

**Submission to the Commission
The Honourable Lillian K. McLellan
Deputy Chief Judge and Coordinator, Justice of the Peace
Program
The Provincial Court of Alberta**

February 2020

(1) As Deputy Chief Judge of the Provincial Court of Alberta, I am the judicial supervisor of the Justice of the Peace program and have served in that capacity for 6 years. I am familiar with the work of the Justices of the Peace and have been present during major changes to their work as a result of legislative changes and court decisions. I understand and will speak to the importance and complexity of the work.

(2) Justices of the Peace play an essential role within Alberta's justice system. *The Justice of the Peace Act and Regulations* sets out the jurisdiction of the Justices of the Peace and includes many provincial statutes. Justices of the Peace hear all first appearance bail matters that are required by the *Criminal Code* to be heard within 24 hours of the arrest time. They review warrant applications and grant orders if appropriate. Many warrants are urgent, lengthy, arrive at all times of the day and are of great importance (murders, missing individuals etc.). Other urgent applications include child apprehension applications or emergency protection order applications. Justices of the Peace also review and issue all process applications fundamental to the justice system (subpoenas, swearing informations etc.) Justices of the Peace also hear provincial act offences including traffic act offences.

(3) The Justices of the Peace sitting in Provincial Offences Court have the challenge of dealing with a court where there are many self-represented litigants while conducting trials, dealing with sentencing issues and bail as required.

(4) Justices of the Peace are located in Grande Prairie, Red Deer, Lethbridge, Medicine Hat. Calgary and Edmonton.

(5) Justices of the Peace may be Full-Time, Part-Time or Ad Hoc. Calgary and Edmonton have Justice of the Peace Hearing Offices that are staffed 16 hours a day (2 eight-hour shifts from 8:00 AM to 4:00 PM and 4:00 PM to midnight.) 365 days a year to handle the work load and urgent applications. Calgary also has a midnight to 8:00 AM shift to cover provincial non-bail emergency applications. The necessity and importance of shift work cannot be overstated. Justice emergencies occur at all hours of the day. With first appearance bail, compressed to 16 hours a day the workload is substantial. The number of applications for Emergency Protection Orders continues to be substantial. These applications are time consuming as there must be sufficient information to meet the requirements of the legislation. The rigours of shift work are I believe well known. When I am interviewing potential candidates I always stress the importance of understanding that shift work is required as well as shifts on weekends and holidays. I have during my term dealt with health issues arising from shift work.

(6) In my time as judicial supervisor there has been a complete overhaul of first appearance bail with the involvement of Crown and Duty Counsel. Clerks and Hearing Office Coordinators have been added to an efficient virtual court system. Justices of the Peace have learned to become familiar with electronic documents, including electronic bail lists and multiple screens. I have been impressed with the dedication and necessary flexibility of the Justices of the Peace to learn different skills. Since the last compensation commission Duty Counsel has been added to the Crown Bail Project. This is an important addition and necessary for impartial justice. Additional stakeholders mean additional complexity for Justices of the Peace.

(7) Bill C-75, intended to make the criminal justice system more modern and efficient and to reduce delays in criminal matters, was rolled out in the past year in stages. The legislation clarified bail provisions. Any bail decision must give primary consideration to a principle of restraint and release the accused at the earliest reasonable opportunity with the least onerous conditions. The legislation also requires the court to consider the circumstances of accused who are Indigenous or members of vulnerable populations. There have had many meetings to ensure judicial education and information was available for all judicial officers in the province.

(8) The legislation hybridizes 118 indictable offences meaning these offences may now be prosecuted either as an indictable offence or as a summary conviction offence. Many offences that could only be prosecuted by indictment and punishable by 10 years' imprisonment or less became hybrid offences, and the maximum penalty of imprisonment for almost all summary conviction offences is standardized to two years less a day. This change will increase the work load of provincial courts.

(9) Major changes to criminal justice involve substantial judicial education. Of concern is the fact that Ad Hoc Justices of the Peace do not receive paid time for education except for travel and registration costs allowable under the professional development allowance.

(10) I point out the changes to the criminal justice system in Bill C-75 to highlight the fact that the work of the Justices of the Peace is important and complex and changes. There has been a great deal of focus on bail and concern about the over-incarceration of accused before their criminal matters are resolved and especially concerning the over-incarceration of indigenous accused and other vulnerable members of society.

(11) In *R. v. Reilly*, 2019 ABCA 212, the Crown appealed an order of the Provincial Court that stayed (pursuant to s. 24(1) of the Charter) charges of assault causing bodily harm, unlawful confinement and

failing to comply with probation orders. The accused had been held for longer than 24 hours before being brought before a Justice of the Peace to deal with first appearance bail. The Alberta Court of Appeal unanimously overturned the decision noting the challenge of finding a remedy that was “appropriate and just” in the circumstances at both the individual and the systemic levels. The Court of Appeal noted that the bail system was in transition stating “However, transition from one system to another is not a blanket justification for *Charter* breaches”. The court stated that “Delays in routine bail and detention matters are a manifestation of the culture of complacency denounced by this Court in *Jordan*, and must be addressed. The time limits in the *Criminal Code* must be met on time, every time for every detained person.”

(12) The Supreme Court of Canada has agreed to hear this matter which likely indicates an interest in speaking to timely bail.

(13) It is important that Alberta Provincial Court attracts and appoints qualified persons to become Justices of the Peace. As noted above the work is ever more important and complex. Our court has had some trouble having vacancies filled in a timely way. A Part-Time Justice of the Peace in each of Calgary and Edmonton has requested the opportunity to become Full-Time. This request is supported by our court and as a result I have requested appointments as follows: Edmonton, 2 Full-Time and 3 Part-Time Justices of the Peace; Calgary, 1 Full-Time and 1 Part-Time Justice of the Peace. When there are vacancies there is additional stress on the remaining Justices of the Peace and not all shifts can be filled.

(14) The shortage of Justices of the Peace has not yet resulted in *constant* crisis because Justices of the Peace have stepped up and some have worked more shifts than they had anticipated and are postponing some holiday time. To manage impending vacancy problems, we instituted a new province wide bail system where Justices of the Peace in Calgary or Edmonton may hear bail from anywhere in the province to meet a shortage of Justices of the Peace in Edmonton. Prior to this protocol Justices of the Peace in Edmonton heard matters from north of

Red Deer and Justices of the Peace in Calgary heard matters from Red Deer and south. This merging process sounds simpler than it actually is. For example, a project was necessary to standardize provincial bail conditions used by the Justices of the Peace. It is far too difficult to accommodate the bail condition lists in different jurisdictions other than to add the necessary conditions specific to an area. A project such as this requires a great deal of time and effort.

(15) Matters set to Provincial Court from the Hearing Office must be set to various provincial locations including circuit points (within 3 days). Justices of the Peace must now be familiar with all of our 72 locations and the many combinations of court sitting dates.

(16) In March and April, 2020 two Ad Hoc Justices of the Peace will be retiring. It will be impossible to fill all Provincial Offence/Traffic Court dates and/or hearing office shifts. Courts and shifts will need to be combined and will likely result in longer trial times and add to problems ensuring timely bail applications.

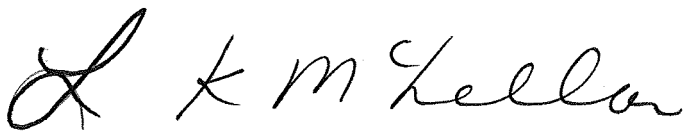
(17) I want to stress that the Justices of the Peace have gracefully and diligently worked with many challenges.

(18) It is important that a Full-Time, Part-Time or Ad Hoc Justices of the Peace be able to serve as an Administrative Justice of the Peace (“AJP”). The position is of vital importance and requires the support of colleagues, the Office of the Chief Judge and requires an important skill set including tact and diplomacy. It must be up to the Office of the Chief Judge to choose the best candidate for this job.

(19) The AJP prepares work schedules that are complicated given a combination of Full-Time, Part-Time and Ad Hoc Justices of the Peace and the need to fill several shifts 365 days a year as well as court sittings. A fair allocation of desirable shifts must be considered along with holiday requests. The AJP meets and/or liaisons with stakeholders

in regular meetings or as required. The AJP responds to questions from police agencies and other stakeholders. The AJP advises of new legislation and ensures newly appointed JPs receive adequate training and mentoring pursuant to the education plans. Again, I stress that the Office of the Chief Judge should be able to choose the best candidate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "L K M McLellan". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

The Honourable Lillian K. McLellan