

# Judicial Justice Compensation Commission 2016

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**Introduction:**

The JJ Association's submission has highlighted the scope of JJ duties, the widening gap in the salary of the JJ component of the Provincial Court and the recent salaries of other persons in other provinces engaged in similar duties.

**The Traffic Court:**

In respect of scope of duties, we wish to highlight to the Commission that despite the JJ's jurisdiction being limited when compared to that of a Provincial Court Judge (PCJ), a full time Traffic Court Judicial Justice presides daily, 5 days weekly, and is given only one Judgment Day a month, thus presiding for generally 20 of a 21 work day month or 21 of a 22 work day month. On all of those weekly 5 days, a traffic Court list has some 40 to 50 odd cases scheduled on pre-set CSB guidelines, which make little or no provision, whatsoever, for the number of witnesses, the length of evidence, the number of exhibits, often if interpretation is required due to late notice by the lay disputant, if expert evidence or video evidence is to be presented, that is, irrespective of what the individual case may entail or whether cases are pre-emptory or set aside before, which makes time of the essence. It is unlike any other trial Court in the province, in that, there is no pretrial co-ordination. The JJ has to canvass lists on the hearing date itself to ascertain what might be involved on any one session of the day, which process can eat into the Court time particularly when disputants are mainly unrepresented and prosecutors are policemen. Despite the limited jurisdiction, JJS are called upon daily to generate a volume of work and still maintain due process in all they do.

The JJ is invariably left to reason with the disgruntled or irate disputant who has taken a day off or travelled some distance or brought witnesses and is not heard that day, in the absence of any of the other trappings of a Court in the province, which has Crown counsel, a Court Clerk and Sheriff and often, counsel, all of whom can shield the presider from rancour of the public. It is unfortunate, but, the omission does colour the tone of communications by the public, who view the Justice as inferior, personally responsible for the volume on Court list and their predicament of having to return another day.

This perception of the JJ as inferior and an extension of Court Services registry staff has been over time become increasingly entrenched. Despite our designation as Judicial Justices, we are referred to as Justice of the Peace by the public, interpreters, police, counsel and even by judges of all courts, as well as Court staff, often in Court documents too.

This has been highlighted in the hope that the aptly worded compensation recommendations of this Commission will send a strong message acknowledging the important judicial role the JJs play in the adjudication process of the Court.

In the context of the modern disputant, enhanced administrative penalties have become grounds to dispute the ticket often times in the hope of Crown being unable to discharge its burden at trial. The modern disputant is also more knowledgeable. It is not uncommon for 2-4 trials to be conducted in the morning or afternoon session alone, at times, with some disputants being sent home for a lack of Court time. In short, the JJ hears a variety of cases in a very short time and is required to be not only expeditious, but, yet maintain due process.

The list although predominantly MVA Act cases can also have other cases of a wide variety such as commercial vehicle regulations, Canada Shipping Act legislation, Tobacco Act, Food Regulations etc. All Contravention Act violations can be placed on the JJ list, besides, a wide variety of municipal bylaw matters.

Contextually, if one deliberated objectively, the limited jurisdiction of the Judicial Justice is perhaps to a large extent necessitated by the volume of work this component is entrusted with, such that, despite their much longer hours of assignment weekly, their work is never ending. The back log and Charter applications at some Court locations are evidence of this, besides the realities of numerous violation tickets being written off because of large backlogs resulting in the filing of Charter delay arguments.

The limited jurisdiction is in no way any indication of their daily responsibilities and the volume of work performed by this component, with very limited time to write reasons, review evidence on continuations and for study. With 2 to 4 trials in one session one is invariably called upon to give decisions in a very limited time too and move on to the next case..

When materials for Conferences are released, often times, it is a struggle to read them prior to conferences, with just one judgment day a month, that may not even fall before the conference and with the daily sitting schedules.

Courts at all levels in the province bear the heavy onus of dealing with the lay defendant or disputant, but, the traffic justice does not even have the luxury of duty or legal aid counsel on occasion for those who cannot afford counsel and soldiers on with the largest number of unrepresented disputants.

The prosecutors appearing in their courts are untrained too and regularly general duty members prosecute serious motor vehicle accident charges and this further protracts proceedings, for example, police attempts to lead evidence of conversations by way of a voir dire, even where the exchange is neither prejudicial nor helpful to the proceedings. A new police officer appears to prosecute his traffic tickets in court just a year or so after assuming police duties, often times, with no prior experience of Court. The JJ has to become responsible for all and necessary research on arguments before him.

We have heard from officers transferred from other provinces that traffic Court violations in other jurisdictions such as Alberta and Ontario are prosecuted by Crown and/ or senior police prosecutors.

The purpose in highlighting this is to underline that the perceived simplicity of these matters are not borne out by the actual day to day workings of the system, particularly so in today's context. A JJ may have a light day or week comparatively, due to officers not showing up, but viewed in the context of their daily court assignment and the demands of the day, it is not uncommon for one to sit from 9.30a.m. and through to nearer to 12 noon or even past (and without a break) in an attempt to deal with cases scheduled for the session and then have to start a fresh list at 1.30 pm.

Arguments that one is entitled to have a break hold little water when faced with that out of province disputant or the one who travelled from the interior or someone who was adjourned before for a lack of Court time or a conviction set aside before for failure to attend or an on-going continuation from another day or the officer and disputant who has brought witnesses with him. One could find any number of similar situations on the same list.

Although the compensation package is not the sole motivator, it is of concern to even the most motivated JJ, who though determined to be of service to the public and with pride in that service, is unfortunately also aware of the challenges of living in warmer British Columbia, with its higher property prices and property taxes, where the price of gasoline has gone fourfold in the last 20 years and one has to drive some 36 km daily to and from work. Time and again compensation has been kept unreasonably low, but more continues to be expected. The latest in the expectation appears to be that the JJ should be completing little fine print exhibit tags for each exhibit submitted in the course of the hearings as set out in Court Services guidelines.

Similarly, a full time Justice at the Call Centre is required to work 5 days weekly, unless on some kind of a rotation, for instance JJ Chellappan works 5 days, Tuesday to Saturday from 8.30 am to 4.30 pm; fixed days of the week. He works one day of every weekend with Saturdays being one of every 5 days worked, that is 5 on and 2 off. All other full timers doing evening shifts, or even just day shifts, on a rotation receive 3 days off for every 5 days worked, that is 5 on and 3 off. Full timers at the Justice Centre, whether on rotation or not, also preside in Traffic Court, if on day assignments on a Monday to Friday. There is a further call to implement shift differentials for weekend, afternoon and evening work.

### **Salaries in other provinces**

The JJ Association in their submissions reference the recent remunerations of judicial officers in 4 other provinces engaging in similar duties, 2 being from 2013 compensation commission, one from the 2015 and the final one from 2016. The Alberta one set at \$ 139, 900 (some 40,400 above B.C) as of 2013, is to have a compensation hearing this year too. The 2016 compensation for Saskatchewan officers appears set at \$133, 426 (some 28, 000 odd higher than BC). In respect of these 4 provinces, the average remuneration is \$131, 467.50 while the BC JJ is at \$105, 099.18 in 2016, that is a difference of \$26, 368.32 with a shortfall of almost \$2,200 monthly.

## **Pensions**

This has implications on the JJ's pension entitlement and the impact is exacerbated over the years and impacts the individual JJ's retirement decisions having regard to the high cost of living in the lower mainland.

Ex-Court services employees in this judicial component can rely on their court services employment history in the determination of their pension to obtain full pension upon completion of 35 years of service. Those from other sectors due to their late start in the component are hard pressed to continue full time, have to delay retirement and most often will not be able to attain full pension having regard to the prior life experience expectations for this appointment.

## **The previous 2 compensation commissions**

Following the failure of the Government to implement 2010 and 2013 Commission Recommendations, a Judicial Review was filed by the JJ Association.

### **a) The 2010 Compensation Commission**

Although not completely privy to all Association matters, it is our understanding that the Government has proposed in 2016 a 4.9 % increase in respect of the 2010 recommendations . If implemented, this would bring JJ's takings closer to about \$110,100 or so, as at 2016. This proposal was made after the Association had filed its submissions suggesting at a minimum only, \$125 000. Having regard to the small numbers of our component, and the even smaller numbers who are members of the Association, the legal costs incurred in any action is likely to be a huge hurdle and a factor in any negotiated settlement. We believe most are aware of what has been incurred by the PCJs in their pursuit of having recommendations implemented. .

The Commission's Recommendation for 2010 was in fact 8% for the third year, but the Government totally disregarded the recommendations implementing no increases, despite the fact that the Commission had already made no recommendations for the first 2 years and recommended one increase only, and at that, only in the third year.. The government of the day had raised their economic concerns before the Commission.

It bears emphasis that the government has of now, has reserved the final decision to their current proposal of 4.9 % (about \$ 4900), to possibly the spring of next year. That proposal is also short of the recommendations made by the Commission for the period, by 3.1 %( a little under \$3,000).

### **b) The 2013 Compensation Commission**

The Recommendations made in 2013 by the Commission, to the best of our knowledge is 5% in the first year with an additional 2% in each of the subsequent years. (Please look at Para 101 of

the 2013 Compensation Report) The JJs received only 5 % for all of those 3 years that is 1.5% each for the first 2 years and 2% for the third year. There was a shortfall of 4% for that period about \$4,000 (based on salaries implemented by the government at the time, 0% for preceding 3 years).

We are not aware of any proposals being received for the period 2014 to 2016 from the government in respect of shortfalls.

One is led to believe that the actual offer of 4.9 % and still not implemented, is in respect of the total shortfall of 12% of the previous Commissions recommendations, that is 8% by the 2010 and a shortfall of 4% by the 2013, Commissions.

This far, just having regard to the last 2 Commission Recommendations, we have not to-date seen about \$12,000 of recommendations, based on a remuneration of 99,000 as at 2013. It has taken a judicial review application to bring a conditional negotiated offer of just 4.9%.

### **Other divisions of our court and Crown counsel**

The JJ Association has highlighted on the salaries of others such as the Crown Counsel which we believe are pegged to Provincial Court Judges. We would in this regard respectfully point out that the current qualifications of the JJ component is not dissimilar to that of Provincial Court Judges, being a law degree with 5 years legal experience, although to our understanding, the Judicial Council looks for 10 years practice in appointing PCJs. If Crown Counsel Salaries can be pegged to PCJs remuneration, having regard to the changed qualifications for JJs, there are good and sound reasons for regard to be had to PCJ remuneration in determining the JJ's remuneration. In the early years, 1978 and 1988 a JJP received 65% and 62% respectively of a PCJ's salary. With the introduction of legal qualifications in 2007, remuneration received was at 38%, and as of 2016, 43% based on existing PCJ remuneration, as of now; the final outcome of the PCJ recommendations are not known. It could potentially reduce final percentages as JJs have received no offers from the government for the period 2014 to 2016.

Despite legal qualifications being introduced as a requirement only in 2007, there have been lawyers in the JJ component in previous years, possibly from as far back as 1996. They were in the minority until about 2007.

Within the current component, 3 full time JJs appointed prior to 2007 (Hughes, Chellappan, and Joseph-Tiwary) have law degrees and were called to the BC Bar when appointed, and 2 of those have LLM from the University of London.

It is noteworthy that the majority of all JJs today are lawyers, and called to the BC Bar.

It might be appropriate to point out that the 2016 PCJ submissions are for \$285,000, \$290,700 and 296,514 for 2017 to 2019 with the current 2016 remuneration from April 2016 indicated as \$244,112 (final outcome unknown).

## **Recommendations sought**

If all Commission recommendations had been adhered to, a JJ would be receiving about \$116 000 as at April 2016.

In making recommendations in 2013, the Compensation Commission stated that the recommendations were intended to redress the closing of financial gaps (para 89), mindful it resulted in only a modest closing of the gap and recognising the gap is too wide and that the JJ remuneration is unreasonably low (para 100).

Attempts by previous Commissions to meet the disparity and unreasonably low remunerations gradually have been ignored completely (2010) or largely ignored (2013). We humbly urge the commission to not only acknowledge this, but further take steps to ensure that JJs receive a remuneration, that not only takes cognizance of that disregard, but, further closes the gap in future remunerations as well. The disregard has exacerbated the unreasonably low salary.

We make this call as the time is ripe with the change in economic circumstances for this disparity to be redressed now and for it not to be allowed to continue.

The JJ Association proposal of 125 000 for the first year as a minimum was made at a time when the component was receiving approximately \$ 105 099. We urge this be viewed as a proposal for a minimum of \$20 000 on top of earlier Commission recommendations for the first year to enable the component to achieve a competitive remuneration, in keeping with the current demands of, and qualifications for the job as well as the economic realities of the day.. The Association's submissions had to be made in the climate of uncertainties currently existing. Percentages in the current climate would have caused more uncertainties as to base numbers.

It would be unrealistic not to have regard to the prevailing average salary of judicial officers in other provinces performing similar work, the anticipated revisions by those Commissions for 2017- 2019, the previous Commissions' recommendations for the B.C. JJ component and their attempts to sensitively redress the existing imbalances and further, the tweaking required to take into account future increases to PCJs and Crown Counsel so that the component is not allowed to fall by the wayside again.

We humbly suggest \$ 131,000 as remuneration for the first year,(that is a total of some \$14,000 odd additional only, above the total recommendations that were made by 2 earlier Commissions) with\$ 140,000 achieved by the third year; such indicated sums to include anything due for the period 2017 to 2019, by virtue of any future negotiated settlements that might occur for pre-2017, that appear currently to be under negotiation. Thus any measures taken by the government and implemented for the supervening years would be given respectful regard in arriving at the final figures that are payable for 2017 to 2019 and will in no

way inflate the numbers. It would also bring the JJ remuneration to about 54 to 57 % of the PCJ current salary of \$244 000, thus ensuring that the JJ remuneration does not fall too unreasonably low as further increases are recommended by the Honourable Commission for the next 3 years. An increase to \$125 000, having regard to the present salaries of PCJs at \$244 000, with final outcomes unknown, and having regard to future recommendations for 2017 to 2019, is likely to very quickly erode any modest closing of the gaps, bearing in mind that even a 1% increase for the PCJs is likely to be in excess of \$2,400.00, and that too, on the existing numbers, final outcomes being unknown.

It is also our hope that this Commission in an aptly worded recommendation will strongly underline that the BC JJ component compensation has continued to lag despite revised JJ qualifications and the complexities of current assignments and will become the impetus for change. Legal qualifications are a requirement in Alberta too and as at 2016, they receive \$139 900 and their compensation is for review this year by a Commission.

Financial security being one of the three core characteristics of judicial independence, it is fervently hoped that this Honourable Commission will set the compensation level of Judicial Justices comparable to other jurisdictions in Canada and commensurate with the current qualifications that are set out the in the B.C. Provincial Court Act.

#### **Conclusion:**

We would like to thank the JJ Association for their ongoing efforts for the component as a whole. This submission was made possible in part by the statistics in their submissions, particularly having regard to time constraints. The writers hope their suggestions made for the benefit of the entire component will in no way be viewed as being critical of submissions already made to the Honourable Commission.

We also wish to thank the Commission for the graciousness accorded in inviting written submission from all interested parties, particularly having regard to the present uncertainties of the compensation issues.

Respectfully Submitted

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