



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

**TO THE**

**BRITISH COLUMBIA**

**JUDICIAL JUSTICES OF THE PEACE**

**2013 COMPENSATION COMMISSION**

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## **TABLE OF CONTENTS**

<b>SECTION</b>	<b>PAGE</b>
PREFACE	3
EXECUTIVE SUMMARY	4
FAIR PROCESS TO DETERMINE JUDICIAL COMPENSATION	6
JUDICIAL JUSTICE'S WORK ENVIRONMENT	15
CURRENT FINANCIAL POSITION OF THE GOVERNMENT	18
REASONABLE COMPENSATION TO JUDICIAL JUSTICES	20
NEED TO ATTRACT QUALIFIED JUDICIAL JUSTICES	21
LAWS OF BRITISH COLUMBIA	23
OTHER RELEVANT MATTERS	23
SUMMARY OF RECOMMENDATIONS	24
CONCLUSION	27

## **PREFACE**

The Canadian Bar Association (British Columbia Branch) (the “CBA”) has been requested to make submissions to provide its distinct perspective regarding judicial compensation for Judicial Justices of the Peace (“JJs”) to the Judicial Justices Of The Peace 2013 Compensation Commission (the “Commission”).

Formed in 1896, the purpose of the CBA 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 approximately 38,000 members and the British Columbia Branch itself has over 6,900 members. Our members practice law in many different areas. The CBA has established 77 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 2007 and 2010, the CBA made submissions to the Commission regarding compensation for JJs.

### **EXECUTIVE SUMMARY**

These Submissions provide the CBA's recommendations on seven matters before the Commission. First, the CBA recommends that the Commission apply the applicable constitutional principles in order to ensure an effective process characterized by government goodwill, a depoliticized judicial compensation process and judicial independence through fair and reasonable judicial compensation.

Second, the CBA recommends that the Commission consider the JJ's work environment as the Province's "people's court", its heavy caseload and the unique demands imposed on JJs in working with large numbers of unrepresented litigants.

Third, the CBA recommends that the Commission find that the government's current financial position allows for fair and reasonable compensation for JJs. In addition, the CBA recommends that the Commission take into account the "Judicial Independence: (And What Everyone Should Know About It)" and the Memorandum of Understanding in the Commission's consideration of the current financial position of the government.

Fourth, the CBA recommends that the Commission should take into account the widening disparity in the levels of compensation between the JJs and Provincial Court judges' compensation levels.

Fifth, the CBA recommends that the Commission consider that competitive compensation must be provided in order to attract qualified applicants to join the JJ Bench.

Six, the CBA recommends that the Commission apply the applicable laws of British Columbia to ensure that judicial independence is protected by the fair and reasonable determination of judicial compensation.

Seven, and finally, the CBA recommends that the Commission consider other relevant matters, including: pensions, benefits, and cost of living allowance indexed for inflation. The CBA further recommends that the Commission recommend that the government pay all reasonable costs incurred by the Judicial Justices Association of British Columbia (the "JJABC") in preparing and making its submissions to the Commission.

## **FAIR PROCESS TO DETERMINE JUDICIAL COMPENSATION**

Under the *Judicial Compensation Act*, S.B.C. 2003, c. 59 (the “Act”), the Commission must report to the Minister of Justice 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.<sup>1</sup>

The Act further requires the Minister of Justice 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 lists the factors the Commission must consider in recommending judicial compensation:

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

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<sup>1</sup> Unofficial copy available at: [http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_03059\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_03059_01).

## Constitutional Principles Applied to the Function of Judicial Compensation Commissions

In addition to the factors listed in the Act, 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*”) laid down the legal principles for governments to follow to set judicial compensation.<sup>2</sup> The CBA intervened in the *PEI Reference*.

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

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<sup>2</sup> See <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/1541/1/document.do>.

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 constitutional principles set out in the *PEI Reference*.

In 2003, the Supreme Court of Canada released its decision in *Elliott v. Alberta*, 2003 SCC 35, [2003] 1 SCR 857 (*Elliott*).<sup>3</sup> In *Elliott*, the Supreme Court held that the principles of judicial independence that apply to judges apply equally to JJs.

Specifically, in *Elliott*, the Supreme Court of Canada held that:

- principles of judicial independence apply to JJs as a result of their authority to exercise judicial functions (para. 17);

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<sup>3</sup> See <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/2067/index.do>.

- JJs serve on the front line of the criminal justice process, and perform numerous judicial functions that significantly affect the rights and liberties of individuals (para. 24);
- JJs are included in the definition of “justice” under s. 2 of the *Criminal Code*, R.S.C. 1985, c. C-46, and are authorized to determine judicial interim release (bail) pursuant to s. 515 of the *Code* (para. 24);

Further, in *Ell*, the Supreme Court of Canada acknowledged that “[j]ustices of the peace have played an important role in Canada’s administration of justice since the adoption of the position from England in the 18th century” and that the “administration of justice could not be carried on in the Provinces effectually without the appointment of justices of the peace and police magistrates”. (para. 4).

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. Québec (Attorney General)*, 2005 SCC 44, [2005] 2 S.C.R. 286 (“*Bodner*”).<sup>4</sup>

The CBA intervened in *Bodner*.

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<sup>4</sup> See <http://csc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/2277/1/document.do>.

In *Bodner*, the Supreme Court of Canada held that the principles stated in the *PEI Reference* remain valid (para. 13). The Supreme Court of Canada further held that the principles of judicial independence that apply to judges apply equally to JJs. More specifically, the Supreme Court of Canada determined that JJs:

- exercise an important judicial role;
- have had their functions expanded over the years; and
- require constitutional protection (para. 121).

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);
- 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);
- “[j]udicial 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).

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).

In 2012, *Bodner* was applied by the BC Supreme Court in *Provincial Court Judges' Association of British Columbia v. British Columbia (Attorney General)*, 2012 BCSC 1022 (CanLII).<sup>5</sup> The Provincial Court Judges' Association of British Columbia (the "PCJA") obtained an order quashing the BC Legislative Assembly's 2011 resolution rejecting many of the recommendations of the 2010 British Columbia Judges Compensation Commission (the "2010 Commission"). The PCJA also obtained a

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<sup>5</sup> See <http://canlii.org/en/bc/bcsc/doc/2012/2012bcsc1022/2012bcsc1022.pdf>.

declaration that the government's response to the 2010 Commission did not conform to the standards set out in the Act.

In applying the *Bodner* test, the BC Supreme Court found that the government did not have empirical evidence to support a legitimate reason for departing from the 2010 Commission's recommendations regarding pensions (paras. 91 and 92). Further, the court found that the government's "net zero" public sector compensation mandate as a basis of refusal of the 2010 Commission's recommendation for a salary increase for judges was not a rational reason and violated *Bodner* (paras. 106 and 107).

The BC Supreme Court ordered special costs against the government for the government's failure to adhere in good faith to the constitutional principles underlying the judicial compensation process. Macaulay, J. held:

[15] In my view, the government's conduct relating to the important constitutional process of setting judicial remuneration as well as its conduct during the judicial review proceeding deserve judicial rebuke. I reach this conclusion reluctantly but have kept in mind that the effectiveness of the process necessarily depends on the goodwill of government. The secretive resort to unconstitutional considerations during the framing of the government response is entirely inconsistent with the obligation of government as was its failure to be forthright during the proceeding.

[16] In the result, the Legislative Assembly made its decision not understanding how Cabinet arrived at its decision. The public, the PCJA and the court are all entitled to more from the AG and the government.<sup>6</sup>

The CBA recommends that the Commission apply the applicable constitutional principles provided in the *PEI Reference*, specific to JJs in *Ell*, clarified in *Bodner* and

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<sup>6</sup> 2012 BCSC 1420 (<http://www.canlii.org/en/bc/bcsc/doc/2012/2012bcsc1420/2012bcsc1420.pdf>).

applied in *Provincial Court Judges' Association of British Columbia v. British Columbia (Attorney General)* in order to ensure an effective process characterized by government goodwill, a depoliticized judicial compensation process and judicial independence through fair and reasonable judicial compensation.

### **JJs' WORK ENVIRONMENT**

All past JJ commissions have all recognized that JJs have an important and challenging work environment.

The first 2002 British Columbia Judicial Justices Of The Peace Compensation Commission found that JJs, are for many British Columbians, “the face” of the Provincial Court.”<sup>7</sup>

The 2004 British Columbia Judicial Justices Of The Peace Compensation Commission observed that:

The absence of lawyers—both to defend and to prosecute the majority of cases heard in this court—places a burden on the JJPs. The defendant is often experiencing the court system for the first time, is usually anxious and may be uncomfortable in the English language. With no lawyers to explain the procedures and relevant law to the defendant, that job falls to the JJP, who

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<sup>7</sup> Page v, see [http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/353535/2002\\_report\\_recommendations.pdf](http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/353535/2002_report_recommendations.pdf).

must take special care to maintain both the reality and the appearance of impartiality.<sup>8</sup>

The 2007 British Columbia Judicial Justices Of The Peace Compensation Commission identified that:

When presiding in court, JJPs are attired and conduct themselves as judges in the ordinary sense, and are seen as such by thousands of people who appear before them each year. To such persons there is no more important judge than the one before whom they appear. Judicial justices are expected to demonstrate the care and patience, courteous consideration and impartial judicial deportment that is required of judges.<sup>9</sup>

The 2010 British Columbia Judicial Justices Of The Peace Compensation Commission found that:

Judicial Justices deal with judicial interim releases at the Justice Centre by teleconference or by videoconference. In conducting these hearings they are frequently dealing with unrepresented litigants and inexperienced police officers. As in court, these hearings are conducted without the benefit of additional support staff. The responsibility of the JJs is considerable as the outcome of these hearings could result in the incarceration of an individual until the conclusion of their trial – regardless of whether the individual is ultimately found

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<sup>8</sup> Page 7, see [http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/371900/report\\_recommendations.pdf](http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/371900/report_recommendations.pdf).

<sup>9</sup> Page 7, see <http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/426287/2007finalreport.pdf>.



guilty of the offence charged.<sup>10</sup>

In addition to previous Commissions' findings, in 2012, Mr. Cowper, Q.C., the Chair of the BC Justice Reform Initiative, released his final report and made a recommendation that "[b]roader use of judicial justices should be considered by the Provincial Court for the hearing of all preliminary inquiries and expansion of their use for bail applications."<sup>11</sup> Specifically, Mr. Cowper, Q.C. identified advantages to using JJs for bail applications: "greater flexibility in service standards and methodology", "increasing standards of performance in relation to bail applications" and "clear cost savings".<sup>12</sup>

The CBA recommends that the Commission consider the JJs' work environment, that JJs are the face of the Provincial Court, that JJs are perceived by the public as judges, JJs are often conducting hearing with lay litigants and that JJs have considerable responsibility for the legal rights and freedoms of ordinary people.

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<sup>10</sup> Page 10, see [http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs2011/471461/2010\\_jjcc\\_finalreport.pdf](http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs2011/471461/2010_jjcc_finalreport.pdf).

<sup>11</sup>"A Criminal Justice System for the 21st Century" (August 2012) at pages 108-109 (<http://www.ag.gov.bc.ca/public/justice-reform/CowperFinalReport.pdf>).

<sup>12</sup> Page 108, *supra*.

## **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.

Following the legal principles set down by the Supreme Court of Canada, the government needs to be mindful that judicial independence is not just a government priority, it is a constitutional duty. A useful definition of what judicial independence is, has recently been stated by the Chief Justices of the British Columbia Court of Appeal, the Supreme Court and the Chief Judge of BC on March 15, 2012: “Judicial Independence: (And What Everyone Should Know About It).”<sup>13</sup>

In our 2012 submissions to the Ministry of Justice and Attorney General of British Columbia regarding White Paper One, the CBA adopted this statement of the Chief Justices and Chief Judge of BC on judicial independence.<sup>14</sup>

In April 2013, the Minister of Justice And Attorney General of British Columbia and the Chief Justices and Chief Judge of BC entered into a memorandum of understanding

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<sup>13</sup> *Judicial Independence (And What Everyone Should Know About It)*, Court of Appeal of BC, Supreme Court of BC, and Provincial Court of BC ([http://www.courts.gov.bc.ca/about\\_the\\_courts/Judicial%20Independence%20Final%20Release.pdf](http://www.courts.gov.bc.ca/about_the_courts/Judicial%20Independence%20Final%20Release.pdf)).

<sup>14</sup> Page 8, see [http://www.cba.org/BC/Initiatives/pdf/CBABC\\_Response\\_to\\_White\\_Paper\\_final\\_December\\_12\\_2012.pdf](http://www.cba.org/BC/Initiatives/pdf/CBABC_Response_to_White_Paper_final_December_12_2012.pdf).

(the “MOU”).<sup>15</sup> The purpose of the MOU is to describe the roles and responsibilities of the Attorney and the Chief Justices and Chief Judge of BC in the administration of the courts. The administration of the courts involves spending public monies for the administration of justice and the operation of the courts.

The government will need to be mindful of the ruling in *Provincial Court Judges’ Association of British Columbia v. British Columbia (Attorney General)* that “the continuing invocation and repetition by government at all stages of the process primarily consisting of the “net-zero” mantra is neither legitimate nor rational under *Bodner*” (para. 74).

The government’s June Budget Update 2013 includes a balanced budget and forecasted surpluses for 2013 through to 2016.<sup>16</sup>

The CBA recommends that the Commission find that the government’s current financial position allows for fair and reasonable judicial compensation. In addition, the CBA recommends that the Commission take into account the “Judicial Independence: (And What Everyone Should Know About It)” and the MOU in the Commission’s consideration of the current financial position of the government.

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<sup>15</sup> Memorandum Of Understanding Between The Minister Of Justice And Attorney General Of British Columbia And The Chief Justice Of British Columbia And The Chief Justice Of The Supreme Court Of British Columbia And The Chief Judge Of The Provincial Court Of British Columbia (April 3, 2013). Available at: [http://www.courts.gov.bc.ca/supreme\\_court/announcements/2013/Memorandum%20of%20Understanding%20\(April%203%202013\).pdf](http://www.courts.gov.bc.ca/supreme_court/announcements/2013/Memorandum%20of%20Understanding%20(April%203%202013).pdf).

<sup>16</sup> News Release: June Update 2013 Confirms Balanced Budget on Track (June 27, 2013) ([http://www.bcbudget.gov.bc.ca/2013\\_June\\_Update/newsrelease/2013\\_June\\_News\\_Release.pdf](http://www.bcbudget.gov.bc.ca/2013_June_Update/newsrelease/2013_June_News_Release.pdf)) and June Update Balanced Budget 2013, Backgrounder 2: Fiscal Plan 2013 /14 – 2015 /16 (June 27, 2013) (page 4) ([http://www.bcbudget.gov.bc.ca/2013\\_June\\_Update/backgrounders/2013\\_June\\_backgrounder\\_fiscal\\_plan.pdf](http://www.bcbudget.gov.bc.ca/2013_June_Update/backgrounders/2013_June_backgrounder_fiscal_plan.pdf)).

## **REASONABLE COMPENSATION TO JJs**

Section 5(5)(b) of the Act requires the Commission to consider the need to provide reasonable compensation to JJs.

As required by the *PEI Reference*, judicial compensation must be “adequate, commensurate with the status, dignity and responsibility of their office (para. 194).

The 2010 British Columbia Judicial Justices Of The Peace Compensation Commission recognized that, while there should not be a fixed relationship between JJs’ and Provincial Court judges’ compensation levels, “the disparity in those levels should not be unfairly widened to the prejudice” of the JJs.<sup>17</sup> The rationale for this conclusion is:

The JJ compensation increases recommended by the 2007 Commission were directly related, inter alia, to the Commission’s concern to arrest what it concluded (p.38) was “the widening disparity between their pay and that of the judges of the Provincial Court, the only other persons who can perform their function”. In expressing its concern, the 2007 Commission confirmed the significance of the relationship between the salaries of the JJs and the PCJs.

That relationship may be defined in percentage terms which will vary over time in the JJPCC process, as we have noted. The ebbs and flows of the figures confirm the absence of a fixed or tied relationship, reflective of the duty of each

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<sup>17</sup> Page 37, *supra*.

Commission to consider the weight and relevance of the evidentiary factors dictated by s.5 (5) of the Act.<sup>18</sup>

The CBA supports this conclusion of the 2010 British Columbia Judicial Justices of the Peace Compensation Commission. The CBA recommends that the Commission should take into account the widening disparity in the levels of compensation between the JJs and Provincial Court judges' compensation levels.

As the Commission makes its recommendations, the CBA urges the Commission to consider the following factors:

- JJs did not receive a compensation increase during the period 2010/11 to 2012/2013;
- cost of living allowance adjustments based on the BC Consumer Price Index;
- and
- compensation of JJs in other jurisdictions.

### **NEED TO ATTRACT QUALIFIED JJs**

Section 5(5)(c) of the Act requires the Commission to consider the need to attract qualified applicants.

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<sup>18</sup> Page 27, *supra*.

JJs are designated as judicial justices under section 30.2 of the *Provincial Court Act*.

The Chief Judge of the Provincial Court has the duty and power to supervise JJs under section 11 of the *Provincial Court Act*.

From the outset, JJs, unlike Provincial Court judges, don't work regular 9 to 5 hours. They are required to provide public service 24/7, 365 days a year. As a result, JJs work shifts, work weekends and work on statutory holidays. They often travel throughout the Province in order to fulfill their responsibilities.

The CBA supports the need to maintain a strong core of JJs by attracting qualified applicants. Applicants to be JJs should be skilled and experienced. As judicial officers, it is important that JJs are lawyers, since lawyers are legally trained and experienced in the adjudicative functions that form the core of the JJ duties and responsibilities.

### **Compensation Needed to Attract Qualified JJs**

The CBA submits that it is the responsibility of the government to provide British Columbians with the highest calibre of judicial resources to resolve their disputes. A key factor in determining proper compensation for JJs is attracting candidates of the highest quality.

JJs should be appointed from a wide cross-section of the Bar accounting for gender, age and location (both urban and rural) and ethnic diversity. 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 JJ Bench should be skilled and experienced and be of exceptional ability.

The CBA recommends that the Commission consider that competitive compensation must be provided in order to attract qualified applicants to the JJ Bench.

### **LAWS OF BRITISH COLUMBIA**

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

The CBA recommends that the Commission apply the applicable laws of British Columbia to ensure that judicial independence of JJs is protected by the fair and reasonable determination of judicial compensation.

### **OTHER RELEVANT MATTERS**

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

The CBA submits that other relevant matters for the Commission to consider include pensions and other benefits. The CBA submits that following the *PEI Reference*, the same legal principles that apply to salaries for judges and JJs apply equally to judicial pensions and other benefits (para. 136).

The CBA submits that other relevant matters for the Commission to consider include costs. Like the CBA, the JJABC is a non-profit organization with limited funding. The CBA recommends that the Commission recommend that the government pay all reasonable costs incurred by the JJABC in preparing and making its submissions to the Commission.

## **SUMMARY OF RECOMMENDATIONS**

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

### **RECOMMENDATION #1:**

The CBA recommends that the Commission apply the applicable constitutional principles provided in the *PEI Reference*, specific to JJs in *Ell*, clarified in *Bodner* and applied in *Provincial Court Judges' Association of British Columbia v. British Columbia (Attorney General)* in order to ensure an effective process characterized by government



goodwill, a depoliticized judicial compensation process and judicial independence through fair and reasonable judicial compensation.

**RECOMMENDATION #2:**

The CBA recommends that the Commission consider the JJs' work environment, that JJs are the face of the Provincial Court, that JJs are perceived by the public as judges, JJs are often conducting hearing with lay litigants and that JJs have considerable responsibility for the legal rights and freedoms of ordinary people.

**RECOMMENDATION #3:**

The CBA recommends that the Commission find that the government's current financial position allows for fair and reasonable judicial compensation for JJs. In addition, the CBA recommends that the Commission take into account the "Judicial Independence: (And What Everyone Should Know About It)" and the MOU in the Commission's consideration of the current financial position of the government.

**RECOMMENDATION #4:**

The CBA recommends that the Commission should take into account the widening disparity in the levels of compensation between the JJs and Provincial Court judges' compensation levels. As the Commission makes its recommendations, the CBA urges the Commission to consider the following factors:

- JJs did not receive a compensation increase during the period 2010/11 to 2012/2013;
- cost of living allowance adjustments based on the BC Consumer Price Index; and
- compensation of JJs in other jurisdictions.

**RECOMMENDATION #5:**

The CBA recommends that the Commission consider that competitive compensation must be provided in order to attract qualified applicants to join the JJ Bench.

**RECOMMENDATION #6:**

The CBA recommends that the Commission apply the applicable laws of British Columbia to ensure that judicial independence is protected by the fair and reasonable determination of judicial compensation for JJs.

**RECOMMENDATION #7:**

The CBA recommends that the Commission recommend that the government pay all reasonable costs incurred by the JJABC in preparing and making its submissions to the Commission.

## **CONCLUSION**

The CBA has a proud tradition of speaking out and protecting the independence of the judiciary.

Consequently, we urge this Commission to recommend to the government that JJs 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 blue ink, appearing to be 'Kerry L. Simmons', written in a cursive style.

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**Kerry L. Simmons**  
President  
Canadian Bar Association BC Branch