



THE CANADIAN
BAR ASSOCIATION
British Columbia Branch

**SUBMISSIONS OF THE CANADIAN BAR ASSOCIATION
(BRITISH COLUMBIA BRANCH)**

TO THE

BRITISH COLUMBIA

2010

JUDGES COMPENSATION COMMISSION

Made By:

The Canadian Bar Association
British Columbia Branch
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PREFACE

The *Judicial Compensation Act* (the “Act”) requires the British Columbia 2010 Judges Compensation Commission (the “Commission”) to report to the Legislative Assembly through the Attorney General on all matters respecting the remuneration, allowances and benefits of judges and to make recommendations with respect to those matters for each of the next three fiscal years.

The Canadian Bar Association (British Columbia Branch) (the “CBABC”) has been asked to make submissions to provide its unique perspective regarding judicial compensation for Provincial Court judges.

The CBABC is a branch of the Canadian Bar Association (the “CBA”). The CBA was formed in 1896. The purpose of the CBA (and, by extension, the provincial Branches, including the CBABC) is to:

- enhance the professional and commercial interests of our members;
- provide personal and professional development and support for our members;
- protect the independence of the judiciary and the Bar;
- promote access to justice;
- promote fair justice systems and practical and effective law reform;
and
- promote equality in the legal profession and eliminate discrimination.

The CBA nationally represents more than 37,000 members and the CBABC has approximately 6,500 members. Our members practice law in many different areas. The CBA has established 74 different sections to

provide a focus for lawyers who practice in similar areas to participate in continuing legal education, research and law reform. The CBA has also established standing committees and special committees from time to time to deal with issues of special interest to the CBA.

In 2004 and 2007, the CBABC made submissions to the Commission regarding judicial compensation.

UNIQUE ROLE OF THE CBA

The CBABC performs a unique role in promoting advancements in the administration of justice and safeguarding the high quality of the justice system. The independence of the judiciary from the executive and legislative branches of government is a cornerstone of Canada's justice system and, by extension, of democracy itself. Judicial independence protects citizens against the abuse of state power.

The CBABC is dedicated to protecting the independence of the judiciary and the Bar. The CBABC is represented on the Judicial Council of British Columbia by the President of the CBABC. The CBABC assists the Judicial Council in its assessment of applicants for the Provincial Court Bench by preparing confidential reports on all applicants who apply for a position with the Provincial Court. The CBABC is also represented on the Advisory on Judicial Appointments for British Columbia for federally-appointed judges.

The CBA and its Branches are independent voices which provide input to regarding the work of judicial compensation commissions across Canada. The CBA and its Branches provide this voice to: (1) promote the independence of the judiciary through the institution and appropriate

financial safeguards for its members and (2) strengthen the judiciary through sufficient financial independence of its members and adequate compensation to attract the best and most qualified candidates for appointment to the Bench.

The CBABC welcomes the opportunity to make these Submissions to assist the Commission in performing its legal duty to determine fair and just judicial compensation.

FAIR PROCESS TO DETERMINE JUDICIAL COMPENSATION

The CBABC submits that a fair process following the rule of law be used to determine judicial compensation.

Judicial Compensation Act

Under the Act, the Commission must report to the Attorney General on all matters respecting the remuneration, allowances and benefits of judges or judicial justices and make recommendations with respect to those matters covering the next three fiscal years. The Act further requires the Attorney General to submit the Commission's report to the Legislative Assembly. Under the Act, the Legislative Assembly may reject one or more of the recommendations made in the report as being unfair or unreasonable, and set the remuneration, allowances or benefits to be substituted for those proposed by the rejected Commission's recommendations.

Section 5(5) of the Act requires the Commission to consider all of the following:

- (a) the current financial position of the government;
- (b) the need to provide reasonable compensation to the judges or judicial justices;
- (c) the need to maintain a strong court by attracting qualified applicants;
- (d) the laws of British Columbia; and
- (e) any other matter the commission considers relevant.

The CBABC supports the Commission to continue to apply the crucial factor of judicial independence to determine judicial compensation.

RECOMMENDATION #1:

The CBABC supports the intent and broad purpose of the Commission to determine appropriate compensation for the Provincial Court Judges through a method that upholds the principle of judicial independence. The CBABC further submits it is proper for the Commission to apply this standard to its present determinations of judicial compensation.

Constitutional Principles Applied to the Function of Judicial Compensation Commissions

The Supreme Court of Canada in *Reference Re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 SCR 3 (the “*PEI Reference*”) (Tab A, Appendix) has set the standard for governments to follow to determine judicial compensation. The CBA intervened in the *PEI Reference* and supports the Supreme Court of Canada’s ruling in that case.

The key constitutional principles emerging from the *PEI Reference* are:

- key components of judicial independence are: security of tenure, administrative independence and financial security (para. 115);
- judicial compensation commissions must be independent, objective and effective (para. 169); and
- judicial salaries can be reduced, increased, or frozen, but not without recourse to an independent effective and objective commission (para. 133).

RECOMMENDATION #2:

The CBABC recommends that the Commission follow the provisions of the Act, including those in section 5(5) and the direction imposed on it by the Supreme Court of Canada in the *PEI Reference* to ensure that the process to be followed to determine judicial compensation is fair and in accordance with the rule of law.

CURRENT FINANCIAL POSITION OF THE GOVERNMENT

Section 5(5)(a) of the Act requires the Commission to consider the current financial position of the government.

In considering the current financial position of the government and assessing competing priorities, the government should be mindful that judicial independence is not just a government priority, it is a constitutional obligation. The government will have to show conclusive evidence of other pressing government fiscal obligations of similar importance to judicial independence before competing priorities are used as a rationale to reduce what a commission concludes to be appropriate judicial compensation. As a result, the funding of the justice system and judicial compensation should be a priority for government when the government allocates funds in the Province's budget.

In keeping with the requirements of the Act and the constitutional principles applicable to ensuring judicial independence through fair judicial compensation noted in our Submissions, the government's current financial position allows for fair and reasonable judicial compensation.

RECOMMENDATION # 3:

The CBABC recommends that the Commission find that the government's current financial position allows for fair and reasonable judicial compensation on the basis of the requirements of the Act and the constitutional principles applicable to ensuring judicial independence through fair judicial compensation as noted in our Submissions.

JUDICIAL INDEPENDENCE

The CBABC acts to protect the independence of the judiciary.

Judicial independence has been recognized as "the lifeblood of constitutionalism in democratic societies" *per* Dickson C.J. in *Beauregard v. Canada*, [1986] 2 S.C.R. 56, at p. 70 (Tab B, Appendix).

As the lifeblood of constitutional principles, unqualified judicial independence functions as a cornerstone of our democratic system.

Judicial independence:

requires objective conditions that ensure the judiciary's freedom to act without interference from any other entity. The principle finds explicit constitutional reference in ss. 96 to 100 of the *Constitution Act, 1867* and s. 11(d) of the *Canadian Charter of Rights and Freedoms*” as per Major, J. at para. 18 in *Ell v. Alberta* [2003] 1 S.C.R. 857 (Tab C, Appendix).

In addition, as stated by the Supreme Court of Canada in the *PEI Reference*, judicial independence protects citizens against the abuse of state power.

Constitutional Principles and Determination of Judicial Compensation: The *PEI Reference*

In the *PEI Reference*, the Supreme Court of Canada sets out the constitutional principles that the Commission and governments must follow in order to preserve judicial independence in determining judicial compensation. These constitutional principles also apply to the Act to inform the factors listed in section 5(5) of the Act.

These applicable constitutional principles emerging from the *PEI Reference* are:

- salaries of Provincial Court judges may be reduced, increased or frozen, subject to prior recourse to a special process, which is independent, effective and objective, for determining judicial remuneration (para. 133);
- under no circumstances is it permissible for the judiciary to engage in negotiations over remuneration with the executive or representatives of the legislature (para. 134);
- any reduction to judicial remuneration, including *de facto* reductions through the erosion of salaries by inflation, cannot take those salaries below a basic minimum level of remuneration which is required for the office of a judge (para. 135);

- financial security is a means to the end of judicial independence, and is therefore for the benefit of the public (para. 193);
- the same principles that apply to salaries for judges apply equally to judicial pensions and other benefits (para. 136);
- judges, although they must ultimately be paid from the public purse, are not civil servants since civil servants are part of the executive, and judges, by definition, are independent of the executive (para. 143);
- if a government rejects the recommendations of a judicial compensation commission, the government must “articulate a legitimate reason” why it has chosen to depart from the recommendations of the commission (para. 183);
- if judicial review is sought after a government rejects the recommendations of a judicial compensation commission, a reviewing court must inquire into the reasonableness of the factual foundation of the claim (para. 183);
- there should be no negotiation for remuneration between the judiciary and the executive and legislature because negotiations for

remuneration from the public purse are “indelibly political”, but it is proper for Provincial Court Judges to convey their concerns and make submissions to government regarding the adequacy of current levels of remuneration (para. 134); and

- judges’ salaries must not fall below the basic minimum level of remuneration for the office of a judge (para. 135) that is “adequate, commensurate with the status, dignity and responsibility of their office” (para. 194).

Constitutional Principles Applied Since The *PEI Reference*

Since the *PEI Reference*, the Supreme Court of Canada has reaffirmed the Supreme Court’s constitutional principles set out in the *PEI Reference*.

In 2005, the Supreme Court of Canada released its decision, *Provincial Court Judges’ Assn. of New Brunswick v. New Brunswick (Minister of Justice)*; *Ontario Judges’ Assn. v. Ontario (Management Board)*; *Bodner v. Alberta*; *Conférence des juges du Québec v. Québec (Attorney General)*;

Minc v. Quebec (Attorney General), 2005 SCC 44, [2005] 2 S.C.R. 286 (“*Bodner*”) (see Tab D, Appendix).

The CBA intervened in *Bodner* and supports the Supreme Court of Canada’s ruling in that case.

In *Bodner*, the Supreme Court of Canada held that the principles stated in the *PEI Reference* remain valid (para. 13).

In *Bodner*, the Supreme Court of Canada reiterated principles articulated in the *PEI Reference* that:

- judicial independence is “the lifeblood of constitutionalism in democratic societies” (para. 4);
- judicial independence is “necessary because of the judiciary’s role as protector of the Constitution and the fundamental values embodied in it, including the rule of law, fundamental justice, equality and preservation of the democratic process” (para. 4 citing *Beauregard, supra* at p. 70);
- judicial independence has two dimensions: first, the individual dimension, which relates to the independence of a particular judge

and the second, the institutional dimension, which relates to the independence of the court the judge sits on; “Both dimensions depend upon objective standards that protect the judiciary’s role” (para. 5);

- the “judiciary must both be and be seen to be independent” (para. 6);
- “Judicial independence serves not as an end in itself, but as a means to safeguard our constitutional order and to maintain public confidence in the administration of justice” (para. 6); and
- key components of judicial independence are: security of tenure, administrative independence and financial security (para. 7).

Regarding the nature of compensation commissions and their recommendations as established by the *PEI Reference*, the Supreme Court of Canada stated in *Bodner* that a commission must focus on identifying the appropriate level of remuneration for the judicial office in question and address all relevant issues in a flexible manner (para. 14).

Regarding a government’s response to the commission’s recommendations, the *Bodner* decision requires a government to give

weight to the commission's recommendations, and provide a complete response to them (para. 23). A government may depart from a commission's recommendations, if the government provides complete and legitimate reasons and that deal with a commission's recommendations in a meaningful way that will meet the standard of rationality (para. 25).

Regarding the level of judicial review of a government's decision to not follow a commission's recommendations, the *Bodner* decision provides that the court must focus on the government's response and on whether the purpose of the commission process has been achieved. Further, the reviewing court should apply a three-stage test for determining the rationality of the government's response:

(1) Has the government articulated a legitimate reason for departing from the commission's recommendations?

(2) Do the government's reasons rely upon a reasonable factual foundation? and

(3) Viewed globally, has the commission process been respected and have the purposes of the commission — preserving judicial independence and depoliticizing the setting of judicial remuneration — been achieved? (para. 31)

The Supreme Court of Canada's decision in *Bodner* does **not** permit a government to reject a commission's recommendations and merely replace it with a government's own recommendations or give a government the final word in determining judicial compensation. Instead, the Supreme Court of Canada has dictated in *Bodner* that a government must respect the commission process and achieve the purposes of the commission: to preserve judicial independence and depoliticize judicial remuneration (para. 31).

RECOMMENDATION # 4:

The CBABC recommends that the Commission apply the applicable constitutional principles provided in the *PEI Reference* and clarified in *Bodner* in order to ensure: a depoliticized judicial compensation process and judicial independence through fair and reasonable judicial compensation as noted in our Submissions.

LAWS OF BRITISH COLUMBIA

Section 5(5)(d) of the Act requires the Commission to consider the laws of British Columbia.

The laws of British Columbia include the Act and other relevant legislation.

Other relevant legislation is the *Provincial Court Act*, R.S.B.C. 1996, c. 379. The *Provincial Court Act* provides for the jurisdiction of the Provincial Court including adult criminal, youth, civil, family, traffic and bylaw cases. The *Provincial Court Act* also provides for the appointment of judges, their duties, and term of office.

Also other relevant legislation includes the *Small Claims Act*, R.S.B.C. 1996. Since 2005, the government expanded the Provincial Court's jurisdiction regarding small claim matters to a maximum of \$25,000 and permits that amount to be increased up to \$50,000.¹ The consequence of the government increasing the monetary limit means that the Provincial

¹ Section 1 of the Small Claims Court Monetary Limit Regulation (B.C. Reg. 179/2005) prescribes the monetary limit of \$25,000. Section 21 of the *Small Claims Act* permits a regulation to be made to increase the monetary limit to a maximum of \$50,000.

Court is having to adjudicate increasing complex legal matters which take more time and effort to resolve.

Since the last determination of judicial compensation in 2007, the government has enacted several statutes which provide for concurrent jurisdiction of the Provincial Court with the Supreme Court. Section 175 of the *Petroleum and Natural Gas Act*, R.S.B.C. 1996, c. 361 provides that orders may be enforced by filing a certified copy of an order of the board with the Supreme Court or the Provincial Court.² Section 66 of the *Oil and Gas Activities Act*, S.B.C. 2008, c. 36 (Bill 20) permits the government to file with the Supreme Court or the Provincial Court a certified copy of a notice imposing an administrative penalty.³ Section 7.4 of the *Lobbyists Registration Act*, S.B.C. 2001, c. 42 (Bill 20) permits the registrar to file with the Supreme Court or the Provincial Court a certified copy of the notice imposing an administrative penalty.⁴ Section 39 of the *Security Services Act*, S.B.C. 2007, c. 30 (Bill 15) permits the registrar to file with the Supreme Court or the Provincial Court a certified copy of the notice imposing an administrative penalty.⁵ Section 33 of the *Strata Property Act*, S.B.C. 1998, c. 43 (Bill 47) gives either the Provincial Court or the

² As amended by section 56 of the *Energy, Mines And Petroleum Resources Statutes Amendment Act, 2010*, S.B.C. 2010, c. 9 (Bill 8) (section 56 in force by regulation).

³ Section 66 to come into force by regulation.

⁴ In force April 1, 2010 by section 21 of the *Lobbyists Registration Amendment Act, 2009*, S.B.C. 2009, c. 31 (Bill 19).

Supreme Court the power to make orders regarding contracts or transactions that was unreasonable or unfair to a strata corporation.⁶

Recent relevant statutes other than the *Provincial Court Act* expand the jurisdiction of the Provincial Court. Section 49 of the *Public Health Act*, S.B.C. 2008, c. 28 (Bill 23) provides that a medical health officer may apply to the Provincial Court for orders regarding dangers to public health.⁷ Section 147 of Chapter 16 of the *Tsawwassen First Nation Final Agreement Act*, S.B.C. 2007, c. 39 (Bill 39) states that the Provincial Court has jurisdiction to hear prosecutions of offences under Tsawwassen Law.⁸ Section 13.33.01 of Chapter 13 of the *Maa-Nulth First Nations Final Agreement Act*, S.B.C. 2007, c. 43 (Bill 45) states that the Provincial Court has jurisdiction to hear prosecutions of offences under Maa-nulth First Nation Laws.⁹

The laws of British Columbia also include the constitutional principles set out in the *PEI Reference*. These constitutional principles are relevant for the Commission to determine judicial compensation since they provide

⁵ In force September 1, 2008 by B.C. Reg. 207/08.

⁶ Section 33, as amended by section 5 of the *Strata Property Amendment Act, 2009*, S.B.C. 2009, c. 17 (Bill 8), comes into force by regulation.

⁷ In force March 31, 2009 by B.C. Reg. 49/09.

⁸ In force April 3, 2009 by B.C. Reg. 55/09.

guidance for the proper application of the factors listed in section 5(5) of the Act that the Commission must consider in determining judicial compensation.

RECOMMENDATION # 5:

The CBABC recommends that the Commission apply the applicable laws of British Columbia, including the expanded jurisdiction of the Provincial Court, relevant constitutional principles, to ensure that judicial independence is protected by the fair and reasonable determination of judicial compensation.

⁹ In force by regulation.

PROVINCIAL COURT JUDGES' WORK ENVIRONMENT

In 2001, in its first report, the Judges Compensation Commission wrote that the Provincial Court is a “People’s Court”:

The “People’s Court”

The Provincial Court has often been described as the “people’s court”. The name reflects the high volume of cases it hears and the fact that the Provincial Court is the only court many residents of the province will ever deal with directly. Many people appear there without lawyers to represent them and thus deal directly with the Court’s Judges. This presents special challenges for the Judges who, in addition to making decisions in each case that comes before them, also are often called upon to educate people about how the justice system works.¹⁰

¹⁰ British Columbia Judges Compensation Commission, Final Report of the 2001 British Columbia Judges Compensation Commission (2001) at page 10 (<http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/210694/2001finalreport.pdf>).

The finding of fact by the 2001 Judges Compensation Commission regarding the increase in self-represented litigants in 2001 is more of a pressing problem in 2010.

Further, in the context of continued government cutbacks to legal aid funding in the Province, the 2004 Judges Compensation Commission, citing with approval the CBA submission, made these findings regarding family law:

Family cases are often complex, sometimes intractable, and always of profound importance to the litigants involved. Meanwhile, government cutbacks to legal aid funding for family matters have led to a large and growing legion of unrepresented family litigants. The result, as set out in the Canadian Bar Association's written submission to us:

...is more time being needed to resolve family matters.

Judges need to take more time and effort to explain the

court process to self-represented litigants. Self represented litigants often find the court process complex, confusing and frustrating. The situation is also frustrating for the judges, lawyers and the clients who are paying for their lawyers to represent them in family court. To provide fair and impartial decisions in these cases of self-represented litigants, additional demands are imposed on the time, energy, professionalism and judicial expertise of the judges.¹¹

The problems found in family law cases by the the 2004 Judges Compensation Commission continue to apply in 2010. Given the continued cutbacks to legal aid funding and the increase in self-represented litigants, this makes the work environment for the Provincial Court even more challenging than before.

Across the Province, there are 89 courthouses and circuit courts.¹² During the fiscal year 2008—2009, the Provincial Court received 220,970 new cases and 28,580 subsequent family applications were filed.¹³ This includes new adult criminal, youth, civil, family, traffic and bylaw cases. By way of comparison, in the Supreme Court of British Columbia, for 2008, there were 63,042 criminal, civil and family cases filed.¹⁴

As the People's Court, the Provincial Court continues to be the workhorse of the court system in the Province.

¹¹ Final Report of the 2004 British Columbia Judges Compensation Commission at page 15 (www.llbc.leg.bc.ca/public/pubdocs/bcdocs/371904/finalreport.pdf).

¹² Ministry of Attorney General, *2010/11 – 2012/130 Service Plan* (March 2010) at page 11 (www.bcbudget.gov.bc.ca/2010/sp/pdf/ministry/ag.pdf).

¹³ Provincial Court of British Columbia, Annual Report 2008-9 at page 11 (www.provincialcourt.bc.ca/downloads/pdf/annualreport2008-2009.pdf).

¹⁴ Supreme Court of British Columbia Annual Report 2009 at page 49 (www.courts.gov.bc.ca/supreme_court/about_the_supreme_court/annual_reports/2009%20Annual%20Report%20%28May%2021,%202010%29.pdf). Criminal cases filed: 1,498. Family cases filed: 13,757. Civil cases filed: 47,787.

RECOMMENDATION # 6:

The CBABC recommends that the Commission award fair and reasonable compensation commensurate with the responsibilities of the work performed by the Judges of the Provincial Court, taking into consideration the:

- **increased demands in jurisdiction; and**
- **increased demands on the time and expertise of the judges.**

QUALIFIED APPLICANTS TO THE JUDICIARY

Section 5 (5)(c) of the Act requires the Commission to consider the need to maintain a strong court by attracting qualified applicants.

The proper and efficient operation of the judicial system depends on a high level of judicial competence. In order to attract qualified applicants, judicial compensation must be competitive. Provincial Court judges should be appointed from a wide cross-section of the Bar accounting for gender, age and location (both urban and rural). Qualified applicants should be drawn from all areas of legal practice, including from the barrister and

solicitor sides of the Bar and the private and public Bar. Applicants to the Provincial Court should be skilled and experienced and be of exceptional ability.

Compensation Needed to Attract the Most Qualified Members From the Bar

A key factor in determining proper compensation for Provincial Court judges is attracting candidates of the highest quality and, once appointed, motivating and retaining those individuals for the duration of their professional careers.

As required by the *PEI Reference*, judicial compensation must be “adequate, commensurate with the status, dignity and responsibility of their office (para. 194). In British Columbia the position of a Provincial Court judge is accorded respect by the public at large.

Just prior to appointment, most judges are senior lawyers, earning the highest income they will earn as lawyers. Once appointed, judges cannot practise any other business, profession or occupation. For the vast majority of judges, their judicial compensation is the sole source of income

for themselves and their families. Consequently, judges should be given fair and reasonable compensation to ensure their financial security which, in turn, ensures judicial independence.

Compensation to Supreme Court Justices and Judges of the Provincial Court

As the People's Court, the CBA submits that the function of the Provincial Court is as important to the people of this Province as that of the Supreme Court. Judges of the Provincial Court perform many of the same functions, work similar hours, apply the same law, and have the same relevance to British Columbians as justices of the Supreme Court. Litigants appearing before the Provincial Court are as deserving as those appearing before the Supreme Court. Litigants in both courts are entitled to the same quality of justice.

Justices of the Supreme Court have an annual compensation of \$271,400 while Provincial Court judges are paid \$231,138. Provincial Court judges are paid \$40, 262 less each year than Supreme Court Justices.

Both the Provincial Court and Supreme Court compete for the same pool of qualified candidates from the Bar. Those lawyers who are well-qualified and suited to the Provincial Court, may very well reasonably choose to apply to the Supreme Court since they will earn \$40,262 more each year. Consequently, the difference in compensation may very well inhibit the recruitment of the best possible candidates to the Provincial Court Bench.

In fact, it appears that the difference in salaries may already be having that affect, as there have been a number of recent appointments to the British Columbia Supreme Court that have come from Provincial Court ranks, and some of those appointees had served a very short time on the Provincial Court before accepting an appointment to the Supreme Court.

Following the *PEI Reference*, financial security is part and parcel of judicial independence and benefits the public.

The public interest is not properly served where there is a significant disparity between the remuneration for judges of the Provincial Court and the justices of the Supreme Court.

RECOMMENDATION # 7:

The CBABC recommends that the Commission accept that the public interest is not properly served where there is a significant disparity between the remuneration for judges of the Provincial Court and the justices of the Supreme Court. The CBABC further recommends that the Commission should take this factor into consideration in its determination of fair and reasonable judicial remuneration.

OTHER RELEVANT MATTERS

Section 5(5)(e) of the Act requires the Commission to consider any other matter the Commission considers relevant.

Costs

The CBABC submits that other relevant matters for the Commission to consider include costs.

The Provincial Court Judges Association Of British Columbia (the “Association”) has expended significant time and expense to prepare and make its submissions before the Commission. To cut costs, the Association has not retained legal counsel and has participated with government in cost-sharing.

Like the CBA , the Association is a non-profit organization with limited funding. For all non-profit organizations, it is a daily challenge to keep costs in line with limited revenues.

Since the beginning of the judicial compensation process under the Act, previous commissions have recommended that government reimburse the

Association for its costs and the government has accepted those recommendations each time. It is reasonable and proper to continue to follow this past practice of previous commissions and the government and have the government pay all reasonable costs incurred by the Association in preparing and making its submissions to the Commission.

RECOMMENDATION # 8:

The CBABC recommends that the Commission recommend that the government pay all reasonable costs incurred by the Provincial Court Judges Association Of British Columbia Association to prepare and make its submissions to the Commission.

SUMMARY OF RECOMMENDATIONS

In these Submissions, the CBABC has made the following recommendations:

RECOMMENDATION #1:

The CBABC supports the intent and broad purpose of the Commission to determine appropriate compensation for the Provincial Court Judges through a method that upholds the principle of judicial independence. The CBA further submits it is proper for the Commission to apply this standard to its present determinations of judicial compensation.

RECOMMENDATION #2:

The CBABC recommends that the Commission follow the provisions of the Act, including those in section 5(5) and the direction imposed on it by the Supreme Court of Canada in the *PEI Reference* to ensure that the process to be followed to determine judicial compensation is fair and in accordance with the rule of law.

RECOMMENDATION # 3:

The CBABC recommends that the Commission find that the government's current financial position allows for fair and reasonable judicial compensation on the basis of the requirements of the Act and the constitutional principles applicable to ensuring judicial independence through fair judicial compensation as noted in our Submissions.

RECOMMENDATION # 4:

The CBABC recommends that the Commission apply the applicable constitutional principles provided in the *PEI Reference* and clarified in *Bodner* in order to ensure: a depoliticized judicial compensation process and judicial independence through fair and reasonable judicial compensation as noted in our Submissions.

RECOMMENDATION # 5:

The CBABC recommends that the Commission apply the applicable laws of British Columbia, including the expanded jurisdiction of the Provincial Court, relevant constitutional principles, to ensure that judicial independence is protected by the fair and reasonable determination of judicial compensation.

RECOMMENDATION # 6:

The CBABC recommends that the Commission award fair and reasonable compensation commensurate with the duties and responsibilities of the work performed by the Judges of the Provincial Court, taking into consideration the:

- increased demands in jurisdiction; and
- increased demands on the time and expertise of the judges.

RECOMMENDATION # 7:

The CBABC recommends that the Commission accept that the public interest is not properly served where there is a significant disparity between the remuneration for judges of the Provincial Court and the justices of the Supreme Court. The CBA further recommends that the Commission should take this factor into consideration in its determination of fair and reasonable judicial remuneration.

RECOMMENDATION # 8:

The CBABC recommends that the Commission recommend that the government pay all reasonable costs incurred by the Provincial Court Judges Association Of British Columbia Association to prepare and make its submissions to the Commission.

CONCLUSION

As an independent voice in society, one of the main goals for the CBA is to speak out and protect the independence of the judiciary.

Consequently, we urge this Commission to recommend to the government that the Provincial Court Judges be fairly and reasonably compensated in order to uphold, preserve and protect the independence of the judiciary in British Columbia.

All of which is respectfully submitted.

A handwritten signature in black ink, appearing to read 'James M. Bond', with a large loop at the beginning and a trailing flourish.

James M. Bond
President
The Canadian Bar Association BC Branch

APPENDIX

SOURCE

TAB
A

Reference Re Remuneration of Judges of the Provincial Court of Prince Edward Island, [1997] 3 SCR 3
(<http://csc.lexum.umontreal.ca/en/1997/1997scr3-3/1997scr3-3.pdf>)

Beauregard v. Canada, [1986] 2 S.C.R. 56
(<http://scc.lexum.umontreal.ca/en/1986/1986scr2-56/1986scr2-56.pdf>)

B

Ell v. Alberta [2003] 1 S.C.R. 857
(<http://csc.lexum.umontreal.ca/en/2003/2003scc35/2003scc35.pdf>)

C

Provincial Court Judges' Assn. of New Brunswick v. New Brunswick (Minister of Justice); Ontario Judges' Assn. v. Ontario (Management Board); Bodner v. Alberta; Conférence des juges du Québec v. Québec (Attorney General); Minc v. Québec (Attorney General), 2005 SCC 44, [2005] 2 S.C.R. 286
(<http://scc.lexum.umontreal.ca/en/2005/2005scc44/2005scc44.pdf>)

D