

**JUDICIAL COUNCIL  
OF BRITISH COLUMBIA**



**ANNUAL REPORT**

**2007 - 2008**



## Judicial Council of British Columbia

The Honourable Wally Oppal  
Attorney General  
PO Box 9044 Stn Prov Govt  
Victoria, BC V8W 9E2

Dear Mr. Attorney:

I present herewith the Annual Report of the Judicial Council of British Columbia for the years 2007 and 2008. The activities of the Judicial Council during this period include the review of 111 applications for appointment as Provincial Court judge, and 51 applications for appointment as Judicial Justice of the Peace. Of those applications, the Council interviewed 40 applicants for the position of Provincial Court judge (20 in 2007; 20 in 2008) and 23 applicants for the position of Judicial Justice (12 in 2007; 11 in 2008).

In previous Annual Reports of the Judicial Council, we have included summaries of all of the complaints examined and investigated pursuant to section 11(2) of the *Provincial Court Act*. The Council has observed that it has no statutory role in responding to complaints unless an inquiry is ordered, and the Council is selected as the tribunal.

Council is aware that the Court is presently undertaking a major review of the complaint process with a view to ensuring that the process is as accessible as possible while ensuring that principles of administrative fairness, accountability and transparency are protected. Accordingly, the summary of the Court's responses to the complaints received over the period of this Annual Report will be published in the Court's next Annual Report as a matter of accountability for the Chief Judge, who discharges the statutory power of preliminary examination and investigation (where required).

The Judicial Council continues to fulfill its statutory object of improving the quality of judicial service in the Provincial Court of British Columbia - to a standard of judicial excellence - in part, by working with the Provincial Court Judges' Association and the Judicial Justices' of the Peace Association to ensure that members of the judiciary are provided with ongoing access to the highest quality of education, and in promoting strict adherence to accepted judicial ethical guidelines.

This report is published in keeping with the Court's tradition of accountability, transparency and public access to information. It will be posted on the Provincial Court website, <http://www.provinciacourt.bc.ca/judicialcouncil/index.html>. Additional copies may be obtained through the Office of the Chief Judge.

Sincerely,

The Honourable Hugh C. Stansfield  
Chief Judge and Chair, Judicial Council of British Columbia



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## 1. Introduction

The Judicial Council of British Columbia is a statutory body created by the *Provincial Court Act*, R.S.B.C. 1996, Chap. 379. The stated object of the Council is to “improve the quality of judicial service.” The Council’s functions include:

1. considering proposed Lieutenant Governor in Council appointments of judges, justices (including judicial justices and justices of the peace);
2. conducting inquiries respecting judges, judicial justices and justices of the peace;
3. considering proposals for improving the judicial services of the Court;
4. continuing the education of judges and organizing educational conferences for judges;
5. preparing and revising, in consultation with the judges, a code of ethics for the judiciary; and
6. reporting to the Attorney General on the matters the Attorney General considers necessary.

The members of the Judicial Council prescribed by the *Act* are the Chief Judge as presiding member; an Associate Chief Judge as alternate presiding member; the president of the Law Society of British Columbia or her/his designate; the president of the British Columbia Branch of the Canadian Bar Association or her/his designate; and, by appointment of the Lieutenant Governor in Council for a term of not longer than 3 years, a judge (who, by convention, is the President of the Provincial Court Judges’ Association); and not more than 4 other persons (again, by convention, this has included a Judicial Justice and, at least, 2 lay persons).

The members of the Council for 2007, and the dates of their appointment, were as follows:

1. The Honourable Hugh C. Stansfield, Chief Judge, presiding member, July 1, 2005
2. The Honourable James J. Threlfall, Associate Chief Judge, alternate presiding member, July 29, 2005
3. The Honourable Judge Robert A. Higinbotham, President of the B.C. Provincial Court Judges’ Association, December 31, 2006
4. Colleen Proctor, Judicial Justice of the Peace, December 2, 2004
5. Ms. Diane I. Turner, nominee of the President of the Law Society of B.C., December 22, 2004
6. Frits E. Verhoeven, President of the Canadian Bar Association, BC Branch, March 9, 2006
7. Ms. Elizabeth (Betsy) Gibbons, December 18, 2002
8. Mr. C. C. (Kip) Woodward, December 18, 2002
9. Mr. Art Vertlieb, Q.C., March 9, 2006

The members of Council for 2008, and the dates of their appointment, were as follows:

1. The Honourable Hugh C. Stansfield, Chief Judge, presiding member, July 1, 2005
2. The Honourable James J. Threlfall, Associate Chief Judge, alternate presiding member, July 1, 2005
3. The Honourable Judge Michael J. Brecknell , President of the B.C. Provincial Court Judges' Association, November 22, 2007
4. Joanne Arntsen, Judicial Justice of the Peace, December 12, 2007
5. Ms. Diane I. Turner, nominee of the President of the Law Society of B.C., December 22, 2004
6. F. Kenneth Walton, President of the Canadian Bar Association, BC Branch, January 1, 2008
7. Ms. Elizabeth (Betsy) Gibbons, December 18, 2002
8. Mr. C. C. (Kip) Woodward, December 18, 2002
9. Mr. Art Vertlieb, Q.C., March 9, 2006

## 2. Meeting Schedule & Business Conducted

The Judicial Council meets approximately once monthly in the Judicial Council Boardroom at Suite 602 - 700 West Georgia Street, Vancouver, BC V7Y 1E8. Meetings generally are for a full day. At most meetings, the Council reviews applications for appointment of Provincial Court judges and justices of the peace, and conducts interviews of candidates.

The following was the meeting schedule for 2007 and 2008.

<u>2007</u>	<u>2008</u>
January 12	January 11
February 9	February 22
March 9	March 28
April 13	April 18
May 11	May 9
June 8	June 27
July 13	July 18
September 14	September 9
October 12	October 17
November 9	November 28
December 7	December 9

The number of applications for recommendation for appointment as a Provincial Court judge and justice of the peace reviewed and interviews held per year are shown in the charts on the following page. The figures reflect the Council's activities in the year, and therefore may include reviews, interviews, or appointments of candidates who applied in a previous year.

In addition to interviews and the review of applications, Council attends to ongoing business at its meetings. Topics in the past two years have included updates to both the Provincial Court Judges' and the Judicial Justices' application packages, a submission from Council to the Judicial Compensation Commission, and reviews of the Canadian Bar Association's reporting process. Judicial Council also had in-depth discussion regarding the subject of appropriate criteria and competencies for judicial applicants and for the current judiciary. On behalf of Judicial Council, the Chief Judge met with the Canadian Bar Association Judicial Advisory Committee to review their role in the appointment process.

As a result of the May 28, 2008 passing of Bill 43-2008, *Miscellaneous Statutes Amendment Act* and the consequent changes to s.6 of the *Provincial Court Act*, Council undertook a comprehensive review of the process for the reappointment of retired judges. This process, including the development of a new application package for retired judges, will continue into 2009.

**JUDICIAL COUNCIL ACTIVITIES SUMMARY**

**Applicants for Recommendation for Appointment as a Provincial Court Judge**

	Applications Received			Pending Applications Reviewed			Applicants Approved for Interview			Applicants Interviewed			Applicants Approved		
Year	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F
2007	89	57	32	46	30	16	17	13	4	20	11	9	9	6	3
2008	47	26	21	65	39	26	25	13	12	20	13	7	12	8	4

**Applicants for Recommendation for Appointment as a Judicial Justice of the Peace**

	2007	2008
Applications received	36	15
Applicants interviewed	12	11
Applicants approved	10	5

**Applicants for Recommendation for Appointment as a Justice of the Peace**

	2007	2008
Applications reviewed	12	22
Applicants approved	11	20

### 3. Appointment Process for Judges

Pursuant to section 6 of the *Provincial Court Act*, judges are appointed by the Lieutenant Governor in Council, on the recommendation of the Judicial Council. The process of receiving a recommendation commences with an application to Judicial Council. The application and approval process are described below.

When a vacancy arises, the Chief Judge, as chair of Judicial Council, provides the Attorney General with the names of recommended candidates who are eligible to sit in the region or district where the appointment will be made.

Candidates may be recommended for appointment if approved by the Council in any of the three years preceding the recommendation. In 2007 and 2008, 22 recommended candidates were appointed by the Lieutenant Governor in Council.

#### *Criteria and Competencies*

In 2008, Judicial Council embarked on an exhaustive review of the criteria and competencies for applicants for appointment as a Provincial Court judge. This process will continue into 2009. What follows are Council's recommended updates that will be circulated for discussion prior to formal adoption.

#### Criteria:

1. At least ten years in the practice of law. Those with less legal practice experience are considered if they have a range of related experience.
2. Superb legal reputation, and a professional record review from the Law Society of British Columbia.
3. Experience in mediation or alternative dispute resolution.
4. Respect in the community.
5. Good health.
6. Appreciation of and experience with diversity.
7. Willingness to travel and to preside in all subject areas (criminal, civil and family).

#### Competencies:

- A. Knowledge and technical skills:
  - Conscientiousness, Commitment to high standards:
- B. Decision making:
  - Decisiveness, Confidence, Moral courage, Independence, Impartiality.
- C. Communication and authority:
  - Firmness without arrogance, Courtesy, Patience, Tolerance, Fairness, Sensitivity, Compassion, Self-discipline.
- D. Professionalism and integrity:

- Capacity to handle stress and isolation of judicial role, Understanding of and commitment to strict adherence to ethical guidelines, Patience, Honesty, Tolerance, Consideration of others, Personal responsibility.
- E. Efficiency:
  - Commitment to public service, Commitment to efficient administration, Self-discipline.
- F. Leadership and management:
  - Responsibility, Imagination, Commitment to efficient administration.

### *Application and Approval Process*

Applications for judicial appointment are submitted on a Judicial Candidate Information Summary, which may be acquired on-line from the Provincial Court web site<sup>1</sup>. Applicants are provided with a package of materials containing an application form and information regarding the application and interview process. Council strives to ensure that applicants understand and consent to the extensive investigation that will be initiated following an application.

The Chief Judge requests a Bar report on every new applicant, from the Advisory Committee to Judicial Council, a committee of the B.C. Branch of the Canadian Bar Association. Generally, updated reports are also sought in respect of re-applicants<sup>2</sup>. In preparing the Bar report, members of the CBA Committee make thorough and discreet inquiries of members of the legal community regarding the applicant's reputation and suitability. The Council is indebted to the CBA Committee for the diligence it brings to this task.

Judicial Council also requests a report on the applicant's standing from the Law Society and invites comment from any judges who are familiar with the applicant or who sit in the area in which the applicant practices.

Once the Bar report is received, generally within a few months of the application being made, the Council reviews the application and makes a decision as to whether to interview the applicant. Three members' votes in favour of an applicant are required to grant an interview. Applicants not approved for an interview are not notified of that fact, but may reapply three years after the date of their original application.

Candidates who are approved for an interview are generally interviewed within a year following the date of their application, though in some cases the Bar report is delayed beyond that for a variety of reasons. Council currently has eight candidates who have been approved for interview, but are waiting for that interview to be scheduled.

Interviews are approximately 45 minutes to one hour in length. Members of the Council ask applicants a series of questions designed to assist Council in assessing whether the applicant meets the criteria set out above, and to address any issues raised by the reports and comments of the Bar, Law Society or judiciary.

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<sup>1</sup><http://www.provincialcourt.bc.ca/judicialofficers/judgesofthecourt/appointmentprocess/index.html>

<sup>2</sup> Applicants may reapply three years after a prior application or interview.

Following the interview, the members review the candidate's application, the Bar and Law Society reports, and comments received from judges, and decides by a vote whether to recommend the applicant for appointment. Motions are either in favour of or against approval. In either case, two members' votes against approval defeats the candidate, regardless of the number of members present.

In early 2008, the Chief Judge met with Peter Gall, Q.C., and Don Munroe, Q.C. of Heenan Blaikie and with former Attorney General, Mr. Geoff Plant, Q.C., at which counsel offered advice regarding the implications of advising judicial candidates of the outcome of their applications. As a result of counsel's advice, Judicial Council unanimously agreed that applicants would not be advised as to the outcome of their application (either as to whether or not they are to be interviewed, or as to the outcome of the interview, including the decision as to whether the applicant will be recommended as being eligible for appointment). Applicants who are interviewed may reapply three years after the date of their interview. Many applicants reapply at least once before being appointed by the Lieutenant Governor in Council.

Judicial Council made some earlier revisions to the approval process in 2000 and 2001. These are fully described in the 1999 – 2001 Annual Report<sup>3</sup>. Council members at that time felt that a "raising of the bar" was necessary, in recognition of the increasingly complex and varied nature of the Court's work, the accelerating workloads, and expanding administrative demands placed upon judges of the Court.

Given the Council's statutorily prescribed objective of improving the quality of judicial service, the approval process must ensure that only exceptional applicants who are unquestionably capable of meeting these increasing demands be recommended as being eligible for appointment.

The chart on the following page shows the history of applications, interviews and approvals over an eight-year period, providing an indication of trends in application rates and a comparison of candidate approval rates before and after the change in the approval process. These figures reflect the Council's activities in the year specified, which include reviews and interviews of applicants from the prior year, and are not reflective of the results of applications made in a particular year.

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<sup>3</sup> <http://www.provincialcourt.bc.ca/downloads/pdf/judicialcouncilannualreport1999,2000,2001.pdf>

## Applications for Recommendation for Appointment as a Provincial Court Judge 2001 - 2008

Year	Applications Received			Pending Applications Reviewed			Applicants Approved for Interview			Applicants Interviewed			Applicants Approved		
	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F
2001	75	56	18	54	43	11	39	32	7	38	26	12	12	10	2
2002	44	27	17	56	39	17	34	25	9	37	28	9	17	15	2
2003	52	40	12	47	31	16	26	18	8	33	23	10	19	12	7
2004	54	36	18	53	36	17	34	23	11	31	23	8	10	10	0
2005	55	44	11	43	32	11	24	17	7	31	21	10	17	11	6
2006	67	42	25	45	33	12	21	16	5	21	16	5	9	6	3
2007	89	57	32	46	30	16	17	13	4	20	11	9	9	6	3
2008	47	26	21	65	39	26	25	13	12	20	13	7	12	8	4

The average number of applications received per year for the eight years to 2008 was 60. The two years with the highest application rates were 2001, with 75 applications, and 2007 with an all-time high of 89 applications. The year with the next highest application rate was 2006. Interestingly, the application rate increased in both 2001 and 2006 following Judicial Compensation Commission hearings which resulted in substantial increases in compensation and continued to remain high over the next year.

The average number of applications reviewed for interview over the last eight years has increased slightly to 51, but, on average only 54% or 27 of those applicants were approved for an interview. The average number of applicants interviewed each year was 29, of which, on average, 13 were approved, resulting in an eight-year average approval rate of about 45% of those interviewed, and about 26% of total reviewed applications.

The average number of judges appointed per year for the two years from 2007 to 2008 was 5 or about 7% of total applicants, and about 50% of annual approvals.

### *Demographics*

Throughout the years 2007-2008, Judicial Council had an average “pool” of 20-25 applicants approved as being eligible for appointment. At the end of December 2008, this pool consisted of 22 candidates, of which 15 were men and 7 were women. Nine of the approved candidates came from the Lower Mainland, and six from other parts of the province.

While eight of the thirteen administrative districts of the Court were represented in the pool, and some of the applicants were willing to relocate, many Court locations were not represented

by resident candidates, or candidates willing to relocate to that location. Candidates who were willing to relocate were more often male than female.

It is the policy of the Council to assess all applicants equally in relation to the appointment criteria, and not to allow the decision to interview or approve an applicant to be affected by a candidate's willingness to relocate to a hard to fill area. However, the application process may be expedited for a candidate in a hard to fill area where there is an upcoming vacancy.

The average age of applicants to the Court in the last two years was 51, with an average of 20 years in practice.

The average age of applicants has changed in the last two years as indicated in the following chart of applicants by age and gender in 2007-2008. The average age of male applicants actually decreased slightly from 2006 but is consistent with the earlier three-year average age of 52 years for applicants for the period, but has increased, significantly for the average female applicant, to age 51 from a previous average age of 46 years.

**Applicants to Judicial Council by Age and Gender**  
2004 - 2008

Year	Total	Male	%	Average Age	Female	%	Average Age
2004	54	36	67%	51	18	33%	46
2005	55	44	80%	52	11	20%	47
2006	67	42	63%	53	25	37%	46
2007	87	56	64%	52	31	36%	50
2008	47	26	55%	52	21	45%	52

Female applicants have on average about three years less practice experience than male applicants. According to the 2005 Law Society Annual Report<sup>4</sup>, the profession is 34% women; however, women continue to leave the profession in larger numbers than men.

Of the twenty one applicants who were approved for appointed in 2007 and 2008, 14 were male and 7 were female. Of those twenty-one applicants, twelve were appointed to the following districts: two to South Fraser; two to the Cariboo Northeast; two to the Northwest; one to Vancouver Criminal; one to the North Fraser; two to Kamloops; one to South Vancouver Island; and one to the Okanagan.

<sup>4</sup>[http://www.lawsociety.bc.ca/publications\\_forms/report-annual/docs/2005/2005AnnualReport.pdf](http://www.lawsociety.bc.ca/publications_forms/report-annual/docs/2005/2005AnnualReport.pdf)

### Applicants by Gender and Area of Practice

Type of practice	2004			2005			2006			2007			2008		
	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F
Private	34	24	10	38	31	7	42	25	17	61	41	20	28	17	11
C. Counsel	17	10	7	11	8	3	15	11	4	19	13	6	14	9	5
Other areas	3	2	1	6	5	1	10	6	4	9	3	6	5	0	5

#### *Diversity*

Judicial Council is committed to recommending applicants for appointment to the Provincial Court who are representative of the general population in the Province. Council is actively seeking means to promote a more diverse Court and to encourage applicants from all walks of life. Applicants are asked to share information regarding their experiences with diversity in the hope that they will assist the Court in learning and more appropriately addressing issues of difference.

#### *Comparison of New and Renewed Applications*

As stated above, applicants who are not appointed may reapply after three years, and often do. The breakdown of applications based upon the number of new and renewed applicants is shown in the following chart. The figures shown in each column reflect the outcome of applications considered by Judicial Council in the year noted.

#### New and Renewed Applications by Year and Sector

	2001	2002	2003	2004	2005	2006	2007	2008
<b>NEW APPLICATIONS:</b>	53	33	37	31	34	45	59	29
Private Practice	37	22	27	18	22	27	41	21
Approved after an interview	4	6	7	3	8	7	1	7
Public Sector and Other Areas	16	10	10	13	12	18	18	8
Approved after an interview	4	4	6	3	3	0	1	2
<b>RENEWED APPLICATIONS:</b>	22	11	15	23	21	22	30	17
Private Practice	16	8	13	16	16	15	20	7
Approved after an interview	3	4	6	2	5	2	2	2
Public Sector and Other Areas	6	3	2	7	5	7	10	11
Approved after an interview	1	3	0	2	1	0	6	0

*Note: Not all persons applying in 2007 and 2008 had been interviewed by the end of 2008, therefore these figures are incomplete.*

Though it may be difficult to identify a trend in light of the low overall numbers, the annual number of new applicants is relatively stable with the exception of a significant spike in 2007 followed by a significant decline. As previously stated, this may be due to the fact that Provincial Court judges received a significant salary and benefit increase from the Judicial Compensation Commission at this time, sparking interest by applicants for a period. Applications from individuals in private practice are declining significantly. New applications approved by Judicial Council from applicants in private practice fell from 12% in 1998 to an all-time low of 1% in 2007 but rebounded to 7% in 2008.

In 2007, along with new applications, there was also an increase in the number of applicants renewing their applications to Judicial Council after previously being unsuccessful. While there was actually a decrease in the number of applicants from private practice who were approved after an interview (less than 1%), there was a significant increase (60%) in the number of applicants from the public sector and other areas who were approved after an interview following their renewed application.

#### **4. Appointment Process for Judicial Justices**

Judicial Justices are appointed by the Lieutenant Governor in Council on the recommendation of the Judicial Council, as are judges. They are assigned by the Chief Judge to preside over matters within their statutory jurisdiction (see below), which include traffic and other ticket offences, some municipal bylaw matters, payment hearings in Small Claims Court, and applications for bail and search warrants.

##### ***Background***

In response to two decisions of the BC Supreme Court in 2000 and 2001, the office of Judicial Justice of the Peace (JJP) was created by the Legislature in April 2001. Amendments to the *Provincial Court Act* permitted the Lieutenant Governor in Council, on the recommendation of the Judicial Council, to designate a justice (defined in the *Act* as a justice of the peace) as a "judicial justice", and gave that office security of tenure and financial security. The newly created JJPs were assigned by the Chief Judge to hear traffic court cases (as sitting justices of the peace had previously), and also to perform duties related to search warrants and bail, primarily by telecommunications. Those justices of the peace, who were formerly sitting justices of the peace, were designated by the legislation as judicial justices, and a number of new JJPs were also appointed. Since that time, further amendments to the *Provincial Court Act* in 2008 provided for the appointment for a fixed period of five to ten years, of part time lawyer judicial justices, paid on a per diem basis. A number of new appointments have been made under these provisions.

### *Justice Centre and Violation Ticket Centre*

Many of the Court's JJPs are now assigned to the Justice Centre in Burnaby, which provides 7 day per week extended hour staffing that enables police forces throughout the Province to obtain search warrants in a timely way, and facilitates the expeditious consideration of the custodial status of persons who have been arrested and detained. When at the Centre, JJPs issue federal and provincial search warrants by FAX and telecommunications, and preside over bail hearings, by telecommunications.

The Court is piloting the use of video bail in several locations in the firm belief that this will provide better access to justice for accused persons and will allow JJPs to make better informed decisions when determining whether to detain an accused person.

The Justice Centre and the sitting division are both supervised by the Office of the Chief Judge, and JJPs may be assigned by the Chief Judge to work in either area. The appointment process for JJPs is similar to that for judges and the criteria for appointment are the same regardless of the subject area to which the JJP may ultimately be assigned.

### *Role of Judicial Council*

The Judicial Council reviews applications, conducts interviews, and approves JJP candidates for appointment and the Chief Judge sends to the Attorney General the names of approved candidates recommended for appointment to available vacancies, in a process similar to that for judges outlined above. Applications for JJP positions may be submitted at any time or may be solicited by a recruitment campaign for a specific vacancy.

When received, applications are initially reviewed by Judicial Council or a Select Committee of the Council, to decide whether the applicant will be interviewed. Candidates are not advised of that decision except through receipt of an invitation to attend for interview. Candidates who are interviewed are not advised whether they have been approved as eligible for appointment.

Since 2001, the Council has maintained a pool of approved applicants similar to the pool for judges. Approvals remain valid for three years. Applicants are eligible to reapply after 3 years from the later of the date of their previous application or the date of their interview, if any.

In 2007 the Council began considering applications by lawyers for appointment as Judicial Justices to serve on a part-time, per diem basis. In 2007, 7 lawyers were appointed as Judicial Justices, by the Lieutenant Governor in Council, on the recommendation of Judicial Council, to serve on a part-time, per diem basis. In 2008, a further, 10 lawyers were appointed to serve as Judicial Justices on a part-time, per diem basis, and 5 ad hoc judicial justices were appointed to meet the needs of the Court

## Appointment Criteria

Applicants for appointment as a Judicial Justice must meet the following criteria:

1. At least five years practicing with the BC Bar. Those with less legal practice experience, or those from a bar outside BC are considered if they have a range of related experience.
2. Superb legal reputation in the legal community, and a professional record review from the Law Society of British Columbia.
3. Demonstrated excellence in your area of the law.
4. Experience in mediation or alternative dispute resolution.
5. Willingness and ability to learn and demonstrated commitment to continuing professional education
6. Knowledge of current issues facing the courts, the judiciary, and the justice system, and awareness of the social context within which the court operates.
7. Ability to listen and communicate effectively.
8. Personal characteristics such as decisiveness, evenness of temperament, fairness, open mindedness, common sense and courage.
9. Demonstrated compassion for those coming before the court and an understanding of their circumstances.
10. Respect in the community.
11. Good health.
12. Passion and enthusiasm.
13. Balanced relationships with peers and subordinates.
14. Demonstrated adaptability and flexibility with respect to job changes.
15. Demonstrated balance of confidence and humility.
16. Appreciation of and experience with diversity.
17. Demonstrated dedication to public service.
18. Ability to cooperate and work with others.
19. Understanding of the role of the court in society and respective roles of the judiciary and other participants in the justice system.
20. Willingness to travel and to sit in all subject areas.

Applications for appointment as a judicial justice of the peace are submitted on a Judicial Justice of the Peace Candidate Information Summary. A sample form may be found at [www.provincialcourt.bc.ca/judicialofficers/justicesofthepeace/appointmentprocess/index.html](http://www.provincialcourt.bc.ca/judicialofficers/justicesofthepeace/appointmentprocess/index.html).

## 5. Appointment Process for Court Services Justices of the Peace

Court Services justices of the peace work in Court registries throughout BC. In addition to their justice of the peace duties, which are assigned by the Chief Judge, they hold various administrative positions in the Court Services Branch of the Ministry of the Attorney General including court manager, administrator and court clerk.

Court Services Justices of the Peace perform such functions as:

1. swearing Informations and arranging for the process to bring accused persons to court to answer new charges;
2. attending to the execution of court orders made by judges and JJPs;
3. determining whether persons qualify to be a “surety” or to guarantee an accused’s bail; and
4. generally performing other duties required of a “justice” in the Criminal Code, but being primarily administrative in nature, and not requiring the exercise of material judicial discretion.

The applicable process for appointment is as follows:

1. A court manager in the relevant location will contact the Office of the Chief Judge (in writing) when they need a justice of the peace appointment, for instance, to fill a vacant position or to accommodate an increase in workload.
2. In the case of a vacant position, the position is usually posted as a government posting, and a competition is held. The successful candidate will submit an application to Judicial Council for appointment as a justice of the peace.
3. When the application is received, it is reviewed by the Office of the Chief Judge staff to ensure it is properly completed and to identify any potential problems with the candidate such as conflicts of interest. A police record check is also conducted.
4. The application is then forwarded to the Administrative Judge in the relevant district with a request that he or she confirm the need for the appointment and interview the candidate according to the following guidelines:
  - (a) The applicant’s existing relationship (if any) with the local police or sheriff which may impede his/her independence. e.g. “Does the candidate know of any potential conflict of interest concerning this position that may impede his/her ability to perform justice of the peace duties?”
  - (b) Ability to learn, communicate effectively and make independent decisions.
  - (c) Willingness to attend courses, i.e. 5 or 6 days basic training and 2 days every second year advanced training.
  - (d) If the Administrative Judge is satisfied on these points, he or she will submit his/her recommendation to Judicial Council.
  - (e) The Administrative Judge’s recommendation and court manager’s request for the appointment, together with the application, are submitted to Judicial Council for approval.
  - (f) Applicants for Court Services Justice of the Peace appointments are not generally interviewed by the Council. If the candidates are approved by Judicial Council they are

invited to attend the basic training course. If successful in the course, they are recommended for appointment.

## **6. Appointment Process for Judicial Case Managers**

Judicial Case Managers (JCMs) are officers of the judiciary who perform case management or judicial scheduling functions. They are required to hold a Justice of the Peace commission as part of their qualifications for the position. When an applicant becomes a potential candidate for employment as a JCM through a government posting process, the applicant must apply for a Justice of the Peace commission. The application proceeds through the Judicial Council approval process in a fashion similar to that for Court Services Justices of the Peace described above.

## **7. Judicial Education**

### *Judges' Education*

New judges receive a three to four weeks orientation program consisting of travel to various districts in the Province, mentoring by experienced judges and court observations. They are also sent in the first year of appointment to the New Judges' Training Program presented by the Canadian Association of Provincial Court Judges in Quebec as well as to the newly appointed provincial and territorial Judges Skills Seminar sponsored by the National Judicial Institute. Often new judges are also sent to one other conference in an area of law in which they may lack practice experience.

Thereafter, new judges and other judges are required to attend semi-annual education conferences presented by the BC Association of Provincial Court Judges, and may also request education leave of up to 5 days, and use their professional allowance to attend approved educational conferences.

The semi-annual educational conferences presented by the Provincial Court Judges' Association's Education Committee, in the Spring and Fall, last for two and one-half days each, ending with a Saturday morning session. The topics covered include recent trends in the law, social context training, mediation skills, new legislation and issues of concern to judges and the public.

The sessions in the Spring and Fall of 2007 and 2008 covered a wide range of topics, some of which are listed below.

- To Recuse or Not Recuse, That is the Question
- The Voice/Views of the Child Report - The Okanagan Experience and “the ROBC”
- The “New” Preliminary Inquiry
- CSO Theory and Reality
- Mentally Disordered Accused Persons: What Counsel Want the Judge to Know
- Senior Judging: A Program for Judges Considering Senior Judging
- Civil Law: Damages
- Judicial Skills and the Self-represented
- Child Protection Workshops
- Spousal Support and the Advisory Guidelines
- DIVORCEmate Software Demonstration
- Judges’ Counselling Program
- Truth & Consequences: Assessing The Credibility of Children
- All in the Family: Lobbing the Sexual Abuse Grenade
- Predator: Investigating and Prosecuting the Offshore Sex Tourist
- What Do We Know and What Should We Know about Pedophilia?
- Sex Offender Treatment Programs: What Works and What Doesn’t
- Sentencing the Sexual Offender: The Good, The Bad and the Merely Ineffective
- Impaired Driving Legislation: Practice Update
- The Challenges Facing Judges in the 21<sup>st</sup> Century
- Enhancing Judicial Skills in Domestic Violent Cases: Translating Theory into Practice
- Vulnerable Children in BC: Helping to Reduce Risk and Overcome Disadvantage
- Judging and FASD Today: Typical Problems Practical Solutions
- Youth Sentencing Issues
- Investigation of Child Internet Exploitation
- Managing High Conflict Litigants in Court
- Judicial Security
- 1000 Little Bricks: Child Refusal & Alienation
- The Matrix Revisited: Evidentiary Issues in Sexual Assault Cases

As stated, individual judges may use their professional allowance and education leave to attend additional education programs, including out-of-province courses and seminars on topics related to their judicial duties. In the past two years judges have attended courses on the following topics:

- National Criminal Law Program - Criminal Procedures and Charter Issues
- Judicial Faculty Development Seminar - Managing the Domestic Violence Trial
- Emerging Issues Conference: Why Gender Equality Still Matters
- Harmonizing Medicine & the Law
- Foundations of Computing
- What Works with Woman Offenders: Challenging Stereotypes and Achieving Change International Conference
- National Lesbian and Gay Law Association - Lavender Law 2008
- Judicial Community Liaison Program 2008 - Domestic Violence in the South Asian Communities: Attitudes, Practices, Challenges and Resources
- Hearing and Deciding Charter Issues
- Criminal Law Seminar: Economic Crimes

The Provincial Court of British Columbia continues to be at the forefront of judicial education for judges in Canada. The continuing success of the Court's education programs is due to the volunteer efforts of the Provincial Court Judges' Association's Education Committee and the many judges who participate on a volunteer basis at the conferences. Judges also participate in educational programs, panels and seminars for continuing legal education to assist in educating judges from other courts and provinces, members of the bar, and the public, on a regular basis. Details of the judges' participation in public legal education are contained in the Court's Annual Reports<sup>5</sup>.

### *Judicial Justice Education*

Judicial Justices are provided with training or orientation specific to their assignments and experience levels upon appointment. Generally this takes the form of observation and on-the-job training, in relation to bail and search warrants, and courses in law and criminal procedure as well as observation, in relation to traffic and payment hearings. Judicial Justices are involved in training to ensure they are prepared to preside over any of the variety of subject areas to which they may be assigned.

Judicial Justices also attend semi-annual education seminars presented by the Judicial Justices' Association Education Committee. The Committee arranges presentations by JJPs, members of the bar, judges and other expert speakers. In 2007 and 2008, presentations were made to the Judicial Justices by guest speakers such as Mr. Justice David Frankel, Mr. Justice William Smart, the Honourable Justice William Smart, and the Honourable Judges Paul Meyers and Vince Hogan, Drs. Brian Tucker, Tonia Nicholls, Yuille, Mark Hayden, BC's Chief Conservation Officer, Suzanne Watson and Doug Elliott, Transportation Canada, Stuart Cadwallader, President, Kulus Consulting and Development, Ellen Gerber, Sr. Crown Counsel, City of Vancouver, Gene Jamieson, Legal Officer, Office of the Chief Judge and Steve Rhodes, Information Technology Systems Manager, Office of the Chief Judge.

The topics covered in 2007 and 2008 included:

- National Security Code changes
- Authority of JJPs to order roadside safety checks
- The Basics of Information Technology
- Payment Hearings
- Stress in the Workplace
- Alternative Theories of Family Violence
- Information and Process Review
- The Role of the Judiciary in a Bail Hearing
- Judicial Ethics
- Current Legislation, Enforcement and Priorities in Conservation
- Court's jurisdiction in bylaw court
- Sentencing Principles
- Communicating effectively with self represented Aboriginal accused persons
- Legacy of the Residential School System
- Gladue implications/obligations on the Court at the bail hearing stage
- Physical and audio cues as to truthfulness of a witness
- Roadside screening devices
- Search Warrants

<sup>5</sup> <http://www.provincialcourt.bc.ca/>

In addition to the semi-annual conferences, the JJP Education Committee hosts regular “Education Nights” at the Justice Centre. In 2007 and 2008 approximately 12 such sessions were held on various topics relating to bail and search warrants at which various experts in the field made presentations to the Judicial Justices who attended either in person or by telephone.

The Executive of the JJP Education Committee has been very active over the past two years : offering presentations to civil servants ; meeting with the Provincial Court Judges’ Association’s Education Committee; sending representatives to a National Justice Institute sponsored conference on bail issues in 2007, and attending the Provincial Court Judges’ Association conferences.

### ***Court Services Justice of the Peace Education***

The Justices of the Peace who are appointed as Court Services Justices of the Peace receive training through a Basic JP Course prior to their appointment, and then receive ongoing on-the-job training and experience in the conduct of their duties, as well as support in the form of a JP manual issued by the Office of the Chief Judge and available assistance from the legal officer to the chief judge. During the years 2004-2006, six justice of the peace basic training programs were held at the Office of the Chief Judge on September 29 to October 1, 2004, March 15 to 17, 2005, June 14 to 16, 2005, October 5 to 7, 2005, April 24 to 26, 2006, and December 4 to 6, 2006.

### ***Judicial Case Manager Education***

The Judicial Case Managers (JCMs) of the Court have an annual conference presented by the Office of the Chief Judge under the supervision of the Administrative JCM. Ongoing, on-the-job training and support is also provided by the Administrative JCM. In 2007-2008, there was a focus on education as Judicial Case Managers took on increasing obligations with expanded duties assigned to them by the Chief Judge.

#### *Sun Peaks - June 1st, 2007*

This one day seminar for Judicial Case Managers from the first five pilot districts discussed the proposed Criminal Process Front End Reforms [JCM Pilot Projects of the Court] including: review of the objectives of Criminal Caseload Management and proposed criminal process reforms; best practices when dealing with Initial Appearances; professionalism and the expanded Judicial Case Manager role; conducting arraignment and trial confirmation hearings.

#### *Vancouver JCM Conference Sept 27 & 28, 2007*

The focus of this conference, attended by all of the Court’s JCMs, was on providing updates and training for Judicial Case Managers in the following areas: District Reviews (process and timelines); changes to Judicial Case Manager compensation; Downtown Community Court (presentation by Judge Gove); civil reforms (use of mediators/arbitrators); planning & implementing criminal process reforms (Victoria/Port Coquitlam pilot projects) and centralized video-bail.

*Victoria JCM Conference – April 3 & 4, 2008*

This conference covered topics such as: drafting and maintaining Rota; professionalism & decorum; review of “best practices” for case management as identified through the District Review process; effective planning & implementation strategies for criminal process reforms; business rules for e-mail scheduling and other computer training.

*Vancouver [Office of the Chief Judge] - Oct 23rd, 2008*

Judicial Case Manager training on “Proposed Criminal Process Front End Reforms” [The Court’s JCM Pilot Projects] was designed for those JCMs at the Court’s Robson Square and 222 Main Street locations, and included: review objectives of Criminal Caseflow Management and criminal process reforms; effective planning & implementation strategies; conducting arraignment and trial confirmation hearings and exercising expanded Judicial Case Manager authority as assigned by the Chief Judge.

## **8. Strategic Planning**

In 2006, the Court completed its strategic plan for 2006-2009. Much of the report dealt with Quality of Justice, which is a subject within the objects of the Council.

In furtherance of Strategy 4-B of that Strategic Plan, the Court concluded its review of the mandate and responsibilities of Judicial Justices. The Court has determined that the role of the Judicial Justice in the criminal justice system should be expanded, particularly with respect to bail. That decision in turn led to Judicial Council establishing new qualifications for Judicial Justices which were subsequently codified in amendments to the *Provincial Court Act* in 2008, as mentioned earlier in this report.

Council has recommended a total of 13 applicants over the course of 2007 and 2008, who have, to the date of this Report, been appointed under the Council’s new criteria.

## **9. Complaints**

Under the *Provincial Court Act*, it is the Chief Judge who has the power and the duty to supervise the Judges and Justices of the Peace (including Judicial Justices) of the Court and is required under section 11(2) to examine all complaints respecting Judges and Justices of the Peace. The Chief Judge must report in writing to the complainant and the judicial officer following an examination.

The *Act* also requires, in section 11(3), that the Chief Judge conduct an investigation respecting the fitness of a Judge or Justice of the Peace to perform his or her duties if the Chief Judge considers that an investigation is required, or if directed to do so by the Attorney General. The result of an investigation may include corrective action or an order for an inquiry respecting the fitness of the judge or justice to perform their duties.

The specific role of the Judicial Council in respect of public complaints, arises indirectly in reference to the Council's statutory object of improving the quality of judicial service, and because the statute contemplates the possibility – in the event the Chief Judge or the Attorney General ordered that there be an inquiry into the fitness for office of a judicial officer – that the judicial officer may elect to have the Judicial Council act as the tribunal at that inquiry (the alternative tribunal is a single justice of the Supreme Court).

As chair of the Judicial Council, the Chief Judge reports to the Judicial Council from time to time regarding certain complaints as they bear upon the Council's interest in the overall quality of judicial service, but the Judicial Council is not engaged in the process relating to complaints. The Court's complaint process is under review by the Office of the Chief Judge with a view to making it more open and accessible to the public and to ensuring it is administratively fair to the judicial officers who are the subject of a complaint.

At the conclusion of that process, the Provincial Court will report in its Annual Report on its findings, including summarizing the complaints received in the years since last reported.

## **10. Public Access to the Judicial Council**

Any member of the public who has a question she or he wishes to direct to the Chief Judge as Chair of the Judicial Council, or to the Judicial Council as a whole, whether arising from this Report, or for any other reason, may do so in writing directed to the Judicial Council of the Provincial Court of British Columbia, 602, 700 West Georgia Street, Vancouver, British Columbia, V7Y 1E8.

## APPENDIX A

### Procedure Bylaw

In this bylaw:

- (1) "Applicant" means an applicant for appointment as a provincial court judge.
  - (2) "Council" means the Judicial Council of British Columbia.
  - (3) "Chair" means the Chief Judge or the alternate presiding member, appointed under the *Provincial Court Act*, where the Chief Judge does not attend a meeting of the Council.
1. The Council is a continuing body notwithstanding any change in membership. The Council may complete any proceedings commenced before a change in membership.
  2. The majority of the members of the Council are a quorum. A quorum must be present to hold any meeting, or to pass any resolution.
  3. All powers of the Council may be exercised by resolution. An act or proceeding of the Council is valid when authorized or adopted by resolution at a meeting of the Council, provided that:
    - (a) A resolution to approve an applicant for appointment will be defeated if any two members vote against approval. A resolution that an applicant not be approved for appointment will succeed if two or more members vote in favour of the resolution. Members present for such resolutions may not abstain.
    - (b) A resolution to approve an applicant for interview will succeed if any three members vote in favour of the resolution.
    - (c) To pass any other resolution at a meeting of the Council there must be a majority vote of the quorum in favour of the resolution. Each member has one vote but in the event of a tie, the Chair must cast a second and deciding vote.
  4. Where any member has a conflict with respect to an applicant, or where there may be a reasonable apprehension of bias in respect of a member, that member shall be disqualified from participating in the interview of the applicant, and shall not participate in any vote with respect to the applicant. Such member shall refrain from involvement in all proceedings or discussions relating to the applicant. Any question regarding whether a member is in a conflict or whether there is a reasonable apprehension of bias shall be resolved by general resolution. If disqualification of a member through conflict or bias reduces the number of members present below a quorum, the interview or vote in respect of the applicant must be adjourned to a time when a quorum is present.

5. The Chair will preside at all meetings of the Council, except when the Chair is not available, in which case, the alternate presiding member must preside.
6. The Council will meet approximately 10 times per year, as scheduled from time to time by the members at a meeting. Notice of the time and place of meetings will be given by the Chair to each member. Any member may attend any meeting of the Council.
7. The Council and its committees may meet in person, via telecommunications or a combination of both. All in person meetings of the Council will be held in Vancouver unless the Council resolves to hold a meeting elsewhere within British Columbia. All in person meetings of committees of the Council will be held in British Columbia at a place resolved by each committee. Notwithstanding the above, all meetings involving interviews of candidates or matters of discipline of judges shall be done in person.
8. Meetings of the Council will be private and confidential, but the Council may invite non-members to attend all or part of a meeting of the Council, except a meeting or a part of a meeting at which candidates are interviewed or votes are taken.
9. The Chair will preserve order at meetings and decide all points of order which may arise, subject to an appeal of any other member present. If an appeal is taken by a member from a decision of the Chair, the question will be decided without debate by a majority vote of the quorum.
10. A bylaw relating to the procedure of the Council may be made or amended by a general resolution passed at a meeting of the Council of which written notice was given in advance to all members.
11. The minutes of all meetings of the Council will be distributed to the members, adopted by resolution at the next meeting of the Council, and then signed by the Chair.
12. Where appropriate, the agenda of meetings of the Council will include:
  - (a) minutes of previous Council meetings or committee meetings;
  - (b) matters arising out of the minutes;
  - (c) communications and inquiries;
  - (d) reports from the Chair, or a committee;
  - (e) applications for appointment;
  - (f) disciplinary matters;
  - (g) new business;
  - (h) approval of expenses; and
  - (i) next meeting.
13. The Council may from time to time by general resolution establish standing committees, as required. The chair of each standing committee will be named by the Chief Judge, and the Chair and the members will be approved by the Council.

14. In addition to the standing committees, the Chair, or Council by general resolution, may establish a select committee to consider any matter. The Chair will name the chair of such committees and the Council may name its members. A select committee may only consider the matter specifically referred to it by the Council or by the Chair.
15. The proceedings of all committees will be subject to the approval of the Council. The minutes of all committee meetings will be circulated to all members of the Council in advance of the Council meeting next following the meeting of the committee.
16. Minutes of a committee and resolutions set out in a committee's minutes will be deemed approved by the Council as of the date of the next Council meeting following their circulation, unless a Council member requests the Chair to call a vote at such meeting. The effective date of a committee resolution must be no earlier than the date of the next Council meeting following the meeting of the committee.
17. Except for judicial members, a member attending a meeting of the Council, a meeting of a committee or other business on behalf of the Council as authorized by the Chair, is entitled to receive payment of an allowance in such amount the Lieutenant Governor in Council considers appropriate, and any travel or out-of-pocket expenses.
18. This bylaw does not apply to the Council acting as a tribunal of inquiry under the *Provincial Court Act*.
19. With respect to procedural issues not covered by this bylaw, *Roberts Rules of Order* shall govern.

Procedure Bylaw adopted this 23rd day of March, 2001 at a meeting of the Judicial Council of British Columbia.