

Judicial Council Annual Report 1996, 1997, 1998

Introduction

The Judicial Council of British Columbia is a body created by statute, originally in the Provincial Court Act of 1969 and continued under the present Provincial Court Act, R.S.B.C. 1996, c. 379. Section 22 of the Act provides:

22. The object of the council is to improve the quality of judicial service, and its functions include the following:

- a. considering proposed Lieutenant Governor in Council appointments of judges, justices and court referees;
- b. conducting inquiries respecting judges, justices and court referees;
- c. considering proposals for improving the judicial services of the court;
- d. continuing the education of judges and organizing conferences of judges;
- e. preparing and revising, in consultation with the judges, a code of ethics for the judiciary;
- f. reporting to the Attorney General on the matters the Attorney General considers necessary

The first reference to a Judicial Council in British Columbia occurred in the Provincial Court Act of 1969. However, it was not until July 21, 1970 that the Judicial Council mentioned in the Act of 1969 came into being with the appointment of Magistrate Cyril White as the senior judge, which was the term then used to describe what is now the position of chief judge.

The early formation of the Provincial Court of British Columbia has been aptly described in a book authored by Alfred Watts, Q.C., formerly an associate chief judge of the Provincial Court of British Columbia, entitled, *Magistrate-Judge, The Story of the Provincial Court of British Columbia* (1986). At page 57, he states:

It is difficult to sufficiently emphasize the importance of the offices of Chief Judge and Council carrying as they do and as related to the Court most of the responsibilities previously exercised by the Department.

Council held its first meeting August 10, 1970, and from the start had many matters on its plate. It was, for example, almost immediately involved in a serious disciplinary inquiry, also recommending that full-time judges not engage in the practice of law, that only legally-trained judges be appointed, that the matter of legal education of judges be examined and that part-time laymen appointed to remote areas be confirmed only as Justices of the Peace and not as Provincial Judges.

At about this time there commenced a whole train of events which were to culminate in the Provincial Court Act 1975, affecting Judges and Justices of the Peace and producing the Court much as it is today.

The statutory provision for the composition of the Judicial Council is contained in section 21(2) of the Act. It provides that;

21(2) The members of the council are the following:

- a. The chief judge as presiding member;
- b. the associate chief judge as alternate presiding member or, if 2 or more associate chief judges are designated, the associate chief judge designated as alternate presiding member by the Lieutenant Governor in Council;
- c. the treasurer of the Law Society of British Columbia nominated by the treasurer,
- d. the president of the British Columbia Branch of the Canadian Bar Association or a person nominated by the president;
- e. by appointment of the Lieutenant Governor in Council for a term of not longer than 3 years, a judge and not more than 4 other persons.

Where the chief judge does not attend a meeting of the judicial council, the alternate presiding member acts as the chair. The council makes its decisions by majority vote and where in a proceeding before council there is no majority decision, the presiding member casts a second and deciding vote.

In 1996, the members of the Judicial Council were; the Honourable Chief Judge Robert W. Metzger as Chair; the Honourable Associate Chief Judge E. Dennis Schmidt; the Honourable Judge D.R. Pendleton (President of the Provincial Court Judges Association); His Worship P. Lim, J.P.; Ms. Susan Daniels, Q.C.; a designate of the Law Society of British Columbia, Mr. Michael J. Brecknell, designate of the Canadian Bar Association; Professor M.J. Callahan, and Councillor J.B. Braithwaite and Dr. D.L. Holmes.

In 1997 the Honourable Judge D.R. Pendleton was replaced by the Honourable Judge B.D. MacKenzie as the new President of the B.C. Provincial Court Judges' Association, and Dr. D.L. Holmes was replaced by Dr. W.M. Kendal.

In 1998 the Honourable J.J. Threlfall replaced the Honourable Judge B.D. MacKenzie and Mr. P.J. Wilson was designated by the Law Society of B.C. to replace Ms. S. Daniels, Q.C.

The Judicial Council meets regularly to carry out its duties and responsibilities under the Act. It reviews all applications for the appointment of judges, court referees (also referred to as "sitting justices of the peace"), and justices of the peace, as well as attending to the other statutory objectives of the Judicial Council, including judicial discipline, education, proposals for the improvement of the judicial services of the Provincial Court and reports which have been made to the Attorney General on matters affecting the Provincial Court, such as judicial compensation, court facilities, and delay and backlog.

As at December 1996 the Provincial Court consisted of 134 full-time judges and 6 ad hoc judges, 350 justices of the peace and 17 sitting justices of the peace and 7 ad hoc sitting justices of the peace. There was a substantial increase to the sitting justice of the peace complement in the fall of 1996 with the addition of 6 full-time appointments and 3 ad hoc appointments to handle the volume in traffic court generated by the photo radar enforcement programme.

As at December of 1997, the Provincial Court consisted of 142 full-time judges and 6 ad hoc judges; 351 justices of the peace, 18 sitting justices of the peace and 6 ad hoc sitting justices of the peace. The judge complement was increased in part in response to the report to the Attorney General on Delay and Backlog in the Provincial Court.

As at December 1998, there were 140 full-time judges and 7 ad hoc judges, 362 justices of the peace and 18 sitting justices of the peace and 6 ad hoc sitting justices of the peace.

The Provincial Court sits in 103 locations throughout the Province of British Columbia. Each person who is appointed as a provincial court judge is expected to preside in all divisions of the court and travel as assigned by the chief judge.

Of the judges, there are currently 38 women, ranging in ages from 40 years to 69 years (the average age is 43; the median, 42). The male judges range in age from 40 to 69 years (the average age is 43; the median, 47).

Applications to the Judicial Council

One of the major functions of the Judicial Council is assessing applications for the position of provincial court judge. Candidates first complete an application form and return it to the chief judge of the Provincial Court, along with a medical report completed by the applicant's doctor (see Appendix A and B). All applications are reviewed by the Judicial Council. The Judicial Council receives written references from the Canadian Bar Association and judges before whom the applicant has appeared. The Law Society of British Columbia also submits a report on the applicant's professional record. After reviewing this material the Judicial Council decides whether a candidate should be interviewed by Council. If a candidate is not selected for interview he or she ceases to be a candidate.

If a candidate is selected for interview, it will take place before a quorum of members of the Judicial Council. At that time, applicants have the opportunity to present their reasons for their application and their particular qualifications for the position. After interviewing the applicant, the Judicial Council determines the acceptability of the candidate by majority vote.

Candidates are informed that they will not hear about the outcome of their application unless they receive an offer of a position by the Attorney General. If no such offer is forthcoming within three years, the candidate may apply again.

Judicial Council assess each applicant on the following criteria:

- Normally 10 years in the practice of law. Those with less legal practice are considered if they have a range of related experience.
- Legal reputation, including:
 - (a) reference from the Canadian Bar Association and judges before whom the applicant has appeared.
 - (b) review of professional record from the Law Society of British Columbia.
- General knowledge of the law, preferably with recent practice in criminal, family and/or civil matters.
- Willingness to learn and a demonstrated commitment to ongoing professional education.
- Knowledge of and sensitivity to current dilemmas and issues facing the courts and the judiciary.
- Ability to listen and communicate effectively.
- Personal characteristics such as decisiveness, even temperament, fairness, and common sense.
- Compassion for those coming before the court and an understanding of their circumstances.

- Respect in the community.
- Good health.
- Passion for the job.
- Ability to handle power.
- Adaptability to job changes and flexibility within the job.
- Humility.
- Appreciation for cultural diversity.
- Public service dedication.
- Ability to work with others cooperatively.
- Understanding of the role of the court in society.

Although the Judicial Council recognizes that many applicants who do not practice in Provincial Court, possess unique attributes and skills that bring a valuable texture to the provincial judiciary, the Council encourages applicants to acquire recent experience, or in knowledge about the provincial court system.

Judicial Council continues to receive relatively few applications from lawyers of aboriginal origin or members of other visible minorities. While this may be a reflection of the composition of the legal profession, the Council encourages such applications.

Between 1996 and 1998, the applications to Judicial Council were as follows:

Year	Applied FF	Applied M	Total	Interviewed F	Interviewed M	Total
1996	19	53	72	9	26	35
1997	13	37	50	13	25	38
1998	24	27	51	6	16	22

*Interview of 1998 candidates will be completed in 1999

Judicial Council is also responsible for recommending the appointment of justices of the peace. Justices of the peace in British Columbia include court referees (also called sitting justices of the peace), stipendiary justices of the peace (who work on a call-out basis), Judicial Case Managers (who are judicial employees) and Court Services justices of the peace (who are government employees working in the court registries). Justices of the peace are almost all lay appointees of the Attorney General but a few sitting justices of the peace are legally trained. All candidates are required to have successfully completed a training course through the Office of the Chief Judge.

Justice of the peace candidates are assessed by the Judicial Council on the basis of a comprehensive application form, related legal background and training, previous work experience, health, reputation in the community, and absence of any conflicts of interest. Court referee (sitting justice of the peace) applicants are screened and interviewed by the Judicial Council as required for vacancies. Many of the characteristics considered in assessing applicants for the position of provincial court judge are also considered when assessing candidates applying to become justices of the peace.

Judicial Council approved 29 justice of the peace candidates in 1996, including 9 sitting justice of the peace applications. In 1997, it approved 41 JP applicants, and 11 in 1998.

Judicial Education

Since the early 1970s the Court has had regular educational programmes for judges, mostly delivered by judges, with the involvement of the Office of the Chief Judge and the Provincial Court Judges' Association of British Columbia. The Judicial Council has mandated a minimum of five days of education to be available to provincial court judges who attend these educational seminars as part of their regular judicial assignments.

In recent years, provincial court judges have attended two seminars per year. The seminars, which are offered in the spring and fall, last for two and one-half days each. The seminars are organized by the Education Committee of the Provincial Court Judges Association in consultation with the Office of the Chief Judge. The seminars cover recent trends in the law, social context training, mediation skills, new legislation and issues of concern to judges and the public.

The regular sessions in the Spring and Fall of 1996, 1997 and 1998 have covered a wide range of topics reflecting the broad spectrum of decision making issues which judges face on a daily basis. These seminars included:

- The New Child, Family and Community Service Act
- Negligence of Government Bodies
- Construction Litigation
- Fetal Alcohol Syndrome
- Family Violence
- The Charter Of Rights
- Media Relationships
- Rules of Evidence
- Child Support Issues
- Reciprocal Enforcement Of Maintenance Legislation
- Alternative Methods Of Dispute Resolution
- Judicial Performance Evaluation
- Small Claims Rules and Practice
- Child Protection Risk Assessment
- HIV/Aids Issues
- Mental Disorder Issues

- Use of Psychiatric Assessments
- The Law Of Hearsay
- The Law Of Credibility
- Small Claims Rules Amendments and Practice
- The Role of the Judge in Ensuring a Fair Trial
- Parent Education Programs in Family Litigation
- The Law of Judicial Notice
- Criminal Caseflow Management
- Child Support Guidelines Legislation
- Computer Use and Application for Judges
- The Law of Sentencing
- New Rules for the Family Relations Act
- The Oath in a Pluralistic Society
- The Unrepresented Accused
- Sexually Exploited Youth
- Recent Developments in Criminal Law

In addition to the above, a three day seminar for all judges was held in November, 1997. The seminar was entitled *The Court in a Multicultural Society: Fairness and Impartiality in Decision Making*. The course was planned by the Chief Judge's Equality Committee. It included a wide range of presenters from the multicultural community. The sessions included a keynote address by former Supreme Court of Canada Justice Bertha Wilson, and presentations by such leaders as Chiefs and Elders in the Aboriginal community, the Attorney General and Deputy Attorney Generals, Thomas Berger, Q.C., and other leading attorneys in multicultural issues, judges from across Canada and officers, directors and workers in the Bilingual/Bicultural community.

The topics included:

- The Court in a Multicultural Society
- Aboriginal Peoples and the Justice System: Different Points of View
- Observations from the Community
- Oaths, Language and Cultural Interests
- Dealing with Bias in the Courtroom
- Going to Court for Recent Arrivals to Canada

- Child Protection and State Intervention in a Diverse Society
- Institutional and Systemic Bias
- Judicial Bias, Apprehended Bias and World View
- Violence Against Women and Children in the Multicultural Context
- The Intersection of Race and Gender
- The use of Discretion in Bail, Sentencing and Other Dispositions: Are Any Factors Inherently Discriminatory
- Judicial Response to Crimes of Hate and Discrimination Based on Race or Culture

Judges also were encouraged to participate in courses not offered by the B.C. Association of Provincial Court Judges. These included a week-long training for all new judges at Val Morin, Quebec under the auspices of the Canadian Association of Provincial Court Judges, and mediation training for new judges, and advanced mediation training for judges currently conducting mediation in civil and child protection cases.

In the Spring of 1998, 13 British Columbia judges attended the fourth Biannual International Conference of the International Association of Women Judges, in Ottawa. The title of the conference was A New Vision for a Non-Violent World: Justice for Each Child. The British Columbia delegation included two men and eleven women. The attending judges reported that it was a tremendously effective conference raising awareness in a number of national and international issues facing judges and persons appearing before judges.

Judges who conduct trials in French in British Columbia attended French language training in Quebec and Ontario in each of the years of 1996 – 1998.

British Columbia is at the forefront of judicial education for provincial court judges in Canada. The continuing success of our education program is due to the efforts of our judges in educating their colleagues on the provincial court bench.

The sitting justices of the peace are mandated to attend annual education seminars. The topics covered in 1996 – 1998 were:

1996 - Defusing Violent Behaviour

- Sexual Harassment
- PCJ Sentencing Workshop
- MVB DL Suspension
- Photo Radar
- Desk Book

1997 - Charter of Rights and Freedoms

- Handling Legal Argument
- Sentencing

- Harassment
- Appeals of Violation Tickets
- Sitting JP Remand Court Pilot Projects
- Photo Radar Group Discussion
- Commercial Vehicles
- Traffic Related Bylaws and MTIs
- 1998 - Understanding the "post-Reference" B.C.P.C.J.A. and C.A.P.C.J.
- "The Role of the Trial Judge in Ensuring a Fair Trial"
- The "Parent Education" Process
- "Ensuring a Fair Trial"
- "The Law of Judicial Notice and Apprehension of Bias"
- Criminal Caseflow Management
- Child Support Guidelines
- The Law of Sentencing

The justices of the peace who are appointed as stipendiary justices of the peace or Court Services justices of the peace also receive regular education. During the years 1996 – 1998 courses were offered on the following topics:

- Search Warrants
- Judicial Ethics and Conduct
- Informations, Process and Bail
- Cultural Diversity
- Case Studies on New Legislation

The sessions on cultural diversity included:

- The Changing Canadian Reality
- Comparative Justice Issues
- South Asian, First Nations and Chinese Perspectives

Complaints

The principle of judicial independence requires that judges and justices of the peace must be free to make their decisions based only upon the facts in a particular case and the law applicable to those facts, without outside interference. If a judge or justice of the peace errs in the application of the law or the finding of the facts in a particular matter, the result may be appealed or subject to judicial review by a higher court, but the judge or justice of the peace may not be disciplined for exercising the judicial discretion that they are duty-bound to apply. However, section 11(1) of the Provincial Court Act does provide that judges hold office during good behaviour, and therefore judicial officers are accountable for conduct that is outside the parameters of proper judicial conduct.

Some common law cases have assisted in determining what is proper judicial conduct and in addition to those cases, the Provincial Court has a *Code of Judicial Ethics*, developed by the Court in 1976, to assist in determining what is and what is not proper judicial conduct for judges of the Provincial Court. The Code was published in a revised form in 1994 to incorporate gender neutral language. (see Appendix C). There is also a JP Code of Ethics approved by the Judicial Council in 1994. (see Appendix E)

The Provincial Court Act provides for a complaint process. Any individual who believes a judge, sitting justice of the peace (court referee), or a justice of the peace has behaved improperly may lodge a written complaint to the chief judge. The complaint process, is set out in section 11(2) –(4) of the Act, as follows:

11 (2) Subject to section 25, all complaints concerning a judge, justice or court referee must be directed in writing to the chief judge who, after having examined the complaint, must report in writing to the complainant and to the judge, justice or court referee.

(3) The chief judge must conduct an investigation respecting the fitness of a judge, justice, or court referee to perform his or her duties if

- a. the Chief Judge considers that an investigation is required, or
- b. the Chief Judge is directed by the Attorney General to conduct an investigation.

(4) On completing of an investigation under subsection (3), the chief judge may

- a. take any corrective action that the Chief Judge considers necessary using the powers given the Chief Judge under this Act, or
- b. order that an inquiry be held respecting the fitness of the judge, justice or court referee to perform his or her duties and the Chief Judge must submit to the Attorney General a written report setting out the nature of the investigation, relevant facts, the findings and any corrective action taken.

After receiving and examining a complaint the chief judge may determine that the complaint:

- a. involves a person who is not subject to the chief judge's jurisdiction;
- b. raises a frivolous, vexatious or trivial matter;
- c. is in substance a disagreement with a decision or an allegation of legal error.
- d. is in substance an objection to the state of the law or social policy;
- e. raises a conduct issue that the Chief Judge will respond to; pursuant to section 11 of the Act.

The vast majority of complaints fall within categories (a) - (d) and require no further action from the chief judge. In most cases where a conduct issue is raised, the chief judge is able to resolve the complaint without an investigation.

The chief judge may conduct an investigation into the fitness of a provincial court judge or justice of the peace to perform judicial duties where the chief judge considers that such an investigation is required, or is directed by the Attorney General to conduct an investigation. Generally, investigations occur when a conduct issue is serious enough to impact on a judicial officer's fitness to meet the demands of their office. This may be as the result of mental or physical problems, a serious breach of conduct or a failure to execute their office or any other conduct that is not consistent with the judicial role. The chief judge may take corrective action if that will resolve concern or may decide that an inquiry must be held. The Attorney General is provided with a written report that sets out the nature of the investigation, the relevant facts and findings, and any corrective action taken.

If a matter is of a very serious nature, the Act provides for an inquiry before a tribunal, which may be the Judicial Council or a Supreme Court Judge. If an inquiry is ordered, the provincial court judge or justice of the peace is suspended from performing judicial duties until the inquiry is completed. An inquiry is public unless the tribunal considers that the public interest requires that it be held in private. At the conclusion of an inquiry the tribunal may order reinstatement with or without a reprimand, suspension with or without salary for up to 6 months or removal from office.

No inquiry has been held by the Judicial Council for many years. The advent of judicial conduct codes, an increasingly thorough screening of judicial applicants, continuing judicial education programmes on matters such as race, gender and cultural issues, and a general willingness of judges and justices of the peace to acknowledge and correct conduct errors, has reduced the need for inquiries as the last resort.

Complainants who are dissatisfied with the chief judge's disposition of a complaint or who have complaints about the chief judge, can direct their complaints to the Attorney General.

The following table provides statistics for complaints handled under the *Provincial Court Act* process for the years 1995-1998.

	1994	1995	1996	1997	1998
New conduct complaints against judges	23	37	34	19	31
New conduct complaints against Justices of the Peace	5	1	1	1	6
New conduct complaints against Sitting Justices of the Peace	8	9	10	3	4
Total new conduct complaints	36	47	45	23	41
Outstanding conduct complaints	3	11	8	3	3
General Complaints	32	75	60	64	73

General complaints refers to letters received by the chief judge which did not raise a conduct issue.

Issues

1. Judicial Compensation

Judicial Council has a keen interest in the working conditions of judges, viewing these as an important aspect of effective judicial services.

Prior to 1986, judicial salaries in British Columbia were fixed by the Attorney General without any formal process. In 1986, the Provincial Court Act was amended by adding section 7.1, which created a Compensation Advisory Committee. The task of the Committee was to make a report to the Attorney

General no later than December 31, 1986 on all matters respecting the remuneration, allowances and benefits of judges of the court and to make recommendations with respect to those matters. The Committee was to make a similar report by the 31st day of December in every even-numbered year thereafter.

The Compensation Advisory Committee for 1992 was not appointed by the Attorney General until December 23, 1992 and, as a result of the obvious lack of time, was unable to file a final report within the required time. The Attorney General expanded the mandate for the 1992 Committee by requesting that, in addition to the usual report on remuneration, allowances and benefits, the Committee consider and make recommendations with respect to an alternative means for establishing judicial remuneration, allowances and benefits to that now provided in section 7.1 of the Act.

It was the strong recommendation of the 1992 Compensation Advisory Committee that the report of a committee under the new process should be binding on Government as to salary and benefits (excluding pensions). The Judicial Council strongly supported this recommendation in the belief that such a recommendation is necessary to preserve the independence of the judiciary. A resolution to that effect was unanimously passed by the Judicial Council (except for the three judges who are members of the Judicial Council and who abstained).

The Act as ultimately amended did not include a binding process on government but did include what is commonly known as a negative resolution clause. See Appendix D for amendments 7.1(1) through (13).

The Act requires that the Committee be appointed as follows and expressly prohibits the appointment to the Committee of a sitting or retired judge or a person employed by a crown corporation or in the public service:

- a. The Attorney General appoints two individuals, one of whom may be a practising lawyer;
- b. The Chief Judge, in consultation with the Provincial Court Judges' Association, appoints two individuals, one of whom may be a practising lawyer; and
- c. The four appointed individuals appoint one other person as the Chair of the Committee.

The 1998 committee appointed under the Legislation was chaired by E.M. (Ted) Hughes, Q.C. The membership was as follows;

A.G. Appointments	Mr. Vince Collins Ms. Gayle Raphanel
C.J. Appointments	Mr. Leonard Doust, Q.C. Mr. Martin Linsley

The committee commenced its report by defining its mandate as follows:

Section 13 of the Provincial Court Act requires the Committee to report to the Attorney General and make recommendations, for a 3-year period, on all matters respecting judges' remuneration, allowances and benefits.

In making its recommendations the committee must consider:

- *The current financial position of the government;*
- *The need to provide reasonable compensation to the judges;*
- *The need to build and maintain a strong court by attracting qualified applicants;*
- *The laws of British Columbia; and*

- *Any other matter the committee considers relevant.*

The Supreme Court of Canada has confirmed that the goal of a committee such as this is to present "an objective and fair set of recommendations dictated by the public interest".

The Committee strongly endorsed the fundamental concept of an independent judiciary. Judicial Council made a submission in this regard. The findings of the committee in the following extract from Chapter 2 of the report are endorsed by Judicial Council.

An Independent Judiciary

What it Means & Why it Matters

- The owner of a small business is accused of polluting a stream and access a potentially crippling fine.
- A parent fights for the return of a small child who was removed by a social worker.
- A driver who has been in an auto accident is suing ICBC for benefits at a time when the Crown corporation is under pressure from government to cut its costs.

What the business owner, the parent, and the motorist want, is to know that the judge will apply the law fairly and will not feel the slightest pressure to decide in favour of government just because it is the government.

What the community wants is to know that the judge will apply the law fairly and will not feel inclined to decide against the government just because it is the government.

In Canada, and in BC in particular, our courts enjoy this level of confidence. Even though the government pays the judges= salaries and even though government appears as a litigant in more cases than any other party, the public does not fear that the government will receive special treatment, for better or worse, in court.

But would that continue to hold true if judges were to be engaged in a protracted and bitter struggle with government over the level of their remuneration?

If the legislature were to make it clear that until judges started making decisions more favourable to government, there would be no salary increases, would the person standing before the court feel confident of getting a fair hearing?

This is a real concern. It does not imply a belief that judges would be influenced in their decision-making. It simply recognizes the importance of perception and that judicial decisions tend to leave one party disappointed and looking for a place to lay blame. In an environment where the legislature and the judiciary are in conflict over money, or where judges are seen to be treated unfairly by government, it would be easy for the suspicion to grow that judicial decisions are not being decided strictly according to law.

Without public confidence, a judicial system, regardless of its true quality, cannot provide the stability that is a precondition to a thriving economy and a healthy society.

The issue of judicial remuneration poses special challenges to the principle of judicial independence.

The judiciary is a branch of government, as is the legislature. Neither is subservient to the other. Yet the judiciary must depend on legislators to set their level of remuneration. Governments across Canada and many other countries have struggled with this conundrum for some time.

Now, the Supreme Court of Canada has ruled in the PEI Reference case, that to avoid the possibility of political interference through economic manipulation - or even the appearance of it, a body such as this Committee must be interposed between the judiciary and the other branches of government. The constitutional function of this Committee is to depoliticize the process of determining remuneration.

As a result of this decision, provinces now are under a constitutional obligation to establish bodies which are independent, effective and objective.

Although the recommendations of this Committee are non-binding they should not be set aside lightly. The court says, at paragraph 180:

Furthermore, if after turning its mind to the report of the commission, the executive or the legislature, as applicable, chooses not to accept one or more of the recommendations in that report, it must be prepared to justify this decision, if necessary in a court of law. The reasons for this decision would be found either in the report of the executive responding to the contents of the commission's report, or in the recitals to the resolution of the legislature on the matter. An unjustified decision could potentially lead to a finding of unconstitutionality. The need for public justification, to my mind, emerges from one of the purposes of s.11(d)'s guarantee of judicial independence B to ensure public confidence in the justice system.

The report of the Attorney General of the Judicial Compensation Committee was tabled by the Attorney General May 21, 1998. A negative resolution introduced by the opposition was defeated by the Legislative Assembly and the recommendations of the Report to the Attorney General of the Judicial Compensation Committee therefore came into effect as of January 1, 1998.

The Judicial Council endorses the independent compensation committee approach to the issue of judicial compensation which compliments the independent appointment process of which Judicial Council is a key component.

2. Chief Judges Report on Delay and Backlog

In late 1997 and early 1998 the court began to experience unusual delay in processing criminal cases. One of the objectives of Judicial Council mandated by Section 22(c) of the Provincial Court Act is to consider proposals for improving the judicial services of the court. Judicial Council supported the chief judge in his analysis of the backlog and delay difficulty faced by the court.

The Attorney General responded to the problem by appointing five additional judges and requesting that the chief judge conduct a detailed evaluation. In addition, the Attorney General made funds available to employ retired judges to undertake extra criminal sittings of the court.

The Report of the Chief Judge on Delay and Backlog in the Provincial Court of British Columbia was submitted by the chief judge to the Attorney General April 6, 1998. Included in the request for five additional judges (later appointed by the Attorney General) were recommendations for a new family court process and the first criminal caseload management rules in Canada in Provincial Court. The Family Court Rules were proclaimed December 1, 1998 and the draft criminal rules are currently under study by judges and government.

Summary

The Judicial Council of British Columbia continued to meet for at least one day per month in each of the three years covered by this report in order to discharge its duties created by Section 22 of the Provincial Court Act.

In that time it has received 173 applicants for appointment as provincial court judges. All applications were reviewed by Judicial Council and 95 were interviewed by Judicial Council.

The Council also reviewed numerous applicants for justice of the peace positions and approved 81 candidates.

Judicial Council is pleased to report on the depth and variety of the education courses offered to judges and justices of the peace. Credit for the content must be given to the Provincial Court Judges' Association, the Sitting Justices of the Peace Association, the Chief Judges' Committee, the chief judge, and Kent Macaulay, the justice of the peace training officer as well as to individual judges who sought out and attended education courses and conferences in addition to those offered by the education mandate.

The Judicial Council is pleased to report that it was not required to act with respect to any complaint pursuant to Section 11 of the Provincial Court Act in any of the years covered by this report.

The Judicial Council is also pleased that the issues raised by the 1998 Compensation Committee were resolved in a way which protected and enhanced judicial independence.

The Judicial Council is also pleased that the Chief Judges' Report on Delay and Backlog filed in 1998 is being studied and has led to an increase in judicial complement and improved court process. In accordance with Section 22(c) of the Provincial Court Act, Judicial Council encourages continued implementation of the recommendations of the Report.