



**Reply Submission of the
Judicial Justices Association of British Columbia
Compensation Commission 2022**

February 3, 2023

INTRODUCTION

1. The Judicial Justices Association of British Columbia (the “Association”) makes the following submissions in reply to the submissions of the Government of British Columbia dated January 12, 2023.
2. The Association’s initial submissions to this Commission set out its concerns regarding the Government’s commitment to the Commission process. The Government has dismissed recommendations by the past four Commissions: 2010, 2013, 2016 and 2019. Despite the past ineffectiveness of the compensation commission process, the Association chose to participate in this Commission with renewed hope and expectations.
3. Regrettably, the Association’s concerns regarding the effectiveness of this process have intensified on review of the Government’s submission.
4. Despite the Government’s decision not to implement the recommendations of the 2019 Commission (owing, in large part, to the uncertainty of the COVID-19 pandemic), the Association was encouraged by the Government’s acknowledgements before the 2019 Commission that:
 - (a) BC’s judicial justices are amongst the lowest paid across similar judicial positions in other provinces, despite having at least as broad jurisdiction as their counterparts; and
 - (b) BC’s judicial justices were experiencing a crisis of recruitment and retention and higher salaries were needed to ameliorate this issue.
5. The Association understands the Government is now resiling from both positions despite no identified change in the factual circumstances of judicial justices.
6. In addition, the Association objects to the Government’s position on the remaining statutory factors, in particular:

- (a) that the effects of Bill S-4 (which are already being felt acutely by the judicial justices) are indeterminate and cannot represent a change in jurisdiction justifying higher compensation¹; and
 - (b) that the economy's current stability and prosperity does not justify increases because it could potentially falter in the future, despite not suffering the lows predicted during the COVID-19 pandemic which the Government decided justified lower increases following the 2019 Commission.
7. Ultimately, the Association remains of the view that unless the Government and all parties participate in this process good faith, there cannot be an effective commission process, as required by the Constitution and identified by the courts.

RESPONSE TO GOVERNMENT SUBMISSIONS

8. The Association submits that the Government's submissions as they relate to judicial justices are not properly based on the factors set out in the *Judicial Compensation Act* and would in fact maintain judicial justice compensation at an unreasonably low level.

The Need to Maintain a Strong Court

9. The Association's position is that this factor remains a strong indicator that increased salaries are needed to address acute recruitment concerns, particularly as more than one-third of the current judicial justice complement faces mandatory retirement during this Commission cycle.
- a. Objective of Diversity
10. The Government acknowledges that this statutory factor does not mean "simply ensuring that there are adequate qualified applicants and sufficient appointments" from those who are recommended, but also requires attempting to ensure that the

¹ Government's submission, para. 212.

diversity of the bench reflects the population of BC by considering factors such as age, gender, ethnicity, residential region and type of practice.²

11. However, the Government's submissions with respect to judicial justices are focused almost entirely on historical trends of applicants and do not consider the implications of small applicant pools or the relationship of compensation to the goal of diversity.
12. The Association submits that the extremely low number of applicants limits the court's ability to attract individuals from all walks of life and ensure diversity which reflects BC as a whole.
13. The current level of compensation is directly tied to this issue and is a barrier for lawyers in private practice. This contributes to a reduction in the diversity of applicants and ultimately the judicial justice complement. We highlight the concern noted by the Canadian Bar Association (BC) ("CBABC") in its submission, which identifies the compensation gap between private practice and the judiciary as a factor deterring highly qualified lawyers in private practice from seeking judicial positions.³

b. Recruitment Crisis Remains Real and Pressing

14. The Government suggests that the changes following the 2019 Commission, including salary increases and "legislative amendments" appear to be addressing previous recruitment and retention concerns.⁴ The Association strongly disagrees with this sentiment.
15. Such statements mischaracterize the role of legislative amendments in recruitment. The amendments which permitted judicial justice reappointments highlight the significant problem of attracting sufficient numbers of applicants. The need for legislative amendments to permit reappointment in fact speaks to a

² Government submission, para. 80.

³ CBABC submission, pp. 4-5.

⁴ Government submission, para. 113.

current and ongoing issue with recruitment, although it may assist with “retention” of justices.

16. According to the table at paragraph 111 of the Government’s submissions, only six (6) judicial justices have been appointed in the past two years, and nine (9) in the past five (5) years. According to Judicial Council, only 10 judicial justices have been appointed since 2015.⁵ The Association repeats that over the upcoming four-year Commission cycle, eleven (11) judicial justices will reach the mandatory retirement age of 75. Judicial Council notes that by 2032, twenty-two (22) judicial justices will have reached age 75. Thus, the current (and historical) rate of recruitment is clearly inadequate to just maintain the existing compliment, let alone increase it and achieve important goals such as diversity.
17. In addition, the Association submits that the lack of appropriate shift differentials for judicial justices working weekend and holiday shifts has resulted in an inability to both recruit judicial justices and to fill the shifts from the current complement. As set out in our Submission and in Judicial Council’s submission at paragraph 43, this frequently results in the provincial court judges filling judicial justices’ shifts. As the Chief Judge noted in her submission,⁶ the practice of having judges fill shifts costs the Government significantly more than if they appropriately paid judicial justices. When judges fill a judicial justice shift, they are compensated with two vacation days.
18. Judicial Council notes “this is not an efficient and sustainable coverage model”, yet without more judicial justices available to do this work, Judicial Council “will need to appoint more judges to manage the increasing workflow and expense.”⁷
19. As of the date of this submission, the Association is aware of the following coverage gaps in February and March 2023:
 - (a) Saturday, February 18: 2 judges filling vacant judicial justice assignments;

⁵ Submissions of Judicial Council, January 25, 2023, para. 34.

⁶ Chief Judge submission, para. 143.

⁷ Submissions of Judicial Council, January 25, 2023, para. 43.

- (b) Sunday, February 19: 3 judges filling vacant judicial justice assignments;
 - (c) Monday, February 20 (Family Day): 2 judges are filling vacant judicial justice assignments; and
 - (d) Sunday, March 19: 1 judge is filling vacant judicial justice assignments.
20. For April 2023, the following shifts remain vacant and it is likely that a call for judges to take shifts will be issued if no judicial justices decide to take on the additional shifts:
- (a) Friday, April 7 (Good Friday): 1 vacant judicial justice assignment;
 - (b) Saturday, April 8: 4 vacant judicial justice assignments;
 - (c) Sunday, April 9 (Easter Sunday): 2 vacant judicial justice assignments;
 - (d) Monday, April 10 (Easter Monday): 1 vacant judicial justice assignment; and
 - (e) Sunday, April 23: 2 vacant judicial justice assignments.
21. In addition, with the implementation of Bill S-4, judicial justices have been given extensive technical training to deal with applications electronically instead of by fax, and there is a concern that judges would not be in a position to simply step into the judicial justice role without similar training and experience.
22. The Association submits that the Government's position of recommending modest compensation increases demonstrates a willful blindness to the current and coming judicial justice crisis, which is deeply perplexing in light of the limited appointments made since the 2019 Commission and the Government's clear acceptance at that Commission of the dire need for recruitment.
23. Before the 2019 Commission, the Government described the state of recruitment as follows:

Mr. Sieg: ... I'll move from that difficult topic to the one that I have been trying to put off for as long as possible, and that's how to deal with **this terrible problem with the shortage in judicial justices. There's no question that there is a recruitment problem.**

... It's hard to say what the causation is, but, certainly, applying the first factor, attraction of highly qualified candidates is an issue. Government does not seek to minimize that at all.⁸ [Emphasis added.]

24. The Government at paragraph 109 of its submissions explains that in its response to the 2019 Commission Report, it “accepted there was a need for modest increases to respond to recruitment and retention issues for Judicial Justices”. This does not align with the comments made at the 2019 Commission.
25. Government now suggests that these “modest increases” have somehow addressed this issue. While the Government relies on historical data provided, in part by the Judicial Council, the Association does not agree that this data demonstrates there is no active recruitment crisis.⁹ The submissions of the Judicial Council itself identify that current recruitment efforts have been ineffective and the challenges are only increasing.¹⁰ The CBABC submissions also reflect serious concern that, without adequate increases in compensation, highly qualified lawyers will be deterred from applying to join the judiciary, as evidenced by a decrease in applicants in 2021.¹¹
26. The Association also agrees wholly with the Chief Judge’s submissions regarding the urgency created as a result of low application and appointment numbers combined with the issue of the aging demographics of the judicial justice complement.¹²

⁸ July 11, 2019 Transcript of the 2019 Commission, at p. 48, Supplemental BOD at Tab 6. The 2019 Commission referenced this admission in its Report: see JBOD, Vol. 1, Tab 18 at p. 18.

⁹ Government submission, paras. 107-113.

¹⁰ Judicial Council submission, paras. 31 – 35.

¹¹ Canadian Bar Association – British Columbia submission, p. 2.

¹² Chief Judge’s submission, paras. 177-179, 181.

Changes, if any, to the Jurisdiction of Judicial Justices

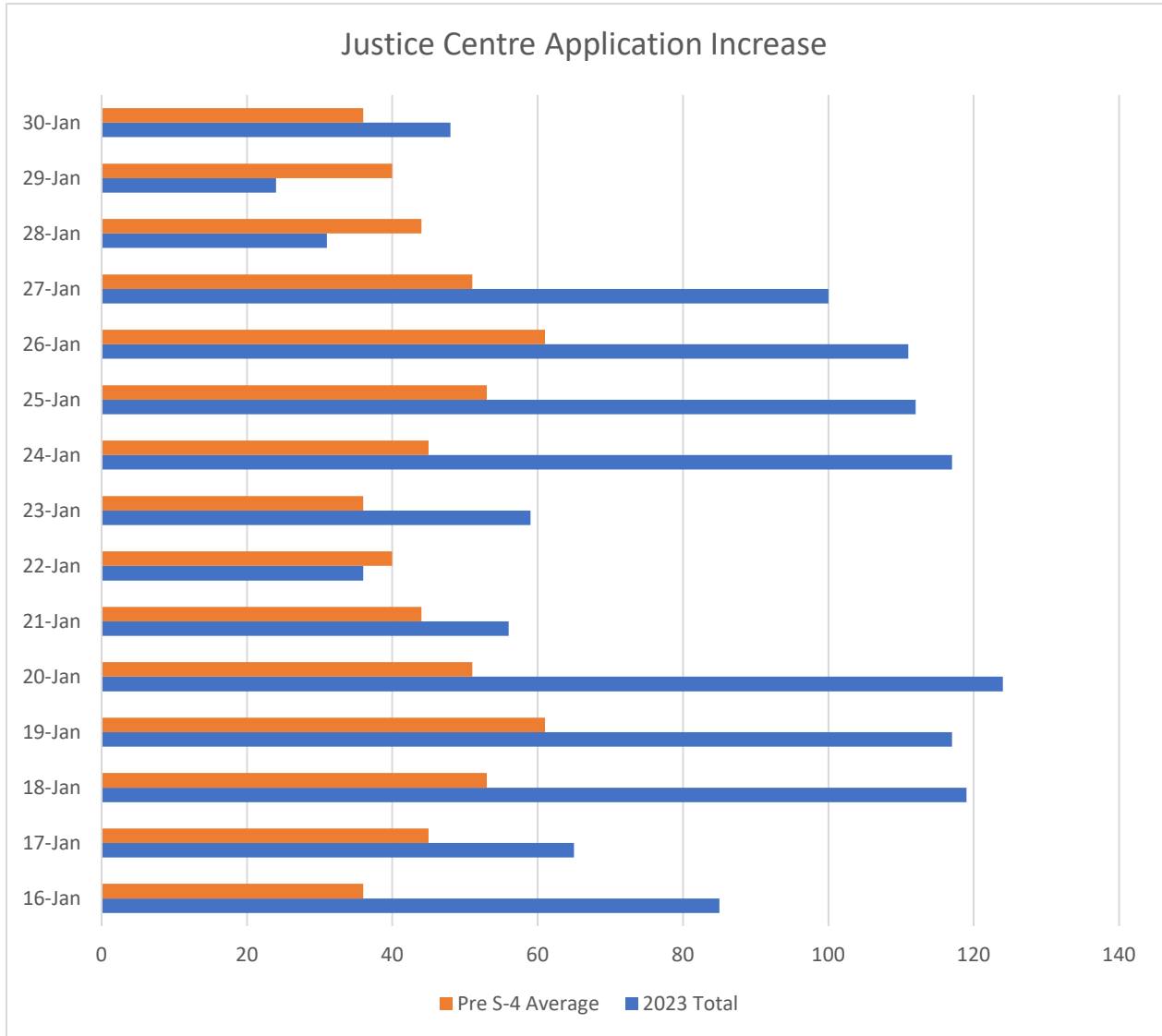
27. The Government submits that “there have been no measurable changes” to the jurisdiction of judicial justices, noting that the impact of new COVID-related offences or the potential effects of an expanded telewarrant regime are not “understood”. The Government adds that “despite” this lack of measurable changes, its position represents an increase in salaries over the 2022 cycle.¹³ The JJABC objects to the Government’s suggestion that it is increasing judicial justice salaries despite no measurable changes in jurisdiction.
28. In the short time S-4 has been law, the impact of the expanded telewarrant process has been immediate and significant. By way of summary, prior to Bill S-4, judicial justices were not able to consider certain judicial authorizations by telecommunication, including but not limited to production orders, tracking warrants and transmission data recorder warrants. A vast number of judicial authorizations sought by police fall into those categories. Due to Bill S-4, these authorizations can now be applied for by telecommunication from across the whole province, through the Justice Centre in Burnaby.
29. In response to this change, as of January 14, 2023, the Chief Judge has issued a new *Assignment of Duties Pursuant to Section 11 of the Provincial Court Act* for judicial justices, adding new paragraph 3 in response to Bill S-4.¹⁴
30. Judicial justices are currently dealing with the effects of Bill S-4 in real time and have experienced a significant increase in applications and have required additional judicial justices to come on shift to deal with the increased volume.
31. As a direct result of Bill S-4, the Provincial Court has introduced a new electronic system for the secure transfer of files through the Justice Centre, known as the Secure File Transfer System (“SFTS”). This has required training for judicial justices to learn to use the system. The expansion of the telewarrant process has

¹³ Government submission, para. 212.

¹⁴ Supplemental BOD, Tab 7.

increased the technological skills required to appropriately carry out judicial justice duties.

32. The below table illustrates the increase in application numbers immediately after the implementation of Bill S-4 compared to average application numbers for January:



33. The underlying data for this table is enclosed in the Supplemental Documents at **Tab 8**.

34. Judicial justices are also dealing with an increased workload associated with changing the format of applications from faxed to emailed applications via SFTS and this will continue to be a work in progress for a significant period in time.
35. The Association submits that, in determining compensation for the next four years, this Commission should accept its submissions, as well as the submissions of the Chief Judge and Judicial Council,¹⁵ and acknowledge that Bill S-4 has already begun to and will continue to increase the workload of judicial justices over time.

Compensation in Respect of Similar Judicial Positions in Canada

36. The Government acknowledges that Alberta, Saskatchewan, Manitoba, Ontario and Quebec all have “full-time roles that are analogous” to that of the judicial justice role in BC. The Government has also acknowledged that out of this analogous grouping, BC’s judicial justices are ranked 5th out of 6 “comparable jurisdictions”, ahead only of Manitoba.¹⁶
37. The Government then goes on to attempt to distinguish the majority of these “analogous” comparators, by noting some differences in jurisdiction and differences in how compensation is determined across jurisdictions.¹⁷
38. The Association submits that the Government overinflates the importance of differences in processes used to determine compensation rates in other provinces. More importantly, any differences in process are not sufficient to account for the comparatively low rate of compensation BC’s judicial justices receive.
39. The Government ultimately states that Alberta is the “closest comparator group” for BC and alleges that the “broader jurisdiction” of Alberta judicial justices justifies the over \$20,000/year difference in salaries between Alberta and BC.¹⁸

¹⁵ Chief Judge’s submissions, para. 172; Judicial Council submission, para. 35.

¹⁶ Government submissions, paras. 152-153.

¹⁷ Government submissions, paras. 154-155.

¹⁸ Government submissions, paras. 156-158.

40. The Association's replies to the Government's submission on this issue are as follows:

(a) The Government has erroneously narrowed its consideration of comparator jurisdictions to Alberta, based on improper criteria.

(b) The Government's justification for the salary gap between Alberta and BC is based upon jurisdictional arguments that were raised at a prior Commission and abandoned by the Government before that Commission. It is wrong and inappropriate for the Government to attempt to rely on these jurisdictional arguments again, having accepted that the Association's position was factually correct before the 2019 Commission.

(c) BC ought to be compared specifically with Ontario and Alberta as close comparators but it is also appropriate for this Commission to address BC's position with respect to all jurisdictions with similar judicial officers, including Quebec.

(d) The Government's argument regarding judicial justice salaries in BC, as compared to salaries in other jurisdictions, is inconsistent with the numbers provided by the Government.

a. Inappropriate Application of Legislative Factor

41. The legislature has seen fit to include "compensation in respect of similar judicial positions in Canada" as a factor this Commission must consider. The legislation does not require a comparison be made only to identical judicial positions or for an examination of this factor to be limited to the "most" similar judicial position. Prior Commissions, including Justice Iacobucci in the 2016 Commission Report,¹⁹ have acknowledged that looking at a number of comparator groups is highly relevant in determining reasonable compensation.

¹⁹ 2016 Commission Report, JBOD Vol. 1, Tab 21 at p. 47.

42. While the 2019 Commission acknowledged that Alberta and Ontario were the “best” comparators across the relevant jurisdictions (Saskatchewan, Alberta, Quebec, Ontario, Yukon, Manitoba), the 2019 Commission also took into account the fact that only one other jurisdiction (Manitoba) had lower salaries than BC’s judicial justices:

There was no disagreement at the hearing that judicial justices are paid less in British Columbia than in all but one other province or territory or that judicial justices have at least as broad jurisdiction as their counterparts in other jurisdictions.

While the best comparators are justices of the peace in Alberta and Ontario, only Manitoba justices of the peace had lower salaries than British Columbia’s judicial justices.

We find that this factor supports the conclusion that the remuneration of British Columbia’s judicial justices is low compared to compensation in respect of similar judicial positions in Canada, having regard to the differences between those jurisdictions and British Columbia.²⁰

43. Given the differences across provinces, it is understandable that each province will determine compensation in a slightly different manner and that the qualifications and jurisdiction of each province may differ somewhat. The question is where BC’s compensation falls in respect to “similar judicial positions” in Canada. The answer to this question is that BC’s judicial justices, despite broadly analogous jurisdiction and high qualification standards, are compensated far below the vast majority of judicial officers in Canada. This clearly demonstrates that BC’s judicial justices are not being compensated “reasonably” when considering this factor. This factor has not changed since the 2019 Commission and, in fact, BC has only fallen further

²⁰ 2019 Commission Report, JBOD Vol. 1, Tab 18 at p. 22.

behind due to the Government's decision not to implement the 2019 Commission's recommendations.

44. Below, we address a number of the Government's statements regarding the situation of judicial justices in BC relative to similar judicial positions in other jurisdictions. We submit that even without engaging in a deeper analysis of the numbers and estimates provided, it is obvious that BCs' judicial justices are paid a salary far below the "average" and are in fact the lowest-paid judicial justices compared to any province with a compensation commission process.²¹ This is an essential point the Commission should keep in mind when considering whether the salaries proposed by the Government for judicial justices are "reasonable compensation."

b. Inaccuracies In Data

45. The Government's submission characterizes BC's salaries as "near the national average for salaries over the last three years" and alleges that, accordingly, the salary level does not require "significant correction".²²
46. That submission does not legitimately reflect the salaries of BC's judicial justices compared to their provincial counterparts.
47. For reference, the Government prepared the following table of salaries at para. 153 of its submissions (which the Association does not accept for 2021/2022 for Alberta):

²¹ Manitoba does not have an independent judicial justice compensation commission and its compensation is fixed at 43% of the provincial court judges' compensation, which is determined by the Commission.

²² Government submissions, para. 213.

Jurisdiction	2020/21	2021/22
Alberta	\$151,813	\$151,813
British Columbia	\$125,750	\$129,500
Manitoba	\$120,615	43% of PCJ salary
Ontario	\$148,962	\$157,164
Quebec	\$174,100	\$194,400
Saskatchewan	\$155,078	\$159,266

48. Clearly, BC’s salary of \$129,500 for 2021/22 is nowhere near the “national average”. BC judicial justices require a substantial increase in salary to close the gap.
49. In addition, it is the Association’s view that the figures used by the Government significantly underestimate what those salaries are likely to be once the current Alberta compensation commission concludes. The Association’s position in this regard is based on the following:
- (a) Alberta has traditionally maintained judicial justice salaries at equal to or higher than the average;
 - (b) Alberta’s most recent commission cycle has not been completed and its recommendations will be retroactive back to 2021;
 - (c) In 2016/2017, the Alberta government froze judicial justice salaries. Accordingly, Alberta judicial justices have remained at the same salary of \$151,813 since 2016/2017; and
 - (d) Alberta, as with all provinces, has experienced significant inflation which is likely to be considered by its compensation commission.
50. Accordingly, it is highly likely that Alberta’s salaries for judicial justices will increase significantly in the upcoming commission cycle, retroactive to 2021, and will not remain stagnated at the rates estimated by our Government. The Commission should therefore be very cautious when calculating national averages.

51. The Government also submits that its proposed increases “can be expected to improve British Columbia’s relative status amongst all jurisdictions” including Alberta “based on currently known salary levels” (para. 215). The Government includes the following chart at para. 218 to demonstrate how the Government’s position would “improve or narrow the salary differential for Judicial Justices for the other five jurisdictions in 2023/2024”:

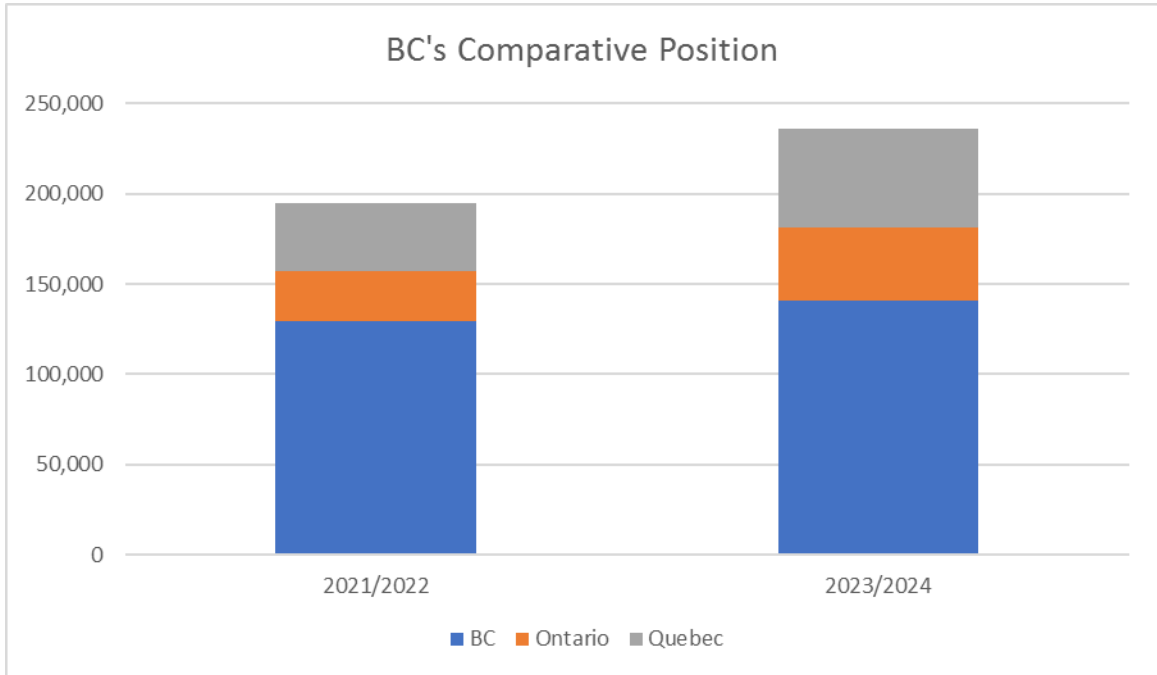
Jurisdiction	Salary 2023/24	British Columbia as a percent of comparator salary
Alberta	\$157,946 ²¹²	89.3%
British Columbia	\$141,000	N/A
Manitoba	\$133,565 ²¹³	105.6%
Ontario	\$181,181 ²¹⁴	77.8%
Quebec	\$235,968 ²¹⁵	59.8%
Saskatchewan	\$166,803 ²¹⁶	84.5%

52. The Government’s calculation with respect to Alberta is speculative as outlined above and is similarly speculative regarding Alberta judicial justice salaries for 2023/24. In addition, the stated salary for Saskatchewan is inconsistent with the Association’s understanding of the 2023/2024 salaries for Saskatchewan.²³ The salaries for Ontario and Quebec are estimations. However, even if the Commission accepts the Government’s estimations, in the absence of comparative data between multiple data points, the Government has provided no support for stating that its proposal will narrow the gap in compensation of BC’s judicial justices vis-à-vis other provinces.

53. It is unconvincing to compare the Government's offer of \$141,000 for judicial justices in BC with speculative projections of salaries in other jurisdictions and then suggest that judicial justices' relative position will improve. It is self evident that if government is recommending an increase to judicial justices’ salaries but estimates a lesser increase for other jurisdictions that judicial justices' relative

²³ The Association understands that Saskatchewan’s salaries for judicial justices are set at 51% of the prior year’s provincial court judge salary, and therefore calculates the Saskatchewan salary for 2023/2024 as \$174,952, not \$166,803 as estimated by Government.

position will artificially improve. In addition, even on the Government’s estimations for Ontario and Quebec, the gap between BC and those provinces will in fact widen rather than “improve” or “narrow”, as alleged by the Government:



54. Ultimately, what matters is where judicial justices will ultimately lie vis-a-vis other jurisdictions, and remaining at or near the lowest salaries across the country is not reasonable.

c. Assertions Regarding Jurisdictional Differences at Paragraph 154

55. The Government has made submissions at paragraph 154 which set out alleged differences in jurisdiction between Alberta, Manitoba, Quebec and Ontario:

The roles of Judicial Justices across these provinces are largely analogous. However, there are some differences in respect of the jurisdiction granted to Judicial Justices that warrant consideration by this Commission. Namely, in certain provinces, the jurisdiction of Judicial Justices is broader than in British Columbia. Examples of such differences include:

- a. in Alberta, Manitoba, Quebec and Ontario, Judicial Justices may issue orders to apprehend a child in need of protection or emergency protection orders;
- b. in Ontario and Quebec, Judicial Justices may issue orders to apprehend an individual for a mental health examination;
- c. in Manitoba, Judicial Justices may conduct trials and sentencing hearings for summary convictions; and
- d. Judicial Justices in Quebec may preside at appearances and order that the accused be remanded into custody. They may also rule on contested applications relating to the disposal of property seized with or without a warrant. As well, the government requires Judicial Justices in Quebec to have at least ten years' practice prior to appointment.

56. The Government's submissions in this regard are nearly identical to those provided in its 2019 Submission before the prior Commission at paragraph 174:

174. There are some relevant differences in respect of the jurisdiction of Judicial justices amongst the provinces/territories. In some provinces/territories, the jurisdiction of the justices of the peace is broader than in British Columbia, including the following:

- o issuing orders to apprehend a child in need of protection or emergency protection orders (Ontario, Alberta);
- o issuing orders to apprehend an individual for a mental health examination (Ontario);
- o conducting trials and sentencing hearings for summary convictions (Manitoba);

- o presiding at appearances and ordering the remanding of the accused to custody (Quebec);
- o ruling on contested applications relating to the disposal of property seized with or without a warrant (Quebec);
- o As well, in at least one other province (Quebec), government requires justices of the peace to have at least ten years' practice prior to appointment.²⁴

57. Before the 2019 Commission, the Association disagreed that these alleged differences were sufficient to find that the jurisdiction of BC's judicial justices was not at least as broad as their counterparts across the country, which the Government agreed to during the 2019 Commission hearing.²⁵ This acknowledgement was accepted by the 2019 Commission and referred to in the 2019 Report regarding this factor:

There was no disagreement at the hearing that judicial justices are paid less in British Columbia than in all but one other province or territory or that judicial justices have at least as broad jurisdiction as their counterparts in other jurisdictions.²⁶

58. The Government agreed before the 2019 Commission that the judicial justices were correct in asserting that their jurisdiction was at least as broad as their counterparts across the country. There is no evidence that this has changed in any way since 2019. Accordingly, the Association submits that this Commission should accept that, for the purposes of its recommendations, the jurisdiction of BC judicial justices remains at least as broad as its counterparts across the country.

²⁴ Excerpt from 2019 Government of British Columbia Submission, para. 174, Supplemental BOD, Tab 9.

²⁵ See 2019 JCC Hearing, July 11, 2019, Day 4 at p. 22, Supplemental BOD, Tab 6.

²⁶ 2019 Commission Report, JBOD Vol. 1, Tab 18, at p. 22.

59. We have addressed the specific comparators in more detail below.

d. Comparison to Ontario, Saskatchewan and Quebec

60. The Government asks that the Commission “consider the differences” in the process of determining compensation for judicial justices in BC as compared to Saskatchewan and Ontario, where salaries are currently determined as a percentage of provincial court judges’ salaries.²⁷ We note that those percentages have been determined in accordance with Commission processes.

61. At paragraph 154, the Government set out differences it alleges “warrant consideration” by this Commission. Notwithstanding the above discussion regarding the jurisdictional issues, the Government emphasizes at paragraph 154(d) that Quebec’s judicial justices are required to have “at least ten years’ practice prior to appointment”.²⁸ In so doing, the Government glosses over an important factor: Ontario and Saskatchewan do not require legal experience to hold the position, compared to BC which requires a judicial justice to be a lawyer with a minimum of 5 years call.

62. The Association submits that if the need for legal training is taken into account vis-à-vis Quebec, then the Commission ought also to consider the difference in qualifications required between BC and Ontario and Saskatchewan, both of which require no legal training prior to appointment.²⁹

63. Under the Government’s proposal, Ontario and Saskatchewan’s judicial justices would be paid approximately \$35,000 - \$40,000 per year more than BC’s judicial justices for 2023/2024, despite the more onerous qualification requirement in BC. If the Government’s view is that Quebec’s requirement for at least 10 years of practice is significant enough to warrant consideration by this Commission, so too is the fact that the standard of qualifications in BC is higher than those in higher-

²⁷ Government submissions, para. 155.

²⁸ In practice, there are no BC judicial justices with less than 17 years of practice and the majority of BC judicial justices have over 30 years of practice.

²⁹ Cross-Jurisdictional Scan, JBOD, Vol. 2, Tab 35, preamble.

paid jurisdictions. This supports the Association's position that BC's judicial justices are underpaid compared to their counterparts. We note that the Association's proposal would still result in BC's judicial justices coming in under Ontario and Quebec judicial justices in 2023/2024 and approximately equivalent with Saskatchewan.

64. Finally, in relation to Quebec, the Government at paragraph 148 of its submission, notes that (with respect to provincial court judges) Quebec is a "notable comparator", due to similar economic growth and population size. The Association submits that, for these reasons, Quebec is an appropriate comparator jurisdiction for judicial justices too. The Association recognizes that Quebec's justices of the peace have some areas of broader jurisdiction, but they are also paid significantly more than BC's judicial justices. Specifically, in 2021/22 Quebec justices of the peace were paid approximately 50% (\$65,000) per year more than BC's judicial justices and this increased to 62% (\$84,500) for 2022/23.³⁰ The Association submits that the jurisdictional and qualification differences do not warrant such huge income disparity between two provinces that are "notable comparators".

Changes in the Compensation of Others Paid By Provincial Public Funds

65. At paragraph 171, the Government has prepared a graph demonstrating average change in salary and does not include the numbers for legal aid lawyers. Instead, the Government included, in a footnote, that legal aid lawyers received a 35% increase in 2019 following 13 years without increases.
66. The Association submits that the significant increase for legal-aid lawyers is highly relevant to the Association's position that this factor supports an increase in judicial justice salaries. Legal-aid lawyers were provided with a significant bump in compensation due to the need for a significant correction – the same position in which the judicial justices currently find themselves.

³⁰ JBOD, Vol. 2, Tab 35.

67. The Provincial Court Judges' Association of British Columbia (the "PCJABC") has set out in significant detail the proper approach to this factor and the Association will not repeat those submissions here but submits that this Commission ought to follow the approach outlined by the PCJABC.³¹

Current and Expected Economic Conditions in BC

68. The Association is concerned that the Government is once again relying on any potential negative economic factors to justify unreasonable compensation for judicial justices. The Government can always find potential risk factors given the very nature of forecasting and the uncertainty of external events. The reality is that BC has weathered external events particularly well over the past many years and the Commission should have full confidence that BC's economic and financial outlook is consistent with the Association's recommendations for increases to compensation.

ADDITIONAL COMMENTS

69. The Association objects to the Government's proposal to the extent it will result in a widening of a gap between provincial court judge and judicial justice remuneration. According to the Government's salary proposals, judicial justices' annual salary will go from 46.2% of provincial court judges' annual salary down to 45.2% by 2024. There is no principled reason to give judicial justices a lower average annual increase than provincial court judges. The Government, in its submissions, has not provided any reason for the disparity in its proposal.
70. The Government, in its submissions, makes assertions that the judicial justices' salaries are above the "minimal level" required to ensure judicial independence. The Association submits that this line of argument is inappropriate given that the legislature has directed the Commission to consider what would constitute "reasonable" compensation – not a minimum level of compensation. Accordingly, whether the Government's proposals meet a minimal level is not relevant to the

³¹ PCJABC Submission, paras. 212-251.

question of whether the Government's proposals would provide a reasonable level of compensation.

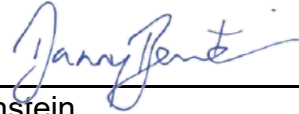
71. The Government's recommendation regarding salary for judicial justices over the four-year mandate does not address the fact that:
- (a) the salaries today are inadequate to attract qualified candidates;
 - (b) there is a real and pressing recruitment crisis due to the aging demographic of the judicial justice complement and upcoming retirements, and the current application rate does not meet the need;
 - (c) the salaries are out of step with the economic prospects for BC and do not take sufficient account of the inflationary environment; and
 - (d) the salaries proposed would only serve to deepen the gulf between BC and the other similar provinces rather than improve BC's position, and there is no logical reason for this to be the case.
72. Ultimately, the Government's proposal does not meet the requirement of "reasonable compensation" for judicial justices.

CONCLUSION

73. We request this Commission in its Report and Recommendations make it clear the compensation hearing process is a legislated process mandated by the Constitution, not merely a formality. Given the tenor of the Government's submissions, this process runs the risk that the Government will, once again, reject this Commission's Report and Recommendations. The Association's concerns in this regard are heightened by the Government's reliance on jurisdictional concerns that it agreed were incorrect during the 2019 Commission, as well as its statements regarding BC's comparative standing across jurisdictions.

74. The Association submits that its proposals should be adopted by this Commission.

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



Danny Bernstein
Counsel for the Judicial Justices Association