

Judicial Justice Compensation Committee

Province of British Columbia

2002 Report

to the Attorney General

Table of Contents

Introduction	i
A. The Judicial Justice of the Peace in British Columbia	ii
1. Who are Judicial Justices of the Peace?	ii
2. Background to the New Judicial Justice Designation	iii
3. What do Judicial Justices Do?	v
4. Appointment.....	ix
5. Tenure	x
6. Training.....	xi
7. Salary & Benefits	xi
8. Ad Hoc Judicial Justices	xii
B. The Judicial Justice of the Peace Compensation Committee	xiv
9. Members	xiv
10. Mandate.....	xiv
11. Process.....	xv
12. The Report.....	xix
C. Determining Compensation	xx
13. Factors to be Considered	xx
D. Recommendations	xxx
14. Salary.....	xxx
15. Pension.....	xxx
16. Vacation.....	xxx
17. Ad Hoc JJPs	xxx
18. Injury Reimbursement	xxx
19. Insurance	xxx
20. Travel Expenses & Chambers Days	xxx
21. Professional Allowance	xxx
22. Term of Office.....	xxx
23. Costs of this Application	xxx
E. Summary of Recommendations	40

Introduction

Since 1995, salaries and benefits for Provincial Court Judges in British Columbia have been determined through a process similar to that used by most other provinces: an independent committee is appointed every three years to consider the issue against a set of defined criteria. The committee reports to the Legislature and the Legislature accepts the recommendations, rejecting only those which it finds to be unfair and unreasonable.

The purpose of this process is to provide the financial security that is an essential element of judicial independence. Judges who are called upon regularly to adjudicate disputes between individuals and the state cannot be obliged to negotiate with that same government for their remuneration. A judiciary that is recognized as being free of influence from any quarter is a priceless asset to British Columbia.

For reasons described in this report, a new class of judicial officer has been created within BC's Provincial Court system, which also requires such protection. Judicial Justices of the Peace were created by an amendment to the *Provincial Court Act* in April 2001.

This committee is BC's first Judicial Justice Compensation Committee and this is its report.

A. The Judicial Justice of the Peace in British Columbia

1. Who are Judicial Justices of the Peace?

There are 30 full-time, two part-time and six ad hoc Judicial Justices of the Peace in British Columbia, performing two different functions.

1. In the role that was formerly referred to as a "Sitting JP" they preside in Provincial Court, handling more than 100,000 cases a year. These are mostly traffic and municipal bylaw cases, and Small Claims payment hearings, but can include prosecutions brought under any of many provincial statutes.
2. From the Justice Centre at 222 Main Street in Vancouver, a team of Judicial Justices of the Peace use telephones and fax machines to process police applications for search warrants and to hear applications for bail (judicial interim release) from across the province. They also preside over weekend bail hearings at the courthouse.

They are not required to be legally trained, although some are. Their aim is to provide a process that is expeditious, fair and understandable to the people appearing before them - most of whom are there without lawyers.

2. Background to the New Judicial Justice Designation

There are more than 300 Justices of the Peace in British Columbia, serving in four categories:

1. Judicial Justices of the Peace, who preside in court and at the Justice Centre
2. Judicial Case Managers who handle trial scheduling and initial appearances
3. Court Services Justices of the Peace who work in the court registries, and
4. Stipendiary Justices of the Peace who are members of their communities and provide JP services during hours when the courthouse is closed.

2.1. The Sitting JP

The Judicial Justice of the Peace role evolved in part from the position formerly known as the "Sitting JP." When BC moved from a lay magistrate's court in the 1970's to a modern Provincial Court presided over by legally trained judges, there remained a need for an expeditious and affordable process for certain less complex matters. The Sitting JP filled this need and their role has steadily expanded.

Initially, Sitting JPs were classified as government managers and paid accordingly. In 1982 they were rated at a Job Level 3. In 1988 the Sitting JPs retained counsel to approach government about what they saw as a lack of judicial independence as reflected in the process for establishing their salaries and their security of tenure. As a result of that effort, Sitting JPs were removed from the Management Job Evaluation Committee classification system and their salary was set at the equivalent of "Job Level 5." Judicial independence issues were left outstanding.

In 1997 the Supreme Court of Canada issued an important decision that expanded our understanding of the concept of judicial independence and how it must be protected. The case was called *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*¹ and is referred to as the *Provincial Court Judges* case. That case identified financial security as one of the critical elements of judicial independence and ruled that the Constitution requires each province to establish a body that is independent of other branches of government, to depoliticize the determination of Provincial Court judges' salaries.

After that decision, BC's Sitting JPs pressed government for a similar process to protect their own independence. When those efforts failed, they brought an action in the Supreme Court of BC. They asked the Court to consider whether their tenure and the method of determining their salaries and benefits met the constitutional standards required for judicial independence. The Court found that they did not:

... I have concluded that a reasonable and informed observer would find that the existing regime for Sitting Justices of the Peace, in terms of both security of tenure and financial security, does not provide them with the level of judicial independence to which they are constitutionally entitled.²

It was that decision that led to an amendment to the *Provincial Court Act* effective April, 2001. The amendment created the new designation of Judicial Justice of the Peace, gave them enhanced security of tenure, and provided for a Judicial Justice of the Peace Compensation Committee to make recommendations to the Attorney General respecting remuneration, allowances and benefits.

¹ [1997] 3 S.C.R. 3

² *Re: Independence of the Provincial Court of BC Justices of the Peace*. [2000] B.C.J. No. 2003

Those then serving as Sitting JPs were designated as Judicial Justices of the Peace.

2.2. The Justice Centre

While changes were being made to accommodate the transformation of Sitting JPs to Judicial Justices of the Peace, bail and search warrant duties were still being carried out by Court Services JPs. That too was about to change as the result of another judicial decision.

In a case referred to as the “*Do*” decision³ the BC Supreme Court ruled that Court Services Justices of the Peace did not have sufficient safeguards of judicial independence to allow them to hear applications for search warrants. At that point, search warrant duties were added to the assignment list for Judicial Justices of the Peace and because of the likelihood that the courts would take a similar view of bail applications, those duties too were added to the Judicial Justices’ assignment.

Following the *Do* decision 11 more Judicial Justices of the Peace were appointed to perform the search warrant and bail functions. Initially they were assigned exclusively to the Justice Centre at 222 Main Street but the plan is to have them perform sitting duties as well and to have those who normally sit in court also rotate through shifts at the Justice Centre.

3. What do Judicial Justices Do?

3.1. Judicial Justices in Court

Judicial Justices of the Peace preside over certain cases in Provincial Court. They are not judges, but they sit in the judge’s seat, they wear judicial gowns, and they decide cases. For many British Columbians, they are the face of the Court.

³ *R. v. Ngou Hu Do*, B.C.S.C., April 20, 2001

The large majority of the work of Judicial Justices involves traffic offences and parking bylaw enforcement but they can be called upon to hear a trial of any ticketable Provincial offence. They also preside over Small Claims payment hearings, where creditors attempt to collect on the judgments they have won in Court.

The rationale behind the “sitting JP” role is that there are many cases that are relatively straightforward, perhaps routine, that require more in the way of fact-finding than sophisticated legal analysis. In general, they are cases where the stakes are not as high as they can be in cases heard by judges. Rather than being dealt with by a Provincial Court Judge, these cases can be handled through a process that is simple, cost effective and accessible to people appearing on their own, without lawyers.

That being so, Judicial Justices of the Peace face challenges that, though shared by Provincial Court Judges are particularly acute in “JP Court.” Judicial Justices must conduct their hearings according to law and within the confines of the rules of evidence, largely without the benefit of lawyers in the courtroom who can explain the process to their clients. They also generally work without legally trained prosecutors to present the Crown’s case. So, they must tread the fine line between maintaining their stance as the impartial adjudicator, and explaining the law and the process to the parties, assisting them to the extent possible. Added to this challenge is the fact that, at least in the larger centres, many of those coming before Judicial Justices are not fully conversant in English and often come from cultural backgrounds that affect their understanding and expectations of the justice system. Whether or not interpreters are used, and they frequently are, even simple English can pose challenges to understanding, let alone legal terminology.

It is also the case that although the matters presided over by JJPs are not intended to require the services of lawyers, lawyers sometimes do appear. Most Judicial Justices have no formal legal training but they can be required to hear legal argument, read and interpret case law, and make a finding based on a legal analysis. This was particularly so during the days of photo radar and the legal challenges it spawned. Judicial Justices are expected to provide reasons for their decisions, and on occasion do so in writing. All proceedings before JJPs are recorded.

3.2. Judicial Justices at the Justice Centre

The Judicial Justice Centre is also known as the 24 Hour Centre because it provides services around the clock to the entire province. The Centre is a windowless space within the courthouse complex at 222 Main Street in Vancouver, where work is conducted almost entirely by telephone and fax machine.

Eleven Judicial Justices of the Peace have been assigned to the Justice Centre. At present a system of rotation is being implemented which will see those Justice Centre JJPs spending time presiding in court, and sitting JJPs doing shift rotations at the Justice Centre.

There are two teams of five JJPs: each team works four days on and four days off. Shifts are 10 hours each, including a 30-minute meal break. One JJP works each of the 5 shifts that cover a 24-hour day and the 11th fills in where needed. Shifts begin at 8 a.m., 9 a.m., 11 a.m., 1 p.m., and 10 p.m. Most JJPs choose to work this last shift from home. They are provided with a telephone/fax machine, a pager and a supply of forms for this purpose. Calls during this shift are not frequent.

The main duties assigned to the Judicial Justices at the Centre are bail hearings and search warrant applications.

3.2.1.1. Bail hearings

When Provincial Courts are closed, the Centre holds bail hearings for the entire province. Typically, an accused person is brought to a room at the police station where he or she is being held. The accused and either the Officer in Charge or the arresting officer participate in the hearing by speakerphone. The police will have submitted the documentation to the Centre by fax, and the conversation will be tape recorded at the Centre. Occasionally defence counsel may participate from yet another location. The process is particularly challenging to the JJP if the police officer is inexperienced, or if unrepresented people are involved.

On weekends, when no regular court sits at 222 Main Street, courthouse bail hearings are held at the Centre. Crown counsel and duty counsel appear in person before the JJP, with the accused attending by telephone from the cell area of the courthouse. In the evenings, counsel may also attend by telephone.

3.2.1.2. Search warrants

Search warrant applications are the bulk of the work at the Centre. In the last eight months of 2001, the JJPs at the Centre processed 3,880 applications.

The JJP considers each application on the basis of the Information to Obtain a Search Warrant. The application is either issued as requested, issued in modified form, or refused. Many applications are routine, such as those to obtain BC Hydro records in marijuana "grow-op" investigations. Some are complex, as in commercial fraud cases, and can run to 100 pages or more. There is often the pressure of an ongoing investigation that is awaiting a warrant so that evidence can be obtained or secured.

The JJP must consider the *Charter* rights of the person whose privacy will be invaded by a search,

and the *Criminal Code* requirements for search warrants.

3.3. Assignment of Duties to JJPs

Whether presiding in court, or working at the Justice Centre, Judicial Justices of the Peace receive their assignments from the Chief Judge of the Provincial Court. The Chief Judge issues a standing assignment to each category of Justice of the Peace, and may amend it from time to time as necessary.

A copy of the Assignment of Duties to Judicial Justices of the Peace is found at Appendix 1.

4. Appointment

Judicial Justices of the Peace, like Provincial Court Judges, are appointed by the Lieutenant Governor in Council, upon recommendation of the province's Judicial Council. The nine-member Judicial Council includes the Chief Judge and an Associate Chief Judge of the Provincial Court, representatives of the legal profession and lay people. At present, a Judicial Justice of the Peace is a member.

According to the submission of the Judicial Council to this committee, the standards required of successful applicants for the position of Judicial Justice of the Peace parallel in most respects those expected of a Provincial Court Judge.

The obvious exception is that judges are required to have a law degree and a minimum of five years in practice; Judicial Justices of the Peace are not required to have formal legal training, though some preference is given to those who have. Because Judicial Justices of the Peace are not necessarily drawn from a pool of practising lawyers, they are expected to have some experience in an adjudication role. The Judicial

Council looks for men and women who are, among other things:

- well-organized
- compassionate
- able to function as part of a team, yet also able to work independently
- moved by injustice yet able to be impartial
- knowledgeable, and committed to continuing professional education
- aware of changing values yet not overly influenced by public opinion.

In recommending Judicial Justices of the Peace, the Judicial Council tries to reflect the population that comes before the court, in terms of gender, ethnicity and language groups.

The appointment process has changed recently and is now similar to that used for appointing Provincial Court Judges. Applications are received at any time and are reviewed by the Council. Candidates who receive three votes in favour are interviewed and fully reviewed. After that, applications that do not receive more than one vote against, are kept in a pool for up to three years, from which the Attorney General will make appointments as positions become vacant.

This process, and the criteria for appointment are currently under review.

5. Tenure

The office of Judicial Justice of the Peace is created by s.30 of the *Provincial Court Act* and section 30.1 stipulates that a Judicial Justice holds office during good behaviour. In other words, the statute creates a special category of JP that enjoys

the same degree of security of tenure as does a Provincial Court Judge.

In the performance of their duties JJPs, like judges, are subject to the supervisory authority of the Chief Judge. Complaints about the conduct of JJPs are handled in the same way as complaints against judges.

6. Training

All new sitting JPs since 1996 have attended a four-week orientation program, designed and delivered primarily by JJPs. Subject areas include:

- case law
- judicial deportment
- sentencing
- Small Claims payment hearings
- conduct of a trial.

The JJPs who were appointed last April to work at the Justice Centre had only one week of training. The plan is to provide them with the additional three weeks' training at some point.

All JJPs receive five days of professional development annually, through the semi-annual seminars organized by the JJP education committee in co-operation with the Office of the Chief Judge.

7. Salary & Benefits

Judicial Justices currently receive \$70,312 annually. This was equivalent to a Management Level 5 (ML5) salary until March 31 this year when ML5 employees received a 2.5% increase.

In 1989 remuneration for Sitting Justices of the Peace (then known as Court Referees) was set at 98% of ML5, retroactive to 1988. Salaries were linked to the ML5 category to ensure that pay

would be adjusted regularly and would keep pace with that of public servants at that level. The rate was later raised to 100% of ML5 and regular increments have averaged just over 2% since 1990. The most recent increase of 2.5% was scheduled for March 31 but was not implemented, because this review process was by then in place.

Benefits include:

- Medical Service Plan
- extended health plan
- dental plan
- group life insurance
- short term illness and injury insurance
- long term disability insurance
- public service pension plan

JJPs are not currently covered by the Workers Compensation Board.

Vacation entitlement for Judicial Justices of the Peace is set by section 15.1 of the *Provincial Court Act*. The effect of that section is that most Judicial Justices are entitled to 22 days annual vacation, but those former court referees who were appointed as JJPs prior to April 11, 2001 are entitled to keep their previous entitlement. This means that some JJPs have up to 35 days annual vacation.

8. Ad Hoc Judicial Justices

Ad Hoc Judicial Justices are used as required to fill vacancies in courtrooms and at the Justice Centre. Currently, the Office of the Chief Judge budgets for 180 days of ad hoc Judicial Justice time and regularly uses more than that.

Ad hoc JJPs are paid \$244 per day. This rate was set some time ago by the Chief Judge, as a percentage of what was then a full-time JJP's salary. There are currently six people who hold JP appointments and who serve as ad hoc Judicial Justices. They are generally retired people who choose to work part-time. They hold no other employment.

B. The Judicial Justice of the Peace Compensation Committee

9. Members

The committee was appointed pursuant to section 32.1 of the *Provincial Court Act*. That section provides that one member be appointed by the Attorney General and one by the Chief Judge of the Provincial Court, and that those two members appoint a third member to chair the committee. The members are

Ted Hughes, Q.C., Chair

James B. Graham, BA, MSW

John D. Waddell, Q.C.

10. Mandate

The *Provincial Court Act*, section 32.1 requires the committee to report to the Attorney General on all matters respecting the remuneration, allowances and benefits of Judicial Justices of the Peace.

The report must be made no later than April 30 following the committee's appointment and must cover the year in which the recommendations are made and each of the following two years. In the case of this, the first such committee, its report must also include the year beginning January 1,

2001. Therefore, this report covers a four-year period.

By statute, the committee must consider:

- the government's current financial position
- the need to provide reasonable compensation to Judicial Justices
- the need to attract qualified applicants
- the nature of the duties and functions of Judicial Justices
- the laws of British Columbia, and
- any other matter the committee considers relevant.

This list of criteria was included in the *Provincial Court Act* in response to the Supreme Court of Canada's ruling in the *Provincial Court Judges* case: The court ruled that a committee such as this one must be independent, objective and effective. By objective, it meant that the committee must refer to objective criteria, not political expediencies, and present a fair set of recommendations dictated by the public interest.

11. Process

11.1. Preliminary meeting

The committee began by holding a joint meeting with the Chief Judge of the Provincial Court and with representatives of the Judicial Justices of the Peace Association and of government. The purpose of that meeting was to develop consensus around the way in which the Committee would fulfill its function.

11.2. Background document

As agreed at the preliminary meeting, the office of the Chief Judge, the Judicial Justices, and government representatives together produced a background document that provided useful information for the Committee.

11.3. Courthouse visits

The committee observed Judicial Justices at work:

- The committee spent an afternoon at Robson Square in Vancouver and observed a trial of a parking ticket offence in which the defendant did not appear, a traffic case involving a taxi driver, and the trial of a store owner accused of selling cigarettes to a minor. Two of these three trials required the use of an interpreter. Another courtroom's list had collapsed because people had failed to appear.
- During an evening at the Justice Centre at 222 Main Street in Vancouver the committee observed Judicial Justices of the Peace considering the search warrant applications that are received by fax from across the province and responding to the applying police officers, either granting or refusing the applications, or asking for clarification or for further information. The Justices also were conducting bail hearings by telephone.
- In Nanaimo the committee observed Small Claims Court payment hearings. The Judicial Justice of the Peace disposed of more than 20 cases involving people who had obtained judgment

in Small Claims Court and were trying, often in vain, to collect what was owing to them.

- That afternoon, in Nanaimo traffic court, several cases were stayed because the police officers were not present to give evidence. A student pled guilty to skateboarding on a highway and was given a reduced fine. One young man admitted to speeding but asked for and was given time to pay his fine. Several motorists who did not attend court were convicted of speeding, failing to display a licence plate and for missing tail lights: they will have to pay their fines before they renew their drivers' licences.
- Members of the committee individually visited JJP court in Victoria and observed Small Claims payment hearings in the morning and traffic court in the afternoon.
- On a Saturday afternoon the committee observed a Judicial Justice of the Peace presiding at bail hearings in court at 222 Main Street. Prosecutors for both the federal and provincial Crown, as well as duty counsel on behalf of those in custody participated. A court clerk was also present. Applications were by telephone from the cell block. The JJP was also responsible for explaining and completing interim release documents and taking the signatures of the people being released.

11.4. Written submissions

A “Call for Written Submissions” was advertised in the Vancouver Sun and Victoria Times-Colonist.

Invitations to make submissions were sent to The Canadian Bar Association, BC Branch; the Law Society of BC; the Provincial Court Judges Association; Judicial Council; the Association of Chiefs of Police; the Union of BC Municipalities; the Crown Counsel Association; the Legal Services Society; and five individual Judicial Justices not represented by the Association.

Written submissions were received from:

- the Judicial Justice of the Peace Association of British Columbia
- the Government of British Columbia
- Judicial Council
- five individual Judicial Justices
- Joan Hughes, Judicial Justice of the Peace
- Ian Bruce McKinnon, of Pacific Issues Partners, as part of the JJPA presentation
- Kelly Simmons, Prince Rupert
- Rick Mohabir, Corrections Officer
- D. K. Stevenson

11.5. Public Hearing

The committee convened a full-day public hearing in Vancouver at which presentations were made by the Judicial Justice of the Peace Association of British Columbia; the Government of British Columbia; the Judicial Council, the Chief Judge of the Provincial Court,

and a group of five individual Judicial Justices not represented by the Association.

11.6. Deliberations

The committee met on three occasions following receipt of submissions and the public hearing, to consider its recommendations.

12. The Report

The *Provincial Court Act*, section 32.1 requires the Attorney General to put the committee's report before the Legislature within 14 days of its receipt unless the Legislature is not sitting at the time or ceases to sit within the 14-day period, in which case the report must be tabled within 14 days of the opening of the next session.

Judicial Justices of the Peace will become eligible to receive the salary, benefits and allowances recommended by the committee unless the Legislature, within 21 days, rejects one or more of the recommendations as being unfair or unreasonable and substitutes other remuneration, allowances or benefits.

The Supreme Court of Canada, in the *Provincial Court Judges* case, said that if the Legislature chooses not to accept one or more of the recommendations, it must be prepared to justify this decision, if necessary in a court of law.

C. Determining Compensation

13. Factors to be Considered

In preparing its report and making its recommendations with respect to salary and other benefits the committee has considered all of the following:

- the government's current financial position
- the need to provide reasonable compensation to Judicial Justices
- the need to attract qualified applicants
- the nature of the duties and functions performed by Judicial Justices, and
- the laws of British Columbia.

13.1. The Government's Current Financial Position

The committee has paid close attention to the extensive written materials provided by the Government of British Columbia and to the oral presentations made by eight government representatives at its public hearing, as well as to the presentation by the analyst who addressed the government's financial position on behalf of the JJPA.

The government's presentation highlighted its \$3.4 billion deficit for 2001/02 which it forecasts will rise to \$4.4 billion in 2002/03. Its three-year

plan is to cut spending and increase revenues to produce a balanced budget in 2004/05, as required by legislation implemented early in this government's mandate.

All ministries except health and education have been instructed to cut spending by 25% over three years. In addition, ministries must meet the cost of inflation and increased demand for services within the dollars allocated in their budgets. The result, according to the government presentation, is that any wage increase granted to government employees will necessarily mean a decrease in the services provided by that ministry.

The government's proposal therefore is that there be no change in salary or benefits for Judicial Justices of the Peace in this and each of the next two years. This is in spite of that fact that until this process was established, Judicial Justices were linked to the public service job level 5 and thus were slated for a 2.5% increase as of April 1, 2002 and a further cost of living increase, estimated at 1.6%, as of 2003. Both those planned increases were to be funded within the ministry's base budget but will not now be implemented for JJPs because their remuneration is now determined by this independent process.

In response, the JJPA suggests that current and projected deficits are the result of policy choices by the current government. These choices - principally, tax reductions and government restructuring - may reap benefits down the road but in the short term government is voluntarily foregoing revenue, they say. Further, they maintain that deficit projections are exaggerated by large contingency allowances that meet a political need for conservative forecasts that are likely to "make the target."

Looking at a variety of measures, including the Auditor General's Financial Information Framework, the JJPA concludes that the government's finances are actually in good order,

despite lacklustre growth in the economy. Comparing British Columbia's debt load with that of other provinces, the JJPA concludes that BC trails only Alberta in its ability to pay, that it is competitive with Ontario and leads the other provinces.

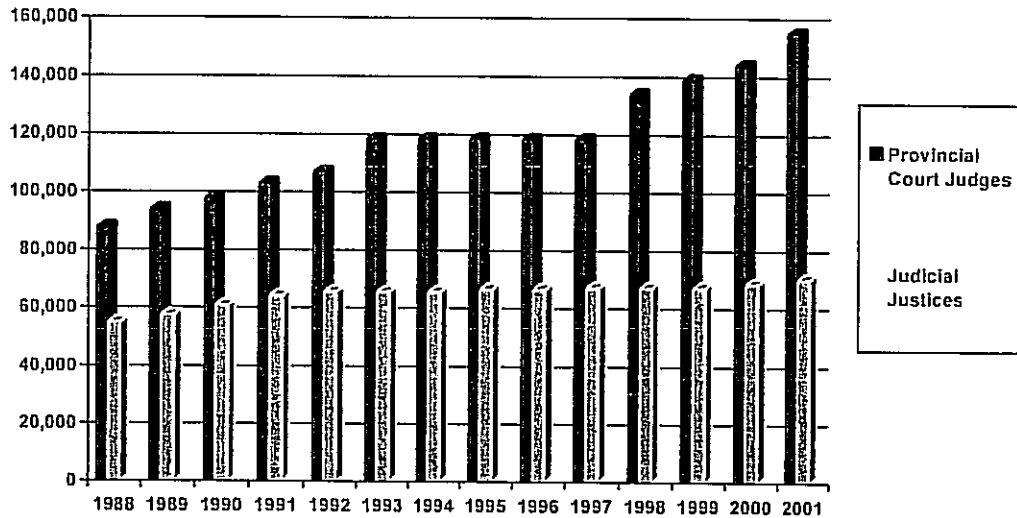
13.2. The Need to Provide Reasonable Compensation to Judicial Justices

In addressing the question of reasonableness, the committee has weighed all of the criteria that it is called upon to consider and has examined the remuneration paid to others whose situations are in varying degrees comparable with that of BC's Judicial Justices of the Peace.

The most obvious comparison is with BC's Provincial Court Judges. JJPs do "judge work," they sit on the bench, wear gowns, make decisions and perform tasks that would otherwise be done by judges. However, the committee is also mindful of the differences in their role and in the qualifications required for the job. The committee would not recommend expressing the JJP's remuneration as a percentage of a judge's salary if for no other reason than that the jurisdiction of either of them can change at any time and thus the nature of their respective duties and functions.

Nonetheless, there is a point of comparison to be made and, as the following graph shows, it is striking the extent to which judges' salaries have escalated in recent years while JJPs' salaries have remained relatively stagnant. In 1989, the salary for a sitting Justice of the Peace was set at a figure that was 61% of a Provincial Court Judge's salary. That approximate ratio was maintained for about 5 years. It dropped below 50% in 1999 and to a low of 44-45% in 2001 and 2002.

TABLE C-1: Salaries earned by Provincial Court Judges and by Justices of the Peace in British Columbia



The committee also found it useful to consider the remuneration paid to Justices of the Peace performing similar functions in Ontario, Alberta and Saskatchewan, always bearing in mind differences in jurisdiction and terms of employment.

The Ontario figures for 2002 - 2004 shown in the chart below are projected figures, based on an established historic pattern of yearly \$3,000 increments.

The two sets of figures for Alberta require a word of explanation. The first column contains salary levels recommended by Alberta's 2000 compensation committee. The committee's salary recommendations were rejected by government. Recommendations as to benefits were accepted but salaries were set at the level reflected in the final column. The Justices of the Peace challenged that action and a Court of Queens Bench decision found the government's action unconstitutional and ruled that the committee's

salary recommendations must stand. The government has since obtained a stay of that decision and an appeal of the Court of Queen's Bench decision is scheduled to be heard this summer by the Alberta Court of Appeal.

TABLE C-2: Salaries & Benefits earned by Justices of the Peace in Ontario, Saskatchewan and Alberta

	Ont.	Sask.	Alta. (as recommended)	Alta. (as set by government)
SALARIES				
2001	\$77,000	67,000	100,000	80,000
2002	\$80,000*	71,000	105,000	85,000
2003	\$83,000*	75,262	105,000	85,000
2004	\$86,000*			
LAW DEGREE REQUIRED?	NO	NO	YES, & 5 years practice experience	YES, & 5 years practice experience
PENSION	Public Service	Public Service	NO: 10% of salary paid in lieu of pension	NO: 10% of salary paid in lieu of pension
VACATION	15 - 30 days	unknown	20 days	20 days

* Projected

Other adjudicative positions in British Columbia were also looked at. For example, residential tenancy arbitrators are paid per hearing and working full-time can earn almost \$100,000, with no pension or other benefits. Workers Compensation Board appeals commissioners earn \$91,514, increasing to \$94,781 in June, 2002, with a full benefit package. Workers' Compensation Review Board members are paid \$78,505, which is the ML7 rate.

The committee also has considered, as it was urged to do by the JIPA, the productivity of the Judicial Justices. The Association points out that Judicial Justices handle a significant portion of

the work of the Provincial Court and do so in a timely and cost effective way, operating as they most often do without benefit of the court clerk and professional prosecutor who support the work of Provincial Court Judges.

13.3. The Need to Attract Qualified Applicants

The role of Judicial Justice of the Peace demands an array of experience, skills and aptitudes: anyone who possesses them in the degree required for this position, has other options as well. It is important then, to offer a remuneration package sufficient to ensure that well qualified people continue to seek out appointment as a Judicial Justice. The Judicial Council told the committee that no application for the position of JJP has been received from anyone working in government at higher than an ML5 position.

There have been three recruitments for Judicial Justices in the past three years. The following table shows the number of applicants, interviewees and appointments made as a result of each.

TABLE C-3: Recent Recruitments for the Judicial Justice Position

	Sept. 1999	April 2001	May 2001
Applications received	410	100	309
Applicants interviewed	14	19	12
Applicants appointed	3 full-time; 2 ad hoc	7	3

The April 2001 recruitment arose as the result of the judicial decision that found Court Services Justices of the Peace not sufficiently independent to hear search warrant applications. Because it was necessary to quickly appoint new Judicial Justices of the Peace who would be able to take up this task immediately, the decision was made

to recruit solely from among Ministry of Attorney General employees with current experience in the area.

It was noted in the government's submission that despite this limited pool of potential candidates, 100 applications were received "no doubt because the Judicial Justice of the Peace position represented an improvement to their salary level or job content and provided the security of tenure and financial security that judicial independence requires."

The submission by the Judicial Council observes that in its various recruitments for this position, often fewer than half of the applicants meet the basic qualifications for the job.

Although the JJPA does not argue that a law degree should be a requirement for the position, it does take the position that its ranks should include some who have legal training. "The salary needs to be sufficient to attract the lawyer who relishes this kind of work."

13.4. The Nature of the Duties and Functions Performed by Judicial Justices

The committee's visits to courthouses in Vancouver, Victoria and Nanaimo and to the Justice Centre gave it a good appreciation for the nature of the duties and functions performed by Judicial Justices of the Peace. This appreciation was enhanced by the written and oral submissions of the JJPA and the five individual justices, but perhaps most acutely by the contribution of Joan E. Hughes, the Judicial Justice assigned to the Kamloops region. Her very personal account of her experiences sitting as a JJP in 18 locations throughout the Central Interior and Kootenay districts paints a vivid picture of the nature of the work of a JJP in rural BC and was most helpful to the committee.

Judicial Justices of the Peace function within the Provincial Court system. They do work that would otherwise be done by judges.

The Chief Judge's Task Group on Sitting JPs in its 2001 report described the justice system's "continuum of process" ranging from the simple to the complex. "It is in the public interest that there be a range of justice processes suited to the circumstances of particular cases," the Task Group said. As the Provincial Court's criminal jurisdiction increases in complexity there is more than ever a need for specialists in more accessible, less complex processes. The Task Group proposed this definition of the role of the Judicial Justice of the Peace:

As a judicial officer of the Provincial Court of British Columbia, Sitting Justices of the Peace specialize in expediting the just determination of matters whose subject or potential outcome warrant especially simplified, readily accessible, and cost effective proceedings.

The bulk of the cases handled by Judicial Justices involve traffic and parking tickets and Small Claims payment hearings. The cases can appear simple and routine but the Judicial Council cautioned against allowing this factor to unduly influence compensation considerations:

It is highly challenging to preside in public over matters that may seem routine to those familiar with the law, yet highly individualized to litigants before the Judge. Judicial Justices must ensure that each litigant is heard, even though they may have heard the same story many times before. They must take care with each case, given that liberty and privacy may be at issue and because litigants may have no other experience with Court beyond this one. They carry out these duties in a very public forum and must not only listen but appear to be listening to all those present.

The other side of the Judicial Justice role is the hearing of search warrant and bail applications at the Justice Centre. These decisions the government characterized as interim and readily reversible. In fact, they can result in serious invasions of personal privacy or the denial of personal liberty.

Judicial Justices in the courtroom deal directly with people encountering the justice system, often for the first time. Normally there is no lawyer there to present the case and to explain the process and its results to the client. The result can be an emotional atmosphere over which the JJP must preside unassisted by other professionals. His or her ability to accomplish this successfully can have a significant impact on public perceptions of the justice system. Even payment hearings for relatively minor sums of money are significant because people's faith in the justice system is eroded if they have succeeded in obtaining judgment and then find it to be worthless.

The government submission notes that due to the number of people who fail to appear for their hearings, court sessions often end early "and no further duties are undertaken to fill the working day." It was the observation of the committee, in its courthouse visits, that some court sessions were either cancelled or were very short due to "no shows." But scheduling is beyond the control of JJPs and clearly in some instances such as those described by Joan Hughes, Judicial Justices work hard to fit in all the cases on the list for the day.

As mentioned by the Judicial Council, Judicial Justices of the Peace work in a very public setting. Their decisions have on occasion, and particularly in the days of photo radar, been the subject of media scrutiny. All of their work, whether in court or at the Justice Centre is "on the record."

Unlike many professionals, Judicial Justices of the Peace are required to work shifts. Until recently it was only those JJPs hired to work at the Justice Centre who were affected but now JJPs who previously only sat in court are expected to take a turn at the Justice Centre as well. This means that people who have throughout their careers worked a 9-5 five-day week will now experience a four-day-on/four-day-off 10 hour shift rotation covering a 24-hour day.

In both its written and oral submissions the government detailed a comprehensive job evaluation of the position of Judicial Justice of the Peace. The position was judged on a set of factors and sub-factors, and measured against certain “benchmark” jobs to arrive at an overall rating of Management Level 4 (ML4).

The committee did not find this evaluation exercise helpful. It is precisely because Judicial Justices of the Peace are not civil servants that this compensation committee process is in place. The committee also found that a number of the observations that were made about the work of the JJP, and occupational comparisons that were made, showed a significant misunderstanding of the role.

13.5. The Laws of British Columbia.

The committee considered the laws of British Columbia and in particular:

- *The Provincial Court Act*
- *The Public Sector Pension Plans Act*
- *The Public Service Benefit Plan Act*
- *The Workers Compensation Act.*

D. Recommendations

14. Salary

The committee recommends the following salary levels:

Year	Percentage Increase	Salary
2001	2.5	\$72,070
2002	2.5	73,872
2003	5.5	77,935
2004	9.0	84,949

The relationship between the roles of Provincial Court Judge and Judicial Justice of the Peace leads the committee to the view that it is unreasonable to pay a JJP a salary that is 45 or 46% of that paid to a judge. This set of figures will begin to redress that imbalance. Future compensation committees, operating within the economic climate of their day, will have the opportunity to further that redress.

In arriving at these figures the committee has been mindful of the province's financial situation. Increases of only 2.5% in the first two years are intended to accommodate the government's commitment to fiscal restraint. At the same time, the committee has taken into account projections of economic growth presented to it, as well as the other factors that it is bound by the *Provincial Court Act* to consider.

The committee sees the government's proposal of 0-0-0, which is its position on civil servants' salaries, as indicative of a fundamental failure to appreciate the real meaning of judicial independence. This committee has been called upon by the Supreme Court of Canada, supported by the Supreme Court of BC, to recognize the independence of this branch of the Provincial Court bench. The 0-0-0 formula applies, by definition, to civil servants and so is irrelevant to this committee's deliberations. Government cannot decide the remuneration of judicial officers in the way that it can for civil servants.

These salary levels will place British Columbia's JJPs within the range of their colleagues in other provinces, slightly ahead of Saskatchewan's but trailing their counterparts in Ontario and Alberta. They also fall considerably short of remuneration paid to adjudicators at BC's Residential Tenancy Office, Workers' Compensation Board, Workers Compensation Review Board and Human Rights Tribunal.

At the same time, the committee is confident that these salary levels will be competitive and will continue to attract and retain sufficient numbers of well qualified candidates. Although to date there have been no applicants for the JJP position from anyone higher than an ML5 position in government, at these rates, that should change. These salaries should attract sufficient applications from lawyers with experience in practice as well.

15. Pension

Pension plans can constitute a significant component of an employee's remuneration package, and that is the case for Judicial Justices of the Peace, who are members of the Public Service Pension Plan (PSPP).

The JJPA asks that their pension entitlements be brought into line with those provided for Provincial Court Judges. They point to the similarity in their functions and the fact that the average age on appointment for both JJPs and judges is 44 years. Specifically, the enhancements they request are:

- for each year of service, the JJP be credited with 1.5 years of pensionable service
- pensions be based on best 3-year instead of 5-year average
- retirement as early as age 55 with unreduced pension, provided there is at least 5 years of pensionable service (i.e., 3 1/3 years as a JJP)
- joint life and 60% survivor benefit for JJPs with a spouse, and a 10-year guarantee for those without a spouse (with adjustments to be made where the spouse is more than 10 years younger)
- pension accrual rate of 3% per year without Canada Pension Plan offset, and the JJPs contribution rate to be 7% of salary
- provisions to allow for accrual of up to 70% of best 3-year maximum.

According to the government's submission to the committee, BC's Provincial Court Judges now receive a very high level of pension benefit that costs the employer 21.96% of salary (as opposed to about 8% for JJPs). The government explains this level of benefit for judges by comparison with other provinces where judges receive similarly generous pensions.

Government argues that these arrangements have been possible for judges only after extensive negotiations with the Public Service Pension Board of Trustees (PSPBT), which manages the plan. Judges were already a distinct group with special pension provisions before the PSPBT came into existence. The Board consented to the enhancements recommended by the 2001 Judicial Compensation Committee on condition that these changes be stipulated in the *Provincial Court Act*. The requisite legislative amendments are now being developed. The government submits that it is unlikely that the PSPBT would agree to further changes to accommodate a group of 30 people, and that government would be reluctant to unilaterally impose such changes “for fear of doing irreversible damage” to pension arrangements affecting 80,000 plan members.

Submissions by the Judicial Justices with respect to pension issues focused primarily on the proposal to credit JJPs with 1.5 years of pensionable service for each year actually served. The rationale offered for this is that JJPs come late to their positions and need to accumulate pension entitlement over a shorter space of time than one beginning a career at a younger age.

Government opposes this suggestion on two grounds:

1. Large accumulations of assets are required to fund pensions and this must be done over an extended period of time, taking advantage of compound interest: there are no shortcuts.
2. Everyone is expected to start early to make provisions for retirement. A change in occupation mid-career should not obligate the new employer to compensate for an individual's inadequate financial management and planning.

Historically, judges' pensions were roughly comparable with those of deputy ministers but the government submission notes:

However, now that the 1.5 pension service factor will soon be eliminated for Deputy Ministers, and the formerly controversial pension plan for MLAs has been discontinued, judges are conspicuously out front having the most generous pension arrangements in BC's public sector by a very wide margin. There is no basis for extending similar arrangements to JJPs even if arrangements for doing so could be worked out with PSPBT.

The committee gave preliminary consideration to the pension issue at its first meeting following the public hearing. At its second meeting, after full consideration of the issue, the committee concluded that it would not recommend changes to the pension plan.

First, we decided that the current plan is as generous a plan as any enjoyed by the overwhelming majority of the working public in BC. The factors that have led to enhancements to the pensions of Provincial Court judges did not, in our view, apply in the case of Judicial Justices.

Second, it was our belief that the cost to government of implementing the proposal would be an amount that we could not support.

Later, in seeking clarification of certain facts and figures, the committee learned that the JJPA had understood that an actuarial assessment of the proposed pension changes would be made available to the committee prior to its deliberations. Further, it was apparent that there was some basis for that understanding. The committee therefore took steps to have that assignment carried out, and government agreed to pay the cost. An actuarial assessment was provided to the committee prior to its final

meeting and copies were provided to the JJPA and to government.

The content of the actuarial assessment confirmed for us the second of the reasons listed above and so the committee's initial decision remains unchanged. We suggest, however, that the actuary's report be retained because it may be useful to a future Judicial Justice Compensation Committee if a similar proposal is advanced. By that time circumstances may be changed to the point of the proposal being attractive to those who then have the responsibility that now rests with the membership of this committee.

16. Vacation

Judicial Justices of the Peace currently are entitled to 22 days annual leave, except for those former court referees whose greater accumulated entitlement was "grandfathered" by the new provisions and who have up to 35 days' annual vacation. The government proposes no change to these provisions while the JJPA asks the committee to recommend an increase from 22 days to 30 days, which would bring the JJPs' annual leave entitlement in line with that of Provincial Court Judges.

The committee recommends that those JJPs now entitled to 22 days' annual leave be entitled to 25 days after 10 years of service in their position.

17. Ad Hoc JJPs

The JJPA suggests that the determination of compensation for ad hoc Judicial Justices should be regularized and the committee agrees. The Chief Judge suggested, and the committee recommends, the following formula:

$$\frac{\text{Annual salary}}{\text{number of working days}} \times .8 = \text{per diem}$$

18. Injury Reimbursement

This is an issue on which all are in agreement. JJPs require an injury reimbursement program because they are not covered under the Workers Compensation Act. Any disputes arising out of claims would be referred to an independent arbitrator or panel, at the government's cost. Terms of the program should be developed cooperatively by government and the Judicial Justices.

19. Insurance

Coverage for medical, extended health, dental, group life and air travel insurance are the same as for Provincial Court Judges. Neither government nor the JJPA asks for any change to these arrangements and the committee recommends none.

20. Travel Expenses & Chambers Days

The JJPA asked for an increase in expense allowances to bring them in line with the level of reimbursement to Provincial Court Judges, and for an increase in chambers days from one to two per month. The Chief Judge of the Court suggested to the committee that these are matters within her prerogative. The committee accepts that suggestion and makes no recommendation.

21. Professional Allowance

The committee was impressed by the professionalism with which the Judicial Justices as a group approach their own continuing education and professional development. Judicial Justices need to remain current in areas of law and procedure that continue to evolve, and to continue to develop the skills that their position demands. Provincial Court judges are allocated an annual allowance of \$2,000 from which they may

pay for continuing education courses, books, journal subscriptions, conferences, and equipment for use when working at home. We recommend that Judicial Justices be allocated an annual professional allowance in the amount of \$1,000 on the same terms as the judges' allowance is provided..

22. Term of Office

The JJPA has asked that the retirement age for JJPs be increased from 65 years to 70, as it is for judges. The *Provincial Court Act*, section 33 does allow a JJP to continue in office to age 70 if an Order-in-Council is made to that effect. Given that Orders-in-Council are made by cabinet, the concerns for judicial independence that gave rise to the creation of this committee satisfy the committee that it is appropriate for JJPs to achieve retirement on the same basis as Provincial Court Judges. The committee recommends that the statutory retirement age for Judicial Justices be increased from 65 years to 70.

23. Costs of this Application

The JJPA submits that the Ministry of Attorney General has committed to reimbursing the association in the amount of \$4,000 for the cost of its submission to this committee, and asks the committee to recommend reimbursement of reasonable expenses beyond that amount.

This is the first committee to be charged with the task of examining the position of Judicial Justice of the Peace and recommending compensation. The government recognized the unique challenge that this presents and says in its own submission that "Considerable amount of information was gathered for the first time for this process and subsequent processes can build on this information." In addition to substantial written materials, eight representatives of government

made presentations in person to the committee's public hearing.

The committee agrees with government's approach by of putting extra resources into establishing a body of information that will be useful in the future. We consider that it would be unfair to expect the present association members to bear the entire burden of developing the Judicial Justice's first submission to a compensation committee. At the committee's request, the association has submitted an accounting of its expenses as follows:

• financial report	\$4207.45
• printing.	1964.84
• travel, courier and miscellaneous expenses.	1178.92
• photo copying.	26.00
Total	7377.21

The committee recommends that government reimburse the association in the amount of \$7,377.21.

E. Summary of Recommendations

24. Salary

The committee recommends the following salary levels:

Year	Percentage Increase	Salary
2001	2.5	\$72,070
2002	2.5	73,872
2003	5.5	77,935
2004	9.0	84,949

25. Pension

The committee recommends no change.

26. Vacation

The committee recommends that those JJPs now entitled to 22 days' annual leave be entitled to 25 days after 10 years of service in their position.

27. Ad Hoc JJPs

The committee recommends that ad hoc JJPs be paid according to the following formula:

$$\frac{\text{Annual salary}}{\text{number of working days}} \times .8 = \text{per diem}$$

28. Injury Reimbursement

The committee recommends that an injury reimbursement program be developed for JJPs.

29. Insurance

The committee recommends no change to coverage for medical, extended health, dental, group life and air travel insurance for JJPs.

30. Travel Expenses & Chambers Days

The committee makes no recommendation.

31. Professional Allowance

The committee recommends a professional allowance for JJPs, in the amount of \$1,000 annually, on the same terms as the Provincial Court Judges' professional allowance.

32. Term of Office

The committee recommends that the statutory retirement for judges be raised from 65 to 70 years, as it is for judges.

33. Costs of this Application

The committee recommends that the Judicial Justice of the Peace Association be reimbursed in the amount of \$7,377.21 for expenses incurred in the development and presentation of its submission to this committee.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

2002 Judicial Justice Compensation Committee

Mr. James B. Graham, BA MSW

Mr. John D. Waddell, Q.C.

Mr. Ted Hughes, Q.C.
Chair

April 29, 2002