also preside in "Traffic Court,"<sup>3</sup> where they sit regular court hours. There is some rotation of assignments of existing judicial justices between duties at the Justice Centre and Traffic Court.

#### **A. Judicial Justice Application and Appointment Process**

[27] Judicial justices are appointed by the Lieutenant Governor in Council on the

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<sup>2</sup> See *Provincial Court Act*, R.S.B.C. 1996, c. 379, s. 2.1.

<sup>3</sup> While referred to by the short name of "Traffic Court" these courts hear matters related to: provincial violation tickets for offences under BC laws, including traffic offences under the Motor Vehicle Act and regulations, and offences under the Liquor Control and Licensing Act; federal contravention tickets for offences under Canadian laws, such as fishing without a licence or possessing undersize crabs under the Fisheries Act; and, municipal ticket Informations for offences under municipal bylaws.

recommendation of the Council. The judicial justice appointment process is similar to that for judges. The criteria for appointment is the same for both components of the judicial justice office (i.e., the Justice Centre and Traffic Division) and judicial justices are appointed to perform both categories of duty. When received, applications are reviewed in a process similar to that for judges. The application and investigation results are reviewed by the Council to decide whether the applicant will be interviewed. The Council then invites successful candidates to attend an interview. Names of applicants recommended for appointment after an interview remain on the list for three years. Applicants are eligible to re-apply three years after the date their application is submitted or 2.5 years from the date of their interview.

[28] Prior to 2006, a law degree or post-secondary education was not a prerequisite for appointment as a judicial justice.

[29] Since 2006 the minimum qualifications required for recommendation for appointment required a law degree. The criteria and competencies for appointment as a judicial justice are listed [here](#).

[30] Since 2001, the Council has accepted applications at any time, in addition to those submitted in response to a specific recruitment. In 2021 the Council issued a Notice to the Profession Calling for Judicial Justice Applications, which was disseminated to: all Provincial Court Judges and Judicial Justices; Trial Lawyers Association of BC; the Advocate; Canadian Bar Association, BC Branch; Law Society of BC; and Courthouse Libraries BC. A link to the Notice is permanently on the Council's webpage. On November 17, 2022 another [Notice](#) calling for applicants was also posted.

## **B. Applicant's Statistics**

[31] The judicial justices sitting complement is currently comprised of 5 full time and 28 part time judicial justices. This does not include judicial justices on long-term disability.

[32] An Associate Chief Judge oversees the division and two Administrative Judicial Justices assist in the judicial administration of day-to-day operational matters for the Court's Traffic Division and the Court's Justice Centre.

[33] **There are 11 judicial justices that will be reaching age 75 between now and 2027 (33% of the judicial justice division)**, a total of 22 judicial justices will reach age 75 by 2032.

[34] In total since 2015 only ten judicial justices have been appointed. While there is a very real, current need to attract qualified candidates, the Court's attempts to do so have had limited success and it is anticipated that will increasingly be a challenge as judicial justices retire or part time judicial justices approach the end of their term.

[35] It is anticipated that as [Bill S-4](#) "*An Act to amend the Criminal Code and the Identification of Criminals Act and to make related amendments to other Acts (COVID-19 response and other measures)*" is in effect this will substantially increase the workload and require more judicial



justices. This Bill replaces the existing telewarrant provisions, which are quite narrow, with a process that permits a wide variety of search warrants, authorizations and orders under the *Criminal Code* to be applied for and issued by a means of telecommunication.

### **C. The Need to Provide Reasonable Compensation to Judicial Justices**

[36] Judicial justices reflect the face of the Court for many citizens in the proceedings to which they are assigned. For many people who come to the Provincial Court to address matters under the jurisdiction of judicial justices, this will be their one opportunity to participate in a court proceeding.

[37] The role fulfilled by the judicial justice is of fundamental importance to the justice system and in maintaining confidence in our public institutions. The work is demanding and challenging and requires, at its foundation, a legally grounded, professional approach. In hearing matters, judicial justices must apply principles of natural justice, procedural fairness, legislation, rules of criminal evidence, and common law. They must also apply all the same principles as those applied by judges. They must present their reasons for judgment or decisions in plain language. They must articulate their reasons for decision on a judicial interim release or for rejecting an application for a warrant or production order, in a timely manner.

[38] The requirement that judicial justices deal with liberty and privacy issues at any time must be properly recognized through appropriate compensation. These individuals work eight-hour "shifts" including on statutory holidays, overnight and on weekends. While they readily accept these assignments, their schedules may be disruptive to their personal lives and they require a willingness and commitment to serve the public in this fashion. There is perhaps no greater pre-trial proceeding as important as the determination of a person's liberty and this work is conducted with great care and understanding by the judicial justices who are committed to sitting at the Justice Centre.

[39] Judicial justices' jurisdiction also includes hearing matters in court such as traffic offences, offences under other provincial and federal statutes, municipal bylaw charges, and small claims payment hearings. Each of these processes is extremely important to the litigants who must be accorded respect and be treated with dignity. The image of the "judge" they see will forever shape their perceptions of the British Columbia justice system.

[40] Judicial justices preside in hearings in which litigants are frequently unrepresented and where the Court does not always have the service of crown prosecutors or court clerks. Under these circumstances, judicial justices must take the time to explain procedures and the law, while ensuring that they remain impartial and meet a demanding court schedule. This adds a layer of complexity to the work that judicial justices undertake.

[41] Judicial justices must personify the judicial traits of dignity, patience and understanding to the public, while under constant scrutiny. All of this must be accomplished professionally, while managing large caseloads and in a number of cases without support staff in court and without assistance from counsel with legal or procedural issues.

[42] It is submitted that the issue for consideration by this Commission, that of reasonable remuneration for judicial justices, must be considered in the context of the duties performed by judicial justices.

[43] As well, it is notable, that prior to COVID-19, the Court for years sent out requests for Judges to assist with coverage at the Justice Centre because it is under-resourced. For each shift worked, a judge is compensated two additional vacation days, so this is not an efficient and sustainable coverage model. Yet without the ability to attract more judicial justice applicants, it is a model that will remain in place. If we are unable to find judicial justices to do this work, we will need to appoint more judges to manage the increasing workflow and expense.

#### **IV. Summary**

[44] The Council respectfully submits that the total compensation package for both Provincial Court judges and judicial justices be set at a level which supports the Council's efforts to recruit exceptional candidates and to maintain a strong complement of judges and judicial justices by retaining those appointed.

All of which is respectfully submitted.



Melissa Gillespie  
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Presiding Member, Judicial Council of British Columbia  
January 25, 2023