

2022 Yukon Judicial Compensation Commission

SUBMISSION OF THE GOVERNMENT OF YUKON IN RELATION
TO TERRITORIAL COURT JUDGES AND JUSTICES OF THE
PEACE

Supplementary Materials

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TERRITORIAL COURT ACT

RSY 2002, c. 217

LOI SUR LA COUR TERRITORIALE

LRY 2002, ch. 217

**UNOFFICIAL CONSOLIDATION OF THE
STATUTES OF YUKON**

**CODIFICATION NON OFFICIELLE DES
LOIS DU YUKON**

TERRITORIAL COURT ACT

RSY 2002, c. 217; amended by SY 2003, c.16; SY 2012, c.3; SY 2013, c.15; SY 2018, c.7; SY 2018, c.16; SY 2019, c.6; SY 2023, c.7

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LOI SUR LA COUR TERRITORIALE

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TERRITORIAL COURT ACT

LOI SUR LA COUR TERRITORIALE

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TERRITORIAL COURT ACT

Preamble

Recognizing that an independent judiciary is one of the cornerstones of a free and democratic society; and
 Recognizing that the justice system requires the respect and confidence of the public it serves; and
 Recognizing that the quality of justice for the citizens of Yukon is a matter of concern for all who live or visit here; and

Recognizing that it is both desirable and necessary to have a working relationship between the Government and the Territorial Court of Yukon that is characterized by mutual respect and cooperation; and

Recognizing that community-based justice activities augment and support the work of the Territorial Court; and

Recognizing that the remuneration of the Territorial Court must be established by a process which is impartial, reasonable and fair,

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

PART 1

INTERPRETATION

1 Definitions

In this Act,

“**chief judge**” means the chief judge of the court appointed in accordance with section 71; « *juge en chef* »

LOI SUR LA COUR TERRITORIALE

Préambule

Attendu :

que l’indépendance de la magistrature est l’une des pierres angulaires d’une société libre et démocratique;
 que le système judiciaire nécessite le respect et la confiance du public qu’il sert;

que la qualité de la justice pour les citoyens du Yukon est une question qui intéresse tous ceux qui vivent au Yukon ou qui le visitent;

qu’il est à la fois désirable et nécessaire que le gouvernement du Yukon et la Cour territoriale du Yukon entretiennent des rapports de travail fondés sur le respect mutuel et la coopération;

que les activités liées à la justice communautaire rehaussent et appuient le rôle de la Cour territoriale;

que la rémunération des juges de la Cour territoriale doit être fixée par un mécanisme impartial, raisonnable et juste,

le commissaire du territoire du Yukon, sur l’avis et avec le consentement de l’Assemblée législative, édicte :

PARTIE 1

DÉFINITIONS

1 Définitions

Les définitions qui suivent s’appliquent à la présente loi.

« **Commission** » La Commission de rémunération des juges constituée sous le régime de la partie 3.
 “*commission*”

“**commission**” means the judicial compensation commission established under Part 3; « *Commission* »

“**council**” means the Judicial Council of the Territorial Court established in accordance with Part 4; « *Conseil* »

“**court**” means, except in respect of a provincial court, the Territorial Court of Yukon; « *Cour* »

“**deputy judge**” means a judge who is not appointed to serve on a permanent basis; « *juge adjoint* »

“**government**” means the Government of the Yukon; « *gouvernement* »

“**judge**” means, except in respect of a provincial court, a judge of the court and includes a deputy judge; « *juge* »

“**judicial remuneration**” means all forms of compensation including salaries, pensions, allowances, and benefits; « *rémunération des juges* »

“**provincial court**” means a court, created by an act of the legislature of a province other than Yukon, the powers and duties of which are substantially similar to those of the Territorial Court of Yukon; « *cour provinciale* »

“**tribunal**” means a judicial conduct tribunal as constituted under section 44. « *tribunal* »

[S.Y. 2012, c. 3, s. 2] [S.Y. 2002, c. 217, s. 1]

2 Continuation

(1) The Territorial Court of Yukon is hereby continued.

(2) The Justice of the Peace Court is hereby continued as part of the court.

[S.Y. 2002, c. 217, s. 2]

3 Jurisdiction

(1) A judge has jurisdiction throughout the Yukon to exercise all the power conferred on, and perform all the duties imposed on a judge, a justice or two or more justices sitting together, or a provincial court judge by or under an enactment of the Yukon or of Canada.

(2) For the purposes of the *Young Offenders Act (Canada)*, the court shall be deemed to have been designated as a youth court and every judge of the court shall be deemed to have been designated a youth

« **Conseil** » Le Conseil de la magistrature de la Cour territoriale constitué conformément à la partie 4. “*council*”

« **Cour** » Sauf à l’égard d’une cour provinciale, s’entend de la Cour territoriale du Yukon “*court*”

« **cour provinciale** » Cour constituée par une loi de la législature d’une province autre que le Yukon dont les pouvoirs et fonctions sont substantiellement similaires à ceux de la Cour territoriale du Yukon. “*provincial court*”

« **gouvernement** » Le gouvernement du Yukon. “*government*”

« **juge** » Sauf à l’égard d’une cour provinciale, s’entend d’un juge de la Cour, y compris un juge adjoint. “*judge*”

« **juge adjoint** » Juge qui n’est pas inamovible. “*deputy judge*”

« **juge en chef** » Le juge en chef de la Cour nommé conformément à l’article 71. “*chief judge*”

« **rémunération des juges** » Toutes formes de rémunération, y compris les salaires, les pensions, les indemnités et les avantages sociaux. “*judicial remuneration*”

« **tribunal** » Le Tribunal de déontologie judiciaire constitué en vertu de l’article 44. “*tribunal*”

[L.Y. 2012, ch. 3, art. 2] [L.Y. 2002, ch. 217, art. 1]

2 Maintien

(1) La Cour territoriale du Yukon est maintenue.

(2) La Cour des juges de paix est maintenue à titre de composante de la Cour.

[L.Y. 2002, ch. 217, art. 2]

3 Compétence

(1) Le juge a compétence partout au Yukon et peut exercer les fonctions et pouvoirs qui sont conférés sous le régime d’un texte du Yukon ou d’un texte fédéral à un juge, à un juge de paix, à deux ou plusieurs juges de paix siégeant ensemble ou à un juge de cour provinciale.

(2) Pour l’application de la *Loi sur les jeunes contrevenants (Canada)*, la Cour est réputée avoir été désignée à titre de tribunal pour adolescents, chacun de ses juges étant réputé avoir été nommé à titre de



court judge.

(3) A judge is *ex officio* a notary public.

[S.Y. 2002, c. 217, s. 3]

4 Civil matters

Except when otherwise provided by statute, the court has no jurisdiction over civil matters.

[S.Y. 2002, c. 217, s. 4]

PART 2 JUDGES

5 Judges of the Supreme Court and Court of Appeal

A justice of the Court of Appeal or a judge of the Supreme Court may sit as a judge of the court and, when that justice or judge does so, they are a judge of the Territorial Court.

[S.Y. 2002, c. 217, s. 5]

6 Appointment of judges

(1) The Commissioner in Executive Council, on the recommendation of the Minister, may appoint any judges that the Commissioner in Executive Council considers necessary when a vacancy occurs or when the volume of work of the court requires an additional appointment.

(2) A judge who is to be a deputy judge may be appointed for a term of not more than five years recommended by the Minister, but a deputy judge is not eligible for re-appointment after the expiration of that term except on the recommendation of the Minister.

(3) The terms of the appointment of every judge shall be judicially noticed.

[S.Y. 2002, c. 217, s. 6]

7 Qualifications

A person shall not be appointed as a judge (other than a deputy judge) unless the person

- (a) is a member, or is qualified to be a member, of the Law Society of Yukon;

juge du tribunal pour adolescents.

(3) Le juge est d'office un notaire public.

[L.Y. 2002, ch. 217, art. 3]

4 Matières civiles

Sauf disposition législative contraire, la Cour n'a aucune compétence dans les matières civiles.

[L.Y. 2002, ch. 217, art. 4]

PARTIE 2 JUGES

5 Juges de la Cour suprême et de la Cour d'appel

Les juges de la Cour d'appel ou ceux de la Cour suprême peuvent siéger à titre de juges de la Cour; ils sont alors des juges de la Cour territoriale.

[L.Y. 2002, ch. 217, art. 5]

6 Nomination des juges

(1) Sur recommandation du ministre, le commissaire en conseil exécutif peut nommer les juges qu'il estime nécessaires en cas de vacance au sein de la magistrature ou lorsque la charge de travail de la Cour l'exige.

(2) Les juges adjoints peuvent être nommés pour un mandat maximal de cinq ans sur la recommandation du ministre; toutefois, le mandat d'un juge adjoint ne peut être renouvelé que sur recommandation du ministre.

(3) Les modalités de nomination de tous les juges sont connues d'office.

[L.Y. 2002, ch. 217, art. 6]

7 Conditions de nomination

Les conditions de nomination à la charge de juge (autre qu'un juge adjoint) sont les suivantes :

- a) être membre du Barreau du Yukon ou posséder les qualités requises pour le devenir;

- (b) has practiced as a lawyer in the Yukon or in a province for the period of at least 10 years immediately preceding the year in which the appointment is to occur, or has other experience satisfactory to the council; and
- (c) has been recommended by the Minister in accordance with this Act.

[S.Y. 2012, c. 3, s. 3] [S.Y. 2002, c. 217, s. 7]

8 Council recommendations to Minister

When a judge (other than a deputy judge) is to be appointed, the council shall submit a list of not less than three and not more than eight qualified candidates to the Minister and the Minister shall recommend appointment of a candidate from this list.

[S.Y. 2012, c. 3, s. 3] [S.Y. 2002, c. 217, s. 8]

9 Compilation of list by council

On being advised that a judge (other than a deputy judge) is to be appointed, the council shall

- (a) advertise the position in newspapers circulating throughout the Yukon and in any other regional or national publications that it considers advisable;
- (b) advise the Law Society of Yukon of the availability of the position and take any further steps that it considers advisable to bring the availability of the position to the attention of other potential candidates who meet the qualifications for appointment;
- (c) interview applicants who appear to be qualified and assess these applicants on the basis of the following criteria
 - (i) the need to have a bench which is demographically representative of the community it serves,
 - (ii) the scholarship, and other attainments of the applicant,
 - (iii) the experience and maturity of the applicant,
 - (iv) the familiarity of the applicant with and the involvement of the applicant in northern communities,

- b) avoir exercé la profession d'avocat au Yukon ou dans une province pendant au moins les 10 dernières années qui précèdent l'année de sa nomination ou posséder une autre expérience que le Conseil estime suffisante;
- c) avoir été recommandé par le ministre conformément à la présente loi.

[L.Y. 2012, ch. 3, art. 3] [L.Y. 2002, ch. 217, art. 7]

8 Recommandations du Conseil au ministre

Lorsqu'il y a lieu de nommer un juge (autre qu'un juge adjoint), le Conseil soumet au ministre une liste d'au moins trois et d'au plus huit candidats qualifiés, et le ministre, à l'aide de cette liste, recommande la nomination de l'un d'eux.

[L.Y. 2012, ch. 3, art. 3] [L.Y. 2002, ch. 217, art. 8]

9 Liste du Conseil

Le Conseil étant avisé qu'un juge (autre qu'un juge adjoint) doit être nommé :

- a) il annonce le poste dans les journaux de diffusion générale au Yukon et dans toutes autres publications régionales ou nationales selon ce qu'il estime indiqué;
- b) il en avise le Barreau du Yukon et fait les démarches qu'il estime justifiées pour que tout autre candidat possédant les qualités requises en prenne connaissance;
- c) il rencontre en entrevue les candidats qui semblent posséder les qualités requises et il les évalue en fonction des critères suivants :
 - (i) la nécessité que la magistrature reflète démographiquement la collectivité qu'elle sert,
 - (ii) leur éducation et leurs autres réalisations personnelles,
 - (iii) leur expérience professionnelle et leur degré de maturité,
 - (iv) leurs connaissances des collectivités nordiques et leur participation à la vie de ces collectivités,



- (v) the familiarity of the applicant with and the understanding of the applicant of Yukon First Nations issues and concerns,
 - (vi) the applicant's record of community service,
 - (vii) additional criteria the council considers appropriate for the needs of the court which are to be communicated by the council to the applicants before their interviews, and
 - (viii) any additional criteria that the Minister considers appropriate in the public interest and that the Minister has communicated to the council in writing which are to be communicated by the council to the applicants before their interviews;
- (d) prepare a list of suitable applicants that complies with section 8 without ranking the applicants but including reasons why each applicant has been included in the list.

[S.Y. 2012, c. 3, s. 3] [S.Y. 2002, c. 217, s. 9]

9.1 Selection of deputy judges

(1) A person shall not be appointed as a deputy judge unless the person

- (a) is a retired judge of the court or a sitting or retired judge of a provincial court; and
- (b) has been recommended by the Minister in accordance with this Act.

(2) If the council considers that the appointment of a deputy judge is required, or if the Minister advises the council that a deputy judge is to be appointed, the council shall submit to the Minister the name of at least one person who qualifies for the appointment.

(3) The Minister may recommend a person for appointment as a deputy judge only if the council has submitted the person's name to the Minister under subsection (2).

[S.Y. 2012, c. 3, s. 4]

- (v) leurs connaissances des questions qui intéressent et préoccupent les premières nations du Yukon et leur compréhension à cet égard,
 - (vi) les services qu'ils ont rendus à la collectivité,
 - (vii) tous autres critères qu'il estime opportun au regard des besoins de la Cour dont il leur fait part avant l'entrevue,
 - (viii) tous autres critères que le ministre estime opportuns dans l'intérêt public et dont il a fait part par écrit au Conseil et que ce dernier leur communique avant l'entrevue;
- d) il prépare la liste des candidats retenus qui est conforme à l'article 8, sans classer ceux-ci, mais en motivant leur choix.

[L.Y. 2012, ch. 3, art. 3] [L.Y. 2002, ch. 217, art. 9]

9.1 Sélection des juges adjoints

(1) Une personne ne peut être nommée juge adjoint que si, à la fois :

- a) elle est un juge à la retraite ou un juge en exercice ou à la retraite d'une cour provinciale;
- b) elle a été recommandée par le ministre en conformité avec la présente loi.

(2) Si le Conseil estime que la nomination d'un juge adjoint est nécessaire, ou si le ministre avise le Conseil qu'un juge adjoint doit être nommé, le Conseil soumet au ministre le nom d'au moins une personne qualifiée pour la nomination.

(3) Le ministre ne peut recommander la nomination d'une personne à titre de juge adjoint que si le Conseil a soumis le nom de cette personne au ministre en application du paragraphe (2).

[L.Y. 2012, ch. 3, art. 4]

10 Oath of office

(1) A judge, before entering on the duties of office, shall swear or affirm an oath as follows before a judge of the Supreme Court or before the chief judge: “**I, _____, do solemnly swear that I will duly, faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me as a judge of the Territorial Court of Yukon for so long as I shall continue to hold office, without fear or favour, and that I will be faithful and bear true allegiance to His Majesty King Charles III, his heirs and successors.**”

(2) The oath of office shall be transmitted immediately to the Minister.

[S.Y.2023, c.7, s.24] [S.Y. 2002, c. 217, s. 10]

11 Term of office

(1) Subject to this Act, a judge holds office during good behaviour.

(2) Subject to this Act, if a deputy judge is appointed for a term, the deputy judge holds office during good behaviour for the term of their appointment.

(3) A judge may resign by submitting to the Minister a written resignation to take effect on the date stated in the resignation.

(4) A judge other than a deputy judge ceases to hold office on attaining the age of 70 years. A deputy judge ceases to hold office on attaining the age of 75 years.

[S.Y. 2013, c. 15, s. 21] [S.Y. 2003, c. 16, s. 2]
[S.Y. 2002, c. 217, s. 11]

(5) [Repealed SY 2018, c.16, s.2]

12 Extra-judicial activities

(1) Except as otherwise authorized by the Commissioner in Executive Council or when on an authorized leave without pay, a judge other than a deputy judge shall not carry on directly or indirectly any occupation, profession, or business other than their judicial responsibilities.

(2) Despite subsection (1), the Commissioner in Executive Council may, after consulting with the chief judge, assign other duties to a judge in place of some or all of their judicial duties in accordance with any conditions contained in the order assigning the judge.

10 Serment professionnel

(1) Préalablement à leur entrée en fonctions, les juges prêtent et souscrivent le serment suivant devant un juge de la Cour suprême : « **Je soussigné, _____, jure d'exercer fidèlement, consciencieusement et le mieux possible mes attributions de juge de la Cour territoriale du Yukon tant que j'occuperai cette charge, de rendre justice sans crainte ni favoritisme et d'être fidèle et de porter sincère allégeance à Sa Majesté le Roi Charles Trois, ainsi qu'à ses héritiers et successeurs.** »

(2) Le serment professionnel est immédiatement transmis au ministre.

[L.Y. 2023, ch. 7, art. 24] [L.Y. 2002, ch. 217, art. 10]

11 Inamovibilité

(1) Sous réserve des autres dispositions de la présente loi, les juges sont nommés à titre inamovible.

(2) Sous réserve de la présente loi, les juges adjoints exercent leur charge à titre inamovible pendant la durée de leur mandat.

(3) Le juge peut démissionner en avisant par écrit le ministre; la démission prend effet à la date mentionnée dans la lettre de démission.

(4) Les juges autres que les juges adjoints cessent d'occuper leur charge dès qu'ils atteignent l'âge de 70 ans. Les juges adjoints cessent d'occuper leur charge dès qu'ils atteignent l'âge de 75 ans.

[L.Y. 2013, ch. 15, art. 21] [L.Y. 2003, ch. 16, art. 2]
[L.Y. 2002, ch. 217, art. 11]

(5) [Abrogé LY 2018, ch. 16, art. 2]

12 Activités extrajudiciaires

(1) Sauf dans la mesure où le commissaire en conseil exécutif l'autorise ou s'ils sont en congé non payé, les juges, à l'exception des juges adjoints, ne peuvent exercer une profession ou une activité commerciale, même indirectement, autre que l'exercice de leur charge judiciaire.

(2) Malgré le paragraphe (1), le commissaire en conseil exécutif peut, après avoir consulté le juge en chef, attribuer d'autres fonctions à un juge en remplacement de la totalité ou d'une partie de ses fonctions judiciaires, conformément aux conditions qu'il énonce dans le décret d'attribution.



(3) The chief judge may authorize leave without pay for a judge for a period not exceeding one year, provided that the leave, whether or not combined with vacation pay, may not exceed a period of one year and may not be granted more than once in a five year period.

(4) A judge shall not act as agent or lawyer in any proceedings before another judge or justice.

(5) A person who has ceased to hold office as a judge, other than as a deputy judge, shall not, within 12 months of the day the person ceased to hold office, act as agent or lawyer in any proceedings before a judge or justice.

(6) Subject to this Act, a judge other than a deputy judge shall reside in Yukon.

(7) No judge shall engage in any manner whatever in partisan political activities.

(8) Subsection (7) does not disentitle a judge to vote in any election.

[S.Y. 2002, c. 217, s. 12]

PART 3

JUDICIAL COMPENSATION COMMISSION

13 Establishment of commission

There shall be established in the year 2001 and in each third year thereafter a commission which shall consist of either one commissioner or three commissioners to be appointed by the Commissioner in Executive Council in accordance with this Part.

[S.Y. 2002, c. 217, s. 13]

14 Mandate of commission

The mandate of the commission shall be to inquire into and make recommendations respecting all matters relating to judicial remuneration of judges, and respecting other related matters as the Minister and the chief judge agree to submit to the commission.

[S.Y. 2002, c. 217, s. 14]

(3) Le juge en chef peut autoriser un juge à prendre un congé maximal d'un an sans traitement; cependant, ce congé, qu'il soit ou non accompagné d'une indemnité de congé, ne peut dépasser un an et ne peut être accordé qu'une fois aux cinq ans.

(4) Il est interdit à un juge d'agir à titre de mandataire ou d'avocat dans une instance dont est saisi un autre juge ou un juge de paix.

(5) À l'exception d'un juge adjoint, il est interdit au juge qui a cessé d'exercer sa charge d'agir à titre de mandataire ou d'avocat dans une instance dont est saisi un juge ou un juge de paix pendant les 12 mois qui suivent la date à laquelle il cesse d'exercer sa charge.

(6) Sous réserve des autres dispositions de la présente loi, les juges, à l'exception des juges adjoints, habitent au Yukon.

(7) Il est interdit aux juges d'exercer de quelque façon que ce soit des activités politiques partisans.

(8) Le paragraphe (7) n'a pas pour effet de priver un juge du droit d'exercer son droit de vote à une élection.

[L.Y. 2002, ch. 217, art. 12]

PARTIE 3

COMMISSION DE RÉMUNÉRATION DES JUGES

13 Création de la Commission

Il est constitué en l'an 2001 et aux trois ans par après une commission composée d'un ou de trois commissaires nommés par le commissaire en conseil exécutif conformément à la présente partie.

[L.Y. 2002, ch. 217, art. 13]

14 Mandat de la Commission

La Commission est chargée d'étudier toutes questions portant sur la rémunération des juges ainsi que toutes questions y afférentes que conviennent de lui soumettre le ministre et le juge en chef et de faire des recommandations à ces égards.

[L.Y. 2002, ch. 217, art. 14]

15 No decrease in judicial remuneration

Subject to section 16, no recommendation of the commission shall result in less judicial remuneration than the remuneration provided to judges to whom this Part applies on the day on which the commission was established.

[S.Y. 2002, c. 217, s. 15]

16 Universal austerity measure

Any universal austerity measure by the government applicable to the public service of the Yukon and also made applicable to judges shall apply to judges, subject to any dispute over its application being resolved by a commission to be established in accordance with this Part within 60 days of a request by either the Minister or the chief judge.

[S.Y. 2002, c. 217, s. 16]

17 Recommendations binding

(1) Subject to subsection (2), recommendations made by the commission with respect to judicial remuneration in accordance with section 14 shall bind the government.

(2) Recommendations made by the commission with respect to judicial remuneration shall not bind the government to the extent that these exceed the highest total value of judicial remuneration provided to territorial or provincial judges of British Columbia, Alberta, Saskatchewan, or the Northwest Territories.

(3) If the recommendation of the commission exceeds the highest total value of judicial remuneration set out in subsection (2), the Commissioner in Executive Council may substitute the highest total value of judicial remuneration for the commission's recommendation.

[S.Y. 2002, c. 217, s. 17]

18 Term of commission

Subject to section 29, on the filing of recommendations under section 14 or section 16, the commission's term of office ends.

[S.Y. 2002, c. 217, s. 18.]

15 Réduction interdite

Sous réserve de l'article 16, les recommandations de la Commission ne peuvent avoir pour effet de réduire la rémunération que touchaient les juges visés par la présente partie à la date de constitution de la Commission.

[L.Y. 2002, ch. 217, art. 15]

16 Mesures d'austérité universelles

Toute mesure d'austérité universelle que prend le gouvernement et qui touche tant la magistrature que la fonction publique du Yukon s'applique à la magistrature, sous réserve toutefois que tout différend concernant l'application d'une telle mesure est tranché par une commission constituée conformément à la présente partie dans les 60 jours d'une demande à cet égard présentée par le ministre ou par le juge en chef.

[L.Y. 2002, ch. 217, art. 16]

17 Effet obligatoire des recommandations

(1) Sous réserve du paragraphe (2), lient le gouvernement les recommandations de la Commission à l'égard de la rémunération des juges formulées conformément à l'article 14.

(2) Le gouvernement n'est pas lié par les recommandations de la Commission qui auraient pour effet d'augmenter la rémunération des juges au-delà de celle des juges de la Cour territoriale des Territoires du Nord-Ouest ou de la Cour provinciale de la Colombie-Britannique, de l'Alberta ou de la Saskatchewan.

(3) Si la recommandation de la Commission a pour effet d'augmenter la rémunération des juges au-delà des montants visés au paragraphe (2), le commissaire en conseil exécutif peut substituer à la recommandation de la Commission le plus élevé de ces montants.

[L.Y. 2002, ch. 217, art. 17]

18 Durée du mandat de la Commission

Sous réserve de l'article 29, le mandat de la Commission prend fin au dépôt des recommandations formulées en vertu de l'article 14 ou 16.

[L.Y. 2002, ch. 217, art. 18]



19 Factors to be considered by the commission

In fulfilling its mandate, the commission shall, in addition to considering any matter it considers relevant, address in its report submissions presented to it regarding

- (a) the current financial position of the government;
- (b) the need to provide reasonable compensation to judges;
- (c) the need to build a strong court by attracting qualified applicants;
- (d) the unique nature of the Yukon;
- (e) the compensation provided to judges in the Northwest Territories and British Columbia, Alberta, and Saskatchewan;
- (f) the laws of the Yukon;
- (g) the cost of living in the Yukon; including the growth or decline in real *per capita* income; and
- (h) any submissions by the public filed under section 26.

[S.Y. 2002, c. 217, s. 19]

20 Exclusions from commission

Unless otherwise agreed by the Minister and by the chief judge, the following are not to be appointed as a commissioner:

- (a) a practicing member of the Law Society of Yukon;
- (b) a current member of the judiciary;
- (c) a member of the public service of the Yukon; and
- (d) a member of the Legislative Assembly.

[S.Y. 2002, c. 217, s. 20]

21 Appointment of commissioners

Subject to section 22, the selection and appointment of commissioners shall occur in the following manner

- (a) the Minister and the chief judge shall endeavour to agree and to make every effort to recommend the appointment of a single commissioner;

19 Facteurs pertinents

Dans l'exercice de son mandat, la Commission tient compte de tout ce qu'elle croit pertinent; en outre, dans son rapport, elle traite des observations qui lui ont été présentées à l'égard des facteurs suivants :

- a) la situation économique actuelle du gouvernement;
- b) la nécessité de rémunérer équitablement les juges;
- c) la nécessité de créer un tribunal solidement constitué en attirant des candidats compétents;
- d) le caractère unique du Yukon;
- e) la rémunération des juges dans les Territoires du Nord-Ouest, en Colombie-Britannique, en Alberta et en Saskatchewan;
- f) les règles de droit du Yukon;
- g) le coût de la vie au Yukon, y compris la croissance ou la baisse du revenu réel par habitant;
- h) les observations du public déposées en vertu de l'article 26.

[L.Y. 2002, ch. 217, art. 19]

20 Inhabilité

À moins que le ministre et le juge en chef en conviennent autrement, les personnes suivantes ne peuvent être nommées commissaires :

- a) un membre en exercice du Barreau du Yukon;
- b) un membre actuel de la magistrature;
- c) un fonctionnaire du Yukon;
- d) un député de l'Assemblée législative. L.Y. 2002, ch. 217, art. 20

21 Nomination des commissaires

Sous réserve de l'article 22, la procédure de sélection et de nomination des commissaires est la suivante :

- a) le ministre et le juge en chef visent à recommander la nomination d'un seul commissaire et font tous les efforts possibles à cette fin;

- (b) if the Minister and the chief judge cannot reach agreement on the recommendation of a commission composed of a single commissioner by February 1 in a year a commission is to be appointed, each shall submit a list of three candidates who, when practicable, represent the demographics of the Yukon;
- (c) by March 1, the Minister shall nominate one commissioner from the list of candidates provided by the chief judge and the chief judge shall nominate one commissioner from the list of candidates provided by the Minister;
- (d) by April 1, the two commissioners who have been selected shall select a third commissioner and when practicable the selection of the third commissioner should ensure that the composition of the commission is representative of the demographics of the Yukon;
- (e) all persons selected shall be appointed immediately by Order in Council;
- (f) Unless the Minister or the chief judge otherwise agree, a failure for any reason to meet any deadline may be submitted by consent of both the Minister and chief judge to mediation or arbitration proceedings they may agree on. Failing agreement, either the Minister or the chief judge may refer the matter to the Supreme Court which shall take whatever action it considers necessary to enable the work of the commission to be carried out in accordance with this Part.

[S.Y. 2002, c. 217, s. 21]

22 Year 2001 Commission

For the purposes of the commission to be held in the year 2001,

- (a) the expression "**July 1**" shall be substituted for the expression "**February 1**" in paragraph 21(b) of the Act;
- (b) the expression "**August 1**" shall be substituted for the expression "**March 1**" in paragraph 21(c) of the Act; and

- b) si le ministre et le juge en chef ne parviennent pas à recommander la nomination d'une commission composée d'un seul commissaire avant le 1er février de l'année durant laquelle une commission doit être nommée, chacun soumet une liste de trois candidats qui, dans la mesure du possible, reflètent la démographie du Yukon;
- c) au plus tard le 1er mars, le ministre et le juge en chef choisissent chacun un commissaire à partir de la liste de candidats de l'autre;
- d) au plus tard le 1er avril, les deux commissaires ainsi nommés en nomment un troisième; dans la mesure du possible, cette nomination devrait assurer que la composition de la commission est représentative de la démographie du Yukon;
- e) les personnes choisies sont immédiatement nommées par décret en conseil;
- f) à moins que le ministre ou le juge en chef en convienne autrement, si les délais impartis ne sont pas respectés pour quelque raison que ce soit, la question peut être soumise, avec le consentement du ministre et du juge en chef, à la médiation ou à tout autre mécanisme de règlement de différends dont ils peuvent convenir, à défaut de quoi, le ministre ou le juge en chef peuvent saisir la Cour suprême de l'affaire, laquelle prend alors les mesures jugées nécessaires pour permettre à la Commission d'exercer sa charge conformément à la présente partie.

[L.Y. 2002, ch. 217, art. 21]

22 Commission de l'an 2001

Aux fins de la commission qui doit être tenue au cours de l'année 2001 :

- a) l'expression « **1er février** » est remplacée par l'expression « **1er juillet** » à l'alinéa 21b);
- b) l'expression « **1er mars** » est remplacée par l'expression « **1er août** » à l'alinéa 21c);



- (c) the expression “**September 1**” shall be substituted for the expression “**April 1**” in paragraph 21(d) of the Act.

[S.Y. 2002, c. 217, s. 22]

23 Mediation skills of commission

If practicable, at least one commissioner should be skilled in mediation or other consensus processes to resolve differences.

[S.Y. 2002, c. 217, s. 23]

24 Operating principles of commission

(1) The commission shall operate efficiently and economically. The commission and the parties appearing before it shall ensure that the commission works in a manner that minimizes its time and costs.

(2) The commission shall make every effort to use mediation and other consensus processes to resolve differences between the parties.

[S.Y. 2002, c. 217, s. 24]

25 Procedures of commission

(1) Hearings before the commission shall be informal and the commission shall ensure that the public has an adequate opportunity to participate in them.

(2) If the commission is composed of three members, the commission may designate one or more of its members to act on behalf of the commission and those commissioners shall act on behalf of the commission to the extent of their designated responsibilities.

(3) Subject to subsection (4), the commission may determine its own rules of conduct including rules respecting public hearings.

(4) The commission shall

- (a) ask the Minister and the court to identify unresolved issues between the government and the judiciary within 30 days of the commission being appointed;
- (b) employ those consensus processes that the commission considers advisable to assist the government and the judiciary in resolving their differences within 60 days of the commission having been appointed; and

- c) l'expression « **1er avril** » est remplacée par l'expression « **1er septembre** » à l'alinéa 21d).

[L.Y. 2002, ch. 217, art. 22]

23 Habiletés liées à la médiation

Dans la mesure du possible, au moins un des commissaires possède des habiletés liées à la médiation ou à tout autre mécanisme consensuel de règlement de différends.

[L.Y. 2002, ch. 217, art. 23]

24 Principes directeurs

(1) La Commission fonctionne de façon efficace et économique. Avec le concours des parties qui comparaissent devant, elle veille à ce que son fonctionnement s'opère dans le cadre d'une économie de temps et d'argent.

(2) Il incombe à la Commission de faire tous les efforts possibles pour régler tout différend entre les parties par voie de médiation ou autre mécanisme consensuel de règlement de différends.

[L.Y. 2002, ch. 217, art. 24]

25 Procédure

(1) Les audiences de la Commission sont tenues sans complications de procédure et elle accorde au public une occasion suffisante d'y participer.

(2) La Commission qui se compose de trois commissaires peut en désigner un ou deux pour la représenter sans que ceux-ci ne puissent à ce titre outrepasser le cadre de leur mandat respectif.

(3) Sous réserve du paragraphe (4), la Commission peut établir sa propre procédure, notamment celle concernant les audiences publiques.

(4) La Commission :

- a) dans les 30 jours de sa nomination, demande au ministre et à la Cour de préciser les points demeurés en litige entre le gouvernement et la magistrature;
- b) dans les 60 jours de sa nomination, utilise les mécanismes de règlement de différends qu'elle juge utiles pour aider le gouvernement et la magistrature à en parvenir à un règlement;

- (c) issue its final recommendations and provide these to the government through the Minister and to the court within 90 days of having been appointed.

(5) The commission shall provide written reasons for all of its final recommendations.

(6) When there are three commissioners, any recommendation concurred in by two commissioners shall be the recommendation of the commission.

[S.Y. 2002, c. 217, s. 25]

26 Public submissions

(1) On creating the commission, the Commissioner in Executive Council shall publish notice of the commission's creation and its purpose in newspapers that are circulated throughout the Yukon. The notice shall state that public submissions are welcomed and shall indicate how, when, and where the public may file its submissions.

(2) Any Yukon person or Yukon organization may make submissions to the commission for 30 days after its appointment.

(3) Unless the commission otherwise consents, no submission from the public filed on or after the 31st day after the commission was appointed shall be received or considered by the commission.

(4) The commission shall provide a copy of any submission by the public to the Minister and the chief judge as soon as possible and in any case no later than 45 days after the commission was appointed.

[S.Y. 2002, c. 217, s. 26]

27 Costs and expenses

(1) A commissioner shall be paid remuneration as may be prescribed by the Commissioner in Executive Council.

(2) A commissioner shall be paid transportation and living expenses incurred in connection with their work away from home but, except as otherwise prescribed, the payment for these expenses shall conform to the payment of those expenses for members of the public service of the Yukon.

- c) dans les 90 jours de sa nomination, communique au gouvernement par l'entremise du ministre et à la Cour ses recommandations définitives.

(5) Toutes les recommandations définitives de la Commission sont motivées par écrit.

(6) S'il y a trois commissaires, les recommandations auxquelles souscrivent deux d'entre eux constituent la recommandation de la Commission.

[L.Y. 2002, ch. 217, art. 25]

26 Observations du public

(1) Lorsqu'il constitue la Commission, le commissaire en conseil exécutif en fait publier un avis dans les journaux de diffusion générale au Yukon. L'avis invite les membres du public à présenter des observations et indique les diverses modalités du dépôt de ces observations.

(2) Toute personne ou organisme du Yukon peut faire présenter des observations à la Commission dans les 30 jours de la date de sa nomination.

(3) Sauf consentement de la Commission à l'effet contraire, sont irrecevables les observations du public déposées après le 31^e jour de sa nomination.

(4) La Commission fournit au ministre et au juge en chef à bref délai, mais en aucun cas plus de 45 jours suivant la date de sa nomination, une copie des observations du public.

[L.Y. 2002, ch. 217, art. 26]

27 Remboursement des commissaires

(1) Les commissaires reçoivent la rémunération que fixe le commissaire en conseil exécutif par règlement.

(2) Les commissaires sont remboursés pour les frais de déplacement et de séjour qu'ils ont engagés dans le cadre de l'exécution de leurs fonctions à l'extérieur de leur lieu de résidence; toutefois, sauf disposition contraire, le remboursement de ces dépenses est conforme à celui que reçoivent les fonctionnaires du Yukon au titre de ces dépenses.



(3) The government shall make available the resources and support the commission may reasonably require to carry out its functions.

(4) The commission may identify those representatives of the court participating in an inquiry of the commission to whom costs shall be paid in accordance with subsections (5) to (7).

(5) A representative of the court identified under subsection (4) who participates in an inquiry of the commission is entitled to be paid, out of the consolidated revenue fund, 65 per cent of the costs determined under subsection (6).

(6) A registrar of the Supreme Court shall determine the amount of costs, on a solicitor-and-client basis, as if the assessment of costs were an assessment of costs under Subrule 57(29) of the *Rules of Court*, with any modifications that the circumstances require.

(7) Subsections (4) to (6) apply to costs incurred in relation to participation in any inquiry of the commission conducted after January 1, 2001.

(8) The government has no obligation to pay any representational costs incurred by the court for reasons other than an appearance before an inquiry of the commission.

[S.Y. 2002, c. 217, s. 27]

28 Effect of report

Recommendations made by the commission that bind the government or the court are deemed to be effective as of the date of the creation of the commission. Any other recommendations accepted by government are effective on a day to be specified by the Minister.

[S.Y. 2002, c. 217, s. 28]

29 Review of recommendation

If the commission has failed to deal with a matter required of it under its mandate in its recommendations or if an error is otherwise manifest in its recommendations, the Minister or the chief judge may apply to the commission within seven days of their receipt of the recommendations to have the error or omission dealt with by the commission within 14 days of the application.

[S.Y. 2002, c. 217, s. 29]

(3) Le gouvernement met à la disposition de la Commission les ressources et le soutien qui sont raisonnablement nécessaires à son bon fonctionnement.

(4) La commission doit identifier tous les représentants du tribunal qui participent à l'une de ses enquêtes et auxquels des frais doivent être payés conformément aux paragraphes (5) à (7).

(5) Un représentant du tribunal, qui est identifié en application du paragraphe (4) et qui participe à une enquête de la commission, a droit de recevoir du Trésor du Yukon 65 pour cent de ses frais déterminés conformément au paragraphe (6).

(6) Un registraire de la Cour suprême doit déterminer le montant des frais suivant le tarif des frais entre avocat et client, tout comme si ces frais étaient une évaluation des frais en vertu du paragraphe 57(29) des Règles de procédure, compte tenu des adaptations de circonstance.

(7) Les paragraphes (4) à (6) s'appliquent à tout représentant qui participe à une enquête de la commission qui a lieu après le 1er janvier 2001.

(8) Le gouvernement n'a pas l'obligation de rembourser des frais de représentation encourus par le tribunal, autres que des frais de comparution dans le cadre d'une enquête de la commission.

[L.Y. 2002, ch. 217, art. 27]

28 Effet du rapport

Les recommandations de la Commission qui lient le gouvernement ou la Cour sont réputées produire leurs effets à compter de la date de sa création. Toutes autres recommandations auxquelles souscrit le gouvernement produisent leurs effets à compter de la date que fixe le ministre.

[L.Y. 2002, ch. 217, art. 28]

29 Révision des recommandations

Si la Commission a omis dans ses recommandations de traiter d'une question qu'il lui incombait d'étudier dans l'exercice de son mandat ou s'il s'y trouve une erreur manifeste, le ministre ou le juge en chef peut lui demander dans les sept jours de la réception des recommandations d'examiner la nature de l'omission ou de l'erreur dans les 14 jours suivant la présentation de la demande.

[L.Y. 2002, ch. 217, art. 29]

PART 4**JUDICIAL COUNCIL****30 Establishment of council**

There shall be a judicial council of the court to be called the Judicial Council of the Territorial Court.

[S.Y. 2002, c. 217, s. 30]

31 Functions of the council

The functions of the council are

- (a) to make recommendations to the Minister respecting appointments of judges and justices;
- (b) subject to Part 5, to deal with complaints respecting judges and justices;
- (c) to make recommendations to the Minister and the chief judge on any matters that it considers necessary respecting the efficiency, uniformity, or quality of judicial services;
- (d) to report to the Minister and the chief judge respecting proposals for improving the judicial services of the court or on any other matters that may be referred to it by the Minister;
- (e) after consulting with the chief judge and the Minister, to consider and recommend any judicial training that in its opinion may reasonably be necessary;
- (f) to serve in an educational capacity, in any manner it sees fit;
- (g) for the better consideration of justice issues of concern to the community, to establish working committees to consider reform and improvements in the areas of family and young offenders matters and criminal, and civil laws, and to make recommendations on these areas to the council. The membership of these committees shall be in the discretion of the council, but the council shall attempt to include representatives of all interested groups on these committees;

PARTIE 4**CONSEIL DE LA MAGISTRATURE****30 Constitution du Conseil**

Est constitué un conseil pour la Cour appelé Conseil de la magistrature de la Cour territoriale.

[L.Y. 2002, ch. 217, art. 30]

31 Fonctions du Conseil

Le Conseil exerce les fonctions suivantes :

- a) présenter au ministre des recommandations de nomination à la charge de juges et de juges de paix;
- b) sous réserve de la partie 5, examiner les plaintes portées contre des juges et des juges de paix;
- c) présenter des recommandations au ministre et au juge en chef sur toutes les questions qu'il estime pertinentes quant à l'efficacité, à l'uniformité ou à la qualité des services judiciaires;
- d) faire rapport au ministre et au juge en chef à l'égard des propositions visant l'amélioration des services judiciaires de la Cour ou sur toutes autres questions que le ministre soumet à son examen;
- e) après consultation du juge en chef et du ministre, préciser la formation que devrait recevoir la magistrature et faire des recommandations à cet égard;
- f) jouer de la manière qu'il juge indiquée un rôle éducatif;
- g) afin qu'il soit mieux tenu compte des préoccupations de la collectivité en matière de justice, constituer des comités de travail chargés d'examiner les réformes et les améliorations possibles à apporter relativement aux matières intéressant la famille et les jeunes contrevenants ainsi qu'en matière civile et criminelle et de lui faire des recommandations à cet égard; la composition de ces comités est laissée à l'appréciation du Conseil, mais celui-ci tente d'y nommer des représentants de tous les groupes intéressés;



- (h) at the request of the supervising judge, to consider whether a change of residence or occupation of a justice merits the dismissal of the justice;
- (i) at the request of the supervising judge, to assess whether or not justices have satisfactorily completed training opportunities offered by the court or whether or not justices have engaged in behaviour inconsistent with the due administration of justice and, if it considers advisable, to refer its concerns about a justice to a tribunal; and
- (j) to perform any other duties that it may be requested to perform by the Minister or the chief judge.

[S.Y. 2002, c. 217, s. 31]

32 Composition of the council

(1) The Commissioner in Executive Council shall appoint the council from

- (a) two members nominated by the Minister, one of whom shall be a member of the Law Society of Yukon and the other shall be a lay person;
- (b) two members nominated by Yukon First Nations, at least one of whom shall be a lay person;
- (c) one member nominated by the Law Society of Yukon;
- (d) one member nominated by the chief judge;
- (e) one member nominated by justices; and
- (f) a resident judge of the Supreme Court nominated by the Chief Justice who may, ex officio, participate in the affairs of the council, on matters other than complaints and discipline.

(2) The council may recommend the appointment of one further lay member who shall, in so far as it is reasonably possible after considering the existing membership, ensure that the council reflects the demographics and diversity of the Yukon.

(3) Nominations under paragraphs (1)(b) to (f) shall be in writing signed by a representative of the nominator.

[S.Y. 2018, c. 7, s. 9] [S.Y. 2002, c. 217, s. 32]

- h) à la demande du juge surveillant, décider si un juge de paix doit être ou non démis de ses fonctions en raison d'un changement de résidence ou de profession;
- i) à la demande du juge surveillant, déterminer si les juges de paix ont réussi les programmes de formation que leur offre la Cour ou si leur comportement est incompatible avec la bonne administration de la justice, et, s'il l'estime indiqué, saisir un tribunal de ses préoccupations à l'endroit d'un juge de paix;
- j) exécuter les autres fonctions que lui confie le ministre ou le juge en chef.

[L.Y. 2002, ch. 217, art. 31]

32 Composition du Conseil

(1) Le commissaire en conseil exécutif procède aux nominations suivantes au Conseil :

- a) deux membres proposés par le ministre, l'un d'eux étant membre du Barreau du Yukon et l'autre, un particulier;
- b) deux membres proposés par les premières nations du Yukon, l'un d'eux au moins étant un particulier;
- c) un membre proposé par le Barreau du Yukon;
- d) un membre proposé par le juge en chef;
- e) un membre proposé par des juges de paix;
- f) un juge en résidence de la Cour suprême proposé par le juge en chef qui peut participer d'office aux activités du Conseil étrangères aux plaintes et aux mesures disciplinaires.

(2) Le Conseil peut recommander la nomination d'un autre particulier qui, dans la mesure raisonnablement possible, eu égard à la composition actuelle du Conseil, s'assure que la composition du Conseil reflète la démographie et la diversité du Yukon.

(3) Les nominations visées aux alinéas (1)b) à f) sont faites par écrit et signées par les représentants des proposant.

[L.Y. 2018, ch. 7, art. 9] [L.Y. 2002, ch. 217, art. 32]



33 Chair

The council shall select a chair from its members and if the chair is for any reason unable to act, the other members of the council shall choose a member to act in the chair's absence.

[S.Y. 2002, c. 217, s. 33]

34 Term of office

(1) Members of the council shall be nominated to serve terms not exceeding three years and may be nominated for further terms.

(2) Vacancy in the membership of the council does not impair the capacity of the remaining members to act.

[S.Y. 2002, c. 217, s. 34]

35 Quorum and procedure

(1) The council may make rules of procedure governing the calling of its meetings and the conduct of its business at its meetings. If possible, it shall conduct its meetings informally.

(2) A majority of members of the council is a quorum.

(3) If in a proceeding before the council there is no majority decision, the chair shall cast a second and deciding vote.

(4) In carrying out its functions set out in section 31, the council may form working committees to carry out the recommendations for these committees set out in the Report of the Board of Inquiry established under Orders-in-Council 1997/181 and 1997/182 respecting the Administration and Operation of the Territorial Court of the Yukon.

[S.Y. 2002, c. 217, s. 35]

33 Présidence

Le Conseil choisit en son sein son président; en cas d'empêchement du président, les autres membres du Conseil désignent un président suppléant.

[L.Y. 2002, ch. 217, art. 33]

34 Durée du mandat

(1) Les membres du Conseil sont nommés pour un mandat maximal renouvelable de trois ans.

(2) Une vacance au sein du Conseil n'entrave pas son fonctionnement.

[L.Y. 2002, ch. 217, art. 34]

35 Quorum et procédure

(1) Le Conseil peut établir son propre règlement intérieur. Si possible, ses réunions se tiennent sans complications de procédure.

(2) Le quorum est constitué par la majorité des membres du Conseil.

(3) En cas de partage, le président du Conseil a voix prépondérante.

(4) Dans l'exercice des fonctions que lui attribue l'article 31, le Conseil peut constituer des comités de travail chargés de mettre en œuvre les recommandations les visant et énoncées dans le rapport intitulé Report of the Board of Inquiry established under Orders-in-Council 1997/181 and 1997/182 respecting the Administration and Operation of the Territorial Court of the Yukon.

[L.Y. 2002, ch. 217, art. 35]



36 Remuneration

Members of the council may be paid nominal remuneration and other expenses and may also be paid transportation and living expenses incurred in connection with the performance of their duties away from their home but, except as otherwise prescribed, the payment for those expenses shall conform to the payment of these expenses to members of the public service of Yukon.

[S.Y. 2002, c. 217, s. 36]

37 Annual report

(1) Within six months of the end of the calendar year, the council shall prepare a report to the Minister on the activities of the council, including its activities under Part 5 of the Act, for the preceding year. In preparing its report, it may make matters confidential when it considers that this is in the best interests of the administration of justice, fairness to the persons involved in these matters, and in the public interest.

(2) The Minister shall table a copy of the report before the Legislature as soon as practicable.

[S.Y. 2002, c. 217, s. 37]

PART 5

COMPLAINTS AND DISCIPLINE

38 Complaint about judicial conduct

(1) A person wishing to make a complaint about

- (a) the conduct of a judge or of a justice;
- (b) the neglect of duty by a judge or a justice; or
- (c) any matter which may lead a person to conclude that the ability or capacity of a judge or justice to perform their responsibilities has become substantially impaired or diminished or that they are otherwise unfit for office

may file a complaint in writing with the registry of the court.

(2) A person who files a complaint may withdraw that complaint at any time with the consent of the council.

[S.Y. 2002, c. 217, s. 38]

36 Rémunération

Les membres du Conseil peuvent recevoir une rémunération symbolique et des indemnités; ils peuvent également recevoir le remboursement des frais de déplacement et de séjour entraînés par l'accomplissement de leurs fonctions hors de leur lieu ordinaire de résidence. Toutefois, sauf disposition réglementaire contraire, le remboursement de ces frais se conforme au remboursement de frais semblables aux fonctionnaires du Yukon.

[L.Y. 2002, ch. 217, art. 36]

37 Rapport annuel

(1) Dans les six mois de la fin de l'année civile, le Conseil présente au ministre un rapport de ses activités, notamment ses activités prévues à la partie 5 de la *Loi* durant l'année précédente. Dans la préparation de son rapport, il peut considérer certaines questions comme confidentielles s'il estime que l'intérêt supérieur de l'administration de la justice le commande pour des raisons d'équité à l'endroit des personnes en cause, ou encore pour protéger l'intérêt public.

(2) Le ministre dépose à bref délai le texte du rapport devant la Législature.

[L.Y. 2002, ch. 217, art. 37]

PARTIE 5

PLAINTES ET DISCIPLINE

38 Plainte visant la conduite d'un juge ou d'un juge de paix

(1) Peut déposer une plainte écrite au greffe de la Cour toute personne qui entend porter plainte au sujet :

- a) de la conduite d'un juge ou d'un juge de paix;
- b) d'un cas de négligence professionnelle imputable à un juge ou à un juge de paix;
- c) de toute question susceptible d'amener une personne à conclure que la capacité ou les compétences d'un juge ou d'un juge de paix à exercer sa charge sont considérablement atteintes ou diminuées ou qu'il est autrement inhabile à s'acquitter de sa charge.

(2) La personne qui dépose une plainte peut la retirer à tout moment avec le consentement du Conseil.

[L.Y. 2002, ch. 217, art. 38]



39 Routing of complaint

The registry shall provide a copy of the complaint immediately to the council, the chief judge, and to the judge or justice who is the subject of the complaint.

[S.Y. 2002, c. 217, s. 39]

40 Council to deal with complaint

Within 30 days of receipt of the complaint, the chair of the council shall call a meeting to consider the complaint.

[S.Y. 2002, c. 217, s. 40]

41 Disposition of complaint by council

(1) On considering the complaint, the council may

- (a) dismiss the complaint if the council finds it unnecessary, scandalous, frivolous, vexatious, unfounded, brought in bad faith, or beyond its jurisdiction;
- (b) refer the complaint to the chief judge to be disposed of by the chief judge in accordance with section 42;
- (c) if the council considers that the complaint is one which should be heard but which it may be able to resolve without referring it to a judicial conduct tribunal, the council may, with the consent of the judge or justice who is the subject of the complaint,
 - (i) give the complainant and the respondent the opportunity to speak to the complaint in the presence of each other, and
 - (ii) dispose of the complaint by way of reprimand or dismiss the complaint; or
- (d) order an inquiry by a tribunal.

(2) A judge or justice against whom a complaint has been made shall not participate as a member of council for the purposes of its reviewing a complaint against them.

(3) The council may investigate a complaint as it considers advisable to determine the disposition of a complaint under subsection (1).

39 Acheminement de la plainte

Le greffe remet immédiatement une copie de la plainte au Conseil, au juge en chef ainsi qu'au juge ou au juge de paix visé par la plainte.

[L.Y. 2002, ch. 217, art. 39]

40 Étude de la plainte par le Conseil

Dans les 30 jours de la réception de la plainte, le président du Conseil convoque une réunion pour étudier la plainte portée. L.Y. 2002, ch. 217, art. 40

41 Décision du Conseil

(1) Après avoir étudié la plainte, le Conseil peut :

- a) la rejeter, s'il est d'avis qu'elle est inutile, scandaleuse, frivole, vexatoire, non fondée, portée de mauvaise foi ou en dehors de sa compétence;
- b) la renvoyer au juge en chef pour qu'il en décide conformément à l'article 42;
- c) s'il est d'avis qu'elle devrait être entendue, mais qu'il peut la régler sans en saisir un tribunal, et, si le juge ou le juge de paix visé par la plainte y consent :
 - (i) donner au plaignant et à l'intimé l'occasion de faire valoir leur point de vue à l'égard de la plainte en la présence de l'autre,
 - (ii) statuer sur la plainte par voie de réprimande ou la rejeter;
- d) en saisir un tribunal.

(2) Le juge ou le juge de paix visé par une plainte ne peut participer à titre de membre du Conseil à l'étude de la plainte.

(3) Le Conseil peut étudier la plainte comme il croit bon pour en disposer au titre du paragraphe (1).



(4) If the council refers a complaint to a judicial conduct tribunal in accordance with paragraph (1)(d), it may recommend the suspension of the judge or justice who is the subject of the complaint with or without pay to the tribunal that is to hear the complaint. The tribunal shall determine immediately whether or not the suspension is warranted and, if it considers the suspension is warranted, it shall suspend the judge or justice until the complaint is disposed subject to any terms and conditions it considers advisable.

[S.Y. 2002, c. 217, s. 41]

42 Disposition of complaint by chief judge

The chief judge shall rule on every complaint referred to the chief judge under paragraph 41(1)(b) within 30 days of receiving the complaint and shall promptly report the disposition of the complaint to the complainant, the judicial council, and to the judge or justice who was the subject of the complaint.

[S.Y. 2002, c. 217, s. 42]

43 Review of chief judge's ruling

A complainant who believes that the chief judge has erred in the disposition of the complainant's complaint may, within 30 days of the receipt of the chief judge's ruling, ask the council to review the complaint and the council shall deal with the matter in accordance with either paragraph 41(1)(c) or (d).

[S.Y. 2002, c. 217, s. 43]

44 Judicial conduct tribunal

A judicial conduct tribunal constituted to hear a matter referred to it by the council under section 41 of this Act shall be a deputy judge of the Supreme Court appointed by the Chief Justice.

[S.Y. 2018, c. 7, s. 9] [S.Y. 2002, c. 217, s. 44]

45 Powers of tribunal

A tribunal shall have all the powers of a board of inquiry appointed under the *Public Inquiries Act*.

[S.Y. 2002, c. 217, s. 45]

(4) Si le Conseil saisit un tribunal d'une plainte en application de l'alinéa (1)d), il peut lui recommander que le juge ou le juge de paix visé par la plainte soit suspendu avec ou sans traitement. Le tribunal décide immédiatement si la suspension est justifiée et, s'il la croit justifiée, il suspend le juge ou le juge de paix jusqu'à ce que la plainte soit tranchée sous réserve des modalités et des conditions qu'il estime indiquées.

[L.Y. 2002, ch. 217, art. 41]

42 Décision du juge en chef

Le juge en chef statue sur toute plainte dont il est saisi en vertu de l'alinéa 41(1)b) dans les 30 jours de la réception de la plainte; il fait rapport sans délai de sa décision au plaignant, au Conseil et au juge ou au juge de paix visé par la plainte.

[L.Y. 2002, ch. 217, art. 42]

43 Révision de la décision du juge en chef

S'il croit que la décision du juge en chef est erronée, le plaignant peut, dans les 30 jours de la réception de la décision, demander au Conseil de la réviser, et le Conseil traite l'affaire conformément à l'alinéa 41(1)c) ou d).

[L.Y. 2002, ch. 217, art. 43]

44 Tribunal de déontologie judiciaire

Le Tribunal de déontologie judiciaire constitué pour entendre une question que lui renvoie le Conseil en vertu de l'article 41 se compose d'un juge adjoint de la Cour suprême nommé par le juge en chef.

[L.Y. 2018, ch. 7, art. 9] [L.Y. 2002, ch. 217, art. 44]

45 Pouvoirs du tribunal

Le tribunal détient tous les pouvoirs d'une commission d'enquête nommée sous le régime de la *Loi sur les enquêtes publiques*. L.Y. 2002, ch. 217, art. 45

46 Procedure of tribunal

(1) An inquiry shall be held in public unless the tribunal determines, in the public interest, that all or part of the inquiry should be held in private, in which case it shall state its reason or reasons for such a determination.

(2) The tribunal holding an inquiry may prohibit the publication of information or documents placed before it in relation to an inquiry or investigation under this Act but shall state its reasons for determining that the publication of the information or the documents is not in the public interest.

(3) When an inquiry is to be held, the tribunal shall give the complainant and the judge or justice who is the subject of the complaint

- (a) reasonable notice of the time and place at which the inquiry is to be held;
- (b) reasonable particulars of the matter being inquired into; and
- (c) the opportunity, by themselves or through counsel, to be heard, to cross-examine witnesses, and to adduce evidence.

(4) Subject to this Act, the tribunal holding an inquiry may determine its own procedures and conduct the inquiry in any manner it considers appropriate.

[S.Y. 2002, c. 217, s. 46]

47 Appointment of counsel for tribunal

The tribunal may appoint counsel, whose fees shall be set by the Commissioner in Executive Council, to assist in the presentation of evidence and argument before the tribunal.

[S.Y. 2002, c. 217, s. 47]

48 Protection and privileges of tribunal

A tribunal conducting an inquiry under this Act has the same protection and privileges, in case of an action brought against them for an act done or omitted to be done in the execution of its duty, as are by law given to judges of the Supreme Court.

[S.Y. 2002, c. 217, s. 48]

46 Procédure du tribunal

(1) Les enquêtes sont publiques, sauf si le tribunal décide que, dans l'intérêt public, tout ou partie de l'enquête devrait se dérouler à huis clos, auquel cas il motive sa décision.

(2) Le tribunal qui mène une enquête peut interdire la publication des renseignements ou des documents qui lui sont présentés dans le cadre d'une enquête ou à la suite d'une investigation menée sous le régime de la présente loi si, à son avis, cette publication n'est pas d'intérêt public; en ce cas, il motive sa décision.

(3) En cas d'enquête, le tribunal donne au plaignant et au juge ou au juge de paix visé par la plainte :

- a) un préavis suffisant des lieu, jour et heure de la tenue de l'enquête;
- b) des précisions suffisantes sur l'affaire objet de l'enquête;
- c) la possibilité d'être entendu, de contre-interroger les témoins et de présenter des éléments de preuve, en personne ou par ministère d'avocat.

(4) Sous réserve des autres dispositions de la présente loi, le tribunal qui mène une enquête peut fixer sa propre procédure et tenir l'enquête de la façon jugée indiquée.

[L.Y. 2002, ch. 217, art. 46]

47 Nomination d'un avocat

Pour prêter assistance dans la présentation de la preuve et des arguments, le tribunal peut nommer un avocat dont les honoraires sont fixés par le commissaire en conseil exécutif.

[L.Y. 2002, ch. 217, art. 47]

48 Immunité du tribunal

Le tribunal qui mène une enquête en vertu de la présente loi bénéficie de la même immunité à l'égard de toute action intentée contre lui au titre d'un acte ou d'une omission accomplis dans l'exercice de ses fonctions que celle que la loi accorde aux juges de la Cour suprême.

[L.Y. 2002, ch. 217, art. 48]



49 Examination of judicial records

For the purposes of an inquiry, the tribunal, or a person authorized by the tribunal, may examine and extract relevant information from any writings or records in the possession of the judge or justice who is the subject of the complaint in respect of which the tribunal was constituted, and may make any copies of those writings or records that the tribunal considers necessary.

[S.Y. 2002, c. 217, s. 49]

50 Determination of tribunal

(1) At the conclusion of its inquiry, the tribunal shall determine whether the complaint has been substantiated or whether it should be dismissed.

(2) If the tribunal dismisses the complaint, the tribunal shall reinstate the judge or justice if it had suspended the judge or justice under subsection 41(4) and may recommend that the judge or justice be compensated for the loss of remuneration, if any, arising out of the suspension.

(3) If the tribunal determines that the complaint has been substantiated, the tribunal may

- (a) issue a written reprimand to the judge or justice whose conduct was the subject of the hearing;
- (b) recommend to the Commissioner in Executive Council that the judge be suspended for a set period with or without pay, or recommend to the Minister that the justice be suspended for a set period with or without pay;
- (c) order that the judge or justice take any training or remedial education that the tribunal considers advisable;
- (d) recommend that the Commissioner in Executive Council dismiss the judge from the court or that the Minister dismiss the justice from the court; or
- (e) make any other order that the circumstances warrant and the public interest may require, having regard for the due administration of justice in the Yukon.

49 Examen des dossiers judiciaires

Pour les besoins d'une enquête, le tribunal, ou la personne qu'il autorise, peut examiner les écrits ou les dossiers en la possession du juge ou du juge de paix visé par la plainte au sujet de laquelle le tribunal a été constitué, en établir les extraits pertinents et en faire des copies selon qu'il l'estime nécessaire.

[L.Y. 2002, ch. 217, art. 49]

50 Décision du tribunal

(1) À la fin de son enquête, le tribunal décide si la plainte est fondée ou s'il y a lieu de la rejeter.

(2) En cas de rejet de la plainte, le tribunal rétablit dans sa charge le juge ou le juge de paix qui a été suspendu en application du paragraphe 41(4); il peut recommander que le juge ou le juge de paix soit indemnisé pour la perte de rémunération, le cas échéant, ayant résulté de la suspension.

(3) Le tribunal ayant décidé que la plainte est fondée peut :

- a) réprimander par écrit le juge ou le juge de paix dont la conduite a fait l'objet de l'audience;
- b) recommander au commissaire en conseil exécutif de suspendre le juge pour une période déterminée, avec ou sans traitement, ou au ministre de suspendre le juge de paix pour une période déterminée, avec ou sans traitement;
- c) ordonner au juge ou au juge de paix de suivre un programme de formation ou d'enseignement correctif qu'il estime indiqué;
- d) recommander au commissaire en conseil exécutif de démettre le juge de ses fonctions ou au ministre de démettre le juge de paix de ses fonctions;
- e) rendre toute autre ordonnance que les circonstances justifient et que l'intérêt public exige, eu égard à la bonne administration de la justice au Yukon.

(4) If a tribunal issues a written reprimand against a judge or justice under paragraph 3(a), the tribunal may further order that the judge or justice be reinstated if the judge or justice had been suspended by the tribunal under subsection 40(4).

[S.Y. 2002, c. 217, s. 50]

51 Notice of decision after inquiry

(1) The tribunal shall promptly notify the judge or justice in respect of whom the inquiry was held, and the Minister, of its order or recommendation and the reasons for the order or recommendation, and it shall file a copy of the order or recommendation and reasons with the registry of the court for immediate publication.

(2) If the tribunal recommends removal or suspension of the judge or justice, the Commissioner in Executive Council must amend or revoke the Order-in-Council appointing the judge and the Minister must amend or revoke the Ministerial Order appointing the justice, as the case may require, immediately after

- (a) an appeal by the judge or justice under section 52 is dismissed; or
- (b) the time for appealing under section 52 has expired.

[S.Y. 2002, c. 217, s. 51]

52 Appeal

(1) A judge or justice in respect of whom an order or recommendation has been made under subsection 50(3) may appeal to the Court of Appeal within 30 days after notice of the order or recommendation was mailed or given to them personally or within 30 days after the order or recommendation was filed under subsection 50(1).

(2) The decision of the Court of Appeal on an appeal under subsection (1) is final.

[S.Y. 2002, c. 217, s. 52]

(4) S'il réprimande par écrit un juge ou un juge de paix en application de l'alinéa (3)a), le tribunal peut ordonner en outre le rétablissement dans sa charge du juge ou du juge de paix suspendu en application du paragraphe 40(4).

[L.Y. 2002, ch. 217, art. 50]

51 Avis de décision après enquête

(1) Le tribunal notifie sans délai le juge ou le juge de paix visé par la tenue de l'enquête, ainsi que le ministre, de son ordonnance ou de la recommandation, qu'il fait accompagner de ses motifs; il dépose copie de l'ordonnance ou de la recommandation motivée au greffe de la Cour en vue de sa publication immédiate.

(2) Si le tribunal recommande la révocation ou la suspension du juge ou du juge de paix, le commissaire en conseil exécutif doit modifier ou révoquer le décret portant nomination du juge et le ministre doit modifier ou révoquer le décret portant nomination du juge de paix, selon le cas, dès que :

- a) ou bien l'appel par le juge ou le juge de paix interjeté en vertu de l'article 52 a été rejeté;
- b) ou bien le délai d'appel prévu à l'article 52 a expiré.

[L.Y. 2002, ch. 217, art. 51]

52 Appel

(1) Le juge ou le juge de paix visé par l'ordonnance ou la recommandation prévue au paragraphe 50(3) peut interjeter appel à la Cour d'appel dans les 30 jours après que l'avis de l'ordonnance ou de la recommandation a été mis à la poste ou lui a été remis personnellement ou dans les 30 jours après que l'ordonnance ou la recommandation a été déposée.

(2) Est définitive la décision de la Cour d'appel saisie d'un appel interjeté en vertu du paragraphe (1).

[L.Y. 2002, ch. 217, art. 52]



PART 6

JUSTICES OF THE PEACE

DIVISION 1 – ADMINISTRATIVE AND PRESIDING JUSTICES

53 Jurisdiction of justice

(1) A justice may be appointed to exercise either administrative functions or presiding functions or both and the terms of the justice's appointment will determine their jurisdiction.

(2) Subject to this section and sections 54 to 56, a justice has jurisdiction throughout the Yukon to exercise all the power conferred on, and perform all the duties imposed on a judge, on a justice or two justices, or on a judge of the provincial court by or under an enactment of the Yukon or Canada.

(3) Subject to this section and sections 54 to 56, a justice shall be deemed to have been designated a youth court judge for the purposes of the *Young Offenders Act (Canada)*.

[S.Y. 2002, c. 217, s. 53]

54 Appointment of justices

(1) The Minister, on the recommendation of the judicial council, may appoint any justices that the Minister considers necessary, subject to any conditions as to residence or occupation that the council recommends. The appointment shall specify that the justice exercise either administrative functions or presiding functions or both.

(2) A justice shall before entering into the duties of office, swear or affirm an oath as follows: "**I, _____, do solemnly swear that I will duly, faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me as a justice for so long as I shall continue to hold office, without fear or favour, and that I will be faithful and bear true allegiance to His Majesty King Charles III, his heirs and successors.**"

(3) Justices of the Court of Appeal, judges of the Supreme Court, and judges may exercise all the authority and powers of justices.

[S.Y. 2023, c.7, s.24] [S.Y. 2002, c. 217, s. 54]

PART 6

JUGES DE PAIX

SECTION 1 – FONCTIONS ADMINISTRATIVES OU DE PRÉSIDENTE DES JUGES DE PAIX

53 Compétence des juges de paix

(1) Les juges de paix peuvent être nommés pour exercer des fonctions administratives ou des fonctions de présidence, ou les deux; les conditions de leur nomination définiront leur compétence.

(2) Sous réserve du présent article et des articles 54 à 56, les juges de paix ont compétence partout au Yukon pour exercer toutes les attributions conférées sous le régime d'un texte du Yukon ou d'un texte fédéral à un juge, à un ou à deux juges de paix ou à un juge de cour provinciale.

(3) Sous réserve du présent article et des articles 54 à 56, les juges de paix sont réputés avoir été désignés juges du Tribunal pour adolescents pour l'application de la *Loi sur les jeunes contrevenants (Canada)*.

[L.Y. 2002, ch. 217, art. 53]

54 Nomination des juges de paix

(1) Sur la recommandation du Conseil, le ministre peut nommer les juges de paix qu'il estime nécessaires, sous réserve des conditions applicables à la résidence ou à la profession que recommande le Conseil. La nomination précise si le juge de paix exerce des fonctions administratives ou des fonctions de présidence, ou les deux.

(2) Préalablement à leur entrée en fonctions, les juges de paix prêtent le serment suivant : « **Je, _____, jure d'exercer fidèlement, consciencieusement et le mieux possible mes attributions de juge de paix tant que j'occuperai cette charge, de rendre justice sans crainte ni favoritisme et d'être fidèle et de porter sincère allégeance à Sa Majesté le Roi Charles Trois, ainsi qu'à ses héritiers et successeurs.** »

(3) Il est conféré aux juges de la Cour d'appel, aux juges de la Cour suprême et aux juges toutes les attributions des juges de paix.

[L.Y. 2023, ch. 7, art. 24] [L.Y. 2019, ch. 6*, art.33]
[L.Y. 2002, ch. 217, art. 54]



55 Administrative functions

Justices exercising administrative functions may

- (a) receive informations;
- (b) issue process;
- (c) conduct small claims mediations and pretrial conferences; and
- (d) perform other similar duties as determined by the supervising judge.

[S.Y. 2002, c. 217, s. 55]

56 Presiding functions

(1) Subject to subsection (2), a justice exercising presiding functions has jurisdiction to exercise all the powers conferred on, and perform all the duties imposed on a justice or on two justices or on a judge by or under an enactment of the Yukon or Canada.

(2) A justice who exercises presiding functions

- (a) in a criminal matter, shall not impose a custodial sentence in excess of 90 days or a conditional sentence in excess of 180 days; or
- (b) in a child protection matter
 - (i) shall not make a permanent care and custody order unless all parties to the application consent to such an order, and
 - (ii) shall not make a temporary care and custody order for a period exceeding three months unless all the parties to the application consent to such an order.

(3) If a justice becomes aware in the course of hearing a criminal matter or child protection matter that a disposition being sought will place the justice in a position where the justice may be required to dispose of the matter contrary to the justice's jurisdiction as determined by subsection (2), the justice shall adjourn the matter so that it is heard by a judge.

[S.Y. 2002, c. 217, s. 56]

55 Fonctions administratives

Dans l'exercice de leurs fonctions administratives, les juges de paix peuvent :

- a) recevoir des dénonciations;
- b) délivrer des actes de procédure;
- c) tenir des séances de médiation en matière de petites créances et des conférences préparatoires au procès;
- d) s'acquitter de toutes autres tâches similaires que lui assigne le juge surveillant.

[L.Y. 2002, ch. 217, art. 55]

56 Fonctions de présidence

(1) Sous réserve du paragraphe (2), le juge de paix qui exerce des fonctions de présidence a compétence pour exercer toutes attributions que confère un texte du Yukon ou un texte fédéral à un ou à deux juges de paix ou à un juge.

(2) Le juge qui exerce des fonctions de présidence :

- a) en matière criminelle ne peut infliger une peine privative de liberté de plus de 90 jours ou une condamnation avec sursis de plus de 180 jours;
- b) en matière de protection de l'enfance ne peut :
 - (i) rendre une ordonnance de prise en charge et de garde permanente que si les parties à l'instance y consentent,
 - (ii) rendre une ordonnance de prise en charge et de garde temporaire pour une période de plus de trois mois que si les parties à l'instance y consentent.

(3) Le juge de paix qui constate en instruisant une affaire en matière criminelle ou en matière de protection de l'enfance qu'il ne peut rendre l'ordonnance sollicitée sans outrepasser sa compétence telle qu'elle est prévue au paragraphe (2), ajourne l'affaire pour qu'elle soit instruite par un juge.

[L.Y. 2002, ch. 217, art. 56]



57 Term of office

- (1) Subject to this Act, a justice ceases to hold office
- (a) on reaching the age of
 - (i) 65 years if the justice is appointed as a full-time justice, or
 - (ii) 75 years if the justice is appointed as a part-time justice; or
 - (b) on resignation.
- (2) Justices appointed before the coming into force of this Act shall continue to hold office according to terms of their appointment under the *Territorial Court Act*, R.S.Y. 1986, c.169.
- (3) If the council determines that a justice has changed residence or occupation contrary to a condition of their appointment imposed under subsection 53(1) or 40(1) of the *Territorial Court Act*, R.S.Y. 1986, c.169, the council may recommend to the Minister that the appointment of the justice be revoked.
- (4) If the Minister receives a recommendation from the council that an appointment be revoked under subsection (2), the Minister shall revoke the appointment.

[S.Y. 2002, c. 217, s. 57]

58 Remuneration

Subject to section 59, judicial remuneration for salaried justices shall be set by the commission in accordance with Part 3 of this Act modified to suit the case.

[S.Y. 2002, c. 217, s. 58]

59 [Repealed S.Y. 2013, c.15, s.23]

60 Travel expenses

A justice is entitled to receive, for travel and living expenses incurred while away from their ordinary place of residence in connection with the performance of duties but, except as otherwise prescribed, the payment of these expenses shall conform to the payment of those expenses for members of the public service of the Yukon.

[S.Y. 2002, c. 217, s. 60]

57 Mandat

- (1) Sous réserve des autres dispositions de la présente loi, la limite d'âge pour l'exercice de la charge de juge de paix est de 65 ans, s'il est nommé à temps plein, et de 75 ans, s'il est nommé à temps partiel; en cas de démission, son mandat prend fin au moment de sa démission.
- (2) Les juges de paix nommés avant l'entrée en vigueur de la présente loi continuent d'exercer leur charge selon les conditions de leur nomination que prévoit la *Loi sur la Cour territoriale*, L.R.Y. 1986, ch. 169.
- (3) Le Conseil peut recommander au ministre de révoquer la nomination du juge de paix s'il constate qu'il a changé de lieu de résidence ou qu'il exerce une autre profession en contravention d'une condition de nomination prévue au paragraphe 53(1) ou 40(1) de la *Loi sur la Cour territoriale*, L.R.Y. 1986, ch. 169.
- (4) Le ministre saisi d'une recommandation de révocation de nomination formulée par le Conseil en vertu du paragraphe (2) peut révoquer la nomination d'un juge de paix.

[L.Y. 2002, ch. 217, art. 57]

58 Rémunération

Sous réserve de l'article 59, la rémunération des juges de paix salariés est fixée par la Commission conformément à la partie 3 de la présente loi modifiée eu égard aux circonstances de l'espèce.

[L.Y. 2002, ch. 217, art. 58]

59[Abroge L.Y. 2013, ch. 15, art. 23]

60 Frais de déplacement

Les juges de paix peuvent recevoir le remboursement des frais de déplacement et de séjour entraînés par l'accomplissement de leurs fonctions hors de leur lieu ordinaire de résidence. Toutefois, sauf disposition réglementaire contraire, le remboursement de ces frais se conforme autant que possible au remboursement des frais semblables aux fonctionnaires du Yukon.

[L.Y. 2002, ch. 217, art. 60]

61 Supervising judge

(1) The chief judge shall appoint a resident judge to be a supervising judge for justices and to liaise with community justice committees.

(2) The supervising judge shall be responsible for the supervision and training of all justices and shall refer any concerns about the training and deportment of justices to the council.

[S.Y. 2002, c. 217, s. 61]

62 Classification of existing justices

(1) Within one year of the coming into force of this Act, the supervising judge appointed under section 61 will review the duties and qualifications of all justices appointed under the *Territorial Court Act*, R.S.Y. 1986, c.169 and recommend to the council that each of these be appointed as a justice with administrative functions, as a justice with presiding functions, or as a justice exercising both functions.

(2) The council shall consider the recommendations of the supervising judge and recommend to the Minister that each currently appointed justice be appointed as a justice performing administrative functions, as a justice with presiding functions, or as a justice exercising both functions.

[S.Y. 2002, c. 217, s. 62]

63 Community justice committees

(1) Interested citizens in a community may establish a community justice committee whose principal work shall be to consider those cases which may be referred to them by the police, prosecutors, or the court for evaluation, diversion, or for recommendations for disposition.

(2) A justice may exercise authority as a justice with presiding functions by sitting with a community justice committee and when appropriate or necessary, exercise jurisdiction, having regard to the recommendations of the community justice committee, the due administration of justice, and the public interest.

[S.Y. 2002, c. 217, s. 63]

61 Le juge surveillant

(1) Le juge en chef nomme un juge en résidence pour surveiller le travail des juges de paix et entrer en rapport avec les comités de justice communautaire.

(2) Le juge surveillant est chargé de la surveillance et de la formation de tous les juges de paix; il saisit le Conseil de toutes préoccupations portant sur leur formation et leur conduite.

[L.Y. 2002, ch. 217, art. 61]

62 Classement des juges de paix déjà en poste

(1) Dans l'année qui suit l'entrée en vigueur de la présente loi, le juge surveillant nommé en vertu de l'article 61 révisera les fonctions et les qualités de tous les juges de paix nommés sous le régime de la *Loi sur la Cour territoriale*, L.R.Y. 1986, ch. 169, et recommande au Conseil que chacun d'eux soit nommé juge exerçant des fonctions administratives, juge exerçant des fonctions de présidence, ou juge exerçant ces deux types de fonctions.

(2) Le Conseil étudie les recommandations du juge surveillant et recommande au ministre quelles fonctions — administratives, de présidence, ou les deux — doivent être conférées à chacun des juges en poste.

[L.Y. 2002, ch. 217, art. 62]

63 Comités de justice communautaire

(1) Tout citoyen intéressé peut établir dans sa collectivité un comité de justice communautaire dont la tâche première est d'étudier les causes qui lui sont soumises par les services de police, les avocats du ministère public ou la Cour aux fins d'évaluation, de déjudiciarisation ou de recommandation.

(2) Le juge de paix peut exercer ses fonctions de président lorsqu'il siège à un comité de justice communautaire et, si nécessaire ou utile, exerce sa compétence en tenant compte des recommandations du comité de justice communautaire, de la bonne administration de la justice et de l'intérêt public.

[L.Y. 2002, ch. 217, art. 63]



DIVISION 2 – STAFF JUSTICES

63.1 Appointment of staff justices

- (1) The Minister may by order
- (a) appoint a person employed with the registry of the court to act as a staff justice; and
 - (b) limit the powers and duties of that person in the appointment.
- (2) The Minister must not appoint as a staff justice a sheriff or any other person employed for the service or execution of documents in a civil process.

[S.Y. 2013, c. 15, s. 24]

63.2 Functions

A staff justice may exercise only the prescribed functions.

[S.Y. 2013, c. 15, s. 24]

63.3 Term limited by employment

The appointment of a person as a staff justice is revoked upon that person ceasing to be employed with the registry of the court or becoming a person described in subsection 63.1(2).

[S.Y. 2013, c. 15, s. 24]

PART 7

ADMINISTRATION

64 Rules committee

The court may establish a rules committee of the court to be composed of the chief judge, not more than three lawyers appointed by the Law Society of Yukon and not more than three other persons appointed by the Minister. The terms for the members appointed by the Law Society and by the Minister shall be decided by the Minister after consultation with the chief judge.

[S.Y. 2002, c. 217, s. 64]

SECTION 2 – JUGES DE PAIX DE LA FONCTION PUBLIQUE

63.1 Nomination de juges de paix issus de la fonction publique

- (1) Le ministre peut, par arrêté :
- a) nommer une personne employée au greffe de la Cour pour agir à titre de juge de paix de la fonction publique;
 - b) limiter les attributions de cette personne dans la nomination.
- (2) Le ministre ne peut nommer à titre de juge de paix de la fonction publique, un shérif ou une autre personne employée pour la signification ou la signature de documents dans le cadre de procédures civiles.

[L.Y. 2013, ch. 15, art. 24]

63.2 Fonctions

Un juge de paix de la fonction publique ne peut exercer que les fonctions prévues par règlement.

[L.Y. 2013, ch. 15, art. 24]

63.3 Mandat lié à l'emploi

La nomination d'une personne à titre de juge de paix de la fonction publique est révoquée lorsque cette personne cesse d'être employée par le greffe ou qu'elle devient une personne visée au paragraphe 63.1(2).

[L.Y. 2013, ch. 15, art. 24]

PARTIE 7

ADMINISTRATION

64 Comité des règles

Le tribunal peut constituer un comité des règles du tribunal composé du juge en chef, d'au plus trois avocats nommés par le Barreau du Yukon et d'au plus trois autres personnes nommées par le ministre. Ce dernier établit la durée du mandat de ces personnes.

[L.Y. 2002, ch. 217, art. 64]

65 Power to make rules

The rules committee may make rules respecting the practice and procedures of the court.

[S.Y. 2002, c. 217, s. 65]

66 Responsibilities of the Minister

The Minister is responsible for the provision, operation, and maintenance of court facilities and services.

[S.Y. 2002, c. 217, s. 66]

67 Court staff

Pursuant to the *Public Service Act*, there may be appointed a clerk of the court and any other employees considered necessary for the dispatch of the business of the court.

[S.Y. 2002, c. 217, s. 67]

68 Court circuits

(1) The chief judge shall after consulting with the Minister and having regard to the volume of judicial work in any area of Yukon, direct that sittings of the court be held at those places that the chief judge and Minister consider advisable.

(2) If there is a dispute between the chief judge and the Minister about the need for a court sitting at a particular place, the matter shall be referred to the council for resolution.

[S.Y. 2002, c. 217, s. 68]

69 Ministerial regulations

(1) After consultation with the chief judge, the Minister may, in respect of proceedings in the court, make regulations prescribing

- (a) the rates of fees and expenses payable to witnesses and interpreters;
- (b) the fees to be paid for the filing or issuing of documents, or for services rendered by clerks or sheriffs;
- (c) the fees, expenses, and other forms of remuneration to be paid to stenographic reporters, or to operators or transcribers of sound recording machines;
- (d) the form of the seal to be used by the court;

65 Pouvoir d'établir des règles

Le comité des règles peut établir des règles régissant la pratique et la procédure de la Cour.

[L.Y. 2002, ch. 217, art. 65]

66 Responsabilités du ministre

Le ministre est chargé de l'établissement, du fonctionnement et de l'entretien des services et des installations judiciaires.

[L.Y. 2002, ch. 217, art. 66]

67 Auxiliaires de la Cour

Le greffier de la Cour et tous autres employés jugés nécessaires à la poursuite des activités de la Cour sont nommés sous le régime de la *Loi sur la fonction publique*.

[L.Y. 2002, ch. 217, art. 67]

68 Circuits judiciaires

(1) Après avoir consulté le ministre, le juge en chef, compte tenu du volume de travail judiciaire dans une région particulière du Yukon, ordonne la tenue de sessions de la Cour en tout lieu que le juge en chef et le ministre jugent indiqué.

(2) En cas de différend entre le juge en chef et le ministre quant à l'opportunité pour la Cour de siéger à un endroit en particulier, la question est renvoyée au Conseil pour qu'il règle la question.

[L.Y. 2002, ch. 217, art. 68]

69 Règlements pris par le ministre

(1) Après avoir consulté le juge en chef, le ministre peut, par règlement, à l'égard des instances tenues devant la Cour :

- a) fixer les tarifs des indemnités payables aux témoins et aux interprètes;
- b) fixer les droits à payer lors du dépôt ou de la délivrance de documents ou au titre des services fournis par les greffiers ou les shérifs;
- c) fixer les honoraires, indemnités et toutes autres formes de rémunération à verser aux sténographes judiciaires ainsi qu'aux préposés à l'enregistrement et à la transcription;
- d) déterminer le modèle du sceau de la Cour;



- | | |
|---|---|
| <p>(e) the remuneration to be paid to justices who are paid on an hourly or <i>per diem</i> rate;</p> | <p>e) fixer la rémunération des juges de paix qui sont payés selon un tarif horaire ou sur une base quotidienne;</p> |
| <p>(e.1) the functions of a staff justice;</p> | <p>e.1) fixer les fonctions d'un juge de paix de la fonction publique;</p> |
| <p>(f) providing for the safekeeping, inspection, and destruction of books, documents, papers, and records of the court and judges;</p> | <p>f) prévoir la conservation, l'inspection et la destruction des livres, documents, pièces et dossiers de la Cour et des juges;</p> |
| <p>(g) governing the remission of money paid to or collected by the court, a judge, or a justice;</p> | <p>g) régir la remise des sommes consignées à la Cour ou perçues par la Cour, par un juge ou par un juge de paix;</p> |
| <p>(h) providing for the appointment and employment of stenographic reporters to take down evidence in respect of proceedings in the court;</p> | <p>h) régir la nomination et les conditions de travail des sténographes judiciaires affectés à la consignation des témoignages rendus au cours des instances tenues devant la Cour;</p> |
| <p>(i) providing for the appointment of operators and transcribers of sound-recording machines when used to record evidence in respect of proceedings in the court; and</p> | <p>i) prévoir la nomination des préposés à l'enregistrement et à la transcription des témoignages rendus au cours des instances tenues devant la Cour;</p> |
| <p>(j) defining the class of matters in which stenographic reporters may be used.</p> | <p>j) définir les catégories d'affaires auxquelles peuvent être affectés des sténographes judiciaires.</p> |
| <p>(2) The Minister may, after consultation with the chief judge and on the recommendation of the chief judge, make regulations</p> | |
| <p>(a) prescribing the administrative duties of the chief judge and other members of the court;</p> | <p>a) préciser les fonctions administratives du juge en chef et des autres juges de la Cour;</p> |
| <p>(b) prescribing the locations for court facilities, or the facilities that may be used by the court;</p> | <p>b) préciser les emplacements des installations de la Cour ou des installations qu'elle peut utiliser;</p> |
| <p>(c) requiring and governing the making of returns and reports by judges and clerks;</p> | <p>c) régir les rapports que les juges et les greffiers doivent faire;</p> |
| <p>(d) prescribing the records that shall be maintained by the court;</p> | <p>d) préciser les dossiers que la Cour doit tenir;</p> |
| <p>(e) prescribing the duties of clerks and other employees;</p> | <p>e) préciser les fonctions des greffiers et des autres employés;</p> |
| <p>(f) establishing a system of statistical records relating to the court;</p> | <p>f) constituer un système de dossiers statistiques portant sur les activités de la Cour;</p> |
| <p>(g) prescribing the forms to be used in the court or issued by the court; and</p> | <p>g) préciser les formulaires à utiliser à la Cour ou que celle-ci utilise;</p> |

- (h) respecting any other matter the Minister considers necessary or advisable in relation to the provision, maintenance, or operation of the facilities or services of the court.

[S.Y. 2013, c. 15, s. 25] [S.Y. 2002, c. 217, s. 69]

- h) régir toute autre question qu'il estime nécessaire ou souhaitable quant à la fourniture, à l'entretien ou au fonctionnement des installations ou des services de la Cour.

[L.Y. 2013, ch. 15, art. 25] [L.Y. 2002, ch. 217, art. 69]

PART 8

GENERAL

70 Presiding officer

Every sitting of the court shall be presided over by a judge or justice and only a person acting pursuant to powers as a judge or justice shall try any action, give any judgment, or make any decision, determination, order, or decree in the court.

[S.Y. 2002, c. 217, s. 70]

71 Chief judge

The Commissioner in Executive Council shall designate a judge to be chief judge of the court to hold office for a term of not more than three years during good behaviour.

[S.Y. 2002, c. 217, s. 71]

72 Associate chief judge

The Commissioner in Executive Council may designate a judge as associate chief judge for a term no greater than three years for the purpose of performing the duties and exercising the powers of the chief judge during the absence of the chief judge from the Yukon or during the absence of the chief judge from the performance of duties due to illness, the taking of leave, or for any other reason.

[S.Y. 2002, c. 217, s. 72]

73 Duties and powers of the chief judge

Subject to this Act, the chief judge has the duty and power to supervise judges and justices in the performance of their duties, and may

- (a) designate the matters or classes of matters in which a judge may act;
- (b) designate the court facility where a judge or justice may act;

PARTIE 8

DISPOSITIONS GÉNÉRALES

70 Présidence

Les sessions de la Cour sont présidées par un juge ou un juge de paix, et seule la personne qui exerce les pouvoirs de juge ou de juge de paix peut connaître d'une action, rendre jugement ou rendre à la Cour toute décision, ordonnance ou y faire toute détermination.

[L.Y. 2002, ch. 217, art. 70]

71 Juge en chef

Le commissaire en conseil exécutif désigne à titre inamovible et pour un mandat maximal de trois ans un juge à titre de juge en chef de la Cour.

[L.Y. 2002, ch. 217, art. 71]

72 Juge en chef adjoint

Le commissaire en conseil exécutif peut désigner un juge à titre de juge en chef adjoint pour un mandat maximal de trois ans afin qu'il exerce les attributions du juge en chef en cas d'absence de celui-ci du Yukon ou en cas d'empêchement d'exercer sa charge, notamment pour cause de congé ou de maladie.

[L.Y. 2002, ch. 217, art. 72]

73 Attributions du juge en chef

Sous réserve des autres dispositions de la présente loi, le juge en chef est chargé de la surveillance des juges et des juges de paix dans l'exercice de leur charge; il peut :

- a) préciser les affaires ou les catégories d'affaires dont un juge peut connaître;
- b) désigner les installations de la Cour où les juges peuvent exercer leur charge;



- (c) assign duties to judges and justices;
- (d) make recommendations to the Minister respecting any matter affecting the administration of the Court; and
- (e) approve the taking of vacation leave and other leave from judicial duties to which a judge may be entitled under this Act.

[S.Y. 2002, c. 217, s. 73]

74 Continuation of proceedings

(1) A judge or presiding justice who retires or resigns remains seized of any matter in respect of which they have heard evidence or argument for a period of 12 weeks after their retirement or resignation and may, within those 12 weeks, continue to hear any further evidence or argument necessary to complete the proceedings in the matter and to give judgment as if they had not retired or resigned.

(2) If a proceeding other than a trial or application under the *Criminal Code (Canada)* has been commenced and the presiding judge or justice is unable for any reason to complete the proceedings, any judge or justice, as the case may be, requested to act by the chief judge may continue the proceedings from where they were left off and, according to that judge or justice's opinion as to what is required to ensure justice, may continue the proceedings to completion or recommence the proceedings from any point.

[S.Y. 2002, c. 217, s. 74]

75 Change of venue

A judge may order that the venue of any matter be changed and that the matter be heard in any place in the Yukon that the judge shall direct.

[S.Y. 2002, c. 217, s. 75]

76 Proceedings in territorial court

(1) Subject to this Act, the rules of practice and procedure followed in the Supreme Court shall, modified as suits the case, be followed in all actions and proceedings in the court.

- c) répartir le travail parmi les juges et les juges de paix;
- d) formuler des recommandations au ministre à l'égard de toute question portant sur l'administration de la Cour;
- e) approuver des vacances et autres congés auxquels les juges peuvent avoir droit en vertu de la présente loi.

[L.Y. 2002, ch. 217, art. 73]

74 Poursuite des instances

(1) Le juge ou le juge de paix président qui prend sa retraite ou démissionne demeure saisi, pendant une période de 12 semaines suivant son départ en retraite ou sa démission, de toutes les affaires au sujet desquelles il a entendu les témoignages ou les débats; il peut, pendant ces 12 semaines, poursuivre l'audition des témoignages et des débats jugée nécessaire pour terminer l'instance en l'espèce et rendre jugement comme s'il n'avait pas pris sa retraite ni démissionné.

(2) Dans toute procédure, à l'exception d'un procès ou d'une requête présentée en vertu du *Code criminel*, si le juge ou le juge de paix président est incapable, pour quelque motif que ce soit, de terminer l'instance, tout juge ou juge de paix, selon le cas, désigné par le juge en chef peut poursuivre l'instance en l'état et, selon ce qui, à son avis, est nécessaire pour rendre justice, poursuivre l'instance ou la reprendre à quelque stade que ce soit.

[L.Y. 2002, ch. 217, art. 74]

75 Changement du lieu du procès

Un juge peut ordonner le changement du lieu de l'audition d'une affaire et décider d'entendre l'affaire à tel endroit au Yukon qu'il désigne.

[L.Y. 2002, ch. 217, art. 75]

76 Instances tenues à la Cour territoriale

(1) Sous réserve des autres dispositions de la présente loi, les règles de pratique et de procédure applicables devant la Cour suprême sont, avec les adaptations nécessaires, applicables à toutes les actions et les instances introduites devant la Cour.

(2) All proceedings in the court shall be entitled **“In the Territorial Court of Yukon.”**

[S.Y. 2002, c. 217, s. 76]

77 Power to preserve order in court

Every judge has the same power and authority to preserve order in a court over which the judge is presiding as may be exercised by a judge of the Supreme Court.

[S.Y. 2002, c. 217, s. 77]

77.1 Vexatious proceedings

(1) If on application or its own motion, the court is satisfied that a person has persistently instituted vexatious proceedings or has conducted a proceeding in a vexatious manner, it may, after giving notice to the Attorney General of Yukon and giving the person the opportunity to be heard, order that except by leave of the court

- (a) the person must not institute a proceeding on behalf of themselves or another person; or
- (b) a proceeding previously instituted by the person must not be continued.

(2) A person in respect of whom the court has made an order under subsection (1) may apply to the court

- (a) for an order rescinding the order; or
- (b) for leave to institute or continue a proceeding.

(3) On receiving an application under subsection (2), the court may

- (a) rescind the order; or
- (b) grant leave to institute or continue a proceeding if it is satisfied that
 - (i) the proceeding is not an abuse of process, and
 - (ii) there are reasonable grounds for the proceeding.

(4) The Attorney General of Yukon is entitled

(2) Toutes les instances introduites devant la Cour portent l'intitulé suivant : **« Cour territoriale du Yukon »**.

[L.Y. 2002, ch. 217, art. 76]

77 Maintien de l'ordre à la Cour

Tous les juges sont investis des mêmes pouvoirs de maintien de l'ordre à la Cour à laquelle ils président que ceux que peut exercer un juge de la Cour suprême.

[L.Y. 2002, ch. 217, art. 77]

77.1 Instances vexatoires

(1) Si la Cour est convaincue, suite à une demande ou de sa propre initiative, qu'une personne a de façon persistante introduit des instances vexatoires ou agi de manière vexatoire dans le cadre d'une instance, elle peut, après avoir avisé le procureur général du Yukon et donné la possibilité à la personne de présenter ses observations, ordonner qu'à moins d'obtenir l'autorisation de la Cour :

- a) il est interdit à la personne d'introduire une instance en son nom ou au nom d'une autre personne;
- b) il est interdit à la personne de continuer une instance qu'elle a déjà introduite.

(2) La personne visée par une ordonnance de la Cour rendue en vertu du paragraphe (1) peut demander à cette Cour :

- a) que soit annulée l'ordonnance;
- b) l'autorisation d'introduire ou de continuer une instance.

(3) Sur réception d'une demande présentée en vertu du paragraphe (2), la Cour peut :

- a) d'une part, annuler l'ordonnance;
- b) d'autre part, accorder l'autorisation de continuer ou d'introduire une instance si elle est convaincue de ce qui suit :
 - (i) l'instance ne constitue pas un abus de procédure,
 - (ii) l'instance est fondée sur des motifs raisonnables.

(4) Le procureur général du Yukon a le droit :



- (a) to receive notice of any application or motion under this section; and
- (b) to appear at the hearing of the application or motion.

[S.Y. 2013, c. 15, s. 26]

78 Want of form

No order, verdict, or judgment or other proceeding made by the court shall be quashed or vacated for want of form.

[S.Y. 2002, c. 217, s. 78]

79 Liability of judge or justice

(1) A judge or justice is not liable for damage caused by anything done or not done by them in the performance of their duty or in respect of a matter in which they lacked or exceeded their jurisdiction unless it is proved that they acted in bad faith or with gross negligence.

(2) When a judge or justice has ceased for any reason to be a judge or justice and an order, warrant, or sentence that could have been lawfully made or imposed by them is subsequently made or imposed by another judge or justice, no action for the recovery of damages lies in respect of that order or warrant made or sentence imposed.

(3) A judge or justice exercising his or her powers under this Act or under any other enactment of the Yukon or Canada has the same protections and privileges, in case of an action brought against him or her for an act done or omitted to be done in the execution of his or her duty, as are by law given to judges of the Supreme Court.

[S.Y. 2002, c. 217, s. 79]

80 Regulations respecting tribunals, the council, and commissions

(1) The Commissioner in Executive Council may make regulations either generally in regard to all tribunals or commissions, or specifically in regard to any tribunal or commission for

- (a) remuneration of witnesses;

- a) d'être avisé d'une demande ou d'une motion sous le régime du présent article;
- b) de comparaître lors de l'audition de la demande ou la motion.

[L.Y. 2013, ch. 15, art. 26]

78 Vice de forme

Ne peuvent être annulés pour vice de forme les ordonnances, verdicts, jugements ou autres actes de procédure émanant de la Cour.

[L.Y. 2002, ch. 217, art. 78]

79 Responsabilité des juges et des juges de paix

(1) Les juges et les juges de paix ne sont pas responsables des dommages qui résultent de leurs actes ou omissions dans l'exercice de leur charge ou en raison de toute affaire à l'égard de laquelle ils n'avaient pas compétence ou ont outrepassé celle-ci, sauf s'il est démontré qu'ils ont agi de mauvaise foi ou en faisant preuve de négligence grossière.

(2) Si un juge ou un juge de paix a cessé pour quelque raison que ce soit d'exercer sa charge et qu'une ordonnance, un mandat ou une peine qu'il aurait pu légalement rendre, décerner ou infliger, selon le cas, l'est par la suite par un autre juge ou juge de paix, aucune action en dommages-intérêts ne peut être intentée relativement à l'ordonnance rendue, au mandat décerné ou à la peine infligée.

(3) Un juge ou un juge de paix qui exerce ses attributions en vertu de la présente loi ou en vertu de toute autre loi du Yukon ou du Canada jouit de la même immunité et des mêmes privilèges que la loi accorde à un juge de la Cour suprême à l'égard de toute action intentée contre lui au titre d'un acte accompli ou d'une omission commise dans l'exercice de ses fonctions.

[L.Y. 2002, ch. 217, art. 79]

80 Règlements concernant les tribunaux, le Conseil et les commissions

(1) Le commissaire en conseil exécutif peut, par règlement, de façon générale à l'égard de tous tribunaux ou commissions, ou de façon particulière à l'égard d'un tribunal ou d'une commission :

- a) fixer la rémunération des témoins;



- (b) allowances to witnesses for travel and living expenses;
- (c) other expenses of a tribunal or commission, including the remuneration of the tribunal or of commissioners;
- (d) generally, all things necessary to provide adequately for the holding of a tribunal or commission.

(2) The Commissioner in Executive Council may make regulations providing for the payment of travel and living expenses for members of a tribunal, the council, and the commission.

[S.Y. 2002, c. 217, s. 80]

81 References in federal Acts

A reference to the expression “**Magistrate’s Court**” or to the word “**magistrate**” in any act of the Parliament of Canada, or in any order, rule, or regulation made thereunder shall be deemed to be a reference to the court and every judge of the court shall be deemed to be a magistrate.

[S.Y. 2002, c. 217, s. 81]

- b) fixer les indemnités des témoins au titre des frais de déplacement et de séjour;
- c) fixer les autres dépenses d’un tribunal ou d’une commission, y compris la rémunération du tribunal ou des commissaires;
- d) plus généralement, prévoir toutes mesures nécessaires à la bonne tenue des séances d’un tribunal ou d’une commission.

(2) Le commissaire en conseil exécutif peut, par règlement, fixer les indemnités à verser aux membres d’un tribunal, du Conseil et de la Commission au titre de leurs frais de déplacement et de séjour.

[L.Y. 2002, ch. 217, art. 80]

81 Renvois dans les lois fédérales

Dans les lois fédérales ainsi que dans les décrets, règles ou règlements pris sous leur régime, les renvois aux termes « **Cour des magistrats** » et « **magistrat** » sont réputés renvoyer à la Cour et chacun de ses juges est réputé être un magistrat.

[L.Y. 2002, ch. 217, art. 81]



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Introduction

The 2024–25 *Fiscal and Economic Outlook* provides an overview of the territory’s current fiscal and economic position and expectations for the medium-term.

The Yukon continues to face pressures tied to the rising cost of living, climate and environmental emergencies, housing and challenges in the health care system, not dissimilar to those seen across the country and around the world. This outlook highlights the economic context that will influence the government’s decision-making as it confronts these challenges and continues to work towards improving the lives of Yukoners in a fiscally responsible way.

After dealing with the extraordinary circumstances presented by a global pandemic, followed by record levels of inflation in most parts of the world, the territorial economy is returning to normal. While remaining elevated, inflation has fallen substantially from recent highs, tourism is rebounding and growth in wages is supporting higher consumer spending. Government spending in 2024–25 will focus on addressing ongoing and emerging priorities of Yukoners in health care, infrastructure, housing, environmental stewardship, and education. The Government of Yukon is also taking action to stabilize net debt, with increased revenues and budgetary surpluses anticipated in each year of the forecast.

The government will continue to collaborate with First Nations, federal and municipal governments, private and public partners and Yukoners to ensure a strong, diversified, and sustainable economy.

Part 1: The Yukon's finances

The Government of Yukon is committed to delivering strong, sustainable fiscal management in Budget 2024–25. To achieve this, the government is focusing investments in health care, education and housing. The budget includes a \$50 million contingency to account for expected but presently undefined expenses such as wildfires, floods and ongoing pressures on the territory's health care system. The government projects a surplus of \$119 million in 2024–25 resulting from continued investment in tangible capital assets that will provide lasting benefits for Yukoners.

Table 1. Fiscal summary

(\$ millions)	2023–24 Main Estimates	2023–24 Supplementary Estimates No.2	2024–25 Main Estimates	2025–26 Plan	2026–27 Plan	2027–28 Plan	2028–29 Plan
Revenue ^{1,2}	1,575.4	1,579.2	1,691.3	1,776.0	1,854.6	1,956.6	2,004.5
Expense ³	(1,642.4)	(1,786.2)	(1,724.3)	(1,779.9)	(1,832.4)	(1,872.7)	(1,898.9)
Contingency for anticipated expenses ⁴	(50.0)	0.0	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
Accounting adjustments ⁵	165.2	208.7	202.0	181.9	101.3	108.0	25.9
Surplus (deficit) ⁶	48.2	1.7	119.0	127.9	73.5	141.9	81.5
Net financial assets (debt), end of year	(374.8)	(444.5)	(488.8)	(516.8)	(521.2)	(455.0)	(375.2)

Source: Department of Finance. Numbers may not add due to rounding.

Table 1 shows revenue growth in 2024–25 projected to exceed expenditure growth. Revenues are projected to grow by \$115.8 million, or 7.4 per cent over 2023–24 Main Estimates while expenditures, net of recoveries, are projected to increase by \$81.9 million, or 5.0 per cent. This results in a year-over-year reduction in the gap between revenues and net expenditures with net expenditures in 2024–25 expected to exceed total revenue by \$33 million, down from \$67 million in 2023–24.

1. To align with the presentation in the Yukon Public Accounts, revenues and recoveries do not include those collected by the Yukon Housing Corporation, which are included in the Accounting Adjustments in this table.

2. Revenue is the sum of "Transfers from Canada", "Tax Revenue", and "Other Revenue" as found on Pages S-14 and S-15 of the 2024–25 Main Estimates, and equivalent pages of budget documents for other periods.

3. Expense is the sum of "Total Appropriated Amounts" minus "Third-Party Recoveries" and "Recoveries from Canada" as found on Pages S-8 and S-9 of the 2024–25 Main Estimates, and equivalent pages of budget documents for other periods.

4. Found on Page S-9 of the 2024–25 Main Estimates.

5. Accounting Adjustments are the sum of "Tangible Capital Assets (net)", "Investment in Land Development", "Expenditures on Loan Programs", and "Other Adjustments (net)", on Page S-9 of the 2024–25 Main Estimates, and equivalent pages of budget documents for other periods.

6. Surplus/(deficit) is the sum of revenue, expense, contingency for anticipated expenses, and accounting adjustments.

The increase in net spending this year is driven in large part by salary increases from the new collective agreement with the Yukon Employees' Union; investments in health care services, including increased funding for Insured Health Services and the Yukon Hospital Corporation; and new funding to support student learning and wellbeing.

Forecast years show revenue growth continuing to exceed net expenditure growth with total revenues exceeding net expenditures beginning in 2026–27 and continuing through the remainder of the forecast. This is due to lower capital spending and planned operations and maintenance (O&M) expenditure growth of 3.5 per cent annually. The result is a positive impact on the territory's net debt position, which levels out in 2025–26, declining to \$375.2 million by 2028–29.

As noted, the government is including a \$50 million contingency in the budget for 2024–25, as it did in 2023–24. Including a contingency has been a proven method to offset the cost of expected but undefined expenditures that arise throughout the fiscal year. These undefined expenditures include climate-related emergencies that are increasing in frequency and scale as a changing climate produces longer and more intense fire and flood seasons in the Yukon. Including this contingency in the budget helps minimize the impact of these yet undefined costs on the Yukon's fiscal position.

Though expenditures are expected to be higher than total revenues, the government is projecting a surplus of \$119 million in 2024–25. This surplus largely represents new buildings, roads, and other infrastructure that will be developed during the year. The value of these infrastructure investments, also known as tangible capital assets, has a positive impact on the surplus. Investments in major tangible capital assets planned for 2024–25 include the Kêts'ádań Kù (Kay-et-zah Dun-Coo) School in Burwash Landing, improvements to the Erik Nielsen Whitehorse International Airport runway, the replacement of the Nisutlin Bay Bridge, and work to complete the Dempster Fibre Project.

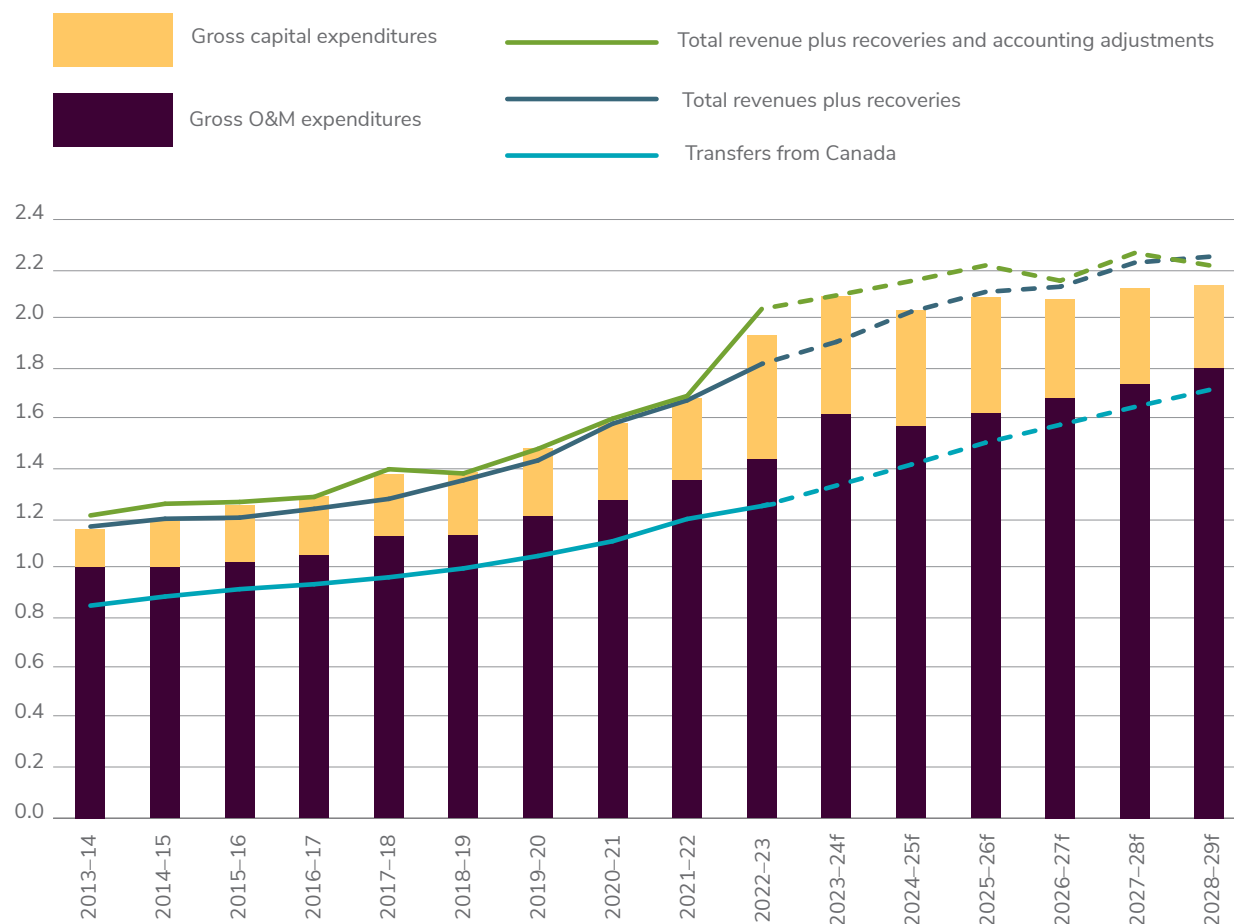
The Yukon government's net financial debt position, totalling \$488.8 million at the end of 2024–25, reflects the difference between the government's total liabilities and its financial assets. These liabilities are primarily long-term liabilities that will not be realized at once. Table 1 shows a stabilization and subsequent decrease in net debt to \$375.2 million in 2028–29 as capital expenditures are reduced, O&M growth stabilizes, and forecasted revenues increase.

The infrastructure investments contributing to the increase in net debt also contribute to the temporary shortfall between revenues and expenditures in 2024–25. The government has access to a line of credit to manage temporary cash flow needs throughout the year. There is an anticipated rise in interest costs for 2024–25 resulting from short-term borrowing to make these investments. However, the government does not foresee a need beyond short-term requirements due to the same factors that are stabilizing net debt in the outlying years of the forecast – strong revenue growth, a moderate capital plan, and a sustainable level of O&M growth. While extreme environmental emergencies or other unforeseen circumstances could require long-term borrowing, the Yukon government would be well positioned to support that borrowing due to its strong financial position. This is evidenced by the Yukon government's AA Stable credit rating and its low net debt-to-GDP ratio, which is among the lowest in Canada.

Chart 1 presents forecasts for gross spending and revenue for the Yukon through 2028–29 and compares it to historical spending as reported in the Yukon Public Accounts.

Chart 1. Government of Yukon fiscal indicators^{7,8}

Expenditures and revenues plus recoveries (\$ billions)



Source: Department of Finance

f = forecast

7. Fiscal years 2013–14 to 2022–23 represent actuals as reported in the Yukon Public Accounts. For comparability, forecasts for fiscal years 2023–24 to 2028–29 use the same methodology, which differs from the presentation in Table 1.

8. To align with the presentation in the Yukon Public Accounts, revenues and recoveries do not include those collected by the Yukon Housing Corporation, which are netted out of the gross expenditures presented in this chart.

In recent fiscal years, growth in government spending outpaced revenue growth. For the fiscal years 2013–14 through 2022–23, gross expenditures have grown by an average of 6.2 per cent annually while revenues, including recoveries, have grown by 4.9 per cent annually. The average growth in expenditures includes a significant increase to capital spending in 2022–23, which can be seen in Chart 1.

The forecast years reverse this trend with revenues plus recoveries growing at 3.6 per cent annually between 2023–24 and 2028–29, which exceeds expenditure growth of 1.7 per cent annually. The lower forecasted expenditure growth rate is a result of reduced capital expenditures and O&M expenditures stabilizing at annual increases of 3.5 per cent.

Revenue

Total government revenue, excluding recoveries, is expected to be \$1.69 billion in 2024–25. This is an increase of \$115.8 million, or 7.4 per cent, from 2023–24 Main Estimates. Revenue growth is projected to be 5.0 per cent in 2025–26 and average 4.0 per cent in each of the last three years of the forecast. Projected increases in revenue are being led by growth in federal transfers as well as a positive outlook for the Yukon's economy and labour market, which will contribute to higher taxation revenue.

Table 2. Revenue by type^{9,10}

(\$ millions)	2023–24 Main Estimates	2023–24 Supplementary Estimates No. 2	2024–25 Main Estimates	2025–26 Plan	2026–27 Plan	2027–28 Plan	2028–29 Plan
Transfers from Canada	1,327.0	1,344.4	1,428.6	1,517.6	1,589.8	1,661.8	1,730.8
Tax revenue	170.9	164.5	190.3	185.6	192.6	197.9	205.4
Personal income tax	98.4	104.6	106.7	109.0	113.4	117.0	122.7
Corporate income tax	27.4	19.0	41.1	33.8	35.4	36.2	37.1
Property tax	7.2	7.2	7.6	7.8	8.3	8.4	8.4
Fuel oil tax	8.8	8.8	9.4	9.6	9.8	10.0	10.2
Tobacco and alcohol taxes	20.0	16.0	15.2	14.8	14.4	14.2	14.0
Insurance premium tax	9.0	9.0	10.2	10.7	11.4	12.2	13.0
Other revenue	77.5	70.3	72.4	72.7	72.2	96.9	68.3
Liquor profit	8.8	7.9	7.2	7.3	7.6	7.6	7.6
Licenses, fees, registrations and permits	18.3	18.3	21.0	19.6	16.0	15.9	15.9
Sale of land	32.3	32.3	30.0	33.2	36.5	61.8	33.2
Other revenue	18.1	11.8	14.1	12.7	12.1	11.6	11.6
Total revenue	1,575.4	1,579.2	1,691.3	1,776.0	1,854.6	1,956.6	2,004.5

Source: Department of Finance. Numbers may not add due to rounding.

9. All revenue figures found on Pages S-14 and S-15 of the 2024–25 Main Estimates, and equivalent pages of budget documents for other periods.

10. To align with the presentation in the Yukon Public Accounts, revenues do not include those collected by the Yukon Housing Corporation.

Transfers from Canada

The increase in government revenue is based primarily on transfers from Canada, which are expected to increase by \$101.6 million, or 7.7 per cent, compared to 2023–24 Main Estimates. These transfers include the Grant from Canada, Canada Health Transfer, Canada Social Transfer, Cannabis Transfer, and new in 2024–25, the forthcoming Vaping Transfer.

The largest of these transfers, the Territorial Formula Financing program, or Grant from Canada, represents 79.8 per cent of the Yukon's total revenue in 2024–25. The grant helps to reduce the gap between the Yukon's ability to raise revenue and its spending needs for core services. The grant is responsive to economic circumstances in the territory compared to the rest of the country. Therefore, increases to the grant are expected to continue based on projected growth of the Yukon's population and changing fiscal circumstances in the provinces and territories across Canada.

In 2024–25, the Government of Yukon intends to join the federally-coordinated vaping products taxation framework, resulting in a new source of revenue. All Canadian jurisdictions are either planning to join this federal framework or will introduce their own vaping tax. The framework will help discourage the use of vaping products, especially among young people, and reduce the associated impacts on the health care system, while ensuring tax revenue collected on the sale of these products is returned to Yukoners. The new tax is expected to apply to vaping products starting in early 2025 and tax revenues collected by the federal government will be returned to the Yukon through a transfer.

Projections for transfers from Canada are also up from prior years based on lower expectations for resource revenue. Under the current resource revenue sharing arrangement with Canada, the Yukon keeps all its annual resource revenues up to \$6 million. Every dollar above this threshold is deducted from the Territorial Formula Financing program. Due to changes in mineral production, the market value of minerals produced, and production costs, the most recent forecast for resource revenues is no longer expected to reach a level that would result in an offset being applied as part of the resource revenue sharing agreement. The impact is an increase in the forecast for revenue from the Territorial Formula Financing program.

Taxation revenue

The Yukon's own-source revenue from taxation is expected to increase by \$19.4 million, or 11.4 per cent, from 2023–24 Main Estimates. Personal income tax revenue is up due to increased employment and income growth, and a non-recurring adjustment from prior tax years. Adjustments for prior tax years are common due to the timing of final reconciliations of tax assessment information. Corporate income tax projections are also up based on a prior year non-recurring adjustment.

The upward trajectory in revenue from personal income tax is also expected to continue throughout the forecast period, supported in part by expectations of increased employment and growing incomes. Although future-year corporate income tax projections are lower than 2024–25, they

remain higher than 2023–24 due to a reduction in the expected number of businesses eligible for the small business tax rate in the Yukon based on current data. The territory's small business tax rate is zero per cent.

The government also generates revenue from sources other than income taxation. The forecast for tax revenue from tobacco products has been revised downwards as smoking rates, and associated taxation revenue from the sale of tobacco products, are trending downwards nationwide, including in the Yukon. Reduced expectations for the sale of tobacco products are partially offset by increases to the tobacco tax rate. The *Tobacco Tax Act* legislates the formula, based on changes to the Whitehorse Consumer Price Index (CPI), by which tobacco tax is calculated and adjusted in January of each year. On January 1, 2024, the tax rate per cigarette increased from 32 to 35 cents. Based on the current outlook for inflation, the tax rate for tobacco products is expected to increase to 37 cents per cigarette in 2025. Revenue from liquor taxation is down slightly based on current projections for the sale of alcohol products.

Aside from changes to the tobacco tax, which is linked to inflation, there are no changes to tax rates proposed as part of Budget 2024–25.

Other revenue

In addition to transfers from Canada and taxation revenue, some other sources of government revenue include profit from liquor operations; licences, fees, registrations and permits; proceeds from land sales; and other revenues. Overall, total revenue from these sources is expected to fall to \$72.4 million in 2024–25, down 6.7 per cent from \$77.5 million in 2023–24 Main Estimates. The largest reduction in revenue is in resource royalty revenues due to factors previously noted that are contributing to the increase in Territorial Formula Financing program revenue. Land sale revenues are also down based on the timing of land being available for sale in the Whistle Bend subdivision of Whitehorse and through rural land development projects. The expectation for liquor profit has also been reduced due to a decrease in projected liquor sales. These reductions are partly offset by projections for higher revenues from licences, fees, registrations and permits.

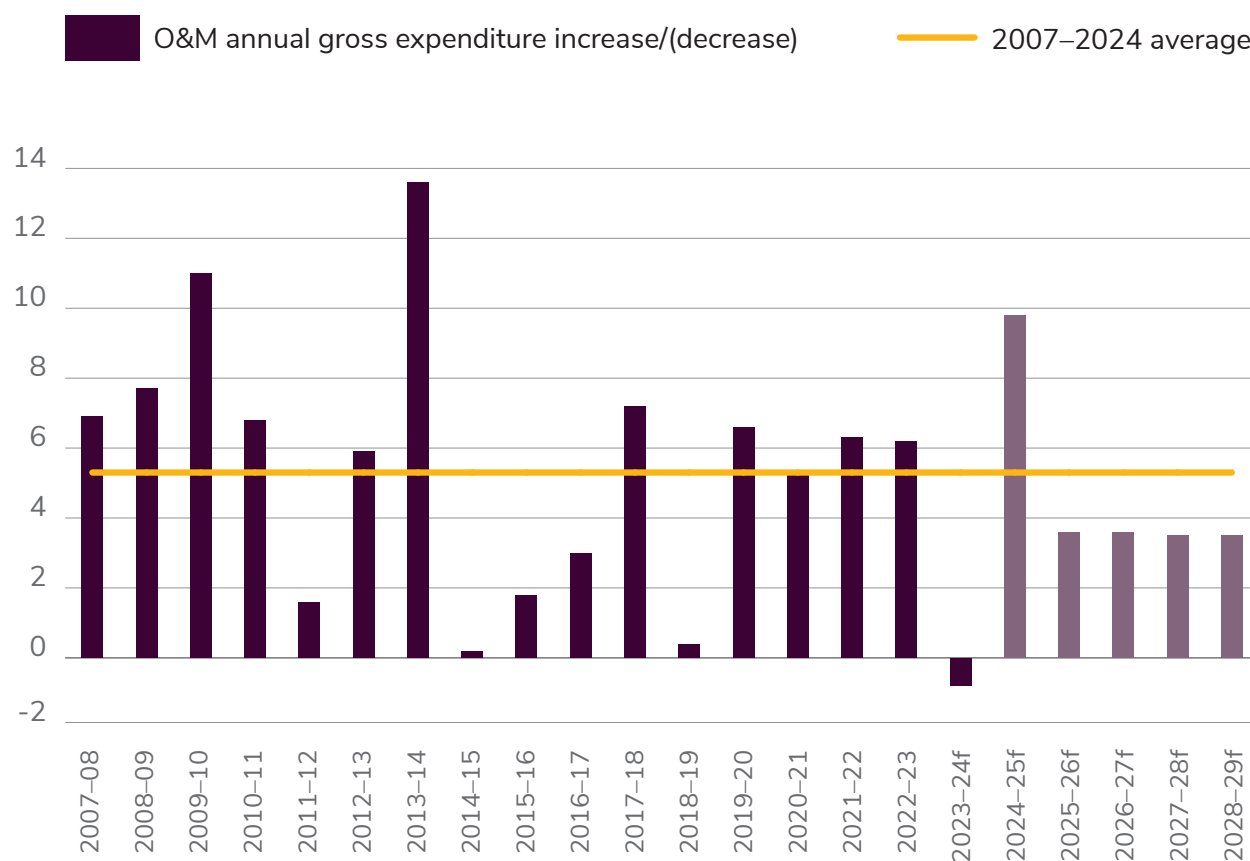
Operations and maintenance expenses

Budget 2024–25 includes plans for gross O&M spending of \$1.595 billion, which reflects a \$141.4 million or 9.7 per cent increase over 2023–24 Main Estimates. Of this increase, 37 per cent is recoverable from Canada and other partners, making the net impact \$88.5 million, or a 6.7 per cent net increase over 2023–24 Main Estimates.

Chart 2 compares forecast gross O&M spending from 2023–24 through 2028–29 to actual historical O&M spending as reported in the Yukon Public Accounts. The average annual growth in O&M spending between 2007–08 and 2023–24 was 5.3 per cent. The decrease in 2023–24 is largely the result of timing around the inclusion of costs for the new collective agreement, which are included in the 2022–23 actuals but not in the 2023–24 Main Estimates. These increases are included in the 2024–25 forecast, which is contributing to the above average increase in 2024–25, after which forecast O&M spending growth in 2025–26 through to the end of the forecast is below the average, at approximately 3.5 per cent in each fiscal year.

Chart 2: Annual growth in gross O&M spending

Change in Government of Yukon gross O&M spending (per cent)



Source: Department of Finance

f = forecast

Increases in gross expenditures in 2024–25 are driven in large part by a new collective agreement with the Yukon Employees' Union; investments in the health care system; new funding for education; efforts related to addressing the challenges of climate change; expenses resulting from the Minto Mine abandonment; and advancing reconciliation with Yukon First Nations.

- The Government of Yukon and the Yukon Employees' Union completed negotiations on a new Collective Bargaining Agreement in June 2023. The new agreement will be in effect until December 31, 2024. The new agreement includes several updates that benefit over 3,500 public service employees, including wage increases that recognize collective bargaining in other jurisdictions and cost-of-living increases. Costs of \$42 million related to the new agreement compose a significant portion of the year-over-year increase to gross expenditures as those costs were not included in 2023–24 Main Estimates due to the timing of negotiations.
- *Putting People First* continues to guide the government's actions to ensure the effectiveness of the territory's health care system. Working through government-to-government partnerships with Yukon First Nations and with health partners, the Government of Yukon continues to lay the foundation for the territory's new health authority. Budget 2024–25 commits \$9.4 million in new funding to advance this health and social services system transformation.
- Budget 2024–25 also contains new funding for Insured Health Services and the Yukon Hospital Corporation. This new funding will support recruitment and retention efforts and address hospital wait times, and ensure Yukoners have access to quality health care when they have to travel outside the territory to receive care. These commitments make up \$45.3 million of the gross increase in expenditures.
- The Substance Use Health Emergency was declared by the Government of Yukon in January 2022. Budget 2024–25 supports continued collaboration across the government and its partners, including Yukon First Nations governments and the RCMP, to address the impacts of drug trafficking and organized crime, as well as to understand safety and wellbeing needs at the community level. New investments to implement additional elements of the *Substance Use Health Emergency Strategy* in 2024–25 are \$2.6 million.
- Budget 2024–25 includes significant commitments to recruit new education assistants, learning assistance teachers, and wellness specialists or similar positions in Yukon schools to support student learning and wellbeing. The government is also investing to improve language and cultural programs by working with the Commission scolaire francophone du Yukon to support French first language learning in Dawson City. Implementing these education initiatives accounts for approximately \$5.5 million of the new expenditures.
- In May 2023, the government took over the Minto Mine site following the operator's decision to abandon the mine. Since that time, the government has been working with the Selkirk First Nation to take all necessary steps to protect the people, property and environment in the area. There is \$21.5 million in Budget 2024–25 for this work and to advance reclamation of the site. These costs are recoverable from the security held by the government for the site.

- The government also remains committed to meeting its targets for reducing emissions. Budget 2024–25 includes additional O&M funding of \$4.8 million to continue existing actions and implement new actions under the *Our Clean Future* strategy. With these new investments, the trajectory of the Yukon’s greenhouse gas emissions from transportation, heating, electricity, and other areas will move closer to the goal of a 45 per cent reduction compared to 2010 levels.
- Reconciliation and respectful partnerships with Yukon First Nations governments is a critical component of work across the Government of Yukon and Budget 2024–25 includes \$4.3 million for the new Land-Based Healing Fund that uses a community-led approach to connect the Yukon’s First Nations communities to mental wellness supports through a strong bond with their heritage.

Five-Year Capital Plan update

The Five-Year Capital Plan promotes accountability by providing a forward looking and transparent view into the Government of Yukon’s infrastructure priorities.

Table 3. Five-Year Capital Plan gross expenditures by category (\$ millions)

	2024–25	2025–26	2026–27	2027–28	2028–29	Five-year total
Climate change, energy and green economy	37	29	23	25	26	140
Housing, health care, education and land development	101	86	90	97	76	451
Community and First Nations infrastructure	79	78	62	59	62	340
Transportation infrastructure	193	202	140	139	102	776
Real property and asset management	43	66	84	54	51	298
Information technology	30	20	17	17	17	102
Annual total	484	480	417	392	333	2,107

Source: Capital Planning Office. Numbers may not add due to rounding.

The Government of Yukon's 2024–25 Five-Year Capital Plan includes approximately \$2.1 billion in capital spending over the next five years, including \$484 million dollars in planned capital spending for fiscal year 2024–25.

In 2023–24, the government reduced the capital plan in response to increasing inflation and interest rates. The 2023–24 fiscal year saw the Bank of Canada (the 'Bank') continue to battle inflation by increasing interest rates. After starting the fiscal year at 4.5 per cent, the Bank's overnight rate increased to 5.0 per cent in July, where it stayed for the remainder of 2023, and is expected to stay to the end of the 2023–24 fiscal year. This restrictive monetary policy continues to put pressure on infrastructure developers and their budgets going forward. Increased costs of production, labour and materials are not expected to change over the short term. As such, the planned capital spend in 2024–25 is unchanged from 2023–24 as the government continues with its strategy to limit growth in the capital plan, maximize federal recoveries, and focus on priority areas such as housing, education, health care and land development.

As in 2023–24, the government is making investments across six main areas in the 2024–25 Five-Year Capital Plan:

- \$140 million dollars for climate change, energy and green economy to continue advancing commitments under *Our Clean Future*. This includes new solar power systems at highway maintenance camps to offset diesel consumption, partnering with Yukon First Nations to support renewable energy projects across the territory, and completing major building energy efficiency upgrades to government owned buildings.
- \$451 million for land development, housing, education and health care, including investment in affordable housing projects in Watson Lake, Dawson City and Whitehorse. The plan includes funding to complete the Mental Wellness Unit at the Whitehorse General Hospital, and to begin construction of the new Kêts'ádaŋ Kù School in Burwash Landing.
- \$340 million for community and First Nations infrastructure projects, prioritized collaboratively with municipalities and Yukon First Nations. These projects include water and wastewater projects, community recreation facilities and child development centres.

- \$776 million for transportation infrastructure, supported by approximately \$315 million in federal funding. These projects include investments in highway upgrades, aerodrome improvements, the replacement of the runway at the Erik Nielsen Whitehorse International Airport, and replacement of the Nisutlin Bay Bridge in Teslin.
- \$298 million for real property and asset management, which includes the maintenance of over 550 buildings throughout the territory, necessary renovations to, or replacement of, existing buildings, and infrastructure upgrades to campgrounds, parks and government-owned tourism facilities.
- \$102 million for information technology to make government services more accessible, efficient and convenient for Yukoners. This includes the maintenance of existing information and technology assets, as well as new investments to improve user convenience and enhance data security.

Projects of note that were delivered, supported or are currently underway include:

- The Beaver Creek Solar Farm Project is under construction and is scheduled to be complete in fall 2024. This project is expected to offset 55 per cent of the community's diesel consumption.
- The Gymnastics and Climbing Facility in Whitehorse's Whistle Bend subdivision entered the construction phase in summer 2023. The 3,000 square metre facility is designed to host competitive and recreational sporting events and is expected to be complete in spring 2025.
- The Old Crow Health and Wellness Centre is expected to be complete in spring 2024 and will provide improved medical services to the community.
- Construction of the 10-plex Housing First Project in Watson Lake began in the summer of 2023. It is scheduled to be completed in the fall 2024.
- The Nisutlin Bay Bridge replacement project began construction in September 2022 and continues to progress. This bridge will provide substantial economic and employment benefits to the Teslin Tlingit Council and the Village of Teslin throughout its construction and is a key component in the Yukon's transportation network.
- Major reconstruction and upgrading of the infrastructure at Erik Nielsen Whitehorse International Airport began in 2023 and will continue through 2026.

Part 2: Economic overview

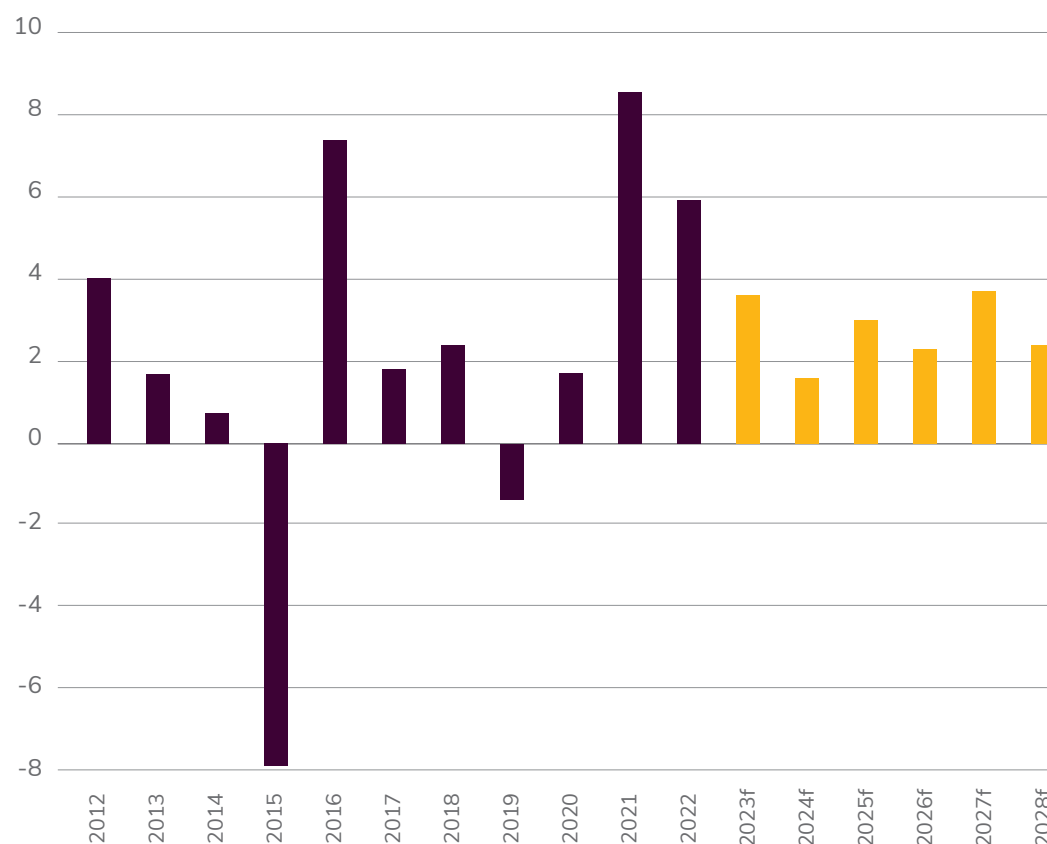
After several volatile years, that included a global pandemic, the Yukon's economy is returning to normal. Tourism has largely returned to pre-pandemic levels and inflation has fallen from recent highs. The economy has been adding jobs, and the unemployment rate was the lowest in the country in 2023. Elevated demand for workers continues to support growth in wages and higher consumer spending. The construction sector also remained busy in 2023.

Further gains in real GDP expected over the medium-term

Following three straight years of gains, the Yukon's real Gross Domestic Product (GDP) is forecast to have grown further in 2023, increasing by 3.6 per cent.

Chart 3. GDP growth forecast for every year of the forecast¹¹

Real GDP change (per cent)



Source: Statistics Canada, Department of Finance

f = forecast

11. Statistics Canada's November 2023 release of 2022 Provincial and Territorial Economic Accounts included revisions to annual estimates to account for a change in the reference year for all GDP volume and price estimates from 2012 to 2017.

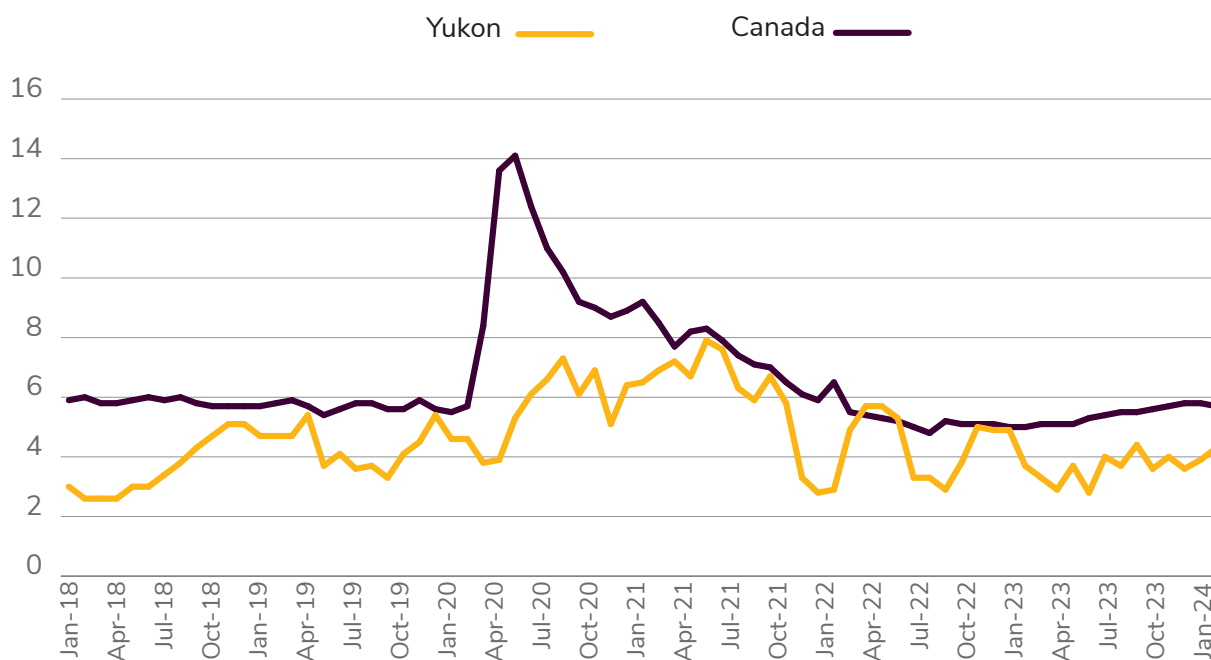
Real GDP is projected to increase in every year of the forecast. The positive outlook is supported by increased mineral production, as the Keno Hill and Eagle Gold mines ramp up to full production. In addition, increased tourism activity is expected to help contribute to growth over the medium-term. Inflation is expected to continue to trend down throughout 2024 with annual production trending towards two per cent over the forecast.

Another strong year for the labour market in 2023

Robust demand for labour persisted in 2023, with both the number of people employed and the size of the labour force surpassing the previous record highs of 2022. Like 2022, employment growth in 2023 outpaced gains in the labour force which caused the territory's unemployment rate to fall and be amongst the lowest in the country once again. For most of the last five years, the unemployment rate in the Yukon has been significantly lower than the national average.

Chart 4. Local unemployment rate outperforming the national rate

Unemployment rate, seasonally adjusted (per cent)

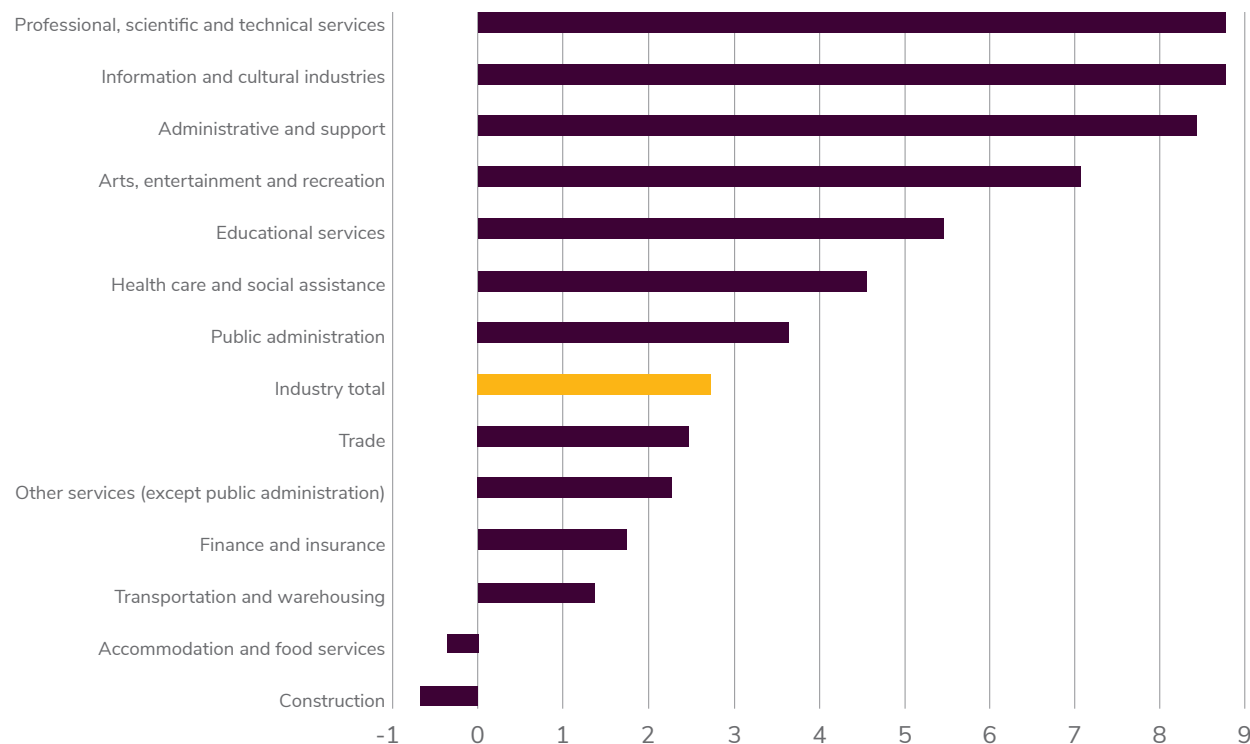


Source: Statistics Canada

High demand for workers is also reflected in job vacancy rates,¹² which have exceeded the unemployment rate throughout 2023.¹³ Elevated demand for labour has been strong across multiple industries, and this has contributed to broad-based increases in wages and earnings.

Chart 5. Wage pressures reflected in higher earnings across most industries

Average weekly earnings, seasonally adjusted, Jan-Nov 2023 change from Jan-Nov 2022 (per cent)



Source: Statistics Canada

12. The job vacancy rate is the number of job vacancies expressed as a percentage of labour demand, defined as all occupied and vacant jobs.

13. Vacancy data for December 2023 was unavailable at the time of writing.

Earnings increased in most industries in 2023, with several posting robust growth. The exceptions were 'construction' and 'accommodation and food services', with both reporting small declines in average earnings over the first 11 months of the year. For construction, healthy earnings gains in the previous two years likely explain some of the 2023 decline, with construction earnings posting average growth of 6.7 per cent over 2021 and 2022. Average earnings for accommodation and food services are down for a second straight year, following growth of 10 per cent in 2021, when growth was supported by income supplements related to the COVID-19 pandemic.

Employers have been offering higher wages to fill job openings. The average offered wage for the Yukon in the third quarter of 2023 was \$28.45 per hour. This was the third highest in Canada and is up 8.6 per cent from the third quarter of 2022.¹⁴

Labour demand is expected to remain strong over the medium-term. As earnings adjust accordingly, it could draw people to the territory hoping to find employment, growing the labour force, and contributing to employment gains. The forecast has the unemployment rate, averaging 4.9 per cent from 2024 to 2028, likely to remain among the lowest in the country.

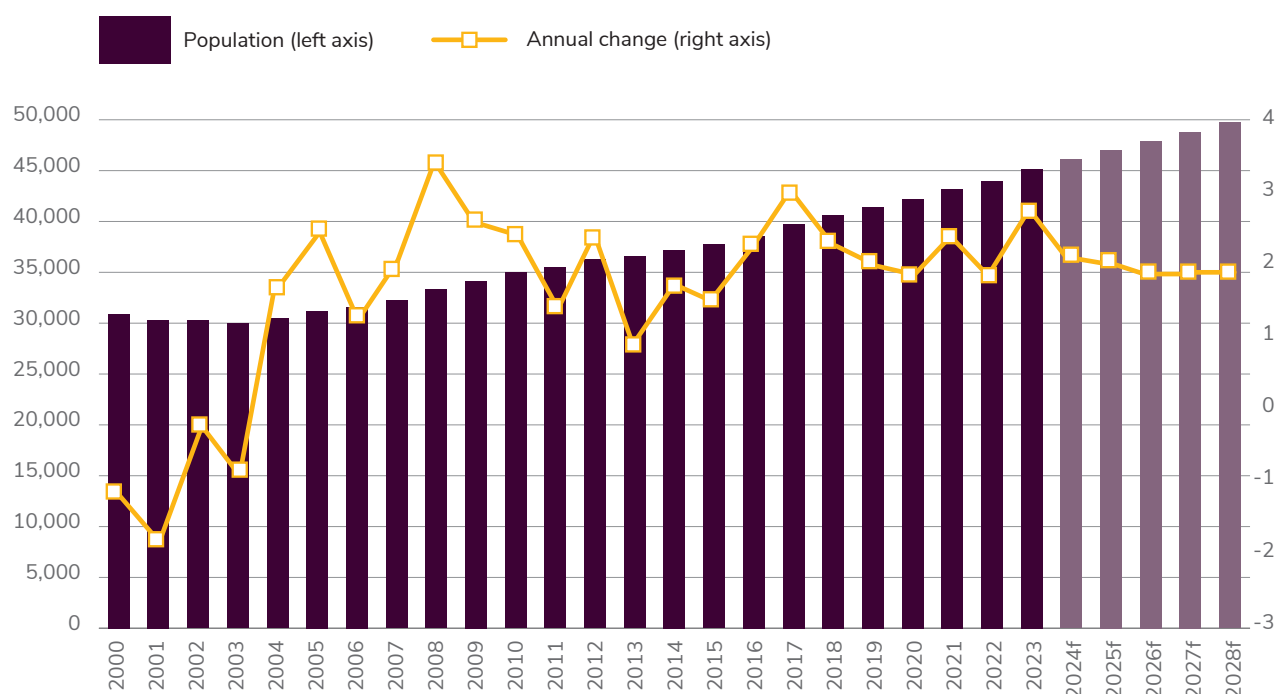
14. Average offered wage data is from Statistics Canada and is available on a quarterly basis starting with the first quarter of 2015. Data for the third quarter of 2023 was the most recent available at the time of writing.

The Yukon is now Canada's most populated territory

The Yukon has surpassed the Northwest Territories in terms of population size to become the largest of the three territories.¹⁵ The Yukon's population increased to 45,169 in 2023,¹⁶ up 2.7 per cent from 2022, the strongest annual increase since 2017's growth of 3 per cent.¹⁷ Growth in 2023 was driven by international migration, with net international migration of 1,120 almost double the previous record of 587 in 2022. Immigration levels have been buoyed by aggressive federal government targets, as they look to add about half a million new permanent residents annually.¹⁸ Nationally, a record number of immigrants in 2023 has contributed to a notable increase in population, with growth in the first nine months already exceeding growth for any full-year period since Canada became a country in 1867.¹⁹

Chart 6. The Yukon's population projected to be almost 50,000 by 2028

Population (persons), annual change (per cent)



Source: Yukon Bureau of Statistics

f = forecast

15. Canada's population estimates, third quarter 2023. Statistics Canada (December 12, 2023).

16. June 30 estimates are considered annual estimates.

17. Population Report, Second Quarter 2023. Yukon Bureau of Statistics. (October 2023).

18. Government of Canada's Immigration Levels Plan for 2024–2026. Immigration, Refugees and Citizenship Canada (November 1, 2023).

19. Canada's population estimates, third quarter 2023. Statistics Canada (December 12, 2023).

A natural population increase of 95 also contributed to gains last year, up from 70 in 2022. Net interprovincial migration of -145 countered some of the growth.

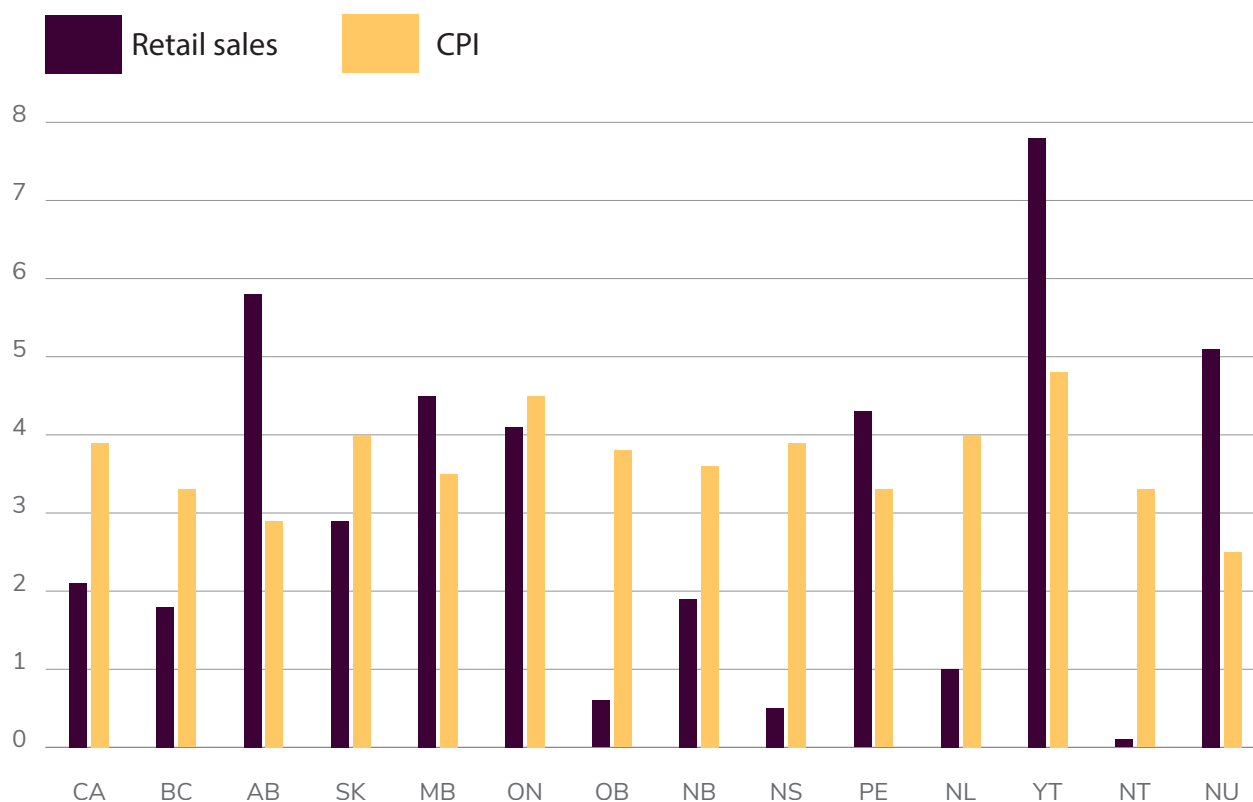
The current forecast shows population increasing every year, with average growth of 1.9 per cent over the forecast period, bringing the territory's population to near 50,000 in 2028.

Higher retail sales driven by more than just higher prices

In 2022, retail sales increased by 7.3 per cent, with nearly all the growth coming from higher prices. Prices have been less of a factor in 2023, with retail sales up 7.8 per cent in 2023 compared to 4.9 per cent growth in the Whitehorse CPI. Chart 7 shows that the Yukon had the strongest retail sales growth in the country in 2023, and is one of only five jurisdictions where retail growth outpaced inflation.

Chart 7. Strong retail sales performance in 2023 not just a product of higher prices

Retail sales, Annual change (per cent), CPI, Annual change (per cent)²⁰



Source: Yukon Bureau of Statistics

20. CPI figures for the territories represent figures for the respective capital cities, as territorial values are not reported.

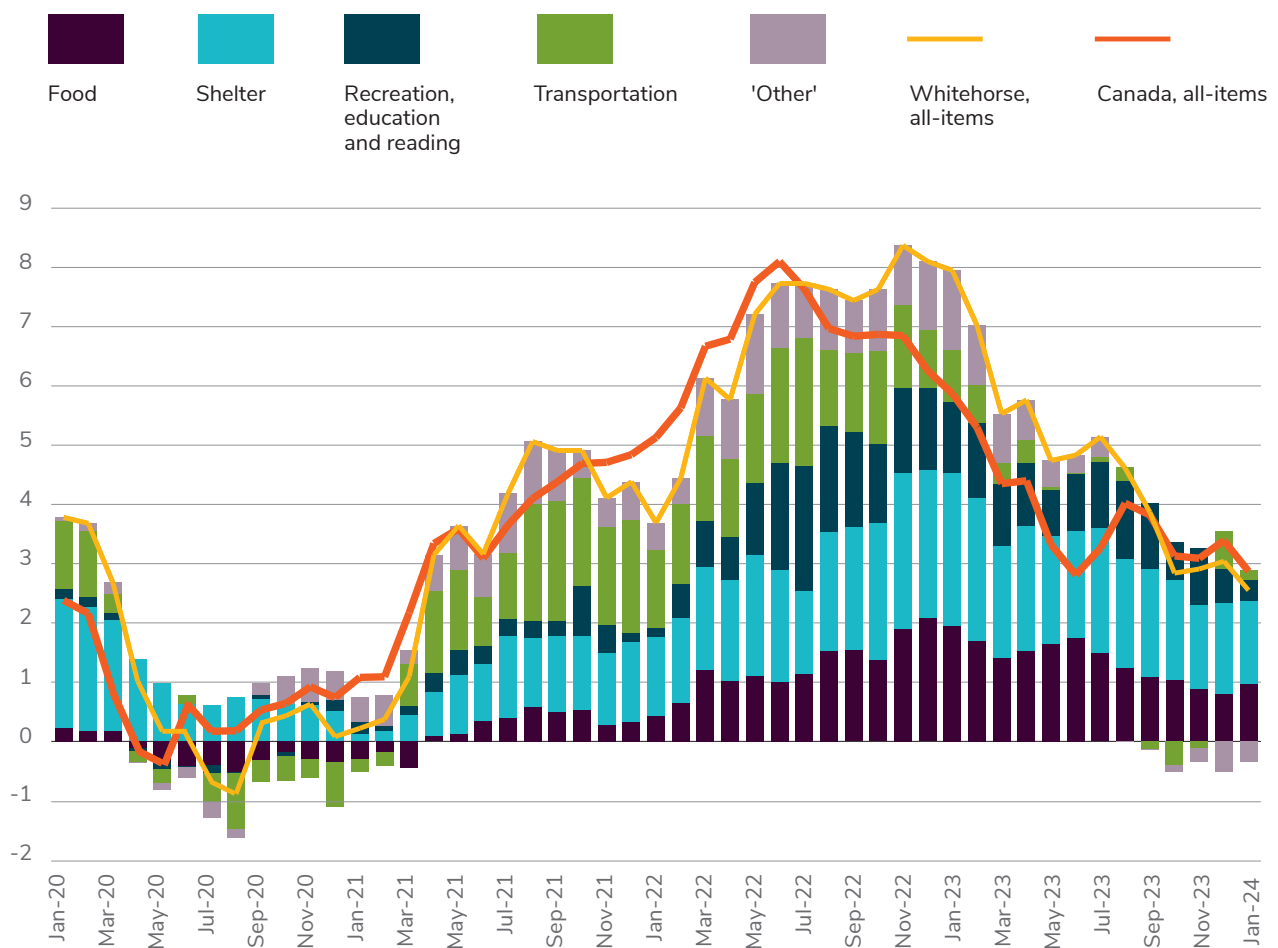
Gains in retail sales are expected in every year of the forecast, with total growth of 28 per cent out to 2028. This is more than double the 12 per cent growth in the Whitehorse CPI forecast for the same period.

Inflation has cooled

After more than a year of local inflation being among the highest in Canada, growth in the Whitehorse CPI has trended down throughout 2023 and is once again below the national rate. January 2024 inflation of 2.6 per cent was the lowest since 1.1 per cent in March 2021.

Chart 8. Local inflation is now tracking below the national rate²¹

Whitehorse CPI, Contribution to year-over-year change (per cent)



Source: Statistics Canada, Department of Finance

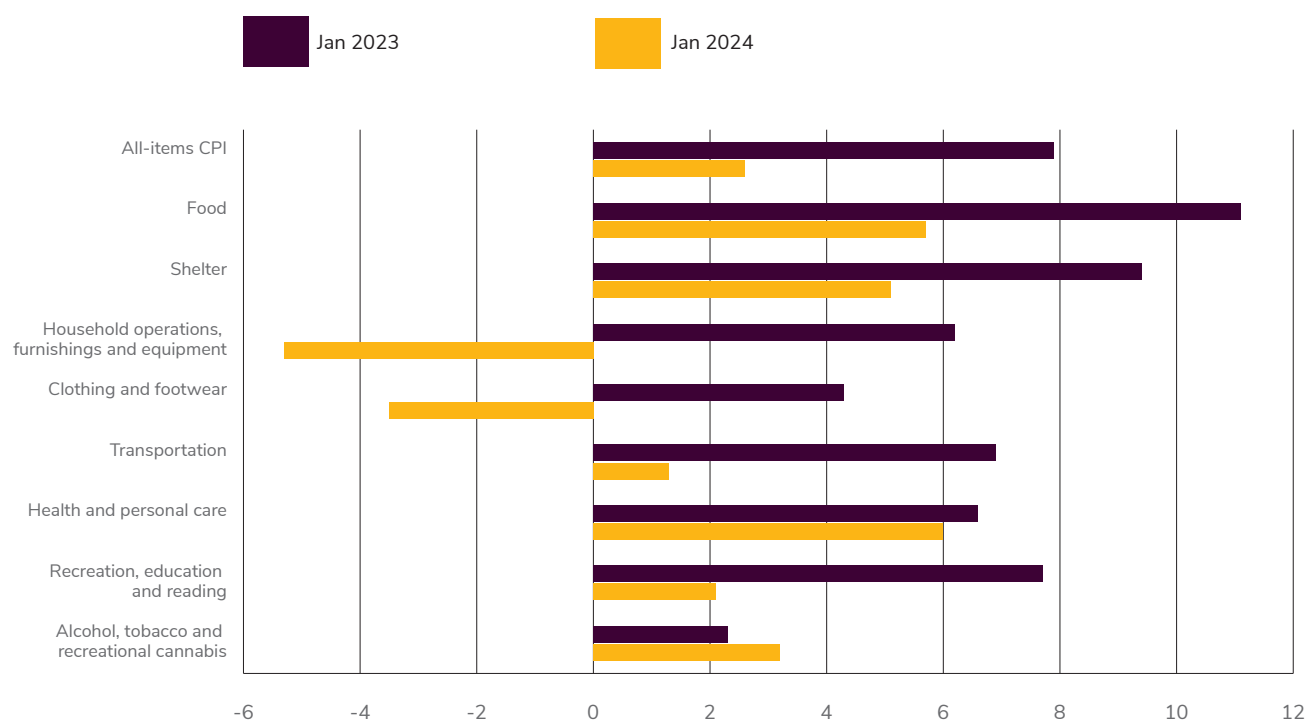
21. 'Other' represents the combined contributions of health and personal care, household operations, furnishings and equipment, clothing and footwear, and alcoholic beverages, tobacco products and recreational cannabis.

Prices for 'food', 'shelter' and 'recreation, education and reading' continue to rise at levels above historic norms and remain the largest contributors to overall price growth. However, all areas have reported much weaker growth in recent months. Shelter costs continue to drive inflation via higher 'mortgage interest costs', 'rent' and 'homeowner's replacement costs'.²²

Tourism's strong rebound coming out of the pandemic continues to drive 'traveller accommodations'²³ and this has also been reflected in price growth in the 'recreation, education and reading' component of the Whitehorse CPI. While still high, inflationary pressures in this area eased later in 2023. As shown in Chart 9, inflation is much improved for most of the key components of the CPI for Whitehorse, with year-over-year contractions noted in some areas.

Chart 9. Broad-based improvement in inflation

Whitehorse CPI, Year-over-year change (per cent)



Source: Statistics Canada

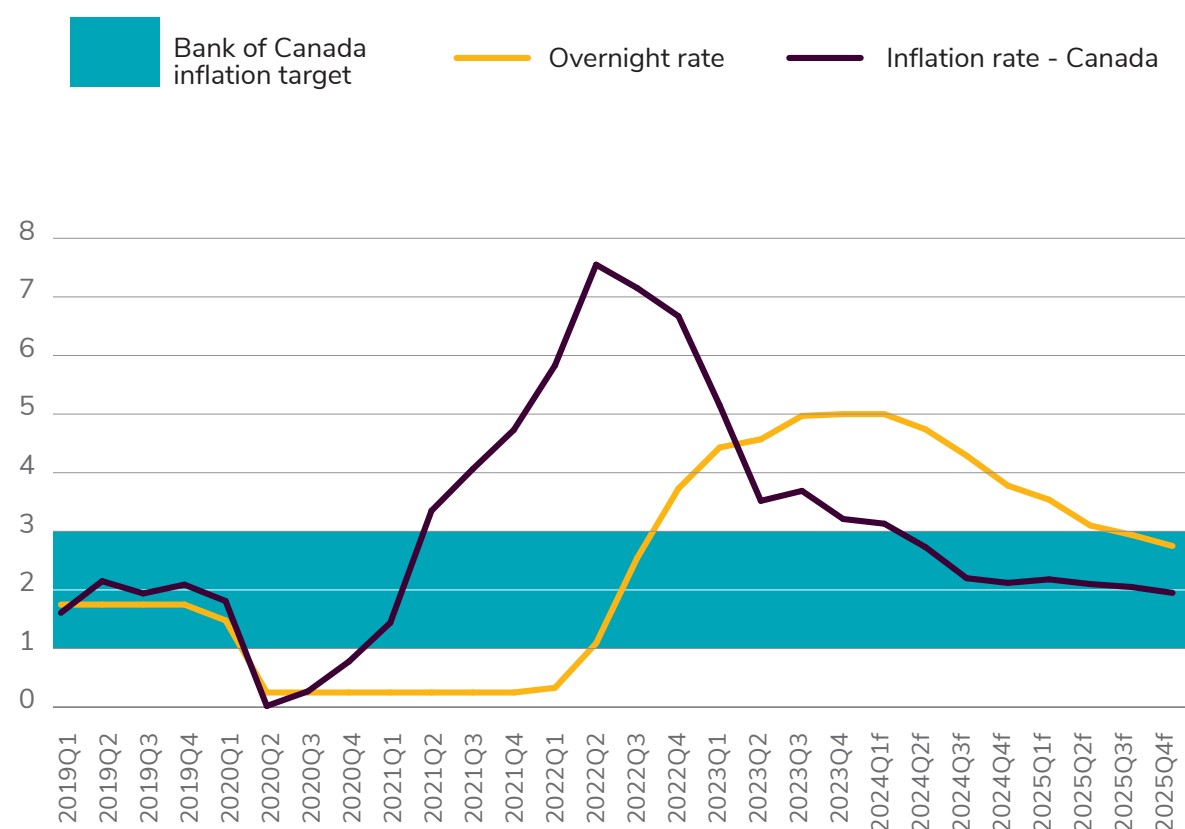
22. Replacement costs reflect an imputed value for the depreciation costs faced by households that own their home. Essentially, it is a cost attributed to the amount a homeowner would spend to maintain the home's market value.

23. As of 2016, adjustments to account for a portion of consumer expenditures on accommodations services taking place out of the consumer's province or territory are no longer made.

Actions taken by the Bank of Canada to rein in inflation by cooling the economy appear to be having the desired effects. The national labour market has softened, consumer spending has slowed and real GDP has leveled out. Following ten increases in the overnight rate since March 2022, the discussion among many analysts has shifted towards the timing of potential rate cuts. According to the Bank, with weaker Canadian growth “overall supply has caught up with demand and the economy now looks to be operating in modest excess supply”,²⁴ and inflation should continue to move toward the mid-point of their 1 to 3 per cent target. Most analysts believe that the Bank will take a cautious approach in reducing its key borrowing rate for fear of cutting rates prematurely. As such, rates are not likely to begin falling until at least the second half of 2024.

Chart 10. Key interest rate expected to fall with inflation

Canada CPI change (per cent), Overnight interest rate (per cent)



Source: Statistics Canada, Bank of Canada, Public forecasts²⁵

24. News release – Bank of Canada maintains policy rate, continues quantitative tightening (January 24, 2024). Bank of Canada.

25. Forecasts for the overnight rate are informed by various public forecasts, including Canada’s major banks.

The Bank's efforts to tame inflation appear to have set the stage for a soft landing for Canada, as inflation is trending down without an accompanying sharp downturn in economic activity. In addition, weaker energy prices and improving supply chains have helped to contribute to a much-improved national inflation picture. Before the recent period of elevated inflation, prices in the Yukon had tracked close to the national trend. After averaging 3.9 per cent in 2023, the Bank expects national inflation to fall to 2.8 per cent in 2024 and 2.2 per cent in 2025.²⁶ As price pressures continue to recede, a similar story is expected locally, with growth of the Whitehorse CPI forecast to fall from 4.9 per cent in 2023 to 3.0 per cent in 2024 and 2.5 per cent in 2025.

Weaker home prices in recent quarters as higher interest rates soften demand

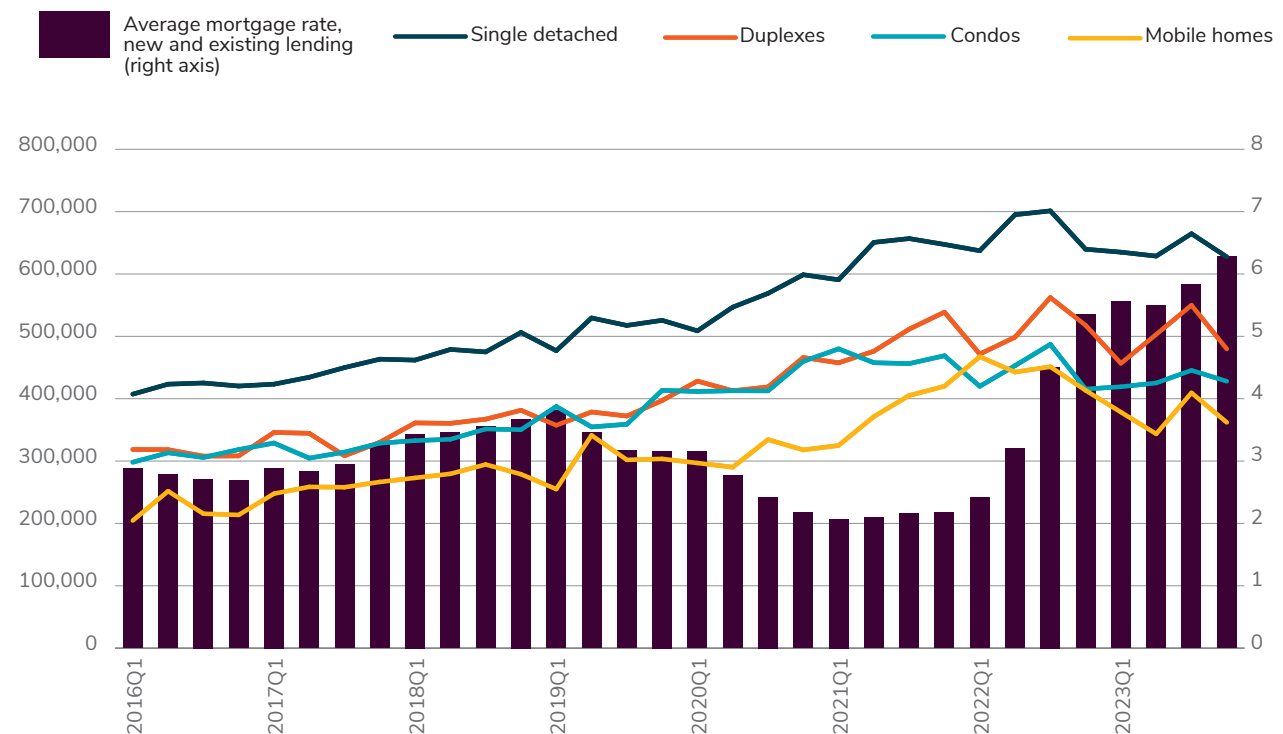
After almost six years of quarterly gains, the average price of a single-detached home has fallen in five consecutive quarters.

Prices have softened across all housing types in recent quarters. This is largely due to the appreciation of interest rates over the last two years, which have increased the cost of financing a home and tempered demand.

26. Monetary Policy Report – January 2024. Bank of Canada. (January 24, 2024).

Chart 11. While still elevated, higher interest rates have taken some steam out of home prices²⁷

Quarterly average selling price (\$), Average mortgage rate, new and existing lending (per cent)



Source: Yukon Bureau of Statistics, Bank of Canada

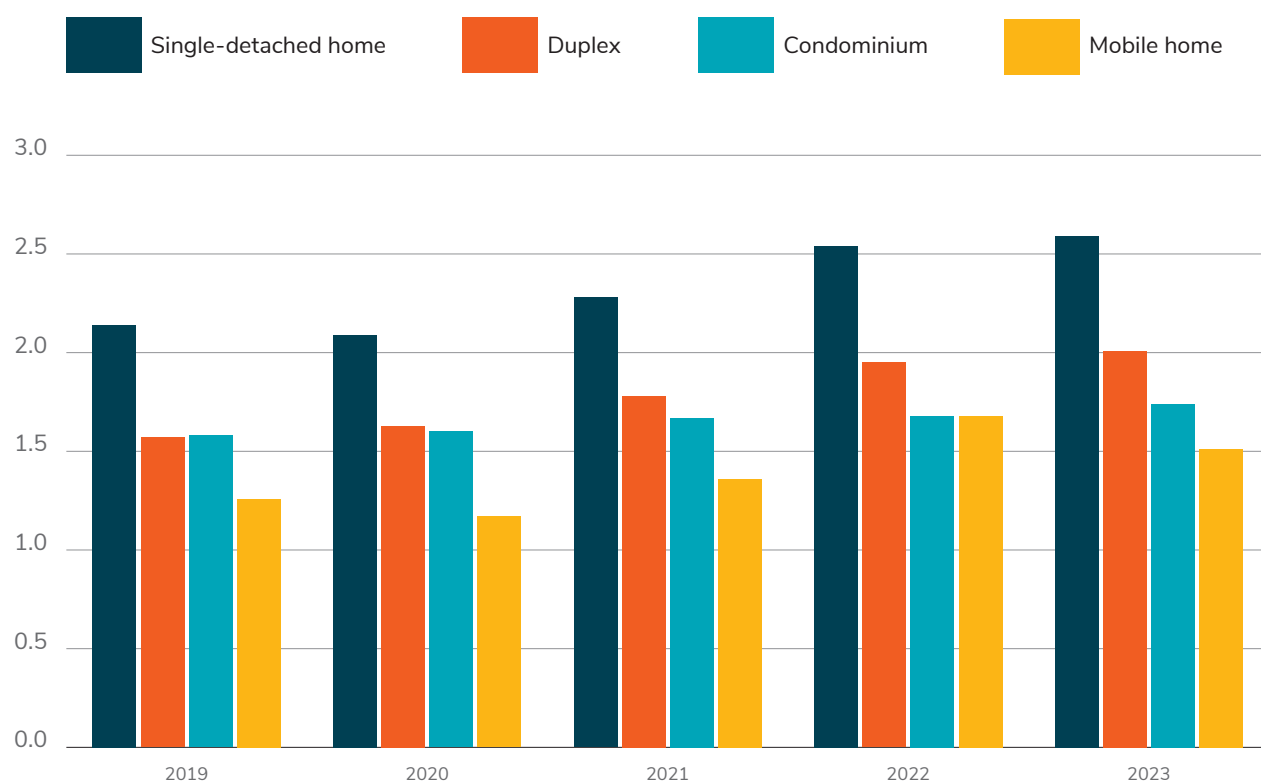
While home prices have fallen from recent records, affordability continues to be a challenge, as lower prices have been offset by increased financing costs due to higher mortgage rates. Affordability indices for various housing types in Whitehorse are presented in Chart 12.

27. The mortgage rate presented represents the average of new and existing lending by chartered banks. This figure captures rates for both variable and fixed mortgages offered, which is more variable than the posted rate.

These indices show the multiple of average Yukon earnings a household must earn to responsibly finance the purchase of housing. Higher values indicate less affordable homes. Chart 12 shows that among single-detached homes, duplexes, condominiums and mobile homes, the latter showed marginal improvement in affordability in 2023.

Chart 12. Higher interest rates negatively impacted affordability in 2023

Affordability indices, Whitehorse



Source: Department of Finance

The Whitehorse rental market remains tight, with rents continuing to climb and a vacancy rate that continues to hover near a record low. The median rent in a building of three or more units was \$1,250 in October 2023, an all-time high, and the vacancy rate of 1.2 per cent, remained quite low, only slightly higher than the 1 per cent vacancy rate reported for April 2023 or the record low of 0.8 per cent reported for April 2022.²⁸

28. Yukon Rent Survey October 2023. Yukon Bureau of Statistics. (February 2024).

With the territory's population projected to continue to grow, driven in large part by in-migration, the stage is set for housing demand to remain strong. As interest rates begin to fall, home prices could start to pick up again. The Government of Yukon is targeting the release of 200 new lots in the spring and summer of 2024. In addition, several master plans for municipalities are underway across the territory, contributing about 1,000 lots advancing towards detailed design. Land development efforts such as this may help address issues with housing supply that have contributed to higher prices and to affordability issues.

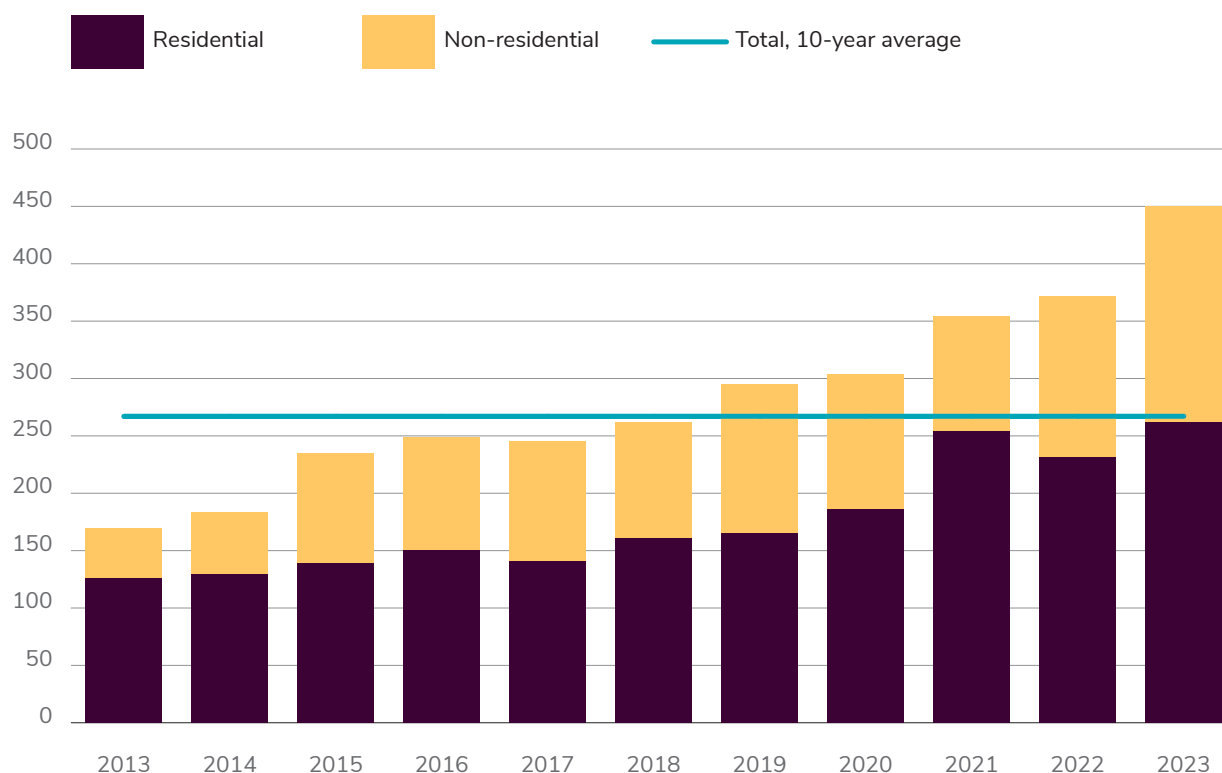
2023 was another busy year for construction

Investment in building construction reached a new record level of \$450 million in 2023, up from the previous high of \$372 million reported in 2022.

Residential building construction was up 13 per cent from the same period of 2022. Most of the growth was noted in multi-unit dwellings, particularly in renovations.

Chart 13. New record investment in building construction

Investment in building construction (\$ millions)



Source: Statistics Canada

While residential projects continue to account for a larger portion of total investment, the 34 per cent increase in non-residential investment is more than two and a half times the growth in residential investment. Commercial investment drove non-residential investment in 2023, led by substantial growth in new construction of office buildings, as well as renovation of existing office space. Non-residential investment in building construction was also supported by institutional and governmental investment, up 14 per cent to almost \$79 million. Overall gains in public investment were driven by new construction in education which grew 75 per cent to almost \$30 million, largely due to construction of the new Whistle Bend Elementary School.

Like investment in non-residential building construction, non-residential building permits saw strong growth in 2023, up nearly 60 per cent to \$234.8 million, from 2022.²⁹ Strong gains in permits for commercial projects as well as government-related projects drove non-residential permit value, accounting for almost all the growth in non-residential permit value. Permitting for a new hotel in downtown Whitehorse helped drive commercial permits, which were up 47 per cent to nearly \$137 million. Government-related permits grew 82 per cent to over \$97 million, supported by plans for a new gymnastics and climbing facility in Whitehorse and work related to the Mental Wellness Unit at the Whitehorse General Hospital. On the residential side, total permit value of about \$82 million in 2023 was down 6.9 per cent from 2022. Building permit data can be a good leading indicator of construction activity, but due to the lag that can exist between the time a permit is issued and when project spending may occur, it is not unusual for investment in building construction and permit values to show notable variance in any given year.

29. Building permits reflect spending intentions at the start of a project, and while the value can be significant, it is not spent all at once. In the case of larger projects, spending can be spread over several years.

Historically, government investment is a prominent driver of construction activity, and this will continue to be the case over the medium-term. The Government of Yukon's latest Five-Year Capital Plan includes spending of over \$2.1 billion out to fiscal year 2028–2029, with a focus on investment in several priority areas, including 'transportation infrastructure', 'land development, housing, education and health' and 'community and First Nations infrastructure'. Some of the notable projects in the Five-Year Capital Plan include about \$190 million for runway and site improvements and replacement of the air maintenance facility at the Erik Nielsen Whitehorse International Airport, up to \$90 million for completion of the Nisutlin Bay Bridge replacement; \$80–90 million for continued development of the Whistle Bend subdivision in Whitehorse; up to \$60 million for construction of housing units as part of the Government of Canada's Northern Carve-Out Fund; up to \$59 million for replacement of the École Whitehorse Elementary School in Whitehorse; up to \$32 million for the new Kêts'ádań Kù school in Burwash Landing; and up to \$22 million to construct a new gymnastics and climbing facility in Whitehorse.

The City of Whitehorse's latest capital expenditure program also identifies about \$305 million in proposed spending on capital projects from 2024 to 2027.³⁰ With spending of over \$155 million, 'engineering services' represents more than half of total spending. Included in this spending is over \$57 million to address the threat of further landslides along the escarpment on Robert Service Way after two landslides in the last couple of years closed a section of this road for several weeks.³¹ Over \$60 million is also identified in projects related to water and waste systems, along with notable spending related to construction and reconstruction activities in several Whitehorse neighbourhoods.³²

The Eagle Gold and Keno Hill mines to drive medium-term production

Minto Metals Corp's decision to walk away from the Minto Mine in May was the biggest story for the local mining sector in 2023. Minto was a long-time producer and a notable contributor to the Yukon's economy since production began in 2007.

Even with the loss of Minto, overall production is expected to increase in the medium-term, as both remaining hard rock mines, Eagle Gold and Keno Hill, are ramping up operations to full production.

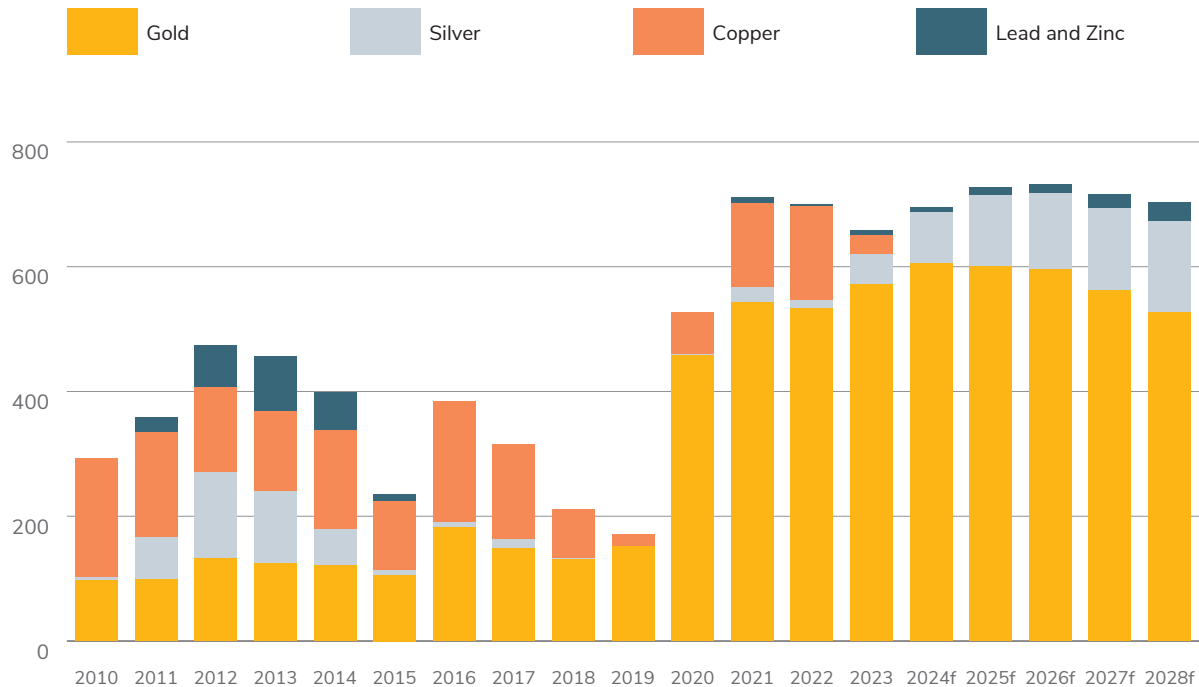
30. Proposed spending captures approved spending of nearly \$55 million, with a further \$250 million subject to external funding approval from federal and territorial funds.

31. This project is approved, but subject to external funding approval.

32. Nearly \$57 million is subject to external approval.

Chart 14. Increased production expected from the Eagle Gold and Keno Hill mines³³

Value of production (\$ millions)



Source: Department of Finance

f = forecast

Victoria Gold Corp's Eagle Gold Mine produced 166,730 ounces of gold in 2023, up over 11 per cent from just over 150,000 ounces in 2022.³⁴ Production in 2023 was a record for the project and successfully achieved Victoria Gold's production target of 160,000–180,000 ounces³⁵. The increase over the previous year is impressive given that forest fire evacuations stopped work twice in 2023. The mine continues to ramp up operations to full production, and the operator expects production to increase to as much as 185,000 ounces in 2024.

33. Due to data suppression by Statistic Canada's, data presented for 2019-2022 are based on internal estimates.

34. News release – Victoria Gold: Eagle Gold Mine Annual and Fourth Quarter 2023 Production Results (January 15, 2024). [Victoria Gold Corp.](#)

35. News release – Victoria Gold: 2023 Second Quarter Results (August 9, 2023). [Victoria Gold Corp.](#)

Operations resumed at the Keno Hill project in the second quarter of last year, with a reported 1.5 million ounces of silver produced in 2023. Silver production fell just short of the lower end of Hecla Mining Company's revised production guidance of 1.6–1.8 million ounces, which had been downgraded from expected production of 2.5–3.0 million ounces due to delays in infrastructure construction and initiatives to improve safety.³⁶ The operator expects much improved silver production in 2024, with silver production projected to increase to as much as 3.0 million ounces.³⁷

Placer gold production has long been a prominent contributor to the local mining industry. With an estimated value of \$155 million, placer gold production accounted for almost a quarter of 2023's total estimated value of mineral production. Placer gold production of about 59,000 fine ounces³⁸ in 2023 is essentially equivalent to the 10-year average. The outlook for placer gold production is complicated by a number of placer water licences set to expire over the medium-term, with some of the licences for large operations. Even with the possibility that some operators could increase mining efforts in lieu of expiring licenses, the current forecast includes an assumption of a moderate decline in placer gold production over the forecast.³⁹

On the exploration side, excluding 2020, when travel and work restrictions related to the COVID-19 pandemic greatly reduced exploration activity, estimates of exploration spending from Natural Resources Canada has been generally flat since 2017.

36. News release – Hecla Reports Third Quarter 2023 Results (November 6, 2023). [Hecla Mining Company](#).

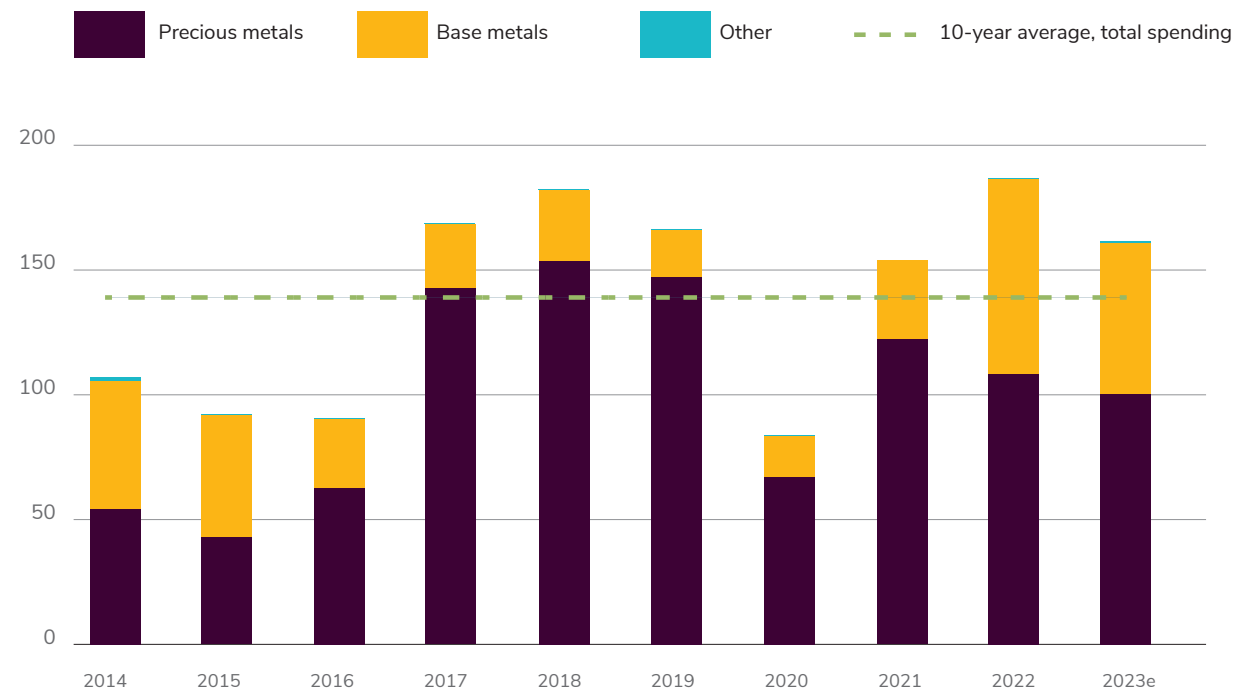
37. News release – Hecla Reports Fourth Quarter and Full Year 2023 Results (February 15, 2023). [Hecla Mining Company](#).

38. Placer gold is a natural alloy of gold and silver containing minor amounts of other metals. The purity of the gold is measured by its fineness, which is the number of parts of gold in of gold in one thousand parts of alloy. Placer gold is often reported in crude ounces, which is the weight inclusive of the other metals. Fine ounces are a measure of the gold content only.

39. In this case, a large operation is one that reports production of more than 1,000 ounces, annually.

Chart 15. Exploration spending in 2023 remained above the 10-year average

Value of mineral exploration and deposit appraisals (\$ millions)



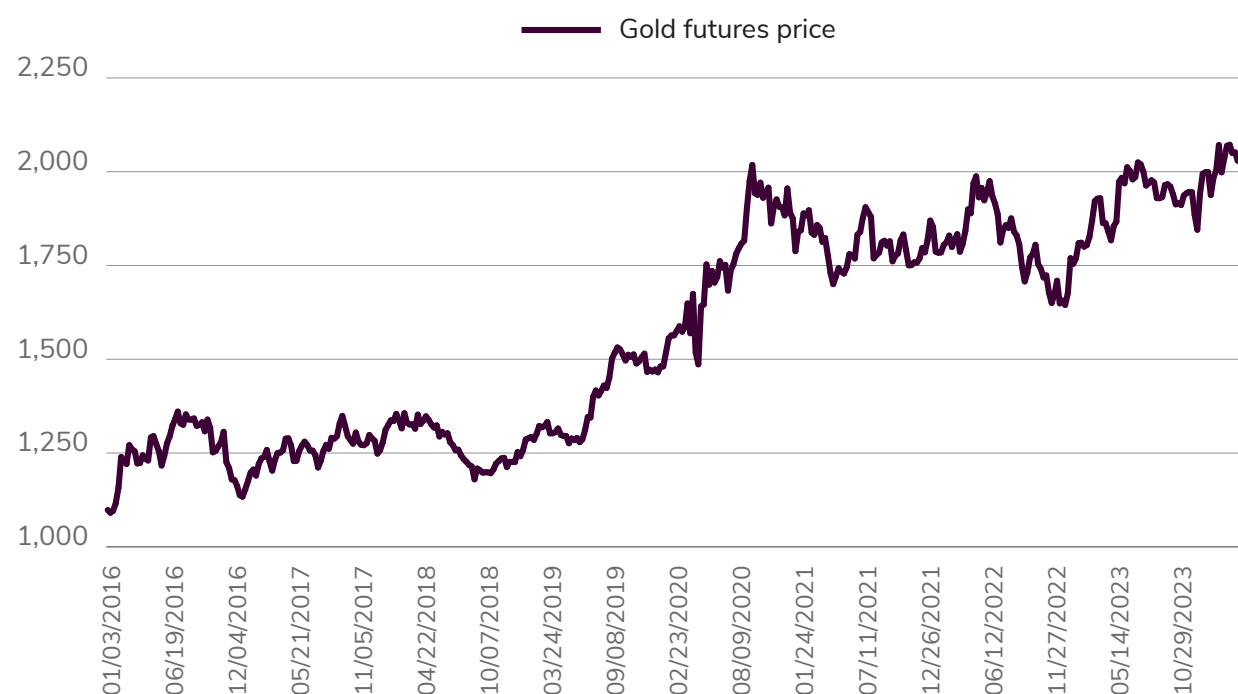
Source: Natural Resources Canada e = estimate

Exploration spending on base metals has been stronger in the last couple of years, but exploration spending remains concentrated on precious metals. The Yukon has a rich history of gold production, and the persistence of high prices has helped fuel recent exploration and should support exploration activities going forward.

Gold prices have been elevated for some time. Since averaging just over \$1,000 USD per ounce at the start of 2016, prices have doubled.

Chart 16. Gold prices touched new records late in 2023

Gold futures, Weekly average (USD)



Source: Investing.com

After averaging about \$1,900 USD per ounce in 2023, gold prices are expected to remain strong in 2024, with many forecasters projecting gold prices to average near \$2,000 USD per ounce.

Silver and copper prices also performed well in 2023, and prices of both commodities are expected to remain strong in 2024. Silver prices were up 8 per cent to near \$23.50 USD per ounce in 2023 and are expected to average near \$23.80 USD per ounce in 2024. The outlook for copper remains positive, with the price expected to average \$3.85 USD per pound over the forecast horizon.

Precious metals should continue to represent most of the exploration spending over the medium-term, but the increasing profile of critical minerals⁴⁰ could increase interest in the search for these minerals in the Yukon. The *Canadian Critical Minerals Strategy*, released in December 2022, clearly highlighted the importance the federal government was placing on minerals deemed to be critical for national and economic security. Currently, production of critical minerals in the Yukon is generally modest, but several potential mines have critical metals as prominent outputs. Recently, Fireweed Metals reported positive results from its largest-ever drill program at its Macpass project, identifying multiple wide and high-grade zones of zinc-lead-silver mineralization.⁴¹ Commitments by Canada and the Yukon to reduce carbon emissions, along with a desire to ensure energy security, sets the stage for increased exploration efforts for critical minerals.

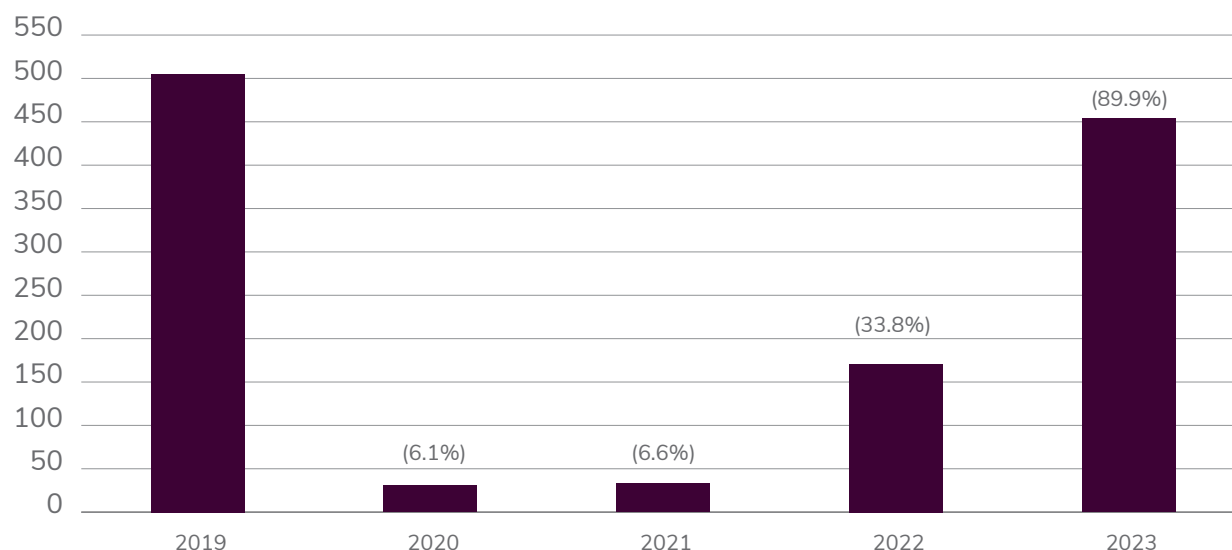
Tourism sector well on its way back, with much improved performance in 2023

Tourism's recovery gained momentum in 2023, with key performance measures having by far their best showings since COVID-19's emergence in early 2020.

Border crossings in 2023 compare favourably with pre-pandemic levels, representing almost 90 per cent of 2019 border crossings.

Chart 17. Much-improved border crossings in 2023

International border crossings (thousands)



Source: Statistics Canada

Figures in parenthesis represent the percentage of 2019 Jan – Nov border crossings for the years in question.

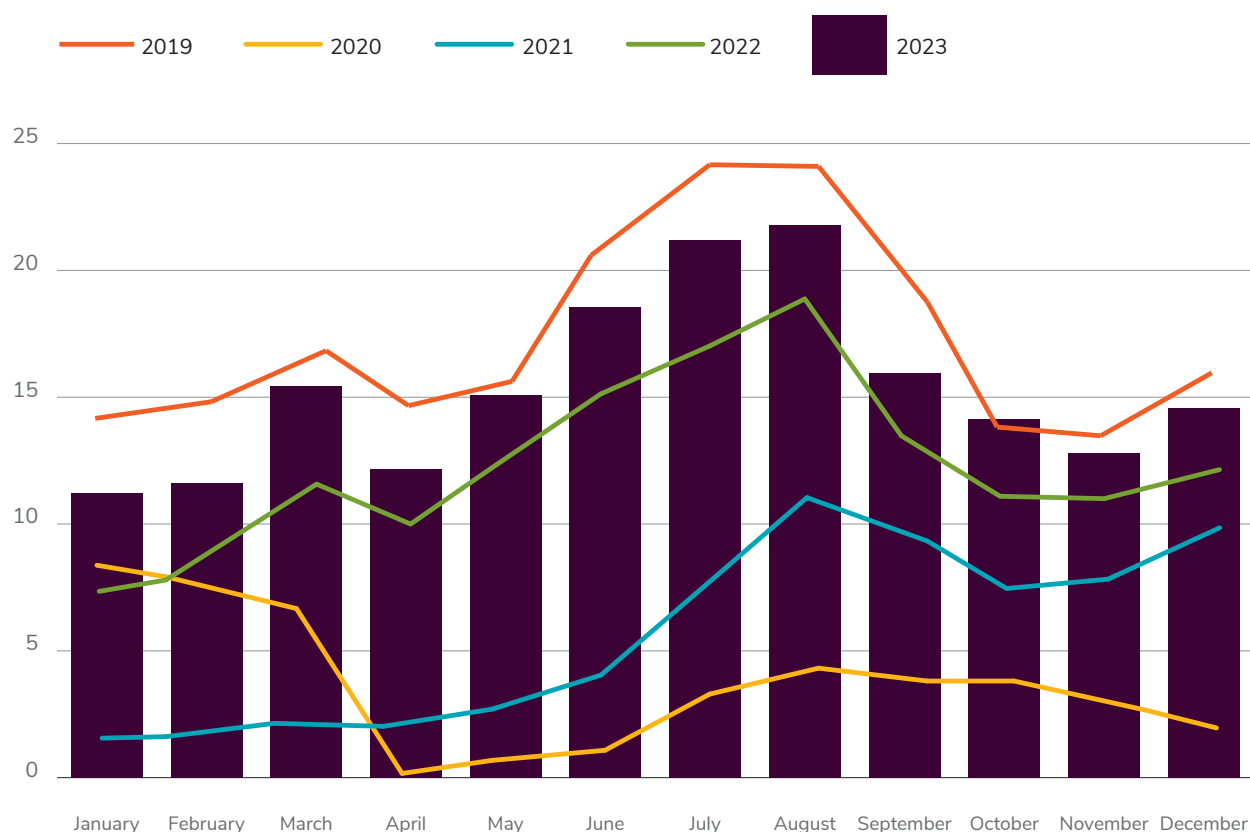
40. The *Canadian Critical Minerals Strategy*, released in December 2022, notes critical minerals as the building blocks of the green and digital economies, highlighting that “there is no energy transition without critical minerals: no batteries, no electric cars, no wind turbines and no solar panels.”

41. Gold, critical minerals top Yukon list (January 18, 2024). [Whitehorse Star](#).

Like border crossings, air arrivals in 2023 are much improved. Arrivals at the Erik Nielson Whitehorse International Airport in 2023 represent over 89 per cent of 2019 arrivals. Chart 18 shows notable improvement in arrivals in every month of 2023, with October's figure exceeding the October 2019 figure.

Chart 18. Strong year-over-year gains in air arrivals in every month of 2023

Arrivals (deplaning passengers, thousands) at Erik Nielson Whitehorse International Airport



Source: Highways and Public Works, Tourism and Culture

A resurgence in travel is also reflected in improvements in other metrics. The average hotel occupancy rate^{42,43}, of 64.8 per cent over the first 11 months of 2023 is well ahead of 2022's occupancy rate of 56.5 per cent for the same period.⁴⁴ International overnight visitation in 2023 was also up about 19 per cent from the same period of the previous year.

42. Occupancy rate is the percentage of occupied rooms expressed as percentage of the total available rooms at a given time.

43. Figures for the occupancy rate do not capture all hotel rooms in the Yukon, with about 600 rooms captured in this calculation.

44. Trends in the Canadian Hotel Industry – National Market Report November 2023. CBRE Hotels. (December 2023).

With its recent impressive performance, the local tourism sector is well positioned for further gains over the medium-term. Overall, visitation is tracking to be back to, or ahead of, pre-pandemic levels, possibly as early as 2024. The latest *Travel Markets Outlook*⁴⁵ released by the Conference Board of Canada does highlight the potential for the recovery to be hampered by economic uncertainty in some of the Yukon's larger sources of international visitation, noting a full recovery in overnight visitation by 2025. Even with concerns about international visitation, the Conference Board of Canada expects robust growth in total visitation in the near-term, with projected growth of 11.7 per cent in 2024, followed by further growth of 9.9 per cent in 2025.

45. *Reliance on International Visitors Keeps Recovery at a Distance – Yukon's Travel Markets Outlook to 2027*. The Conference Board of Canada. (February 8, 2024).

Appendix:

Key economic indicators

	2022	2023	2024f	2025f	2026f	2027f	2028f
Gross Domestic Product (GDP)							
Real GDP (2017 \$ millions)	3,405	3,528 (f)	3,586	3,695	3,781	3,920	4,015
Per cent change	5.9	3.6	1.6	3.0	2.3	3.7	2.4
Nominal GDP (\$ millions)	3,930	4,271 (f)	4,469	4,719	4,924	5,208	5,440
Per cent change	9.4	8.7	4.6	5.6	4.3	5.8	4.4
Mineral production							
Metal production (\$ millions)	700	660 (f)	700	730	730	720	700
Labour market							
Labour force*	24,400	24,900	25,600	26,100	26,400	26,700	27,200
Employment*	23,400	24,000	24,600	24,700	25,000	25,400	25,900
Unemployment rate	4.1	3.6	4.2	5.4	5.2	4.9	4.7
Participation rate	73.1	73.2	73.6	73.4	72.8	72.7	72.8
Income							
Household income (\$ millions)	2,560	2,798	3,001	3,133	3,276	3,463	3,659
Per cent change	7.2	9.3	7.2	4.4	4.6	5.7	5.7
Consumers							
Consumer price inflation^	6.8	4.9	3.0	2.5	2.0	2.0	2.0
Retail sales (\$ millions)*	1,085	1,170	1,230	1,290	1,350	1,420	1,500
Population							
Population*	43,964	45,169	46,100	47,000	47,900	48,800	49,700
Per cent change	1.8	2.7	2.1	2.0	1.9	1.9	1.9
Key assumptions							
Gold (USD/t oz)	1,802	1,907	1,936	1,784	1,775	1,775	1,775
Silver (USD/t oz)	21.79	23.47	23.78	23.03	23.00	23.00	23.00
Copper (USD/lb.)	4.00	3.83	3.76	3.93	3.82	3.83	3.84
Zinc (USD/lb.)	1.54	1.25	1.14	1.14	1.06	1.07	1.07
Lead (USD/lb.)	0.98	0.96	0.95	0.97	0.99	0.99	0.99
Can/US exchange rate	0.77	0.74	0.74	0.78	0.78	0.78	0.78

f = forecast

^ = CPI available only for Whitehorse, annual average

* = Forecasts rounded. Annual per cent change based on unrounded figures.

Source: Statistics Canada, Bank of Canada, Yukon Bureau of Statistics

Population projections are produced by Yukon Bureau of Statistics. Metal prices forecasts are informed by various public forecasts, including Canada's major banks, the World Bank and the International Monetary Fund. All other forecasts are produced by the Department of Finance's Economic Research branch based on data available as of February 22, 2024.



Deputy Ministers, Managers, and Legal Officers Salary Grid
Effective July 1, 2024

Pay Range	Annual Min	Annual Max	Bi-weekly Min	Bi-weekly Max	37.5 Hours Min	37.5 Hours Max
Deputy Ministers						
DM00	202,799	271,299	7,773.65	10,399.38	103.65	138.66
Managers						
MG06	94,871	130,286	3,636.58	4,994.10	48.49	66.59
MG05	103,303	141,870	3,959.79	5,438.13	52.80	72.51
MG04	111,735	153,449	4,283.00	5,881.98	57.11	78.43
MG03	120,167	165,030	4,606.22	6,325.90	61.42	84.35
MG02	131,835	180,954	5,053.47	6,936.29	67.38	92.48
MG01	152,915	209,907	5,861.51	8,046.11	78.15	107.28
Legal Officers						
LE01	98,169	131,350	3,762.99	5,772.69	50.17	76.97
LE02	121,388	162,368	4,653.02	6,223.86	62.04	82.98
LE03	131,591	176,020	5,044.12	6,747.16	67.25	89.96
LM01	168,674	225,623	6,465.58	8,648.54	86.21	115.31
LM02	156,179	208,910	5,986.62	8,007.90	79.82	106.77
LM03	145,013	193,974	5,558.61	7,435.37	74.11	99.14

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Members' Salaries and Benefits

Indemnities, expense allowance and salaries of Members of the Yukon Legislative Assembly.

RESOURCES

- [2007 Report on MLA Salaries and Benefits \(//yukonassembly.ca/sites/default/files/inline-files/report-mla-salaries-and-benefits_0.pdf\)](https://yukonassembly.ca/sites/default/files/inline-files/report-mla-salaries-and-benefits_0.pdf)
- [2018 Report on MLA Salaries and Benefits \(//yukonassembly.ca/sites/default/files/inline-files/report-MLA-salaries-benefits-2018.pdf\)](https://yukonassembly.ca/sites/default/files/inline-files/report-MLA-salaries-benefits-2018.pdf)

YUKON INDEMNITIES, EXPENSE ALLOWANCE AND SALARIES

	April 1, 2021 - March 31, 2022	April 1, 2022 - March 31, 2023	April 1, 2023 - March 31, 2024	April 1, 2024 - March 31, 2025
Indemnities	\$82,130	\$83,855	\$88,215	\$93,067
Expense Allowance (taxable)	\$20,527	\$20,958	\$22,048	\$23,261
Salaries				
(a) Ministers	\$44,224	\$45,153	\$47,501	\$50,114
(b) Premier	\$66,282	\$67,674	\$71,193	\$75,109
(c) Leader of the Opposition	\$44,224	\$44,153	\$47,501	\$50,114

(d) Leader of the Third Party	\$21,967	\$22,428	\$23,595	\$24,893
(e) Speaker	\$41,076	\$41,939	\$44,119	\$46,546
(f) Deputy Speaker	\$16,405	\$16,750	\$17,620	\$18,589

To obtain total income: add the indemnity, expense allowance, and salary.

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Report and Recommendations of the 2019 Yukon Judicial Compensation Commission

PRESENTED TO: THE JUDGES AND JUSTICES OF THE PEACE OF
THE TERRITORIAL COURT OF YUKON AND TO THE
GOVERNMENT OF YUKON

Debra Fendrick
COMMISSIONER

MARCH 2021

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I. INTRODUCTION

1. The 2019 Yukon Judicial Compensation Commission (the “Commission”) was established, as required every three years since 2001, under the *Territorial Court Act*, RSY 2002, c. 217, as amended (the “*Act*”).
2. The Commission is directed by the *Act* to inquire into and make binding recommendations on salary and other benefits payable to Judges and Justices of the Peace of the Territorial Court of Yukon (referred to as the “Judges” and the “JPs” respectively), here for the three fiscal year period, April 1, 2019 – March 31, 2022.
3. Together with any matter it considers relevant, the Commission bases its recommendations on the submissions presented to it by the parties and the public regarding the factors set out under section 19 of the *Act*.
4. As is encouraged under the *Act* and a 2005 Letter of Understanding, the parties presented joint submissions regarding salary increases for JPs and medical travel insurance coverage for Deputy Judges to the Commission for review and if determined appropriate, recommendation.
5. The Judges and Government of Yukon were unable to agree on salary increases for the Judges. As a result, the Commission conducted a formal hearing on the salary issue.
6. This report sets out the Commission’s recommendations on the disputed salary issue as well as the compensation issues agreed to by the parties following the Commission’s completion of its inquiry in accordance with the *Act*

II. THE COMMISSION AND ITS MANDATE

7. The 2019 Commission, the seventh such commission under the *Act*, was established by Order in Council 2019/80, effective June 14, 2019.
8. Section 13 of the *Act* allows for a commission to consist of one commissioner or three commissioners. With the parties’ approval, Debra Fendrick was appointed as the sole Commissioner of the 2019 Commission.
9. Part 3 of the *Act* sets out the Commission’s mandate and process. The Part 3 provisions direct the Commission to conduct an independent inquiry after receiving submissions from the parties in order to make recommendations respecting all matters relating to judicial compensation submitted to it.

10. Section 19 of the *Act* lists the factors the Commission must consider in carrying out its mandate. These factors are set out and discussed in detail in this report.
11. The Commission's recommendations pertain to compensation for both the Judges of the Territorial Court, including Deputy Judges, as well as the Justices of the Peace of the Court.
12. The Commission is to operate efficiently and economically and use mediation and other consensus processes to resolve differences between the parties.
13. The consensus model principles are echoed in a 2005 Letter of Understanding ("LOU") entered into between the Yukon government and the judiciary. The LOU promotes the making of joint submissions by the parties and outlines the process for the review or hearing of the parties' submissions by the Commission.
14. The Commission is required to provide written reasons for all its final recommendations. The Commission's recommendations are binding on the Yukon government, subject to a review by the Commission if it fails to deal with a matter required of it or an error is manifest in its recommendations.
15. The Commission's role is to contribute to maintaining and enhancing the independence of the Territorial Court of Yukon (the "Court") and its judiciary through the inquiry process and the report containing its recommendations.

III. THE 2019 COMMISSION PROCESS

16. The parties and their respective representatives before the Commission are:
 - The Yukon Territorial Court Judges and Deputy Judges, represented by Alison Latimer, lawyer,
 - The Yukon Government, represented by Gary Bainbridge, lawyer, and
 - The Yukon Territorial Court Justices of the Peace, represented by Steve Smyth, president of the Yukon Justices of the Peace Association
17. As outlined under the LOU, the parties communicated with each other identifying outstanding issue and possible areas of agreement before and during a series of teleconference "check in" meetings with the Commission during the fall and winter of 2019/2020.
18. In January, 2020, the Commission caused a notice under section 26 of the *Act* to be published in Yukon newspapers advising of the Commission's creation and purpose and seeking submissions from the public.
19. No submissions from the public were received in response to the notice.

20. In January, 2020, the parties advised the Commission that they were working on possible Joint Submissions. With the parties' agreement, the Commission set a hearing date for August 7, 2020.
21. On June 26, 2020, the Government and the Judges filed a Joint Submission on medical travel insurance for Deputy Judges.
22. On July 7, 2020, the Government and the JPs filed a Joint Submission on salary, that being the only outstanding issue of compensation between those parties.
23. The Government and the Judges filed individual written submissions on the issue of salary for the Judges on July 7, 2020, together with extensive supporting materials and as well as casebooks of legal authorities.
24. Lawyers for the Government and Judges appeared before the Commission at the August 7, 2020 virtual hearing. The JPs' representative had earlier advised the Commission that he would not be attending the hearing as there did not appear to be any issues affecting the Joint Submission of the JPs and the Government.
25. At the close of the August 7, 2020 hearing, the Government and Judges requested the Commission adjourn its proceedings until sometime after the Fall 2020 sitting of the Yukon Legislature so that it could be determined whether additional submissions to the Commission in respect of judicial pensions were required.
26. Section 18 of the *Act* provides that subject to a limited review provision under section 29, the Commission's term of office ends on the filing of its recommendations. The parties jointly requested that any recommendations on salary not be filed until the parties advised, or the Commission determined, that the pension issue was resolved or need not be addressed.
27. On September 23, 2020, the parties notified the Commission that they had agreed to withdraw the pension issue from the 2019 Commission, with the Judges reserving the right to raise the pension issue before a future Commission if the pension matter was not resolved to their satisfaction.
28. On October 23, 2020, to ensure that the public had an adequate opportunity to participate in a hearing before it, the Commission determined that a further call for public submissions was necessary. A public hearing date was scheduled for December 18, 2020. Notice of the public hearing was published in the Whitehorse Star and the Yukon News on November 20, 2020. The submissions filed on behalf of the Government, the Judges and the JPs were made publicly available on the Government's website.

29. No one from the public appeared at the December 18, 2020 virtual hearing. No further submissions were received from the parties at that time.
30. On January 4, 2021, given the time lapse since the August hearing, the Commission asked for additional submissions from the Judges and the Government regarding the current financial position of the Yukon government, a factor for consideration identified under section 19(a) of the *Act*.
31. The Judges and the Government filed written submissions on January 15, 2021 regarding the following documents:
 - Yukon Government 2020 – 21 Interim Fiscal and Economic Update, October 2020 (the “Update”)
 - Yukon Monthly Statistical Review, November 2020
32. On January 22, 2021, the Commission granted leave to the Judges to file further submissions in reply to a Crime Statistics Report attached to the Government's January 15, 2021 submission, with an opportunity for the Government to respond if it wished. The Judges filed their reply on January 29, 2021. The Government advised it would not be responding to that reply.
33. On January 22, 2021, the Commission also ruled that it would consider reports of judicial compensation commissions in comparator jurisdictions described under the *Act* that had been published following the hearing and delivery of submissions. The Commission made this ruling based on the inquiry-based model of the Commission process and the past practice of the 2010 Yukon Judicial Compensation Commission, which considered judicial salary figures made known following the filing of the parties’ submissions.

IV. LEGAL PRINCIPLES APPLICABLE TO JUDICIAL COMPENSATION

34. Judicial independence is an unwritten legal norm, recognized and affirmed under Canada’s *Constitution* and *Charter of Rights and Freedoms*, section 11(d). Judicial independence is necessary because the judiciary’s role is to protect the *Constitution* and the values embodied in it and applies to both the individual, relating to the independence of a particular judge, and institutionally, relating to the independence of the court the judge sits on. Public confidence depends on the judiciary both being independent and being seen to be independent.¹
35. Judicial independence necessarily includes financial security for the judiciary, whose salaries are paid by the government of the province or territory where the court is situated.

¹ *Cameron v. Yukon*, 2011 YKSC 35 at para. 12

36. Prior to the Supreme Court of Canada's decision in the *PEI Reference* case², salary negotiations occurred in some provinces between provincial court judges or their associations and the government, sometimes resulting in lawsuits and public debate with the danger that the public might think that judges, no matter how independent they were in fact, could be influenced either for or against the government because of issues arising from the salary negotiations.
37. As a result, the Supreme Court of Canada declared that judicial compensation commissions were to be the sole forum for discussion, review and recommendations to a provincial government on judicial compensation issues.
38. Based on recommendations by Ted Hughes in 1998, following an inquiry requested by Yukon's Minister of Justice, the *Territorial Court Act* was amended to establish a judicial compensation commission process for Territorial Court Judges. Subsequent amendments were passed to include Justices of the Peace in the same process.
39. The Commission process is designed to operate efficiently and economically and encourages the use of consensus for parties to resolve their compensation differences. Only if the parties are not able to reach consensus, does the Commission hold a hearing.
40. The Commission itself is directed to employ consensus processes to assist the government and judiciary in resolving their differences.
41. Following the first few Commission reviews and pursuant to the direction in section 24(2) of the *Act* that mediation and other consensus processes be used, the Judges, the JPs and the Government signed a Letter of Understanding in January, 2005. The LOU outlines informal procedures for the parties to follow to address their outstanding compensation issues consistent with the established legal principles and the *Act*, while preserving a formal hearing procedure if the informal procedure proves unworkable.
42. If the discussions between the parties under the LOU result in agreement, the Commission is to examine any Joint Submission(s) arising from that agreement and if accepted, disclose them in the Commission's report and recommendations.
43. The judicial compensation commission process is neither adjudicative interest arbitration nor judicial decision-making. Its focus is to be on identifying the appropriate remuneration for the judicial office in question.³ The Commission is not obliged to adopt a Joint Submission, but should exercise caution in substituting its opinion in place of the parties' agreement.⁴

² *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1973] 3 SCR 3

³ *Cameron v. Yukon*, *supra* at para. 100

⁴ 2016 Yukon Judicial Compensation Commission Report, p. 15

44. It is preferable that reasonably detailed reasons be given for the Commission's recommendations, even when it has accepted a Joint Submission, in part because the reasons may be of assistance to the work of future commissions.⁵
45. Section 19 of the *Act* states that "the commission shall, in addition to considering any matter it considers relevant, address in its report submissions presented to it regarding" certain enumerated or mandated factors.
46. The enumerated factors under section 19 are:
 - a. the current financial position of the government;
 - b. the need to provide reasonable compensation to judges;
 - c. the need to build a strong core by attracting qualified applicants;
 - d. the unique nature of the Yukon;
 - e. compensation provided to judges in the Northwest Territories, British Columbia, Alberta and Saskatchewan;
 - f. the laws of the Yukon;
 - g. the cost of living in the Yukon; and
 - h. any submissions filed by the public.
47. The Commission is of the view that section 19 should not be interpreted to apply only to "unresolved issues" but also where submissions are joint, that is where there is no disagreement or dispute on the issues between the parties.
48. Ultimately, whether the parties reach consensus or present unresolved issues to the Commission, it remains the mandate of the Commission to inquire into and make recommendations to the Yukon government on all matters of judicial compensation. The Commission must consider the parties' submissions on the criteria described under section 19 of the *Act*, together with any matter the Commission considers relevant, in making its recommendations.
49. The Commission's recommendations regarding judicial remuneration are binding on the Yukon government except to the extent that they exceed the highest total value of judicial remuneration provided to territorial or provincial judges of British Columbia, Alberta, Saskatchewan or the Northwest Territories.

V. ISSUES BEFORE THE COMMISSION

50. The following is a summary of the issues the parties asked the Commission to consider in making recommendations for the Judges' and JPs' compensation for the term of the Commission's review:

⁵ *Cameron v. Yukon*, *supra* at para. 104

Salary:

1. What should the Commission recommend Judges receive for salary for the period April 1, 2019 – March 31, 2022?
2. What should the Commission recommend JPs receive for salary for the period April 1, 2019 – March 31, 2022?

Medical Travel Insurance for Deputy Judges:

1. Should the Commission recommend Deputy Judges of the Territorial Court receive an annual stipend to defray the cost of medical travel insurance while travelling to or working on court business in Yukon?

VI. SUMMARY OF PARTIES' POSITIONS ON THE ISSUES

51. As has been the practice regarding the setting of judicial remuneration across Canada since the *PEI Reference* case and expressly reflected in the *Territorial Court Act*, the parties are encouraged to identify and reach common ground on any outstanding issues of compensation prior to a hearing before the Commission.
52. In the case of the JPs and the Government, the parties agreed and presented a Joint Submission that the JPs receive a 2% per year increase to their hourly wage, effective April 1st of each year from 2019 – 2021, for all three JP categories.
53. The Government and JPs further agreed that all other terms, benefits, allowances and stipends in effect for the hourly paid JPs were to remain unchanged.
54. Similarly, the Government and the Judges were able to agree on one compensation benefit: medical travel insurance for Deputy Judges of the Court. In a Joint Submission, the Government agrees to provide a once annual stipend of \$220.00 to a Deputy Judge attending Yukon to cover the premium cost of medical insurance during the travel of the Deputy Judge to and from Yukon, as well time actively working in the Yukon. If the Deputy Judge chooses not to purchase travel insurance, the Deputy Judge may keep the annual payment of \$220.00.
55. The Government and the Judges also agree that all other compensation benefits for the Judges should remain unchanged. They agree that the single remaining issue between them is the salary to be paid to the Judges.
56. Both the Government and the Judges agree that the Judges' salaries should be increased, effective April 1 of each year, 2019 – 2021. Where they differ is on the amount of that increase.
57. The Judges say that for Yukon Judges to “catch up” and retain parity with judges in comparator jurisdictions, specifically the Northwest Territories and Saskatchewan, the

Judges should receive a one-time lump sum salary increase of \$14,000.00 (4.9% of their 2018 salary) effective April 1, 2019.

58. For 2020 and 2021, to allow for the economic uncertainty due to the pandemic but prevent erosion due to inflation, the Judges ask that their salaries be increased by the greater of 0% or a percentage equal to the Consumer Price Index increase for Whitehorse for the previous year ending December 31.
59. In response, the Government says that the increase in income for the Judges, relative to inflation, over the last 19 years, together with their robust judicial pension and other benefits, ensures that the Judges are sufficiently compensated to maintain their judicial independence. As a result, given the grave economic uncertainty caused by the COVID-19 pandemic, the Government proposes that the Judges salaries be increased by 0.5% effective April 1, 2019 followed by a further 0.5% increase on April 1st in each of 2020 and 2021.
60. The Government and the Judges expanded on their positions in their filed written submissions as well as their verbal submissions at the August 7, 2020, hearing before the Commission. Each party referred extensively to information they filed in support of their submissions regarding the section 19 factors under the *Act*, which must be considered by the Commission in making its recommendations.

VII. SUBMISSIONS OF THE PARTIES AND COMMISSION'S ANALYSIS

A. Joint Submission: Justices of the Peace Salary

- The JPs and the Government of Yukon were able to agree on the amount of a reasonable salary increase for JPs and placed a joint submission before the Commission for approval, if considered appropriate.
- The joint submission proposes an increase of 6% in total over the three years covered by the Commission's mandate. The parties ask the Commission recommend that effective April 1, 2019 the pay rate for hourly paid JPs be increased by 2% per year as follows:

JP 1: April 1, 2019: from \$45.00/hour to \$45.90/hour [2% increase]

April 1, 2020: from \$45.90/hour to \$46.82/hour [2% increase]

April 1, 2021: from \$46.82/hour to \$47.75/ hour [2% increase]

JP 2: April 1, 2019: from \$50.00/hour to \$51.00/hour [2% increase]

April 1, 2020: from \$51.00/hour to \$52.02/hour [2% increase]

April 1, 2021: from \$52.02/ hour to \$53.06/hour [2% increase]

JP 3: April 1, 2019: from \$70.00/hour to \$71.40/hour [2% increase]

April 1, 2020: from \$71.40/hour to \$72.83/hour [2% increase]

April 1, 2021: from \$72.83/hour to \$74.29 per hour [2% increase]

61. In their December 2, 2019 position letter in support of the Joint Submission, the JPs refer to a recent 12% increase in electrical rates as well as an expected \$460 per year increase in food prices. The JPs anticipate that other consumer expenses will rise as fuel costs rise because of new carbon taxes.
62. The JPs submit that a number of its members are retired people living on fixed incomes so that any increase in income is helpful.
63. The JPs submitted that Justice of the Peace are the "front line" of the Yukon justice system and that most Yukoners who become involved with the justice system interact with JPs or are impacted by a decision of a JP.
64. The JPs referred to a Yukon Judicial Council statement that "Justices of the Peace have evolved as an indispensable and essential part of Yukon's judicial system. Access to justice requires trained active justices in each community." Further "owing to the widely dispersed Yukon population, a properly functioning and vigorous justice of the peace program is essential for the proper administration of justice in the territory."
65. The JPs also refer to the dynamic state of the laws in Canada and Yukon, with the consequence that Yukon JPs must stay current with changes in the law. They refer to changes in the *Criminal Code* relating to impaired driving and bail hearings, new Cannabis legislation, new summary conviction tickets and new forms and court procedures which impact their work.
66. The JPs submit that they are actively engaged in working with the Judges of the Territorial Court to ensure their training needs meet the needs of the Court. The JPs confirm their commitment to training to improve their ability to deliver quality services to the Court and people of the Yukon.
67. The Government submitted that that proposed hourly rate increases for the JPs are comparable to salaries of Justice of the Peace positions in the comparator jurisdictions identified under section 19 of the *Act*:
 - In British Columbia, Justices per day rate is \$778 or \$93.38 per hour although new Justices must have a law degree and been practicing for five years
 - In Alberta full-time Justices' wage rate is \$120 per hour; since 1999, sitting Justices must have a law degree and practice for five years
 - In Saskatchewan, Justices are entitled to 51% of the Provincial Court Judges' salary, which works out to an hourly rate of \$88.11 per hour
 - Northwest Territories Justices of the Peace receive \$480/year for being "active"; they also receive \$55/hour or \$65/hour to a maximum of \$335 or \$395 per day (respectively) depending upon whether assigned administrative or sitting duties
68. The Government and JPs agree that all other terms, benefits, allowances, stipends in effect for hourly rated Justices of the Peace in the Yukon should remain unchanged.

Commission Analysis

69. First, regarding process, the Commission notes each party had their own reasons for supporting the Joint Submission, indicating an absence of pressure or coercion. There was no indication that the process leading to the joint proposal was inappropriate in any way.
70. Second, in terms of substance, the Commission reviewed the Joint Submission in light of section 19 of the *Act* and concludes as follows:
 - (a) For reasons more fully set out in the report pertaining to Judges' salaries, the current financial position of the Yukon government, although showing a deficit in 2020, as a result of pandemic relief measures, is relatively strong and appears able to provide for the proposed hourly rate increases;
 - (b) JPs, as judicial officers of the Court, are entitled to financial security as part of ensuring judicial independence in the Court
 - (c) JPs perform an important and essential role in Yukon's justice system; there is a need to attract and maintain qualified applicants, a component of which is reasonable compensation, particularly to JPs who are retired persons living on a fixed income
 - (d) JPs reside in Whitehorse as well as the outlying communities and can be called upon outside typical working hours to perform their judicial responsibilities; the JPs undergo ongoing training outside their sitting responsibilities to keep current on the law and procedure in the Court
 - (e) The hourly rates proposed place Yukon JPs in relative parity with their counterparts in NWT; the salaries are lower than in the provincial comparators, noting that two of the provinces require that JPs have law degrees and five years' experience as a lawyer, which is not a requirement in Yukon
 - (f) JPs have broad judicial duties, particularly in Yukon communities to which Judges travel only on circuit court; JPs need and want ongoing training in the laws they administer
 - (g) The cost of living in Yukon has increased according to the Whitehorse CPI statistics for 2019 and 2020 and the evidence provided by the JPs in terms of electrical rate and food cost increases.
71. After reviewing the evidence in light of the section 19 factors, the Commission concludes that the joint proposal regarding the salary increase for the JPs is reasonable and recommends it be implemented.
- B. Joint submission of the Judges and Government of Yukon regarding medical travel insurance for Deputy Judges**
72. The Judges and the Government agreed on the issue of medical travel insurance coverage for Deputy Judges of the Court and submitted a Joint Submission for consideration by the Commission for approval, if considered appropriate.

73. In their written submission, the Judges propose that Deputy Judges be provided with medical travel insurance for the periods that they are working as Deputy Judges, including travel to and from Yukon.
74. In its written submission, the Government stated that because they are not considered to be employees, Deputy Judges are not eligible to enroll in the medical insurance plan available to Territorial Court Judges for travel to and from Yukon, or their work while in Yukon. The Government states that the Joint Management Committee, comprised of Yukon government employee representatives, cannot be mandated to allow Deputy Judges to enter into the plan. The JMC has previously refused or limited access to the plan to individuals employed at arm's length from the Government of Yukon. The Government submits that the JMC may have concerns how the external group of Deputy Judges would affect the experience or cost of the plan.
75. The Government further submits that the current plan includes specific terms and conditions for eligibility which Deputy Judges would not be able to satisfy, for example active employment for minimum of 90 days before coverage comes into effect.
76. As a result, the Government has sought alternatives, such as providing insurance through a private carrier. Medical insurance coverage for out-of-province travel is understandably quite difficult to obtain at present given the concerns of the COVID- 19 pandemic.
77. The Government located one private carrier insurance plan which would require proof of medical eligibility for applicants over 59 years of age and a self-declaration if an individual is a smoker. The Government submits these requirements may raise potential privacy concerns for the Deputy Judges.
78. The Government submits that to meet the Judges' request for medical travel insurance coverage for Deputy Judges, an annual payment be made to each Deputy Judge who travels to work in Yukon. The payment would be comparable to the premium that would be charged for medical travel insurance.
79. The Government submits that each individual Deputy Judge could decide if they wish to obtain insurance or not. If not, the Deputy Judge could then simply keep the annual payment. The government submits that the annual premium payment of \$220.00 should be sufficient to cover all or the majority of the premium for all or the majority of Deputy Judges.
80. The Government and Judges propose that the Yukon government provide a once annual stipend of \$220.00 if a Deputy Judge attends the Yukon. This stipend is intended to cover the premium for medical insurance during the travel of the Deputy Judges to and from Yukon as well as time actively working in the Yukon as opposed to presence for personal reasons.
81. The parties further agree that if Deputy Judges choose not to purchase insurance, the Deputy Judge may keep the annual stipend.

Commission Analysis

82. The lawyers representing the Government and the Judges are very experienced and knowledgeable in the issues of Yukon judicial compensation. The parties they represent are highly sophisticated in matters of law and procedure. The Commission, like its predecessors, is cautious of substituting its opinion for a joint position of the parties regarding compensation, unless the Commission is convinced that the joint position is unreasonable, illogical or otherwise questionable as stated by the Yukon Supreme Court in the *Cameron* case.⁶
83. The Commission sees no need either on the basis of process or substance to not approve the joint submission on the issue of medical travel insurance coverage for Deputy Judges.
84. The modest amount proposed satisfies the need for Deputy Judges, an important component of the administration of the work of the Territorial Court, to be protected while on Court business in Yukon. The Commission recommends the joint submission regarding medical travel insurance for Deputy Judges be implemented.
- C. Individual submissions on Judges' Salaries**
85. The Judges and Government advise that the single compensation issue on which they could not agree was salary for the Judges.
86. The parties did not propose any modifications to any other terms, benefits, allowances or stipends in effect for the Judges save for salary and medical travel insurance for Deputy Judges.
87. Regarding salary, the Judges and Government agree that the Judges are entitled to an increase in salary. They differ on the percentage or amount of the salary increase, as summarized in the table below.

	Government Submission	Judges' Submission
April 1, 2019–March 31, 2020	\$288,650.00 (0.5% increase)	\$301,213.00 (4.9% increase)
April 1, 2020–March 31, 2021	\$290,093.00 (0.5% increase)	2019 salary + 0% or CPI % increase for Whitehorse (whichever is greater)
April 1, 2021–March 31, 2022	\$291,543.00 (0.5% increase)	2020 salary + 0% or CPI % increase for Whitehorse (whichever is greater)

⁶ *Cameron v. Yukon*, *supra* at para. 100

88. Each party presented evidence and written and oral submissions to the Commission to support their respective positions according to the factors enumerated under section 19 of the *Act*.
89. In conducting this inquiry, the Commission is mindful that no one section 19 factor is deemed more important than another; the Commission's report must show the Commission considered all the factors. However, the Commission must look at what is reasonable on the unique facts and context before it. Depending on those facts and context, the importance of each factor will vary from commission to commission.⁷
90. Although each commission makes its assessment in its own context, the starting point is ideally the date of the previous commission's report.⁸ The 2016 report was filed on January 18, 2019 for the fiscal period April 1, 2016-March 31, 2019 and recommended the joint proposals filed by the parties.
91. In conducting its inquiry and considering the section 19 factors, the Commission must review the circumstances arising after the previous Commission report and determine what impact those circumstances have had on the fairness of the existing compensation and if there is impact, suggest changes.⁹
92. Below is a summary of the submissions of the Judges and the Government, followed by the Commission's analysis, according to each section 19 factor.

s. 19(a): the current financial position of the government

92. Judges' Submissions

- Yukon's economy is strong and robust.
- COVID19 did not impact Yukon's economy in 2019
- COVID19 may have some economic impacts in 2020 –2021
- Such impacts not likely to be significant in Yukon
- Structure of Judges' submission is flexible to accommodate impacts
- The Conference Board of Canada [CBC], from summer of 2019 forecasts Yukon's economy to grow 10% in 2020, 5.3% in 2021 and 3.6% on average to 2025
- The CBC report forecasts increase in the consumer price index (CPI) as follows:
 - 2019 – 2.1%
 - 2020 – 2.1%
 - 2021 – 2.0%
- Actual CPI for Whitehorse in 2019 was 2%
- The Yukon government budget passed in March 2020 forecast GDP to grow as follows:
 - 2019 – 1%
 - 2020 – 6.2%
 - 2021 – 2024 – 3.3% on average

⁷ Report of the 2016 Judicial Compensation Commission, British Columbia, p. 42

⁸ Report of the 2016 Judicial Compensation Commission, British Columbia, p. 4

⁹ 2005 Yukon Judicial Compensation Commission Report, p. 5

- The Yukon government 2020-21 Interim Fiscal and Economic Update based on August 2020 data, revised the forecast for growth in Yukon's GDP as follows:
 - 2019 – 1%
 - 2020 – 0.8%
 - 2021 6.9%
- The government revised its forecast for increases in CPI
 - 2019 – 2.0%
 - 2021.2%
 - 2021 2.0%
- Yukon's March 2020 budget did not signal any concern about economic impact of COVID-19 on Yukon's economy
- Budget documents suggest mining is a major driver of Yukon economy
- Mining declared an essential service in March 2020 and not likely to be impacted by COVID-19
- First quarter of 2020 Yukon's economy outpaced national growth in earnings
- Yukon saw a decline in economic activity because of COVID-19 pandemic
- Government has increased operating and maintenance expense spending, to 0.8% above the 20-year average
- Yukon and Nunavut are only jurisdictions expected to see the real GDP growth in 2020 despite the pandemic
- Yukon has seen continued growth in personal incomes and average earnings continue to increase, outpacing the national growth rate
- Yukon has seen continued strength and resilience in the housing sector
- Yukon retail sales have rebounded to almost the same level as 2019
- Yukon government has been progressing and staying largely on target on most capital projects planned
- Yukon has seen robust strength in the mining sector
- Yukon's unemployment rate remains among the lowest in Canada
- Yukon continues to have population gains for the 17th consecutive year and growth is forecast to continue
- Whitehorse's population has increased by 24.2% in last 10 years
- The federal transfer payments to Yukon for 2020 – 2021 will round \$1,116 million, an increase of \$59 million from 2019 – 20
- Yukon's construction industry remains active; residential construction exceeded 2019 and non-residential construction would be buoyed in the medium term by development of mining operations
- Yukon attained a balanced-budget in 2019
- Yukon's response to the COVID 19 pandemic resulted in increased spending, which was offset by federal transfers
- Revised forecast shows a deficit of \$31.6 million in 2020 – 21; no revised forecast offered for the following years
- Submit there is optimism for projected balanced budget and about the Yukon economy in general.
- Note that as of May 1, 2020 11 people had been infected with COVID 19; as of January 12, 2021, Yukon had six active cases of COVID 19

- Yukon is scheduled to receive sufficient vaccines to immunize all adult Yukoners who would like to receive the vaccine in the first three months of 2021 with vaccinations already underway

93. **Government Submissions**

- According to its budget documents of March 2019, Yukon government projected the following deficits and surpluses:
 - 2018 – 2019 [Main]: \$4.5 million deficit
 - 2018 – 2019 [sup estimates]: \$7.1 million deficit
 - 2019 – 2020 [main estimates]: \$5.9 million deficit
 - 2020 – 2021 [plan]: \$5 million surplus
 - 2020 – 2021 [plan]: \$3.7 million surplus
- Government relies on accumulated financial resources and surpluses to offset recent annual deficits
- Prior to the onset of the COVID-19 pandemic, governments net financial resources show debt was \$60,768,000
- Projections of net debt are expected to change in fall of 2020, given the effects of COVID-19
- Now is simply not the time for significant pay increases; appropriate watchword is caution
- Treat financial information available at the time of hearing in August 2020 with caution as all pre-COVID
- Legitimate that pandemic concern does not apply to 2019 financial position
- Rationale is to take money available from 2019 and spread it over 3-year term of this review
- Recommend that *status quo* be maintained because of COVID-19, with any necessary salary catch up at future review if economy rebounds
- Refer to Update statement that deterioration in outlook since March demonstrates how much uncertainty there is in economy and how dramatically economic conditions can shift; when budget tabled on March 5, 2020, there were just under 105,000 confirmed COVID – 19 cases worldwide and financial markets appear to be improving; by March 19, 2020 confirmed cases would triple and financial markets would collapse with the TSX losing 26% of its value
- While there is a case for optimism, recovery is some distance away
- COVID-19 presents much uncertainty for the future
- Even with the gradual reopening of the economy underway, 2020 will be a challenging year for Yukon's economy; fallout from the virus is expected to extend into next year and possibly beyond with potential ramifications affecting Yukon's economic and fiscal outlook.

Commission Analysis

94. The financial position of the Yukon government as described in the 2020-21 Interim Fiscal and Economic Update (the “Update”) is not as rosy as forecast in the March 2020 Budget. The Budget forecast a 1% growth in GDP in 2019, increasing to 6.2% in 2020 and falling to 3.3% on average to 2028. These figures were slightly more conservative than the

Conference Board of Canada report from the summer of 2019 which predicted a GDP increase of 2.2%, 10% and 5.3% for 2019 – 2021.

95. Both sets of positive growth figures were anchored in the operation and development of several large mines. These projects were forecast to provide significant revenue based on rising mineral prices but at the same time, put pressure on the labour market and housing and infrastructure resources.
96. The Budget and the CBC Report also forecasted the expected rate of inflation for Whitehorse, the largest Yukon community. The budget forecast inflation to increase by 2% in 2019; 2.5% in 2020 and 2% in 2021. The CBC figures were slightly different in forecasting inflation to rise by 2.1% in 2019; 2.1% in 2021 and 2.0% in 2022
97. In short, Yukon's revenues were expected to increase, relative to expenses, and inflation was expected to remain in the low single digits
98. The parties made their submissions referring to these pre-pandemic forecasts and the prevailing economic circumstances when they appeared before the Commission in August, 2020. When the Commission resumed its deliberations, the Commission asked the parties for further submissions on the economic information in the governments Update as section 19(a) refers to the "current" financial position of the government. Given the uncertainty about the economy in the early days of the pandemic, the Commission considered that more current economic information would be relevant.
99. The Commission is of the view that even though it is difficult to predict the future with certainty, the information in the government's Update shows the current financial position of the Yukon government to be relatively healthy, compared to other provinces and territories.
100. Total government revenue for 2020/2021 is now forecast at \$1.3 billion, a decrease of 0.8% or \$10 million, primarily due to the pandemic-related effects on economic activity. The Yukon government projects a 0.8% growth in GDP in 2020/21. The government forecasts a net operation and maintenance expense increase of 3.3% or \$38 million after recoveries from the federal government and third parties. 94.5% of this increase is related to the pandemic relief measures. Capital spending has decreased by 1% or \$3.7 million.
101. The Update points to growth in metal prices in 2020 and that the near – term outlook for mineral production has improved since March 2020. The projected triple increase in the value of mineral production is in contrast to the decline in tourism revenue, 5% of Yukon's GDP. At the time of this report, Yukon's mines are still operating and have not experienced any shutdowns due to the pandemic.
102. The Update notes that construction remains active with residential building construction exceeding 2019's total. Further, despite significant job losses, average earnings have grown in Yukon, increasing 6.9% from the same period in 2019.

103. Yukon's unemployment rate (2020 expected annual average of 6.9%) is among the lowest in Canada but may be understated and is still well above Yukon's February 2020 figure of 4.1%. Retail sales have rebounded after sharp drops in March and April.
104. As the Update says, COVID-19 impacts in Yukon were "worse than some, but better than most." The catchphrase in the Update, however, is uncertainty regarding the future.
105. Not surprisingly, given its role as stewards of the public purse the Government submits that because of the uncertainty caused by the pandemic, now is not the appropriate time for judicial salary increases above those they present. The Commission prefers the Judges' more optimistic outlook as evidenced by the positive economic growth factors in the Update together with the roll out of the vaccine to Yukon's population.
106. Even though revenues are expected to decrease less than 1%, the government expects to be in a forecasted \$31.6 million deficit position for 2020/2021. However, the deficit is due to pandemic related costs and economic growth is forecast to remain positive due to the underlying pre-pandemic momentum in the economy, namely mining.
107. The Commission also notes that the Yukon government continues to be in a net financial asset position, with a balance of \$171.9 million at March 31, 2020.¹⁰
108. The Commission appreciates the Government's justified concern about the pandemic's medium- and longer-term negative effect on the economy. However, the Commission's mandate is to make recommendations for the fiscal years 2019-2021. In considering the current financial position of the Government, the Commission interprets this phrase to mean relative to the term of the Commission's review. The Yukon government's financial position was positive in 2019/2020 and appears positive, especially compared to other parts of Canada for 2020/2021. The pandemic's effect on the government's financial position for 2021/2022 remains speculative. But any negative effects may well be offset by continued increases in revenue from mining and maintenance of federal transfer payments.
109. To date, the Government has not enacted any broad policy initiatives or cost-saving measures such as salary freezes, in response to anticipated negative economic performance. Universal austerity measures certainly apply to the Yukon judiciary and have been applied in the past.¹¹ These measures may become necessary if the Government's finances slip from their current position and Judges are required to share the burden of difficult economic conditions. That time has not yet arrived.
110. The Commission concludes that the current financial position of the Yukon Government can accommodate the increases in judicial compensation in the ranges sought by the parties for the period April 1, 2019- March 31, 2022.

¹⁰ Government of Yukon, Financial Statement Discussion and Analysis for the year ended March 31, 2020 <https://yukon.ca/en/2019-20-public-accounts-financial-statement-discussion-and-analysis>

¹¹ 1998 Yukon Judicial Compensation Commission Report, p. 6

s. 19(b) the need to provide reasonable compensation to judges

111. Judges' submissions

- An appointment to the bench is viewed as a long-term commitment, not a stepping stone to another career
- Following retirement, options for judges engaging in paying work or limited, as returning to practice law is generally not an option, especially in small jurisdictions such as Yukon
- Preservation from erosion by inflation is key if judicial salaries are to remain at a level to ensure judicial independence and ensure public confidence in the independence of the judiciary
- A Judge has no opportunity to earn income from other sources once appointed to the bench
- Judges are unlike lawyers or civil servants who can engage in business outside their work
- Lawyers can engage in non-legal business to increase the professional income
- Lawyers can choose an academic career or can do consulting work on the side

112. Government's submissions

- Financial security is a component of judicial independence
- Financial security requires judicial salaries be above an adequate minimal level for the office of the Judge
- But large salary increases not justified on an objective basis are to be avoided
- There is a range of compensation, the top and bottom margins of which identify where public confidence in the independence of the judiciary would be undermined
- To determine what is reasonable compensation, survey incomes in the community
- Gain an understanding of the relative financial position of judges to the community they serve
- Effective April 1, 2019, the judges earned \$287,213.60 per year
- Statistics show that the average personal income in Yukon between 2013 – 2017 ran from \$43,110.00. - \$47,520.00
- Compared to other legal and government professionals, judges are better paid
 - Four 2020, a government deputy minister earns between \$182,079 – \$243,581
 - For 2018, a senior government lawyer earns between \$118,147 – \$158,036
 - Effective July 1, 2019, teachers with 10+ years of experience earn between \$108,203 – \$117,393
 - Effective April 1, 2019, the Yukon Premier earns \$163,340 plus an expense allowance of \$19,847, subject to a CPI index adjustment every April 1
- Between 2019 – 2021, government employees receive the following increases:
 - 2019:1.75%
 - 2020:1.75%
 - 2021 1.75%
- management and legal officers for the government received a 1.5% increase in January 2017, 1% in January 2018 and 2% in January 2019; a 2.25% increase in 2020 was provided in return for loss of severance pay

- Importantly, all government wage increases were agreed to prior to the COVID-19 pandemic
- Judges' salaries are currently considerably higher than salaries of other sectors
- Judges also receive a Yukon bonus benefit and a robust pension
- Oppose any suggestion that judges salary should be *on par* with Supreme Court judge salaries
- By case law, it is inappropriate to compare provincial court judges' salaries to supreme court judges' salaries because of unique considerations in setting the latter
- Federal salaries are uniform to not reflect regional differences and further, attract qualified candidates in major metropolitan areas where salary levels are much higher than in small urban centres
- Previous Yukon judicial compensation commissions have rejected concept of parity between Territorial Court Judges and Supreme Court Judges
- Although some overlapping interests and needs of both levels of judges, Supreme Court has broader jurisdiction in civil matters
- Finally, Supreme Court Judges are compensated by different government with different financial constraints and expectations
- Also oppose any suggestion that comparison with compensation for Judges of the Nunavut Court of Justice be read into section 19 as a comparator jurisdiction
 - Judges of the Nunavut Court of Justice are federally appointed, paid by federal government and have Superior Court jurisdiction
 - Section 19 of the *Act* refers only to compensation for territorial or provincial judges
 - Even if Commission has discretion to consider this as a relevant point, section 17 provides that recommendations are binding only to the extent they do not exceed the highest total value of judicial compensation provided to territorial or provincial court judges of the named jurisdictions
- To consider a reference to the Nunavut Court of Justice salaries would disregard clear legislation
- Salary increases and other remuneration proposed by government are reasonable, ensure a level compensation above the adequate minimal level to maintain judicial independence and are not so large as to undermine public confidence in judicial independence

Commission Analysis

113. The *PEI reference* case explains why judicial remuneration must be adequate to ensure continued public confidence in the independence of the judiciary. If salaries are too low, there is always the danger, however speculative that judges would be tempted to decide cases a certain way to secure a higher salary from the executive branch of the government or a benefit from a litigant.
114. As a result, a guarantee of a minimum salary for judges is part of the financial security aspect of judicial independence. It prevents a government from reducing judicial salaries (except for austerity measures). It also is a protection against erosion of judicial salaries by inflation.¹²

¹² Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, *supra* at para. 195

115. The Judges say that the Government's submission to increase judicial salaries by .05%/year when inflation is or will be 2% per year or more, would result in erosion. The Government responds that cost of living increases are aspirational and if automatic, would defeat the purpose of the commission process.
116. The Government says that the Judges are already relatively well compensated by comparison to salaries payable to legal and government professionals. Although it can be helpful to survey some of the other sectors of the Yukon economy in making an assessment of reasonable compensation¹³, what is most relevant is the salary paid to other judges, not other government or private sector positions¹⁴. Section 19[e] directs the Commission to consider salaries of other judges. Also, there was no evidence provided of how the other public service positions truly compared to the duties of the Judges, which are a small and unique group in many ways.
117. The Commission agrees with the Government that an increase in compensation is not automatic simply because this review is mandated. At the same time, the Commission is of the view that unless the context or facts before the Commission dictate otherwise, judicial compensation should keep pace with the rate of inflation. Otherwise, the value of judicial salaries naturally erodes over time compared to the cost of living. There could be exceptional circumstances where a cost-of-living increase is not warranted, perhaps because it would cause compensation to exceed the highest total value of judicial remuneration provided in the comparator jurisdictions or if the government enacted broad-based deficit reduction measures.¹⁵
118. The COVID19 pandemic is of course an unprecedented event, affecting the world in many and as yet unknown ways. Its like has not experienced by most of the population, except centenarians. The Commission does not minimize the impact or severity of the pandemic as a public health crisis or that the Yukon government, like its counterparts, responded with robust economic supports for the population. But in the absence of evidence of a significant and widespread, as opposed to potential, effect on the current financial position of the Yukon government, the Commission does not view the pandemic as a reason to not recommend an inflationary increase to judicial salaries.
119. The Commission agrees with the Government that large salary increases must be justified on an objective basis. The Commission interprets "large" to mean any increases in excess of an increase in accordance with the rate of inflation.

s. 19(c) the need to build a strong court

120. Judges' Submissions

¹³ 2010 Yukon Judicial Compensation Commission, p. 30

¹⁴ 2002 Yukon Judicial Compensation Commission, p. 8

¹⁵ Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, *supra* paras. 133-137

- candidates for the court require 10 – 15 years' experience as a lawyer
- regard should be had of earnings of lawyers with the required years of experience and appropriate degree of ability
- Insufficient data available concerning incomes of private lawyers so do not rely on such data
- Instead focus on other options open to highly desirable candidates for the Court
- Tradition in Yukon has been to seek judges from both Yukon and outside jurisdictions
- need to look at judicial earnings elsewhere
- do not seek parity but submit that comparison with salaries of federally appointed judges is a relevant and important factor because:
 - Supreme Courts recruit from the same pool of candidates
 - And the overall similarity in difficulty and complexity of respective workloads, skills demanded by the work and qualifications to be a judge
 - Nature and function of judicial work shows great similarities amongst various levels of courts
 - both levels of court require same qualities of judicial temperament and legal knowledge and sense of fairness
 - Judges at all levels make decisions that affect people's lives, including potential loss of freedom without bending to public pressure
- Cases coming before the Court are increasingly complex and involving multi-day trials and expect *Criminal Code* amendments will lead to an increased workload
- Bill C – 75 limits the accused's right to preliminary inquiries, make it more likely for cases to proceed to trial in the Territorial Court and Supreme Court
- There are increased opportunities for pretrial applications resulting in the need for more comprehensive written reasons
- Refer to the Police Reported Crime Statistics in Yukon 2019 to submit that if crime is increasing, and the size of the bench remains the same, the work of the Court compared to previous years will increase
- Referred to Report's noted increases in *Criminal Code* violations as well as overall crime rate, violent *Criminal Code* violations, property crime, traffic violations and federal statute violations
- Violent *Criminal Code* violations in Yukon per 100,000 population was third-highest in Canada; increasing by 31.6% compared to 2018
- The Report shows crime severity in Yukon has increased by 26% in 2019, the biggest increase in Canada and placing Yukon third highest in the country
- Referred to other provinces that have linked provincial court judges' salaries to that of Supreme Court judges; Ontario judicial compensation commission set salaries of Ontario judges as a specific percentage of federal judges' salaries
- Yearly salaries of federally appointed judges in Yukon, Northwest Territories and Nunavut are:
 - 2019: \$329,900 plus \$12,000 northern allowance [2.6 increase]
 - 2020: \$338,800 plus \$12,000 northern allowance [2.7% increase]
- Submit that a large gap between Territorial and Supreme Court's affects the Territorial Court's ability to attract the best qualified applicants from the same pool of lawyers; fear Territorial Court will be viewed as distinctly second-best choice

- Judicial compensation must be sufficient to attract best qualified candidates, and also retain and motivate those candidates already appointed

121. Government's submissions

- Government wants a strong Court as does the public
- Multiple factors attract lawyers to become a judge
 - Professional desire to discharge important and challenging role as a judge
 - Ability to make a difference through one's work especially in a small jurisdiction
 - Compensation must be seen to be reasonable given responsibilities and challenges of being a judge
- Judges, like of elected officials, assume that public service may have some drawbacks
- Note very low turnover of judges in Territorial Court; retirement to follow lengthy service, all evidence that compensation is associated with being a judge is not a deterrent
- In addition to higher earnings and salaries than government lawyers and managers, judges have a valuable pension plan which is a consideration in terms of attracting qualified candidates
- Submit little risk that compensation as proposed by the Government not being adequate would be a deterrent to qualified candidates

Commission Analysis

122. No one can doubt that a strong Court is in the public interest.
123. A strong Court is composed of the candidates best qualified to hold judicial office.
124. The Commission accepts that compensation, including non-salary benefits like a pension, is a factor in attracting qualified candidates as judges. It also accepts that candidates can be drawn by a professional desire to provide public service and have a meaningful impact on society through their work.
125. The Government says that the low turnover at the Territorial Court and retirements following lengthy service are evidence that the level of compensation is reasonable. However, the question is more whether the level of compensation is sufficient, upon the departure of a present member, to attract qualified candidates to fill vacancies.¹⁶
126. The evidence shows that there are potentially many factors for a potential judicial candidate to weigh.
127. A lawyer must have a minimum 10 years' experience to apply to be a judge of the Court. At that stage of their career, a lawyer is presumed to be entering into the most lucrative years of practice.

¹⁶ 2010 Yukon Judicial Compensation Commission Report, p. 31

128. The Government provided the Commission with salary information for Government lawyers. Those salaries are less than the Judges' salaries.
129. Unfortunately, there was no evidence of private lawyers' incomes. That evidence would be helpful to compare with the judicial salaries, to see if these candidates in fact have to consider a pay reduction.
130. It is fair to say that private lawyers likely don't have pension benefits, which may make a judicial pension attractive, depending on the candidate's age. Government lawyers would likely have the advantage of carrying over their existing pension entitlement upon becoming a Judge.
131. One of the ways in which judges are unique from many others paid out of public funds is the opportunity to earn additional income. Under section 12 of the *Act*, judges cannot directly or indirectly carry out any other occupation, profession or business other than their judicial duties. This foregone opportunity underlines the need for reasonable compensation for judges.
132. It is fair to say that more senior lawyers, public or private, may be involved in business or investment activities separate from their law practice, from which they would have to divest themselves in the event of accepting a judicial appointment. This may be unattractive from both a financial and logistical perspective.
133. The Commission accepts that both the Territorial Court and the Supreme Court draw from a similar pool of candidates. Territorial Court judges are also candidates for appointment to the Supreme Court.
134. Although lawyers across Canada may apply, the most recent appointments to the Territorial Court have been local candidates (save for one candidate who had been a former resident). Similarly, the appointments to the Supreme Court since 2000 have been local candidates. There is no reason to expect that local appointments will not continue to be the norm and future candidates will closely consider both Courts and their respective compensation arrangements when considering a judicial appointment. As a result, the Commission considers the compensation paid to Yukon Supreme Court Judges to be a relevant, but not determinative, consideration.
135. The Commission notes that the Yukon Supreme Court salaries were \$329,900.00 in 2019 and \$338,000.00 in 2020, with an additional \$12,000 northern allowance being paid each year.
136. To be clear, the Commission is not recommending parity with Supreme Court salaries as the caselaw states that is not appropriate. Nor is the Commission recommending a salary escalator formula based on Supreme Court salaries, as that would be a legislative initiative.

137. Neither is the Commission comparing the level of responsibility or workloads of the two courts. The Supreme Court and Territorial Court are constitutionally and practically very distinct courts, each fulfilling a necessary and complementary role in the justice system.
138. The Commission is mindful that attracting highly qualified applicants could become a problem if the compensation for the Territorial Court does not keep pace with other options open for these candidates
139. The Commission concludes that compensation may be a significant consideration for applicants for future vacancies in the Court. It may also be a factor for current members remaining on the bench.

s. 19(d): the unique nature of Yukon

139. Judges' submissions

- The Territorial Court has three resident full-time judges, one of whom is the Chief Judge
- There are 27 Deputy Judges who are called upon to assist as needed; they sit in other jurisdictions
- By comparison, NWT has four full-time resident judges
- The population of NWT is similar to Yukon
- The Court provides Circuit Court services to 13 communities outside Whitehorse involving extensive travel, sometimes with limited accommodation and meals
- Circuit Court travelling time and nights away from home have an impact on Judges' family life
- Judges daily face difficult social problems and work to avoid becoming callous while remaining sensitive to circumstances of the parties before them; facts and issues can be profoundly disturbing
- Government initiatives of community and restorative justice place additional demands on the Judges
- Judges need to be familiar and sensitive to First Nations culture, practices and conventions, especially between different communities
- Community justice initiatives require Judges participating in many meetings and training sessions in addition to regular Court settings
- Judges receive calls at all hours from police officers throughout the Yukon seeking warrants
- social isolation is a factor; in a small jurisdiction Judges encounter persons they've dealt with in court and may forego many activities and relationships
- Judges' freedom of expression may be restricted, even on everyday matters

140. Government submissions

- Acknowledge the reality of social isolation for the Judges
- Recognize that the Court needs to be familiar and sensitive to First Nations culture and practices

- Government is aware of the Court's contribution to life in Yukon and innovative approaches to assist in administering justice
- Submit that Yukon is a wonderful place to live and raise a family, with many outdoor and arts activities and easy access to urban centres in southern Canada

Commission Analysis

141. The first judicial compensation commission in Yukon wrote that its recommendations on compensation must be "Yukon based and Yukon sensitive" while keeping in mind comparable remuneration and benefits in the courts of neighboring jurisdictions.¹⁷ It is significant that the focus on the uniqueness of the Yukon is codified in section 19 (d) of the *Act*.
142. The life of a judge of the Territorial Court has been described as far from easy¹⁸. The Court sits regularly in Circuit Courts serving 14 communities in addition to regular sittings in Whitehorse. There is no evidence of a decrease in the Court's current responsibility, described in the 1998 report, for more than 90% of criminal proceedings in Yukon as well as jurisdiction in non-criminal matters which exceeds the scope of jurisdiction exercised by colleague judges in provincial jurisdictions.
143. Like their colleagues in the Northwest Territories, the Circuit Court work to the communities outside Whitehorse typically involves an extensive travel schedule and overnight accommodation and meal facilities that may be less than ideal, causing a certain amount of physical stress and fatigue. It is reasonable to conclude that Circuit Court travelling in time away from home would also impact a Judges' family life.
144. Both the Judges and Government recognize the additional demands placed on the Court in delivering the governmental policy the of community restorative justice initiatives. These initiatives require meetings and training sessions in addition to regular court settings. They likewise recognize that the Court has to be familiar and sensitive to First Nations culture and practices, which may differ between communities.
145. Even though the Yukon is large geographically, the community is small. As a result, more cases are reported in the media and may be the subject of public and political comment. It is reasonable to expect that Judges routinely encounter people they have dealt with in court, often in difficult circumstances. This social reality may well lead to Judges foregoing activities or relationships they might otherwise pursue. As with other high-profile positions in, public service positions, there are certain drawbacks. However, the cases that Judges deal with on a regular basis can be highly emotional and disturbing, making a Judge's interaction with the public quite distinct from many public service positions.
146. Clearly there are many lifestyle benefits to living in the Yukon, evidenced by the lengthy service of the Judges.

¹⁷ 1998 Yukon Judicial Compensation Commission Report, p. 4

¹⁸ 1998 Yukon Judicial Compensation Commission Report, p. 2

147. The Commission concludes that the unique nature of the Yukon includes a recognition that judges encounter some social isolation as well as increased challenges in carrying out their judicial responsibilities. This is a relevant but not determinative factor in determining the adequacy of judicial compensation.

s. 19(e): compensation in comparator jurisdictions

148. Judges' submissions

- Most useful to consider salaries and benefits of judges in other jurisdictions because nature of the job as a judge is unique in its constitutional status and function; being a judge is not a job that can be easily compared with other jobs in Yukon
- The key comparators are BC, Alberta Saskatchewan and the Northwest Territories (NWT)
- However, the Government of Alberta rejected that provinces' judicial compensation commission recommendations and imposed a four-year salary freeze; the Alberta Judges Association applied for judicial review and outcome unknown
- In British Columbia, the government rejected the salary recommendations of three successive judicial compensation commissions; litigation ensued but the 2020 commission completed its recommendations
- because Nunavut and NWT split after the passing of the *Act*, both jurisdictions must be considered as comparator jurisdictions for statutory interpretation and policy reasons
- in light of uncertainty regarding BC and Alberta judicial compensation, say Saskatchewan and NWT are most relevant and reliable comparators
- Yukon judicial salaries increased substantially between 1999 – 2009
- by reviewing table of most recent adjustment of salaries, Yukon judicial salaries have begun to fall behind since 2018, particularly NWT judicial salaries
- Submit achieving parity with the NWT is a fair and proper objective so the need to "catch-up" is a live issue now
- Yukon and NWT were consistent in comparable judicial salaries from 2013 – 2017; prior to 2017, Yukon judicial salaries were greater
- Proposed the following salary increases:
 - effective April 1, 2019 a lump sum increase of \$14,000.00
 - effective April 1 of each of 2020 and 2021 and increase by the greater of 0% or percentage equal to the CPI for the preceding year ending December 31
 - Submit Yukon judicial salaries must keep pace with the NWT judicial salaries; a "catch-up" is necessary

149. Government submissions

- Effective April 1, 2018, Territorial Court Judges earn \$287,213.60 per year
- Acknowledge valuable contribution of the Court
- Accept that a moderate salary increase is appropriate to keep pace with inflation and recognize salaries in comparator jurisdictions
- Over the past two decades, Territorial Court Judges have seen substantial increases in their compensation (111% increase in income over 19 years)

- In comparison, inflation over last 19 years has only been 43.6%
- Real increase in income for Judges is approximately 74% over 19 years; well above salary enjoyed by most other sectors of Yukon's workforce
- Propose a salary increase for the Judges of 0.5% 2019, 0.5% in 2020 and 0.5% in 2021 which together with robust judicial pension and other benefits insurers compensation remains well above level required to maintain judicial independence
- Base salary of judges would increase to:
 - \$288,650.00 effective April 1, 2019
 - \$290,093.00 effective April 1, 2020 and
 - \$291,543.00 effective April 1, 2021
- Proposed increases will keep Judges' salaries "in the running" with provincial comparators and attract "the best and the brightest" to the bench
- although recognize that recommendations for British Columbia judges' salaries for 2017 – 2020 were not accepted and that litigation is ongoing, will use BC government substituted salaries for that timeframe
- However, since 2019 judicial compensation commission recommendations have not yet been accepted or rejected, use the BC recommendations for 2020-2023
- In Alberta, use actual imposed salaries rather than recommended salaries as unaware of litigation arising from rejection and substitution
- Also look at salaries for provincial court judges in other non-comparator provinces which show Yukon judicial salaries are very close to the highest compared to other Canadian jurisdictions
- Mere requirement of Commission sitting every three years does not mean that judicial salaries increase automatically; must be based on what is fair and reasonable at the time
- Has not been a significant increase in workload of Judges or significant change in duties since tabling of last Commission report in January 2019
- Submit that crime rate figures in Report of little use because of lack of detail in comparison to other jurisdictions
- Note in Report that most of "other Criminal Code violations" were disturbances of the peace or related to administration of justice
- Also note in Report that violent crime increased in all Canadian jurisdictions with a 1% increase in Yukon, although disconcerting, proportion nationally in range of 0.2% - 2.0%

Commission Analysis

150. The Commission considered the salary ranges for judges in the comparator jurisdictions of Alberta, British Columbia, Saskatchewan and the Northwest Territories as required under section 19.
151. The Commission considers the comparator groups as objective markers of reasonableness¹⁹, while keeping mind there are differences between those jurisdictions and Yukon.
152. The comparison process is complicated because the governments in two of the comparator jurisdictions, Alberta and British Columbia, have substituted salaries lower than those

¹⁹ Report of the 2016 British Columbia Judicial Compensation Commission, p. 4

recommended by the provinces' judicial compensation commissions. Litigation has ensued regarding those government substitutions. At the time of this report, the outcome of the court action in Alberta was unknown. In British Columbia, the Supreme Court ordered that the government reconsider the BC Commission's 2017-19 recommendations. The BC Government has not rejected or approved the commission's 2020-23 recommendations.

153. The Commission agrees with the Government that as far as Alberta is concerned, the "law is the law" regarding the amount of judicial compensation payable in that province and will use the Alberta government substituted salaries for comparison. Since the British Columbia Supreme Court rejected the substitution of the commission's 2017-2019 recommendations,²⁰ the Commission will use the recommended BC salary figures for those years, as well as the recommended figures for 2020-2023.
154. The Commission also considered the recommended salary figures in the reports of the Northwest Territories and Saskatchewan Judicial Compensation Commissions, released as of March 2020 and December 2020 respectively. The Commission found these most recent Judicial Compensation Commission Reports very helpful as it is often challenging to reconcile the different salaries because commissions are created and issue their reports at different times.
155. The Commission prepared the following table based on the salary information provided by the parties together with the updated compensation information from the Northwest Territories and Saskatchewan. The table also shows the Judges' submissions on salary for the term of this Commission (in blue) and the Government's submissions (in orange):

²⁰ Provincial Court Judges Association v. British Columbia (Attorney-General) 2020 BCSC 1264

	ALBERTA	BC	SASK	NWT	YUKON
April 1, 2013	\$273,000	\$242,464	\$254,458	\$252,414	\$257,606
April 1, 2014	\$279,825	\$244,889	\$260,819	\$256,055	\$262,758
April 1, 2015	\$286,821	\$248,562	\$272,295	\$260,302	\$268,013
April 1, 2016	\$293,991	\$262,000	\$282,184	\$272,000	\$273,374
April 1, 2017			\$290,848	\$278,828	\$280,208
set by legislation	\$293,991	\$262,000			
<i>Recommended</i>	\$296,382	\$273,000			
April 1, 2018			\$295,792	\$289,733	\$287,213
Set by legislation	\$293,991	\$266,000			
<i>Recommended</i>	\$302,304	\$277,095			
April 1, 2019			\$304,075	\$299,869	2019 + 0% or CPI YCC: \$288,650
set by legislation	\$293,991	\$270,000			
<i>Recommended</i>	\$309,500	\$281,251			
April 1, 2020			\$304,074 + CPI + 1%	2019 + CPI (1.6%)	2019 + 0% or CPI YCC: \$290,094
set by legislation	\$293,991				
<i>Recommended</i>	\$318,500	\$287,000	\$312,286	\$304,667	
April 1, 2021	2021 JCC		2020 JCC	2020 + 0% or CPI	2020 + 0% or CPI YCC: \$291,543
<i>Recommended</i>		\$297,000	\$316,971		
April 1, 2022	2021 JCC		2020 JCC	2021 + 0% or CPI	2022 JCC
<i>Recommended</i>		\$307,000	.95% QBJ		
April 1, 2023			2020 JCC	2022 + 0% or CPI	2022 JCC
			.95% QBJ		

156. It can be seen that as of April 1, 2018, Yukon judges were the second lowest paid judges in the comparator jurisdictions. If the salaries were increased effective April 1, 2019 according to the Government's submissions, the salaries would remain second lowest. The salaries would rise to would rise to second highest based on the Judges' submissions.
157. As of April 1, 2020, the Judges salaries would be second highest (based on the Judges' proposal) and second lowest (based on the Government's proposal).
158. The comparison of the salaries as of April 1, 2021 is speculative due to the correlation of salary increases with the Consumer Price Index. However, given the figures available, even with an unknown CPI multiplier, it is reasonable to conclude that the salary proposed by the Government in the last year of this Commission's term would be the lowest in the comparator jurisdictions. In all three years, the Yukon Judges' salaries would lag behind the salaries paid in the NWT.
159. In 2002, the Commission of the day wrote that parity with salaries of judges in the Northwest Territories has been recognized as a fair and proper objective²¹. As a consequence, past commissions have paid close attention to the judicial salaries in the Northwest Territories.
160. The Commission agrees that a comparison of salaries shows that as of March 31, 2019, and the end of the last Commission's review, Yukon Judges' salaries had begun to fall behind their counterparts, most importantly the Northwest Territories Judges.
161. The Commission considers the salaries of the judges in the NWT a relevant consideration carrying significant weight - one because of the similarity in working conditions and workload in the two territorial courts as compared to the southern provinces. But also, because as the 2004 NWT Judicial Compensation Commission stated: "...keeping relative pace with the other territories and provinces, in terms of establishing a competitive remuneration package, is critical to recruiting and retaining Judges. This is consistent with the consideration that living and working in the North often places extraordinary demands upon the Judges....in terms of travel and time away from home, and the nature of the cases."²²
162. The Commission acknowledges the Government's concern and its desire to maintain the *status quo* in the current state of economic uncertainty caused by the pandemic. However, the Government agreed that the uncertainty due to the pandemic did not affect the economic situation for 2019. The Commission is of the view the November 2020 Update provides a more accurate picture of the Yukon government's relatively healthy financial position, even in light of the pandemic. The Government also submitted that it does not lack the ability to pay an increase in the Judges' salaries. Against this backdrop, the request to recommend a .5% increase each year could have the unintended effect of an austerity

²¹ 2002 Yukon Judicial Compensation Commission Report, p. 8

²² Report and Recommendations of the NWT Judicial Remuneration Commission, March 2, 2004, p. 10

measure directed at the Judges alone, which the Supreme Court of Canada has said should be avoided.²³

163. The Commission recommends the following salary increases, including an initial “catchup” percentage increase of 2% in 2019 in addition to an inflationary increase in all three years of the term of this review.
- 2019: \$298,701.52 (2% “catch up” increase + 2% CPI increase = 4% overall increase)
 - 2020: \$304,675.55 (2% increase equal to CPI for Whitehorse as of December 31, 2019)
 - 2021: 2020 salary + greater of 0% or a % increase equal to CPI for Whitehorse as of December 31, 2020
164. With these increases, Yukon Judges’ salaries will be third and second highest (depending on the year) in the comparator jurisdictions, behind Saskatchewan but on par with the Northwest Territories. Depending on the outcome of government or court action in BC and Alberta, that placement could change.
165. As the Yukon Supreme Court said in the *Cameron* case, “the setting of judicial remuneration is not an exact science.”²⁴ Further, as both parties acknowledge, if these increases turn out to be too high or too low, there can be a reckoning before the next Commission.

s. 19(f) The Laws of the Yukon

166. Judges’ submissions

- Territorial court judges in Yukon deal with a wide range of matters compared to provincial courts where judges are assigned to specific divisions
- Examples of additional responsibilities imposed by Yukon laws are emergency intervention orders, reviewing vehicle impoundments and licence suspensions, child protection matters, peace bond applications, coroners’ inquests and prosecutions under territorial regulatory legislation
- further to community and restorative justice initiatives created under government policy, Territorial Court Judges attend community meetings, develop alternative court procedures such as Domestic Violence Treatment Option Court and the Community Wellness Court

167. Government’s submissions

- There are two possible interpretations of “laws of the Yukon”
 - That the commission should consider the number, nature and complexity of Yukon laws in considering judicial compensation for the judges who apply and interpret that law

²³ Reference re Remuneration of the Judges of the Provincial Court of Prince Edward Island, *supra* at para. 156

²⁴ *Cameron v. Yukon*, *supra* at para. 91

- as in NWT, look generally at the laws of the jurisdiction, not one particular aspect
- Submit the *Territorial Court Act*, its regulations, previous reports of Yukon judicial compensation commissions and applicable case law should be considered
- In particular, consider legislation such as the *Taxpayer Protection Act* under which the government cannot incur an accumulated deficit without dissolving the legislature and recommending an election be held
- Submit Commission must ensure none of its recommendations cause the government to incur an accumulated deficit so as to undermine the *Taxpayer Protection Act*
- Even if second interpretation is not favoured, as it was not with a previous commission, the general laws of the Yukon cannot be ignored
- Commission should not recommend changes which undermine the law

Commission's Analysis

168. The Judges and Government have long held differing views of the meaning to be attached to the phrase "laws of the Yukon" under section 19(f).
169. Both parties agree the Commission may consider their submissions on the number, nature and complexity of the laws of the Yukon as a factor in recommending compensation for the judges of the Territorial Court who must interpret and apply that law.
170. The Government urges the Commission however to look not only at the law generally, but also consider legislation such as the *Taxpayer Protection Act* which prohibits the Yukon government from incurring an accumulated deficit except on certain conditions. The Government submits that the Commission should ensure none of its recommendations cause the Yukon government to incur an accumulated deficit to undermine this legislation. It further submits that Government's proposed increases would not lead to such a contravention. The Government did not provide evidence if and how the Judges' proposed increases would contravene the *Taxpayer Protection Act*.
171. The Commission considered the Government's argument carefully as it raises a serious point about the legality of the Commission's recommendations. The Commission finds no reason to depart from the conclusion of both the 2010 and 2013 Yukon JCCs on this same point. The Commission does not expect that its recommendations will run afoul of any legislation, although as past Commissions have noted, that possibility always exists.²⁵ The Commission is not responsible for ensuring that its recommendations do not cause the Government to incur an accumulated deficit. The Executive Council and the Management Board, unlike the Commission, are expressly bound by the prohibition in the *Taxpayer Protection Act* and are in sole possession of the evidence warning of this potential violation. Given that the Government is aware of the range of increases sought by the parties and that the Update on the government's financial position is available, the Commission would expect to hear evidence from the Government if the Commission's

²⁵ 2013 Yukon Judicial Compensation Commission Report, p. 30

recommendations within this range could in fact cause a violation of the *Taxpayer Protection Act*.

172. In summary, the Commission concludes that is required to take appropriate account of the laws of the Yukon generally and in particular as they relate to the Judges interpreting and applying those laws. The latter aspect relates to the Judges' workload on which the parties made submissions at the August hearing.
173. As noted by the 1998 Commission, the Territorial Court is responsible for 90% of criminal proceedings in Yukon. The Court also has many other responsibilities, including exclusive jurisdiction for child protection matters and Coroner's Inquests as well as peace bonds and emergency intervention orders. Many of these extra responsibilities necessarily entail work outside the typical work day or work week, in Whitehorse and while on circuit.
174. Following the August hearing, the parties filed written submissions on the Crime Statistics Report²⁶ referred to in the November 2020 Yukon Monthly Statistical Review.²⁷ The report shows that Yukon's crime rate is third-highest in Canada on a *per capita* basis, with the Northwest Territories and Nunavut having higher rates.
175. Because the Commission's mandate is to review any change in circumstances since the last Commission's report, the increase in the number of actual criminal incidents in Yukon from 2016 - 2018 compared to 2019 (as shown on page 7 – 8 of the report) is of particular interest. Those statistics show an increase in all violations in 2019 compared to the previous three years, save for "other Criminal Code violations" (28.08% of all 2019 violations). The Government points out that "other Criminal Code violations" in Yukon mainly include disturbances of the peace and administration of justice, from which the Commission takes it may be inferred are less demanding of the judiciary than other criminal violations.
176. Individually, the number of some types of violations between 2016 – 2018 were lower than the number of same category violations in the three years prior (2013 – 2016). However, the overall total of actual incidents for all violations in 2019 is the highest since 2010.
177. The Commission agrees that more detail would be required to determine the impact of the number of police reported incidents on the Court's workload due to the increase in terms of the number, length and complexity of trials, compared to other jurisdictions. The Commission also acknowledges that the crime statistics for the first quarter of 2019 are within the term of the previous Commission.
178. However, considering the Yukon statistics on their own, it is reasonable to infer that the demonstrable increase in overall criminal incidents in 2019 would lead to some degree of increased workload for both Judges and Justices of the Peace. This inference is supported in part by the Judges' submission that the number of judicial authorization applications has increased over the past 10 years. The Court dealt with 60 such applications in 2010 and approximately the same number in 2015. However, in 2018, there were 122 applications;

²⁶ Police Reported Crime Statistics in Yukon 2019 https://yukon.ca/sites/yukon.ca/files/ybs/crime_2019.pdf

²⁷ Yukon Monthly Statistical Review November 2020 https://yukon.ca/sites/yukon.ca/files/ybs/mr_nov2020.pdf

in 2019 police made 132 applications. Between January 1 – June 30, 2020 there have been 79 applications.

179. Whether any increases to the Court's workload results from recent amendments to the criminal law remains to be seen.
180. The Commission concludes that while the jurisdiction of the Court has not changed since the 2016 Commission review, the evidence from the Crime Statistics Report and from the Judges, who are in the best position to know, has led to some increase in the volume and complexity of work within the existing jurisdiction, which is relevant to determining reasonable compensation.

s. 19(g): The Cost of Living in the Yukon

182. Judges' submissions

- Section 19 (g) refers to "real per capita income" which is not being tracked by Statistics Canada since 2010
- However other measures are available to track the growth in or decline in earnings and income is generally
- One measure is median total family income
- Incomes of families in the Yukon are consistently higher than any other jurisdiction in Canada, save for NWT
- In 2017, median total family income in Yukon was second-highest at \$120,630 overall Canadian median total family income was \$92,990
- Another measure is Average Income Assessed; in 2017 Yukon had the third-highest Average Income Assessed except NWT and Alberta
- Another measure is primary household income per capital, measuring market income of households including income from labour businesses and property prior to government transfers and taxes
- Conference Board of Canada predicts primary household income in Yukon will increase as follows:
 - 2019 – 3.8%
 - 2020 – 8.7%
 - 2021 – 5.6%
- See also increases in Wages and the Salaries Per Employee which forecast the following increases:
 - 2019 – 2.6%
 - 2020 – 4.3%
 - 2021 – 3.5%
- Real gains in purchasing power are expected as above increases in primary household income exceeded the forecasted increases to CPI for the same years
- Submit that various indicators show that Yukon leads Canada in various income measures which have increased relative to incomes of other Canadians

- Prediction of continued growth by Conference Board of Canada supports proposals for increased compensation

183. **Government submissions**

- Cost-of-living increases in Whitehorse had been modest over the past 20 years: on average, the annual rate of inflation for Whitehorse has been 2.3% [1998 – 2018]
- The all-items CPI for Whitehorse while not directly proportional to any other jurisdiction is similar to that to the rest of Canada
- The 2019 CPI for Whitehorse increased 2.0% over 2018 while Canada's CPI increased 1.9% over the same period
- Appears to be a downward trend in cost of living with the COVID-19 pandemic; CPI fell 0.2% on a year-over-year basis in April 2020 followed by a 0.4% drop in May 2020
- The CPI figure in the November 2020 Yukon Monthly Statistical Review is less than government's proposal for 2020 salary increase and was negative in previous months
- The average personal income in Yukon from 2013 – 2017 increased from \$43,110-\$47,520 [10.23%]; increase in CPI and overseeing five-year period was approximately 7.6%
- annual salary of Territorial Court Judges far exceeds average per capita income
- Fewer than 200 people filed a tax return in 2016 claiming income over \$250,000
- Real economic growth rates for Yukon GDP have ranged from 0.651% in 2014 – 3.243% in 2018
- Yukon residents enjoy relatively low personal income tax rates compared to other jurisdictions
- There is no sales tax in Yukon; fuel taxes are some of the lowest in Canada
- submit that lower tax burden suggest Judges enjoy a higher disposable income relative to other provincial residents

Commission's Analysis

184. The cost of living in the Yukon is a factor in determining the adequacy of judicial compensation.
185. There is no one specific measure for assessing changes in the cost of living in Yukon. However, a number of statistical measures can assist in determining any such changes.
186. The primary statistic referred by the parties is the Consumer Price Index, [CPI]. The CPI is a measure of the rate of the price change for goods and services bought by Canadian consumers and is the most widely used indicator of price changes in Canada. The CPI is measured nationally as well as by province and territory. The Yukon CPI is measured only for Whitehorse.
187. In terms of actual data, the change in the Whitehorse CPI for 2019 was 2.0%.²⁸

²⁸ Yukon Monthly Statistical Review November 2020 https://yukon.ca/sites/yukon.ca/files/ybs/mr_nov2020.pdf, p

188. According to the Yukon Bureau of Statistics information filed with the Commission, the Whitehorse CPI fluctuated between 2000 – 2007 with an overall increasing trend. The CPI increased steadily from 2016 (1.0%) to 2018 (2.4%), before falling slightly to 2.0% in 2019
189. In terms of a forecast for the CPI in the next two years, the Yukon government revised its earlier Budget forecast in its Update as follows:
- From 2.5% to 1.2 % increase for 2020
 - No change for 2.0% increase for 2021
190. At the August hearing, the Government pointed out that Canadian's CPI fell 0.7% in April 2020 on a seasonally adjusted monthly basis. This was the first year – over – year decline in the CPI since September 2009. The non-seasonally adjusted CPI for Whitehorse fell – 0.4% from the previous April. The Government submitted that the CPI data in the November 2020 Monthly Statistical Review showing an increase of 0.4% in the CPI from the negative figure in April reinforced the uncertainty still present in the economy due to the pandemic.
191. The Commission notes that in the November 2020 Monthly Statistical Review data, the major contributors to the CPI increase were the prices of electricity, rent and purchase and leasing of passenger vehicles. These increases were offset by decreases in the price of fuel and telephone services.²⁹
192. The Commission concludes that the cost of goods and services in Yukon as measured by the Whitehorse CPI is increasing, as shown by the 2% increase in 2019, as has been the trend for the previous four years. After a springtime decline in the CPI coinciding with the lockdown due to the pandemic, the current information indicates that the CPI is again on the rise.³⁰
193. The *Act* refers to specific consideration of the growth or decline in real *per capita* income as part of considering the cost of living in the Yukon, which statistic has apparently not been measured since 2010.
194. However, by examining the statistical measures of income of Yukon residents provided by the parties, it can be inferred that Yukon residents in general are enjoying increases in their incomes over time and the forecast is optimistic for further increases:
- the distribution of total income for families has increased steadily from 2015 – 2017³¹

²⁹ Yukon Monthly Statistical Review November 2020 https://yukon.ca/sites/yukon.ca/files/ybs/mr_nov2020.pdf, p 5

³⁰ Yukon Monthly Statistical Review November 2020 https://yukon.ca/sites/yukon.ca/files/ybs/mr_nov2020.pdf, p 5

³¹ Statistics Canada, "Median Total Income-All Census Families", Table 11-10-0012-01

- The total assessed income for tax providers in Yukon has increased from 2008 – 2017 with 2017 being the highest on record showing an average assessed income of \$57,386, an increase of 4.5% from 2016³²
 - During the first six months of 2020, average weekly earnings in Yukon increased 6.9% from the same period in 2019, slightly stronger than the 6.6% growth reported nationally³³
195. As the Government points out, the salaries of Judges are in excess of what it describes as the average personal income of Yukon residents and their salary increases outpace the percentage increase of the CPI. It notes that Yukon residents, similar to residents of the Northwest Territories and Nunavut, are taxed at lower personal income tax rates than residents in the comparator jurisdictions of Saskatchewan, Alberta and British Columbia. The Commission accepts that these lower tax rates would result in somewhat higher net income available to Yukon residents, which includes the Judges.
 196. Based on these two points, it could be argued that there is more room for the Judges to absorb the impact of a cost-of-living increase, either because their salaries exceed the average individual's salary substantially or because the percentage increase of the Judges' salaries significantly exceeded the CPI percentage increase in a given time period.
 197. However, a review of the statistics presented to the Commission of Average Income Assessed, Canada, Province and Territories (2016)³⁴ leads the Commission to conclude that salaries of judges in the comparator jurisdictions and nationally, substantially exceed individual incomes in the same jurisdictions, for at least that year. The Commission would expect the same evidence to exist for the years after 2016. None of the judicial compensation commission reports or caselaw presented to the Commission are to the effect that this difference in income disentitles judges to an increase in their compensation.
 198. The Government submitted that personal income in Yukon from 2013-2017 increased by 10.23% and the CPI over that same time period increased 7.6%. By reviewing past reports, the Commission finds that the increase in judicial salaries over that same four-year time period have increased 11.49%. As a result, the Commission does not find that the increase in Yukon judicial salaries significantly exceeds the CPI increase in recent years.
 199. As stated earlier, the Commission recommends that an increase to the Judges' compensation for the term of this review should include an annual percentage increase equivalent to the annual percentage increase in the Consumer Price Index for Whitehorse.
 200. The Commission is guided to this conclusion by the cumulative statistical evidence of the increase in the cost of living in Yukon and by the Supreme Court of Canada statement in the *PEI Reference* case that judicial compensation commissions are to be convened within

³² Yukon Bureau of Statistics, "Yukon Income Statistics 2017 Taxation Year"

³³ <https://yukon.ca/sites/yukon.ca/files/fin-2020-21-interim-fiscal-economic-update.pdf>, p. 11

³⁴ Yukon Bureau of Statistics, "Yukon Income Statistics: 2016 Taxation Year", p. 6

fixed periods of time in order to consider the adequacy of judicial salaries expressly “in light of the cost of living and other relevant factors.”³⁵

s. 19(h) Submissions filed by the Public under section 26 of the *Act*

201. The Commissions did not receive any submissions from the public either in response to the section 26 notice of the Commission’s creation and purpose or at the public hearing on December 18, 2020.

VIII. OTHER RELEVANT CONSIDERATIONS

202. Judges’ submissions

- The COVID 19 pandemic has presented significant challenges for the Court:
 - Substantial addition to administrative workload
 - Resulting stressful and dangerous working conditions
 - Physical distancing measures required significant creativity and adaptability
 - Court remained open, being deemed critical service under the *Civil Emergency Measures Act*
 - Bail hearings and other important matters are heard but most trials and preliminary hearings adjourned at the beginning of the pandemic
 - Once restrictions ease, expect a surge of cases and a heavier workload in the medium term
- IT problems caused difficulties regarding conference calls and video technology and create a difficult work environment
 - A triage judge will oversee and manage files and assize sittings have been scheduled for fall and winter for high volume of trials on the docket
 - Court application for warrants has been modified to reduce in-person contact for ever-increasing amount of judicial authorization applications
- The economy for 2019 of the first quarter of 2020 was not affected by the pandemic
- Yukon saw a decline in economic activity because of the pandemic and an increase in operating and maintenance expense spending [0.8% above the 20-year average]
- Yukon's tourism industry declined resulting in a real GDP forecast decline for 2020 but forecast is still positive
- Yukon and Nunavut are only Canadian jurisdictions expected to see real GDP growth in 2020 despite the pandemic
- There is optimism in Yukon's Fiscal and Economic Update as Yukon experience the following:
 - Successful prevention of significant community spread of COVID-19
 - Continued growth in personal incomes and average earnings
 - Continued strength and resilience and housing sector
 - Rebounding retail sales to almost same level as 2019

³⁵ Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, *supra* at para. 51

- Resiliency and staying on target on most capital projects
- Expecting to see real GDP growth
- Robust strength in mining sector
- Unemployment rate that remains among the lowest in Canada
- Continued population gain for 17th consecutive year
- Active construction industry
- Total major federal transfer payments to Yukon for 2020 – 21 increase by \$59 million over previous year to \$1,116 million
- Even though forecasting during the pandemic is challenging and economic conditions can shift quickly, submit Interim Fiscal Update is overly conservative and pessimistic
- Revised 2020 – 21 forecast incorporates additional spending room to allow government response to surges
- Surge in infection rates unlikely due to public health measures and availability of COVID-19 vaccine
- Yukon to receive enough vaccines to immunize all adult Yukoners first three months of 2021 and effort underway already
- Yukon's response to pandemic resulting in increased spending but offset by federal transfers
- Revise forecast for 2020 – 21 is a \$31.6 million deficit
- Judiciary not immune to broadly based government actions responding to pressures on the economy but don't focus on compensation provided to Judges
- The pandemic is not a reason to deny Judges a reasonable increase in pay for 2019 or CPI adjustment in subsequent years
- Recommendations sought by Judges can be accommodated within the current forecast of financial position of the government

203. **Government submissions**

- COVID-19 pandemic has disrupted the Canadian and worldwide economies making the pandemic a relevant factor
- Although some cautious signs of improvement from the early days of the pandemic, naïve to think a significant rebound is imminent
- In April 2020, Royal Bank of Canada forecasting recession due to the pandemic
- The Organization for Economic Cooperation and Development June 2020 Economic Outlook speaks of tremendous negative effects of pandemic
- The OECD Report forecasts Canada's annual output to shrink by 9.4% in 2020 in the event of a second virus outbreak [8% if recovery uninterrupted] and rates of unemployment remain elevated
- Submit Yukon's economy will not emerge unscathed from pandemic; March 2020 projected budget surpluses are no longer expected to occur
- Government announced \$26.7 million in relief support
- Too early to understand full impact of pandemic on Government of Yukon and associated costs in terms of reallocating funds or potential deficit
- Yukon's 2020 – 21 Interim Fiscal and Economic Update confirms now is not the time for significant pay increase

- Earlier filed financial information all pre-pandemic; Interim Fiscal Update graphically shows how economy fell off the cliff in spring
- While, as of the winter of 2020, more optimism, the pandemic presents much uncertainty for the future
- Even with the gradual reopening of the economy, 2020 will be a challenging year for Yukon's economy; fallout from the virus expected to extend into 2021 and possibly beyond

Commission Analysis

204. The Commission agrees with the parties that the COVID-19 pandemic is a relevant consideration for the Commission.
205. No previous commission has had to consider the existence of a supervening event like the pandemic in making recommendations on judicial compensation. The question is- how is the pandemic relevant in this context?
206. The Commission confirms that its purpose is to serve as an independent body providing recommendations to government on judicial compensation following consideration of specified factors under the *Act*. As result, the Commission is of the view that it must consider the pandemic's effect as it pertains to those factors identified under section 19(a) – (h) of the *Act*.
207. The Government focused its submissions of the pandemic's effects on the financial position of the Yukon government. The Government's early submissions referred to a predicted recession and the projected reductions of Canada's productivity in the event of subsequent outbreaks and shutdowns. It referred to the Yukon government's outpouring of support initiatives and cautioned that the full financial impact to the government is unknown.
208. Although the picture was more optimistic as of November 2020, the Government cautions that recovery is some distance away and refers to the absence of a timely development of a vaccine.
209. The Commission accepts that the pandemic has caused great uncertainty in the global and national economies. The Yukon economy appears to have been spared large scale damage although the threat of uncertainty remains. As of January 2021, the promised delivery of the Moderna vaccine sufficient to vaccinate all adult Yukoners by early 2021 was being put in place and the vaccination effort is already underway, thereby tempering one of the risk factors identified by the Government.
210. The Judges focused their submissions on the pandemic's effect in terms of workload and working conditions for the Judges. They say the pandemic caused an increased administrative workload of the Court and created more stressful and dangerous working conditions. The Court's processes were deemed a critical service under the *Civil Emergency Measures Act* and it is a given that courts must operate no matter the circumstances. Numerous matters were adjourned but bail hearings and other important

matters continued to be heard. Unfortunate difficulties with technology made video and conference calling difficult. The Court adopted a triage model to ensure an efficient use of court resources. There were no circuit courts and only very limited in-person proceedings for several months in 2020. It is reasonable to conclude that the Court will be dealing with a backlog of cases now that in-person proceedings have resumed.

211. There was no rulebook for responding to this pandemic and both the Yukon Government and the Territorial Court are to be commended for their dedication and resourcefulness in ensuring that the criminal justice system continues to operate in very uncertain times.
212. The Commission concludes that the effects of the pandemic are serious. No one has a crystal ball in terms of the ultimate impact of the pandemic. Those impacts will be much more evident in the next few years. But in light of an effective vaccine already being distributed in Yukon together with the relatively healthy financial position of the Yukon government for at least the next year, the pandemic's effects have been contained in the context of recommending an increase in judicial compensation for the period April 1, 2019-March 31, 2022.

IX. CONCLUSIONS AND RECOMMENDATIONS

213. The Commission carefully reviewed and considered the materials and submissions presented by the parties.
214. First, with respect to the Joint Submissions filed by the parties, applying the test set out in the *Cameron* case, the Commission concludes that the joint submissions of the parties are appropriate for recommendation.
215. The Commission concludes that there is no evidence that the process leading to the joint submission regarding the salaries of the JPs or the medical insurance allowance for the Deputy Judges was questionable or inappropriate. Rather, the Commission views the joint submissions as products of consensus between the parties, consistent with the constitutional principles set out in the *PEI Reference* case.
216. Regarding the substance of the proposed compensation for the JPs, there is no evidence to suggest that the proposal is unreasonable. The Commission is of the view that the proposed increase of 2% in each year of the term of this review is appropriate based on the important first-line role of the JPs in the justice system and the demonstrable increase in the cost of living in Yukon.

Recommendation: JP Salaries

That effective April 1, 2019, the pay rate for the hourly-rated Justices of the Peace be increased by 2% per year, as follows:

JP 1: April 1, 2019: from \$45.00/hour to \$45.90/hour [2% increase]

April 1, 2020: from \$45.90/hour to \$46.82/hour [2% increase]

April 1, 2021: from \$46.82/hour to \$47.75/ hour [2% increase]

JP 2: April 1, 2019: from \$50.00/hour to \$51.00/hour [2% increase]

April 1, 2020: from \$51.00/hour to \$52.02/hour [2% increase]

April 1, 2021: from \$52.02 per hour to \$53.06/hour [2% increase]

JP 3: April 1, 2019: from \$70.00/hour to \$71.40/hour [2% increase]

April 1, 2020: from \$71.40/hour to \$72.83/hour [2% increase]

April 1, 2021: from \$72.83/hour to \$74.29 per hour [2% increase]

217. The Commission also approves the terms of the joint submission of the Judges and the Government regarding the allowance for Deputy Judges for medical insurance coverage while in Yukon. The modest amount proposed satisfies the need for Deputy Judges, an important component of the administration of the work of the Territorial Court, to be protected while on court business in Yukon.

Recommendation: Medical Insurance Coverage for Deputy Judges

That the Government of Yukon will provide a once-annual stipend of \$220.00 to a Deputy Judge attending the Yukon to cover the cost for medical insurance during the travel of the Deputy Judge to and from Yukon, as well as for time actively working in Yukon (as opposed to presence for personal reasons). If the Deputy Judge chooses not to purchase insurance, the Deputy Judge may keep the annual payment.

218. Because the parties themselves have put the joint submissions before the Commission, the Commission expects that the parties, through their representatives, would consent to and approve the wording of the recommendations for proper implementation.
219. Regarding the outstanding compensation issue of the appropriate increase in the Judges' salary, the Commission recommends the increases described below. The Commission views these increases as reasonable because they fairly reflect the changed circumstances since the implementation of the report of the previous Commission. The recommended increases achieve the long-recognized goal of maintaining Yukon judges' salaries near parity with the salaries of judges in the identified comparator jurisdictions, particularly the NWT where the breadth of judicial responsibility is more comparable than in the southern provinces. The increases prevent salary erosion due to the demonstrable increase in the cost of living in Yukon and are appropriate given the current relatively healthy financial position of the Yukon government, indeed the Yukon economy in general. Finally, the recommended increases should help ensure a strong Court, now and in the future, especially as the effects of the COVID-19 pandemic continue to present unprecedented challenges for the justice system as well as society as a whole.

Recommendation: Salaries for Judges of the Territorial Court

1. That effective April 1, 2019, the salaries for Yukon Territorial Court Judges be set at \$298,701.52, a 4% increase.
2. That effective April 1, 2020, the salaries for Yukon Territorial Court Judges be increased to \$304,675.55, a 2% increase which is equal to the percentage increase to the CPI for Whitehorse for the year ending December 31, 2019.
3. That commencing April 1, 2021, the salaries of the Yukon Territorial Court Judge be increased by greater of 0% or a percentage increase equal to the CPI percentage increase for Whitehorse for the year ending December 31, 2020.

X. CLOSING REMARKS

The Commission thanks the parties and their representatives: Alison Latimer on behalf of the Judges, Steve Smith, representative for the Justices of the Peace Association and Gary Bainbridge, on behalf of the Government of Yukon, for their comprehensive and thoughtful written and oral submissions and for assembling a full and helpful evidentiary record. The Commission appreciated the representatives' patient, helpful and cooperative assistance throughout this inquiry.

The Commission also wishes to express appreciation to Patricia Randell, Director, and Michele Campbell, in the Department of Justice for providing assistance whenever requested by the Commission. The Commission also thanks Lorna Hutchinson for her assistance in the preparation of this formal report.

This report is submitted this 5th date of March, 2021.



Debra Fendrick

Commissioner, 2019 Yukon Judicial Compensation Commission

**British Columbia
Judicial Compensation Commission
2022**

FINAL REPORT

**To the Attorney General and the
Chief Judge of the Provincial Court**

April 28, 2023

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1 Overview

1.1 Introduction

The 2022 Judicial Compensation Commission (“2022 JCC”) makes this report with our recommendations to the Attorney General and the Chief Judge of the Provincial Court. We have been mandated to make independent and objective recommendations regarding the remuneration, allowances, and benefits of British Columbia’s Provincial Court judges and judicial justices. We have considered all the information placed before us¹ and assessed it with respect to each of the statutory factors (described below), and as a whole. We have looked back at the work of past judicial compensation commissions, and forward in making recommendations for the four fiscal years ahead.

Compensation of the judiciary—and the process by which changes to compensation occur—must respect the constitutional principle of judicial independence. The courts must “be free and appear to be free of political interference through economic manipulation by other branches of government” including the legislature.² While the legislative branch of government must authorize all public spending and may reduce, increase, or freeze judicial salaries, “the imperative of protecting the courts from political interference through economic manipulation requires that an independent body—a judicial compensation commission—be interposed between the judiciary and the other branches of government.”³

The executive and legislative branches of government may decide on the “exact shape and powers” of such a commission; nevertheless, a judicial compensation commission must be independent, objective, and effective.⁴ Its constitutional function is to depoliticize the process of determining judicial remuneration.

In British Columbia, the *Judicial Compensation Act* (the “Act”) sets out the process for selecting an independent commission to make recommendations on all matters respecting the remuneration, allowances and benefits of Provincial Court judges and judicial justices.⁵ The commissioners must

¹ See Appendices A, B, D, F, and G. The full citations for abbreviations used in the footnotes to this report are found in Appendices A, B, and D.

² *Reference re Remuneration of Judges of the Provincial Court of PEI; Reference re Independence and Impartiality of Judges of the Provincial Court of PEI*, [1997] 3 SCR 3 [“PEI Reference”], para. 131.

³ *PEI Reference*, para. 147.

⁴ *PEI Reference*, paras. 167, 170, 173, and 174.

⁵ *Judicial Compensation Act*, SBC 2003, c. 59 [the “*Judicial Compensation Act*”], ss. 2(2), and 5(1).

make recommendations with reference to objective criteria—not political expediencies.⁶ The Act provides objective criteria for the commission’s use in the form of six factors for consideration:⁷

- (a) the need to maintain a strong court by attracting highly qualified applicants;
- (b) changes, if any, to the jurisdiction of judges or judicial justices;
- (c) compensation provided in respect of similar judicial positions in Canada, having regard to the differences between those jurisdictions and British Columbia;
- (d) changes in the compensation of others paid by provincial public funds in British Columbia;
- (e) the generally accepted current and expected economic conditions in British Columbia; and
- (f) the current and expected financial position of the government over the 4 fiscal years that are the subject of the report.

The commission may also consider other factors it considers relevant.⁸

In addition to being independent and objective, “most importantly, the commission must also be effective.”⁹ For the commission process to be effective, the government must not make changes to judicial compensation until it has received a report from a judicial compensation commission, and the commission must convene at regular intervals to protect against the reduction in judicial salaries due to inflation.¹⁰ Further, the commission’s report “must have a meaningful effect on the determination of judicial salaries.”¹¹ “Meaningful effect” does not mean the commission’s report is binding on government; the government retains the power to depart from the commission’s recommendations as long as it justifies its decision to do so with “rational reasons.”¹² However, the commission’s recommendations must be given weight.¹³

⁶ *PEI Reference*, para. 173.

⁷ *Judicial Compensation Act*, s. 5(5).

⁸ *Judicial Compensation Act*, s. 5(5.2).

⁹ *PEI Reference*, para. 173.

¹⁰ *PEI Reference*, para. 174.

¹¹ *PEI Reference*, para. 175.

¹² *Provincial Court Judges’ Association of New Brunswick v. New Brunswick (Minister of Justice)*; *Ontario Judges’ Association v. Ontario (Management Board)*; *Bodner v. Alberta*; *Conférence des juges du Québec v. Québec (Attorney General)*; *Minc v. Québec (Attorney General)*, 2005 SCC 44, [2005] 2 SCR 286 [“*Bodner*”], paras. 20-22; *PEI Reference*, paras. 182-184.

¹³ *Bodner*, para. 23.

1.2 Summary of Recommendations

1. *Salaries*: The Government should set the Provincial Court judges' and judicial justices' salaries for the next four fiscal years as follows:

Fiscal Year:	2023-24	2024-25	2025-26	2026-27
Provincial Court Judges	\$343,000	\$360,000	\$360,000 + a percentage increase equivalent to the annual average percentage change in BC CPI for 2024 ¹⁴	2025-26 salary + a percentage increase equivalent to the annual average percentage change in BC CPI for 2025
Judicial Justices	\$172,000	\$177,000	\$182,000	\$187,000

2. *Salary Differentials*: Administrative judges should continue to receive the following percentages of a puisne judge's salary: Chief Judge 112%; Associate Chief Judges 108%; and Regional Administrative Judges 106%. Administrative Judicial Justices should receive 106% of judicial justice compensation.
3. *Judges' Pensions*: The 3% accrual rate for judge's pensions should be maintained.
4. *Non-judicial Pensions for Judges*: The *Judicial Compensation Act* should be amended to align the non-judicial pensionable service provisions with the Public Service Pension Plan rule changes made in 2018 and 2022, as detailed in Appendix F, in respect of the following:
 - i. the benefit accrual rates for service between April 1, 2018 - March 31, 2022, and after April 1, 2022;
 - ii. the past service benefit enhancement and the bridge benefit for the period of April 1, 2006 - March 31, 2018 and after April 1, 2018; and
 - iii. the early retirement factor for non-judicial service earned on or after April 1, 2018.
5. *Flexible Benefits Program*: Effective January 1, 2024, Provincial Court judges should receive the enhancements to the flexible benefits program that were offered to excluded public sector employees on January 1, 2023. Future enhancements to the flexible benefits plan for excluded employees and appointees should be automatically implemented for the Provincial Court judges, with the judiciary having recourse to seek changes through future judicial compensation commissions.

¹⁴ See footnote 261, *infra*, for remarks about the calculation of BC CPI.

6. *Part-time Judicial Justice Amount in lieu of Benefits:* The amount in lieu of benefits added to the per diem pay for part-time judicial justices should be increased from 20% to 22%.
7. *Shift Premiums for Judicial Justices:* As set out in Appendix G, new holidays should be added to the list of the holidays that attract a \$245 shift premium, the shift premium for Christmas Day should be increased by \$75, a weekend shift premium of \$75 should be implemented and a court closure day shift premium of \$75 should be implemented.
8. *Overhead Amount for Part-time Judicial Justices:* The overhead amount added to the per diem pay for part-time judicial justices should be increased from \$75 to \$100.
9. *Professional Development Allowance:* For the next four fiscal years, the professional development allowance for judges should remain at \$4,500 per year, and the professional development allowance for judicial justices should remain at \$3,250 per year.
10. *Travel Allowance:* The current travel allowance (or travel per diems) for judges and judicial justices should be maintained.
11. *Interest on Retroactive Salary Increases:* For retroactive salary increases, the Government should pay judges or judicial justices pre-judgment interest from April 1, 2023 to the date on which the increase is established and post-judgment interest thereafter until payment is made.
12. *Costs:* The Government should, by regulation pursuant to section 7.1(3) of the *Judicial Compensation Act*, reimburse 100% of the reasonable costs and disbursements, including expert witness costs, of the Provincial Court Judges Association (PCJA) and the Judicial Justices Association (JJA) for their participation in the 2022 Commission process.

2 The 2022 Commission and Its Process

2.1 Who Are We and What Was our Mandate?

The 2022 JCC consists of five Commissioners tasked with preparing a report to the Attorney General and the Chief Judge on “all matters respecting the remuneration, allowances and benefits of judges and judicial justices.” The Commissioners make recommendations on those matters for each of the fiscal years 2023-24, 2024-25, 2025-26, and 2026-27.¹⁵ The need to provide reasonable compensation for judges and judicial justices guides this mandate.¹⁶

The statutory appointment process resulted in the following appointments:¹⁷

1. **Vern Blair**, FCPA, FCA, FCBV, FRICS, is a Chartered Professional Accountant and a Chartered Business Valuator. He negotiates for and advises owners and management and is an arbitrator and mediator.
2. **Lisa Castle** is a part-time consultant specializing in supporting organizations to become stronger with their people. She worked in higher education for 28 years, with the majority of those holding the most senior Human Resources role including UBC's first Vice-President, Human Resources.
3. **Eric Gottardi**, KC, is a Vancouver lawyer and former chair of the CBA National Criminal Law Section and the Criminal Section of the Uniform Law Conference of Canada. He sits as a non-bencher adjudicator with the Law Society's Discipline Tribunal and on the Faculty (and as a planner) of the Federation of Law Societies' Criminal Law Program.
4. **Robert Lapper**, KC, is a lawyer and law professor. Currently Faculty Chair in Law and Public Policy at the University of Victoria, he previously served as CEO of the Law Society of Ontario, and in several Deputy Minister and Assistant Deputy Minister positions in the BC Government.
5. **Lynn Smith**, OC, KC, Commission Chair, is a retired Justice of the Supreme Court of British Columbia and a former law Professor and Dean of Law at the University of British Columbia.

The Commissioners retained Kathy L. Grant as their counsel.

¹⁵ *Judicial Compensation Act*, ss. 2(2), and 5(1).

¹⁶ *Judicial Compensation Act*, s. 5(5).

¹⁷ *Judicial Compensation Act*, s. 2(2).

Independent of both government and the judiciary, the Commissioners strove to produce an objective report, based on evidence, and taking into account all the factors set out in section 5(5) of the Act.

2.2 What Did We Do?

After holding pre-hearing conferences with the main participants—the Government, the PCJA, the JJA, and the Chief Judge—we received written submissions from them and others, we held oral hearings, we visited several courts, and we deliberated and prepared this report.

As set out in Appendix A, we received written submissions from the main participants as well as the Judicial Council, Canadian Bar Association BC Branch, and the Law Society of British Columbia. The Government has made these submissions publicly available through the Commission’s webpage, online: <https://www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/judicial-compensation/2022-judicial-compensation-commission>. Appendix B describes the books of documents from the main participants, most of which were jointly compiled.

We held four days of in-person oral hearings in Vancouver in mid-February 2023. We held two additional virtual oral hearings, through Zoom, on March 10, 2023 and March 13, 2023, to hear submissions about the provincial budget that was delivered on February 28, 2023 and to complete submissions on the issue of costs. During oral hearings, we heard submissions from the PCJA, the JJA, the Chief Judge (who also spoke for the Judicial Council), and the Government.

We also heard from three witnesses, as set out in Appendix C. Both Mr. Ian McKinnon, a consultant with Pacific Issues Partners, and Ms. Heather Wood, Deputy Minister of Finance for British Columbia, provided evidence concerning the current and expected economic conditions in British Columbia and the current and expected financial position of the government. Mr. André Sauvé, an actuary in private practice, provided us with a comparative analysis of judicial pension plans in Canada.

Documents provided to the Commission during the oral hearing were marked as exhibits, as set out in Appendix D.

To inform our understanding of the work of the Provincial Court, we visited various court locations (see Appendix E). A representative of the Government attended all the court visits. We were impressed by the wide range of cases coming before the court and the fast pace of the work. We saw many instances of the judges dealing with unrepresented litigants and observed the judges’ and judicial justices’ abilities to find the delicate balance between ensuring equal access to justice for unrepresented persons and maintaining judicial impartiality. We also witnessed the impressive innovations of the Provincial Court through, for example, the Indigenous Court and the Downtown Community Court.

We considered all the submissions, documents, witness evidence, and other information described above during our deliberations and report writing. In this report, we highlight the information that is most pertinent to understanding our recommendations.

2.3 What Challenges Did We Face?

We begin by acknowledging the extraordinary work of the participants and their counsel in preparing for and organizing the hearings, and then providing us with evidence, documentation, and detailed and careful submissions—all in an unforgiving timeframe, as described below.

However, we did face certain challenges in completing our mandate.

First, recent statutory amendments extended the timeline for the Commission’s recommendations from three fiscal years to four fiscal years. The inherent uncertainty in forecasting future conditions, particularly with respect to the “expected” elements of the factors set out in subsections 5(5)(d) and 5(5)(e) of the Act, increases with the addition of another year to a commission’s mandate.

Second, the Government delayed the appointment and reporting of the 2022 JCC such that, instead of the Commission operating in the March 1 to October 31 timeframe, it operated over the September 1 to April 30 timeframe.¹⁸ The logical timing for hearings—midway during the commission process—could not be utilized as it fell during the December holiday season. Unfortunately, participants, counsel for the participants, and the Commissioners had prior commitments in January and early February that pushed the dates for oral hearings into mid-February 2023. This left only six weeks for the Commissioners to produce a preliminary report by April 1, 2023, instead of the 2.5 to three months usually available to judicial compensation commissions.

Third, this tight timeline became even more challenging due to the delivery of the 2023-24 provincial budget on February 28, 2023—after the Commission’s oral hearings. As the budget contained forecasting of economic conditions and the Government’s financial position through to later years of the Commission’s mandate, it was important for the Commissioners to hear submissions on the budget. The Commission held additional virtual hearings on March 10 and March 13, 2023. Consequently, the Commissioners had only three weeks after final submissions to prepare their preliminary report.

In addition, in the late afternoon of March 30, 2023, the day before we delivered our Preliminary Report, we were advised that the Lieutenant Governor in Council had increased the maximum amounts for participation costs for the Provincial Court Judges’ Association and the Judicial Justices’ Association.¹⁹

¹⁸ *Bill 30 – 2021 Attorney General Statutes Amendment Act, 2021*, third reading, s. 9.

¹⁹ B.C. Reg. 83/2023, approved and ordered on March 30, 2023. Order in Council No. 194 sets higher amounts for the purposes of section 7.1(2) of the Judicial Compensation Act and effectively revises that section to read as follows:

- (2) The maximum amount that may be paid under subsection (1), which maximum amount applies separately to the Provincial Court Judges’ Association of British Columbia and the Judicial Justices Association of British Columbia, is as follows:
 - (a) the first \$40,000 in costs;
 - (b) 85% of the costs over \$40,000 but under \$150,000.

We were, however, able to consider whether this new regulation changed our conclusions regarding costs prior to issuing our Final Report.

The results of the 2019 Judicial Compensation Commission (“2019 JCC”) with respect to Provincial Court judges’ compensation were unknown at the time we delivered our Preliminary Report. A decision from the Supreme Court of British Columbia on judicial review was then outstanding. As it happens, that Supreme Court decision was delivered on April 3, 2023, two days after we delivered our Preliminary Report on the 2022 JCC.²⁰ The Supreme Court quashed two motions of the Legislative Assembly rejecting the salary and costs recommendations of the 2019 JCC. The matter has been remitted back to the Legislative Assembly for its reconsideration. Thus, the question of compensation for Provincial Court judges for the period covered by the 2019 JCC is still unsettled, as is the question of costs for the 2019 JCC.

Unfortunately, these timing issues are not unique to the 2022 JCC. For several cycles, judicial compensation commissions have had to deal with the same problem: not knowing the final result of the previous commission process. We do not yet know the “final” compensation that will be paid to judges over the 2019 JCC’s mandate.

Finally, the issue of whether and in what circumstances a commission may make a recommendation that departs from the costs formula set out in section 7.1 of the *Judicial Compensation Act* was—at the time the Commission conducted its hearing and wrote its Preliminary Report—before the Supreme Court of British Columbia in the judicial review proceeding following the 2019 JCC. This Commission had to consider whether its recommendations on costs risked conflicting with the (then) anticipated court decision. Additionally, the Government delayed providing submissions on costs until the evening of March 4, 2023 to allow more time for the Court to deliver judgment.²¹ (As it transpired, in our view our recommendations on costs in the Preliminary Report of April 1, 2023, are fully consistent with the April 3, 2023 Supreme Court decision.)

While understandable, this delay put further stress on the timing for the 2022 JCC’s report.

Some of these challenges were unavoidable, but we make the following suggestions to aid future commissions in their work:

- Any change to the statutory timing for a judicial compensation commission should allow for hearings midway through the commission’s process (and should only be made after consultation with the PCJA, JJA, and Chief Judge). This will ensure adequate time for report preparation following the hearings;
- Counsel for the Government, JJA, and PCJA, as well as the Chief Judge should come to the process with significant flexibility in their schedules for a mid-process hearing. In the normal process this would mean hearings at the end of June or early July;

²⁰ *Provincial Court Judges’ Association of British Columbia v. British Columbia (Attorney General)*, 2023 BCSC 520.

²¹ Main Submission of Government, para. 71; Costs Submission of Government.

- Potential commissioners should be pre-screened, prior to their appointment, for their ability to participate in hearings midway through the process;
- The time frame for the commission's work should not overlap with a provincial budget; and
- Submissions on all substantive issues should be delivered to the commission prior to oral hearings. If necessary, the commission has the discretion to seek additional submissions or information if required.

3 The Role and Work of Provincial Court Judges and Judicial Justices

3.1 Jurisdiction and Composition of the Provincial Court

The Provincial Court's judges and judicial justices are the face of justice to most British Columbians. The Court has broad jurisdiction and operates at over 80 locations.

The Provincial Court is one of two trial courts in the province—the other being the Supreme Court of British Columbia. The Provincial Court is a statutory court, with broad jurisdiction.²² The Court and every judge exercise “power” and “perform all the duties” conferred on them under federal and provincial legislation.²³ The Court exercises jurisdiction in six primary subject areas: adult criminal, youth criminal, family, child protection, civil (small claims), and traffic, ticket, and bylaw matters.

Previous judicial compensation commissions aptly described the Provincial Court as the “People’s Court.”²⁴ The Provincial Court hears 95% of the criminal cases in British Columbia. The only significant exceptions are where an accused elects to be tried by a Supreme Court Justice with or without a jury, murder cases, and extradition cases. In many such cases, a preliminary hearing may be held in Provincial Court. The Provincial Court has exclusive jurisdiction over child protection proceedings. It exercises concurrent jurisdiction with the Supreme Court under the *Family Law Act* over matters of guardianship, parenting arrangements and child and spousal support. It has broad civil jurisdiction over claims between \$5,001 and \$35,000, and it hears applications for exceptions from the Civil Resolution Tribunal (concerning matters of \$5,000 or less).²⁵

Certain matters before the court may only be heard by a Provincial Court judge.²⁶ Aside from these, the Chief Judge may assign the matters to be heard by either judges or judicial justices.²⁷ Currently, judicial justices hear the following: bail hearings outside court sitting hours, judicial

²² Main Submission of Government, para. 31; Submissions of Chief Judge, paras. 15-20; Main Submission of PCJA, paras. 79-80; Submission of Judicial Council, para. 19.

²³ *Provincial Court Act*, RSBC 1996, c. 379 [*Provincial Court Act*], s. 2(3).

²⁴ See for example, Judicial Compensation Commission 2019 Final Report, October 24, 2019, JBD, Vol. 1, Tab 18, p. 10.

²⁵ See descriptions of jurisdiction in Main Submission of PCJA paras. 79-103; Main Submission of Government, paras. 29-31, 42; and Submission of Chief Judge, paras. 17-20.

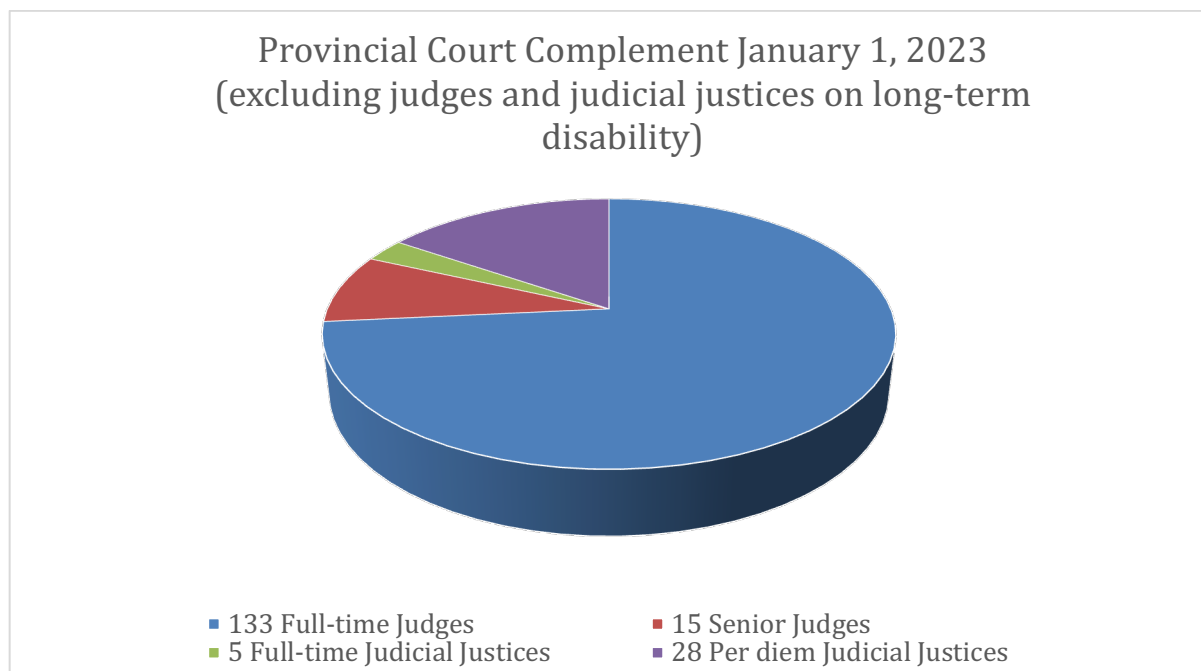
²⁶ *Provincial Court Act*, s. 2.1.

²⁷ *Provincial Court Act*, s. 11.

authorization applications (including for search warrants and production orders), payment hearings, ticket violation hearings, and traffic offences hearings.²⁸

In short, most people who come to court in British Columbia, do so before a judge or judicial justice of the Provincial Court. These judges and judicial justices are the face of justice to most British Columbians.

As of January 1, 2023, there were 131 full-time Provincial Court judges and 15 senior judges (0.45 of a full-time judge) for a complement of roughly 138 full-time equivalent judges.²⁹ Five full-time judicial justices and 28 part-time or “per diem” judicial justices make a total of 33 judicial justices.³⁰



The judges and judicial justices work at over 80 physical locations across the province, in five regions, as depicted in the figure below.³¹ Full-time registries operate at 44 of these locations. Additionally, since the fall of 2020, the Court sits in six virtual bail courts that do not have a

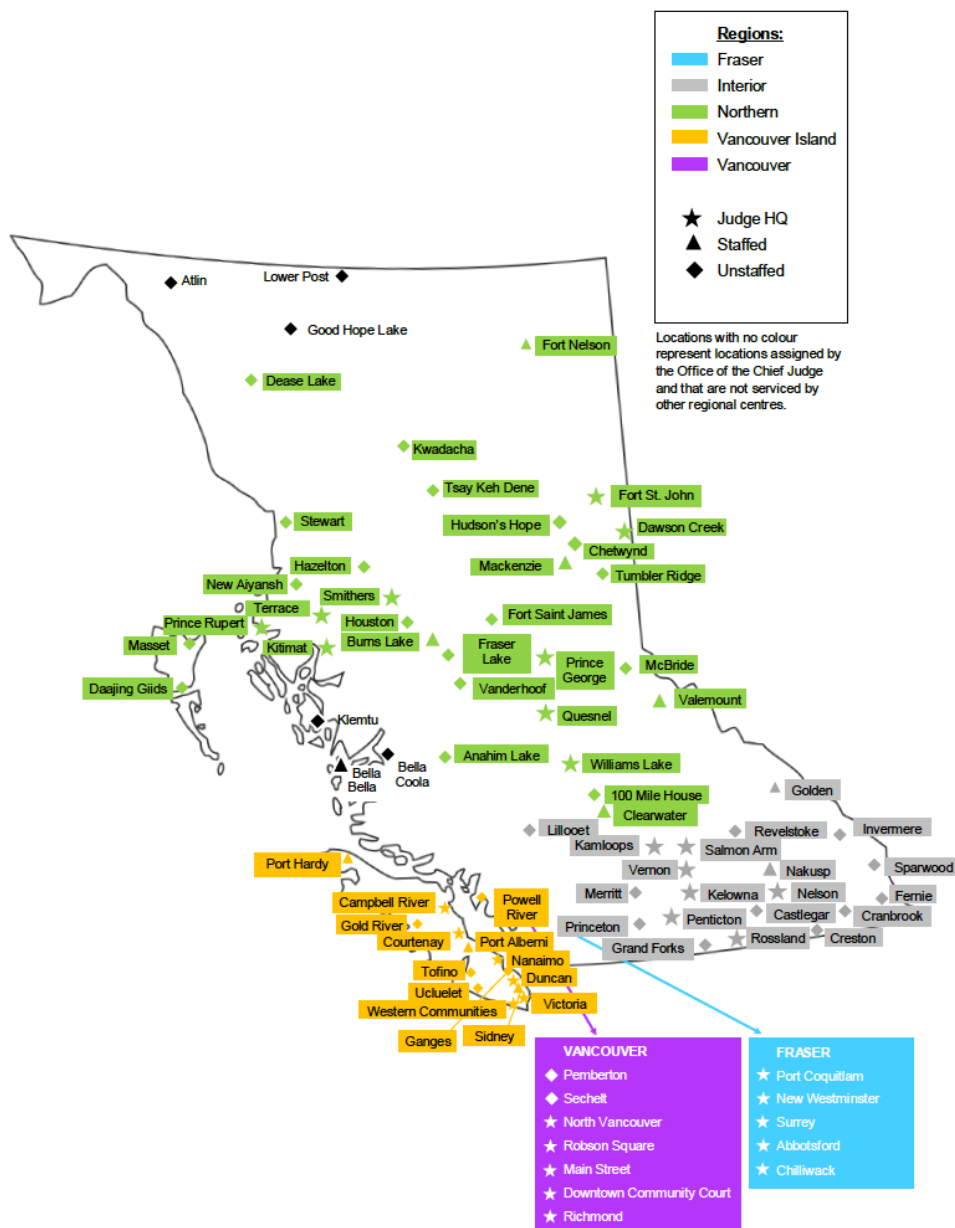
²⁸ Submission of Chief Judge, para. 137; Main Submission of JJA, paras. 40, 48, 58, 70, 74, and 78; Main Submission of Government, para. 60; Judicial Justices Assignment of Duties Pursuant to s. 11 of the *Provincial Court Act*, January 14, 2023, Supplemental Book of Documents of the JJA, Tab 7.

²⁹ Submission of Chief Judge, para. 31. Note these numbers do not include judges on long-term disability. The Chief Judge explained that these numbers are “constantly in flux” and that the number is expected to decline this year due to senior elections and retirements that are coming up: TR February 15, 2023, Chief Judge Gillespie, p. 162, ll. 15-19.

³⁰ Submission of Chief Judge, para. 135. Note these numbers do not include judicial justices on long-term disability. One of the full-time judicial justices is currently sitting part-time. Per diem judicial justices are guaranteed 40 working days per year under s. 30.2(4) of the *Provincial Court Act*, RSBC 1996, c. 379.

³¹ This figure was taken from Submission of the Chief Judge, p. 12.

physical building and that are staffed by clerks and judges (or judicial justices) who may be working in any location in the province. Similarly, the counsel and accused in these virtual bail courts may be at any location in the province.³²



Some judges hold administrative roles within the court. An administrative judge is paid more than a puisne judge because of their extra duties:

- The Chief Judge receives 112% of the puisne judge salary;

³² TR, February 15, 2023, Chief Judge Gillespie, p. 136, l. 1 to p. 137, l. 6.

- Two Associate Chief Judges receive 108% of the puisne judge salary; and
- Five Regional Administrative Judges receive 106% of the puisne judge salary.³³

Similarly, two Administrative Judicial Justices receive 106% of a judicial justice's remuneration.³⁴

3.2 Current Work of the Court

On average, 65% of the Provincial Court's work is criminal, 25% is family law (including child protection), and 10% is civil.³⁵

In 2021-22, the court received the following numbers of new or incoming cases:

- 79,458 new or incoming cases in the five subject areas heard by judges (adult criminal, youth criminal, family, child protection and small claims); and
- 69,346 new or incoming traffic, ticket and bylaw offences dealt with by judicial justices.³⁶

These numbers are the lowest in the last five years. However, both the Chief Judge and the Government told us to view the numbers since 2020 with caution due to the impact of the COVID-19 pandemic.³⁷

From 2017-18 to 2021-22, much of the drop in criminal cases—the largest portion of the Court's work—is explained by drops in property offences and administration of justice offences (e.g., failure to appear or breaches of conditions). The pandemic closures and restrictions on travel, the reduction in in-person hearings, and the shift to working from home all resulted in reduced opportunity to commit these types of offences.³⁸ However, violent crime and offences against the person—including sexual assaults—have increased slightly over the period from 2017-18 to 2021-22. Increased reporting of sexual assault cases likely accounts for this increase.³⁹ Offences against the person are among the most complicated cases heard by the Provincial Court. Sexual assault cases can involve multiple applications and complicated rulings on *voir dire*s. They may require the appointment of legal aid counsel to assist the complainant, and commonly experience scheduling delays and lengthy trials.⁴⁰

The number of self-represented litigants has declined over the last two years. However, again, the numbers need to be approached with caution due to the court shut-down and modifications made during the COVID-19 pandemic. Still, in 2021, there were close to 70,000 appearances made by

³³ Submission of Chief Judge, para. 124.

³⁴ Submission of Chief Judge, para. 165.

³⁵ TR, February 15, 2023, Chief Judge Gillespie, p. 138, ll. 20-24.

³⁶ Main Submission of Government, para. 44; Submission of Chief Judge, paras. 16 and 150.

³⁷ Submission of Chief Judge, para. 16; Main Submission of Government, paras. 46 and 48.

³⁸ TR February 15, 2023, Chief Judge Gillespie, p. 149, ll. 4-14; Exhibit 8 pp. 10 and 19-20.

³⁹ TR February 15, 2023, Chief Judge Gillespie, p. 149, ll. 15-21; Exhibit 8 pp. 10 and 19-20.

⁴⁰ TR February 15, 2023, Chief Judge Gillespie, p. 150, ll. 4-23.

self-represented litigants in the small claims, family, and criminal divisions⁴¹—that is hundreds of appearances by self-represented litigants every day the court is open. The Chief Judge told us that “the number of self-represented litigants has an impact on every step of the court process.”⁴²

Provincial Court Judges

The Chief Judge explained that the workload of judges is affected by several factors in addition to the volume of new cases.⁴³ BC Provincial Court judges do not specialize as they do in some other provinces.⁴⁴ Judges in British Columbia hear all types of cases—criminal, family, and civil—sometimes all in the same day. Judges need to come to the court with either “a diverse practice or the ability to learn and be conversant in multiple areas of the law quickly.”⁴⁵ Sometimes, a judge may be the only judge at a court location and therefore must be capable of dealing with all subject matters and providing reasons on those matters in relatively quick order.⁴⁶ Judges working in the Northern Region often travel long distances in all types of weather to reach remote court locations. Judges assigned to chambers in the Northern Region may spend up to 30-40% of their sitting time on travel status.⁴⁷

While Provincial Court judges may reserve judgment in a longer matter, most decisions are delivered orally at the end of the case following a brief opportunity to consider the material. The judges have little research assistance.⁴⁸ Still, where cases are appealed to the Court of Appeal, the judges’ decisions face the same standard of appellate review as decisions of the Supreme Court of British Columbia, creating “a tension between the volume of the work and the desire to serve the public in a timely manner and to ‘get it right’.”⁴⁹

Technological innovations, particularly the ability of judges to sit virtually, have affected how judges work. As the Chief Judge told us, “It used to be your day was not completed as a judge until the work in your courthouse was completed. Now your day may not be completed until the work in the province is completed because you can be hearing virtual matters, case conferences, taking matters from bail lists all over the province.”⁵⁰ In 2021-22, 79% of all court appearances (excluding

⁴¹ Main Submission of Government, para. 47.

⁴² Submission of Chief Judge, para. 27.

⁴³ See full list of factors in Submission of Chief Judge, para. 21.

⁴⁴ TR February 15, 2023, Chief Judge Gillespie, p. 139, l. 1 to p. 140, l. 6; Submission of Judicial Council, para. 19.

⁴⁵ TR February 15, 2023, Chief Judge Gillespie, p. 140, l. 7 to p. 141, l. 4.

⁴⁶ *Ibid.*

⁴⁷ Submission of Judicial Council, para. 20.

⁴⁸ Submission of Judicial Council, para. 20.

⁴⁹ Submission of Chief Judge, para. 30.

⁵⁰ TR February 15, 2023, Chief Judge Gillespie, p. 156, l. 22 to p. 157, l. 7.

traffic and bylaw) were “technology enabled appearances” where one or more of the participants appeared remotely by audio- or video-conferencing or telephone.⁵¹

The Provincial Court has taken an innovative approach to the administration of justice, leading to national recognition for some of its specialized courts:⁵²

- Vancouver’s Downtown Community Court;
- Victoria’s Integrated Court;
- Drug Treatment Court of Vancouver;
- Indigenous Courts (in eight locations);
- Aboriginal Family Healing Court Conferences (New Westminster);
- Domestic Violence Courts (Cowichan Valley, Nanaimo, Surrey, Kelowna, Penticton, and Kamloops); and
- Kelowna Integrated Court.

Judicial Justices

Judicial justices work in two areas: ⁵³

- a. Traffic Division: these Judicial Justices sit in courthouses around the province, hearing disputed violation tickets, small claims payment hearings, disputed municipal bylaw tickets and applications for judicial authorizations brought in person before the court. These Judicial Justices work weekdays when the courthouses are open.
- b. Justice Centre: located in Burnaby, the Justice Centre provides access to Judicial Justices from anywhere in the province using telephone and video conferencing. Twenty-three Judicial Justices work through the Justice Centre, either on site or remotely (those working remotely will “sit” at home). These Judicial Justices conduct bail hearings daily outside of court sitting hours, including on weekends and statutory holidays. They also consider judicial authorization applications such as those for search warrants and production orders 24 hours a day, seven days a week.

For traffic, ticket, and bylaw work, as noted above, total case numbers have declined over the last five years—though the numbers need to be understood in the context of the COVID-19 pandemic. The work of a judicial justice in traffic court can be very demanding, with court lists in the range of 60 matters per day, and without the assistance of support staff, a court clerk, or a sheriff.⁵⁴ The large number of self-represented litigants contributes to the intensity of the workload. Judicial

⁵¹ Appendices for Submission of Government, Tab 1: Provincial Court of British Columbia Annual Report 2021/22, p. 34.

⁵² See generally, Submission of Chief Judge, paras. 72-106.

⁵³ Main Submission of Government, para. 61, based on Provincial Court of British Columbia Annual Report 2021/22 p. 33.

⁵⁴ Submission of Chief Judge, paras. 151-152; Submission of Judicial Council, paras. 40-41.

justices often need to inform self-represented litigants about procedural matters.⁵⁵ Payment hearings can be very stressful for all concerned as the judgment debtor often has little financial resources but is legally obligated to satisfy a judgement.⁵⁶

The number of bail hearings heard through the Justice Centre has declined somewhat over the last five years, with judicial justices conducting just over 18,000 bail hearings in 2021-22.⁵⁷ While judicial justices heard fewer search warrant/production order applications in 2021-22 than 2020-21, the total for 2021-22 (18,711) was considerably higher than for 2019-20 (16,297) and follows an upward trend in cases since 2015-16.⁵⁸

Almost all of the Justice Centre's work is "unscheduled and is performed in 'real time', in a fast-paced environment with high expectations for timely decisions."⁵⁹ Bail hearings often proceed without the accused person having a lawyer. This makes the determination of whether to release an individual and, if so, under what conditions, more challenging.⁶⁰ Despite the "Crown-led bail" initiative, discussed in section 3.3, police-led bail hearings continue to occur. Because the police officers are not lawyers and may have difficulty shedding their investigative role for the purpose of the hearing, the judicial justice must be particularly vigilant to the requirements of the administration of justice including fairness to the person detained. In judicial authorization applications, judicial justices must "balance an individual's security against unreasonable search or seizure, weighed against the interest of the state to investigate crime."⁶¹

We heard evidence about how the federal Bill S-4⁶² makes changes to the way in which judicial authorization applications are received and considered. More specifically, we heard about how this change is increasing the workload of judicial justices and how it is creating staffing challenges for the Chief Judge. This evidence is discussed in section 4.2.

3.3 Resilience and Resourcefulness of the Court

We heard much about the Provincial Court's resilience and resourcefulness in delivering access to justice. We also observed some of the court's innovations during our court visits.

In the area of family law, in collaboration with the Justice Services Branch of the Ministry of the Attorney General, the court has expanded an early resolution process, which launched in Victoria in 2019, to Surrey in 2020. This model provides families with early access to information and an

⁵⁵ Submission of Chief Judge, para. 153; Submission of Judicial Council, paras. 40-41.

⁵⁶ Submission of Chief Judge, para. 154.

⁵⁷ Submission of Chief Judge, para. 140.

⁵⁸ Submission of Chief Judge, para. 140.

⁵⁹ Submission of Chief Judge, para. 148.

⁶⁰ Submission of Chief Judge, para. 145; Submission of Judicial Council, para. 40-41.

⁶¹ Submission of Chief Judge, para. 147.

⁶² Bill S-4, *An Act to amend the Criminal Code and the Identification of Criminals Act and to make related amendments to other Acts (COVID-19 response and other measures)* received Royal Assent on December 15, 2022. It came into force on January 14, 2023.

opportunity to mediate. It has significantly reduced the cases that proceed to trial. In 2021, the court implemented new *Provincial Court Family Law Rules*, which are easier for litigants to understand, and which allow for streamlined appearances. Under the new Rules, the court launched the Informal Trial Pilot Project in Kamloops in 2022. If parties agree to the informal process, the judge may allow evidence that is relevant, material, and reliable, even if it might not be allowed under the strict rules of evidence. The judge may also help the parties settle issues.⁶³

The court has implemented a desk order process under the new *Family Law Rules*, enabling applicants to apply for an order without having to make a court appearance. These applications are processed within two days, adding to the workload of judges outside of court sitting hours. Every rejected application requires reasons. Since the desk order process started in 2022, the court has received about 314 per month (roughly equating to 3,700 per year).⁶⁴

On the criminal side, technological innovation, especially video technology and remote attendance, has enabled the court to optimize the deployment of judicial resources. It connects the Justice Centre to remote regions for bail hearings and allows for remand appearances and bail hearings from remand and custody centres.⁶⁵

According to the Chief Judge, the British Columbia Provincial Court is a leader in the collection and reporting of court related data,⁶⁶ including data on “time to trial.” These data enable the Chief Judge to make decisions about where in the province to send judicial resources. Currently “time to trial” delays are roughly the same as those experienced prior to the COVID-19 pandemic (but were longer during the pandemic). The Chief Judge said that, while there are declining caseloads, those declines need to be viewed in the context of increases in cases involving offences to the person, which take more time to proceed to trial. She suggested that the most significant reason for the reduction in case backlogs that occurred during the pandemic was “the innovative methods that were undertaken by this court during COVID to reduce times to trial delays, including virtual bail.”⁶⁷ For example, at the beginning of the COVID pandemic, the delay to trial in Fort St. John was more than 18 months. Now it is down to 11 months. The Chief Judge attributed this reduction to the fact that bail has been moved to the virtual bail court, which started in 2020. Bail applications occurring within court sitting hours are assigned to be heard virtually by judges from within the Region or at another location, thereby freeing up local Provincial Court judges to do the trial work at a particular court location without interruption. Outside of court sitting hours bail applications are heard by judicial justices at the Justice Centre.⁶⁸

⁶³ Submission of Chief Judge, paras. 49-54.

⁶⁴ Submission of Chief Judge, para. 56; TR February 15, 2023, Chief Judge Gillespie, p. 157, l. 8 to p. 158, l. 4.

⁶⁵ Submission of Chief Judge, para. 62.

⁶⁶ TR February 15, 2023, Chief Judge Gillespie, p. 152, ll. 2-3.

⁶⁷ TR February 15, 2023, Chief Judge Gillespie, p. 153, ll. 6-12.

⁶⁸ TR February 15, 2023, Chief Judge Gillespie, p. 153, ll. 21-24.

The implementation, in May 2020, of mandatory criminal pre-trial conferences has also reduced time to trial and been successful in resolving some cases or narrowing the issues in others.⁶⁹

At the Justice Centre, since 2018, significant work and inter-agency collaboration has enabled transition of the bail system from “police-led” bail (where police represent the Crown) to “Crown-led” bail proceedings in which all bail matters are heard in clerked courts, with Crown Counsel conducting the charge assessment, and with duty counsel available to assist those in custody. The change has resulted in an increase in consent releases because Crown and defence counsel have an opportunity to discuss reasonable release terms.⁷⁰ Despite this initiative, some instances of police-led bail still occur.

The court has also been exploring technology to allow a clerk (or a judicial justice working without a clerk), to capture the official court record for proceedings, allowing the proceeding to be recorded from anywhere there is internet.⁷¹

Other initiatives underway to improve access to justice in traffic court include creating an online option for initiating traffic disputes; creating digital case files for traffic and ticket matters; enabling judicial justices to adjudicate online requests for time to pay and fine reductions that do not require in-person hearings; and to notify parties of hearings by email.⁷² The court has also piloted a project in which parties volunteer to attend remote traffic hearings at certain court locations.⁷³ As well, judicial justices contributed to the government’s 2021 online information tool called “Understand Your Ticket.”⁷⁴

⁶⁹ TR February 15, 2023, Chief Judge Gillespie, p. 163, ll. 8-17; Submission of Chief Judge, para. 68.

⁷⁰ Submission of Chief Judge, paras. 168-169.

⁷¹ Submission of Chief Judge, para. 173.

⁷² Submission of Chief Judge, para. 175.

⁷³ Submission of Chief Judge, para. 176.

⁷⁴ Submission of Chief Judge, para. 174.

4 Assessment of Reasonable Compensation

The Supreme Court of Canada describes the role of a judicial compensation commission in this way: “The commission must objectively consider the submissions of all parties and any relevant factors identified in the enabling statute and regulations. Its recommendations must result from a fair and objective hearing. Its report must explain and justify its position.”⁷⁵

In British Columbia, sections 5(1), 5(5) and 5(5.2) of the Act⁷⁶ set out our mandate and the specification of relevant factors as follows:

(1) Not later than April 1, 2023 following its formation, the commission must, in a preliminary report to the minister and chief judge,

- (a) report on all matters respecting the remuneration, allowances and benefits of judges and judicial justices, and
- (b) make recommendations with respect to those matters for each of the next 4 fiscal years.

...

(5) In preparing a report, the commission must be guided by the need to provide reasonable compensation for judges and judicial justices in British Columbia over the 4 fiscal years that are the subject of the report, taking into account all of the following:

- (a) the need to maintain a strong court by attracting highly qualified applicants;
- (b) changes, if any, to the jurisdiction of judges or judicial justices;
- (c) compensation provided in respect of similar judicial positions in Canada, having regard to the differences between those jurisdictions and British Columbia;
- (d) changes in the compensation of others paid by provincial public funds in British Columbia;
- (e) the generally accepted current and expected economic conditions in British Columbia; and
- (f) the current and expected financial position of the government over the 4 fiscal years that are the subject of the report.

(5.1) The report of the commission must demonstrate that the commission has considered all of the factors set out in subsection (5).

(5.2) The commission may consider factors it considers relevant that are not set out in subsection (5), but if it relies on another factor, the report of the commission must explain the relevance of the factor.

[Emphasis added.]

⁷⁵ *Bodner*, para. 17; *PEI Reference*, para. 173: “the objectivity of the commission be ensured by including in the enabling legislation or regulations a list of relevant factors to guide the commission’s deliberations.”

⁷⁶ As amended by *Attorney General Statutes Amendment Act, 2021*, concerning the date in s. 5(1).

Reasonable compensation is not merely “adequate” compensation, nor is it “generous” compensation. It is *reasonable* total compensation for the work performed. Reasonableness is measured against objective factors. The factors set out in sections 5(5)(a) to (f) provide us with useful objective markers indicating whether the compensation for judicial officers in British Columbia is reasonable. No single one of these factors is overriding, and these factors are not exclusive. Instead, considered together, along with other relevant factors as contemplated in section 5(5.2), they assist us in assessing the current state of judicial compensation in British Columbia and, importantly, guide us in determining what constitutes reasonable compensation for judges and judicial justices over the next four years.

The statute requires us to take a proactive, future-oriented approach to judicial compensation. Our job is to look at the current conditions, as well as what can be predicted about the future. We must make the best assessment we can about reasonable compensation for judges and judicial justices for the next four years.

In the sections that follow, we consider the evidence in relation to each of the statutory factors and determine what each factor tells us about the reasonable compensation of judges and judicial justices for their work over the next four fiscal years.

4.1 Factor 1: The need to maintain a strong court by attracting highly qualified applicants

The compensation offered judges and judicial justices must be at a level to attract highly qualified applicants and keep those who are appointed motivated to stay with the court in the face of other options or the prospect of early retirement.

The Provincial Court is the face of justice for the vast majority of British Columbians who engage with the justice system. As described above, judges and judicial justices work in a fast-paced environment with long court lists. They often face complex matters. They must consider the issues before them with care and attention, yet they must also do it with speed. Sometimes the subject matter is emotionally challenging and traumatic, such as cases involving child pornography and sexual assaults against children. The Provincial Court needs “highly qualified applicants” so that highly qualified judges and judicial justices will be appointed to do this work.

Provincial Court Judges

We begin by assessing whether the Provincial Court can attract highly qualified applicants in sufficient numbers to maintain a strong court.

The Need for Highly Qualified Applicants

As described by the Judicial Council,

To move into the role of a provincial court judge requires lawyers with a wide breadth of skills (including effective case management and mediation skills) and the ability to render

high quality justice in all divisions of the court (family, civil, criminal, and youth). ... This is a demanding job that must be carried out in a respectful and impartial manner, dealing with emotionally draining issues, and still getting through an often overwhelming court list for the day.⁷⁷

The criteria for appointment include at least 10 years in the practice of law; superb legal reputation and a professional record review from the Law Society of British Columbia; experience in mediation or alternative dispute resolution; respect in the community; good health; appreciation of and experience with diversity; and a willingness to travel and to sit in all subject areas.⁷⁸ Applicants must also demonstrate a number of competencies in the areas of knowledge and technical skills, decision-making, communication and authority, professionalism and temperament, effectiveness, and leadership and management for those in administrative positions.⁷⁹

The PCJA points out that the standard set out in Factor 1 is not “qualified applicants” but “highly qualified applicants” and quotes from several past commissions (some under previous legislation) using words like “outstanding candidates,” “exceptional candidates,” and “best candidates.” It also notes the Judicial Council’s requirement that candidates have a superb legal reputation.⁸⁰ The Chief Judge expressed the need to ensure that the remuneration is reasonable and sufficient to attract the “most qualified applicants.”⁸¹ The Government, however, points out that the statutory standard looks at what is needed to maintain a “strong court” by attracting “highly qualified applicants.” The Government submits that applicants need not be the “most qualified” or “superior” to maintain a strong court.⁸² Since the Judicial Council has been making appointments every year, the Government submits that there must exist sufficient candidates who meet the Council’s standard.⁸³

Aside from the fact of appointments being made and the standards set by the Judicial Council, there was no evidence before the Commission about the *quality* of candidates for appointment as judges, and no way to know whether the court is attracting the best possible candidates.⁸⁴

No participant suggested that existing members of the court, including recent appointments, are less than high quality. The Government submitted that because the court attracts excellent candidates, some from the private bar where higher salaries exist, it follows that something more than salaries motivates candidates to apply to become a judge.⁸⁵

⁷⁷ Submission of Judicial Council, para. 19.

⁷⁸ Criteria and Competencies for Appointment, JBD, Vol. 1, Tab 10.

⁷⁹ Criteria and Competencies for Appointment, JBD, Vol. 1, Tab 10.

⁸⁰ Main Submission of PCJA, paras. 166-168.

⁸¹ Submission of Chief Judge, para. 120.

⁸² Reply Submission of Government, para. 111.

⁸³ TR February 16, 2023, Ms. Wolfe for Government, p. 28, ll. 1-10.

⁸⁴ TR February 16, 2023, Ms. Wolfe for Government, p. 30, ll.14-22. Main Submission of PCJA, para. 173: “It is difficult to comment upon the *quality* of the applications” [emphasis in original].

⁸⁵ TR February 16, 2023, Ms. Wolfe for Government, p. 34, ll. 21-24 and p. 35, ll. 3-22.

The only competition for those seeking judicial positions in British Columbia comes from the Supreme Court of British Columbia, whose judges are federally appointed. A candidate may apply to either court, and an existing Provincial Court judge or justice may move to the Supreme Court upon a successful application. The Government told us there have been no appointments to the Supreme Court from the Provincial Court since 2019, and only two in the last five years (one in 2017 and one in 2018).⁸⁶ As there is no way to know how many potential applicants decided to apply to the Supreme Court instead of the Provincial Court in the first place, this data point does not provide complete information on competition from the Supreme Court.

Diversity of the Court

The Government submitted that a strong court will have a diverse bench that reflects the population of British Columbia in terms of characteristics like “age, gender, ethnicity, residential region and type of practice.”⁸⁷ The PCJA agreed but focussed its submissions on “legal diversity.”

Consistent with 10-year averages, the average age of women applying to the bench in 2021 was 51, and for men was 54. Applicants had an average of 23 years of experience in the practice of law.⁸⁸ Numbers of applications from women decreased in 2021, while applications from men increased. However, more women than average were appointed in 2021 and conversely, less men were appointed in 2021. As of March 31, 2022, 52.7% of full-time judges were women, and the proportion of women has increased in recent years.⁸⁹

From 2012 to 2021, the numbers of applications received from candidates originating in different regions and the numbers of appointments in different regions are as follows:⁹⁰

Region	Vancouver	Fraser	Northern	Vancouver Island	Interior
Applications Received	120	75	48	71	59
Appointments Made	7	42	21	11	16

These numbers show that the court is attracting applications from all areas of the province with a higher proportion from the Lower Mainland. It is impossible to know whether the appointments made to a region came from applicants originating in that region or whether applicants in one region were appointed to another. As described below, the Chief Judge told us the Northern Region

⁸⁶ Main Submission of Government, para. 97.

⁸⁷ Main Submission of Government, para. 80.

⁸⁸ Main Submission of Government, para. 88, based on Judicial Council of British Columbia Annual Report 2021, p. 18, JBD, Vol. 1, Tab 2. Note: gender data is based on binary statistics for men and women; it does not yet include numbers of non-binary individuals. Note the 10-year average for years of practice was 22 years.

⁸⁹ Main Submission of Government, paras. 89-91.

⁹⁰ Judicial Council of British Columbia Annual Report 2021, JBD, Vol. 1, Tab 2, p. 18.

is hard to staff and that judges appointed to the North from other regions often transfer back to their “home” region when a position becomes available.

We have little information on ethnic, cultural, or other diversity of judicial applicants. Since 2014, applicants may provide this information on a voluntary basis, but the numbers of applicants who do so varies from year to year, and there is no information for those who choose not to provide it. In 2021, of the 24 applicants, two identified themselves as indigenous, four as ethnic or visible minority, and four as a diverse group.⁹¹

The discussion about “legal diversity” stemmed from the large representation of Crown Counsel in the pool of applicants for Provincial Court judgeships. We heard that in 2021, 50% of applicants came from private practice, 37% came from Crown Counsel, and 13% from other areas of law.⁹² These percentages are based on the positions held by applicants at the time of their applications, and do not reflect prior experience in other areas. These numbers have been roughly consistent over the last seven years.⁹³ In contrast, Crown prosecutors comprise only 4.3% of the practising lawyers in British Columbia.⁹⁴

The PCJA characterizes this as an overrepresentation of Crown Counsel,⁹⁵ and says the court would benefit from greater legal diversity (i.e., criminal defence counsel in private practice and lawyers in private practice with civil and family law backgrounds). Further, the PCJA says the rate of remuneration is at least one factor in this overrepresentation, as “all Crown counsel will receive at minimum a 15 percent pay increase in appointment [sic]” while “Many lawyers in private practice would incur a loss in salary upon appointment.”⁹⁶

The Government says the “total universe of practicing lawyers” is not the “best metric against which to measure the proportion of crown counsel” applying for judicial positions since the “total universe” includes solicitors and many other lawyers who do not have significant litigation or Provincial Court experience. Crown Counsel comprise “a significant portion of the practising lawyers who have both litigation experience and experience in the Provincial Court.”⁹⁷ Additionally, many Crown Counsel have legal experience prior to joining the Crown, and some

⁹¹ Both “visible minority” and “diverse group” may include individuals who are LGBTQ+, as well as First Nations persons or people of colour.

⁹² Main Submission of PCJA, para. 178, fn 138 indicates that “Crown Counsel” includes only prosecutors; the “other areas” includes other lawyers employed by government.

⁹³ Main Submission of Government, para. 93; Judicial Council of British Columbia Annual Report 2021, JBD, Vol. 1, Tab 2, p. 18. The Judicial Council records the position last held by the applicant and therefore do not reflect any prior experience of a candidate in other areas of law: see Main Submission of Government, para. 94; TR February 16, 2023, Ms. Wolfe for Government, p. 42, ll. 25 to p. 43, ll. 1-9.

⁹⁴ Reply Submission of PCJA, Appendix A: Letter from Law Society of British Columbia dated January 25, 2023.

⁹⁵ Main Submission of PCJA, para. 181.

⁹⁶ TR February 14, 2023, Ms. Latimer for PCJA, p. 154, ll. 6-11; p. 157, l. 23 to p. 158, l. 2.

⁹⁷ TR February 16, 2023, Ms. Wolfe for Government, p. 42, ll. 6-19.

judicial appointments that come from the Crown may have broader experience than just being Crown counsel—as demonstrated by some of the recent Provincial Court appointments.⁹⁸

Application and Appointment Statistics

Over the last 11 years, there has been a decline in the number of incoming applications.⁹⁹

Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
No. of applicants	35	46	50	27	43	63	27	37	30	24	23

Candidates apply through the Provincial Court’s website. The applicants go through extensive scrutiny including a confidential bar report prepared by the Canadian Bar Association, a report from the Law Society of British Columbia, and discreet inquiries to current judges who are familiar with the applicant. Based on this information, the nine-member Judicial Council votes on whom to interview; a candidate needs three votes to be granted an interview. At least five (but usually all nine) Council members conduct the interviews. After an interview, if two or more Council members vote to *not* approve an applicant, the applicant is not placed on the approved list. Otherwise, the applicant is placed on the approved list. Applicants are not notified of the outcome. If placed on the approved list, an applicant remains there for up to three years from the date of their interview. The Attorney General may then appoint judges from the “approved list.” An applicant who was not interviewed may reapply three years from the date of their previous application. An applicant who was interviewed but not appointed may reapply 2.5 years from the date of their previous interview.¹⁰⁰

The figure below from the Judicial Council’s 2021 Annual Report shows the application and appointment statistics for 2021 along with the 10-year average.¹⁰¹

The Government accepts that the decreasing number of applications is a trend that needs to be monitored, but says the “trend is not cause for alarm.”¹⁰² The Government suggests the COVID-19 pandemic may have impacted applications for judicial appointment.¹⁰³ It says the court is “still attracting a sufficient number of highly qualified applicants to allow ten appointments per year, as

⁹⁸ TR February 16, 2023, Ms. Wolfe for Government, p. 44, ll. 16-25; Appendices for Submission of Government, Tabs 8 and 9.

⁹⁹ Information taken from Submission of Chief Judge, para. 121. Note “the number of applications in 2017 was significantly higher due to the influx of paper applications being submitted before the launch of a new online application system”: Submission of Chief Judge, fn 8.

¹⁰⁰ See description of the application and appointment process in Judicial Council Submission, paras. 4-9.

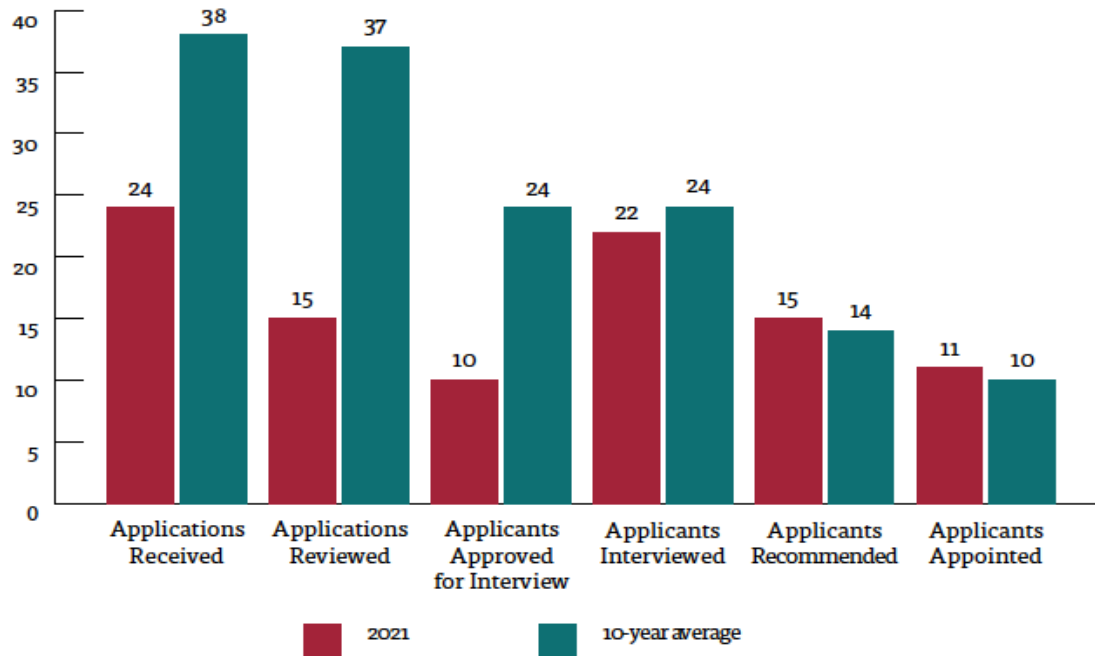
¹⁰¹ JBD, Vol. 1, Tab 2 p. 15.

¹⁰² Reply Submission of Government, paras. 113-114; Main Submission of Government, para. 101; TR February 16, 2023, Ms. Wolfe for Government, p. 21, l. 19 to p. 22, l. 5.

¹⁰³ Reply Submission of Government, para. 114.

the Chief Judge anticipates will continue.”¹⁰⁴ Also, the Government points out that the number of applicants recommended for appointment in 2021 (i.e., 15) was higher than in 2020 when only five were recommended, and slightly higher than the 10-year average of 14.¹⁰⁵

Figure 1: Applications and Outcomes (2021 and 10-Year Average)¹



As shown in the table below, 2022 has the lowest average number of candidates on the approved list since 1999.¹⁰⁶

Year	1999 2000 2001	2002 2003	2004 2005 2006	2007 2008	2009 2010	2011	2012	2013	2014	2015	2016
Average No. on approved list	36	39	31	20- 25	24	25	23	19	20	28	26

Year	2017	2018	2019	2020	2021	2022
Average No. on approved list	25	23	23	25	20	15

While the court is currently meeting its needs in terms of appointments, the appointment of an average of 10 judges per year speaks to the “high demand the court has for judges.”¹⁰⁷ The Chief

¹⁰⁴ Reply Submission of Government, para. 115.

¹⁰⁵ Reply Submission of Government, para. 116.

¹⁰⁶ This table is created from Exhibit 9.

¹⁰⁷ TR February 13, 2023, Chief Judge Gillespie, p. 162, ll. 22-24.

Judge characterized the decline in the number of candidates on the approved list as “quite alarming” and “significant.”¹⁰⁸ Some of the 15 candidates currently on the approved list will likely “time out” when they reach three years on the list. Approximately 37% of applicants are approved for appointment. That means “you get about nine candidates a year out of 24 applicants.” If the application number remains around 24 per year, this would equate to 36 approved candidates over the next four years (which the Chief Judge rounded up to 40). Over that same period, the court will need approximately 40 new judges.¹⁰⁹ But it is not as simple as matching 40 approved candidates to 40 new positions: “The vast majority of applicants apply for the Lower Mainland but there are a large number of positions in other places around the province in the north, in the northern part of the Island and in certain parts of the interior where it is difficult to attract candidates to that place.”¹¹⁰

Further, judges who are appointed to serve in, for example, the Northern Region but who come from other regions of the province often transfer back to their home region when positions become available, leaving vacancies in the North. Even judges who come from the North have moved to other locations because the travel demands in the North are so difficult or for other personal reasons. The Chief Judge said she is “very concerned” about the ability to staff the court generally, and specifically in locations outside the Lower Mainland.¹¹¹

While acknowledging that the average number of candidates on the approved list is low, the Government said the number “goes up and down.”¹¹² Also, the lower number in 2022 follows slightly higher than average appointments in 2021 (11 appointments) and 2022 (13 appointments), which may, in part, account for the lower average number on the approved list in 2022.¹¹³

Conclusions

Our review of the evidence shows a startlingly low level of interest in the Provincial Court, with a low and declining rate of applications for appointment to it. There is serious difficulty in filling judicial vacancies outside the Lower Mainland. While it is not surprising that a significant portion of applicants come from a Crown Counsel background, the court would benefit from greater legal diversity given the nature of the court’s work overall. The evidence shows a good gender balance in applicants and appointments to the court, but there is little information about other areas of diversity. The trends described above in terms of applications to the court, and the low numbers of candidates on the current approved list, indicate that there may well be insufficient highly qualified candidates to fill vacancies that are likely to arise before the next judicial compensation commission. While those appointed to the bench are “highly qualified” if measured by their average years of legal experience, which is well over the minimum, this is but one relevant measure for assessing the qualities of a prospective judge. To consistently appoint highly qualified judges

¹⁰⁸ TR February 15, 2023, Chief Judge Gillespie, p. 160, l. 25 to p. 161, l. 6.

¹⁰⁹ TR February 15, 2023, Chief Judge Gillespie, p. 165, ll. 3-20.

¹¹⁰ TR February 15, 2023, Chief Judge Gillespie, p. 165, l. 24 to p. 166, l. 5.

¹¹¹ TR February 15, 2023, Chief Judge Gillespie, p. 165, l. 24 to p. 166, l. 21; and p. 167 ll. 21-24.

¹¹² TR February 16, 2023, Ms. Wolfe for Government, p. 23, ll. 1-4.

¹¹³ TR February 16, 2023, Ms. Wolfe for Government, p. 23, ll. 6-19.

to this court, the appointing body should be able to draw from a much deeper pool of applicants than has been available in recent years.

Overall, this factor supports an increase in pay sufficient to attract more applicants for Provincial Court appointment from highly qualified lawyers of diverse legal backgrounds.

Judicial Justices

The Judicial Council describes the work of a judicial justice as “demanding and challenging and requires, at its foundation, a legally grounded, professional approach.” Judicial justices must apply all the same principles as those applied by a judge: “principles of natural justice, procedural fairness, legislation, rules of criminal evidence, and common law.”¹¹⁴ Indeed, aside from only requiring five years of legal practice instead of 10, the criteria and competencies for appointment as a judicial justice are almost identical to those of a judge.¹¹⁵

The JJA notes the words “highly qualified applicants” in section 5(5)(a) are “particularly instructive,” given the serious liberty and privacy issues judicial justices deal with, along with their role as the “face of justice” for ordinary citizens.¹¹⁶

The appointment process for judicial justices mirrors that for judges.¹¹⁷ Again, once recommended by the Judicial Council, an applicant stays on the “approved list” for three years. The following table shows the numbers of judicial justice applications received, interviews conducted, applicants recommended, and applicants appointed over the last 6 years:¹¹⁸

Year	Applications Received	Interviews Conducted	Applicants Recommended	Applicants Appointed
2017	2	0	0	0
2018	9	2	4 ¹¹⁹	0
2019	15	4	3	3
2020	5	3	2	3
2021	8	6	2	3
2022	4	4	2	1

¹¹⁴ Submission of Judicial Council, para. 37.

¹¹⁵ JBD, Vol. 1, Tab 13.

¹¹⁶ Main Submission of JJA, para. 96.

¹¹⁷ Submission of the Judicial Council, para. 27.

¹¹⁸ Main Submission of Government, para. 111; TR February 15, 2023, Chief Judge Gillespie, p. 169, ll. 11-20; Main Submission of JJA, para. 89. In respect of applicants for the position of judicial justice, we have no information on their ages, genders, regional area of origin, ethnic or cultural background, or legal diversity.

¹¹⁹ Two candidates were recommended without interviews in 2018 as they had previously been judicial officers.

The Government submits the salary increase and legislative amendments following the 2019 JCC “appear to be addressing the previous recruitment and retention problems.”¹²⁰ It notes the number of applicants recommended since 2018 is higher than the number of appointments, and “If these trends continue, it should be possible to address the upcoming retirements over the next four years.”¹²¹ The Government also said that, without knowing what a sufficient complement is for judicial justices, it is difficult to know whether needs are being met.¹²² Further, the Government submits its proposed salary recommendation and other proposed recommendations are “collectively sufficient to assist with recruitment and retention needs.”¹²³

In contrast, the Chief Judge described judicial justice recruitment as keeping “our head barely above water.”¹²⁴ She said she was not “sitting on big approved lists.” She could not tell us the number currently on the approved list because it is so small that revealing it “would be revealing to candidates who is and who is not on that list.”¹²⁵ The Chief Judge said the current complement of judicial justices is not large enough, given the increased numbers of production orders that judicial justices are dealing with due to the impact of Bill S-4 (described further below), and the increased evening bail shifts. Starting in March 2023, five shifts per week (260 shifts per year) will be added to meet these needs. The Chief Judge said that “at least” a couple more part-time justices are required to do that work.¹²⁶ The JJA also submitted that, while no one can currently answer how many judicial justices are needed, there clearly are not enough to meet current requirements.¹²⁷

Twelve of the current judicial justices will reach age 75 (mandatory retirement) between now and 2027. That is 36% of the judicial justice division. Further, the Chief Judge noted that half the judicial justices are older than 66 and “you have to be thinking on some level that some of those people are not going to stay until 75.”¹²⁸

The age demographics of the current judicial justices are shown in the figure below.¹²⁹

¹²⁰ Main Submission of Government, para. 113.

¹²¹ Reply Submission of Government, para. 94.

¹²² TR February 16, 2023, Ms. Wolfe for Government, p. 52, l. 24 to p. 53, l. 13.

¹²³ Supplemental Submission of Government, March 6, 2023, para. 15.

¹²⁴ TR February 15, 2023, Chief Judge Gillespie, p. 169, ll. 9-10.

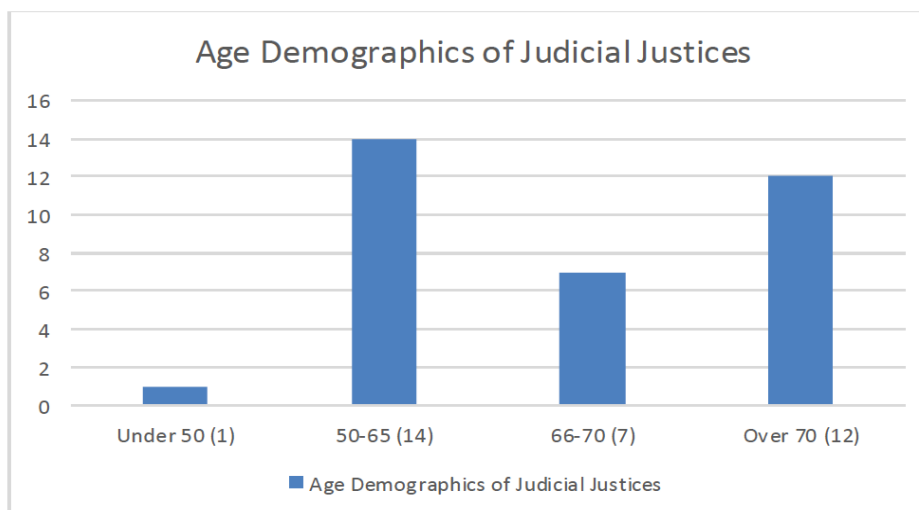
¹²⁵ TR February 15, 2023, Chief Judge Gillespie, p. 169, ll. 20-25.

¹²⁶ TR February 15, 2023, Chief Judge Gillespie, p. 171, ll. 2-5.

¹²⁷ TR February 15, 2023, Mr. Bernstein for JJA, p. 36, l. 23 to p. 37, l. 1.

¹²⁸ TR February 15, 2023, Chief Judge Gillespie, p. 169, ll. 1-8.

¹²⁹ Submission of Chief Judge, p. 38, Figure 10.



When judicial justices are not able to cover shifts at the Justice Centre, the Chief Judge must assign judges to cover that work. Judges are currently paid more than twice as much as judicial justices. Further, they are offered “two for one holiday time” to take a shift at the Justice Centre. This builds up a “leave liability” because “those judges aren’t able to sit in court as much because they can only carry over a certain amount of holidays.” The Chief Judge compared the situation to robbing Peter to pay Paul.¹³⁰ The JJA advised that in 2022, Provincial Court judges filled 42 shifts at the Justice Centre. Twenty-three of these shifts occurred during judicial justices’ educational conferences. Of the remaining shifts, all but one were on weekends or holidays.¹³¹ The JJA also advised that judges filled eight judicial justice shifts so far in February and March 2023, and that 10 shifts remained unfilled for April 2023. All these shifts fall on weekends or holidays.¹³²

The Chief Judge has made efforts to recruit more judicial justices, speaking to many different bar groups. The Judicial Council made two recent calls for applicants (September 13, 2021, and November 18, 2022). These efforts have not resulted in any noticeable increase in applications.¹³³

In response to a question about why recruitment is aimed only at filling part-time judicial justice positions, the Chief Judge explained, “frankly, full-time lawyers will not work for the amount that we pay full-time judicial justices.”¹³⁴

Consideration of this factor reveals a looming crisis in attracting and maintaining a strong complement of judicial justices. Given the foreseeable retirements, older age demographics of the current complement, and very low application and approved candidate numbers, it is highly likely

¹³⁰ TR February 15, 2023, Chief Judge Gillespie, p. 171, ll. 15-22.

¹³¹ Main Submission of JJA, paras. 93-94.

¹³² Reply Submission of JJA, paras. 19-20.

¹³³ Submission of Chief Judge, paras. 178-179.

¹³⁴ TR February 15, 2023, Chief Judge Gillespie, p. 168, ll. 8-10.

that the court will not have a sufficient complement of judicial justices to meet the workload of the judicial justice division unless steps are taken immediately to improve recruitment.

This factor militates in favour of significant compensation increases for judicial justices.

4.2 Factor 2: Changes, if any, to the jurisdiction of judges or judicial justices

Provincial Court Judges

As no new changes in jurisdiction significantly impacted judges over the last three years, and we were not advised of predicted changes over the next four years, Factor 2 supports neither an increase nor decrease in the compensation paid to judges.

The PCJA submitted there have been no significant changes to the jurisdiction of Provincial Court judges since 2016.¹³⁵ The impact of changes that occurred prior to the last judicial compensation commission (i.e., the shift of small claims files under \$5001 to the Civil Resolution Tribunal, and changes to the number of hybrid offences in the *Criminal Code*) are difficult to assess due to the impact of the COVID-19 pandemic.¹³⁶ Similarly, the Government says it is difficult to assess if the new offences related to the COVID-19 pandemic had any effect on the court.¹³⁷

Neither participant argued that a change in jurisdiction was relevant to this Commission's work concerning judges. As the Government pointed out, however, we must still take this statutory factor into account. The fact that there was no change in jurisdiction should be assessed along with the other factors in determining whether this factor supports an increase or supports compensation staying the same."¹³⁸

We conclude that, on its own, this factor supports neither an increase nor decrease in compensation for Provincial Court judges.

Judicial Justices

Recent changes to the Criminal Code concerning judicial authorizations by telewarrant will significantly increase the collective workload of judicial justices. This factor supports an increase in compensation to judicial justices.

The JJA submits that Bill S-4's changes to the *Criminal Code* constitute a change in the jurisdiction of judicial justices because these changes allow applications for judicial authorizations that previously had to be made in person (to either a judge or judicial justice) to now be made through

¹³⁵ Main Submission of PCJA, para. 184.

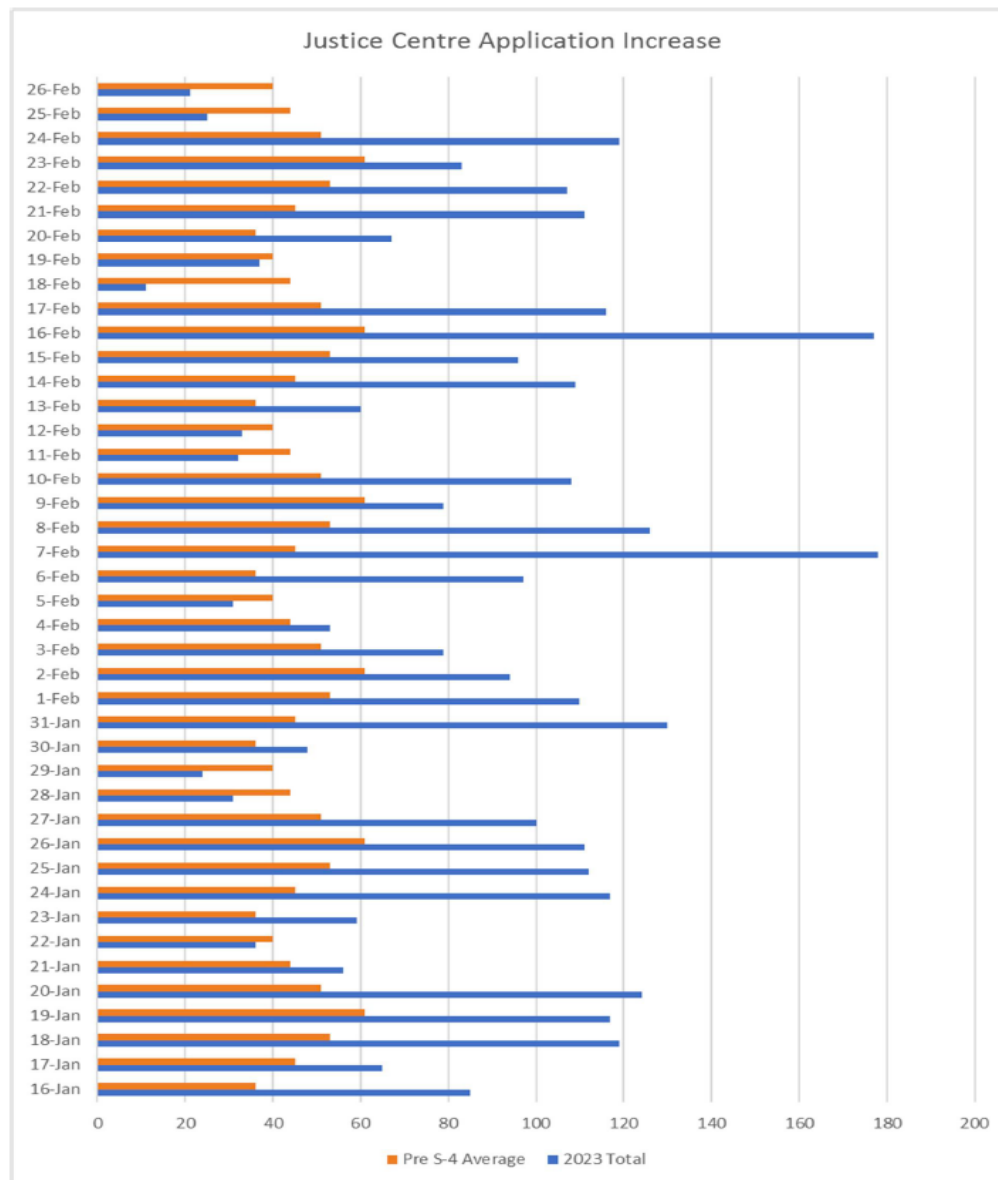
¹³⁶ Main Submission of PCJA, para. 184; Main Submission of Government, paras. 116-118.

¹³⁷ Main Submission of Government, para. 119.

¹³⁸ TR February 15, 2023, Ms. Wolfe for Government, p. 205, ll. 20-24.

telecommunications.¹³⁹ Stated differently, judicial justices now have jurisdiction to hear the vast majority of judicial authorization applications throughout the province by way of telecommunication. The changes took effect on January 16, 2023.

Data for the first 42 days since the change took effect show an increased number of applications per day to the Justice Centre (dark blue lines) compared to the average number of applications for the same day of the week (light orange lines, averaged over October, November, and December 2022), as shown in the figure below:¹⁴⁰



¹³⁹ Main Submission of JJA, para. 97.

¹⁴⁰ Figure taken from Supplementary Submission of JJA, para. 7.

The JJA told us that, as of March 6, 2023, the number of unfilled shifts at the Justice Centre “continues to grow” with 27 unfilled shifts from March 29 to May 31, 2023. As well, in response to both Bill S-4 and the anticipated opening of a new virtual bail court commencing March 13, 2023, over 230 new shifts have been created at the Justice Centre.¹⁴¹ The JJA submits there is no reason to expect that the number of applications received will decrease over time, noting that Bill S-4 was intended to introduce lasting changes to the criminal justice system in order to improve flexibility and efficiency.¹⁴²

The Government submitted that Bill S-4 is not a true change in jurisdiction since many of the authorizations now allowed to be heard by telecommunications could previously be heard by judicial justices in person. It said these shifts in workflow are of a different nature than the changes in jurisdiction that have been considered by previous commissions.¹⁴³ The Government says changes in the workload to judicial justices should be monitored over the 2022 cycle, but that it would be premature to recommend any significant adjustments (to compensation) until there is concrete evidence to determine the magnitude of the change.¹⁴⁴ The Government “doesn’t deny that there may be an impact,” but more time and data are needed to know whether this new process will “continue at the current level or is going to level off a bit.”¹⁴⁵ It says its proposal concerning shift premiums may help to address the need to fill new shifts.¹⁴⁶ It recognizes that “there may be a need to increase the overall complement of Judicial Justices in response to Bill S-4” but that it is “still too early to conclude that S-4, by itself, warrants an increase in salaries.”¹⁴⁷

The Chief Judge noted that whether this is a change in jurisdiction depends on how you define “jurisdiction.” In any event, “It results in an increase in their workload which is something I think jurisdiction is meant to address.”¹⁴⁸

The figure above shows a clear pattern: the days with the lowest numbers of applications (i.e., January 21, 22, 28 and 29, February 4, 5, 11, 12, 18, 19, 25 and 26) are weekend days; the higher application numbers are on weekdays, only one of which was a holiday (Family Day). While the data only reflect six weeks, they suggest the increased workload is coming on weekdays, and therefore would not be addressed in any way by a weekend shift premium. While we agree the available data about the impact from Bill S-4 are limited, they show a current, growing, significant increase to the workload of judicial justices. This increased workload, combined with the evidence that 230 to 260 new shifts per year will be needed at the Justice Centre, in part to cover this increased workload, is compelling. There is no logical reason to suspect that use of this new

¹⁴¹ Supplemental Submission of JJA, paras. 10-11. Note the Chief Judge’s evidence was that 260 shifts would be added: TR February 15, 2023, Chief Judge Gillespie, p. 171, ll. 2-5.

¹⁴² Supplemental Submission of JJA, para. 8.

¹⁴³ TR February 15, 2023, Ms. Wolfe for Government, p. 239, ll. 1-6.

¹⁴⁴ Reply Submission of Government, para. 99.

¹⁴⁵ TR February 15, 2023, Ms. Wolfe for Government, p. 239, l. 22 to p. 240, l. 4.

¹⁴⁶ TR February 15, 2023, Ms. Wolfe for Government, p. 241, ll. 5-10.

¹⁴⁷ Supplemental Submission of Government, March 6, 2023, para. 14.

¹⁴⁸ TR February 15, 2023, Chief Judge Gillespie, p. 173, l. 11 to p. 174, l. 6.

process will drop off; indeed, it seems likely to increase as police seeking authorizations become familiar with the new process. In any case, as Commissioners we are required to look ahead to the next four fiscal years. The evidence shows a real risk that the workload of judicial justices will increase significantly over the next four years in comparison to the last year.

We appreciate the Government’s submission that the nature of the change presented by Bill S-4 is different from the sorts of jurisdictional changes addressed by previous commissions. There is no caselaw in this context to help us in determining what “changes to the jurisdiction” of judicial justices means. We agree with the Chief Judge that, in including this factor, the legislature must have intended to capture changes in the workload of judicial justices that flow from changes to the legislation that gives them jurisdiction. This is such a change. This change stems directly from federal legislation that now permits judicial officers—in this case BC judicial justices—to hear matters (virtual applications for authorizations) that they were not permitted to hear previously. It is different from other possible changes in workload that might occur owing to factors unrelated to legislation.

Nevertheless, even if Bill S-4 does not amount to a “change in jurisdiction,” it does increase the workload on judicial justices and is another factor that we consider relevant to this Commission’s mandate under section 5(5.2) of the *Judicial Compensation Act*.¹⁴⁹ This change in workload is relevant because it increases the need for judicial justices to fill shifts at the Justice Centre or to take on greater workloads during their shifts. Further, it compounds the anticipated problems arising from an insufficient judicial justice complement and the apparent low interest in judicial justice positions, described above.

Whether the changes in workload arising from Bill S-4’s amendment of the *Criminal Code* are viewed as a jurisdictional change or as “another relevant factor,” these changes militate in favour of increases to judicial justice compensation.

4.3 Factor 3: Compensation provided in respect of similar judicial positions in Canada, having regard to the differences between those jurisdictions and British Columbia

Provincial Court Judges

Examining similar judicial positions in Canada reveals British Columbia’s Provincial Court judge salaries are out of step and well below the average of best comparators.

While this factor must be considered along with all the other statutory factors, we agree with the 2016 JCC and the 2019 JCC that the compensation of other judges in Canada is an important consideration in determining the reasonable compensation paid to BC judges.¹⁵⁰ We have looked at all other judges, including federally appointed and provincially appointed judges across Canada.

¹⁴⁹ We advised Government, JJA, PCJA, and Chief Judge that we may consider the effects of Bill S-4 as another relevant factor under s. 5(5.2) and those participants had an opportunity to make submissions on this issue.

¹⁵⁰ 2019 JCC Report, JBD, Vol. 1, Tab 18, p. 20; 2016 JCC Report, JBD, Vol. 1, Tab 21, p. 47.

The Government submits the federally appointed judges are not useful comparators because superior court judges have broader, and inherent, jurisdiction to hear civil, family, and criminal cases, and the superior court judges hear appeals from the Provincial Court and conduct judicial reviews.¹⁵¹ While the types of cases differ, and the Provincial Court judges are limited to their statutory jurisdiction, the judicial roles are similar in both courts. As noted by the PCJA, “the same qualities of judicial temperament, legal knowledge, and an abiding sense of fairness are required of all judges” and all judges make decisions that will greatly affect people’s lives, including the potential loss of freedom.¹⁵²

The BC Supreme Court logically competes with the BC Provincial Court for applicants by drawing from the same pool: BC lawyers with at least 10 years of experience. While some lawyers will apply to one court over the other for reasons other than compensation (e.g., because of differences in the nature of the cases heard), compensation will be an important consideration, as it is in applying for any position. Federally appointed judges currently receive \$83,700 more in salary per year than Provincial Court judges in British Columbia, and the compensation value of pension benefits for a federally appointed judge (expressed as a level of percentage of pay over the working lifetime of a typical judge) is 66.4% compared to 43.1% for a Provincial Court judge.¹⁵³

In short, while recognizing differences (including the type of work done in the superior courts of general jurisdiction compared with that done in statutory provincial courts), we also see similarities sufficient to include federally appointed judges as one element in the group of Canadian comparators.

While provincial courts in other provinces are less likely to compete with the BC Provincial Court for applicants, judges in provincial courts across Canada are important comparators because of the similarity in roles and subject matters dealt with by the other provincial courts.

The Government says the method of determining compensation in other jurisdictions is a “difference” that must be considered when comparing the salaries of provincial court judges in other Canadian jurisdictions to BC salaries.¹⁵⁴ Some provincial governments (Ontario, Saskatchewan, and New Brunswick) have chosen to set their judges’ salaries at a fixed percentage of superior court judges’ salaries. The Government says British Columbia has made a different policy choice that does not contemplate a fixed relationship, and that we must take account of this “difference” and “give effect to the choices made here.”¹⁵⁵ In Government’s submission, because Ontario, Saskatchewan, and New Brunswick use fixed percentages of superior court salaries to determine their provincial court salaries, these provinces do not make good comparators.¹⁵⁶

¹⁵¹ Main Submission of Government, paras. 128 and 130.

¹⁵² Main Submission of PCJA, para. 191.

¹⁵³ PCJA BD, Tab 3, p. 5.

¹⁵⁴ Main Submission of Government, paras. 132-135.

¹⁵⁵ Main Submission of Government, para. 134-135.

¹⁵⁶ Main Submission of Government, paras. 132, 145, 146

The wording of section 5(5)(c) seems aimed at directing commissions to consider *substantive* differences in either (a) the nature of judicial work, or (b) the economic or social characteristics of the region or “jurisdiction” where the work is done. The language of section 5(5)(c) does not naturally suggest that a commission should delve into the *processes* by which governments in other regions of Canada have chosen to make decisions about judicial compensation. Comparing judicial salaries to other similar positions is intended to provide an objective measure of the reasonableness of salaries that have been implemented by the BC Government. If we eliminate from comparison all the provinces whose governments have not made the same policy choices as the BC Government in respect of the process for setting judicial compensation, we will not have an objective comparative view of what is being paid for similar judicial work across the country. We will have a view that is biased to be as close as possible to the policy choices of the BC Government. Accordingly, we reject the Government’s contention that Ontario, Saskatchewan, and New Brunswick are inappropriate comparators.

In short, we agree with the 2019 JCC. In looking at provincial court salaries across the country, it considered both differences in the positions (“markers of similarity: the qualifications for the positions, the core qualities required for them and the nature of the judicial work, including jurisdiction”), and differences among regional jurisdictions (“performance of their respective economies and relative debt levels, populations, [and] budgets”).¹⁵⁷

The participants acknowledge the broad jurisdiction of BC Provincial Court judges.¹⁵⁸ Not all other provincial courts in Canada hear cases from the diverse subject areas represented before BC judges. In Alberta and Ontario, urban areas have specialized criminal, family, and civil divisions while rural areas have non-specialized judges. In Quebec, specialized courts exist in almost all areas of the province and judges are assigned exclusively to those divisions.¹⁵⁹

With respect to differences in economic indicators, the Government submits that Alberta and Quebec are the notable comparators for British Columbia, saying these are the closest to British Columbia in terms of GDP and population. It says the current salaries received by BC Provincial Court judges are “within a reasonable range” of these comparators.¹⁶⁰ The PCJA submits the best comparators are Alberta, Saskatchewan, and Ontario, as these jurisdictions are, like British Columbia, “in favourable economic positions” as measured by GDP per capita.¹⁶¹

While Quebec is close to British Columbia in terms of unemployment rate and provincial GDP, it is 63% larger in population, resulting in a lower GDP per capita. Nevertheless, the PCJA concedes that, comparing the six largest provinces, GDP per capita would be “broadly similar.” However, looking only at GDP per capita obscures the relative costs of living in different provinces such as the cost of buying a home. The only other province with comparable home prices to British

¹⁵⁷ 2019 JCC Report, JBD, Vol. 1, Tab 18, pp. 19-20

¹⁵⁸ TR February 16, 2023, Ms. Wolfe for Government, p. 16, ll. 12-14; Main Submission of Government, p. 31; Main Submission of PCJA, para. 79.

¹⁵⁹ TR February 15, 2023, Chief Judge Gillespie, p. 139, l. 1 to p. 140, l. 6.

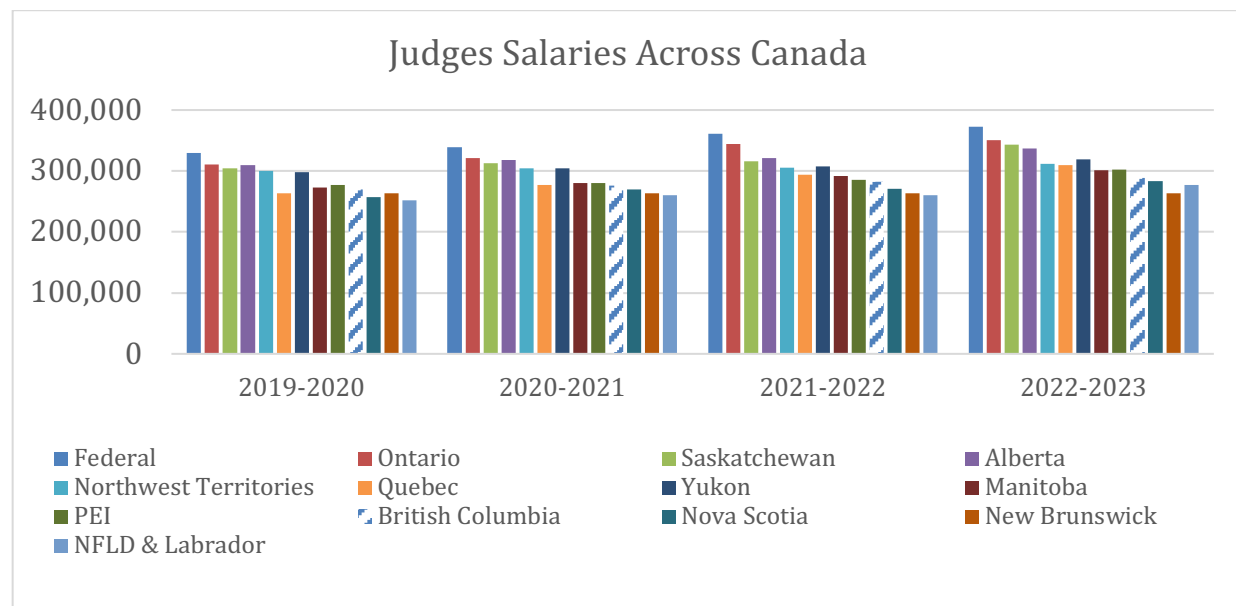
¹⁶⁰ Main Submission of Government, paras. 148-149.

¹⁶¹ Main Submission of PCJA, para. 208; Reply Submission of PCJA, para. 37; TR February 13, 2023, Mr. McKinnon, p. 77, ll. 9-13.

Columbia is Ontario.¹⁶² Other economic factors, such as debt as a percentage of GDP, make Alberta and Saskatchewan comparable to British Columbia.¹⁶³ Saskatchewan has the closest unemployment rate to British Columbia, and is also similarly diverse in its export destinations.¹⁶⁴

Taking these points into account, the closest comparators to BC Provincial Court judges are provincially appointed judges in Alberta, Saskatchewan, and Ontario. While some urban courts in Alberta and Ontario are more specialized than in British Columbia, the rural judges have comparatively broad jurisdiction—unlike the more specialized judges in Quebec. Alberta, Saskatchewan, and Ontario have similarly healthy economies. Ontario is most similar to British Columbia in terms of housing costs. Alberta and Saskatchewan are similar to British Columbia in terms of debt as a percentage of GDP. Alberta is similar in terms of population size, and Saskatchewan in terms of diverse export destinations.

The figure below shows annualized judicial salaries across Canada for the last four fiscal years.¹⁶⁵



¹⁶² Reply Submission of PCJA, paras. 38-39.

¹⁶³ Exhibit 1, slide: BC – Provincial Comparisons Taxpayer-Supported Debt (% of GDP).

¹⁶⁴ Exhibit 1, slide: Export Destinations; slide: Unemployment Rate by Province and Region.

¹⁶⁵ Data for this figure come from JBD, Vol. 2, Tab 34. For Alberta in 2021/22 and 2022/23 and Yukon 2022/23, the actual compensation is unknown. We assumed that these jurisdictions will be given at least an increase to account—in some way—for CPI. To provide an estimate of the 2021/22 salary for Alberta, the 2020/21 salary was increased by the amount equal to the change in “all items” monthly CPI for Alberta from January 2020 to January 2021: 0.8%. To provide an estimate of the 2022/23 salary for Alberta, the estimated 2021/22 salary was increased by the amount equal to the change in “all items” monthly CPI for Alberta from January 2021 to January 2022: 4.8%. To provide an estimate of the 2022/23 salary for the Yukon, the 2021/22 salary for Yukon was increased by the amount equal to the change in “all items” CPI for Yukon from January 2021 to January 2022: 3.7%. The “all items” monthly CPI numbers for these provinces were generated from Statistics Canada. [Table 18-10-0004-02 Consumer Price Index by geography, all-items, monthly, percentage change, not seasonally adjusted, Canada, provinces, Whitehorse, Yellowknife and Iqaluit.](#)

British Columbia's Provincial Court judge salaries currently rank 10th out of all judicial salaries in Canada (9th if only considering provincial/territorial courts). We also note that, while the judicial salaries in most other provinces for the 2023-24 fiscal year are currently unknown, those that are known have increased from the 2022-23 values shown in the figure above.

The table below shows judicial salaries across Canada for the current year (2022-23), along with averages for comparison:¹⁶⁶

Jurisdiction	Salary for 2022-23
Federal	372,200
Ontario	350,212
Saskatchewan	343,045
Alberta	336,458 (estimate)
Yukon	319,107 (estimate)
Northwest Territories	311,723
Québec	310,000
Prince Edward Island	302,010
Manitoba	301,345
British Columbia	288,500
Nova Scotia	283,075
Newfoundland & Labrador	277,357
New Brunswick	263,920
AVERAGES	
All salaries (excluding BC)	314,204
All provinces/territories (excluding BC)	308,932
Alberta, Saskatchewan, and Ontario	343,238
Alberta, Saskatchewan, Ontario, and Quebec	334,928

For 2022-23, the average salary of all judges (federal and provincial) across Canada, excluding BC judges, is \$314,204. British Columbia's judges' salary is over \$25,000 below the national average.

If we look only at British Columbia's closest comparators (Alberta, Saskatchewan, and Ontario) and exclude federal judges, the average salary is \$343,238. British Columbia's economy is comparably healthy to their economies. With respect to BC's financial position, independent bond rating agencies give British Columbia the highest rating in Canada (see discussion under section

¹⁶⁶ See *ibid.* for calculation of values for Alberta and Yukon.

4.5). Despite that, a BC Provincial Court judge's salary is currently \$54,738 below the average of its closest comparators. This objective measure strongly suggests that BC judges' salaries are unreasonably low.

Additionally, considering compensation as a whole (as described below in section 6.2), Mr. Sauvé's undisputed evidence was that the estimated compensation value of the judicial pension arrangement in British Columbia is 43.1% of salary compared to an average compensation value of 54.6% for the other four jurisdictions he considered (federal, Alberta, Ontario, and Saskatchewan)—for a difference of 11.5% of salary.¹⁶⁷

In our view, British Columbia is not paying salaries to its Provincial Court judges that are within a reasonable range of the province's comparators. This factor militates in favour of a significant increase in compensation.

Judicial Justices

British Columbia's judicial justices are paid below average salaries for work similar to other judicial justices or justices of the peace in Canada, despite British Columbia's strong economy and more favourable fiscal position.

Only Alberta, Saskatchewan, Manitoba, Ontario, and Quebec have judicial justice or justice of the peace positions (collectively "judicial justices") that are comparable or analogous to those in British Columbia.¹⁶⁸

However, there are some differences. In British Columbia and Alberta, a judicial justice must have a law degree and have practised for five years, but in Ontario no legal training is required to hold the position. In Quebec, 10 year's legal practice is required.¹⁶⁹ The Government also points to some differences in the jurisdiction of judicial justices among the six provinces,¹⁷⁰ but aside from Manitoba (where judicial justices conduct trials and sentencing hearings for summary convictions) and Quebec (where judicial justices rule on contested applications relating to the disposal of seized property), the differences in jurisdiction are relatively minor. All deal with significant liberty and privacy issues, and the Government acknowledged that the jurisdiction of judicial justices across Canada is "largely analogous."¹⁷¹

The Government argues that we should consider the difference between the processes for determining compensation for judicial justices. It points to the fact that in Saskatchewan, Ontario, and Manitoba the salaries are set as a percentage of provincial judges' salaries. For the same

¹⁶⁷ Comparative Analysis of Judicial Pension Plans, Prepared by Andre Sauvé, December 2022, PCJA BD, Tab 3, p.5.

¹⁶⁸ Main Submission of Government, para. 154; Main Submission of JJA, para. 101.

¹⁶⁹ Reply Submission of JJA, para. 61

¹⁷⁰ Main Submission of Government, para. 154.

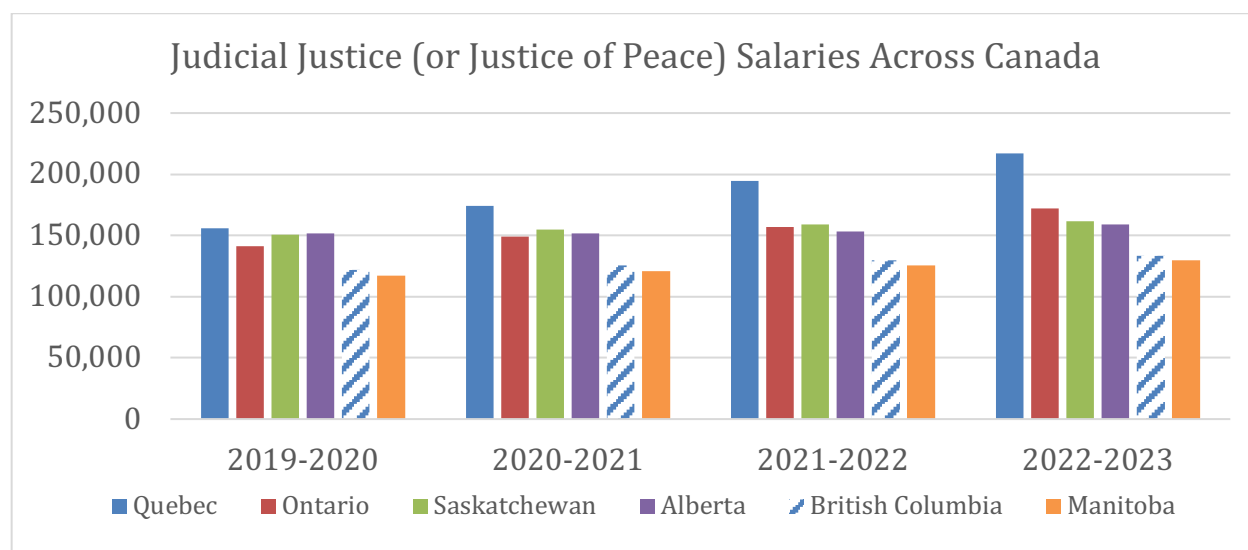
¹⁷¹ TR February 16, 2023, Ms. Wolfe for Government, p. 13, ll. 1-20; Main Submission of Government, paras. 152 and 154.

reasons described above in the section on judges, we do not find differences in the processes for determining compensation to be relevant considerations under this factor.

The Government says Alberta is the most appropriate comparator for judicial justice salaries in terms of “GDP, GDP growth, geographic location and population.” It says Quebec is not an appropriate comparator given differences in jurisdiction.¹⁷² The JJA adopted the 2019 JCC’s finding that Alberta and Ontario are the best comparators.¹⁷³

We find the roles of judicial justices across Canada to be roughly comparable, acknowledging some differences. As with the analysis above for judges, we find Alberta, Saskatchewan, and Ontario to be the closest to British Columbia with respect to the health of their economies, housing costs or provincial debt burdens. For consistency and given slight variations in the judicial justice roles in Quebec and Manitoba, we have determined that Alberta, Saskatchewan, and Ontario are the best comparators.

The figure below shows the annualized salaries of BC judicial justices and similar positions across Canada for the 2019-20 to 2022-23 fiscal years.¹⁷⁴



The current salary for BC judicial justices is \$34,366 below the average of all the other provinces. Despite British Columbia having a strong economy and an independently-ranked stronger financial

¹⁷² Main Submission of Government, para. 156.

¹⁷³ Main Submission of JJA, para. 102. TR February 15, 2022, Mr. Bernstein for JJA, p. 91, ll. 12-23; p. 93, ll. 3-10. p. 121, ll. 7-23.

¹⁷⁴ Data for this figure come from JBD, Vol. 2, Tab 35. For Alberta in 2021/22 and 2022/23, the actual compensation is unknown, but the participants provided us with an unconfirmed number for 2021/22 of \$151,813. Assuming at least an increase to account for CPI in the previous year, to provide an estimate of the 2022/23 salary for Alberta, the 2021/22 salary was increased by the amount equal to the change in “all items” CPI for Alberta from January 2021 to January 2022: 4.8%. The “all items” CPI numbers were generated from Statistics Canada. [Table 18-10-0004-02 Consumer Price Index by geography, all-items, monthly, percentage change, not seasonally adjusted, Canada, provinces, Whitehorse, Yellowknife and Iqaluit.](#)

position than any other province, BC judicial justice salaries are \$30,751 below the average of its closest comparators, Alberta, Saskatchewan, and Ontario.

The current salaries and averages for comparison are found in the following table:¹⁷⁵

Jurisdiction	Salary for 2022-23
Québec	217,000
Ontario	172,000
Saskatchewan	161,655
Alberta	159,100 (estimate)
British Columbia	133,500
Manitoba	129,578
AVERAGES	
All provinces (excluding BC)	167,866
Alberta, Saskatchewan, and Ontario	164,251
Alberta, Saskatchewan, Ontario, and Quebec	177,438

Within British Columbia, the position of a judicial justice may also be compared with that of a Provincial Court judge. The two positions have some overlapping jurisdiction such that Provincial Court judges fill shifts normally assigned to judicial justices. The qualifications for the positions are nearly identical. As noted by the JJA, “To the public, there is generally no discernible difference between a judicial justice and a Provincial Court judge.”¹⁷⁶ However, as described above, the statutory jurisdiction of a Provincial Court judge is much broader than that of a judicial justice. The judicial justice’s jurisdiction is further limited by the assignment of specific duties by the Chief Judge.

Currently, the salary of a full-time judicial justice is 46.3% of the annual salary of a judge: \$133,500 compared to \$288,500. In 1978, when judicial justices did not have to be lawyers, the salary of a judicial justice was 64.7% of a judge’s salary.¹⁷⁷ While judicial justices are much more specialized, have narrower jurisdiction, and do not conduct trials (other than in traffic court), it strikes us as remarkable that BC judicial justices are now paid less than half the salary of Provincial Court judges.

As with Provincial Court judges, this factor militates in favour of significant compensation increases for judicial justices.

¹⁷⁵ See *ibid.* for the estimate of Alberta Judicial Justice salary.

¹⁷⁶ Main Submission of JJA, para. 140.

¹⁷⁷ Main Submission of JJA, paras. 142-143.

4.4 Factor 4: Changes in the compensation of others paid by provincial public funds in British Columbia

The Government's current approach to compensation of the public sector is relatively generous compared to recent history. The Government has shown its willingness to address specific problems such as recruitment and retention with increases in compensation.

This factor directs us to look at changes in the compensation of others paid out of the public purse. It is the *change* in compensation that is important—not a dollar-for-dollar comparison of compensation between different groups of public employees or public office-holders.¹⁷⁸ Under this factor, it is important to look at trends, and consider what those trends might say about a reasonable approach to judicial compensation, noting the unique, constitutional role of the judiciary. For example, looking at the changes to the compensation of others paid from the public purse might “support the inference that the Province had exercised moderation in dealing with other public salaries.”¹⁷⁹ Conversely, it might support an inference that the government has acted more expansively.

Under this factor we look at what the government has considered “to be a reasonable change in compensation for the rest of the public service.”¹⁸⁰ The Government acknowledged that a strict application of its public sector bargaining mandate to changes in compensation by the judiciary would not be appropriate.¹⁸¹

The Government rightly conceded that “we are in a different world” compared to the situation before past commissions.¹⁸² The *2022 Shared Recovery Mandate* is the most generous bargaining mandate that the BC Government has put forth in over 12 years.¹⁸³ It guarantees, over a three-year period, wage increases to the public sector of 11.5% to 13.75%, depending on whether cost of living adjustments need to be made.¹⁸⁴ The Government said the mandate was designed, in part, to respond to inflation. The PCJA pointed out that under this bargaining mandate, the BC

¹⁷⁸ *Provincial Court Judges' Association of British Columbia v. British Columbia (Attorney General)*, 2021 BCCA 295, JBA, Vol. 1, Tab 14, para. 59.

¹⁷⁹ *Provincial Court Judges' Association of British Columbia v. British Columbia (Attorney General)*, 2021 BCCA 295, JBA, Vol. 1, Tab 14, para. 61.

¹⁸⁰ TR February 16, 2023, Ms. Wolfe for Government, p. 61, ll. 2-4.

¹⁸¹ Main Submission of Government, para. 162, citing *Provincial Court Judges Association of British Columbia v. British Columbia (Attorney General)*, 2012 BCSC 1022.

¹⁸² TR February 16, 2023, Ms. Wolfe for Government, p. 61, l. 23 to p. 62, l. 2.

¹⁸³ For comparison, see the government's public sector bargaining mandates from 2019, 2014, 2012, and 2010 at <https://www2.gov.bc.ca/gov/content/employment-business/employers/public-sector-employers/public-sector-bargaining/mandates-and-agreements>. The 2010 and 2012 mandates were for zero net increases. The 2014 mandate was for 0, 1, 1.5, 1.5 and 1.5% increases over 5 years. The 2019 mandate was for 2% increases in each of 3 years.

¹⁸⁴ Main Submission of Government, para. 177; 2022 Shared Recovery Mandate, JBD, Vol. 2, Tab 43.

Government is also offering “a flexibility allocation to target additional wage adjustments—over and above the general wage increases—that are needed to address, among other things, specific recruitment and retention challenges.”¹⁸⁵

The PCJA also described instances where small groups of employees receive certain bonuses or stipends.¹⁸⁶ In addition, some employees in the public sector receive step increases as they progress through “levels” of their positions. In contrast, all Provincial Court judges or judicial justices receive the same compensation regardless of years served; there are no salary increases or stipends or bonuses, and no promotion levels for a judge to move through (with the exception of the small number of administrative positions of Chief Judge, Associate Chief Judge, etc. referred to above). The Government submits such step increases are irrelevant to this Commission as members of the judiciary already receive the maximum salary for their position.¹⁸⁷ We accept that point, and in any event, on the evidence before us it is impossible to assess whether there has been a change in the compensation received by employees in the public sector as a result of changes in bonuses or the system of progression through position levels.

One conclusion is clearly supported by the evidence: in exceptional circumstances, the government has shown itself willing to depart from bargaining mandates and to implement greater compensation increases for specific groups. The PCJA says these exceptions demonstrate there are “circumstances in which government may need to offer increases over and above the bargaining mandate” to address problems.¹⁸⁸

For example, in 2019, when the government’s bargaining mandate was 2%, it increased legal aid tariff rates by 35% after the legal aid lawyers working for tariff rates threatened to strike. The context for this raise included that the tariff rates had not been raised in 13 years.¹⁸⁹

The PCJA and the Government referred to a current example: family physicians, who may receive changes in compensation greater than the *2022 Shared Recovery Mandate*, to ensure that the “take home pay of family doctors will be roughly comparable to equivalent hospital physicians going forward.”¹⁹⁰ The context here includes a health care system in crisis and “a recruitment and retention” problem for family doctors.

The Commission requested and the Government provided further details about the increased compensation for physicians. It appears that all physicians will see across the board increases to the rates and fees they may charge of 6-8.25% over three years (2022/23 to 2024/25), depending on whether a Cost of Living Protection Adjustment is triggered.¹⁹¹ On top of this, approximately

¹⁸⁵ Main Submission of PCJA, para. 331.

¹⁸⁶ TR February 14, Ms. Latimer for PCJA, p. 215, ll. 1-19.

¹⁸⁷ Reply Submission of Government, para. 34.

¹⁸⁸ TR February 14, 2023, Ms. Latimer for PCJA, p. 216, ll. 17-20.

¹⁸⁹ Main Submission of PCJA, para. 228; Reply Submission of Government, para. 37.

¹⁹⁰ Main Submission of PCJA, para. 231; Reply Submission of Government, para. 37.

¹⁹¹ Information Respecting Increases in Compensation for Family Physicians in British Columbia, prepared for 2022 JCC, p. 4. (See Appendix B, item 8.)

\$428 million dollars are available to address specific priority areas “such as increasing the Business Cost Premium to offset overhead costs of a physician’s practice.”¹⁹² There is also a new compensation model for family physicians which is intended to be competitive with compensation for hospitalists (physicians who work in hospitals). The actual compensation varies based on how individual family physicians “respond to various incentives in the model.”¹⁹³

From the information provided,¹⁹⁴ it is difficult to know exactly how much of an increase these combined compensation methods provide to an “average” family physician. However, the PCJA referred to documents from the Ministry of Health and statements made by the government to the media, both of which indicate that a full-time family doctor (meeting certain parameters set out in the compensation model) could receive an increase in pay from \$250,000 per year to \$385,000 per year under the new model. This potentially represents a 54% increase in gross income per year for those physicians meeting all the parameters and responding to the incentives in the model.¹⁹⁵ The Government agreed that the change in the compensation model for family doctors is meant to address recruitment and retention problems.¹⁹⁶

The evidence before us clearly shows the BC Government currently taking a generous approach to increases in compensation in the public sector when compared to the recent past. The evidence also shows that government is willing to allocate significant funding in order to correct specific problems like the recruitment and retention of family doctors.

Overall, this factor supports an increase in compensation for both judges and judicial justices.

4.5 Factors 5 and 6: The generally accepted current and expected economic conditions in British Columbia; and the current and expected financial position of the government over the four fiscal years that are the subject of the report

The BC economy is sound and solid. The government is currently embarked on a number of spending programs due to its fiscal surplus. British Columbia receives the highest credit ratings of any province. While a short-term economic slowdown is expected this year, the economy is expected to rebound to normal levels. The economic and fiscal position of British Columbia permits significant increases in compensation for Provincial Court judges and judicial justices.

¹⁹² Information Respecting Increases in Compensation for Family Physicians in British Columbia, prepared for 2022 JCC, pp. 3-4. (See Appendix B, item 8.)

¹⁹³ Information Respecting Increases in Compensation for Family Physicians in British Columbia, prepared for 2022 JCC, p. 4. (See Appendix B, item 8.)

¹⁹⁴ Information Respecting Increases in Compensation for Family Physicians in British Columbia, prepared for 2022 JCC. (See Appendix B, item 8.)

¹⁹⁵ Supplemental Submission of PCJA, para. 11 and Tabs D, E, and F.

¹⁹⁶ TR March 10, 2023, Ms. Wolfe for Government, p. 98, ll. 11-25.

Although Factors 5 and 6 are discrete factors, the “current and expected economic conditions” obviously affect the “current and expected financial position of the government.” Therefore, we have chosen—like the participants did in the oral hearings—to discuss these factors together.

Two witnesses gave evidence to help us understand these factors. We heard from Mr. Ian McKinnon, a consultant with Pacific Issues Partners, who provided us with a report, a supplementary report, and two PowerPoint presentations.¹⁹⁷ His evidence was presented by the PCJA. Ms. Heather Wood, Deputy Minister of Finance for British Columbia, was tendered by the Government. She provided a report, testified before us, and provided us with two PowerPoint presentations.¹⁹⁸ We also had before us considerable information regarding the 2023 Provincial Budget (“Budget 2023”).¹⁹⁹

Both witnesses spoke about the state of the BC economy. Mr. McKinnon told us the following:

- Canada has a considerable advantage over other G7 countries arising from lower debt levels. The IMF expects Canada’s economic growth forecast to be slightly above the average for advanced economies. International events are expected to have a positive effect on Canada’s economy, such as China’s relaxation of COVID restrictions, which is expected to improve supply chain issues, and the conflict in Eastern Europe, which has increased demand for Canadian grain and energy.²⁰⁰
- In response to inflation, over the last year the Bank of Canada increased interest rates “rapidly and fairly dramatically.” Inflation is now stabilizing and beginning to move down.²⁰¹ Since the summer of 2022, the consumer price index (CPI) has been trending down.²⁰²
- Canadian Real GDP is above where it was pre-COVID-19, by a “significant percent.”²⁰³ Similarly, Canadian employment levels have been fully restored to pre-pandemic levels and “have been growing since.”²⁰⁴
- In British Columbia, “the GDP has grown faster, unemployment has tended to be below the national average and we’ve got a diversified economy. Diversified economy means that you don’t have the terrific ups, the booms ... but nor do we have the declines.”²⁰⁵ The BC economy is sound and solid.²⁰⁶

¹⁹⁷ PCJA BD Tab 1; Exhibit 1; Supplementary Submission of PCJA, Tab B; and Exhibit 14.

¹⁹⁸ Exhibit 2; and Exhibit 17.

¹⁹⁹ Budget Submission of Government, Appendices; and Supplemental Submission of PCJA, Appendices.

²⁰⁰ TR March 10, 2023, Mr. McKinnon, p. 12, l. 20 to p. 14, l. 8; Exhibit 14, p. 2.

²⁰¹ TR March 10, 2023, Mr. McKinnon, p. 15, ll. 4-15.

²⁰² TR March 10, 2023, Mr. McKinnon, p. 17, ll. 15-18.

²⁰³ TR March 10, 2023, Mr. McKinnon, p. 15, ll. 16-23; Exhibit 14, p. 4.

²⁰⁴ TR March 10, 2023, Mr. McKinnon, p. 15, l. 24 to p. 16, l. 4; Exhibit 14, p. 5.

²⁰⁵ TR March 10, 2023, Mr. McKinnon, p. 18, ll. 17-21; Exhibit 14, p. 7.

²⁰⁶ TR March 10, 2023, Mr. McKinnon, p. 25, ll. 18-22.

Ms. Wood similarly testified to the strength and resilience of the BC economy, but cautioned about an economic slowdown over the next year:

- The BC economy has proven to be resilient in facing the pandemic and geopolitical disruptions.²⁰⁷
- Economic growth was “very strong” in 2021 and 2022, slowing towards the end of 2022, and a slower growth in GDP is expected in the 2023-24 fiscal year as higher interest rates start to cool domestic and global demand.²⁰⁸
- BC real GDP growth in 2023 is forecast to be 0.4%, which is lower than the previous forecast of 1.5% from the First Quarterly Report.²⁰⁹ In the near and medium term, the economy is forecast to “expand by 1.5 percent in 2024” and to be in the range of 2.2 to 2.4 percent annually by 2025-2027.²¹⁰
- While economic growth is not strong every year, the “underlying fundamentals of BC’s economy are very strong.”²¹¹ Overall, British Columbia has a “sound, solid economy.”²¹²

With respect to the financial position of the BC government, Mr. McKinnon told us the following:

- The government’s strong financial position reflects British Columbia’s strong economy and the government’s “prudence” in budgeting.²¹³
- The government has been using the recent budgetary estimates to “spend as much of the surplus as they can.”²¹⁴ Given time constraints, this spending cannot go through normal processes and is subject to less reporting and evaluation.²¹⁵
- The current budget shows deficits over the next three years, largely due to increased spending.²¹⁶
- British Columbia has significant fiscal capacity due to its relatively low personal tax burden.²¹⁷

²⁰⁷ TR February 14, 2023, Ms. Wood, p. 34, ll. 13-17.

²⁰⁸ *Ibid.* and see TR March 13, 2023, Ms. Wood, p. 6, l. 15 to p. 8, l. 3.

²⁰⁹ TR March 13, 2023, Ms. Wood, p. 20, ll. 11-14; Budget Submission of Government, para. 7.

²¹⁰ TR March 13, 2023, Ms. Wood, p. 8, ll. 11-21.

²¹¹ TR March 13, 2023, Ms. Wood, p. 20, ll. 8-15.

²¹² TR February 14, 2023, Ms. Wood, p. 88, l. 1.

²¹³ TR March 10, 2023, Mr. McKinnon, p. 19, ll. 4-15; Exhibit 14, p.8 (Quote from Ms. Wood’s Letter of February 28, 2023, in *Budget 2023*, p. v).

²¹⁴ TR March 10, 2023, Mr. McKinnon, p. 20 ll. 17-24.

²¹⁵ TR March 10, 2023, Mr. McKinnon, p. 21, ll. 7-15.

²¹⁶ TR March 10, 2023, Mr. McKinnon, p. 21, l. 16 to p. 22, l. 2; Exhibit 14, p. 10.

²¹⁷ Exhibit 1, slide: Fiscal Capacity.

- It is “highly probable” that no other province in Canada builds the same level of prudence into its budgets as does British Columbia. British Columbia’s bigger margins are an “appropriate response” to uncertainty.²¹⁸
- British Columbia has the highest credit ratings (from independent rating agencies) of any province in the country. The strength of the rating influences the interest rate a debt-holder is charged.²¹⁹ The rating agencies’ “core mission” is similar to that of this Commission in terms of looking at the future of the economy and the fiscal prospects of the government—they look at these factors in determining the prospect that the government’s debt will be paid back.²²⁰ As shown in the figure below,²²¹ these ratings view British Columbia’s fiscal performance as better than any other province.²²²

Ratings Agencies Give BC Highest Provincial Rating

	S&P	DBRS	Moody’s
B.C.	AA+	AA high	Aaa
Alberta	A	AA low	Aa3
Sask.	AA	AA low	Aa1
Manitoba	A+	A high	Aa2
Ontario	A+	AA low	Aa3
Quebec	AA-	AA low	Aa2
N.B.	A+	A high	Aa2
Nova Scotia	A	A high	Aa2
Nfld.	A	A low	A1

Ms. Wood also told us about increased levels of government spending, the expected deficits, and the prudence in the budget. She also referred to lower expected revenues and increased debt levels:

- The third quarterly report for 2022-23 shows a surplus of \$3.6 billion, which is lower than the surplus noted in the second quarterly report because the Province has used \$2.1 billion of the formerly reported surplus to fund priorities in this fiscal year, including infrastructure grants to local governments, BC Ferries affordability, rental protections, and an

²¹⁸ TR March 10, 2023, Mr. McKinnon, p. 27, ll. 5-12; TR February 13, 2023, Mr. McKinnon, p. 70, ll. 1-7.

²¹⁹ TR March 10, 2023, Mr. McKinnon, p. 23, l. 15 to p. 24, l. 11; p. 32, ll. 2-15; Exhibit 14, p. 12.

²²⁰ TR March 10, 2023, Mr. McKinnon, p. 23, l. 21 to p. 24, l. 5.

²²¹ Exhibit 14, slide: Rating Agencies Give BC Highest Provincial Rating. See, TR March 10, 2023, Mr. McKinnon, p. 24, ll. 12-20, where Mr. McKinnon explains that the S&P (Standard and Poor’s) rating was updated in December 2022, leaving BC’s ratings exactly where they were in the spring of 2022.

²²² Exhibit 1, slide: B.C.’s Ratings; TR March 10, 2023, Mr. McKinnon, p. 23, ll. 2-8.

affordability tax credit.²²³ In relation to the \$1 billion dollar grant to municipalities for infrastructure, she said the Province does not maintain control over how the municipalities spend the money, but can indicate the categories of funding that local governments should be using and require public reporting on the use of the funds.²²⁴

- Any budgetary surplus from 2022-23 that is not spent before the end of the fiscal year will be applied against the province's debt as a matter of law and accounting practice.²²⁵
- The government projects lower revenue for the next two years owing to tax revenues returning to "more normal levels from the highs of 2022."²²⁶
- The operating surplus in 2022-23 "brought down the debt level but the forecasted deficits and capital spending forecasted in budget will result in increased debt and somewhat deteriorating debt affordability metrics."²²⁷ While declining deficits are expected in later years of the forecast, provincial debt will "continue to increase as a result of capital spending."²²⁸ However, long term, "BC continues to have relatively affordable levels of debt."²²⁹
- The budget includes explicit layers of prudence through the economic forecast and forecast allowance and through contingencies (as explained further below). The prudence that is built into the budget makes the Province's fiscal position resilient.²³⁰
- British Columbia is unique among provinces in that it has "multiple levels of prudence. We have economic prudence; we have contingencies allocation; we have forecast allowance. So BC is unique in that regard, and the credit rating agencies have acknowledged that."²³¹

Both witnesses spoke in detail about the prudence measures built into the BC Government's forecasting. Mr. McKinnon compared the monetary sum of the prudence measures incorporated into Budget 2023 for the next three years against the estimated deficits for the same years. Doing so results in a positive balance in the range of \$1.5 to \$2 billion per year.²³² Mr. McKinnon said one cannot look at multibillion dollar deficits without realizing that amounts are built into the budget to "respond to demand in needs or shortfalls on the income side."²³³

²²³ TR March 13, 2023, Ms. Wood, p. 9, l. 22 to p. 10, l. 9.

²²⁴ TR March 13, 2023, Ms. Wood, p. 23, ll. 15-20.

²²⁵ TR February 14, 2023, Ms. Wood, p. 72, l. 20 to p. 73, l. 7.

²²⁶ TR March 13, 2023, Ms. Wood, p. 10, l. 24 to p. 11, l. 3; Exhibit 17, p. 5 (Budget 2023 Fiscal Plan).

²²⁷ TR March 13, 2023, Ms. Wood, p. 12, ll. 10-15.

²²⁸ Exhibit 17, p. 8.

²²⁹ TR March 13, 2023, Ms. Wood, p. 13, ll. 4-7.

²³⁰ TR March 13, 2023, Ms. Wood, p. 28, ll. 3-15.

²³¹ TR March 13, 2023, Ms. Wood, p. 31, ll. 3-8.

²³² TR March 10, 2023, Mr. McKinnon, p. 22, ll. 3-24; Exhibit 14, p. 11.

²³³ TR March 10, 2023, Mr. McKinnon, p. 23, ll. 9-14.

Ms. Wood told us the government's "prudence measures" in Budget 2023 fall into various categories: general contingencies, a forecast allowance, priority spending initiatives and caseload pressures, and specific contingencies.²³⁴ The bulk of the prudence measures (\$5.5 billion of \$6.2 in 2023-24) are general or specific contingencies, which are allocated expenses. She said it was not possible to "offset" the contingency measures against the forecast deficit as Mr. McKinnon had done.²³⁵ They "reflect actual expenses that are anticipated"—they are for "specific items such as the wage mandate costs, pandemic related spending and climate related disasters."²³⁶ The "priority spending initiatives and caseload pressures" is a prudence measure built into the fiscal budget for 2025-26, acknowledging that, in later years of the fiscal plan, there will be a need to fund core government programs.²³⁷ It is only the "forecast allowance" that could "perhaps late in the fiscal year" be removed to get an assessment of the "bottom line" of the budget.²³⁸

We accept that, as Ms. Wood stated, it is unusual to compare the monetary sum of the prudence measures incorporated into Budget 2023 for the next three years against the estimated deficits for the same years, and we are not placing any weight on that comparison. Instead, we rely on the evidence from both Mr. McKinnon and Ms. Wood that the government's prudence measures serve British Columbia well in times of uncertainty.

In submissions, the PCJA pointed out that the economy and the government's financial position are so strong that the government has been able to make the largest infrastructure investment in the province's history, spending very large sums "outside the normal budgeting processes and the analysis that is usually entailed in those financial decisions." It says such actions are not those of "a government that sees significant fiscal risks in the next few years."²³⁹ Further, the PCJA argued that a recent agreement with the federal government on healthcare spending is another positive change to the government's fiscal position and "another reason to have confidence" in the government's fiscal position.²⁴⁰ Ms. Wood testified that these agreements are not reflected in the forecasts in Budget 2023.²⁴¹ However, part of that funding will not help to offset costs until after 2025/26, and the other part of it will be for new costs and will not offset existing costs.²⁴²

²³⁴ Budget Submission of Government, Appendices (Budget 2023, p. 30).

²³⁵ TR March 13, 2023, Ms. Wood, p. 15, ll. 14-19.

²³⁶ TR March 13, 2023, Ms. Wood, p. 12, ll. 16-24; p. 17, ll. 20-25.

²³⁷ TR March 13, 2023, Ms. Wood, p. 16, ll. 8-17.

²³⁸ TR March 13, 2023, Ms. Wood, p.18, ll. 1-9.

²³⁹ Supplemental Submission of PCJA, para. 5; TR March 10, 2023, Ms. Latimer for PCJA, p. 41, l. 22 to p. 42, l. 6.

²⁴⁰ TR March 10, 2023, Ms. Latimer for PCJA, p. 42, l. 15 to p. 43, l. 5.

²⁴¹ TR March 13, 2023, Ms. Wood, p. 24, ll. 12-16.

²⁴² TR March 13, 2023, Ms. Wood, p. 32, ll. 2-13.

The JJA adopted the PCJA’s submissions, noting that a positive outlook for British Columbia is consistent with increases to judicial compensation.²⁴³

The Government’s submissions emphasized that the BC economy has slowed over 2022, and that forecasts call for further slowing or a recession in 2023.²⁴⁴ In the longer term, “British Columbia is expected to experience steady employment growth, solid investment activity, and higher international migration” resulting in “a higher real GDP growth range between 2025 and 2027.”²⁴⁵ Risks to the economy include persistent high inflation, uncertainty over the impact of higher interest rates on borrowing and the housing market, lingering supply chain disruptions, a weaker than expected global economy, the impacts of geopolitical conflicts on trade, and aging demographics leading to tighter labour markets.²⁴⁶

On its financial position, the Government noted increased spending measures aimed at British Columbians struggling with cost of living pressures, and debt metrics calling for fiscal prudence.²⁴⁷ The Government noted that the budget’s prudence measures account for a number of risks.²⁴⁸

We have considered all this evidence. Despite some disagreements, for example in the characterization of future risks to the economy (and consequently, the financial outlook of the government), by and large Mr. McKinnon’s and Ms. Wood’s evidence painted a consistent picture. The disagreements are not material to our conclusions about this factor.

We conclude that British Columbia’s economy is sound, solid, and resilient. Independent bond rating agencies have confidence in the province, giving it the highest ratings of any province in the country. The government builds layers of prudence into its budgets—more than other provinces—and this prudence makes for a resilient fiscal position. British Columbia is well-positioned financially to weather risks over the next few years. The rapid and record level spending of 2022-23’s budget surplus demonstrates the Government’s confidence in its own financial position. The short-term outlook is for an economic slowdown or recession in 2023-24, but then a recovery to normal levels of growth in 2024-25 and beyond.

In our view, the strength and resilience in the economy and the financial position of government are each compatible with significant increases in judicial compensation. However, the forecasted economic slowdown for 2023-24 indicates the need for some moderation in the next fiscal year.

²⁴³ Main Submission of JJA, para. 130; Reply Submission of JJA, para. 68; Supplemental Submission of JJA, para. 28; TR March 10, 2023, Mr. Bernstein for JJA, p. 54, ll. 4-6.

²⁴⁴ Budget Submission of Government, paras. 6-12. TR March 10, Ms. Wolfe for Government, p. 64, l. 15 to p. 65, l. 21.

²⁴⁵ Budget Submission of Government, para. 14.

²⁴⁶ Budget Submission of Government, para. 15.

²⁴⁷ Budget Submission of Government, paras. 22-23.

²⁴⁸ Budget Submission of Government, paras. 25-26.

5 Recommendations on Salaries

Both the PCJA and the JJA submitted that a significant “correction” to judicial salaries is needed to bring the compensation of judges and judicial justices up to the level of “reasonable compensation.”²⁴⁹ That correction, they say, should not just account for inflation but address the fall in ordinal rank in comparison to other judicial officers across Canada.²⁵⁰ The Government recommended modest increases to current salaries, incorporating “a level of catch-up” with inflation and then increases to address anticipated inflation over the 2022 cycle.²⁵¹

We heard different views about whether it is necessary for us to have a notional “starting point” from which to recommend increases (or decreases) to the salaries of judicial officers. The “starting point” would have to be notional (for judges) because, at the time of making our Final Report, the Legislative Assembly’s implemented salary for 2022-23 has been quashed and remitted back to the Legislative Assembly for reconsideration.²⁵² Thus, though the current judicial salary is \$288,500, the “final” salary—for at least the judges—for 2022-23 remains unknown.²⁵³

The Government argued that the legislature is responsible for approving public expenditures and, given it has approved the current salaries of judges, those current salaries have “to be the starting point of this commission’s work.”²⁵⁴ Further, it says the statutory factors that we are required to account for all involve changes in conditions in some form or another, so all need a starting point.²⁵⁵ More specifically, the Government submitted that to understand the magnitude of an increase that is being requested you need a starting point, especially when taking into account the changes in the compensation of others.²⁵⁶

²⁴⁹ TR February 15, 2023, Mr. Bernstein for JJA, p. 36, ll. 8-16.

²⁵⁰²⁵⁰ TR February 16, 2023, Ms. Latimer for PCJA, p. 101, ll. 3-10, p. 124 l. 17 to p. 125, l. 3; Mr. Bernstein for JJA p. 114, ll. 7-20. Also, see JBD, Vol. 2, Tab 34 which provides provincial court salary details for all the provinces and territories. These data show British Columbia’s fall in salary “rank” since 2010.

²⁵¹ Main Submission of Government, para. 9.

²⁵² *Provincial Court Judges’ Association of British Columbia v. British Columbia (Attorney General)*, 2023 BCSC 520.

²⁵³ The PCJA cautioned us to avoid the situation where, as happened in 2013, the commission recommends a percentage increase on what is currently paid to judges, only to have the starting point changed by a subsequent court decision: TR February 14, 2023, Ms. Latimer for PCJA, p. 139, ll. 11-23; *Provincial Court Judges’ Association of British Columbia v. British Columbia (Attorney General)*, 2017 BCCA 63 at paras. 4, 6, 8, and 9. See also the discussion of starting point in the 2016 JCC Report, JBD, Vol. 1, Tab 21, p. 59.

²⁵⁴ TR February 15, 2023, Ms. Wolfe for Government, p. 202, l. 21 to p. 203, l. 6.

²⁵⁵ TR February 15, 2023, Ms. Wolfe for Government, p. 207, ll. 7-13.

²⁵⁶ TR February 15, 2023, Ms. Wolfe for Government, p. 208, l. 18 to p. 209, l. 6; February 16, 2023, Ms. Wolfe for Government, p. 56, ll. 16-19.

The PCJA asked us to focus on a dollar amount rather than a percentage increase based on a notional starting point, as this will focus us on the appropriate question—the reasonable remuneration that should be paid to judges.²⁵⁷ It said the starting point is not particularly important with respect to changes to the compensation paid to others because we do not need to find that judges should receive identical increases to others paid by public funds.²⁵⁸ It urged us to focus on what changes in the compensation of others tell us about government’s approach to compensation generally, and to consider that evidence along with all the other statutory factors.²⁵⁹

In considering some of the statutory factors, it is obviously relevant and useful to look at what judges and judicial justices are currently being paid. However, we are not expressing our recommendations in terms of a percentage increase. Our focus is on what is reasonable compensation for the next four years—not only on what is a reasonable increase in compensation.

5.1 Provincial Court Judges

Our recommendation for Provincial Court judges’ salaries for the next four fiscal years appears in the table below along with the salaries proposed by the PCJA and the Government. Although the PCJA proposed a salary for 2023-24 and then requested an increase by the amount of CPI for each of the subsequent three years, we have expressed the subsequent years of its proposal in dollar terms for ease of comparison.

<u>Provincial Court Judges</u>	<u>Current Salary</u>	<u>2023 - 2024</u>	<u>2024 - 2025</u>	<u>2025 - 2026</u>	<u>2026 - 2027</u>
Government Submission	\$288,500	\$311,000	\$323,000	\$332,000	\$338,000
PCJA Submission	\$288,500	\$350,860	\$364,547 (\$350,860 + est. 3.9% CPI increase) ²⁶⁰	\$373,296 (\$364,547 + est. 2.4% CPI increase)	\$381,509 (\$373,296 + est. 2.2% CPI increase)
RECOMMENDATION:		\$343,000	\$360,000	\$360,000 + a percentage increase equivalent to the annual average percentage change in BC CPI for 2024 ²⁶¹	2025-26 salary + a percentage increase equivalent to the annual average percentage change in BC CPI for 2025

²⁵⁷ TR February 14, 2023, Ms. Latimer for PCJA, p. 138, ll.15-24.

²⁵⁸ TR February 15, 2023, Ms. Latimer for PCJA, p. 6, ll. 3-11.

²⁵⁹ TR February 15, 2023, Ms. Latimer for PCJA, p. 6, ll. 13-22; p. 7, ll. 4-17.

²⁶⁰ These estimates for CPI are taken from Reply Submission of Government, para. 109.

²⁶¹ For clarity, “BC CPI” refers to CPI for the whole province of British Columbia (not CPI that may be experienced in a particular region of the province), and it refers to “all items” CPI (not CPI calculated on a subset

It must be remembered that “reasonable compensation” speaks to total compensation. For judges, pensions comprise a significant part of their total compensation. No participant proposed any changes to the overall value of pensions. Where increases in compensation are needed, we have determined that those increases should, at this time, come in the form of increased salary.

In arriving at our salary recommendations, we have considered what each statutory factor tells us about the reasonable compensation for judges:

- Factor 1 supports a salary increase sufficient to attract greater numbers of highly qualified applicants from diverse legal backgrounds to apply to become Provincial Court judges. There is currently low interest in this court, shown by declining applications, coupled with a serious difficulty in filling judicial vacancies outside the Lower Mainland. The court could benefit from more diversity in applicants’ previous legal practice. The appointing body needs a deeper pool of applicants from which to draw.
- Factor 2 supports neither an increase nor decrease in the compensation paid to judges.
- Factor 3 reveals BC Provincial Court judges’ salaries are out of step and well below the average of best comparators, which are objective indicators of reasonable judicial salaries. The ranking of current provincial/territorial court judges’ salaries across Canada shows British Columbia in 9th of 12 places. Provinces with comparable economies or costs of living (particularly housing) occupy the top three spots. Ontario, Saskatchewan, and Alberta are each close to \$50,000 above the current level of BC judges’ salaries. This gap, which grows larger if pension values are considered (see section 6.2 below), militates in favour of a significant increase in judges’ salaries.
- Factor 4 supports an increase in compensation for judges. The government has taken a relatively generous approach to compensation of the public sector and has shown a willingness to increase wages when needed to address recruitment and retention problems for others paid from the public purse.
- Factor 5 supports an increase in judges’ salaries. The BC economy is solid and resilient. While there is a forecasted economic slowdown that indicates the need for a degree of moderation in the next fiscal year, the overall and longer-term outlooks for the BC economy are both positive and strong.
- Factor 6 supports an increase in judges’ salaries. The financial position of government is strong, and arguably the best in Canada. British Columbia is well-positioned through its budgetary prudence to remain financially strong over the next four years.

Considered together, these factors overwhelmingly indicate the need for an increase in compensation. While Factor 2 is neutral, the alignment of all other factors shows that the time is ripe to correct the significantly below average pay earned by BC Provincial Court judges compared

of particular goods and/or services). BC CPI calculations should be made on the basis of the previous calendar year (e.g., for the 2025-2026 salary, use the annual average percent change from January 1, 2024 to December 31, 2024). BC Stats is to be relied on as the source for reporting BC CPI, using Stat Can data. BC CPI percentage changes should be calculated to one decimal place. If the annual average percentage change in the BC CPI over the previous calendar year is less than 0%, it should be treated as a 0% change and the judges’ salary will remain the same rather than being reduced.

to all other judges in Canada, and especially to their closest comparators. Given the healthy economy of British Columbia, and the strong financial position of the government, BC judges should receive compensation that puts them closer to the top group of courts on the table found on page 40 of this report and within the range of Alberta, Saskatchewan, and Ontario judges.

A significant correction in salary should help to address the Provincial Court’s challenge in recruiting judges. For one thing, it would reduce the current gap in pay between Provincial Court and Supreme Court judges. A pay correction also aligns with the government’s current approach to sharing the success of British Columbia’s strong financial position with others paid from public funds. Government’s actions in the past six months, and its approach in Budget 2023, show that it is able, while remaining commendably prudent, to give robust support to valuable public activities—such as the work of family physicians. We recognize that access to justice is not universally seen as equivalent to access to health care. However, a justice system that may struggle over the next four years with a declining court complement deserves support. The Government is clearly in a position to provide such support at this time.

We agree with the PCJA that a significant correction is required to judges salaries. However, we have determined that a lesser amount in the first year than what the PCJA has proposed would still meet the requirement for reasonable compensation so long as it is followed by a further corrective increase in the second year.

We also heard the Government’s submission that its proposed salaries “take into account the need to remain economically and fiscally prudent, given the anticipated initial decline and weakening of the economic and financial position that is reflected in budget 2023,” (with a forecast of a return to average growth, with some deficits and increased debt over the subsequent three years.)²⁶² While we disagree that the amounts proposed by the Government are reasonable when taking into account all the factors discussed above, we accept that an economic slowdown is expected for 2023-24 before a return to normal economic levels. In recognition of this, we have split the correction in judges’ salaries over the first two years of our mandate: 2023-24 and 2024-25. We recommend the judges receive increases in salary over and above rates of inflation for those two years. After the full correction is implemented, for the last two years of our mandate, we recommend inflationary increases equal to BC’s Consumer Price Index.²⁶³ By tying the later increases to CPI, we intend to keep judicial salaries stable against the cost of living.

Our salary recommendation will still likely put BC judges behind its closest comparators in 2023-24, but will likely place BC judges above the national average.

5.2 Judicial Justices

Our recommendation for judicial justices’ salaries for the next four fiscal years appears in the table below along with the salaries proposed by the JJA and Government.

²⁶² TR March 10, 2023, Ms. Wolfe for Government, p. 71 ll. 10-22.

²⁶³ See footnote 261, *supra*, for remarks about the calculation of BC CPI.

<u>Judicial Justices</u>	<u>Current Salary</u>	<u>2023 – 2024</u>	<u>2024 – 2025</u>	<u>2025 - 2026</u>	<u>2026-2027</u>
Government Submission	\$133,500	\$143,915	\$149,527	\$153,564	\$156,636
JJA Submission	\$133,500	\$175,000	\$180,000	\$185,000	\$190,000
RECOMMENDATION:		\$172,000	\$177,000	\$182,000	\$187,000

We note that most judicial justices work part-time and they will be paid pursuant to a per diem formula, based on the full-time salary.

We recognize that benefits factor into the total compensation of judicial justices, and accordingly we have recommended (below) an increase to the amount paid to part-time judicial justices in lieu of benefits, as well as an increase in the amount paid for “overhead” to part-time judicial justices. Further, in making our salary recommendation, we have considered that shift premiums factor into the total compensation of part-time judicial justices. Still, salary (or the per diem equivalent) remains the largest component of judicial justice compensation.

In arriving at our salary recommendations, we have considered what each statutory factor tells us about the reasonable compensation for judicial justices:

- Factor 1 reveals a looming crisis in attracting and maintaining a strong complement of judicial justices. It is very likely the court will not have a sufficient complement of judicial justices to meet the workloads of the Judicial Justice Division over the next four years unless steps are taken immediately to improve recruitment. This factor strongly militates in favour of significant salary increases for judicial justices.
- Whether the changes in workload arising from Bill S-4’s amendment of the *Criminal Code* are viewed as a jurisdictional change (Factor 2) or as “another relevant factor” under section 5(5.2), these changes militate in favour of increases to judicial justice compensation. The evidence clearly shows an impact to judicial justice workload and a current problem in finding judicial justices to do this work—a problem that is likely to worsen over time.
- Factor 3 shows BC judicial justice salaries are well below the average of those in other provinces, and over \$30,000 below BC’s closest comparators, Alberta, Saskatchewan, and Ontario. This factor supports significant salary increases.
- Factor 4 supports an increase in compensation for judicial justices. The government has taken a relatively generous approach to compensation of the public sector and has shown a willingness to increase wages when needed to address recruitment and retention problems for others paid from the public purse.
- Factor 5 supports an increase in compensation for judicial justices. The economy is solid and resilient. While there is a forecasted economic slowdown that indicates some moderation in salaries for the next fiscal year, the overall and longer-term outlook for the BC economy is one of strength.

- Factor 6 supports an increase in judicial justices' salaries. The financial position of government is strong and arguably the best in Canada. British Columbia is well-positioned financially through its budgetary prudence to remain in a strong position over the next four years.

Considered together, these factors overwhelmingly support the need for increased compensation for judicial justices. The staffing impact of federal Bill S-4—whether considered under Factor 2 or as another relevant factor under section 5(5.2) of the Act—combined with the crisis in recruiting new judicial justices and the impending retirements over the next four years suggest that a significant bump in judicial justice salary must occur immediately.

The current salary is not reasonable when compared with that of other judicial justices in Canada; it is currently \$30,000 below the average of the closest comparators. In light of British Columbia's healthy economy and its strong financial position, BC judicial justices should be paid at least the average of their Alberta, Saskatchewan, and Ontario counterparts. And, in our view, given the historic underpayment of these judicial officers and the crisis in recruitment that has ensued, a salary slightly above the average of those comparators is warranted. Our recommendation will put judicial justices' salary at approximately 49% of our salary recommendation for a Provincial Court judge, which is an improvement over the current 46%, but still nowhere near the historical highs. A pay correction to address the unreasonably low pay of BC judicial justices also aligns with the government's current approach to sharing the success of British Columbia's strong financial position with others paid from public funds.

While we agree with the JJA that a significant correction to judicial justice salaries is required, we recommend a slightly lesser amount than what the JJA proposed as sufficient to meet the goal of reasonable compensation. We heard the Government's submission that its proposed salaries take into account the need to remain economically and fiscally prudent, given the anticipated short-term decline and weakening of the economic and financial position that is reflected in Budget 2023. Still, we find the amounts proposed by the Government to be unreasonable given our assessment of all the factors discussed above.

Rather than dividing the corrective increase over two years, as we have recommended for judges, we conclude that the bulk of the salary correction needs to come in the first year of our mandate. The judicial justice division could soon be on life support if recruitment efforts continue to fail, and we think that a delay is too risky. We recommend the judicial justices receive a significant increase as of April 1, 2023. Recognizing that both the JJA and the Government told us they prefer the certainty of defined dollar amounts over increases linked to increases in CPI, we have recommended a fixed increase of \$5,000 in each of the following years of our mandate.

Our salary recommendation will likely put BC judicial justices near the national average, and somewhere in the range of judicial justices in Alberta, Saskatchewan, and Ontario.

6 Recommendations on Other Aspects of Judicial Compensation

6.1 Salary Differentials for Administrative Positions

RECOMMENDATION: Administrative judges should continue to receive the following percentages of a puisne judge's salary: Chief Judge 112%; Associate Chief Judges 108%; and Regional Administrative Judges 106%. Administrative Judicial Justices should receive 106% of judicial justice compensation.

We agree with the main participants that the current salary differentials for administrative positions within the court should remain as follows: the Chief Judge (112% of puisne judge), Associate Chief Judges (108% of puisne judge), Regional Administrative Judges (106% of puisne judge), and Administrative Judicial Justices (106% of judicial justice compensation). The higher compensation reflects the added responsibilities and workload that accompany these roles. Agreement among the participants indicates that the current salary differentials are reasonable and do not need to be changed.

6.2 Pensions for Provincial Court Judges

Accrual Rate

RECOMMENDATION: The 3% accrual rate for judge's pensions should be maintained.

Both the PCJA and the Government agree that the current accrual rate for judges' pensions should be maintained at 3%.

The only information before us about judicial pensions came from André Sauvé, Consulting Actuary, who prepared a report for the PCJA. His report compared the pension arrangements of the federal courts and provincial courts in British Columbia, Alberta, Saskatchewan, and Ontario. Aside from age-related accrual rate adjustments in Saskatchewan, both Alberta's and Saskatchewan's pension plans have 3% accrual rates. The Ontario and federal pensions have no fixed annual accrual rates; pension amounts in Ontario and for federally appointed judges use different formulas.²⁶⁴ Overall, Mr. Sauvé concluded that:

²⁶⁴ Comparative Analysis of Judicial Pension Plans, Prepared by Andre Sauvé, December 2022, PCJA BD, Tab 3, p.2.

The compensation value of the judicial pension arrangement in British Columbia is estimated to be 43.1% of salary compared to an average compensation value of 54.6% for the other four jurisdictions for a difference of 11.5% of salary.²⁶⁵

This evidence shows the pension of BC's Provincial Court judges to be less valuable than the pensions of other courts. Still, the PCJA and the government have not made any arguments about changes to the judge's pension arrangement. Instead, the PCJA uses this difference in pension value between jurisdictions to argue that their salary proposal is "modest" when considered in the context of the "combined value of both the salary and pension paid to judges in BC and the comparator jurisdictions."²⁶⁶

Given the agreement of the PCJA and the Government to maintain the current 3% accrual rate, as well as the fact that it is the same rate as in Alberta and Saskatchewan, we recommend maintaining the 3% accrual rate for judges' pensions.

Non-judicial Pensions

RECOMMENDATION: The Judicial Compensation Act should be amended to align the non-judicial pensionable service provisions with the Public Service Pension Plan rule changes made in 2018 and 2022, as detailed in Appendix F, in respect of the following:

- i. the benefit accrual rates for service between April 1, 2018-March 31, 2022, and after April 1, 2022;*
- ii. the past service benefit enhancement and the bridge benefit for the period of April 1, 2006-March 31, 2018 and after April 1, 2018; and*
- iii. the early retirement factor for non-judicial service earned on or after April 1, 2018.*

Some Provincial Court judges earned pensionable service in the Public Sector Pension Plan ("PSPP") as public servants prior to appointment to the bench. However, once an individual is appointed to the bench, both the judicial and the "non-judicial" portions of their pension are governed by Part 3 of the *Judicial Compensation Act*. Historically, many aspects of the non-judicial pension benefit provisions under the Act were aligned with the PSPP rules; however, amendments to the PSPP rules in April 2018 and April 2022 have brought them out of alignment. The result is "a divergence between non-judicial pension benefits earned while working as a regular member of the PSPP ... and what would ultimately be received by a judge in respect of the non-judicial component of their pension upon retirement from the bench."²⁶⁷

²⁶⁵ *Ibid.*, p.5.

²⁶⁶ Main Submission of PCJA, para. 287

²⁶⁷ Joint Submission on Non-Judicial Pensions, para. 4.

To correct this divergence, the Government and the PCJA, with the support of the Chief Judge, jointly proposed that we make the following recommendation:

That the *Act* be amended to align the non-judicial pensionable service provisions with the Public Service Pension Plan rule changes made in 2018 and 2022, as detailed in the attachment to the joint proposal, in respect of the following:

- i. the benefit accrual rates for service between April 1, 2018-March 31, 2022, and after April 1, 2022;
- ii. the past service benefit enhancement and the bridge benefit for the period of April 1, 2006-March 31, 2018 and after April 1, 2018; and
- iii. the early retirement factor for non-judicial service earned on or after April 1, 2018.

The attachment to the joint proposal is found in Appendix F to this report. The participants advise us that the proposed recommendation would be cost neutral for both the PSPP and for the judges to which the change would apply.²⁶⁸

Given that all affected participants support this proposed recommendation, and that it is cost neutral to them, we agree to make this recommendation.

6.3 Benefits

Enhancements to the Flexible Benefits for Judges and Full-time Judicial Justices

RECOMMENDATION: Effective January 1, 2024, Provincial Court judges should receive the enhancements to the flexible benefits program that were offered to excluded public sector employees on January 1, 2023. Future enhancements to the flexible benefits plan for excluded employees and appointees should be automatically implemented for the Provincial Court judges, with the judiciary having recourse to seek changes through future judicial compensation commissions.

The Government notes that modest enhancements were made to the flexible benefits plan for public sector excluded employees on January 1, 2023. The Government suggests that these benefits could be made available for judges and full-time judicial justices. The Government also proposes that “future enhancements to the flexible benefits plan for excluded employees and appointees be automatically implemented for the judiciary.” This would not preclude the judiciary from seeking other changes to the flexible benefits plan through future commission processes, but it would ensure that there is no lag time for the judiciary to access benefit enhancements to which other excluded employees become entitled.²⁶⁹ Examples of the enhancements are an increase in the

²⁶⁸ Joint Submission on Non-Judicial Pensions, para. 7.

²⁶⁹ Reply Submission of Government, paras. 59-60; JBD, Vol 2, Tab 46, p. 4 and Appendix “A”.

annual maximum for counselling services from \$500 to \$750, and an increase in the employee basic life insurance from \$80,000 to \$100,000.²⁷⁰

The PCJA supports these changes.²⁷¹

The JJA “does not wish for there to be any changes to its flexible benefits” and does not agree with the changes proposed by government.²⁷² The JJA opposes the changes based on its understanding that the changes include an annual cap on physiotherapy treatments, which are currently unlimited. The JJA says unlimited physiotherapy treatments are “a valuable benefit given the rigors of the job including the many hours spent at a desk, using a computer and looking at a screen.”²⁷³

Despite the possible cap on physiotherapy treatments, overall, these changes or “enhancements” seem reasonable and are in line with the benefits provided to public sector excluded employees. However, we also note that there are only five full-time judicial justices who are affected by changes to the flexible benefits plans, some of whom may retire during this commission cycle, and that the JJA opposes these changes.

We recommend that, effective January 1, 2024, Provincial Court judges receive the enhancements to the flexible benefits program that were offered to excluded public sector employees on January 1, 2023, and that future enhancements to the flexible benefits plan for excluded employees and appointees be automatically implemented for Provincial Court Judges. We make no recommendation in respect of full-time judicial justices.

Part-time Judicial Justices Per Diem in Lieu of Benefits

RECOMMENDATION: The amount in lieu of benefits added to the per diem pay for part-time judicial justices should be increased from 20% to 22%.

Part-time judicial justices do not receive any benefits as part of their compensation. They currently receive an additional 20% in lieu of benefits, calculated on the amount of a full-time judicial justice salary divided by 207 days. For example, based on the current full-time judicial salary, the amount in lieu of benefits added to the part-time per diem rate would be as follows: $(\$133,500/207) \times 20\% = 128.98$. The JJA initially sought to increase the percentage amount to 25.4% as this is the government “charge-back” rate for budgeting the cost of benefits for full-time employees, including full-time judicial justices.²⁷⁴

The Government proposed an increase in the percentage amount in lieu of benefits to 22%, on the basis that the 25.4% chargeback rate includes a component for administration of the benefits

²⁷⁰ JBD, Vol. 2, Tab 46, Appendix “A”.

²⁷¹ TR February 16, 2023, Ms. Latimer for PCJA, p. 97, ll. 15-20.

²⁷² TR February 16, 2023, Mr. Bernstein for JJA, p. 109, ll. 10-17.

²⁷³ Supplemental Submission of JJA, paras. 14-15. Note that the Submission uses the words “physical therapy”, but the flexible benefits plan provides for “physiotherapy”: JBD, Vol. 2, Tab 39, p. 1, Column for Option 3.

²⁷⁴ Main Submission of JJA, paras. 150- 155.

regime. The Government provided a breakdown of the value of benefits paid for by government that actually go to a full-time judicial justice (expressed in terms of a percentage of full-time salary) as follows: pension contributions 15.9%; ETA/MSP 1.95%; health and dental benefits 3.08%; LTD 1.10%. These total 21.93%, which the Government rounded up to 22%.²⁷⁵ After considering this information, the JJA agreed that an increase in the percentage amount in lieu of benefits to 22% would be appropriate.²⁷⁶

We agree with the participants and recommend that the percentage amount added in lieu of benefits to the per diem for part-time judicial justices be increased to 22%. This increase is needed to keep the compensation of part-time judicial justices in line with that of their full-time colleagues.

Chief Judge's Request for Increased Base Budget Funding to the Court to Cover Long-term Disability Plan Costs

The 2022 JCC makes no recommendation concerning funding to the court for long-term disability plan costs for judges and full-time judicial justices.

The Chief Judge sought a recommendation from us that government's base budget funding to the Court be increased by \$1,000,000 per fiscal year to cover the cost for long-term disability benefits for judges and full-time judicial justices, with the court having access to contingency funds should the cost exceed \$1,000,000.²⁷⁷

In response, the Government says it has chosen to fund some of these expenditures associated with the plan through contingencies rather than an increase in base budget funding. Instead of accessing the available contingency funds, since 2020-21, the Office of the Chief Judge has been able to absorb the costs of the long-term disability plan that exceed the base budget amount. There has been no shortfall, and the Office of the Chief Judge has "not demonstrated any need to access the available contingencies earmarked for long-term disability expenditures for the last three fiscal years."²⁷⁸ In these circumstances the Government requests the commission refrain from making any recommendation.²⁷⁹

We agree with the Government that there is no need for any recommendation on this issue. Funds appear to be available to the Office of the Chief Judge if necessary to make up any shortfall resulting from the costs of the long-term disability program.

²⁷⁵ TR February 15, 2023, Ms. Wolfe for Government, p. 220, ll. 1-23; Exhibit 12.

²⁷⁶ Supplemental Submission of JJA, para. 12.

²⁷⁷ Submission of Chief Judge, paras. 3 and 183.

²⁷⁸ Reply Submission of Government, para. 137.

²⁷⁹ Reply Submission of Government, paras. 132-138.

6.4 Shift Premiums for Judicial Justices

RECOMMENDATION: As set out in Appendix G, new holidays should be added to the list of the holidays attracting a \$245 shift premium, the shift premium for Christmas Day should be increased by \$75, a weekend shift premium of \$75 should be implemented and a court closure day shift premium of \$75 should be implemented.

Judicial justices currently receive a \$245 shift premium for taking shifts on certain holidays. The JJA asked that additional holidays be added to the list that attract the \$245 shift premium.²⁸⁰ The JJA also asked for the Christmas Day shift premium to be increased by \$75, noting that judges have had to fill Christmas Day shifts for the last four years.²⁸¹ The JJA also sought to establish a weekend premium of \$75, noting that weekend shifts are often difficult to fill.²⁸² As well, the JJA asked for a “court closure” premium of \$75 for shifts that fall on a court closure day (such as where a court closure occurs on a weekday to make up for a holiday that falls on a weekend).²⁸³

The Government supports adding additional holidays to the list that attracts the \$245 shift premium, and the increased premium for Christmas Day.²⁸⁴ The Government also supports implementing a weekend shift premium to address the evidence of staffing challenges at the Justice Centre. However, the Government proposes that a \$25 premium would be “proportionate to weekend shift premiums paid elsewhere in the public sector.”²⁸⁵ Similarly, for court closure days, the Government supports a \$25 premium.²⁸⁶

The JJA proposes specific language to describe the shift premiums, to avoid uncertainty over whether a shift attracts a premium and what that premium should be. The Government agrees with all the language proposed, except for the amount of the weekend and court closure premiums, which it submits should be \$25.²⁸⁷ The proposed language is set out in Appendix G.

We agree with both the JJA and the Government that adding the days proposed to the list of holidays attracting a \$245 premium, and increasing the premium for Christmas Day, will enhance the court’s capacity to staff shifts on these holidays. We also agree with the language proposed to describe the shift premiums.

With respect to weekends and court closure days, the evidence shows Provincial Court judges staffing shifts at the Justice Centre, particularly on weekends. (While we do not have specific information before us concerning court closure days, it is logical to treat them similarly to weekend

²⁸⁰ Main Submission of JJA, para. 167.

²⁸¹ Main Submission of JJA, para. 168-169.

²⁸² Main Submission of JJA, paras. 173, 93.

²⁸³ Supplementary Submission of JJA, para. 18.

²⁸⁴ Reply Submission of Government, para. 71; Exhibit 13.

²⁸⁵ Reply Submission of Government, para. 72.

²⁸⁶ Exhibit 13.

²⁸⁷ Supplemental Submission of JJA, paras. 19-21; Exhibit 13.

days as they usually result in a “long weekend.”) It is not clear to us whether either a \$25 or a \$75 shift premium will be sufficient to address the staffing problem; neither may be enough on their own. More judicial justices are required in the staffing pool, which our salary recommendation above is intended to address. Still, in the shorter term, given the much greater cost of having a Provincial Court judge fill a vacant weekend shift, adding a \$75 premium to encourage the current judicial justices to pick up these shifts seems reasonable, and that is what we recommend.

6.5 Overhead Amount for Judicial Justices

RECOMMENDATION: The overhead amount added to the per diem pay for part-time judicial justices should be increased from \$75 to \$100.

Since 2007, part-time judicial justices receive \$75 per shift to account for overhead costs. This amount has not been increased in over 15 years. The JJA sought an increase of this amount to \$100 per shift, arguing that it is required to keep up with inflation, and to attract highly qualified applicants to the judicial justice position.²⁸⁸ The Government supports this increase as “logical” given the increase in overhead costs that judicial justices would have incurred since 2007.²⁸⁹

We agree it is time to increase the overhead amount for part-time judicial justices to \$100 per shift in order to maintain the purchasing power intended when the overhead amount was implemented in 2007. We so recommend.

6.6 Professional Development Allowance

RECOMMENDATION: For the next four fiscal years, the professional development allowance for judges should remain at \$4,500 per year, and the professional development allowance for judicial justices should remain at \$3,250 per year.

The PCJA requests no changes to the judges’ professional development allowance (“PDA”) and the Government agrees that no change is necessary. As there is no evidence before us that an increase (or decrease) is required, we recommend this amount remain the same (\$4500 per year) for the next four fiscal years.

The JJA seeks an increase in judicial justices’ PDA from \$3,250 to \$4,500 to be at parity with the judges. It also seeks to increase the portion of a judicial justice’s PDA that can be used for “Expenses Reasonably Incurred in the Execution of the Office of a Judicial Justice and Approved Other Expenses” from the current \$1,500 to \$2,500. The JJA says judicial education is important and that the cost of attending conferences that are popular with judicial justices exceeds the current budget.²⁹⁰

²⁸⁸ Main Submission of JJA, paras. 157-160.

²⁸⁹ Reply Submission of Government, para. 65.

²⁹⁰ TR February 15, 2023, Mr. Bernstein for JJA, p. 124, ll. 3-15, l. 18 to p. 126, l. 17.

The Government does not support either of these proposed changes. It says no evidence demonstrates that recent increases in the PDA budget for judicial justices (implemented April 1, 2020) are ineffective.²⁹¹ The Government understands that PDA spending since 2020 has likely been impacted by the pandemic and is therefore not a good measure of need. However, judicial justices' PDA spending for the 2019-20 fiscal year—which occurred mostly prior to the pandemic—was less than one third of the total PDA budget available.²⁹² As well, during the 2019-20 fiscal year, the per justice PDA was lower at only \$2,500. While four justices exceeded that limit, as can be seen by the global numbers, overall, judicial justices only spent half the annual allotment in that year.²⁹³

On this evidence, we decline to recommend an adjustment to the PDA of judicial justices at this time.

6.7 Travel Allowance

RECOMMENDATION: The current travel allowance or per diems for judges and judicial justices should be maintained.

Neither the PCJA or the JJA seek changes to the current travel reimbursement and the Government asks that the current travel per diems be maintained.²⁹⁴ Judges and judicial justices both fall within government's "group 4" expense category, meaning they receive the same travel per diems as Members of the Legislative Assembly, which is the highest level.²⁹⁵ As there is no evidence before us showing a need to increase (or decrease) current travel allowances, we agree with the parties that current travel per diems, whereby judges and judicial justices receive the same travel per diems as Members of the Legislative Assembly, should be maintained.

²⁹¹ Reply Submission of Government, para. 80.

²⁹² Judicial justices spent only \$39,722 of the available \$124,330, comprised of the 2019-20 allowance of \$78,958 and \$45,372 carried over from the previous year: Exhibit 10.

²⁹³ Exhibit 10.

²⁹⁴ The JJA stated that "To the extent that changes are made, the JJABC seeks the same policy as Provincial Court Judges" though it did not ask for any changes be made: Main Submission of JJA, para. 23(c).

²⁹⁵ TR February 15, 2023, Ms. Wolfe for Government, p. 193, ll. 1-9.

7 Recommendations on Interest and Costs

7.1 Interest on any Retroactive Salary Adjustments

RECOMMENDATION: For retroactive salary increases, the Government should pay judges or judicial justices pre-judgment interest from April 1, 2023 to the date on which the increase is established and post-judgment interest thereafter until payment is made.

In respect of any retroactive salary increases that occur after April 1, 2023, both the PCJA and the JJA seek pre-judgment interest for judges and judicial justices from April 1, 2023 to the date on which the increase is established, and then post-judgment interest thereafter until the payments are made. The Government does not oppose these interest requests. In our view, interest on retroactive payments will ensure that judges and judicial justices receive the full benefit of any salary adjustments that are delayed. The use of the pre-judgment and post-judgment rates is appropriate for this purpose.

7.2 Costs of Participation in Commission Proceedings

*RECOMMENDATION: The Government should, by enacting a regulation pursuant to section 7.1(3) of the Judicial Compensation Act, reimburse 100% of the reasonable costs and disbursements, including expert costs, of the PCJA and JJA for their participation in the 2022 commission process.**

Both the PCJA and JJA ask us to recommend that the Government pay 100% of their reasonable legal fees and disbursements, including—for the PCJA—100% of the cost of its expert evidence.²⁹⁶ The JJA asks, in the alternative, for a recommendation for “a significant increase to the ceiling of reimbursed costs” by way of a regulation or amendment to the Act.²⁹⁷ The Government’s position is that the Commission should leave costs to be dealt with under section 7.1 of the Act.

In the late afternoon of March 30, 2023, the day before we delivered our Preliminary Report, we were advised that the Lieutenant Governor in Council had increased the maximum amounts for participation costs for the Provincial Court Judges’ Association and the Judicial Justices’ Association. Order in Council No. 194²⁹⁸ sets higher amounts for the purposes of section 7.1(2) of

²⁹⁶ Main Submission of PCJA, para. 355; Main Submission of JJA, para. 23(d).

²⁹⁷ Main Submission of JJA, para. 23(d).

²⁹⁸ B.C. Reg. 83/2023, approved and ordered on March 30, 2023.

the *Judicial Compensation Act*. Pursuant to that revision, the legislation effectively provides as follows:

- 7.1 (1) Subject to subsection (2), the government may pay out of the consolidated revenue fund the reasonable costs, incurred by the Provincial Court Judges' Association of British Columbia and the Judicial Justices Association of British Columbia, of participating in the commission.
- (2) The maximum amount that may be paid under subsection (1), which maximum amount applies separately to the Provincial Court Judges' Association of British Columbia and the Judicial Justices Association of British Columbia, is as follows:
- (a) the first \$40 000 in costs;²⁹⁹
 - (b) 85% of the costs over \$40 000 but under \$150 000.³⁰⁰
- (3) Despite subsections (1) and (2), the Lieutenant Governor in Council may, by regulation, set higher amounts for the purposes of subsection (2).

The JJA tells us its anticipated total legal costs for this process will be approximately \$80,000 (including taxes), which is an increase of about \$20,000 over the 2019 JCC. It attributes most of the increase to a substantial increase in pre-hearing discussions and preparations.³⁰¹ We note the small number of members in the JJA, meaning that it likely has very limited resources.³⁰² If the JJA were responsible for one third of its legal costs over \$30,000, that could impose a \$500 to \$1000 burden on each individual member—up to 0.7% of a current full-time judicial justice salary.

The PCJA tells us its costs will be approximately \$90,000 for legal fees, and disbursements including expert reports, but not including junior counsel's attendance at the hearings. In 2019, the total costs were about \$85,000.³⁰³ The PCJA attributes the increase in fees this year to higher expert fees.³⁰⁴ While the PCJA has a larger pool of potential members with higher salaries than the JJA, it argues it is “manifestly unfair that the judiciary should be burdened by personally funding its participation in the process.” In contrast, it says the Government “uses any number of civil servants paid from the public purse and who are presumably capable of utilizing Government resources as they see fit in order to advance the Government's position.”³⁰⁵

The Government submits the costs formula under the Act has not been found unconstitutional and remains good law.³⁰⁶ We make no comment here on the constitutionality of those provisions. We speak instead to their effect on the 2022 Commission process.

²⁹⁹ Previously, \$30,000.

³⁰⁰ Previously, two-thirds of the costs over \$30,000 but under \$150,000.

³⁰¹ Supplementary Submission of JJA, para. 29.

³⁰² Main Submission of JJA, para. 188.

³⁰³ Supplemental Submission of PCJA, para. 23.

³⁰⁴ Supplemental Submission of PCJA, para. 23.

³⁰⁵ Main Submission of PCJA, para. 385.

³⁰⁶ Costs Submission of Government, para. 7.

The Government says the Commission should not make any recommendations on costs, arguing that costs do not fall within the broad jurisdiction of the Commission because costs are not “remuneration, allowances and benefits” of judges and judicial justices and do not “implicate” remuneration, allowances or benefits.³⁰⁷ The Government refers to a decision of Chief Justice Hinkson, in a judicial review of the Government’s response to the 2016 JCC. He upheld the validity of the Government’s rejection of the 2016 JCC’s decision on costs, and his decision was not appealed.³⁰⁸ The Government says, consistent with that decision, it may be open to a commission to make a recommendation on costs only “where it is necessary to ensure the approach to costs is ‘fair, equitable and reasonable’.”³⁰⁹ The Government says, “A recommendation to alter a legislated norm cannot be justified on the basis of matters the Legislature must have understood at the time the norm was established. Instead, a Commission’s recommendation to alter such a norm can only be justified on the basis of exceptional circumstances or a significant evolution in the Commission process.”³¹⁰ It submits the disparity of resources between the government and the judicial officers, the importance of judicial officer participation in the process, and the potential impact of inflation were all known to the Legislature and therefore do not justify departure from the statutory norm.³¹¹

The PCJA submits that the legislation sets out no requirement for “exceptional circumstances” before a commission may make recommendations respecting costs.³¹² It says section 5(1) of the Act gives a commission broad jurisdiction to report on “all matters respecting the remuneration, allowances and benefits of judges.” The PCJA says that the costs of participation in the hearings falls within this broad jurisdiction.³¹³ Further, it says, “There is no principled difference between recommendations made in the face of the statutory provisions concerning costs and a myriad of other issues that the commissions must consider and which may also require legislative change.”³¹⁴ Indeed, in these proceedings, the Government and the PCJA have jointly asked us to recommend an amendment to the Act concerning non-judicial pensions. Further, as the PCJA points out, it is difficult to imagine a bar to the commission recommending that government, by regulation, set higher amounts than those set out in the Act, as such regulations are expressly contemplated in section 7.1(3) of the Act.³¹⁵

We agree with the PCJA that we have jurisdiction to make a recommendation on costs.

First, while reimbursement for the cost of participating in a commission may not be “remuneration, allowances and benefits of judges and judicial justices” *per se*, it is “a matter respecting remuneration, allowances and benefits.” Participation in the commission process is the only way

³⁰⁷ TR March 10, 2023, Ms. Wolfe for Government, p. 88, ll. 17-20.

³⁰⁸ Costs Submission of Government, para. 9; *Provincial Court Judges’ Association v. British Columbia (Attorney General)*, 2020 BCSC 1264.

³⁰⁹ Costs Submission of Government, para. 18.

³¹⁰ Costs Submission of Government, para. 19.

³¹¹ Costs Submission of Government, para. 12.

³¹² Supplemental Submission of PCJA, para. 14.

³¹³ Main Submission of PCJA, paras. 356-357.

³¹⁴ Supplemental Submission of PCJA, para. 15.

³¹⁵ Supplemental Submission of PCJA, para. 18.

for judicial officers to seek changes to their compensation. Accordingly, the costs of that participation are very much a matter respecting remuneration.

Second, nothing in Chief Justice Hinkson’s decision prohibits us from making recommendations concerning costs; his ruling speaks to the rationality of the government’s rejection of the 2016 JJC’s recommendation on costs, not to the ability of a commission to make such a recommendation. While Chief Justice Hinkson noted departures from the “legislative norm” were for the legislative branch of government to consider, not the judiciary upon judicial review, he did not suggest that commissions cannot make recommendations that depart from the legislative norm.³¹⁶ He noted that the statutory formula may be overridden by the government through regulation. In our view, that is most likely to happen following a recommendation from a judicial compensation commission.

Third, there is no legislated requirement for exceptional circumstances to exist before a commission may make a recommendation on the costs of participation in the commission process. The legislature may establish a statutory formula for costs (as it has in BC since 2015), the government may agree to pay the participatory costs of the judiciary (as it did historically in BC), or the commission may determine costs. The Supreme Court of Canada has said that, irrespective of the approach to the payment of costs, “it should be fair, equitable and reasonable.”³¹⁷ If the statutory costs formula set out in section 7.1 of the Act results in an approach to the payment of costs that is not fair, equitable and reasonable, that is a “matter respecting remuneration” upon which this Commission may make recommendations. And, in assessing what is fair, equitable and reasonable, this Commission is not limited to the consideration of matters that could not have been known to the legislature at the time it enacted section 7.1. If it were so limited, the legislature could, knowingly, enact an unfair, inequitable, and unreasonable approach to costs without any recourse by the judicial officers who must engage through the commission process on matters respecting their remuneration.

The question for us is whether the application of the section 7.1 formula for costs in the circumstances of the 2022 JCC constitutes an approach to costs that is fair, equitable and reasonable.

As described in the introduction to this report, this Commission exists in fulfilment of a constitutional imperative. Judges and judicial justices alike *must* participate in this process to seek any changes to their compensation. They *may not* negotiate with the other branches of government over their compensation.³¹⁸ In our hearings, counsel for the JJA told us, “the current allowance for legal fees is insufficient to cover the costs of the association’s participation” such that “judicial justices carry some of the costs themselves.”³¹⁹ He said that the “concern about legal fees “really inhibits participation in this constitutionally mandated process,”³²⁰ and that his clients must think about how much it is going to cost them personally to participate, and consequently, how much

³¹⁶ *Provincial Court Judges’ Association v. British Columbia (Attorney General)*, 2020 BCSC 1264, at para. 99.

³¹⁷ *R. v. Campbell*, [1999] 2 SCR 956, para. 5.

³¹⁸ *PEI Reference*, paras. 186 to 191.

³¹⁹ TR February 15, 2023, Mr. Bernstein for JJA, p. 128, ll. 9-13.

³²⁰ TR February 15, 2023, Mr. Bernstein for JJA, p. 129, ll. 14-21.

time he can spend in preparing for the hearing.³²¹ This indicates to us a significant problem with the current costs formula. It creates a deterrent to the level of participation by judges and judicial justices that is reasonably necessary for this Commission to complete its mandate.

We agree with the PCJA that the approach to costs is not equitable. While the Government has resources for this process paid by the taxpayer, the judiciary must pay any amount over the statutory limits out of their own pockets. Further, the statutory formula does not treat different members of the judiciary equitably in that the financial burden on individual judicial justices to participate in the commission process is much greater than the burden on individual judges.

The costs approach is not fair. Section 7.1 does not account for inflation. Thus, with each passing commission cycle, it compensates the JJA and the PCJA less for their participation. We heard from the JJA that, based on inflation alone, the (former) \$30,000 amount, for full reimbursement, would need to be increased to \$36,000 to cover the same amount of participation costs.³²²

Most importantly, the costs approach is not reasonable. Section 7.1(1) of the Act speaks to government paying the “reasonable costs” of the PCJA’s and the JJA’s participation in the commission. But the maximum amounts set in subsection (2) are unreasonably low when considered against the amount of work involved in the commission process and the information required by the Commission to complete its mandate.

As noted by the PCJA, the Act does not prescribe a process for the commission.³²³ The commission is not a commission of inquiry with resources to retain counsel or other staff to produce evidence; that work is left to the participants. We were told that the amount of work has increased over the last three commissions since section 7.1 came into force, particularly in relation to document production and preparation for the commission hearings.³²⁴ The commission process entails—as described by the PCJA—“multiple days of hearings, expert evidence, experts being recalled and so on and a sufficiently complex process that the government sees fit that it needs to have two counsel presents [sic].”³²⁵ We note that the PCJA also had two counsel present at the hearings, and the JJA had a second counsel appear at one of the virtual hearings. The point is: significant work was required of *all* the main participants.

To be clear, the commission needs the work of the PCJA, the JJA, and the Government to enable it to do its job. All three of these participants need to be adequately funded. The commission also needs expert evidence, tested through well-informed cross-examination where necessary. The costs of leading, and responding to, expert evidence need to be adequately funded.

We have considered whether the March 30, 2023 change to the formula affects our recommendation on costs or the rationale for it.

³²¹ TR February 15, 2023, Mr. Bernstein for JJA, p. 130 l. 17 to p. 131, l. 6.

³²² Main Submission of JJA, para. 185.

³²³ *Judicial Compensation Act*, s. 5(6); TR March 10, 2023, Ms. Latimer for PCJA, p. 47, ll. 14-21.

³²⁴ TR March 10, 2023, Mr. Bernstein for JJA, p. 53, l. 10 to p. 54, l. 3; Ms. Latimer for PCJA, p. 47, l. 21 to p. 48, l. 3.

³²⁵ TR March 10, 2023, Ms. Latimer for PCJA, p. 47, l. 24 to p. 48, l. 3.

While the higher amount of \$40,000 in section 7.1(2)(a) does remedy the negative inflationary impact that we note in our discussion (above) concerning the former \$30,000 amount for full reimbursement, nothing in the revised amounts in OIC No. 194 detracts from our core reasons for recommending that the Government should reimburse 100% of the reasonable costs and disbursements, including expert costs, of the PCJA and the JJA for participation in the 2022 commission process.

We have also considered whether the April 3, 2023 judgment by The Honourable Justice Sharma on judicial review of the legislative response to the 2019 JCC³²⁶ requires us to revisit our analysis of the costs issue. We have concluded that it does not; the approach taken by the Court there is consistent with the one we have taken here in our Report.

In summary, the current statutory formula for costs does not lead to a fair, equitable or reasonable result in the context of the 2022 JCC. The result places financial burdens on individual judicial officers. The statutory formula also does not provide for inflationary increases that have occurred since the legislation was passed. Importantly, the current limits on reimbursement deter reasonably full participation in this constitutionally-mandated process.

Consequently, we recommend that Government enact a regulation pursuant to section 7.1(3) to reimburse 100% of the reasonable costs and disbursements of the PCJA and JJA for their participation in the 2022 Commission. If there is controversy about the reasonableness of the costs and disbursements claimed, the participants can come back to us through written submissions or at a hearing.

³²⁶ *Provincial Court Judges' Association of British Columbia v. British Columbia (Attorney General)*, 2023 BCSC 520.

8 Confidence in the Commission Process

We heard from participants about their levels of confidence in this process. We have also reflected on the judicial compensation process and its history in British Columbia. We hope these comments prove useful to future commissions and to the government in considering our recommendations.

The Recent History of Judicial Compensation Processes

As we noted in our salary recommendations above, salary comprises the largest component of judicial compensation. It has also proven to be the most contentious. The Government provided useful tables summarizing the salary recommendations, responses of the government, ensuing litigation, and outcomes of the last four commissions as shown below:³²⁷

Year	JCC recommendations (Provincial Court Judges)	Government (Govt) Initial Response	Further Developments
2010	<ul style="list-style-type: none"> 2011/12: 0% 2012/13: 0% 2013/14: cumulative CPI over prior 3 years 	<ul style="list-style-type: none"> Rejected salary (and pension) Substituted 0% salary increase (consistent with net-zero public sector mandate) 	<ul style="list-style-type: none"> Response challenged BCSC set aside initial response; remitted back Second response substituted 1.5% increase for 2013/14 Second response set aside by BCCA and Govt ordered to accept 2010 JCC recommendations, resulting in 2013/14 salary of \$242,464
2013	<ul style="list-style-type: none"> 2014/15: \$241,500 2015/16: \$245,122 2016/17: \$250,024 <p>As 2010 litigation still outstanding, JCC used</p>	<ul style="list-style-type: none"> Rejected salary (and pension) Substituted: <ul style="list-style-type: none"> 2014/15: \$236,950 2015/15: \$240,504 2016/17: \$244,112 	<ul style="list-style-type: none"> Response challenged BCSC set aside initial response; remitted back

³²⁷ These tables are recreated from Main Submission of Government, paras. 66 and 72. We corrected typographic errors to the dates in the middle column of the 2016 rows. See also “Judicial Compensation Commissions 2010 to 2019 – Summary of Submissions and Results,” JBD, Vol. 1, Tab 17.

Year	JCC recommendations (Provincial Court Judges)	Government (Govt) Initial Response	Further Developments
	Govt's second response as starting point (\$234,605)		<ul style="list-style-type: none"> Govt appealed; Judges cross-appealed BCCA dismissed appeal; ordered Govt to reconsider response without attributing fault to any party or the legislature (as outcome of 2010 litigation changed the starting point) Second response not challenged; set at: 2014/15: \$244,889 2015/16: \$248,562 2016/17: \$252,290
2016	<ul style="list-style-type: none"> 2017/18: \$273,000 2018/19: \$277,095 2019/20: \$281,251 100% of reasonable costs 	<ul style="list-style-type: none"> Rejected salary (and costs) Substituted: 2017/18: \$262,000 2018/19: \$266,000 2019/20: \$270,000 	<ul style="list-style-type: none"> Response challenged BCSC set aside initial response on salaries but upheld rejection of costs; remitted back Govt appealed on salaries BCCA allowed appeal, upholding Govt's initial response
2019	<ul style="list-style-type: none"> 2020/21: \$287,000 2021/22: \$297,000 2021/23: \$307,000 Regulation be enacted to permit 100% of reasonable costs 	<ul style="list-style-type: none"> Rejected salary (and costs) Substituted: 2020/21: \$276,000 2021/22: \$282,250 2022/23: \$288,500 	<ul style="list-style-type: none"> Response challenged Litigation ongoing – petition argued September 2022 and decision reserved

Year	JCC recommendations (Judicial Justices)	Government (Govt) Initial Response	Further Developments
2010	<ul style="list-style-type: none"> 2011/12: 0% 2012/13: 0% 2013/14: 8% (\$107,487) 	<ul style="list-style-type: none"> Rejected salary and per diem Substituted 0% salary increase (consistent with 	<ul style="list-style-type: none"> Response to 2010 and 2013 challenged Govt later agreed to place motion

Year	JCC recommendations (Judicial Justices)	Government (Govt) Initial Response	Further Developments
	<ul style="list-style-type: none"> Change to per diem formula (FT salary/219 days + 24.5% in lieu of benefits +\$80 overhead) 	net-zero public sector mandate)	before legislature to increase salary by 4.9% from previous fiscal <ul style="list-style-type: none"> Legislature adopted motion in July 2016, resulting in 2013/14 salary of \$104,402 Court case discontinued
2013	<ul style="list-style-type: none"> 2014/15: \$104,501 2015/16: \$106,591 2016/17: \$108,723 Change to per diem formula (change number of days to 207 to account for chambers days allowed to FT JJs) 	<ul style="list-style-type: none"> Rejected salary; accepted per diem change Substituted: 2014/15: \$101,018 2015/16: \$103,038 2016/17: \$105,099 	<ul style="list-style-type: none"> Resulting motion of legislature in July 2016; salaries set at: 2014/15: \$105,968 2015/16: \$108,087 2015/17: \$110,249
2016	<ul style="list-style-type: none"> 2017/18: \$125,000 2018/19: \$126,875 2019/20: \$128,778 100% of reasonable costs 	<ul style="list-style-type: none"> Rejected salary (and costs) Substituted: 2017/18: \$118,000 2018/19: \$120,000 2019/20: \$122,000 	<ul style="list-style-type: none"> Salaries implemented per Govt response Costs paid per statutory formula
2019	<ul style="list-style-type: none"> 2020/21: \$138,000 2021/22: \$142,000 2022/23: \$146,000 Regulation be enacted to permit 100% of reasonable costs 	<ul style="list-style-type: none"> Rejected salary (and costs) Substituted: 2020/21: \$125,750 2021/22: \$129,500 2022/23: \$133,500 	<ul style="list-style-type: none"> Salaries implemented per Govt response Costs paid per statutory formula

These tables show the repeated history of commissions making salary recommendations, governments rejecting those recommendations, and the PCJA petitioning the court for judicial review, followed by one or more of the parties appealing the judgment to the Court of Appeal, occasionally resulting in an amended response and further litigation.

Disillusionment with the Commission Process

The PCJA set out the ideal view of judicial compensation commissions in its submissions, stating that their very existence attracts qualified applicants to the court because a commission provides candidates with the “legitimate expectation that compensation will be regularly, meaningfully, and effectively reviewed, and adjusted in good faith.” This expectation, the PCJA says, reduces the “risk that only those lawyers whose current level of compensation is less than that of a judge will

be attracted [to applying for the position].”³²⁸ Further, the existence of a commission and the prospect of increases in compensation that at least keep pace with inflation may explain why judges remain as judges after appointment.³²⁹

In the oral submissions, we heard a disheartened view of the actual commission process over time. Counsel for the JJA described its members’ strong feelings of disillusion.³³⁰ This is perhaps unsurprising, given the history set out above. Repeatedly, judges and judicial justices have participated in time-consuming processes in good faith before independent commissions. The commissions’ resulting recommendations for salary increases are then rejected by the government. For the last four commission cycles, the government’s rejection of the salary recommendations has led to the judges seeking judicial review of those decisions. The Court of Appeal commented in 2021 that while the commission process in British Columbia “has avoided the unseemly involvement of judges of the British Columbia Provincial Court in the negotiation of their remuneration, it has done so at the cost of constant litigation.”³³¹ (It appears that judicial justices have not been involved in the same amount of litigation simply because they cannot afford it.³³²)

This repeated pattern risks compromising the commission process itself. Participation in commissions can seem pointless and ineffective to those whose livelihoods are at stake. This problem is compounded where the costs of participation are not covered.

It must be recalled that judicial compensation commissions are constitutionally required to be independent, objective, and “most importantly, the commission must also be effective.”³³³ The commission’s report “must have a meaningful effect on the determination of judicial salaries.”³³⁴ This does not mean the commission’s report is binding on government; the government retains power to depart from the commission’s recommendations as long as it justifies its decision to do so with “rational reasons.”³³⁵ However, the commission’s recommendations must be given weight.³³⁶ The pattern of almost routine rejection of the salary recommendations of independent and objective commissioners seriously undermines the effectiveness of the commission process.

We also note that this pattern creates uncertainty around judicial compensation that could well affect the ability of the Provincial Court to recruit new judges and judicial justices. The legislature has specified that commissioners must consider the need to attract highly qualified applicants in

³²⁸ Main Submission of PCJA, paras. 155 and 157.

³²⁹ Main Submission of PCJA, para. 158.

³³⁰ TR February 13, 2023, Mr. Bernstein for JJA, p. 20, ll. 10-23.

³³¹ *Provincial Court Judges’ Association of British Columbia v. British Columbia (Attorney General)*, 2021 BCCA 295, JBA, Vol. 1, Tab 14, para. 7.

³³² As counsel for the JJA noted in his opening remarks at the Commission hearing: “The judicial justices are not involved in litigation, ... That isn’t to say that they necessarily agree with previous outcomes, but there’s resource issues involved in litigation.” See: TR February 13, 2023, Mr. Bernstein for JJA, p. 22 ll. 2-7.

³³³ *PEI Reference*, para. 174.

³³⁴ *PEI Reference*, para. 175.

³³⁵ *Bodner*, paras. 20-22; *PEI Reference*, paras. 182-184.

³³⁶ *Bodner*, para. 23.

order to maintain a strong court. To say the least, perpetual litigation and uncertainty about salary—the largest component of compensation—is not a feature that would attract highly qualified candidates to apply for appointment to this court; it is much more likely to be a deterrent.

The pattern could also lead to a decline in morale due to the repeated cycle of commission recommendation, government rejection, judicial review, appeal, and eventual resolution of a salary, possibly years after it has been earned. So far as we are aware, no other group of people paid from the public purse is subject to this constant cycle of uncertainty over their salaries.

The Government argued that the disillusion spoken of in the submissions of the PCJA and JJA—concerning whether the work of this Commission would meaningfully affect the outcome—stems from the incorrect view that the legislature is intended to simply accept the recommendations of the commission in order for them to have meaningful effect.³³⁷

While the Government is correct that commissions' recommendations are not binding, they do need to be given "meaningful effect." Any *single* rejection of a salary recommendation does not necessarily undermine the constitutional process for judicial compensation. However, the repeated pattern of government receiving, rejecting, and substituting lower numbers for the salaries recommended by multiple independent commissions at the very least raises doubt about the effectiveness of the process in the minds of participants (and the commissioners who undertake this work).

When Chief Justice Lamer wrote in the *PEI Reference* that government must be prepared to justify—if necessary in a court of law—"one or more" recommendations it chooses not to accept, he likely did not envision what has ensued in British Columbia over the last 13 years. Independent commissioners have worked hard to review the evidence and to make impartial recommendations for salaries that reflect reasonable compensation in consideration of the statutory factors. They have arrived at recommendations after submissions from the Government, from the judges and judicial justices, and from external organizations such as the Canadian Bar Association and the Law Society, and after giving serious consideration to all of those submissions. There has been no suggestion that previous commissions were anything but impartial. If this process is working properly, rejection should be the exception, not the norm. The government should have confidence in the process that it set up. It should have confidence in the commissioners who are appointed through that process.

We hope that our recommendations will receive careful consideration, followed by implementation, and that this 2022 Judicial Compensation Commission will mark a change in the unfortunate pattern that has been established over the previous decade. Such an outcome would begin to restore confidence in the commission process.

³³⁷ TR March 10, 2023, Ms. Wolfe for Government, p. 94, ll. 2-7.

9 Conclusions

Despite the concerns about the process identified in the preceding section, we remain hopeful that the work we have done to develop recommendations for the reasonable compensation of British Columbia's Provincial Court judges and judicial justices for the next four fiscal years will be useful and that this Commission's work will prove to be not only independent and impartial, but also effective.

The work of the 2022 JCC was shared by many people. We thank counsel for the Government, PCJA, and JJA, and the participants themselves, for the thoughtful work that went into compiling information and providing useful submissions. We could not have done our job without you. We also thank the witnesses who took time to appear at our hearings—two of them more than once. Your testimony helped us understand some of the factors we needed to consider in making our recommendations. We thank government officials and counsel for making all the arrangements for our hearings at UBC Robson Square, and for handling the administration of the hearings. We recognize the contributions of the Chief Judge's staff and the judicial justices who organized court tours for us in conjunction with our counsel. We thank the Chief Judge and the other judges and judicial justices who took the time to speak with us during our court visits. We also appreciate the written submissions of the Law Society and the Canadian Bar Association – BC Branch.


The Commission particularly thanks Commission Counsel, Kathy Grant, for her invaluable assistance, advice, and support. As not only Commission Counsel, but also as the Commission's only administrative support, Ms. Grant played many roles, all effectively and with aplomb.



Lynn Smith, OC, KC, Commission Chair



Eric Gottardi, KC



Vern Blair, FCPA, FCA, FCBV, FRICS



Robert Lapper, KC



Lisa Castle

Appendix A: List of Submissions

1. Submission of the Provincial Court Judges Association of British Columbia to the 2022 Judicial Compensation Commission, January 12, 2023, Counsel: Alison M. Latimer, KC [**“Main Submission of PCJA”**]
2. Submission of the Judicial Justices Association of British Columbia, 2022 Judicial Compensation Commission, January 12, 2023, Counsel: Danny Bernstein [**“Main Submission of JJA”**]
3. Submission of the Government of British Columbia to the 2022 Judicial Compensation Commission, January 12, 2023, Counsel: Karrie Wolfe and Steven Davis [**“Main Submission of Government”**]
4. Submission of the Canadian Bar Association, BC Branch to the 2022 Judicial Compensation Committee [sic], January 23, 2023
5. Submission of the Law Society of British Columbia, 2022 Judicial Compensation Commission, January 24, 2023
6. Submission of the Chief Judge of the Provincial Court of British Columbia to the 2022 Judicial Compensation Commission, January 25, 2023 [**“Submission of Chief Judge”**]
7. Submission of the Judicial Council of British Columbia to the 2022 Judicial Compensation Commission, January 25, 2023 [**“Submission of Judicial Council”**]
8. Reply Submission of the Provincial Court Judges Association of British Columbia to the 2022 Judicial Compensation Commission, February 3, 2023, Counsel: Alison M. Latimer, KC [**“Reply Submission of PCJA”**]
9. Reply Submission of the Judicial Justices Association of British Columbia, Compensation Commission 2022, February 3, 2023, Counsel: Danny Bernstein [**“Reply Submission of JJA”**]
10. Reply Submission of the Government of British Columbia to the 2022 Judicial Compensation Commission, February 3, 2023, Counsel: Karrie Wolfe and Steven Davis [**“Reply Submission of Government”**]
11. Joint Proposed Recommendation to the 2022 Judicial Compensation Commission respecting Non-Judicial Pensions for Provincial Court Judges, March 3, 2023 [**“Joint Submission on Non-Judicial Pensions”**]
12. The Government of British Columbia’s Submissions to the 2022 Judicial Compensation Commission respecting participation costs, March 4, 2023 [**“Cost Submission of Government”**]

13. Supplemental Submission of the Government of British Columbia to the 2022 Judicial Compensation Commission regarding matters specific to the Judicial Justices Association, March 6, 2023 [**“Supplemental Submission of Government, March 6, 2023”**]
14. Supplemental Submission of the Government of British Columbia to the 2022 Judicial Compensation Commission on Budget 2023, March 7, 2023 [**“Budget Submission of Government”**]
15. Supplemental Submission of the Provincial Court Judges Association of British Columbia to the 2022 Judicial Compensation Commission, March 7, 2023 [**“Supplemental Submission of PCJA”**]
16. Supplemental Submission of the Judicial Justices Association of British Columbia, Compensation Commission 2022, March 7, 2023 [**“Supplemental Submission of JJA”**]

Appendix B: Documents and Authorities

1. Joint Book of Documents of the Parties, Volumes 1 and 2, with revised Tab 34 (revised March 9, 2023) [**“JBD”**]
2. Book of Documents of the Provincial Court Judges Association of British Columbia [**“PCJA BD”**]
3. Book of Documents of the Judicial Justices Association of British Columbia
4. Appendices for the Submission of the Government of British Columbia [**“Appendices for Submission of Government”**]
5. Appendices to the Reply Submission of the Government of British Columbia (in same volume as the Government’s Reply Submissions)
6. Supplemental Book of Documents of the Judicial Justices Association of British Columbia
7. Joint Book of Authorities of the Parties, Volumes 1 and 2 [**“JBA”**]
8. Package of seven documents prepared or compiled by the Government concerning recent pay increases to family physicians.
9. Executive Council of Nova Scotia, OIC 2023-71, March 7, 2023, adopting recommendations of the Nova Scotia Provincial Judges’ Salaries and Benefits Tribunal for period of April 1, 2023 to March 31, 2026.
10. Transcripts of Oral Hearings for February 13, 2023, February 14, 2023, February 15, 2023, February 16, 2023, March 10, 2023, and March 13, 2023 [**“TR”**]

Appendix C: Witnesses

Monday, February 13, 2023

Mr. Ian McKinnon, Pacific Issues Partners

Mr. André Sauvé, actuary in private practice

Tuesday, February 14, 2023

Ms. Heather Wood, Deputy Minister of Finance for British Columbia

Friday, March 10, 2023

Mr. Ian McKinnon, Pacific Issues Partners

Monday March 13, 2023

Ms. Heather Wood, Deputy Minister of Finance for British Columbia

Appendix D: Hearing Exhibits

Exhibit	Description
1	The Current Financial Position of the Government: A report for Submission to the Judicial Compensation Commission Prepared by Ian McKinnon – Presentation Material
2	Point in Time Report on the Current and Expected Economic Conditions in British Columbia and the Current and Expected Financial Position of Government as of December 2022, prepared by Heather Wood; and Presentation to the Judicial Compensation Commission, February 14, 2023
3	Times Colonist Article, February 6, 2023 “B.C. throne speech forecasts slowdown but says it’s not time to cut back on spending”
4	British Columbia News Release, office of the premier, dated February 12, 2023 “B.C. building stronger communities with \$1-billion Growing Communities Fund”
5	Vancouver Sun, February 13, 2023 “Vaughn Palmer: Why B.C.’s premier is in a rush to spend, spend, spend”
6	British Columbia Construction Association, BC Construction Industry Statistics (Fall-2022)
7	The Cambridge Lectures 2023 Registration Form, and the 2023 NCLP Registration Form
8	BC Prosecution Service Annual Report 2021/22
9	Memo to Judicial Compensation Commission from Chief Judge Melissa Gillespie, February 14, 2023 Re: Judicial Applicant Information
10	2019-20 table of expenditures of Judicial Justice Professional Development Expenses
11	Replacement for p. 3 of Government Reply Submissions (Blue Coloured Table)
12	Email from Mr. Davis, February 16, 2023 concerning “22% for pay in lieu of benefits - part-time Judicial Justices”
13	Email from Ms. Wolfe, March 7, 2023 concerning “2022 JCC – Government’s position re: JJABC modified shift premium proposal”

14	Ian McKinnon Presentation, “The Current Financial Position of the Government Post-Budget Update” March 2023
15	Vancouver Sun, News Article, March 6, 2023, “Surrey might reduce property tax hike, but only if RCMP remains, mayor says”
16	Vancouver Sun, News Article, February 23, 2023, “2021 B.C. floods recovery: Federal government provides \$557 million to help address devastation”
17	Heather Wood, Presentation to the Judicial Compensation Commission re: Budget and Fiscal Plan 2023/24 – 2025/26, March 10, 2023

Appendix E: Court Tours and Site Visits

1. November 21, 2022³³⁸

- a. Robson Courthouse, 800 Hornby St, Vancouver, BC
 - ACJ Wishart spoke about virtual family management conferences and settlement conferences
 - Commissioners and participant representatives watched traffic court, and civil law hearings
- b. Vancouver Criminal Court, 222 Main St, Vancouver, BC
 - Commissioners and participant representatives watched disposition court
- c. Downtown Community Court, 211 Gore Ave, Vancouver, BC
 - Commissioners and participant representatives watched the Downtown Community Court
 - Judge Doherty provided an overview of the Court
- d. Surrey Courthouse, 14340 – 57 Ave, Surrey, BC
 - ACJ Wishart provided an overview of virtual bail
 - Commissioners and participant representatives watched virtual bail, in-person bail and other criminal matters

2. February 10, 2023

- a. Indigenous Court, Inn at the Quay, 900 Quayside Dr, New Westminster, BC
 - Judge Brown provided an overview of the court, prior to sitting
 - Commissioners and participant representatives watched the court, including client updates and sentencing

3. February 11, 2023

- a. Justice Centre
 - Chief Judge Gillespie, Judicial Justice Brown, and Judicial Justice Blackstone provided an overview of work at the Justice Centre
 - Commissioners and participant representatives watched bail hearings
 - Commissioners and participant representatives viewed how a judicial justice deals with an electronic search warrant application

³³⁸ Commissioner Castle was unable to attend on this day due to illness. Commissioner Gottardi was only able to attend at Surrey Courthouse.

Appendix F: Attachment to Joint Proposed Recommendation Re: Non-judicial Pensions

Attachment to Joint Proposed Recommendation re: non-judicial pensions **ECKLER**

MEMO

TO	Paul Craven, ADM, Justice Service Branch, Ministry of Attorney General Melissa Gillespie, Chief Judge, Provincial Court of British Columbia
FROM	Catherine Robertson, Eckler Ltd.
CC:	Chris Skillings, Director, Reporting & Analysis, Provincial Treasury Stuart Morgan, Executive Director, Public Service Pension Board of Trustees
DATE	February 24, 2023
RE	2022 Judicial Compensation Commission ("JCC") proposal to recommend amendments to the Judicial Compensation Act to incorporate non-judicial pension benefit plan design changes

Further to the letter of February 15, 2023 from the Public Service Pension Board, this memo sets out the requested analysis on potential cost implications from the proposal to recommend amendments to the Judicial Compensation Act ("JCA") to incorporate non-judicial pension benefit plan design changes.

Background

The background document provided to us is attached to this memo for reference. In summary, the Public Service Pension Plan (the "PSPP") has been amended twice recently. Firstly, effective April 1, 2018, the benefits for general PSPP members were amended to introduce a flat accrual rate of 1.85%, eliminate the bridge benefit and the rule of 85, provide an early retirement reduction of 6.2% per annum below age 60, as well as providing a retroactive benefit improvement to increase the below YMPE accrual rate from 1.35% to 1.65%, with a corresponding reduction in the bridge benefit, for service accrued from April 1, 2006 to March 31, 2018. We refer to these amendments in this memo as the "2018 PSPP amendments". Secondly, effective April 1, 2022, the benefits for general PSPP members were amended to increase the flat accrual rate to 1.95% for future service, "the 2022 PSPP amendments".

In the absence of a change to the JCA, currently when any PSPP plan member is appointed as a judge, any non-judicial service under the PSPP reverts back to the PSPP benefits prior to the 2018 and 2022 PSPP amendments. This memo considers the cost implications, if any, of the proposed amendments to apply the 2018 and 2022 PSPP amendments to non-judicial service for judges (the "JCC non-judicial proposed amendments"). No changes are being proposed, or have been considered, for judicial service.

The request is for us to consider any cost implications from the JCC non-judicial proposed amendments both for PSPP and for Judges.

PSPP Cost Implications

We have reviewed the impact of the JCC non-judicial proposed amendments on the PSPP, and conclude there is no cost impact to PSPP.

As noted in our valuation reports for PSPP, we ignore the enhanced benefits which are provided to certain member e.g. judges in the valuation, and report separately to the Board on the additional contributions required for such members. As a result, when costing both the 2018 PSPP amendments and the 2022 PSPP amendments, we assumed the amendments would apply to all members, including judges. This means we have already reflected the cost of providing the 2018 and 2022 PSPP amendments to non-judicial service for judges within the 2018 and 2022 PSPP amendments. Generally, where these amendments resulted in a cost to the PSPP, these costs were met out of surplus. The surplus arose on all PSPP members, so has been allocated appropriately. The appropriate contributions have also been made for the benefits provided.

Judges Cost Implications

We have reviewed the impact of the JCC non-judicial proposed amendments on the contributions currently being paid by judges, and conclude there is no cost increase to judges.

We establish the contributions due from judges based on a separate valuation. Judges are a relatively small group of members, who are on average older than the general PSPP active population, and with more generous benefit provisions. Due to the size of the group, and the potential spread of ages at which judges are appointed, it is not appropriate to use the entry age normal cost method that is used for the regular plan. Accordingly, we use the projected unit credit method, which estimates the cost of benefits accruing following the valuation and therefore accurately allows for the age profile of the judges and the increasing cost of accrual over time.

Although there are no changes being proposed to the current benefits for judicial service, the JCC non-judicial proposed amendments may slightly reduce the current judges contributions. The reason for this is that where the JCC non-judicial proposed amendments have an impact on the accrued pension, they will, in aggregate across all judges, increase the total accrued pension. As a result, where a judge is projected to meet the current maximum accrual of 70% of the member's highest average salary, then they may meet this limit sooner allowing for the JCC non-judicial proposed amendments. On reaching this maximum, the valuation assumes that contributions cease, resulting in a lower required contribution. The data we have includes the total non-judicial service, so we have had to approximate how that service is split between April 1, 2006 to March 31, 2018 and from April 1, 2018 (to March 31, 2020, the date of the last valuation). The estimated contribution reduction is marginal. Given that the magnitude of the reduction is not material, the approximations involved in the estimate, and the upcoming valuation as of March 31, 2023 (which may lead to contribution changes due to experience or data changes), we would recommend that the current contributions are maintained until the 2023 valuation is completed.

ECKLER

With respect to any increase in accrued benefits that may apply to individual judges as a result of the JCC non-judicial proposed amendments, as noted above, these increases were already costed in the 2018 and 2022 PSPP amendments, with any increased cost largely being met from surplus. Hence, the judges should not be charged again for any benefit improvements to accrued service as a result of the JCC non-judicial proposed amendments. In addition, the appropriate contributions have been paid to the PSPP for any post March 31, 2018 non-judicial service accrued by any current judge.

We would be pleased to discuss this further.

2022 Judicial Compensation Commission ("JCC") proposal to recommend amendments to the *Judicial Compensation Act* to incorporate non-judicial pension benefit plan design changes

Background

The *Judicial Compensation Act* ("JCA") includes provisions for judges' pension benefits for both judicial service and non-judicial service (if any). At retirement, judges will receive a blended lifetime pension benefit if they earned any pensionable service as a regular member under the Public Service Pension Plan ("PSPP") prior to being appointed to the provincial court (for example, working as a government lawyer).

Historically, the JCA's non-judicial pension benefits provisions have been harmonious with the PSPP rules in many respects. This harmony ensured the pension benefit earned and paid for while serving as a regular member is maintained despite the change in employment status. However, plan design changes made by the PSPP in recent years have not been incorporated into the JCA, resulting in a divergence in the benefits for impacted judges in relation to non-judicial service.

The changes proposed for recommendation to the 2022 JCC intend to incorporate the plan design changes to ensure impacted judges receive benefits in harmony with the current PSPP plan design (i.e., the benefit that was earned prior to judicial appointment). If ultimately implemented through subsequent JCA amendments, it is expected the changes will result in improved lifetime benefits for virtually all existing active and retired impacted judges.

Proposed Amendments to be Recommended

The proposal is to pursue incorporating plan design changes into the JCA for those elements where the JCA and PSPP have been historically harmonious (an overview of pension benefits is provided in Appendix A). These elements include the benefit accrual rates, the bridge benefit, and the early retirement factor. If implemented, the proposed changes would apply to non-judicial service only; there would be no changes to the judicial benefit. Specifically, the proposed changes are as follows:

1. Moving from 1.35%/2% integrated benefit accrual rates to the following flat benefit accrual rates:
 - a. 1.85% for service from April 1, 2018 – March 31, 2022
 - b. 1.95% for service after April 1, 2022
2. Past service benefit enhancement ("benefit enhancement") to the lifetime portion of the pension of 1.35% up to 1.65% for service on earnings up to Yearly Maximum Pensionable Earnings ("YMPE") for the period of April 1, 2006 – March 31, 2018
3. Corresponding elimination / reduction to the bridge benefit payable until the earlier of age 65 and death:
 - a. Elimination of bridge benefit for service after April 1, 2018; and
 - b. Reduction of bridge benefit from 0.65% to 0.35% on earnings up to the YMPE for service between April 1, 2006 and March 31, 2018 (offset by the benefit enhancement to the lifetime portion above)

4. Increasing the Early Retirement Factor (ERF) from 5% to 6.2% for the non-judicial benefit portion of service earned on or after April 1, 2018, for judges that do not qualify for an unreduced pension.

Individual judges' pensionable service will likely cross over the timeframes shown above.

There are other pension elements that have **not** been historically harmonious between the two regimes and would therefore not be changed by this proposal if ultimately implemented. They include:

1. Shorter three year Highest Average Salary (HAS) calculation for both judicial and non-judicial service, compared to five years for regular members;
2. More favourable "Rule of 55/5" (no reduction in pension if retire at age 55 with at least 5 years of service) for all service (both judicial and non-judicial). Depending on the service period, regular members must meet the rule of 85 (for service pre-plan design), have 35 years of service or reach age 60 with at least 2 years of service to qualify for an unreduced pension; and
3. Enhanced 'normal form' of pension that includes a joint life 60 per cent normal form option with no reduction for married members. Regular members are only provided a single life with a 10-year guarantee normal form, regardless of their spousal status.

In each case, the features above result in a more favourable pension benefit for judges compared to benefits earned by regular members of the plan. The continuation of these more favourable features is an important factor in support of the 'net benefit' outcomes for impacted judges under the proposal for recommendation.

Determination of Impacted Judges

The plan design changes were applied to all regular members that still had an entitlement in the plan at the time of implementation, regardless of status: all active, inactive/deferred and retired members were impacted to the extent pensionable service was earned during the periods noted above. However, because the non-judicial component of judges' pensions is prescribed by the JCA, the plan design changes did not apply to judges.

The proposal will apply the changes in a consistent manner for judges with non-judicial service earned during the effective dates if those judges still have an entitlement in the plan¹. This is true regardless of status under the plan: e.g. active, inactive/deferred, or retired. This application is the most equitable approach to implementing plan design changes, including because it ensures the past service benefit enhancement is awarded consistently to all members.

Pension Corporation has confirmed there are a total of 54 impacted judges with non-judicial service earned in the timeframe that would be affected by the plan design changes, if

¹ Any member who remains in the pension plan, whether actively employed, retired, or deferred but with benefits left in the plan, holds an entitlement.

implemented: 47 active judges and 7 retired judges². There are no inactive/deferred members impacted. An assessment of the population of impacted judges is provided in Appendix B.

Effective dates

The proposal for recommendation would, if implemented, apply the new provisions retroactively to the effective dates of the plan design changes. This retroactivity ensures impacted judges receive the benefits of plan design changes consistent with what would have applied to their previous earned time if they had not been appointed, creating equity with continuing regular members of the plan.

Importantly, the past service benefit enhancement was provided to members with an entitlement under the plan on or after October 1, 2019. All members, whether active, inactive/deferred, or retired that were in the plan on or after this date received the benefit enhancement for time served during the April 1, 2006 to March 31, 2018 period. The proposal for recommendation would, if implemented, retroactively award the benefit to eligible judges (including retired judges) with an entitlement as of the October 1, 2019 date.

For judges that are not eligible for an unreduced pension (i.e. members who receive a reduced pension), the higher ERF would apply to the non-judicial pension component at the time of retirement for non-judicial service earned after April 1, 2018 (being the start date of the new flat accrual structure). However, Pension Corporation advises there have been no reduced pensions put into pay over the last 15 years. As a result, this change has no impact on the existing retired judge population and is not anticipated to impact active judges as a population in the future.

The October 1, 2019 effective date for the benefit enhancement would also be relevant in the following specific circumstances.

Commuted values

The October 1, 2019 effective date was relevant for calculating a commuted value in the event a member elects to leave the plan or a lump sum payout is required due to a member's death³. A member/beneficiary who took their commuted value prior to this date did not receive the benefit enhancement.

Pension corporation has confirmed there have been no commuted values calculated for impacted judges since October 1, 2019, and therefore there is no impact for existing judges (and no recalculations required). Assuming the parties agree to propose, and the JCC recommends, these changes, it is proposed that, rather than using the October 1, 2019 date for purposes of determining a member's entitlement for commuted values, the date the JCC recommendations in this regard are either accepted by the Lieutenant Governor in Council or approved by the

² In addition to the 54 impacted judges, there are also 5 impacted masters: 2 active master and 3 retired masters. While masters' pensions are tied to those of provincial court judges under the Supreme Court Act, the 2022 JCC will not deal with masters directly, so the remainder of this document omits reference to the 5 impacted masters.

legislative assembly be used instead. This approach would avoid the complexity of having to recalculate the amount if a commuted value payment is made to a judge between today and the effective date of the JCA amendments. If a judge is paid a commuted value after the date of the JCA amendments, the benefit enhancement would be included.

Adjustments to the normal form

For members who are currently receiving a pension and chose a pension option with a greater value than the normal form pension, the proposal will ensure that member's pension prior to age 65 does not decrease. This means that for members currently receiving a pension who chose a single life pension guaranteed for 15 years or a 100% joint survivor pension, there would be a slight reduction in their lifetime pension increase in order to maintain the same pension prior to age 65⁴. This is the same principle that was applied for regular members at the time plan design was implemented.

Pension Corporation has confirmed there are two existing retired judges who would be impacted by this issue if the changes are ultimately implemented. These members would see no impact to their pre-65 payments and would still receive an increase to lifetime benefits after age 65, albeit on a slightly reduced basis for the reason noted above.

Refund of overcontributions

The JCA permits a lifetime pension benefit up to a maximum 70% of HAS. When an active judge's benefit accrual reaches 70%⁵, contributions cease. If proposed plan design changes result in a judge exceeding the 70% maximum, or reaching the maximum more quickly, the judge will have made an over-contribution retrospectively. Under the proposal, overcontributions would have to be calculated and returned to any judge in this situation who has an entitlement on or after October 1, 2019.

Pension Corporation has confirmed there are three judges (two active, one retired) that have reached the 70% maximum and would require a refund of overcontributions if the changes are implemented. There are no inactive/deferred judges impacted.

Cost implications to the Plan

The plan design changes were developed and implemented within a 'cost neutral', or 'fully funded' framework; the benefit of new flat accrual rates was funded by foregoing the bridge benefit and increased early retirement factor on future service. As well, the estimated cost related to the past service benefit enhancement was funded from a portion of the plan's surplus identified in the 2017 actuarial valuation. In combination, both changes were fully funded and did not result in a change to contribution rates.

⁴ An optional form factor is applied to the lifetime pension when a greater pension form is provided than the normal form. This factor is not applied to the temporary bridge benefit, therefore this can result in a small reduction in the net payment before age 65.

⁵ For example, for a judge that works 100% in a judicial capacity (i.e. has no non-judicial service), the 70% max is reached after 23.33 years (70% / 3% accrual per year).

It is expected that the proposal, if implemented, will have no incremental cost to the plan: as members of the pension plan, costs associated with the benefits accrued were considered at the time the actuarial work was performed. This is expected to be true even with anticipated retroactive benefit enhancements and/or overcontributions that result in lump sum payments to impacted judges. The proposal here simply ensures the benefits are awarded to judges with non-judicial service during the relevant timeframes as the plan design changes originally contemplated.

Pension Corporation's internal actuary has reviewed the proposal and agrees with this conclusion. The plan's actuary will be engaged to confirm this understanding. The ability to move forward with the proposal for recommendation to the 2022 JCC is contingent on the actuary's confirmation of no cost outcome. If a cost is identified, funding sources and/or modifications will need to be identified.

Next steps

- Confirm a clear understanding with all parties of the proposal, respond to any additional questions, and agreement to proceed
- Liaise with Pension Corporation for additional information and/or modelling, if needed
- Confirm the 'no cost' implications with plan actuary
- Confirm JCC submission approach

Appendix A – Overview of Defined Benefit Pension Benefit

Judicial pensions are a **defined benefit (DB)** pension arrangement. The amount of the lifetime pension benefit is calculated based on a benefit accrual rate, years of service under the plan, and the salary earned by the member.

While judges are members of the Public Service Pension Plan (PSPP), their enhanced pension rules for judicial service are contained in the *Judicial Compensation Act (JCA)*. The JCA also contains the pension rules for non-judicial service.

Glossary of Key Terms

Benefit Accrual Rate: The multiplier used in the pension formula, along with a member's pensionable service and earnings, to calculate the member's lifetime pension.

Bridge Benefit: A temporary monthly amount paid in addition to the lifetime pension. It is payable from the member's retirement date until the member turns 65 or dies, whichever comes first. For regular members, the bridge benefit applies only to service up to March 31, 2018.

Commuted Value: A lump-sum value based on the amount of money the pension plan would need to put aside today, at current interest rates, to pay for a member's future pension at retirement.

Highest Average Salary (HAS): The average of a member's three highest years of pensionable salary for judges (compared to a five year average for regular members). To calculate this average, the plan uses the best three years of full-time-equivalent earnings from the member's entire time with the plan. When a member retires, their pension is based on a formula that uses the member's highest average salary.

Normal Form of pension: Is the single life or joint life amount of a pension set by the Board or as specified in the *Judicial Compensation Act*, before any actuarial factors are applied to calculate the various pension option amounts.

Year's maximum pensionable earnings (YMPE): A salary limit set by the federal government each year for the purposes of determining the maximum annual contributions workers make to the Canada Pension Plan. It is also used as part of the pension formula to calculate contributions and pension benefits for certain periods.

Existing JCA terms

Accrual Rates

Non-judicial service:

- Lifetime: 1.35% up to the YMPE, 2.0% over the YMPE
- Bridge Benefit: 0.65% up to lesser of HAS or YMPE

Judicial service:

- Lifetime: flat 3.0%
- Bridge Benefit: No bridge benefit

Highest Average Salary (HAS)

- 3-year HAS applied to both non-judicial and judicial service

Early retirement reduction rates

- 5.0% per year from age 60, for non-judicial and judicial service, subject to unreduced rule below
- Judges qualify for an unreduced pension at age 55 if they have at least 5 years of contributory service (55/5 rule)

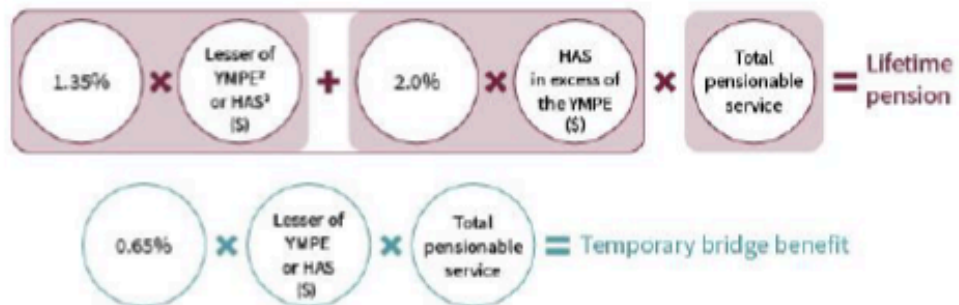
Sample Calculation (under existing JCA pension benefits):

- Assume the following:
 - 10 years of non-judicial service and 10 years as a judge
 - HAS of \$290,000
 - YMPE \$64,900
 - Retirement age: 65 (no bridge benefit or early reduction applied)
- Non judicial service:
 - $1.35\% \times 10 \text{ years} \times \$64,900 = \$8,762$ plus
 - $2.0\% \times 10 \text{ years} \times \$225,100 = \$45,020$
- Judicial service:
 - $3.0\% \times 10 \text{ years} \times \$290,000 = \$87,000$
- Total Annual Pension = \$140,782

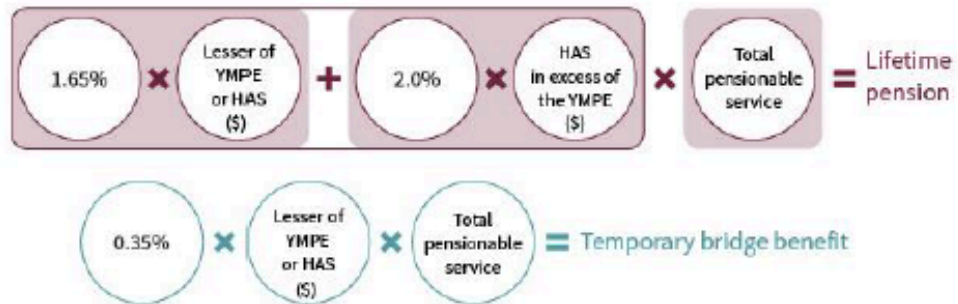
Plan Design Changes for Regular Members

- Past service benefit enhancement (increased the below YMPE accrual rate from 1.35% to 1.65%, corresponding decrease in bridge benefit from 0.65% to 0.35%) for service earned between April 1, 2006 and March 31, 2018, effective October 1, 2019)
- Flat 1.85% accrual rate, effective April 1, 2018
- Flat 1.95% accrual rate, effective April 1, 2022

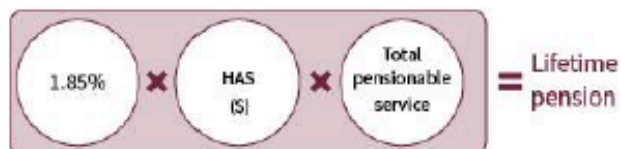
For pensionable service earned before April 1, 2006:



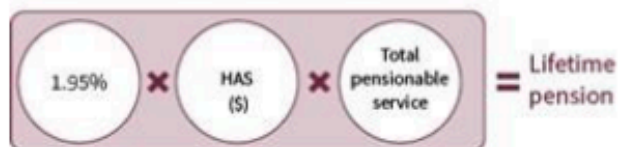
For pensionable service earned between April 1, 2006 and March 31, 2018, inclusive:



For pensionable service earned on and after April 1, 2018, to March 31, 2022, inclusive:



For pensionable service earned on or after April 1, 2022:



Appendix B – Assessment of implications for Impacted Judges

Pension Corporation have confirmed there are a total of 54 active and retired judges impacted by the proposal. Of the 54 total, 47 are active judges and 7 are retired judges. There are no inactive/deferred members impacted.

The following table provides an overview of the identified population by group based on timeframe of non-judicial service. Individual judges' experience will vary depending on the duration and timespan of the time earned, retirement age, HAS, and YMPE - final outcomes for active members cannot be known in advance of a specific retirement date being identified.

Scenario	Plan design changes applied	Comments on impacts
Of the 47 active judges:		
30 judges have April 1, 2006 to March 31, 2018 service only	past service benefit enhancement with offsetting bridge benefit reduction to age 65	No change to net pensions paid up to age 65, increased lifetime pensions paid beyond. All judges are better off
2 judges have April 1, 2018 March 31, 2022 service only	change from 2%/1.35% accrual rate to flat 1.85% for duration of non-judicial service	Impact depends on HAS and YMPE at time of retirement. Using current YMPE and a HAS of \$288,500, <u>members will see marginal reduction in lifetime pension</u> [note members identified have only 2.22 and 0.6 years of non-judicial service.]
14 judges have both April 1, 2006 to March 31, 2018 and April 1, 2018 to March 31, 2022 service	Both: i) change from 2%/1.35% accrual rate to flat 1.85% for duration of non-judicial service, and ii) past service benefit enhancement with offsetting bridge benefit reduction to age 65	Impact will depend on duration of time between the two periods, age of retirement, and HAS and YMPE at time of retirement. The past service benefit enhancement will offset time at 1.85% to some degree. The net impact will vary on a case by case basis. Average judge experience supports a net benefit outcome in most cases. The amount of the lost/reduced bridge benefit will be paid back over a period of time depending on the factors noted above.

1 judge has service through all three periods; April 1, 2006 to March 31, 2018 and April 1, 2018 to March 31, 2022 service as well as post-April 1, 2022 service	All: i) change from 2%/1.35% accrual rate to flat 1.85% for duration of non-judicial service, ii) 1.95% on time after 2022 iii) past service benefit enhancement with offsetting bridge benefit reduction to age 65	Impact will depend on duration of time between the two periods, age at retirement, and HAS and YMPE at time of retirement. For one judge identified, Pension Corporation has confirmed time spanning pre-2018 and post-2022 is expected to offset period at 1.85% resulting in net benefit after age 65. The amount of the lost/reduced bridge benefit will be paid back over a period of time depending on the factors noted above.
Of the 7 retired judges:		
7 retired judges have time earned only in the 2006 – 2018 period	past service benefit enhancement with offsetting bridge benefit reduction to age 65	No change to net pensions paid up to age 65, increased lifetime pensions paid beyond. Judges will receive a lump sum benefit enhancement for pensions paid after October 1, 2019 All judges are better off

Other factors assessed:

- 3 judges (two active, 1 retired) have hit the 70% maximum accrual such that contributions ceased. These individuals would receive an overcontribution refund to the extent changes accelerated reaching 70%.
- There have been no commuted value asset transfers out of the plan (due to leaving or lump sum payout due to member death) on or after the effective date – there are no situations where the issue of a commuted value recalculation is currently needed.
- There is one terminated judge who has post-April 1, 2006 non-judicial service, but that individual was paid out in 2013, prior to the October 1, 2019 effective date and is therefore not affected.
- There are two retired members who retired prior to age 65 and elected a Joint Survivor 100% form for lifetime pension. These two individuals will be subject to the mechanism discussed above to ensure net payments prior to age 65 are not impacted and will receive a slightly lower increase to the lifetime pension.

- An assessment of marriage breakdown is still required: if there are any instances, the limited member's benefit will be treated the same way as the member's benefit.

Appendix G: Changes to Shift Premiums for Judicial Justices

(a) Definitions:

- (i) “Shift” means an 8-hour scheduled Shift.
- (ii) “Weekend” includes any Shift where any portion of the Shift falls on a Saturday or Sunday, but does not include Holidays.
- (iii) “Court closure day” means any Shift where any portion of the shift falls on a Monday or Tuesday that is not a holiday, on which day courts are generally closed for provincial court judges in BC (for example, when July 1 falls on a Saturday or Sunday and courts are generally closed on the following Monday).
- (iv) “Holidays” include:
 - (A) New Year’s Day, Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, British Columbia Day, Labour Day, National Day for Truth and Reconciliation, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day; or
 - (B) Any Shift where any portion of the Shift falls on a Holiday.

(b) Weekend Shift premium: \$75

(c) Holiday Shift premium: Remain at \$245 but with an additional \$75 for any Christmas Day Shift

(d) Court closure day premium: \$75

(e) A judicial justice may only claim the Holiday premium once for the same Holiday. For example, if a night judicial justice works June 30th from 11pm to 7am, as well as July 1st from 11pm to 7am, that judicial justice may only claim the Holiday premium for one of these shifts. As another example, if one judicial justice works June 30th from 11pm to 7am and a different judicial justice works July 1st from 11pm to 7am, each judicial justice will receive the Holiday premium.

(f) Any Shift worked by a judicial justice will attract the highest applicable premium for that Shift, and only that premium.



ALBERTA

Report and Recommendations

of the:

2021 JUDICIAL COMPENSATION COMMISSION

PRESENTED TO:

THE MINISTER OF JUSTICE AND SOLICITOR GENERAL

IN AND FOR THE PROVINCE OF ALBERTA

and

THE ALBERTA PROVINCIAL JUSTICE'S ASSOCIATION

**Dated June 15, 2023, as
amended June 30, 2023**

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INTRODUCTION

The federal and all provincial and territorial jurisdictions in Canada have constitutionally mandated tribunals to make recommendations to government about appropriate compensation for Judges now known as Justices. In Alberta, that tribunal is called a Judicial Compensation Commission (“JCC”), created by section 42 of the *Judicature Act*.

The mandate of the JCC and its processes are a result of the 1997 decision of the Supreme Court of Canada known as the *PEI Reference*¹ case. We note the following comments from Chief Justice Lamer in that case:

“The imperative of protecting the courts from political interference through economic manipulation is served by interposing an independent body – a judicial compensation commission – between the judiciary and the other branches of government. The constitutional function of this body is to depoliticize the process of determining changes or freezes to judicial remuneration. This objective would be achieved by setting that body the specific task of issuing a report on the salaries and benefits of judges to the executive and the legislature, responding to the particular proposals made by the government to increase, reduce, or freeze judges’ salaries.” (para. 166)

¹ Reference re: *Remuneration of Judges in the Provincial Court (Prince Edward Island)* [1997] 3 S.C.R. 3 (“the *PEI Reference*”)

“The commissions charged with the responsibility of dealing with the issue of judicial remuneration must meet three general criteria. They must be independent, objective, and effective.” (para. 169)

“The rationale for independence flows from the constitutional function performed by these commissions – they serve as an institutional sieve, to prevent the setting or freezing of judicial remuneration from being used as a means to exert political pressure through the economic manipulation of the judiciary. It would undermine that goal if the independent commissions were under the control of the executive or the legislature.” (para. 170)

“...the salary commissions must be objective. They must make recommendations on judges’ remuneration by reference to objective criteria, not political expediencies. The goal is to present “an objective and fair set of recommendations dictated by the public interest” (Canada, Department of Justice, *Report and Recommendations of the 1995 Commission on Judges’ Salaries and Benefits* (1996) at p. 7). Although s. 11(d) does not require it, the commission’s objectivity can be promoted by ensuring that it is fully informed before deliberating and making its recommendations. This can best be achieved by requiring that the commission receive and consider submissions from the judiciary, the executive and the legislature.... Moreover, I recommend (but do not require) that the objectivity of the commission be ensured by including in the enabling legislation or regulations a list of relevant factors to guide the commission’s deliberations. These factors need not be exhaustive. A list of factors might include, for example, increases in the cost of living, the need to ensure that judges’ salaries remain adequate, as well as the need to attract excellent candidates to the judiciary.” (para. 173)

In response to those directions, Alberta passed the *Provincial Judges and Application Judges 2021 Compensation Commission Regulation* (the “Regulation”), creating the 2021 JCC, describing its role and inquiry procedure, and setting out the non-exhaustive list of criteria this Commission must consider.

S. 5.3(2) of the Regulation lists eight criteria which we must consider:

- (a) The constitutional law of Canada and the need to maintain the independence of Justices and Application Judges;
- (b) The generally accepted current and expected economic conditions (as defined in s. 5.3(1)) in Alberta, and the resulting impact on the price of labour in Alberta;
- (c) The change in the cost of living in Alberta;
- (d) The current and expected financial position of the Government over the fiscal years that are the subject of the recommendations;
- (e) The level of increases or decreases, or both, provided to other programs and persons funded by the Government;
- (f) The roles, duties and jurisdiction of Justices and Application Judges;
- (g) Compensation provided to Justices and Application Judges in other Canadian jurisdictions, having regard to the differences between those jurisdictions and Alberta, especially as they relate to differences in the matters referred to in numbers 2, 3 and 4 in respect of those jurisdictions; and
- (h) The need to attract highly qualified applicants as Justices and Application Judges.

S. 5.3(1) interprets the phrase “generally accepted current and expected economic conditions” as follows:

“In this section, “generally accepted current and expected economic conditions” in respect of a jurisdiction includes, without limitation,

- (a) real gross domestic product,
- (b) real gross domestic product per capita,
- (c) the employment rate,
- (d) the unemployment rate,
- (e) the labour force participation rate, and
- (f) the consumer price index.”

At the outset of our process, we were told by the Minister and the Alberta Provincial Judges’ Association (now called the Alberta Provincial Justices’ Association, the “Association”) that the only compensation issues to be considered by this Commission were salary and travel expense reimbursement. Since then, the Minister and the Association have proposed that the following form part of this report, and this Commission has agreed: the issue of the Minister’s request for a recommendation with regard to a travel expense reimbursement policy is reserved. This Commission will accept further submissions on this issue by dates to be determined by agreement of the Minister and the Association. This Commission will make its recommendation on this issue by a date to be set by the Minister in accordance with the Regulation.

In the result, this report will restrict its recommendations to salaries for the period April 1, 2021 to March 31, 2025. We note that the submissions to us are restricted to full time salaries for Justices, and we have not been asked to make any additional

recommendations for administrative Justices, part time Justices, or any other category, all of which are set by agreed formulae.

SUMMARY OF RECOMMENDATIONS

The 2021 JCC recommends that the Government of Alberta should set the salaries of Justices and Application Judges for the four year mandate of this commission as follows:

April 1, 2021 - March 31, 2022:	\$328,500
April 1, 2022 - March 31, 2023:	\$348,000
April 1, 2023 – March 31, 2024:	\$362,000
April 1, 2024 – March 31, 2025:	\$372,500

THE 2021 JUDICIAL COMPENSATION COMMISSION AND ITS PROCESS

The 2021 JCC was established by the Regulation. Its mandate is to conduct an inquiry respecting the appropriate level of compensation for Justices and Application Judges, and issue a report making recommendations respecting compensation for the period April 1, 2021 to March 31, 2025.

Pursuant to s. 3(1) of the Regulation, on May 3, 2022 the Minister appointed Chantel Kassongo, K.C. as a Commissioner and Andrew Sims, K.C. as a Commissioner on the nomination of the Association. On August 8, 2022 the Minister appointed Donald Cranston, K.C. as a Commissioner and the Chair of the Commission, on the nomination of the first two Commissioners.

As will be described later in this report, the Lieutenant Governor in Council made its order concerning compensation for the four years from April 1, 2017 to March 31, 2021 on October 5, 2022, following a court judicial review. We note that Counsel for the Minister, Counsel for the Association and the 2021 JCC were all of the view that it was important to have that order before written submissions were made and the inquiry was held for the current compensation period April 1, 2021 to March 31, 2025.

Pre-hearing conference calls with Counsel for the Minister and Counsel for the Association were held to discuss and agree on the process to be followed, including the schedule for submissions and for the inquiry hearing. The inquiry hearing was scheduled for February 1 and 2, 2023. The 2021 JCC had the advantage of receiving thorough written submissions to allow for careful review sufficiently in advance of the hearing.

Public notices were published in Edmonton and Calgary newspapers on December 17, 2022, and a press release was issued on December 16, 2022, inviting members of the public to make written submissions. Five written submissions were received:

1. The Law Society of Alberta by its president, Ken Warren, K.C.;
2. The Alberta Branch of the Canadian Bar Association;
3. Doug Moe, K.C.;
4. “Jared B”, later identified as Jared Bieza; and
5. Alex Clark.

Jared Bieza and Alex Clark expressed concerns about individual Judges in cases in which they were involved, and submitted that those Judges were overpaid. Jared B Bieza submitted that more broadly, Judges were highly paid and should not receive any increase in their salary.

Doug Moe, K.C. submitted that Judges’ salaries should be higher to attract the best candidates.

The Law Society of Alberta and the Alberta Branch of the Canadian Bar Association did not propose any particular salary levels, but expressed strong support for the work of independent judicial compensation commissions.

At the inquiry hearing held on February 1 and 2, 2023, most of the time was taken by oral submissions from Counsel for the Minister and Counsel for the Association, and hearing oral evidence from the experts retained by them, namely Dr. Tombe (Economist), Mr. Antunes (Economist) and Mr. Sauve (Actuary). In addition, pursuant to s. 5.2(7) of the Regulation, Amanda Lindberg, President of the Alberta Branch of the Canadian Bar Association and Jared Bieza were given leave to make oral submissions.

At the conclusion of our public hearing, Counsel for the Association asked for confirmation that the Minister had placed before the Commission all the evidence and argument it intended to rely upon. Mutual assurances to that effect were given. Subsequently, the parties added some additional information by consent, but subject to those additions, we are assured that all relevant material has been placed before us.

In this report we highlight the information that has led us to the reasons for our recommendations. We emphasize however that in making our decisions, we have considered all submissions, witness evidence and documents received during our deliberations. The written submissions are publicly available through the Government's website for the 2021 JCC.

THE WORK OF THE ALBERTA COURT OF JUSTICE

When the 2021 JCC was created the Court was called the Provincial Court of Alberta, populated by Judges. Now, it is called the Alberta Court of Justice and Judges are now called Justices.

The Court sits in 73 locations in the province. There are 21 base points offering common Court services, and smaller circuit points where the Court sits on specific days. The Court functions by divisions, though all Justices can function as Alberta Court of Justice Justices anywhere in the province. Justices sitting in Edmonton and Calgary are dedicated to a specific area of criminal, civil or family and youth. Justices sitting in the other regions of the province hear cases in all areas, and typically have significant travel obligations.

The Court has broad jurisdiction in 5 areas: adult criminal, provincial offences, fatality and any other inquiries, family and youth, and civil. We have been told that adult and youth criminal is the most significant area of the court's work, measured by volume. In fact, all criminal cases start in the Alberta Court of Justice, and we have been advised that 97% of those cases are concluded there.

In recent years the Court has been proactive in establishing various special needs Courts to better respond to needs in the areas of domestic violence, drug treatment, mental health, and indigenous justice. The latter can include special community hearings using a restorative justice model. All require Justices to have special knowledge and skills.

The Court's civil jurisdiction has steadily increased over the years. Today, the claim limit is \$50,000 and is scheduled to increase to \$100,000 on August 1, 2023. Legislation which received royal assent in December, 2022 allows future increases in the claim limit to \$200,000.

The Court has extensive and often exclusive jurisdiction concerning youth criminal matters and child protection proceedings. Both concern serious matters, often with lifelong consequences. The Court also has concurrent jurisdiction with the Court of King's Bench concerning many, but not all, aspects of family law.

In our view, it is clear that the Alberta Court of Justice is a mature multijurisdictional Court, and it is aptly said that it represents the "face of justice" for most Albertans.

APPLICATION JUDGES IN THE COURT OF KING'S BENCH

The submissions we received from the Association were entirely focused on Justices of the Alberta Court of Justice. Application Judges did not have Counsel making submissions to this Commission. The submissions of the Minister had some references to Application Judges, but the vast majority concerned Justices of the Alberta Court of Justice.

We have been assured that it is understood and agreed that recommendations for salaries of Justices apply in all respects to Application Judges. Indeed, we note that s. 9.1 of the *Provincial Judges and Application Judges Compensation Regulation* provides that full time Application Judges are to be paid the same salary as that paid to full time Justices of the Alberta Court of Justice.

We accordingly need not address that question further, except to say that the work of application Judges has value and importance to our system of justice in Alberta. They are particularly important to ensure timely adjudication of important issues and in adding to the overall efficiency of the Court of King's Bench.

ASSESSMENT OF THE APPROPRIATE LEVEL OF COMPENSATION

Introduction

In 2005 the Supreme Court of Canada in its decision known as *Bodner*² gave this guidance at paragraph 17:

“The commission must objectively consider the submissions of all parties and any relevant factors identified in the enabling statute and regulations. Its recommendations must result from a fair and objective hearing. Its report must explain and justify its position.”

As noted earlier, the Supreme Court of Canada in 1997 in *PEI Reference* put it this way:

“The goal is to present an objective and fair set of recommendations dictated by the public interest.”

The appropriate level of compensation is to be measured against objective factors. No single factor is determinative or overriding. The assessment is not formulaic. Instead, it requires us to assess all factors, guiding us to a judgment as to what constitutes appropriate compensation for Justices in Alberta over this four year period.

² *Provincial Court Judges' Assn. of New Brunswick v. New Brunswick (Minister of Justice)*; *Ontario Judges' Assn. v. Ontario (Management Board)*; *Bodner v. Alberta*; *Conférence des juges du Québec v. Québec (Attorney General)*; *Minc v. Québec (Attorney General)*, [2005] 2 S.C.R. 286, 2005 SCC 44

We have carefully considered all of the submissions and evidence in accordance with the guidance provided by the Supreme Court of Canada, and the three principles described in s. 4 of the Regulation: (a) the need for an independent, objective and effective process for determining judicial compensation; (b) the need to present an objective and fair set of recommendations dictated by the public interest; and (c) the constitutional guarantee of judicial independence.

In the sections of this report that follow, we consider the evidence in relation to each regulatory criteria. Before doing so, it is helpful to contextualize our recommendations by summarizing the findings of earlier JCCs in Alberta, and the Government's response to those recommendations.

JCC History in Alberta

Following the 1997 decision of the Supreme Court of Canada in *PEI Reference*, there have been seven previous JCCs in Alberta, starting in 1998. The following is a summary of that work:

1998 JCC (April 1, 1998 – March 31, 2000)

Recommendation: Substantial salary increase from \$113,964 to \$142,000 effective April 1, 1998, and \$152,000 effective April 1, 1999. Substantial improvements to pension arrangements also recommended.

Government Response: Salary recommendations not accepted.

Result: The Association sought judicial review and the Court found the government's response did not meet the required standard. The government was required to implement the recommendations.

2000 JCC (April 1, 2000 – March 31, 2003)

Recommendation: Salary increase to \$170,000 for all 3 years. Some improvements to pension arrangements, all based on a joint submission from the Minister and the Association.

Government Response: Accepted.

2003 JCC (April 1, 2003 – March 31, 2006)

Recommendation: Salary increases to \$200,000 effective April 1, 2003, \$210,000 effective April 1, 2004 and \$220,000 effective April 1, 2005.

Government Response: Salary recommendations not accepted.

Result: The Association sought judicial review. The Court ordered that the government justify its departure from the recommendations within 90 days, and failing that, the recommendations would be binding. The government did not do so, appealed the order and sought a stay. The stay application was refused, and the appeal was not pursued.

2006 JCC (April 1, 2006 – March 31, 2009)

Recommendation: Salaries would remain at \$220,000 for all 3 years, on a joint submission from the Minister and the Association.

Government Response: Accepted

2009 JCC (April 1, 2009 – March 31, 2013)

Recommendation: Salary increases to \$250,000 effective April 1, 2009, \$255,000 effective April 1, 2010, and for the last 2 years, salaries to be increased by the percentage amount in the year over year increase, if any, in the Alberta all items consumer price index for the preceding year. Other recommendations concerning pensions, professional allowances and pay to Administrative Judges were made on the joint submission of the Minister and the Association.

Government Response: Accepted

2013 JCC (April 1, 2013 – March 31, 2017)

Recommendation: Salary increases to \$273,000 effective April 1, 2013, \$279,825 effective April 1, 2014, \$286,821 effective April 1, 2015, and \$293,991 effective April 1, 2016. A joint submission of the Minister and the Association concerning professional allowances, pension plan changes, and a judicial indemnity were recommended.

Government Response: Accepted

2017 JCC (April 1, 2017 – March 31, 2021)

Recommendation: Salary increases to \$296,382 effective April 1, 2017, \$302,304 effective April 1, 2018, \$309,500 effective April 1, 2019, and \$318,500 effective April 1, 2020. A joint submission from the Minister and the Association concerning age of eligibility for part-time service and an increase to the professional allowance were also recommended. A final recommendation concerned the judicial indemnity.

Government Response: Salary recommendations were not accepted.

Result: The Association sought judicial review. By a decision issued June 14, 2022 the Court of King's Bench³ decided the Government response did not meet the requirements in *Bodner*, set aside that response and referred the matter back to the Lieutenant Governor in Council for reconsideration within 120 days. On October 5, 2022 the Lieutenant Governor in Council accepted the salary recommendations of the 2017 JCC.

The Minister's Position

Before the 2021 JCC the Minister has proposed the following salaries:

\$318,500 effective April 1, 2021 (no increase)

\$322,481 effective April 1, 2022 (1.25% increase)

\$328,931 effective April 1, 2023 (2.00% increase)

\$335,510 effective April 1, 2024 (2.00% increase)

³ *Alberta Provincial Judges' Association v. Alberta* [2022] ABQB 415 (Ross J.)

The Association's Position

Before the 2021 JCC the Association has proposed that for the four years in our mandate, the annual salary of puisne Justices should be increased to 96% of the salary established for federally appointed Justices. That would place the salaries at \$346,656 effective April 1, 2021, \$357,312 effective April 1, 2022, \$368,352 effective April 1, 2023 and an estimated amount of 382,020 effective April 1, 2024.

THE INDIVIDUAL CRITERIA

Criteria s. 5.3(2)(a): The constitutional law of Canada and the need to maintain the independence of Justices and application Judges

As one would expect, the Minister and the Association agree that protection of judicial independence is a fundamental principle informing the Commission's work. There is no suggestion that judicial salaries are at or approaching a level that would raise concern about the potential for political interference through economic vulnerability.

We are not concerned here with deciding what would amount to a bare minimum level of income, or, for that matter, a maximum level, but rather to assess what is an appropriate level of compensation that is objectively determined to be fair in light of the various criteria described in the Regulation.

This criteria concerning the need to maintain the independence of conditions criteria has been addressed by prior JCCs, other JCCs in Canada, and the case law including the recent decision of Ross, J. in *Alberta Provincial Judges' Association v. Alberta*⁴. We have nothing meaningful to add.

In our view, this criteria does not of itself justify an increase in judicial salaries.

Criteria s. 5.3(2)(b): The generally accepted current and expected economic conditions in Alberta, and the resulting impact on the price of labour.

The phrase “generally accepted current and expected economic conditions” is explained in s. 5.3(1) to include, without limitation, real gross domestic product (GDP), real GDP per capita, the employment rate, the unemployment rate, the labour force participation rate, and the consumer price index. The phrase “price of labour” is not defined, and the Economists have given us two perspectives on the meaning of that phrase for our purposes.

⁴ Ibid.

We were provided with helpful reports from both Economists, Dr. Tombe and Mr. Antunes. We found both Economists to be credible. Mr. Antunes tended to be more cautious in his predictions than Dr. Tombe, fueled in part by his concern about the risk of energy price volatility, and in part by the periods of growth and recession leading up to and during the pandemic.

The Economists were respectful of the views of each other, and there was no material disagreement between them. If in this section we have tended to quote Dr. Tombe more than Mr. Antunes, it is only because for our purposes the explanations provided by Dr. Tombe more easily meet our needs. It is also because Mr. Antunes tended to provide his comments based on changes in the rate of growth in Alberta's metrics measured against more distant past years, rather than the actual level of the various metrics.

We summarize what we consider to be the key submissions provided by the Minister concerning this criteria:

1. As Alberta remains heavily dependent on oil and gas extraction revenues, its economy remains at significant risk due to uncertainty around global supply.

2. With the collapse of oil prices and two massive recessions in 2015-2016, “Alberta’s economy fell significantly behind the rest of the country.”
3. Even with its projected economic growth, Alberta is not expected to see a return to the pre-2015 boom period. Real GDP is forecasted to remain at lower than 2% below its 2010-2014 average, whereas nationally it is forecast to increase 8.6%.
4. The Minister acknowledges that Alberta continues to have the highest average per capita income and wages in Canada. The Minister submitted that the gap in real personal income per capita that Alberta historically held over other provinces has shrunk. By 2025 real per capita income in Alberta is forecast to be 11% above the national average, albeit below 2010 levels in Alberta.
5. The Minister has submitted that when looking at changes in a population’s employment incomes, only base salaries should be considered. Various aspects of compensation such as progression through salary ranges, merit pay, promotions, hours worked, overtime, shift premiums, commissions, bonuses and so on should be irrelevant when looking at incomes and assessing what a fair and appropriate level of salary should be for Justices, since Justices do not receive those forms of compensation.
6. When considering public-sector salary increases going back to 2017, the salaries proposed by the Minister for Justices in the first three years of our mandate will result in cumulative increases which far surpass those of the public sector.
7. Justices received a significant increase in 2020, compared to small or no increase for others. The Minister says that is taken into account by proposing no increase for April 1, 2021. The Minister says that looking at 2017-2023, Justices will remain significantly ahead of other Albertans with the Minister’s proposal.

The Minister went on to describe it this way at paragraph 40 of the written submission:

“Households in Alberta that are expected to see only moderate growth in base salaries over the period 2017-2025... are being asked to fund any increases in compensation to judges. Household income is the primary driver of personal income tax revenue. Consideration of this factor supports Alberta’s position that only moderate increases, reflective of what Alberta households are expecting to receive, are aligned with the public interest and justified in this 2021 JCC’s mandate.”

8. At paragraph 26 of the Minister’s submission, it is argued that “[t]he shift in Alberta’s economic position over recent years, in comparison to the rest of the country, indicates that it is not appropriate to continue to set judicial salaries at the front of the pack. Alberta’s economy is currently strong, but over time it has moved toward the country’s average for various metrics.” No evidence is referenced to support that statement, and in our view, that statement is not consistent with the evidence before this Commission.
9. The expert economic evidence is aligned in many respects. But the Association’s submissions highlighting the very recent strengths over the past year and the positive forecast “downplay” (1) the significant and lengthy periods of economic decline that Alberta has been emerging from, and (2) the risks that come with Alberta’s continued reliance on energy levels in a highly uncertain global context.

10. The strong recent growth in Alberta's economy is partly because Alberta had deeper economic slowdowns from which to recover.
11. It is undisputed that GDP has remained higher in Alberta than the rest of the country over the past decade.
12. Changes in real GDP per capita "demonstrate overall stagnation, and even decline, in Alberta, compared to the increases being enjoyed in most other provinces."
13. British Columbia posted higher GDP growth rates than Alberta in 2020 and 2021.
14. Real GDP growth in Alberta is projected to (1) slow down significantly in 2023, (2) match the national average in 2024, and (3) remain close to the national average in 2025.
15. Alberta has seen improvements in its labour market, but we need to consider:
(1) the services sector is highly dependent on the energy sector which is subject to volatility, and (2) though Alberta has a younger demography than other provinces, labour participation rates align with the rest of Canada when considering prime working age.

16. It is uncertain whether Alberta's high wages relative to the rest of Canada will continue. Alberta has enjoyed strong employment growth in 2022, and is projected to continue to see strong employment growth over the term of the 2021 JCC mandate.
17. Unemployment rates remain high and wage gains are expected to remain aligned with the rest of Canada.
18. "[U]nanticipated economic decline that has occurred since the last JCC report provides a basis for a tempered approach to compensation by the current JCC. The Minister's proposal for modest judicial salary increases over the term of this Commission's mandate:
- a. Aligns with price of labour changes in both the private and public sectors of the province while providing more of a cushion for Justices to those changes,
 - b. Recognizes that wage gains have significantly slowed for Albertans over recent years, and
 - c. Reflects a fair and reasonable approach to compensation." (Minister's written submission at para. 41)

The Association's key submissions concerning this criteria are summarized as follows:

1. Dr. Tombe's report starts with an analysis of GDP, making the following points:
 - a. Alberta's economy contracted more than any other in Canada during COVID, falling 7.9% in 2020 as compared to 2019. But Alberta's economy is on a strong upward trajectory and now materially exceeds its pre-COVID and pre-recession peak.
 - b. Alberta's economy will continue its strong pace of growth this year and potentially for the next several years. It is also projected to perform well relative to other provinces.
 - c. GDP per capita for Alberta was materially above the rest of the country prior to the 2015-16 recession. Even at the bottom of the recession, Alberta's GDP per capita remained above any other province.
 - d. Despite the stagnation in the economy through 2019 and the contraction in 2020 due to the pandemic and declining energy prices, Alberta's economy continued to outperform any other in Canada, though by a significantly smaller margin than in the past.
 - e. Reasonable projections from a wide variety of private and government forecasters indicate Alberta's economy will continue to produce higher GDP per capita than any other province. He noted the latest outlook is for Alberta's GDP per capita to be over 13% above the next highest province, Saskatchewan, and nearly 35% above Ontario.

2. Labour market indicators show that Alberta has not only exceeded its pre-pandemic employment levels, but approached and in some cases exceeded levels not seen since before the 2015-16 recession, especially for women.
3. Alberta suffered the second largest employment decline relative to population in the pandemic, second only to Quebec. But by the summer of 2022 that decline had “more than reversed”.
4. Alberta’s unemployment rate increased significantly during the pandemic to a high of 15%. But by the summer of 2022 it had dropped to below 5%, and for the first time in many years fell below the national average of 5.2%. It is expected to remain near that level in the long run.
5. Alberta’s employment rate has recovered to a level higher than pre-pandemic levels, though not to the levels seen in the boom years preceding the 2015-16 recession.
6. Alberta’s employment rate leads the country. Its October 2022 employment rate of 65.2% was higher than the next highest province of Saskatchewan at 63.8%, and nearly 5% higher than the national average.
7. Alberta’s labour force participation rate was 69% in October 2022, which when adjusted for demographic change is modestly below pre-recession levels. But Alberta’s rate is higher than any other province and significantly higher than the national participation rate of 64.9%.
8. Wages and salaries of employed Albertans are high relative to the rest of the country, though the gap is less than pre-recession levels.

9. The Government of Alberta is predicting average weekly earnings growth of 4.1% in 2023, which is a significant increase over recent years.
10. Alberta households have the highest average levels of income in Canada, with both Alberta and Ontario significantly higher than the national average. Alberta is more than 14% higher than that national average.
11. Dr. Tombe has noted that capital investment, a critical input into the production of goods and services, remains high in Alberta. In 2021 it was higher than any other province by a wide margin, and remains higher even if investment in the highly capital intensive oil and gas sector is excluded.
12. Alberta's public sector employment, as a share of Alberta's population is below the national average, but in line with British Columbia and Ontario.
13. Alberta's population growth is expected to continue to outpace the rest of Canada. Further, Alberta's demographics are more favourable than other provinces. Alberta is the youngest province and projected to remain so. Dr. Tombe has said that "demographic patterns strongly indicate that over time, Alberta's rate of economic growth will exceed that of the rest of the country."
14. Dr. Tombe concluded his review of this criteria with the following:

"While Alberta's economy still features some areas of weakness – such as accommodation and food services, where some pandemic-related disruptions have yet to fully abate – overall economic conditions are exceptionally strong relative to other provincial economies in Canada. Conditions have also rapidly improved in recent years. In fact, by some measures, Alberta's economy is operating at levels not seen since before the 2015-16 recession. ... While there is always uncertainty when projecting forward, the prospects for Alberta's economic strength to grow

even more may be bright. The Conference Board of Canada – one of Canada’s larger private-sector forecasters – projects several years of robust growth in the province. Their latest outlook from September 2022, does highlight some potential risks from rising inflation and interest rates, but on balance, they anticipate real GDP, total income, retail sales, and wage growth to all increase. Labour markets will also gradually and modestly improve from their already strong levels. ...While this is just one private-sector forecaster, it reflects the generally accepted view that Alberta’s economic conditions will continue to improve.” (Dr. Tombe report, page 30)

15. We are required to consider the economic conditions impact on the price of labour in Alberta. Dr. Tombe’s said this:

“This continued improvement will have positive implications for wage and income growth. The Conference Board of Canada anticipates wage and salary growth rates in Alberta to average 3.4% in 2023 and 3.6% in 2024. Over the whole four-year period from 2021 to 2024, they project average wage and salary growth of just over 2.5% per year. They also project household disposable (after-tax) incomes to grow by an average annual rate of 3.5% over the same period. Beyond 2024, wage growth should tend to reflect labour productivity growth plus inflation. With the latter likely to return over time to more normal levels, close to 2%, and with a reasonable expectation of 1% per year labour productivity growth, Alberta’s long-run average annual wage and salary growth should be approximately 3%.” (Dr. Tombe report, page 31)

16. The Association ended its written submission on this criteria by arguing that while the 2009, 2013 and 2017 JCCs saw fit to temper their recommendations in light of the fiscal circumstances, there is no basis for that approach in the current economic circumstances.

17. Concerning the Minister's emphasis on the volatility of Alberta's energy-sector, the 2017 JCC took the right approach in considering volatility: "[g]iven the 'waxing and waning' effect of world oil prices on the Alberta economy, it would not be appropriate to focus on the recent drop in the price of oil as the deciding factor which outweighs all others in our recommendations."
18. The Minister's observation that Alberta remains heavily dependent on oil and gas extraction revenues, averaging nearly 25% of Alberta's GDP in 2021 should be considered in light of deliberate policy choices by the Alberta Government. The Association notes that reliance on natural resource revenues to fund operations accounts for one quarter of Alberta's total budget volatility, and nearly all of the excess volatility when compared to British Columbia. Further, the lack of a broad-based consumption tax – unique in Canada – further increases budget volatility.
19. The Minister's statement that Alberta's economy fell significantly behind the rest of the country following the 2015-16 recession is wrong. The Minister has failed to distinguish between actual levels and growth rates. Instead, it is true that the level of GDP per capita is higher in Alberta than all other provinces. The same may be said of employment.
20. The Association addressed the Minister's assertion at paragraph 24 of the Minister's written brief that real GDP per capita in Alberta for 2025 is forecast to remain at 2% below its 2010 to 2014 average, whereas nationally it is forecast to increase by 8.6%. As noted above, this is a reference to growth rates. Both real and nominal GDP per capita in Alberta are the highest in Canada.

21. The Association notes that the most recent Labour Market Notes published by the Alberta Government indicate that employment in Alberta grew faster in 2022 than any other province except Newfoundland and Labrador, and nearly twice the national employment growth rate.

22. The Association disputes the Minister's assertion that changes in earnings relating to total compensation are irrelevant to Justices and that only changes in base salaries should be considered. Dr. Tombe noted in his rebuttal report at page 2:

“As these other forms of compensation are an important component of overall compensation growth elsewhere in the economy, omitting them from consideration would leave one comparing to only one aspect of the overall average earnings growth in the economy generally.... On average, annual growth in the FWI measure of compensation [which includes these other forms of compensation] is nearly 1 percentage point higher than the price of labour measure between 2013 and 2021. The cumulative effect over this period is 19.6% growth using FWI and 11.4% growth using the price of labour. Excluding forms of compensation growth that most workers in Alberta receive (and expect) therefore tends to significantly understate average earnings growth in the province.”

23. The Association notes the Minister's description of anticipated increases in what the Minister refers to as “the price of labour” as 1.9% for 2023, 2.8% for 2024 and 2.9% for 2025. We note that the phrase “price of labour” is a phrase used by Mr. Antunes at pages 15 and 16 of his written report to refer to base salary only. He “breaks out the increases associated with salary range increases (defined here as the price of labour) versus the increases in the total salary budget...” There is nothing to suggest that is the meaning to be given to the undefined term “price of labour” in clause 5.3(2)(b) of the Regulation.

24. The Association then noted that the Conference Board of Canada forecasts for wages and salaries growth, excerpted in Dr. Tombe's report are 3.4% for 2023 and 3.6% for 2024.

25. It is significant in considering public-sector increases dating from 2017 in relation to the price of labour that those were largely impacted by public-sector pay restraint as a Government policy, in light of what were high public-sector salaries in Alberta relative to the rest of Canada. The Association notes that there has never been a direct relationship between public-sector salaries and the positioning of Justices' salaries, and the only takeaway for us should be that observed by Dr. Tombe, namely that "public-sector pay is not an excessive burden on public finances or provincial economic activity."

26. In response to the Minister's position that significant unforeseen economic developments occurring after the 2017 JCC report justify the Minister's proposal for no salary increase in 2021, the Association notes that the 2017 JCC recommended an increase in Justices' salaries for 2020 "to compensate, at least in part, for projected increases in the cost of living and to a lesser degree in the IAI. That Commission observed it was "necessary to avoid overall wage erosion and to maintain some semblance of the historic relative position of Alberta Justices with respect to those in other jurisdictions, especially taking into account total compensation."

We have carefully considered the evidence of Mr. Antunes and Dr. Tombes, together with the submissions of the Minister and the Association. We have the following additional observations:

1. It is true that reliance on oil and gas extraction revenues and the resulting reliance on uncertain global markets creates a risk to the Alberta economy. Whether one is inclined to the more cautious predictions of Mr. Antunes or the somewhat more optimistic predictions of Dr. Tombe, the result is that over the period of our mandate, the economic conditions in Alberta will lead the country. The data is already known for the first year of our mandate and we are now well into the second year, so the need to forecast into the future is for a relatively short time. We are fortunate to not be in the position of some past JCCs facing challenging economic forecasts.
2. The Minister's statement that "Alberta's economy fell significantly behind the rest of the country" is not correct. It is correct to say that the rate of decline and recover in Alberta has been worse than other parts of the country, but the level of economic conditions still remains the highest.
3. The Minister's concern that Alberta is not expected to see a return to the boom period between 2010 and 2014 is noted, but of limited value given that period is nine to thirteen years ago.
4. We acknowledge the Minister's observations about the modest movement in public-sector salaries. That, in part, led us to the view expressed in considering criteria (e) that payments to public-sector persons do not indicate a justification for an increase in judicial salaries.
5. Concerning the factors referred to in s. 5.3(1), the Economists agree that real GDP, real GDP per capita, the employment rate and the labour force participation rate in Alberta lead all other provinces in Canada, even though the gap for some of these measures may have narrowed. The unemployment rate in Alberta has stabilized, is below the national average, and is forecast to remain

near that level. The CPI is not materially different in Alberta from other parts of Canada.

6. As Dr. Tombe has noted, a wide variety of private and public forecasters project that Alberta will continue to produce higher GDP per capita than any other province. We accept Dr. Tombe's opinion that while there are, of course, still some features of weakness, overall economic conditions are exceptionally strong relative to other Canadian provinces over the term of our mandate. Dr. Tombe referred to the Conference Board of Canada recent projections of robust growth for Alberta over several years, and notes that is the generally accepted view of economists. Mr. Antunes, while more cautious, does not disagree.
7. The Minister's submissions place significant emphasis on (1) a cautious concern about risk arising from Alberta's reliance on oil and gas extraction revenues and an uncertain global market, (2) the impact of the 2015-2016 recession followed by the impact of the pandemic, and (3) the importance of a careful fiscal response. We understand the views expressed by the Minister, but in assessing this criteria with the information from the economists makes it clear that Alberta is in a leading economic position in Canada now which is projected to continue for the balance of the term of our mandate.

We turn now to the resulting impact on the price of labour. The phrase "price of labour" is used but not defined in the regulation. Mr. Antunes explained its elements and expanded on why he felt it an appropriate indicator. It is also used in a document prepared within government. Mr. Antunes, as its apparent author, and Dr. Tombe, each gave their perspective on its use and utility as an indicator of current and expected economic conditions.

Statistics Canada produces a fixed weight index (FWI) which measures earnings to adjust for hours and employment composition. Mr. Antunes compares that to what he refers to as the price of labour approach. He prefers this approach as it eliminates changes in earnings due to things like merit pay, progression increments, promotions and so on, on the basis that Justices do not receive any of those things. Dr. Tombe argues that those features of compensation are important to measure. While Justices do not receive those things, a fair comparison of compensation of others requires that fulsome approach. The FWI approach gives rise to a 1% higher annual growth rate than the more restricted “price of labour” approach as described by Mr. Antunes.

We are inclined to the view that the approach of Dr. Tombe is more fair and appropriate, as it considers full compensation in Alberta’s economy. Even if the intent in the criteria is to use this approach as explained in the government document and by Mr. Antunes, we would nonetheless consider those additional components of compensation in assessing the fairness and appropriateness of salaries to be paid to Justices, even outside the “price of labour” referred to in s. 5.3(2)(b), as permitted by s. 5.3(4) of the Regulation. The difference is not just academic. In considering compensation paid to those in both the private and public sectors, it is unfair to look at only a part of those persons’ compensation. The fact that Justices do not receive merit pay, bonuses, overtime pay, and so on does not change that fairness.

The Minister agrees that Alberta has the highest incomes and wages per capita in the country, and that is forecast to continue for the term of our mandate, though the margin between Alberta and other provinces is smaller. The economic conditions have a positive impact on the price of labour in Alberta.

Consideration of this criteria leads to a conclusion that favours an increase in judicial salaries.

Criteria s. 5.3(2)(c): The change in the cost of living in Alberta

The Minister's proposed increases are lower than the cost of living increases projected for this period. The essence of the Minister's position is that all Albertans are exposed to these inflationary pressures, and it is not in the public interest to shield Justices from those pressures. Justices are expected to shoulder their fair share of these generally applicable economic realities.

The Association has calculated that using the salaries proposed by the Minister, and the Alberta CPI provided to us by Dr. Tombe, the purchasing power of Justices' salaries over the four years of our mandate would be reduced by \$69,381. The Association calculated that the anticipated salary for the final year of our mandate starting April 1,

2024 using the agreed projected IAI would be \$382,020 which would be 4.4% more than the salary level if calculated to adjust only for the prior year cost of inflation.

The Association submits that guarding against falling real incomes for Justices is not just about protecting the economic interests of Justices. It also helps minimize possible perceptions that, by reducing real incomes, Government's goal is to influence the judiciary.

The changes in the cost of living known or forecasted over the period of our mandate are discussed in reference to the consumer price index (CPI), in this case, for Alberta.

Those changes have been identified by Dr. Tombe as:

2021. 3.2%

2022. 6.7%

2023. 3.2%

2024. 2.3%

As noted in the Minister's submissions, while cost of living is difficult to measure, a common proxy is Statistics Canada's CPI, though it explicitly states it is not a cost of living index (COLI). The Minister notes that "[t]he difference between CPI and COLI is that CPI measures the change in cost of a fixed basket of goods and services,

approximating an average Canadian household's spending habits. A COLI, on the other hand, would measure the price changes required to maintain a certain standard of living." The Minister also noted that changes in CPI have a significantly greater impact on low-income households. The limitations of CPI as a metric should be kept in mind.

Both economic experts present a similar picture of CPI. Our obligation is to weigh the important impact of inflation on judicial salaries, while recognizing that Justices should shoulder a fair share of the economic realities faced by all Albertans.

In our judgment, this criteria of the change in the cost of living supports an increase in judicial salaries, but requires some tempering to avoid unduly sheltering Justices from the impact of inflation.

Criteria s. 5.3(2)(d): The current and expected financial position of the Government over the fiscal years that are the subject of the recommendations

The Minister submits that this Commission should endeavour to make recommendations that are compatible with the current state of government finances. We would prefer to say, in keeping with the regulated criteria, that we must consider the expected current and expected financial position of the Government over the period of

our mandate, and consider that along with all the other criteria in making our recommendations.

The Minister argues that in considering this criteria, while fiscal positions of governments in Canada improved in 2022, that improvement followed sharp increases in debt and health care costs during the pandemic. It is argued that Albertans will see rising debt financing costs due to their shared responsibility for federal debt, and an aging population's impact on health care costs. It is also argued that Alberta will need to keep wages better aligned with other provinces, and that Albertans will continue to benefit from a low cost of living. (Minister's written submission, paras 50-51). The Minister then put it this way at paragraph 54:

“Judges should shoulder their fair share of the downswings experienced by all Albertans, just as judges receive the benefit of upswings in this province. Even if Alberta is well-positioned to weather the challenges ahead, wages of any group being paid out of the public purse must remain fiscally prudent and tempered given the need to keep wages in Alberta competitive, mounting debt financing costs, risks on the horizon and volatility in oil revenues.”

In the reply written submission, the Minister observes at paragraph 51-52 that the Government has chosen to adopt fiscal prudence, including continued reduction of public-sector pay to align with other provinces. It is argued that this Commission should not consider Alberta's capacity to raise funds through increased taxes or debt – Dr.

Tombe points out that capacity is superior to any other jurisdiction in Canada. Rather, we should consider the Government's "policy choice to reduce deficits by controlling spending instead of raising taxes, which everyone in the province will be directly or indirectly affected by. It would be unfair and unreasonable for Justices to be sheltered from the burdens of a policy which is within the Government's constitutional right to manage the public purse."

The Association notes that "Alberta's provincial budget is unusual in that taxation accounts for only one-third of Alberta's revenues as compared with one-half in most other provinces. The difference comes from the fact that Alberta benefits from natural resource and investment revenues that most other provinces do not have available. On the expenditure side, Alberta is similar to other provinces in that expenditures on health, education and social services represent about 80% of all government operations."

The Association notes Dr. Tombe's assessment that the 2022 Alberta budget is a significant turning point in Alberta's recent history. He said in his report:

"From a deficit of nearly \$17 billion in 2021-21 to a surplus of nearly \$4 billion in 2021-22, the improvement in provincial finances in real per capita terms is larger than any other provincial government has experienced in Canadian history – by a wide margin."

Dr. Tombe then noted the improvement in the financial position is expected to continue in 2022-23 with a projected surplus of \$13.2 billion for that fiscal year. It is important that Dr. Tombe projects an approximate surplus of \$8 billion in 2023-24, and \$5 billion in 2024-25. Dr. Tombe projects that over the longer term Alberta will remain in a stronger position than other provincial governments. Mr. Antunes did not dispute those assessments, though he is somewhat more cautious in forecasting energy prices and volatility, and therefore the sizes of the projected surpluses.

Looking at Alberta's financial position over the term of our mandate, Dr. Tombe noted two other considerations:

1. Alberta's net public debt is lower than most provinces with only British Columbia and Saskatchewan having approximately comparable levels. Alberta's net debt as a share of GDP is expected to be the lowest of all provinces at the end of the 2022-23 fiscal year, by a considerable margin.
2. Alberta has a higher ability to raise revenue that far exceeds the ability of any other province.

The Association concluded its comments on this criteria by noting at paragraph 68 of its reply written submission that "while there is no dispute that, as set out at paragraph 50, Alberta, like all provincial governments, will face long-term challenges to government finances from an aging population and rising health care costs, there can also be no

reasonable dispute that Alberta has ample fiscal capacity to manage both short-term volatility and long-term expenditure pressures.”

The Minister does not argue that Alberta has no ability to pay increased salaries, but rather that prudent fiscal management requires that the Government act responsibly to moderate salary increases.

We accept and agree with the idea that just because the Government is well positioned financially does not necessarily mean that it should pay increased salaries. However, we must also be careful not to allow political fiscal policy to outweigh the other considerations.

In our view, this criteria does not of itself justify judicial salary increases.

Criteria s. 5.3(2)(e): The level of increases or decreases, or both, provided to other programs and persons funded by the Government

The Minister submits that there is no constitutional principle that prohibits a JCC from considering what the government is paying other programs and persons funded by the government. Indeed, the Regulation requires us to consider this. The Minister goes

further in stating at paragraph 65 of the reply submission that choosing a fiscal policy is a choice for the government to make, “as opposed to this Commission”. It is true that this Commission must consider increases or decreases or both provided to programs and persons funded by the government, and those policy decisions are for the government alone to make. Decisions about the level of increases or decreases of judicial salaries, though paid from the public purse, must proceed through the independent JCC process, and are not for the government to make based on its own choices, but rather for expressed reasons following the JCC process.

The Minister’s submissions take us through wide ranging public sector increases in salaries through 2023-2024. They conclude that the levels of increases provided to individuals funded by the government “demonstrate Alberta’s commitment to apply a fiscally prudent and tempered approach to wage increases”, and are “markedly less than the amount of increase proposed by the [Association] for Judges’ salaries.”

Little if any evidence has been provided to this Commission on program funding by the Alberta Government. The evidence has been focused on funding to persons, either through collective bargaining or otherwise.

The Association notes that the

“levels of increases provided to other programs or persons funded by the Government show what increases the Government has been prepared to agree to for public sector groups which engage in collective bargaining, given political considerations and the bargaining power exerted by the relevant bargaining unit.... The level of increase must be viewed as evidence of the willingness of the Government to pay and accordingly, its own political assessment of its financial position.”

It reminds us of Chief Justice Lamer’s view that the use of public funds is inherently political, and the purpose of JCCs is to act as an institutional sieve to depoliticize, to the greatest extent possible, the setting of judicial compensation.

In its reply submission, the Association points out that this criteria focuses on the level of increases or decreases provided to other programs or persons funded by government, and that fiscal economic criteria are separately considered. It says:

“Compensation increases that the Government has been prepared to agree to in collective bargaining with unionized workers or been prepared to pay non-unionized individuals are necessarily informed by political considerations (including its assessment of the “public interest”) that must form no part of this JCC’s deliberations.”

It is clear that Alberta’s fiscal policy has been to exercise significant restraint with public-sector wages in the last few years. That of course is for the Government to determine taking into account the various political, fiscal policy and other considerations. In the

case of judicial salaries, we must consider the levels of these payments, but we are not bound to mirror them. We must assess all of the criteria several of which are interrelated, and act as a “sieve” to depoliticize the setting of judicial compensation.

On balance, we consider this criteria does not of itself justify judicial salary increases.

Criteria s. 5.3(2)(f): The roles, duties and jurisdiction of Justices and Application Judges

The Minister’s submission acknowledges that Justices of both the Alberta Court of Justice and the Court of King’s Bench occupy judicial offices that carry significant personal and professional responsibilities and obligations. Their role is fundamentally important to upholding the rule of law in Canada.

The Minister has identified legislative changes affecting the jurisdiction and procedures of the Alberta Court of Justice since the 2017 JCC report. The Minister submits that none of the changes fundamentally increase the jurisdiction of the court, and they do not warrant an increase in compensation.

The Association has a different perspective, looking beyond specific legislative changes and considering the ongoing evolution of the Court's role in Alberta's justice system. It said at paragraph 153 of its submission:

“As was recognized by past JCCs, the [Alberta Court of Justice's] jurisdiction has continued to expand since its inception at the instance of both the federal and provincial governments. Because of this ever-growing jurisdiction, and the choices exercised by counsel and unrepresented litigants, it is increasingly the Court which has the greatest day to day contact with Albertans from all walks of life. As a result, [Alberta Court of Justice justices'] role is, and will continue to be, an evolving and significant one, as they grapple with an increasingly complex array of legal issues and social challenges.”

The 2009 JCC reported on the changing role and jurisdiction of the Court at that time. What was true then continues to be largely true now. There is little difference between the work of Court of King's Bench Judges and Alberta Court of Justice Justices in criminal law with the exception of jury trials. As noted earlier, fully 97% of all criminal cases are fully dealt with in the Alberta Court of Justice. The civil jurisdiction continues to expand. It currently has a limit of \$50,000, which will increase to \$100,000 on August 1, 2023 and existing legislation allows for future increases to \$200,000. Youth, child protection, and family law are increasingly complex matters. The increasing challenges of unrepresented litigants in all these areas adds to the challenges faced by Justices every day.

Coupled with the initiatives to create special purpose courts and considering the work of the Alberta Court of Justice described earlier in this report, it is our view that the Association fairly described the evolving role and duties of the Court, and the Minister's position that legislative changes since the 2017 JCC report do not materially change the jurisdiction of the Court does not change that conclusion.

In assessing this criteria, we find ourselves most concerned with the gap between salaries for these Judges and Judges in the Court of King's Bench. While we accept the position of the Minister and the Association that a gap is appropriate, the current and anticipated role of Judges during the period of our mandate should not be too large. Fairness dictates that the gap be moderate and not allowed to widen, unless there are demonstrable reasons to do so.

In our view, this criteria points to a need for an increase in judicial salaries.

Criteria s. 5.3(2)(g): Compensation provided to justices and application judges in other Canadian jurisdictions, having regard to the differences between those jurisdictions and Alberta, especially as they relate to differences in the matters referred to in clauses (b), (c), and (d) in respect of those other jurisdictions

This criteria requires us to consider compensation provided to Justices in other Canadian jurisdictions. It requires us to have regard to the differences between those jurisdictions and Alberta, especially as they relate to the economic factors referred to clauses (b), (c) and (d).

The starting point then is to assess other Canadian jurisdictions, and to determine which are the best comparables, especially from an economic perspective.

The 2017 JCC said:

“Historically, Judicial Compensation Commissions in Alberta have accepted that since Alberta’s economy has been among the nation’s strongest, the most appropriate comparisons have been to the provinces with the strongest economies, particularly Ontario. As well, Commissions have found that, although it is appropriate for there to be some difference between Alberta provincial and federally-appointed judges’ salaries (given the hierarchy of courts and the differences between the courts), nevertheless the difference in compensation should not be so large as to create a disincentive for well-qualified candidates to apply to the provincial court.”

All of the evidence before us supports the view that Alberta leads the country based on most relevant indicators of economic activity. That is considered in more detail in our review of the evidence concerning clause (b). The best comparable continues to be

Ontario, and that has been the case since the work of the 2000 JCC. We are of the view that continues to be the case.

We have been advised by the Association that Saskatchewan has seen significant improvement in its relative economic position in recent years, and that has not been challenged by the Minister. The evidence supports that observation. It is accordingly useful to also look to Saskatchewan for comparison.

The Minister opposes what is referred to as a narrow approach to inter-provincial comparison, which is said to involve “pre-selecting the highest paid jurisdictions (Ontario and Saskatchewan) and assuming a need to keep up with them.” The Minister argues consideration of other jurisdictions should only be undertaken in light of a public interest goal. The Minister says: “The relative compensation of judges in Canada is not a horse race; there is no prize for having the highest salaries in Canada.”

The Minister has urged us to consider British Columbia, “to the extent that it may be useful for some purposes to formulate a limited group of the most relevant comparators.” At paragraph 108 of the Minister’s written submission, it is pointed out that (1) British Columbia has a higher gross domestic product (“GDP”) per capita than Ontario in recent years, (2) because the pandemic hit Alberta harder than most provinces, its place as the country’s leader in real income per capita was surpassed by

British Columbia in 2021, (3) median income in British Columbia is higher than Saskatchewan, (4) British Columbia and Alberta have similar levels of per capita program expenditures, and (5) British Columbia has lower unemployment rates than Alberta and Ontario.

At paragraph 109 of the Minister's written submission, the following is said:

"The existence of a largely similar province with a significantly lower salary demonstrates that inter-provincial comparison cannot be reduced to keeping up for the sake of keeping up. The commission process in Ontario and Saskatchewan has led to relatively high salary recommendations, while the process in BC has led to relatively low salary recommendations. Without deeper exploration into what led to these disparate outcomes, all that can be observed is that Alberta is not an outlier."

In considering this criteria we are required to have regard to the differences in other Canadian jurisdictions, especially as they relate to the economic criteria, and with that in hand consider compensation in those jurisdictions. We have had regard to the differences and have decided that Ontario, Saskatchewan and British Columbia are each useful comparables. That is not because they are the provinces paying the highest salaries, but rather because the economic criteria relating to those provinces are most comparable to Alberta. As with all criteria, we are obliged to carry out our mandate dictated by the public interest.

The Minister has argued at paragraph 21 of the written submission that “Alberta’s economy fell significantly behind the rest of the country”.

Alberta’s economy has not fallen significantly behind the rest of the country. In fact, the evidence before us indicates that it continues to lead the country. What is true is that the gap between Alberta and the rest of the provinces has narrowed, but Alberta still leads other provinces in economic performance, and that is forecast to continue during the period of our mandate.

The Minister’s written reply submission argues the following at paragraph 99:

“The economic and financial gaps between Alberta and the rest of Canada are shrinking. It is no longer sustainable and in tune with the direction of our economy and public spending for Alberta to be ‘leading the pack’ in its compensation of [Alberta Court of Justice justices] and application judges. Alberta has accumulated significant deficits over the past several years and public-sector Alberta workers have seen this correction in their nominal salaries decreasing in comparison to other provinces. Real private-sector incomes have also decreased. It is time for a corresponding adjustment in judges’ compensation.”

As noted earlier, while the gaps between Alberta and the rest of Canada had been shrinking, Alberta’s economy remains the strongest in Canada. Forecasts for the period

of our mandate indicate that is likely to continue. We note the following from Dr. Tombe's report at pages 47 and 48:

“Following several years of challenging economic conditions – starting with a recession in 2015 and 2016, a moderate recovery through 2019, and a severe pandemic-related contraction in 2020 – Alberta's economy has markedly improved. Estimates of monthly GDP show the provincial economy grew to record highs by mid 2022, and most private-sector forecasts anticipate continued strong growth through 2023 and 2024. High energy prices are part of the story, but there is renewed and broad-based strength throughout Alberta's economy and labour market. Employment rates and incomes remain high, not only on average but across most demographic groups in Alberta. Based on most relevant indicators of economic activity, Alberta leads the country.”

The Minister submits the primary purpose of comparison between provincially and federally paid Justices in Alberta is potential competition between Alberta's Courts for highly qualified applicants. We have two observations about that submission: (1) there is no evidence or even suggestion that Alberta competes with other provinces for applicants. The only competition for applicants occurs within Alberta and concerns federally paid Justices; and (2) the need to attract highly qualified applicants is identified by the Government in its Regulation as a separate criteria.

The Minister has cautioned that when considering judicial salaries in other jurisdictions, the public interest goals may not align with those in Alberta. The Minister submitted that there are two interrelated trends in judicial compensation in Canada that raise

significant concerns: automatic indexing to inappropriate metrics, and automatic indexing to other judicial salaries.

As to the first concern, the Minister has submitted an automatic increase indexed to the Average Weekly Earnings (AWE) is inappropriate in Alberta. It is said to be incompatible with the objective criteria established in the Regulation. During the pandemic, the Minister submits economic damage occurred in Canada which caused lower paying jobs to be removed from the workforce which caused the AWE to spike. The Minister points to that spike in the AWE index leading to increases in salaries effective April 1, 2021 for federally appointed Judges of 6.6%, and for Ontario Judges of 7.3%, and for Saskatchewan Judges an increase of 8.2% effective April 1, 2022.. The Minister argues those increases were a direct result of severe economic harm, and should be given no weight, as to do so would risk significant damage to public confidence in the judiciary.

The federal government under the *Judges Act* utilizes this metric to automatically increase federal Judicial salaries in the time between federal JCCs. Those increases are considered in the federal JCC process. The provinces of Ontario and Saskatchewan have decided to connect provincial Justices' salaries to federal Judges' salaries by application of a fixed percentage. In considering this criteria, we are obliged to consider those comparisons. We have kept in mind the Minister's concern.

As to the second concern, the Minister argues that automatic indexing to other judicial salaries makes that other jurisdiction of reduced utility as a comparator because compensation in Alberta must be set with reference to all the regulated criteria. The Minister also submits that because the Alberta JCC process is not binding on the government, the use of automatic indexing by a JCC can only provide an “interim value” which could be “significantly different” from the “final effective salary”. “The effectiveness and objectiveness of this process would be undermined by relying on presumptions about the likely outcome.”

Our mandate is to consider all the criteria. As we note shortly, this Commission does not agree with the use of automatic indexing to federal Judges’ salaries.

The Minister added that the Commission should consider the low tax regime in Alberta compared to other jurisdictions. The decision of the Court of King’s Bench judicially reviewing the Government’s response to the 2017 JCC recommendations noted that the lower tax regime in Alberta was not addressed by the 2017 JCC, and had that been considered, it might have affected the 2017 JCC conclusions regarding Ontario salaries, though not federal Judges’ salaries paid in Alberta.

The Minister concluded this portion of the written submission with the following found at paragraph 92:

“While federal, Ontario, and Saskatchewan salaries are higher than those proposed by the Minister, there are clear public interest reasons to avoid giving significant weight to those salaries, as doing so would be based on following increases that resulted from the economic downturn, in direct contradiction to the goal of economic fairness. Furthermore, aside from those jurisdictions, Alberta salaries remain ahead of highly relevant comparators such as BC and Manitoba, and far ahead of the Atlantic provinces.”

There is little evidence before us concerning Manitoba’s economic conditions. What there is does not persuade us that there would be value in including Manitoba as a comparator.

We pause to note here that the new 2022 British Columbia JCC Report makes recommendations that if accepted, will take British Columbia Judges’ salaries effective April 1, 2023 and April 1, 2024 higher than the salaries proposed by the Minister.

In the reply written submission, the Minister has added that in assessing whether it is appropriate to utilize a proposed ratio, from 2000 to 2020, the ratio between provincial and federal salaries has ranged from 80.9% to 94%. The Association’s calculations show that from 2000 to 2020, the ratio has been between 92% and 95%. The differences in the percentage range relates to the period before 2013 when for some years, the actual salary paid to federal Judges increased due to IAI adjustments

subsequent to the JCC recommendations.. What is clear is that from 2013 to 2020, the salaries ranged from 92.4% to 94%. The Minister's proposal would see Alberta salaries at approximately 86% to 88% of federal salaries for the four year mandate of this Commission.

The Association starts its submission about this criteria by stating its position that other Judges are the best comparators to consider in assessing appropriate compensation. That is because of the uniqueness of the judicial role. It notes that past JCCs have considered the remuneration paid to Justices both in and out of Alberta to be of particular importance, with the primary focus on federally appointed Justices in Alberta and provincial court Judges in Ontario.

In response to the Minister's concern about statutory indexing of salaries to federally appointed Judges' salaries, the Association argues the concern is misplaced. The constitutionally required judicial compensation commission process assesses the indexing and its place in establishing fair and appropriate salaries.

The Association says it is noteworthy that unlike Alberta, the Ontario provincial court does not exercise civil jurisdiction. It notes that Alberta has the highest civil claims limit of any common law jurisdiction in Canada, and that it will materially increase during the mandate of this Commission.

The Association observes that whereas past JCCs did not focus much attention on Saskatchewan due to its past economic conditions, that has recently changed with significant improvements in Saskatchewan's economic condition, especially relative to other Canadian jurisdictions.

The analysis provided by the Association's expert, consulting Actuary Andre Sauve, was provided by the Association not to advocate for improvements in the pension benefits, but rather to demonstrate that the overall compensation of Alberta Justices is further behind than salary levels alone would suggest. The Minister has challenged the methodology used by Mr. Sauve and its relevance given that possible changes to pension benefits are not before the 2021 JCC. We accept the information as useful to assess salaries in the context of the total value of compensation. That is not to address any perceived deficiencies in the pension benefits by a salary increase, but only to be aware of the context of the salary question within overall compensation. We have been careful in our deliberations to keep that distinction clearly in mind.

The Association also addressed the Minister's submission that the Alberta "tax advantage" should be considered in comparing income of Justices in other jurisdictions. All Albertans are exposed to relatively lower tax rates, and have been for many years. No previous JCC has made its inter-jurisdictional comparisons on an "after tax" basis.

The Association notes that if an “after tax” approach was taken for Justices, that would disadvantage Justices compared to all other Albertans. It also notes that if that approach was taken, then it would follow that if taxes in Alberta were to increase, Judicial salaries would need to receive an upward adjustment, or at least be reviewed in a later JCC proceeding. One could logically extend the question to housing cost differentials, and other costs of living.

There would be no tax advantage when compared to federally appointed Judges in Alberta. Should the comparison change for federally appointed Judges elsewhere in Canada? We do not think that any financial advantage or disadvantage born from local market considerations or provincial tax policy should be a relevant consideration. It would distort years of prior comparisons to now, for the first time in years of JCC processes, to inject the tax rate comparison more directly into the process.

The Association also drew to our attention that Ontario Judges and federally appointed Judges are entitled to eight weeks vacation, compared to six weeks available to Alberta Justices. This is not a request for an increase in vacation time, but rather to add context to the overall comparison.

We turn now to a summary of judicial salaries for federally appointed Judges, and Judges from Ontario, Saskatchewan and British Columbia for the period of our mandate.

Federal

For the period of our mandate, federally appointed Judges receive a salary effective April 1, 2021 of \$361,100. For the next three years, the federal *Judges Act* provides that salary shall be increased each year by the percentage change in the Industrial Aggregate. That means the salary effective for April 1, 2022 is \$372,200, and the salary effective April 1, 2023 is 383,700. The percentage change in the Industrial Aggregate affecting the last year is not yet known. The Conference Board of Canada predicts 3.7% for 2023, which if correct would mean salary level for April 1, 2024 would be \$397,937.

Ontario

The salary effective April 1, 2017 was \$292,829. For each year thereafter the salary increases to align with a percentage of the salary of federally appointed Judges on a phased-in approach reaching 95.27% of federally appointed Judges' salaries by April 1, 2021.

Saskatchewan

In Saskatchewan salaries increased so that they reached 95% of federally appointed Judges' salaries for the prior fiscal year by April 1, 2022. Legislation now creates a presumptive salary at that level each year that would apply unless there are any specified extraordinary circumstances.

British Columbia

On April 28, 2023 the British Columbia 2022 JCC issued its recommendations for the four years of its mandate, namely April 1, 2023 to March 31, 2027. That Commission was in the unfortunate position of not knowing the result of the 2019 JCC's recommendations for the period April 1, 2020 to March 31, 2023. The recommendations of the 2019 JCC were not accepted by government, and the Province's Judges' Association sought judicial review of the government's decision. The court quashed the government decision and remitted the matter back to the British Columbia Legislative Assembly for reconsideration. The Attorney General of British Columbia appealed that court decision on May 1, 2023, so the issue of Judges' salaries effective April 1, 2020 remains unresolved.

It is still useful to note the salary recommendations of the 2022 JCC, particularly in view of the observations of the Minister here that British Columbia would be a highly valuable comparable for the purposes of our recommendations. The British Columbia 2022 JCC has made the following recommendations:

1. For April 1, 2023 to March 31, 2024: \$343,000
2. For April 1, 2024 to March 31, 2025: \$360,000
3. For April 1, 2025 to March 31, 2026: \$360,000 plus a % increase = the annual average % change in BC's CPI for 2024
4. For April 1, 2026 to March 31, 2027: The 2025-2025 salary plus a % increase = the annual average % change in BC's CPI for 2025.

The British Columbia 2022 JCC noted that reasonable compensation speaks to total compensation. It observed that for Judges, pensions comprise a significant part of their total compensation. As here, no participant in the BC process proposed any changes to the value of pensions. The Commission said that where increases in compensation are needed, it had determined that those increases should at this time come in the form of increased salary.

This chart may assist in showing the comparisons we have reviewed alongside the Minister's proposal and the Association's proposal:

JUDICIAL SALARY COMPARISONS						
	Federal	Ontario	Sask.	British Columbia	Minister Proposal	Association Proposal
April 1/21	361,100	344,020	316,971	297,000	318,500	346,656
April 1/22	372,200	354,595	343,045	307,000	322,481	357,312
April 1/23	383,700	365,595	353,590	343,000	328,931	368,388
April 1 24	397,937*	379,114	364,515	360,000	335,510	382,020

* Assuming the Conference Board of Canada projections

We have concluded, as have past JCCs, that in Alberta, it is not appropriate to tie Alberta Justices' salaries to a fixed percentage of federal salaries. To do so would hamper Alberta's ability to assess the various criteria over time. We acknowledge that may lead to potential distortions in the comparability of provinces like Ontario and Saskatchewan, but it is more important to the process of determining a fair and appropriate salary that Alberta have the ability to assess all criteria rather than default to a percentage calculation.

We have also concluded that it is both fair and appropriate to consider the salary levels in Ontario, Saskatchewan and British Columbia.

In our view, this criteria weighs in favour of an increase in salaries for Alberta Justices. While we are of the view that fixing salaries to a percentage of federal Judges' salaries is unwise in Alberta, the Minister's proposal of salaries in the 86% to 88% range is not fair or appropriate. That is too large a gap, representing a material drop from the 92% to 94% range that has existed since 2013.

Criteria s. 5.3(2)(h): The need to attract highly qualified applicants as Justices and Application Judges

As noted by the 2017 JCC, the work done by Justices of this Court differs from the work of federally appointed Judges in some material respects, though we would note the difference is not nearly as large as it once was. Lawyers may have a variety of reasons – not just the level of compensation – for choosing to apply to one court and not another. Those would include the nature of the work, their perception of the workload, their perception of the place of the Court in the judicial system, and their perception of the prestige of the office, to name but a few. Nonetheless, there is no question that appropriate compensation is an important factor in attracting highly qualified applicants.

The Association has submitted:

“(t)here will only be legal diversity on the Bench if those from the private bar apply to be appointed. There will only be highly qualified applicants from the private bar if the level of remuneration is comparatively adequate to what one might reasonably expect to earn or benefit from in practice. If the pool of applicants fails to include highly qualified applicants from the private bar, there is a substantial risk that the [Alberta Court of Justice] will revert in appearance to a ‘police court’.... The Government will only have the ability to ensure legal diversity on the Court if it has a full range of qualified applicants to choose from. The Commission can create the opportunity for legal diversity by ensuring that the level of remuneration is attractive to qualified applicants from the private bar.”⁵

The Association also submits that the existence of applicants does not necessarily mean there are sufficient or even any “highly qualified” applicants. It submits that the mere existence and operation of the screening system for applicants does not assure selection of “highly qualified” applicants, notwithstanding that the Chief Justice of the Alberta Court of Justice plays a leadership role in the screening system.

Respectfully, in our view the Association has overstated its case. There is no evidence before us that members of the private bar are not applying due to compensation concerns. There is no evidence that the screening system is failing to identify “highly qualified” applicants. There is evidence that a disproportionate number of appointments

⁵ Association submission at para 278 and 279

are from government (including the Crown office and legal aid), but there is no evidentiary basis to conclude that is because members of the private bar are choosing to not apply due to compensation concerns. It may also be said that the Government's wage restraint in the public sector, including legal aid, over many years, may itself have increased the number of applicants from that sector, but here too, there is no evidence that allows us to reach that conclusion. There is no evidence of the levels of compensation of lawyers in private practice, and as a subset, there is certainly no evidence of the compensation of lawyers in private practice who may be interested and highly qualified to apply for appointment. That is not surprising as it would be difficult to obtain reliable evidence on that front. There is evidence that the number of applicants in recent years has declined.

It is true that in endeavouring to attract highly qualified applicants, the Alberta Court of Justice is competing to some degree with the Court of King's Bench, and to a much lesser extent with the Alberta Court of Appeal, the Federal Court of Canada, and the Tax Court of Canada. This criteria requires us to ensure, to the best of our ability, that any gap in compensation is fair and appropriate.

The gap is most apparent when total compensation, including pension benefits, is considered. The Association has submitted that significant gaps would remain, even in light of the Association's salary proposals, between the total compensation paid to Justices in Alberta and that paid to Judges in Ontario and federally. The Association

tells us “the disparity in compensation is largely due to the significantly more advantageous pension provisions that exist for Judges in both Ontario and Canada. While that analysis may well support improvements to be made to the pension provisions available to Alberta Justices, none are proposed to this 2021 JCC. The Association is focussed on restoring the salary to an appropriate level in light of the relevant criteria.”

It is to be emphasized that neither the Minister nor the Association have placed the appropriateness of pensions before this Commission for its consideration. Accordingly we do not have a mandate to fully address the gap, but rather only the salary component. That is not to say that total compensation should not be considered when assessing the appropriate salary – only that we do not have a mandate to make a recommendation on the pension component.

In our view, the gap in salaries between Justices and federally paid Judges is the most significant influence in assessing this criteria, and weighs in favour of an increase in judicial salaries.

RECOMMENDATIONS

Our mandate is to present an objective and fair set of recommendations dictated by the public interest. In doing so we are to consider the criteria set out in s. 5.3(2) of the Regulation.

Three criteria do not suggest a need for increases in judicial salaries. Of the remaining five, the main drivers for an increase in Judicial salaries are (1) salaries in comparable jurisdictions in Canada and (2) the current and expected economic conditions in Alberta. We include in the latter changes in the cost of living.

Before we address those main drivers, the remaining two criteria (criteria f and h) require brief comment. Our principal concern in relation to both criteria is the gap between federal Judges' salaries and provincial Justices. The gap must not be so large that there is a disincentive for potential applicants to the Alberta Court of Justice to apply. As to the roles, duties and jurisdiction of the Alberta Court of Justice Justices, we have expressed the view that while we accept a gap is still warranted, fairness dictates the gap should not be large in view of the modern role and duties of these Justices.

Turning to compensation provided to Judges in other Canadian jurisdictions, it is necessary to address federally paid Judges and Judges from other provinces

separately. As we have said, in our opinion, Judges' salaries should not be tied by a fixed percentage to federal Judges' salaries. But the gap between the salary levels must be considered, and has been observed by earlier JCCs, the gap should not be large. We think the Minister's proposal setting salaries at 86% to 88% of federally paid Judges is unfair and too low. It is a significant departure from the relationship of those salaries over the last ten years.

The Association's proposal to fix salaries at 96% of federally paid Judges cannot be recommended by us, not only because we do not agree with the idea of fixing salaries by a fixed percentage, for the reason stated earlier, but also because in our judgment the resulting income levels are not warranted by a consideration of all the other criteria.

We have considered salaries paid to Judges in other provinces with the closest comparable economic circumstances: Ontario, Saskatchewan and British Columbia. We know that the information available to us in British Columbia is the last two JCCs recommendations, and that the government's decision remains outstanding. The recommendations arise from a history of lower judicial salaries. A review of the 2019 and especially the 2022 JCC reports in British Columbia makes it clear that the recommendations are for material increases, which if accepted by government, would bring British Columbia judicial salaries closer to those in Ontario, Saskatchewan and Alberta.

In Saskatchewan and Ontario, the decisions to tie salaries to a fixed percentage of federally paid Judges' salaries presents a challenge. We have considered the salaries that result from those percentages. While we have concern about Alberta Justices being paid less than the Judges in Ontario, we remain of the view that it is more important to have an objective analysis of the criteria than default to a fixed percentage.

As reviewed at some length earlier, the economic conditions in Alberta are strong and lead the country in most metrics. Those economic conditions support an increase in judicial salaries, but those increases should be somewhat tempered to avoid unduly sheltering Justices from the impact of cost of living increases experienced by all Albertans.

Having considered each criteria individually and collectively, we have come to the conclusion that fair and appropriate judicial salaries for the period of our mandate should be:

April 1, 2021 – March 31, 2022:	\$328,500
April 1, 2022 – March 31, 2023:	\$348,000
April 1, 2023 – March 31, 2024:	\$362,000
April 1, 2024 – March 31, 2025:	\$372,500

We want to thank Counsel for the two parties for their submissions, courtesies and cooperation throughout this process. In addition we thank those who also made submissions in person and in writing. We also wish to extend our thanks to Ruth Fast of Alberta's Justice Department for her assistance to us in arranging public notices and the inquiry hearing.

This is the unanimous view of all three Commissioners.

Respectfully Submitted,



Donald R. Cranston, K.C.
Commissioner and Chair



Andrew C.L. Sims, K.C.
Commissioner



Chantel T. Kassongo, K.C.
Commissioner



**Report and Recommendations
of the 2023 Provincial Court
Commission of Saskatchewan**

**Presented to the Minister of Justice and
Attorney General and the Saskatchewan
Provincial Court Judges' Association**

December, 2023

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I. THE COMMISSION AND ITS MANDATE

1. The 2023 Provincial Court Commission (the “Commission”) was appointed pursuant to section 36 of *The Provincial Court Act, 1998*, S.S. 1998, c P-30.11 as amended (the “Act”). Section 36(2) specifies the composition of the Commission and in accordance with the legislative requirements, the Commission is composed of the following members:
 - i) Andrea V. Argue, K.C. – Appointee of the Minister of Justice (the “Minister”);
 - ii) Brian R. Pfefferle, K.C. – Appointee of the Saskatchewan Provincial Court Judges’ Association (the “Association”); and
 - iii) Michelle J. Ouellette, K.C. – Chairperson, appointed by the other two members of the Commission.¹
2. The Commission is the eleventh Provincial Court Commission, the first one being established in 1991. The current Commission process follows the 1997 decision of the Supreme Court of Canada in *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*.²
3. Since the Bundon Commission, which reported in 1998 and 1999, there has been a Provincial Court Commission appointed every three years.
4. The mandate of the Commission is set out in s. 38 of the Act and is divided into compulsory and discretionary, or advisory, components:

38(1) A commission **shall** inquire into and make recommendations with respect to the following:

- (a) the salaries to be paid to:
 - i) the chief judge;
 - ii) an associate chief judge;

¹ The original Appointee of the Minister was appointed to the Provincial Court following selection of the Chair by that member and the Appointee of the Association. Ms. Argue’s appointment followed.

² *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 SCR 3 (“PEI Reference”)

- iii) subject to section 38.1, judges other than the chief judge, associate chief judges and temporary judges; and
 - iv) temporary judges;
 - (b) the remuneration to be paid to judges who perform administrative duties assigned to them pursuant to clause 8(f);
 - (c) the allowances to be paid to judges who reside in the Northern Saskatchewan Administration District;
 - (d) professional allowances
 - (e) vacation leave;
 - (f) pension benefits and additional retirement benefits.
- (2) A commission **may** inquire into and make recommendations with respect to the following:
- (a) the support staff, facilities, equipment and security of the court;
 - (b) the benefits to be provided to judges pursuant to regulations made pursuant to clause 65(d).
[emphasis added]

5. Pursuant to s. 38(3), the salary recommended by a commission cannot be less than the salary being received by the judges on the day on which the report containing the recommendation is submitted to the minister.
6. Section 37 of the Act provides that the Commission may determine its own procedures.

II. THE COMMISSION PROCESS AND PROCEEDINGS

7. The Commission followed a process generally established by previous Commissions.
8. Advertisements calling for submissions to this Commission were placed in the Regina Leader

Post and the Saskatoon Star Phoenix on Wednesday, October 11, 2023. The advertisements indicated that the Commission would be receiving submissions from interested parties and that a hearing would be held in Saskatoon at the location and date indicated. Notice of the hearing dates was also posted on the Commission's website at:

<https://www.saskatchewan.ca/government/government-structure/boards-commissions-and-agencies/saskatchewan-provincial-court-commission>

9. The Commission was greatly assisted by written and oral submissions from the parties through their legal counsel. The Commission received both written and oral submissions from the following:
 - i) the Association;
 - ii) the Deputy Minister of Justice on behalf of the Government of Saskatchewan (the "Government");
 - iii) the Canadian Bar Association – Saskatchewan Branch (the "CBA"); and
 - iv) the Saskatoon Criminal Defence Lawyers Association Inc. (the "SCDLA").
10. The Commission also received Reply Submissions from the Association and the Government as well as supplementary materials by way of correspondence. The submissions and other materials submitted by the parties can be found on the Commission website at: <http://www.saskatchewan.ca/government/government-structure/boards-commissions-and-agencies/saskatchewan-provincial-court-commission#submissions-and-replies>.
11. The Commission conducted a single public hearing in Saskatoon on November 15, 2023. With the agreement of the Association and the Government, the Commission elected not to hold an additional public hearing in Regina.
12. The Commission is required to prepare a report with its recommendations on the s. 38(1) matters for the four year period commencing April 1, 2024, and to submit it to the Minister and the Association by December 31, 2023 (s. 41 of the Act).³
13. A significant change in the long-standing Commission process will be implemented with this Commission. The Act was recently amended to provide that the Commission process will take

³ The parties are agreed that given that December 31, 2023 falls on a Sunday, and the following Monday, January 1, 2024, is a statutory holiday, the Commission's report will be submitted on or before January 2, 2024.

place every four years, rather than every three years as was the case with previous Commissions. (See s. 36(1)(e): “A Provincial Court Commission must be established... on or before July 1 of every fourth year after 2023.”)

III. PREVIOUS COMMISSIONS

14. There have been ten previous Provincial Court Commissions in Saskatchewan:
 - i) The Schmeiser Commission reported in 1991;
 - ii) The Irwin Commission reported in 1993;
 - iii) The Bundon Commission reported in 1998 and 1999;
 - iv) The Vicq Commission reported in 2002;
 - v) The Barnard Commission reported in 2005;
 - vi) The Zakreski Commission reported in 2008;
 - vii) The Hood Commission reported in 2011;
 - viii) The Hodson Commission reported in 2014;
 - ix) The Prosser Commission reported in 2017; and
 - x) The Jaspar Commission reported in 2020.
15. All previous reports and recommendations are available on the Commission’s website and will not be summarized in this report, although comments from some earlier reports are reproduced herein.
16. It is noteworthy to observe that the Commission process in Saskatchewan has worked extremely well despite differences in the positions of the parties on issues brought before successive Commissions. As the Government points out, there has never been any litigation in this province over the implementation of any previous Commission’s recommendations. This is a laudable history that contrasts with the experience in some other jurisdictions.

IV. THE PROVINCIAL COURT OF SASKATCHEWAN

17. The Provincial Court of Saskatchewan currently consists of a Chief Judge and, as a general

rule, 48 additional judges sitting in 13 permanent judicial centers and 59 additional circuit points, for a total of 72 locations throughout the Province.

18. The parties agree that the number of judges has remained relatively stable since 1979, following the establishment of the Provincial Court in 1978, and has ranged between 41 and 50 judges on the Provincial Court Bench.
19. The Association's description of the Provincial Court at paragraph 82 of its submission is one with which the Commission agrees:

The Provincial Court is the face of justice in Saskatchewan. It is a front-line Court designed to provide judicial resolutions in a timely fashion to the legal issues brought to it by members of Saskatchewan's public and law enforcement agencies. It is the first and only court with which most litigants – both civil and criminal – in Saskatchewan will ever have contact.

20. As reaffirmed in the Hood Commission Report (2011) (paras 217 -218):

[...] [T]he Provincial Court plays a vital role in our society.

Traditionally, this Court is the point of entry into the criminal justice system and the data provided to us shows their role is ever-increasing. They preside over the vast majority of criminal matters and they have wide reaching powers that require them to balance the rights of persons charged with offenses against the need to ensure our communities are protected and well served. Two of their most onerous duties are, as defined by the Association, to determine guilt and impose sentences, where necessary, that balance the protection of the public and the needs of the offender. In these and all of their duties, it is a delicate balance as it requires they must be independent and unbiased, and be perceived as such at all times.

The role and duty of the Judge is not confined to the courtroom and it is not limited to the normal work hours that many citizens enjoy. Judges can be called upon at any time, day or night, to deal with emergency situations, to authorize search warrants and urgent mental health warrants. Judges in the

North and those who attend the many circuit points throughout the Province often have work days that are long in duration and work environments that require special skills to maintain public confidence in the administration of justice.

21. This vital role is not disputed by the Government.
22. As described at paragraphs 93 - 96 of the Association's submission, the Provincial Court exercises jurisdiction in five main areas of law: adult criminal, youth criminal, regulatory offences (including traffic, consumer protection, and occupational health and safety prosecutions), civil, and family (particularly child protection hearings).
23. In his oral submissions, Mr. Kuski, for the Association, described the Provincial Court as "the people's court" and this characterization has also been attributed to the Provincial Court in other jurisdictions.⁴
24. With respect to the criminal jurisdiction exercised by the Provincial Court, the Commission acknowledges that the majority of criminal prosecutions in Saskatchewan take place in Provincial Court. Most citizens of Saskatchewan facing criminal charges will have them resolved in Provincial Court. This is also acknowledged by the Government.
25. The Provincial Court has absolute jurisdiction over Summary Conviction offences and concurrent jurisdiction with the Court of King's Bench over almost all indictable offences.
26. Likewise, the Commission accepts that both the volume and complexity of cases coming before the Court have increased significantly over the past number of years. In terms of the increase in the volume of criminal appearances before the Provincial Court, the statistics are striking:

2014: 826,564

2019: 1,013,112

2022: 1,090,408

(See the Association's Submission at paragraphs 126 and 127.)

⁴ See for example the Final Report of the 2022 British Columbia Judicial Compensation Commission at 3.

Again, these numbers are not disputed by the Government.

27. The complexity of the matters coming before the Provincial Court has similarly increased. The reasons for the rise in both volume and complexity have been noted by previous Commissions and have not abated. As the SCDLA asserted at page 10 of its submission: “[f]ollowing the amendments in 2019 to the Criminal Code which limited the availability of preliminary inquiries, Provincial Court became predominantly a trial court...”. The impact of the rising substance abuse and mental health crises alone has been significant, as noted at page 5 of the CBA submission. The increased awareness of the need for consideration of “Gladue” factors with respect to Indigenous offenders adds another level of complexity.
28. The evolution of the Provincial Court’s procedural parameters is another factor that impacts the workload of the court. The Association points out the impact of the elimination of many Preliminary Hearings and the effect of the Supreme Court of Canada decision in *R v Jordan*.⁵ In that decision, the Supreme Court acknowledged at para 42: “the increased complexity of pre-trial and trial processes”, and observed that: “New offences, procedures, obligations on the Crown and police, and legal tests have emerged”, while also creating presumptive delay ceilings, further increasing the demands on the Provincial Court.
29. Regarding the Provincial Court’s civil jurisdiction, the monetary value of Small Claims matters brought before the Provincial Court has grown from the original limit of \$5,000 in 1988 to \$30,000, in the most recent increase in 2016.
30. There was no dispute between the parties with respect to the pending increase to the Small Claims limit to \$50,000 by way of changes to the regulations to *The Small Claims Act, 2016*, S-50.
31. A Small Claims limit of \$30,000 has expanded the scope of the Small Claims matters that Provincial Court judges are required to adjudicate, and that scope can reasonably be expected to expand further when the Small Claims limit increases to \$50,000. Whereas at one point in time, the Provincial Court’s civil jurisdiction may have related primarily to the recovery of small debts, that is unlikely to continue to be the case. The Provincial Court can be expected to hear the full panoply of civil matters, albeit with a \$50,000 monetary limit.

⁵ *R v Jordan* [2016] 1 SCR 631

32. Moreover, there is no dispute that many of the parties who come before the Provincial Court, particularly in the civil or family law context, are self-represented. Again, as noted in the Association's submission at paragraphs 136 – 143, this further complicates the work of Provincial Court judges in dealing with litigants who have no legal knowledge and no legal advisor to assist them.
33. Lastly, the Commission notes the work implemented by the Provincial Court with respect to a number of "Special Initiatives". These include the Therapeutic Courts dealing with domestic violence, mental illness and substance addictions, as well as the Cree Court.

V. THE CURRENT COMPENSATION/BENEFITS PACKAGE

34. The Provincial Court has a compensation package that, overall, the Commission considers to be fair and reasonable. It consists of a number of different components.
35. In addition to salary to be determined in accordance with the formula set out in s.38.1 of the Act, the judges of the Provincial Court are entitled to the following pension and retirement benefits:
- i) Pension and Additional Retirement Benefit of 3% per year of service, multiplied by average salary over best 3 years;
 - ii) Survivor Pension - Surviving spouse is entitled to defined benefits pension for life;
 - iii) Surviving Child Benefits - The benefit is paid to a surviving child of a Judge, if the Judge dies without a spouse or if the spouse later dies, payable up to age 18;
 - iv) Early Retirement Pensions - Full pensions of 70% of average salary over best 3 years, when a judge's age and years of service equal 80;
 - v) Indexing of Pension - Pensions are indexed to 75% of CPI up to a CPI of 5% and indexed at 50% of CPI for portion of CPI over 5%;
 - vi) Judges Contributions - judges contribute 5% of salary;

- vii) Government Contributions - Government contributes the amount necessary to make up the difference between the judges' contributions and the amounts necessary to pay the pension and additional retirement benefits.
- 36. The Provincial Court pension/retirement benefit plan, in particular, has been described as “very generous”. (Hodson Commission, para. 148; Hood Commission, paras. 214, 230)
- 37. Judges are also eligible for a number of additional benefits, including:
 - i) Disability Benefits - 100% of salary for temporary disability (up to 1 year); 70% for permanent disability, on the recommendation of the Judicial Council, with no premiums;
 - ii) Annual Vacation - 30 days (up to 30 days can be accumulated with prior approval from the Chief Judge);
 - iii) Annual Professional Allowance - \$4,000;
 - iv) Annual sick leave – 1.5 days per month, which can be accumulated year to year;
 - v) Group Life Insurance - Minimum 2 times salary with optional coverage up to \$500,000, the first \$25,000 of coverage being paid for by the province;
 - vi) Dental Plan - Same dental plan as public service employees; premiums are paid by the Government.
 - vii) Extended Health Plan - Premiums are paid by the Government.
- 38. The pension, additional retirement benefits, and other benefits to which Provincial Court judges are entitled are more fully described in Tables 2 and 3 of the Government’s written submission (pages 35-38).

VI. PRINCIPLES GOVERNING THE COMMISSION’S WORK

- 39. This Commission’s work, as with previous Commissions, is based on the foundational principle of judicial independence. The Supreme Court of Canada has identified the principle of judicial independence and the importance of the application of, and adherence to, that

principle by Provincial Court Compensation Commissions in two seminal cases, namely:

- i) The *PEI Reference*; and
- ii) *Provincial Court Judges' Association of New Brunswick v. New Brunswick* [2005] 2 SCR 286 ("*New Brunswick Reference*").

40. Judicial independence is recognized to have three essential characteristics:

- (i) security of tenure;
- (ii) financial security; and
- (iii) administrative independence.

41. The Commission process was established to address the *financial security* component of judicial independence, following the Supreme Court's direction that there must be no negotiations between the judiciary and the government over compensation.

42. This Commission is required to be independent, effective and objective. Our recommendations must be based on objective factors, not political expediency. Our general approach should consider the description set out at paragraph 14 of the New Brunswick Reference:

The Commission process is an "institutional sieve" (Reference at paras 170,185,189) – a structural separation between the government and the judiciary. [...] Its focus is on identifying the appropriate level of remuneration for the judicial office in question. All relevant issues may be addressed. The process is flexible and its purpose is not simply to "update" the previous Commission's Report. However, in the absence of reasons to the contrary, the starting point should be the date of the previous Commission's Report.

43. It is common ground between the parties that judicial independence:

...is the cornerstone of the Canadian court system. Judicial independence is essential to ensure fair and reasoned decisions from the courts, decided solely on the merits of each case. Judicial independence also ensures that the public has confidence in the court system and in court decisions, as well as confidence that the courts make their decisions without any external pressures or influences. Judicial independence is a crucial guarantee of the rule of law in a free and democratic society.

(See the Government's Submission at paragraph 1.)

44. As summarized by the Jaspar Commission in 2020:

The work of this and all previous commissions is founded on the principle of judicial independence. The Supreme Court of Canada has endorsed the following principles in relation to the role of the Commission:

(a) It is a constitutional requirement that the Commission is independent, objective and effective.

(b) The Commission's recommendations must result from a fair and objective hearing, and its report must explain and justify its position.

(c) The role of the Commission is not simply to update the previous commission's report, and each commission must make its assessment in its own context. That said, the Commission does not operate in a void, and the reports of previous commissions and their outcomes are part of the background and context that the Commission must consider. Absent reasons to the contrary, the starting point for analysis should be the date of the previous commission's report; and

(d) The Commission must objectively consider the submissions of all parties and any relevant factors identified in the enabling statute and regulations (if any).

45. While in some jurisdictions, the relevant legislation sets out a specific, non-exhaustive list of factors that Provincial Court Commissions are to consider, in Saskatchewan the Act does not contain a list of such relevant factors to be considered by this Commission. The Vicq Commission (2002), however, at pp. 8 and 9 of its report did identify a list of relevant factors which have been followed by subsequent commissions, as follows:

The Commission was keenly aware throughout its deliberations of the foundation principle of judicial independence. The Commission's task – as Chief Justice Lamer made very clear – is to make recommendations based on objective factors, and it should be "fully informed" before doing so. (para.172, Provincial Judges Reference) In our view, the interpretation of The Provincial Court Act, 1998 which best meets these objectives is that the

Commission has the jurisdiction to and should consider a broad range of "objective" factors. This approach is also consistent with Chief Justice Lamer's recommendation that legislation contain a "non-exhaustive" list of relevant factors, and that the list might include the need for "adequate" salaries. The notion of "adequacy" is inherently flexible, and invites the Commission to consider all factors it considers relevant in the course of discharging its constitutionally mandated task.

[...]

To summarize, it is the Commission's view that while all of its deliberations must be framed by and fully respect the principle of judicial independence; it is, within that framework, entitled to take account of a wide variety of "objective" factors. Those factors include the history of judicial remuneration, changes in cost of living, prevailing economic and fiscal conditions in Saskatchewan, public and private sector salary comparators both within and outside Saskatchewan, recruitment and retention issues and the unique responsibilities and work environment of Provincial Court Judges.

VII. THE ISSUES TO BE DETERMINED and THE POSITIONS TAKEN BY THE PARTIES

46. As identified previously, the Act sets out a number of issues that the Commission must consider:

38(1) A commission shall inquire into and make recommendations with respect to the following:

(a) the salaries to be paid to:

- (i) the chief judge;
- (ii) an associate chief judge;
- (iii) subject to s.38.1, judges other than the chief judge, associate chief judges and temporary judges; and

- (iv) temporary judges;
 - (b) the remuneration to be paid to judges who perform administrative duties assigned to them pursuant to clause 8(f);
 - (c) the allowances to be paid to judges who reside in the Northern Saskatchewan Administration District;
 - (d) professional allowances;
 - (e) vacation leave;
 - (f) pension benefits and additional retirement benefits.
47. The Commission heard from the parties on some, but not all of these matters.

a. Judicial Salaries

48. The Commission received written and oral submissions with respect to s.38(1)(a)(iii) of the Act, regarding the salaries to be paid to Provincial Court judges.
49. The salaries paid to Provincial Court judges since 2020 have been set pursuant to a formula arrived at during the Jaspar Commission. This formula was implemented by the enactment of s.38.1 of the Act.
50. The salaries currently paid to Provincial Court judges pursuant to the legislative enactment of the Jaspar Commission formula, are set out in Table 1 of the Government's submission (page 27):

SALARIES AND ADDITIONAL AMOUNTS AS OF APRIL 1, 2023

POSITION	SALARY
Judge - Base Salary	\$ 353,590
Chief Judge - Base Salary + 7.5%	\$ 380,109
Associate Chief Judge - Base Salary + 5%	\$ 371,270
Judges performing Administrative Duties – Base Salary + 2.5%	\$ 362,430
Judges receiving Northern Allowance – Base Salary + 5%	\$ 371,270

51. Section 38.1(2)(a) legislates a presumption that a Provincial Court judge's salary will be based on 95% of the salary set for the justices of the King's Bench Court in the previous year. (As a result, it is somewhat inaccurate to simply describe the salary of Provincial Court judges as "95%" of the salaries for King's Bench justices.)
52. By way of example, the protocol provides that for the annual period of April 1, 2024 to March 31, 2025, the base salary for Provincial Court judges will be adjusted to 95% of the salary paid to Justices of the Court of King's Bench on March 31, 2024, and so on for the subsequent three years.
53. The Act allows either the Association or the Government to request a Commission to review the 95% rate in "extraordinary circumstances".
54. No such extraordinary circumstances were raised by any party.
55. Although there initially appeared to be some dispute between the Association and the Government as to whether the Commission should affirm the adjustments to salaries for the coming four years, or only for the next year, to allow for the possibility of "extraordinary circumstances" arising (see the Government's Reply Submission at paragraphs 23 - 25), the Commission understands that there is in fact no dispute over that issue.
56. As the Commission now understands, both the Association and the Government are advocating for the Commission to recommend an adjustment to the salaries of Provincial Court judges consistent with the statutory presumption set out in s.38.1(2) of the Act.
57. The CBA's submissions supported the application of the formula set out in the Act.
58. The SCDLA, a body whose members practice much of their time in the Provincial Court, submitted that there should be no discrepancy between the salaries of Provincial Court judges and those of King's Bench Justices.
59. No submissions were made by any party respecting other aspects of judicial salaries and the Commission understands that no changes are sought by either the Association or the Government, to those other matters set out in s.38(1) of the Act, save for the matters set out below.

b. Professional Allowance

60. The Commission received written and oral submissions with respect to the professional allowance to which Provincial Court judges are entitled pursuant to s.38(1)(d) of the Act.
61. The members of the Provincial Court are entitled to an annual Professional Allowance, currently set at \$4,000. The Professional Allowance is intended to allow Provincial Court judges to acquire the resources they need to carry out their judicial duties. These might include such things as textbooks, journals, personal technology upgrades, replacement court clothing, and a home security system.
62. As the Government noted in its written submission, since the Hood Commission in 2011, the Professional Allowance may also be used to pay for additional eligible expenses such as those related to the promotion of physical fitness.
63. The Professional Allowance is also the source of funds available to Provincial Court judges to allow them to register for and travel to attend educational programs or conferences, to engage in other professional development such as membership in various organizations, or to access French language training.
64. This allowance for judicial education is provided for by various means in other jurisdictions; that may be by way of a separate Education Allowance (Manitoba, for example), or by way of “in-house” judicial education (Alberta, for example).
65. If unused, the Professional Allowance cannot be carried over to the following year. If an amount in excess of \$4,000 is spent in a given year, however, the surplus can be drawn from the following year’s allowance.
66. The Professional Allowance is administered by the Office of the Chief Judge pursuant to the “Protocol and Administrative Direction on Professional Allowance for Judges of the Court” (the “Protocol”). The Protocol was provided to the Commission at Appendix 22 of the Association’s written submission.
67. The Commission accepts that this Professional Allowance is, as noted by the Association, at para. 188 of its submissions, “administered judiciously...to ensure that amounts available

under them are used only for items necessary for judges to perform their judicial functions”.

68. The Association is seeking a staged increase to the Professional Allowance of \$875 per year, per judge, eventually bringing the Professional Allowance on par with the Incidental Allowance currently allowed to Justices of the Superior Court, at \$7,500.
69. The Association points out that the Professional Allowance has not been increased since 2014, during which time inflation has increased by approximately 26%, significantly eroding the purchasing power of the Professional Allowance.
70. The Association points to such factors as the increasing complexity of the matters coming before the Provincial Court, the dramatically increased costs in all sectors of the economy, and the increased use of technology by courts, as justification for the proposed increase in the Professional Allowance.
71. The Government submits that no increase in the Professional Allowance is required to support judicial independence and points out that Saskatchewan Provincial Court judges currently enjoy the third highest Professional Allowance in Canada.
72. The Government also points out that for 2022 – 2023, the average amount of the Professional Allowance utilized by Provincial Court judges was \$3,727 – less than the full \$4,000.
73. The Government suggests that since the entire amount of the current Professional Allowance is not being spent, there is no basis to consider an increase without more specific evidence to support the increase.
74. The CBA’s submissions supported the Association’s position in favour of a staged increase to the Professional Allowance, emphasizing the importance of Provincial Court judges staying up-to-date on a wide variety of legal issues.
75. The SCDLA made no specific written submissions on the Professional Allowance, but in its oral presentation pointed out the escalating costs of attendance at conferences, as well as the value of such conferences in combatting the isolation that is a recognized consequence of a judicial appointment. It submits that, overall, there should be no distinction between the benefits received by federally appointed justices and the Provincial Court judges.

c. Vacation Leave

76. The Commission received written and oral submissions with respect to the vacation leave to which Provincial Court judges are entitled pursuant to s.38(1)(e) of the Act.
77. Provincial Court judges are currently entitled to vacation leave equivalent to 30 working days annually. This equates to six weeks of vacation time per year.
78. The vacation entitlement has been set at 30 days per annum since the first Provincial Court Commission in 1998. It was arrived at by agreement between the parties at that time.
79. The issue of whether the vacation entitlement should be increased has been before at least four previous iterations of the Commission: the Vicq Commission (2002), the Zakreski Commission (2008), the Hodson Commission (2014) and the Prosser Commission (2017).
80. None of those Commissions determined that an increase in the vacation entitlement was warranted, finding generally that the 30 day leave entitlement was fair and reasonable.
81. The Prosser Commission, in particular, pointed out the significant cost of adding the requested 10 day additional entitlement (the request at that time) and noted that it would be comparable to the cost of adding two full-time Provincial Court judges' salaries.
82. The Association's current request is for a staged increase of one day per year over the next four years. The Association submits that this modest increase will ensure that Provincial Court judges have adequate time to rest and replenish the physical and mental reserves required to manage a steadily increasing workload.
83. The Association points out that the (eventual) 4 additional days of vacation would obviously pose a significantly lower cost to the Government than the requests of 10 additional days made to previous Commissions.
84. It was noted during the Hearing that 30 days/6 weeks of vacation leave is fairly consistent with most Provincial Courts across Canada (Ontario, Yukon and the Northwest Territories are the main exceptions), and with a number of other legal environments (other than private practice).
85. It was further noted during the Hearing, by Associate Chief Judge Anand, and in response to questions by the Commission, that it is "not rare for judges to come in on vacation and work

on reserves and do admin work”: See page 61 of the Transcript. The Commission accepts this as true, demonstrating the demanding nature of the work Provincial Court judges do.

86. In a supplementary submission, the Association also responded to a query from the Commission about the entitlement of government lawyers to “SDO”s (Scheduled Days Off) in addition to their 30 day vacation entitlement.
87. The Association pointed out that while Crown Prosecutors (a frequent source of appointments to the Provincial Court) are entitled to the same 30 day vacation leave as Provincial Court judges, they are also entitled to 12 SDO’s per year. The Association noted that a Crown Prosecutor considering an application to the Provincial Court is therefore facing the prospect of losing 12 days of paid leave annually.
88. The Government opposes the Association’s request and submits that the current vacation entitlement is sufficient to maintain the mental and physical well-being of the Provincial Court judges. It points out that most jurisdictions have a similar entitlement.
89. The Government does not agree that the cost of four additional vacation days is insignificant. It estimates the additional cost of the Association’s request, taking into account the cost of maintaining service levels by increased utilization of Temporary Judges and therefore increased travel and lodging costs, to approximate the cost of two additional full-time judicial salaries.
90. The SCDLA, as noted previously, is supportive of bringing the Provincial Court judges’ salaries and benefits, overall, in line with their federally appointed counterparts.
91. The CBA is supportive of the Association’s position with respect to increasing the vacation entitlement, pointing out the importance of making sure that Provincial Court judges are able to maintain a high level of productivity in the face of a steadily increasing workload, by allowing sufficient time for them to be refreshed by adequate vacation time.

d. Additional items under consideration

92. No submissions were made regarding the other matters set out in s. 38(1) and the Commission does not understand either the Government or the Association to be requesting any changes to

those other components of the Act that fall under the compulsory aspect of the Commission's mandate. The Commission was nevertheless mindful of that mandate, and the fact that it is required to consider all issues set out in s.38(1).

93. As noted previously, the Act also sets out, in s. 38(2), several advisory matters that the Commission may, but is not obliged to, consider. The Commission understands that no changes are sought by either the Government or the Association with respect to those advisory matters.

VIII. RECOMMENDATIONS

94. In coming to its recommendations, the Commission was very appreciative of the assistance provided by the submissions of both the Association and the Government, as well as those of the CBA and the SCDLA. The Commission reviewed and carefully considered all submissions. Reviewing reports of previous Commissions and the relevant case law provided guidance on the approach we took to our task.
95. The Commission considered each of the factors raised and discussed by the parties in their submissions, both oral and written. Chief among those factors, of course, was the need to preserve judicial independence, as already discussed. The Commission is confident that all parties recognize the fundamentally important nature of that principle.
96. Other important factors discussed by the parties and considered by the Commission in coming to its recommendations include: the critically important role played by the Provincial Court in this province; the need to attract and retain the best candidates to the Provincial Court in order to sustain that role; the economic conditions and other fiscal obligations facing the Government; and the positions of comparator groups. Again, the parties' thoughtful submissions were of great assistance.
97. After careful consideration and discussion, the Commission is pleased to set out its recommendations:

a. Judicial Salaries

98. As noted earlier, the Commission initially understood that there was some discrepancy between

the positions of the Association and the Government on the implementation of the formula established by the presumption in s.38.1.

99. The Commission understood the Government to be suggesting that the Commission ought not to recommend a salary adjustment in accordance with the presumption in the Act for each of the next four years because of the potential for “extraordinary circumstances”, as the term is used in the Act, to arise over a four year period.
100. The Commission now understands that there is no such discrepancy between the Association and the Government on this issue.
101. Accordingly, the Commission is pleased to recommend that, in accordance with the statutory presumption contained in s.38.1(2) of the Act, the salaries of Saskatchewan’s Provincial Court judges be adjusted as follows:
 - i) For the annual period of April 1, 2024 to March 31, 2025, the base salary be adjusted to the product of .95 and the salary paid to the Justices of the Court of King’s Bench at March 31, 2024;
 - ii) For the annual period of April 1, 2025 to March 31, 2026, the base salary be adjusted to the product of .95 and the salary paid to the Justices of the Court of King’s Bench at March 31, 2025;
 - iii) For the annual period of April 1, 2026 to March 31, 2027, the base salary be adjusted to the product of .95 and the salary paid to the Justices of the Court of King’s Bench at March 31, 2026;
 - iv) For the annual period of April 1, 2027 to March 31, 2028, the base salary be adjusted to the product of .95 and the salary paid to the Justices of the Court of King’s Bench at March 31, 2027;
102. As set out in s.38.1(3), if, in any of the four years referred to above, the calculation required would result in a reduction to a judge’s salary, the salary to be paid that year will be the annual salary paid in the previous annual period.
103. Given the impact of the formula on salaries for other judges, including the Chief Judge, Associate Chief Judges, Administrative Judges, and Northern Judges, and the fact that neither

the Association nor the Government is seeking changes with respect to those salaries, the Commission makes no specific recommendations regarding those salaries. Likewise, no change regarding salaries for Temporary Judges was sought by either party and no such change is recommended.

104. The Commission observes that setting out the annual salary for each year in the period of time until the next Commission is established is consistent with the practice of previous Commissions. We feel this remains an appropriately consistent approach despite the fact that the interval between Commissions has been extended to four years.
105. The Commission would have recommended this approach in the event of a disagreement between the parties, seeing no reason to depart from the practice of previous Commissions.

b. Professional Allowance

106. The Commission understands and agrees that the Professional Allowance must cover a broad range of expenses incurred by Provincial Court judges in acquiring the various resources they may need in order to perform their judicial function. The array of potential items included in the Professional Allowance is extensive and diverse. It includes, but is not limited to: textbooks, journals, personal technology upgrades, replacement court clothing, a home security system, fitness programs, eye-glasses, hearing aids, memberships in organizations, registration and travel to attend educational programs, including French language training.
107. All of these various items can be important resources to a given judge. The Commission was particularly cognizant, however, of the importance of ensuring that Saskatchewan's Provincial Court judges are able to reasonably access adequate educational resources and programs to allow them to keep up to date with developments in the law related to their five main areas of jurisdiction, which are themselves wide-ranging, and also with the rapidly changing social, economic and cultural factors that have a direct impact on the matters coming before the Court.
108. The increase in the Small Claims monetary limit, the impact of the crisis in mental health and addictions, the increasing volume of self-represented litigants and the evolving landscape of reconciliation with Indigenous peoples are but a few such significant developments.

109. The Commission acknowledges the Government's point of view on the availability of online educational programs. In our view, these programs are useful adjuncts, but cannot and do not offer the same advantages as attendance at in-person educational programs where the exchange of ideas and sharing of experiences are invaluable beyond the formal components of the program.
110. The Commission believes that all Provincial Court judges should have better access to educational programs than is currently available through the Professional Allowance, given the myriad of other items that may be needed by a judge at any point in time and the finite fund available through the Professional Allowance.
111. Provincial Court judges should not have to choose between installation and monitoring of a home security system, an expensive endeavor the need for which may be significant in some locations, and attendance at a week-long educational program. Both may well be essential to the judges' sense of comfort and safety and their ability to fulfill their judicial role for the benefit of the citizens who appear before them.
112. The Commission noted the relatively minor increases that have been made to the Professional Allowance since its inception and, in particular, the fact that the Professional Allowance has remained static since the small increase in 2014 that took it to \$4,000. The value of that \$4,000 today is much different than it was in 2014. Most of the items currently included under the Professional Allowance will have increased significantly in cost.
113. The Commission heard oral submissions, particularly from the CBA and the SCDLA, regarding the cost of quality in-person continuing legal education programs; it is significant and can be expected to continue to increase. Certainly, it is commonly recognized that the costs of travel, meals, and accommodation alone have risen dramatically since 2014.
114. Accordingly, the Commission is pleased to recommend that the Professional Allowance be immediately increased by \$2,000, bringing the annual Professional Allowance to \$6,000 in the aggregate. The additional \$2,000 should be designated to provide specifically for judicial education. The original \$4,000 should continue to be available to be used for any of the items currently included in the Protocol, including, among other things, judicial education and professional development.

115. The Commission acknowledges that this increase to the Professional Allowance is less than that requested by the Association and more restricted in its use than the existing \$4,000 generally administered under the Protocol. It is, however, an immediate and significant increase that should allow Provincial Court judges better access to the judicial education they need in order to perform their judicial role well, while still allowing access to the other resources that individual judges may require.
116. The Commission also acknowledges that this change ostensibly results in an increased financial burden for the Government. Nonetheless, the Commission sees the proposed approach as a reasonable compromise between the Government's need to mind the public "purse-strings", and the need to ensure that Provincial Court judges have all of the resources needed to ensure they can perform their critically important role in our judicial system.
117. Dedicating the increase to the Professional Allowance for use in judicial education provides a degree of accountability, transparency, and reassurance to the public that the additional expenditure of provincial funds is well founded, without derogating from the independence of a judge to use the current Professional Allowance in accordance with the Protocol.
118. Furthermore, if the Government is correct in its assertion that an increase in the Professional Allowance is not indicated because even the current \$4,000 Professional Allowance is not being fully utilized, then adding to that "unused" amount should not constitute a significant financial burden.
119. If, on the other hand, the additional amount allows Provincial Court judges to access more high-quality continuing judicial education, the additional monies will be well-spent in the Commission's view. That is so even if not all Provincial Court judges choose to use the Professional Allowance available to them.

c. Vacation Leave

120. The Commission has considerable regard for the need for Provincial Court judges to have adequate time to rest, relax and refresh themselves, however they choose to do so, by ensuring they have sufficient vacation time.

121. The Commission gave careful consideration to the various factors that weighed in favour of and against the notion of increasing the number of vacation days. In the Commission's view, however, 30 days (or six weeks) is a reasonable length of vacation leave. It is fairly consistent with vacation leave available to judges in many other jurisdictions, although the Commission acknowledges that there are some with longer periods of vacation leave available. Judges are also allowed the possibility of "carrying over" or accumulating some of the 30 days in order to facilitate a longer vacation period on occasion.
122. The Commission does not accept that the undisputed challenging workload of Provincial Court judges is best addressed by increasing their vacation leave. In our view, having access to sufficient judicial resources is a better means of managing the demands of a significant workload than adding to the vacation leave by 1, 2, 3 or 4 days.
123. In a supplemental submission, the Association referred to the 12 SDO's available to Crown Prosecutors, in addition to their 30 days of vacation, and suggested that giving up "12 days of vacation" would be a disincentive to Crown Prosecutors considering an application to the Provincial Court. The Commission does not accept that loss of the SDO's would be a significant disincentive. Crown Prosecutors' compensation package is arrived at through an entirely different process. It is the subject of negotiation in which some elements are inevitably given up in exchange for others.
124. While Crown Prosecutors applying to the Provincial Court will face a loss of their SDO's, they will have a significantly higher salary and other benefits available to them. The Commission does not see this as a disincentive.
125. Nor does the Commission accept that the current 30 days of vacation leave would be a significant disincentive for lawyers to apply to the Provincial Court from the private practice of law. Although lawyers in private practice do technically have the flexibility to schedule as much vacation time as they wish, many, if not most, would never see themselves taking six weeks of vacation leave in one year.
126. Those practitioners considering an application to the Provincial Court, whether from the Crown, Legal Aid, or private practice, are unlikely to be deterred by a 30 day vacation leave.
127. The Commission was influenced by the fact that a request to increase the number of vacation

days to which Provincial Court judges are entitled has been made to several previous Commissions and in none of those cases was the request granted. That is a factor that we took into account in our deliberations.

128. Put simply, the Commission was not persuaded that increasing the number of vacation days available to Provincial Court judges addresses the problems asserted by the Association in relation to the noted increase in workload. In fact, as noted at the Hearing and as stated above, it is “not rare for judges to come in on vacation and work on reserves and do admin work”: See page 61 of the Transcript. It appears other mechanisms outside the scope and authority of the Commission, such as adding to the number of Provincial Court judges, would be better suited to address this concern.
129. Accordingly, the Commission is pleased to recommend that no change be made to the current thirty day period of vacation leave.

d. Other matters

130. As to the advisory matters set out in s.38(2) of the Act, having received no submissions from any party with respect to those issues, the Commission declined to consider them.

IX. SUMMARY OF RECOMMENDATIONS

131. In summary, this Commission makes the following recommendations:
- i) For the annual period of April 1, 2024 to March 31, 2025, the base salary be adjusted to the product of .95 and the salary paid to the Justices of the Court of King’s Bench at March 31, 2024.
 - ii) For the annual period of April 1, 2025 to March 31, 2026, the base salary be adjusted to the product of .95 and the salary paid to the Justices of the Court of King’s Bench at March 31, 2025.
 - iii) For the annual period of April 1, 2026 to March 31, 2027, the base salary be adjusted to the product of .95 and the salary paid to the Justices of the Court of

King's Bench at March 31, 2026.

- iv) For the annual period of April 1, 2027 to March 31, 2028, the base salary be adjusted to the product of .95 and the salary paid to the Justices of the Court of King's Bench at March 31, 2027.
- v) There be no change to the manner in which salaries are calculated for the Chief Judge, the Associate Chief Judges, Administrative Judges, and Northern Judges.
- vi) There be no change to the salaries of Temporary Judges.
- vii) The Professional Allowance be increased to \$6,000 in the aggregate, \$2,000 of which should be designated for use in obtaining continuing judicial education, and \$4,000 of which should continue to be available to be used in accordance with the Court's Protocol and Administrative Direction on Professional Allowance for Judges of the Court, including, *inter alia*, continuing judicial education.
- viii) There be no change to the current Vacation Allowance.
- ix) There be no changes to the pension or other benefits provided to judges.

X. CLOSING REMARKS

- 132. This Commission wishes to express its sincere appreciation and gratitude to all parties who made submissions to the Commission. In particular, we wish to acknowledge the exemplary work of legal counsel on behalf of the Association and the Government in relation to the quality and comprehensiveness of both their written submissions and oral presentations at the Commission Hearing.
- 133. It was a privilege for the members of the Commission to be able to play a role in safeguarding the independence of the judiciary, "for the benefit of the judged, and not the judges", and in maintaining public confidence in the administration of justice.

134. The recommendations contained in this report are the unanimous recommendations of this Commission.

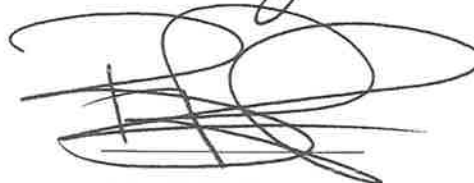
DATED at Saskatoon, Saskatchewan effective this 2nd day of January, 2024.



Michelle J. Ouellette K.C.,
Chairperson



Andrea V. Argue K.C.



Brian R. Pfefferle K.C.

DRAFT

SCHEDULE

Title

1 These regulations may be cited as *The Provincial Court Compensation Amendment Regulations, 2024*.

RRS c P-30.11 Reg 2, new section 6

2 *The Provincial Court Compensation Regulations are amended by repealing section 6 and substituting the following:*

“Professional allowance

6(1) In this section, ‘**judicial education**’ includes a judge’s registration to attend judicial and legal conferences or seminars, travel, accommodation, meals and other reasonable incidental expenses arising from the judge’s attendance.

(2) For each annual period commencing on or after April 1, 2015 and ending on March 31, 2024, a judge is entitled to be paid an accountable professional allowance of \$4,000.

(3) Subject to subsection (4), for each annual period commencing on or after April 1, 2024, a judge is entitled to be paid an accountable professional allowance of \$6,000.

(4) The accountable professional allowance mentioned in subsection (3) includes an amount of \$2,000 to be used specifically for judicial education”.

Coming into force

3 These regulations come into force on the day determined in accordance with Part IV of the Act.

REPORT OF THE NORTHWEST TERRITORIES JUDICIAL REMUNERATION COMMISSION

2020

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Introduction:

[1] The *Territorial Court Act*¹ establishes the process through which territorial judges' salaries and benefits are set. The Judicial Remuneration Commission (Commission) conducts an inquiry and, based on submissions received at a hearing of the inquiry from territorial judges or their representative, the Minister of Justice (the Minister), and any other interested person or body, makes recommendations which are binding on the Minister to implement.²

[2] The Commission is mandated to conduct hearings and make recommendations on salaries and benefits every four years. The current Commission will establish territorial judges' salaries for the fiscal years 2020/21, 2021/22, 2022/23 and 2023/24. The Commission's recommendations take effect on April 1 of the year the Commission holds its hearing. This reflects the beginning of the government's fiscal year, with each fiscal year running April 1 to March 31.

[3] Section 12.9 of the *Territorial Court Act* sets out the factors the Commission must consider in making recommendations.³ The Minister and the territorial judges have provided considerable background information as to recommendations made by past Commissions, and regarding how the factors should be applied to the issues before the Commission.

[4] In the time since the Commission closed its proceedings and concluded its deliberations, but before completion of this report, the Northwest Territories and every province and territory in Canada have been forced to contend with a global pandemic. At the time of issuance of this report, the Northwest Territories is under a public health emergency caused by the imminent spread of the COVID-19 virus. Long-term economic effects of the pandemic on the Northwest Territories are unknown.

[5] This report reflects the Commission's conclusions based on an assessment of the evidence and submissions provided to the Commission and is based on economic conditions before the pandemic began. The Commission does not propose to re-open its proceedings. The Minister or the Chief Judge may utilize section 12.92 to request a further Commission inquiry, if as a result of the pandemic, there is need to revisit the recommendations outlined in this report.⁴

¹ *Territorial Court Act*, R.S.N.W.T. 1988, c. T-2

² *Territorial Court Act*, R.S.N.W.T. 1988, c. T-2, section 12.1 to 12.95

³ *Territorial Court Act*, R.S.N.W.T. 1988, c. T-2, section 12.9

⁴ *Territorial Court Act*, R.S.N.W.T. 1988, c. T-2, section 12.92

Issues:

[6] The following is a summary of the issues the Commission has been asked to consider in making recommendations for territorial judges' salary and benefits for the fiscal years 2020/21, 2021/22, 2022/23 and 2023/24:

Salary:

1. What should the Commission recommend territorial judges receive for salary over the next four years?

Long Term Disability (LTD):

2. Should the Commission recommend territorial judges be eligible for long term disability (LTD) benefits until the point where they are required to start receiving pension, at age 69?

Continuing Professional Development (CPD):

3. Should the Commission recommend the Minister provide territorial judges with a global fund, or individual allowances, for continuing professional development (CPD)?
4. Alternatively, should the Commission recommend the Minister set parameters for the number of courses, or specific courses, territorial judges are entitled to take as CPD?

Extended Health Benefits:

5. Should the Commission recommend approval of the Alberta Blue Cross Plan for current territorial judges, and plans administered by Green Shield Canada for retired judges and surviving spouses?

Background:

[7] The Commission conducted its inquiry through written submissions followed by a hearing held in Yellowknife, Northwest Territories, on January 13, 2020.

[8] The Commission presented interrogatories and received written responses from the parties before the hearing. In addition, the Commission received written submissions from retired judge Brian Bruser, on behalf of himself and his spouse. The Commission received additional responses and submissions, after the hearing, in response to questions arising at the in-person hearing.

[9] Neither party called witnesses at the hearing on January 13, 2020. The Commission received information directly from counsel, in the form of asserted or uncontested evidence combined with argument. Forecasts, predictions and interpretations of information were not tested through cross-examination.

[10] This section of the Commission's report outlines a summary of uncontested background information which is relevant to all four issues presented by the parties for the Commission's consideration. It provides the context for the evaluation of factors under each issue.

Nature and Extent of the Legal Jurisdiction of the Territorial Judges (Subsection 12.9(a) of the Territorial Court Act):

[11] Territorial judges deal with all aspects of the Territorial Court's jurisdiction, which include criminal, civil, and family jurisdiction. The following is more detailed outline of their responsibilities, taken primarily from the judges' submissions:

[12] A large percentage of adult criminal prosecutions in the Northwest Territories are tried in the Territorial Court. This includes trials of summary conviction offences, hybrid offences, and indictable offences. Judges also conduct preliminary inquiries, sentencing hearings, motions and case management conferences.

[13] Territorial judges hear almost all Youth Justice Court cases. Judges deal with matters relating to young offenders including applications relating to custody orders and community supervision orders. They also preside over sentencing conferences and bail conferences in complex cases.

[14] The Territorial Court has jurisdiction over civil matters of amounts up to and including \$35,000. The Territorial Court frequently deals with unrepresented litigants in these proceedings. Civil claims are subject to mandatory mediation and acting as mediator requires of judges a unique set of skills.

[15] The Territorial Court has jurisdiction over family law matters including issues of custody, child and spousal support, maintenance, child protection, legitimacy, paternity and adoption. Territorial judges also deal with temporary and permanent child apprehensions in the Northwest Territories.

[16] Territorial judges also consider *ex parte* applications for warrants, production orders, sealing orders, and applications to vary the conditions of court orders. Other out-of-court

work includes the development and delivery of training and education programs to lawyers, other judges, justices of the peace, and others.

[17] Territorial judges hear applications for psychiatric assessments, and applications to determine whether an accused person is unfit to stand trial or should be exempted from criminal responsibility. Territorial judges are involved in various ways with the following specialized courts:

- Domestic Violence Court
- Wellness Court
- Drug Treatment Court

[18] Matters involving minor offences may be diverted from the court system to Community Justice Committees. While on circuit, territorial judges may meet with local committees.

Adequacy of Salaries and Benefits having regard to Cost of Living and Changes in Real Per Capita Income (Subsection 12.9(b) of the Territorial Court Act):

[19] The parties submitted a Joint Book of Documents which included a report from the Conference Board of Canada⁵ and the Northwest Territories Budget Address for 2019-2020.⁶ The following is a footnote of relevant information and forecasts:

[20] The Consumer Price Index ("CPI") statistics, published by Statistics Canada, tracks changes in the cost of a fixed basket of consumer goods on monthly basis. The percentage increases in CPI for the years 2015 to 2018 for Yellowknife, Northwest Territories, have been, respectively, 1.6% for 2015, 1.2% for 2016, 1.2% for 2017 and 1.6% for 2018.

[21] The Conference Board of Canada forecasts future CPI increases at 2.0% for 2019, 2.1% for 2020, 2.0% for 2021, 2.0% for 2022, and 2.0% for 2023.

[22] In 2017, the median total family income in the Northwest Territories was \$144,900, the highest in Canada. The Conference Board of Canada predicts that primary household income in the Northwest Territories will increase 7.2% in 2020, 3.2% in 2021, 3.9% in 2022 and 2.3% in 2023.

[23] Residents of the Northwest Territories also have the highest average weekly earnings of any jurisdiction in Canada, at \$1,420.19 in 2018. The Conference Board of Canada forecasts wages and salaries per employee to increase by 1.3% for 2019, 4.5% for 2020, 2.6% for 2021, 2.5% for 2022, and 1.9% for 2023.

⁵ Joint Book of Documents, Tab 14: Conference Board of Canada, "Territorial Outlook Economic Forecast Report: Summer 2019"

⁶ Joint Book of Documents, Tab 15: Budget Address, 2019-2020, Northwest Territories, February 6, 2019 including Budget Papers: Economic Review; and Fiscal Review.

Salaries and Benefits of Provincial and Territorial Judges in Other Jurisdictions in Canada (Subsection 12.9(c) of the Territorial Court Act):

[24] The parties have provided information to assist in the comparison of salaries with other provincial and territorial courts across Canada.⁷ The parties also provided information to allow for a comparison of LTD benefits.⁸

[25] Comparative information with respect to CPD and extended health benefits came to the Commission at the hearing and afterwards. The parties disagree as to the completeness of interpretative value of the information. As such, it remains contested and is considered along with the parties' arguments below.

Working Conditions under which the Territorial Judges carry out their Duties (Subsection 12.9(d) of the Territorial Court Act):

[26] The judges' submissions provide a snapshot of the working conditions of territorial judges, especially while travelling on circuit courts outside Yellowknife. The following is a summary of relevant conditions which are uncontested by the Minister:

- Territorial judges must travel to other communities, often by small aircraft, in cold and dark conditions. Delays can occur due to weather.
- On some of the circuits, suitable accommodation is not available, and the judge will commute to and from a community for each day of court sitting.
- In small communities, the Territorial Court sits without the amenities of a courthouse, in hockey arenas, community centres, gymnasiums, community halls, council chambers and hotels.
- There is often no private area for the judge in circuit courts, such that accused persons or members of the public may be able to approach the judge.
- Judges may sit beyond ordinary working hours to accommodate witnesses and accused who have travelled long distances. Judges may also need to travel on the weekend to accommodate circuit court schedules.
- The Territorial Court routinely deals with clients with difficult backgrounds and addiction issues or cognitive challenges. In smaller communities, it must do so without the same level of support available in larger centres like Yellowknife.
- Territorial judges regularly deal with accused persons or witnesses through an interpreter, which can lengthen proceedings and present additional challenges.
- Judges must carry out their duties within the unique cultural context of the Northwest Territories communities, and must isolate themselves, both socially and physically.

⁷Joint Book of Documents, Tab 11: Puisne Judges' Salaries Across Canada, as at November 2019; Initial Submission of the Minister of Justice of the Northwest Territories to the Judicial Remuneration Commission, submitted November 25, 2019: Table at p. 6

⁸ Submissions of the Judges of the Territorial Court of the Northwest Territories to the Northwest Territories Judicial Remuneration Commission, submitted November 25, 2019: Table at p. 72

Economic Fairness (Subsection 12.9(e) of the Territorial Court Act):

[27] In their submissions, the parties have approached economic fairness by advancing arguments based on fairness relative to pay and benefits received by other judges, senior public servants and professionals. As such, the parties' arguments on this factor are summarized below, and addressed in the Commission's analysis and reasons for decision.

Economic Conditions of the Northwest Territories (Subsection 12.9(f) of the Territorial Court Act):

[28] The primary resources presented to the Commission, regarding economic conditions in the Northwest Territories, are again the Conference Board of Canada report and the Government of the Northwest Territories (GNWT) budget document noted under the heading *Cost of Living and Real Per Capita Income*.

[29] The Conference Board of Canada report offers the following prognostication, largely based on an assessment of the mining industry, which is central to the Northwest Territories' economy:

- The Conference Board of Canada reports that diamond mining at the Northwest Territories' three mines (i.e., Gahcho Kué, Diavik, and Ekati) each topped 20 million carats in 2018, surpassing expectations.
- However, the Conference Board of Canada also notes that diamond production in the Northwest Territories has reached its peak.
- The Conference Board of Canada forecasts that the diamond mines in the Northwest Territories will commence wrapping up production beginning in 2025 and continuing into the 2030's.
- This could well have negative economic implications for the long-term in the Northwest Territories.
- Over the next four years, the Conference Board of Canada forecasts a decline in diamond mining in some areas, but also forecasts that these declines will be offset somewhat by other mining production developments, as well as increases in other areas of the economy.
- The Conference Board of Canada forecasts percentage Gross Domestic Product (GDP) changes of 2.1% in 2019, 2.5% in 2020, -3.0% in 2021, 1.3% in 2022 and 1.1% in 2023.

[30] The parties offer argument on the relevance and weight to be placed on this information, which the Commission therefore accepts only as projections that have been made, not as established fact. The parties' submissions are again addressed below.

Any other Factors that the Commission may consider Relevant to its Review (Subsection 12.9(g) of the Territorial Court Act):

[31] Both parties submit that judicial independence should be an important factor in the Commission's deliberations. The Minister also suggests consideration be given to the promotion of recruitment and retention for judges.⁹ The Commission accepts these are legitimate factors and has taken them into consideration.

⁹ Initial Submission of the Minister of Justice of the Northwest Territories to the Judicial Remuneration Commission, submitted November 25, 2019: p. 13

Salary:

[32] The parties have both advanced positions and rationales in support of increasing judges' salaries over the next four years.

[33] The judges' position is that judges should receive an increase of 3.38% for 2020/21, raising salaries to \$310,000, plus an increase equal to the percentage increase in CPI for Yellowknife over the preceding calendar year, for 2021/22, 2022/23 and 2023/24.

[34] The judges' further position is that the Chief Judge shall continue to receive an additional \$15,000 per year, which the Chief Judge currently receives as the Chief Judge's Differential.

[35] The Minister's position is that judges should receive an increase of 0.5% for 2020/21; and an increase of 0.5% for 2021/22; and an increase of 1.5% for 2022/23; and an increase of 1.5% for 2023/24.

Judges' Submissions:

[36] The following is a summary of the judge's submissions on salary, applying the factors outlined in section 12.9 of the Act:

Legal Jurisdiction and Working Conditions:

- Territorial judges exercise a jurisdiction that is as broad as, or broader, than their counterparts elsewhere.
- Working conditions are more difficult in that they perform more onerous circuit work.
- In most other jurisdictions, judges will exercise only criminal or civil jurisdiction, but not both.
- The number of regulatory offences has increased considerably in recent years.
- The increased monetary limit for small claims is among the highest in Canada. This has provided an avenue for litigation for individuals who would otherwise have had to bring claims in Supreme Court.
- Psychiatric Assessments and Mental Health applications can be complicated and stressful.
- Beyond their regular court and after-hours duties, territorial judges seek to enhance the administration of justice in the community, through delivering training and participating on specialized courts.
- The breadth of territorial judges' jurisdiction supports compensation that is among the highest paid to judges in other provinces and territories.

Cost of Living and Real Per Capita Income:

- The judges' proposal for \$310,000 effective April 1, 2020 would be a 3.38% increase, which likely amounts to just over 1% beyond what is required to protect the 2019 salary from erosion.
- Territorial judges live and work in a jurisdiction which has the highest average weekly earnings, primary household incomes, and median total family incomes in Canada.

- Further, it is predicted that primary household incomes will rise significantly in the Northwest Territories over the period at issue.
- According to the NWT Bureau of Statistics, Yellowknife's living cost differential for 2018 was 20 to 25% higher than that of Edmonton.
- The higher cost of living in the Northwest Territories must be considered in assessing how compensation paid to territorial judges should compare with that paid to counterparts in other jurisdictions.
- The various indicators showing the Northwest Territories as a leader in Canada in income measures supports the judges' proposal for increased compensation.

Other Jurisdictions:

- The uniqueness of the judicial role supports the approach of past Commissions, which have considered the comparison with compensation paid to judges in other jurisdictions to be of utmost importance.
- Past Commissions have consistently found that the Northwest Territories judges should be among the most highly paid of judges in the provincial and territorial jurisdictions across Canada.
- Since the 2001 Commission, comparisons have focussed on judges in Ontario, Alberta, Saskatchewan and Yukon.
- In Ontario, provincial court judges are entitled to salary increases each year based on the percentage increase in the Industrial Aggregate Index for Canada over the preceding twelve months (i.e., April 1 - March 31).
- Based on the recommendations of their last Commission, Ontario judges would be paid a salary equal to 95.27% of that amount, or \$326,993, in 2020/21.
- In Alberta, the government rejected the recommendation of the 2017 Commission and imposed a four-year salary freeze at the 2016 salary of \$293,991.
- The Alberta Provincial judges' Association plans to seek judicial review of the salary freeze.
- But for the salary freeze, and based on the recommendations of their last Commission, Alberta judges would be paid a salary equal to \$318,500, in 2020/21.
- The salaries for Yukon judges for the years commencing 2019/20 are currently unknown as the 2019 Yukon Commission's process has yet to occur but can reasonably be expected to increase.
- In Saskatchewan judges' salaries will increase in 2020 by an amount equal to the percentage increase in CPI plus 1%. If the CPI increase is 1.7%, the result would be a salary of \$312,284.

Working Conditions:

- Past Commissions have considered that working conditions of the judges are more onerous than those of their counterparts in the rest of Canada.
- While nearly all jurisdictions have circuit courts, territorial judges travel more often and to more remote communities, and often work longer hours.
- Territorial judges spend significantly more time on circuit than their counterparts in other jurisdictions, including judges in Yukon and Nunavut

- The greater severity of the crimes in the Northwest Territories results in a higher proportion of serious and complex criminal matters appearing in the Territorial Court, as compared with other jurisdictions.
- Bill C-75 is expected to have a significant impact on the work of provincial and territorial courts across Canada. Once it is fully implemented, the Bill will eliminate preliminary inquiries for all offences, except for those where there is a risk of life imprisonment.
- Bill C-75 will result in more trials in Territorial Court and will also likely result in more cases remaining in the Territorial Court.
- There are currently 39 active justices of the peace in the Northwest Territories. Justices of the peace assist territorial judges in several ways, but their authority and jurisdiction has been increasingly limited in recent years.
- Due to recent retirements, there is a junior and inexperienced roster of justices of the peace who require significant training. As a result, much of their work has been transferred to the Territorial Court, adding to judges' workloads.
- The Chief Judge, or another designated judge, spends considerable time overseeing training and meeting with justices of the peace.
- In addition to scheduled training sessions, the Chief Judge, or other designated judge, provides refresher courses to the clerks of the court and justices of the peace in their home communities.
- Judges' significant and difficult workload supports their requests for increased compensation.

Economic Fairness:

- The Commission should examine how judges' salaries compare with the salaries paid to judges in other jurisdictions considering the way in which the earnings of professionals and employees generally compare with the earnings of their counterparts in other jurisdictions.
- The high incomes and earnings of Northwest Territories residents, relative to residents of other jurisdictions, and the high average weekly earnings of Northwest Territories workers (relative to Alberta, Ontario and Yukon), support judges being paid a salary among the highest across Canada.
- In 2018, the incomes of professionals in the Northwest Territories were close to those of Ontario professionals, both of which were slightly behind the earnings of Alberta professionals but ahead of the Canadian average.
- Public administration earnings are higher in the Northwest Territories than in Ontario, Alberta, Saskatchewan and Yukon. They are also well in excess of the Canadian average.
- The various measures of compensation support the judges' request for compensation that is among the highest compensation paid to judges across the country.

Economic Conditions:

- This factor involves consideration of prevailing and predicted conditions in the territorial economy but does not consider the fiscal situation of the GNWT or its ability to pay.
- The Conference Board of Canada's predictions regarding the wrapping up of diamond mine production are not forecast to occur within the next four years, the period for which the Commission is making recommendations.

Minister's Submissions:

[37] The following is a summary of the judge's submissions on salary, applying the factors outlined in section 12.9 of the *Territorial Court Act*:

Nature and Extent of Jurisdiction:

- Judges hear most criminal and regulatory matters in the Northwest Territories, as well as certain family law matters, mainly child protection matters and some applications for child support.
- Judges may also hear small claims matters of a limited dollar amount, although this is rare in practice.
- The jurisdiction exercised by the judges is theoretically and practically very similar to the jurisdiction exercised by other territorial and provincial judges across Canada.
- While individual judges are not able to specialize, this is likely true of most territorial and provincial judges in Canada.

Adequacy of Salaries and Benefits:

- Salaries and benefits provided to judges are adequate to maintain judicial independence. In each of 2017, 2018 and 2019, there was an increase equal to CPI on December 31 of the previous year, plus 1.5%.
- The resulting salaries, including a 2019/20 salary of nearly \$300,000, as well as the generous benefits package provided to judges, are adequate to ensure judges remain independent and free from financial pressures.
- The percentage growth in judges' salaries since 2000/01 has been higher than the percentage growth in the salaries of others paid from the public purse.

Other jurisdictions:

- Comparing the salaries and benefits of territorial and provincial court judges across Canada continues to be an inexact science.
- Legislation in many provinces provides that Commission recommendations can be rejected, which can result in litigation and uncertainty.
- In 2019/20, territorial judges are approximately the third to fifth highest paid provincial/territorial judges in Canada, with a salary of \$299,869.
- Judges are also provided with a Northern Allowance of \$3,700 per year in addition to salary.

Working Conditions:

- Certain aspects of judges' working conditions are challenging, and each successive panel of the Commission has viewed the judges' working conditions as a significant factor suggesting the judges should be among the highest paid in Canada.
- As a result, working conditions are reflected in the judges' current salary.
- The working conditions of the judges are no worse than in the past and have probably improved somewhat in recent years. Improvements in technology can only continue to improve working conditions.

Economic Fairness:

- The current composition of the Territorial Court is evidence of the economic fairness of the compensation the judges receive.
- Two of the four current judges were very well-respected and experienced lawyers who were appointed from the private bar.
- Two of the four current judges were very well-respected and experienced lawyers working in the public sector prior to their appointments.
- The most recent appointee was previously the Information and Privacy Commissioner of Newfoundland and Labrador, indicating vacant positions attract excellent candidates from across Canada.

Economic Conditions:

- Since the 2016 recommendations of the Commission, the Northwest Territories' economy has performed poorly, and the economic outlook has deteriorated.
- In the last two years, diamond prices have collapsed, reducing mining revenues through lower sale values and reduced royalties for the GNWT.
- Between 2014 and 2018, the government sector grew at an average annual compound rate of 1.7%.
- The territorial public administration sector itself increased 1.2% annually over that time.
- Between 2014 and 2018, total employment in the Northwest Territories has fallen by an average annual rate of 0.8%.
- The GNWT's fiscal situation is linked to the economy through population growth. With population growing more slowly than the national average, this will remain a drag on the calculation for the federal Territorial Formula Financing grant over the next four years.
- The economic outlook remains uncertain because of the Northwest Territories economy's dependence on the non-renewable resource industry for high paying jobs and local business opportunities.

[38] Based on the above assertions regarding the Northwest Territories economy, the Minister submits that judges should not be paid such salaries as to create the perception judges are exempt from shouldering the burden of difficult economic times.¹⁰

¹⁰ Reply Submissions of the Minister of Justice of the Northwest Territories to the Judicial remuneration Commission, submitted December 20, 2019; citing Joint Book of Documents, Tab 12: *Reference re Remuneration of Judges of The Provincial Court of Prince Edward Island*; *Reference re Independence and Impartiality of the Provincial Court of Prince Edward Island*; *R. v. Campbell*; *R. v. Ekmecic*; *R. v. Wickman*; *Manitoba Provincial Judges' Association v. Manitoba (Minister of Justice)*, [1997] 3 S.C.R. 3 (PEI Reference), at para. 196

Reasons for Decision – Salary:

[39] In making its report and recommendations, the Commission is required to consider the factors outlined in section 12.9 of the *Territorial Court Act*. The Commission must make its own independent assessment of these factors, based on the evidence and argument presented.¹¹

[40] There is considerable common ground between the parties' submissions with respect to the factors in section 12.9. The Commission notes more similarities than differences in how the parties recommend the factors be evaluated. The overall picture is that judges' salaries should continue to be in the upper end compared to other jurisdictions and keep pace with cost of living increases.

Nature and Extent of Jurisdiction:

[41] The judges' jurisdiction encompasses a wide range of work, including criminal and quasi-criminal matters, youth matters, civil claims, family matters, child protection matters, *ex parte* applications and other duties, psychiatric assessments and mental health applications. Judges also participate in specialized courts, and work with justices of the peace.

[42] The skills required to work in all these areas goes beyond hearing cases in court. Judges must also be able to act as mediators of civil claims, serve as trainers for justices of the peace, and engage alternative approaches in Wellness Court and Drug Treatment Court. These are offered as just some examples of functions which go beyond the already challenging role of adjudicating cases in court. Judges must be highly skilled, and highly adaptable to fulfill the responsibilities required of them.

[43] There appears to be some question as to the volume of small claims matters judges hear, and how many of these are resolved through mediation as opposed to trial. There also appears to be some question as to the extent to which judges elsewhere can more readily specialize. The Commission cannot resolve these contested matters without more concrete evidence.

[44] It is not, however, necessary to resolve these disputed points with precision. The work is all judicial or related work. Regardless of how the workload is itemized, the evidence is that territorial judges exercise broad, varied and extensive jurisdiction. As a result, this factor supports continuing to pay judges in the upper range compared with other jurisdictions. The conclusion remains, notwithstanding variations that may exist from jurisdiction to jurisdiction.

Adequacy in Relation to Cost of Living:

[45] The Commission accepts that judges' salaries should adjusted along with cost of living increases, as a means of ensuring judges' incomes remain appropriate to maintaining judicial independence.

[46] The CPI provides a metric that allows salary increases to be aligned with statistically established cost of living increases. Both the judges and the Minister seem to agree in principle to some form of annual increase based on CPI. The judges have asked the Commission to

¹¹ Joint Book of Authorities, Tab 13: *Provincial Court Judges' Association of New Brunswick v. New Brunswick (Minister of Justice)*; *Ontario Judges' Assn. v. Ontario (Management Board)*; *Bodner v. Alberta*; *Conférence des juges du Québec v. Québec (Attorney General)*; *Minc v. Quebec (Attorney General)*, [2005] 2 S.C.R. 286, at para. 15

recommend a fixed increase of 3.38% for 2020/21, higher than the forecast CPI increase for the year. The Minister has recommended fixed increases for each of next four years which are lower than CPI increases for the year. This is where the parties' positions diverge in applying the principle of cost of living increase.

[47] The Conference Board of Canada forecasts offer predictions on what cost of living will do over the next four years. For the purposes of maintaining salaries, the forecast figures are not as accurate as actual CPI information made available from Statistics Canada each year. All other factors being equal, the easiest way to maintain judges' salaries would be to adjust salaries each year based on actual CPI increases.

[48] The 2016 Commission applied this methodology to the second, third and fourth years of its mandate. It recommended that, commencing on April 1st of each year, from 2017 to 2019 inclusive, judges' salaries would be increased by an amount equal to the CPI for Yellowknife calculated by Statistics Canada for the preceding year ending December 31st (plus an additional 1.5 percentage points).¹²

[49] The parties agree that, if this Commission is to apply the same approach, the Commission should be specific in recommending that increases be based on the average CPI for the preceding year, to avoid any confusion that it is to be based on a specific date at the year's end. The Commission accepts this submission. If adjustments are tied to the CPI increases, the average increase over the preceding year offers a more appropriate metric than the CPI on a fixed date.¹³

[50] The Commission is not satisfied, on this factor, of the need to constrain judge's salaries to increases less than predicted CPI increases, as proposed by the Minister. Judges' salaries may have increased more than those of public servants since 2000, but this is not particularly determinative. Public servants' incomes are only one comparator to establish adequacy relative to others in the same community. Furthermore, the Commission's task is prospective. The Minister has not established any rationale for limiting future increases based on increases granted over the past 10 years.

[51] Percentage increases established through binding mediation, used to conclude collective bargaining between the GNWT with the Union of Northern Workers, are likewise not determinative. The Commission heard that Mediator Ready established increases of 0% for 2016, 0% for 2017, 1.6% for 2018, 2.3% for 2019 and 2.5% for 2020,¹⁴ In setting those percentages, the mediator was presumably looking at factors more directly tied to government finances, and unrelated to considerations of judicial independence. The Commission has no indication of how cost of living or changes in real per capita income factored into his deliberations.

[52] The Commission is likewise not satisfied, on this factor, of need to increase judges' salaries above predicted CPI increases in 2020/21, as proposed by the judges. The information offered, in terms of Yellowknife's cost of living differential for 2018, shows that costs are higher than in Edmonton. Median family incomes in the Northwest Territories are also high and

¹² Joint Book of Documents, Tab 9: 2016 Report of the Northwest Territories Judicial Remuneration Commission

¹³ Transcript of Hearing held January 13, 2020, at p. 22, ll. 5-24 and p. 41, ll. 5-14

¹⁴ Transcript of Hearing held January 13, 2020, at p. 95, ll. 22-27

predicted to increase in the next four years. These realities support judges being paid in the upper end, but they are not novel or determinative considerations for 2020/21.

[53] It has not been established that judges' relative earnings would be eroded unless they received a 3.38% increase in 2020/21. While relative earnings are one consideration, relative unemployment rates are another consideration and it has not been established the Northwest Territories compares as favourably on that score. In addition, the Commission does not have information as to the relative cost of living where other judges in the upper salary quartile reside, including larger cities like Calgary or Toronto. In summary, the Commission has not been provided with a rationale to conclude judges' relative earnings would be eroded unless they receive a 3.38% increase in 2020/21.

Other jurisdictions:

[54] The Commission has considered judges' salaries in other jurisdictions which continue to provide useful comparators for the upper end of salaries for provincial and territorial judges. The information available to the Commission does not extend for the next four years, and there is uncertainty especially with respect to Alberta.

[55] In Ontario, provincial court judges are receiving higher salaries in 2019/20 than territorial judges in the Northwest Territories. It is difficult to predict what will happen with salaries in Ontario, since they are based on a percentage of salaries for federally appointed judges.

[56] In Yukon, territorial judges are receiving lower salaries in 2019/20 than territorial judges in the Northwest Territories. Again, it is unknown what Yukon's Commission will recommend, and what the government will pay, over the next four years.

[57] In Alberta, provincial court judges could be receiving more or less than territorial judges in the Northwest Territories. It depends on whether the Alberta Government's freeze on judicial salaries remains in effect, or if it is successfully challenged on judicial review. As of the time of this report, the Commission had no further information as to whether a judicial review was proceeding.

[58] In Saskatchewan, provincial court judges will receive 3% increases in 2020/21 and 2021/22. This will result in salaries greater than those of territorial judges in the Northwest Territories, regardless of whether the Commission recommends the judges' full request or something less. The Minister's request would result in salaries far below judges' salaries in Saskatchewan.

[59] Based on these comparisons, straight CPI increases would maintain Northwest Territories' judges in the top quartile for salary, possibly quite comfortably in the top quartile depending on what happens in Alberta. Larger increases could push judges' salaries significantly higher in relative terms, given the unknowns in many of the higher paying jurisdictions.

Working Conditions:

[60] The Territorial Court conducts circuit courts across an expansive and remote territory, a feature which has characterized the Territorial Court throughout its history. The challenges of circuit work, including improvised facilities and cold temperatures, warrants higher than average salaries for territorial judges.

[61] There is some consensus that working conditions have improved to an extent, through the increased use of chartered flights, for example, as well as through increased accessibility to technology including telephone and video conferencing.¹⁵

[62] There is no indication judges' working conditions, which have always been difficult in the Northwest Territories, have gotten markedly worse. If they have improved to some degree, recent improvements still have not changed the most fundamental realities of delivering justice in the communities where events occurred. All the territorial judges participate in maintaining the circuit schedule, which means long hours and isolation on top of weather and ever-changing logistical challenges.

[63] The impact of changes to workload, on working conditions, is more challenging to assess. The Commission does not have much information, for example, to assess how much Bill C-75 will affect working conditions. If judges are required to hear more trials, the volume of work may increase, but the work is judicial in nature as with other work in the courtroom setting.

[64] Likewise, if judges are required to devote time to training and mentoring justices of the peace, which may take away from courtroom work, without necessarily subjecting judges to better or worse conditions.

[65] Working conditions has always been a factor supporting higher salaries for Northwest Territories. It continues to be so. Territorial judges have a wide and varied jurisdiction, which requires adaptability to physical changes, legislative changes, and occasional workload re-alignments. Much of what they do is conducted outside the capital of Yellowknife, with varying types and degrees of challenges.

Economic Fairness:

[66] The judges present economic fairness in terms of ensuring territorial judges have salaries competitive relative to those of judges and other professionals in other jurisdictions. As outlined above, territorial judges have salaries in the upper end of incomes of provincial and territorial judges.

[67] The above-average incomes of professionals in the Northwest Territories, close to those of Ontario professionals and slightly behind those of Alberta professionals, supports maintaining judges in the upper quartile of judicial earnings. Jurisdictions with professional incomes above the Canadian average remain relevant as comparator jurisdictions.

[68] The Commission accepts that judicial incomes should generally continue to exceed those of public service. In the Northwest Territories, public sector earnings may exceed those in Ontario, Alberta, Saskatchewan and Yukon, but this is again not a unique circumstance warranting an adjustment above CPI in 2020/21. There is no indication of public sector earnings on a trajectory that needs to be matched to ensure economic fairness to judges.

[69] The Minister points to the quality of judicial appointees, from both public and private sectors, as evidence of economic fairness in judicial remuneration to date. The ability to attract good candidates, as well as the relatively young retirement ages of territorial judges, indicates compensation to date has been fair and adequate. Adjustments based on CPI increases will ensure this continues for the next four years.

¹⁵ Transcript of Hearing held January 13, 2020, at p. 18, ll. 18-26

Economic Conditions:

[70] The Conference Board of Canada predicts the diamond mining industry will be wrapping up operations in the Northwest Territories starting, around 2025 and continuing into the 2030's. This is beyond the four-year period for which the Commission is tasked with making recommendations for judges' salaries to 2024. It is therefore too early to conclude judicial incomes should be reduced in relation to forecast changes in CPI.

[71] At this point, the influence of economic conditions has not been reflected in reductions to the public service, or cost-saving measures such as freezes on senior management salaries. It is therefore too early to conclude judges should have to share the burden of difficult economic times, as suggested by the Minister.

[72] The effect of anticipated economic events on the Northwest Territories' population, and the effect of population on government revenues, remain speculative at this point. The negative predictions outlined in the Conference Board of Canada report are subject to possible offset by increases in mining or other activity.

[73] The Commission's mandate is to recommend judges' salaries for the next four years, and to this end forecasts and predictions which extend beyond four years are less relevant than evidence regarding the more immediate economic timeframe. Conditions which prevailed at the time of the Commission's proceedings support judges receiving incomes consistent with those at the top of public and private sector incomes.

Any Other Factors:

[74] The Commission has considered the need to support judicial independence, in applying all other factors.

[75] Judges should be secure with respect to salary, and this includes security from unjustified erosion of salary. The Northwest Territories is not yet in economic circumstances where there is a burden of hard times which judges must share.

[76] The Territorial Court has attracted quality candidates in the past, and in order to continue doing so, salaries should be maintained at a high level with appropriate adjustments reflective of changes to CPI.

Conclusions:

[77] The Commission accepts that territorial judges' salaries should be in the top quartile nationally, but not necessarily at the top of the quartile. Based on the consideration of factors outlined above, this can be achieved through adjustments reflecting CPI increases for each of the next four years. In addition, it is reasonable to protect territorial judges' salaries from reduction in the event CPI decreases in coming years, since it cannot be assumed CPI changes will at all times be positive.

[78] There is no need for an additional increase in the first year, as the judges propose, since there is no increase required to raise salaries from a lower quartile to the top. There is likewise no supportable rationale for recommending increases less than CPI, as the Minister has proposed. This would have the effect of eroding judges' real earnings over the next four years.

[79] The Commission recommends that territorial judges receive an adjustment equal to the average percentage increase in CPI for Yellowknife over the preceding calendar year, ending December 31, for each of 2020/21, 2021/22, 2022/23, and 2023/24.

[80] The Commission recommends, as a means of protecting salaries from erosion, that territorial judges' average percentage adjustments be no less than zero, in the event of negative average percentage changes in CPI for Yellowknife over the preceding calendar year, ending December 31, for any of 2020/21, 2021/22, 2022/23 or 2023/24.

[81] The Chief Judge receives an additional differential of \$15,000 per year, and as there is no request for an increase and no suggestion the Minister plans to withdraw this component, a recommendation to continue the differential would be redundant.

Long Term Disability (LTD):

[82] The issue presented to the Commission on LTD is whether to recommend the extension of LTD benefits to the age at which judges are normally obliged to start receiving pension.

[83] The background information relevant to this issue is as follows:

- The GNWT insures for long-term disability benefits for each judge through Great-West Life (now Canada Life).
- Long-term disability benefits are also provided for under the judges' Supplemental Pension Plan Regulations.
- According to this regulation, disabled judges receive a monthly benefit equal to 70% of a judges' salary but must retire and commence receipt of pension at age 65. A disabled judge must retire at age 65.
- In 2005, section 11 of the *Territorial Court Act* was amended to provide that judges must cease holding office at age 75, up from age 65, unless they resign earlier voluntarily.
- Nonetheless, the judges' Supplemental Pension Plan Regulations provide that judges accrue pension only to age 69 and receipt of pension must commence in the month after the judge reaches age 69.
- There have not been any territorial judges who have gone on LTD.
- The Commission received information that seven judges have retired from the Territorial Court, with retirement ages ranging from 57 to 66, with one judge having retired over the age of 65.

[84] In summary, judges must no longer retire at age 65. If they continue to work until they are required to start receiving pension, a month after reaching age 69, there is currently no LTD coverage for the period between ages 65 and 69.

Judges' Submissions:

[85] The following is a summary of the judge's submissions in support of extending LTD to age 69:

- LTD benefits should be provided up to age 69, the age for mandatory receipt of pension under section 3(1) of the judges' Supplemental Pension Plan Regulations.
- This would give all judges on the bench the same opportunity to accrue judicial service up to age 69.
- The current provisions create a disadvantage for a judge who suffers an illness or significant injury as he or she approaches age 65.
- The judge may have had no intention of retiring and could recover from the disabling condition after reaching age 65 and be able to return to work up to age 75.
- But for being disabled at the time they reach age 65, the judge would have accrued further pensionable service up to age 69.
- Because the judge happens to be on disability at the time the judge reaches age 65, the judge is obliged to retire for pension purposes and commence receipt of pension.
- The extension of the availability of long-term disability benefits to age 69 would ensure equality of treatment for all judges regardless of disability.

- In Yukon, LTD benefits are available until age 65, retirement, resignation or death, with a mandatory retirement age of 75. This availability of LTD benefits is the same as in the Northwest Territories.
- In Saskatchewan, LTD benefits are available until 65, retirement, resignation or death. The mandatory retirement age is 65, with one-year extensions available to age 70.
- In British Columbia, Alberta and Ontario LTD benefits are available until the earlier of retirement, resignation or death. Retirement age varies from province to province.
- In Newfoundland and Labrador, the 2017-2021 Newfoundland and Labrador Salary and Benefits Tribunal recommended that long-term disability benefits should be available until retirement. The Government had not responded to the recommendation as of the date of submissions.

Minister's Submissions:

[86] The following is a summary of the Minister's submissions in support of maintaining the status quo:

- There is nothing inherently illogical or offensive about the current recommendation and regulations requiring a judge on LTD to retire at age 65.
- The change requested by the judges would increase the GNWT's risk exposure stemming from the limited insurance policies it can obtain for the judges.
- The LTD benefit for judges that is currently in place costs the GNWT money but, more importantly, exposes the GNWT to considerable risk.
- Because the judges are a very small group, the GNWT is not able to insure them for LTD as a group. Instead, the GNWT must try to obtain individual policies for each judge to defray its LTD risk.
- These policies have limitations, and any portion of the LTD benefit that is not covered by the insurance policy is self-insured by the GNWT. If a judge does not qualify for an individual policy, the GNWT is required to assume 100% of the LTD risk.
- The change requested by the judges could result in a judge being on LTD for a further four years, all the while accumulating pensionable service and being paid 70% of his or her salary.
- At the 2019/20 salary, this would result in an additional cost of \$840,000, which does not include the pension contributions and top-ups and other expenses that would result from four further years of LTD.
- The changes the judges have requested would also introduce considerable extra uncertainty to important planning decisions.
- In the event this situation arises, there will be important questions to be answered, for example:
 - Is the judge on LTD likely to return?
 - Should another judge be appointed to the bench?
 - What happens if the judge on LTD wants to return to active service if a new judge has been appointed?
- While these questions could arise under the present regime, the eligibility for an additional four years of LTD adds further risk and uncertainty.

Reasons for Decision – Long Term Disability (LTD):

[87] In determining this issue, the Commission is again required to consider the factors outlined in section 12.9 of the *Territorial Court Act*. The Commission must make its own independent assessment of these factors, based on the evidence and argument presented.

[88] The Commission accepts the fundamental premise that LTD benefits should be made available to judges for as long as they are eligible to work before receiving pension. The judges' proposal makes sense as a housekeeping measure to parallel benefits with the working tenure of judges, which was extended from 65 to 75 with amendments to section 11 of the *Territorial Court Act* in 2005.

[89] There may be a risk of increased costs associated with this proposal, but the Minister has not established those risks are cost prohibitive. The history of the territorial judges indicates that LTD has not been used, and that judges have typically retired earlier than 65. The risk of judges going on LTD for extended periods is not something that past circumstances suggests is highly probable.

[90] The risks identified by the Minister are also not contingent on LTD benefits being extended to age 69. There is already a risk that the GNWT will be liable for high self-insured costs if any of the current judges were to go on disability. This is an inevitable function of the small size of bench, and the GNWT may have to bear that risk if it is unable to obtain group policies. The Minister has not established that increasing eligibility from 65 to 69 will greatly increase this risk.

[91] Finally, the Minister has depicted a worst-case scenario to provide an example of the risks associated with a judge going on LTD for an extended period. While a return to work may not always be feasible for a judge on LTD, there are many scenarios where there may be opportunities for resumption of duties, with or without modified work arrangements. The GNWT's risk is also mitigated by the small size of the bench, since the number of potential claims is limited.

[92] The Commission does not propose to speculate on the effect of a judge taking LTD on the need for judicial appointments. There are many variables which will go into determining how many judges the Territorial Court needs, and need will vary from time to time depending on caseloads and other factors. The Territorial Court already manages workload through use of regular and deputy judges. Scenarios involving a judge going on LTD can be managed as circumstances present themselves.

Conclusion:

[93] The Commission supports making LTD benefits available to judges up to the age at which they start receiving pension, as opposed to ceasing at age 65. This will achieve consistency in pay and benefits for all judges of working age who have not yet attained the age of receiving mandatory pension.

[94] The Commission recommends that, effective April 1, 2020, long-term disability benefits should be made available to judges until the earlier of resignation, death, or attaining the age for mandatory receipt of pension, at age 69.

Continuing Professional Development (CPD):

[95] The Minister introduced the issue of addressing CPD, by requesting the Commission recommend either a professional development allowance for each judge, or a global fund for the Territorial Court as a whole.

[96] At the public hearing on January 13, 2020, the Minister clarified that its proposal is intended to encompass French language training which judges have been regularly receiving over the years. The Commission requested information as to actual amounts spent on judges' CPD, including French language training. The parties were given an opportunity to address this information through further written submissions.

[97] The judges maintain there should be no monetary limit on CPD, but they are not opposed to establishing parameters around the number of training opportunities that should be funded. With respect to French language training, the judges have proposed the GNWT fund specific programs plus private tutoring sessions for judges.

[98] In response to the Commission's request during the hearing, the Minister provided a table indicating judges' CPD actual expenses since 2010/11. The table indicates that expenses for French language training and travel have exceeded expenses for all other forms of conferences and training since 2013/14.¹⁶

[99] With respect to specific French language programming, the Commission has received the following information, which does not appear to be in dispute:

- There is a French Language Program available to judges, operated by the Commissioner for Federal Judicial Affairs Canada, with two sessions a year held in Quebec.
- There is also a French Language Training Program for provincial and territorial judges, with two sessions a year held in New Brunswick.
- Some jurisdictions have accessed federal funding for judges to attend these programs.
- The Minister has applied for federal funding, but at this point, has not received a response.

Minister's Submissions:

[100] The following is a summary of the Minister's submissions in support of introducing limits to judges' CPD expenses:

- The Minister supports the judiciary's ongoing education, so that judges may stay abreast of developments in the law, as well as shifts in social and cultural contexts.
- Judges' conference and training costs have increased significantly over the years.
- In difficult economic times and given that less than one thousand dollars is spent annually on conferences and training for the average GNWT employee, there is pressure on the Department of Justice to manage judge's CPD expenses more effectively and efficiently.
- Saskatchewan has an annual professional allowance of \$4,000 per judge.
- Manitoba has a global fund of \$40,000 per year.

¹⁶ Territorial Court Judges – Conference / Training Expense Summary, submitted January 16, 2020

- Ontario allocates \$3,750. per judge as an annual professional allowance.
- Alberta has an annual professional allowance of \$4,000 per judge.
- Recognizing that travel costs from the north are higher, and that local professional development opportunities are less frequently available, the Minister proposes a CPD allowance of \$5,000 to \$7,500. Alternatively, the Minister proposes a global fund of \$20,000 to \$30,000.

[101] At the hearing, the Minister submitted that judges cannot realistically expect to become proficient enough to conduct a trial in a second language. Language training should be included in the CPD allowance or global fund to ensure overall expenses are reasonably maintained.

[102] In response the judges' submissions on French language training, the Minister expressed agreement to providing funding for judges to attend two of the four annual sessions identified by the judges, on the following conditions:

- Costs will be paid from federal funding, if available.
- Additional costs will be paid from the CPD fund.
- All costs will be paid from the CPD fund, if federal funding is not available.
- Training from private tutors that is approved by the Chief Judge will be paid from the CPD fund.

Judges' Submissions:

[103] The following is a summary of the judges' submissions regarding funding for CPD:

- The Territorial Court is a small bench of only four judges. Judges deal with complex issues in relative isolation and this is particularly so when they are on circuit.
- It is in the public interest to ensure that CPD relevant to the work of the Territorial Court is encouraged through appropriate funding, in order to ensure the ability to provide a high quality of justice.
- The Canadian Association of Provincial Court Judges ("CAPCJ") adopted a resolution in 2013 that aspires to all judges receiving at least 10 days per year of judicial education.
- In most jurisdictions, this is achieved through the delivery of in-house programs for as many as six days per year, and attendance at judicial or legal conferences for the balance.
- Given the small Bench in the NWT, in-house programs are not a feasible alternative, and the result is that most NWT judges likely receive less than 10 days per year of judicial education.
- In addition to pursuing purely educational opportunities, the Chief Judge is a member of the Canadian Council of Chief Judges ("CCCJ"), which meets twice annually.
- Another territorial judge serves as a director of the CAPCJ. The CAPCJ directors meet in person twice annually, including at one meeting held in conjunction with CAPCJ's annual educational conference.
- Participation in the work of CCCJ and CAPCJ is invaluable to the Territorial Court as a whole, and the public served by the judiciary. From the judges' perspective, their involvement in the work of the CCCJ and CAPCJ is particularly important for judges from a remote jurisdiction like the NWT, as it gives them access to expertise and experience from across Canada.

- The Territorial Court is unable to benefit from the economies of scale created by the provision of in-house judicial education in the larger jurisdictions, so most provinces are not useful comparators for the NWT.
- In Manitoba, the \$40,000 annual education budget is provided to the Manitoba Provincial Court to offer in-house education for its 41 member judges. This approach is not a feasible option for a court the size of the Territorial Court of the Northwest Territories.
- Manitoba judges are also each provided with a further education allowance budget equal to \$3,000 per judge, for a total of \$123,000 based on 41 judges.
- Manitoba judges also receive a professional allowance in the amount of \$2,000 per year.
- In Alberta, there are two three-day Bench meetings each year funded by the Government of Alberta, the main portions of which involve high-quality judicial education. In addition to the Alberta Provincial Court's education budget, each judge receives a professional allowance of \$4,500 per annum.
- Similar arrangements are in place in British Columbia and Ontario.
- Yukon and Prince Edward Island each have three full-time judges and, as such, their courts are closest in size to the Territorial Court of the Northwest Territories.
- Also, like their colleagues from the Northwest Territories, Prince Edward Island and Yukon judges incur significant expense in travelling to pursue judicial education.
- The Government of Yukon funds judicial education approved by the Chief Judge in accordance with established court policy. In addition, judges receive a professional allowance of \$5,000.
- Members of the Provincial Court of Prince Edward Island participate in the annual Atlantic judges' Education Conference. This is arranged in coordination with judges from the provincial courts of Newfoundland and Labrador, Nova Scotia and New Brunswick, to create efficiencies in the delivery of judicial education.
- In addition, the Government of Prince Edward Island pays for judges' attendance and participation in judicial education approved by the Chief Judge.
- The determination of what judicial education is appropriate and necessary for members of the Territorial Court is an essential component of the administrative independence of the judiciary.
- Accordingly, the power to approve attendance at professional development events must remain within the control of the Chief Judge, in accordance with court policy.

[104] The judges submit they are not opposed to establishing parameters around the funding available for judicial education on the following basis:

- (a) funding should be provided for judges to attend up to two judicial education conferences per year; and, in addition,
- (b) a judge serving as a director and/or committee member of CAPCJ should be permitted to attend additional meetings of that organization, as necessary to fulfill their mandate; and
- (c) the Chief Judge's participation in meetings of the CCCJ should also be funded.

[105] With respect to French language training, the judges submit it should be considered separate and apart from judicial education generally, on the basis the public interest demands that members of the Territorial Court are equipped to conduct court proceedings in French.

[106] The following a summary of the judges' further submissions on French language training, delivered after the hearing and in response to the Minister's submissions at the hearing:

- The *Criminal Code* provides that an accused can have a trial in either of the two official languages.
- This means that there will be francophones in Territorial Court who will go through the process from first appearance to trial.
- Although judicial steps prior to trial can be dealt with through an interpreter, the court does not always know that a person will be speaking French and an interpreter is not always immediately available.
- There is an advantage to the judicial system if the judge can deal with these preliminary steps in French, in a small jurisdiction with only four judges.
- The territorial judge should not have to make a choice between French language training and professional development in other substantive or procedural areas of the law.
- This is recognized by the CAPCJ, which has adopted as a guideline, the need for each provincial or territorial judge to have 10 days of training in substantive or procedural law. This minimum requirement is in addition to any language training which should be made available to the judge.
- Both Yukon and Prince Edward Island provide certain separate funding for French language training, beyond that provided for substantive judicial education.
- The Provincial Court in Prince Edward Island receives funding from the federal Government for up to \$25,000 toward French language training for judges.
- In addition, up to \$3,200 in funding is provided for judges' travel to access language training. Any additional costs are paid by Prince Edward Island.
- Similarly, Yukon territorial judges receive funding from the federal government which covers the expenses of two Yukon judges attending training in New Brunswick twice per year.
- Supreme Court judges in the Northwest Territories are entitled to have a private tutor and to attend the Quebec sessions. This is outside of other entitlements to professional allowance.

[107] The judges' proposal on language training is that the GNWT fund all amounts not covered by the federal government, for the following French language training for anglophone judges:

- (a) Private tutor, for 90-minute sessions twice per week; and
- (b) Attendance by the judges, each year, at any two of:
 - i) the French Language Program offered in Quebec; or
 - ii) the French Language Training Program offered in New Brunswick.

[108] The judges also propose that the GNWT should fund francophone judges for any expenses not covered by the federal government to attend training for French-speaking judges working in an English environment, offered in Quebec City.

Reasons for Decision – Continuing Professional Development (CPD):

[109] Section 5.1 of the *Territorial Court Act* provides that the Chief Judge may, in consultation with other territorial judges, establish and implement a plan for continuing education of territorial judges. The existence of this provision, in legislation, implies that the Chief Judge will be provided with an operational budget to put such a plan into effect.

[110] Section 12.4 of the *Territorial Court Act* mandates the Commission to conduct an inquiry with respect to salaries, pension, sick leave and other benefits provided to territorial judges. The provision does not specifically mention allowances for CPD, but this could be considered among the “other benefits” provided to territorial judges.

[111] The Commission is reluctant to make recommendations with respect to specific elements of a CPD plan, since this is within the purview of the Chief Judge. The budget for establishing and implementing the plan should be left to discussions between the Chief Judge and the Department of Justice, comparable to other budget items essential to maintaining the court, such as equipment and supply costs.

[112] There may still be some scope, however, for the Commission to consider recommendations to provide CPD allowances as “other benefits” provided to territorial judges. This approach recognizes the hybrid nature of CPD, in that it can be pursued as required under a plan pursuant to legislation, or as a professional pursuit made available as a benefit.

[113] The issue has been presented in a way that does not reflect this distinction. The Minister proposed amounts, either for individual allowances or a global fund, are far below the actual expenses incurred by the GNWT since 2010. If French language training expenses (including travel and contract expenses) are removed, the Minister’s proposed numbers are closer to actuals. However, the Minister is proposing to have the Commission recommend numbers which incorporate both language training and other forms of CPD.

[114] If French language training had nothing more than marginal benefit, there could be some rationalization for including it within the numbers presented. The Commission, however, accepts the reasons judges have offered in support of French language training. While it may be highly unlikely that a unilingual anglophone judge will become sufficiently proficient to conduct a trial in French, that is not standard.

[115] Individuals coming before the Territorial Court have a right to a trial in French. It is reasonable to expect territorial judges seek out training to at least have the proficiency to communicate information to any individual appearing before them. Minimal or functional proficiency may fall short of fluency, but it is preferable to zero competency in the second language. There is value to the administration of justice in training judges to some level of proficiency in French.

[116] The Commission is nonetheless reluctant to address French language training as proposed by either of the parties. The judges’ proposal is to recommend the GNWT fund private tutors as well as the specific programs designed specifically for judges. The Minister accepts this proposal, provided funds beyond those paid from federal funding come out of the proposed CPD fund. Both proposals presume the Commission is prepared to accept a role in accepting the programs as the basis for a funding recommendation.

[117] If the Commission were to recommend funding for specific programs, it could be straying into areas more properly belonging within the purview of the Chief Judge. This applies to specific French language courses. It also applies to the judges' suggestion that the Commission specifically fund participation in CAPCJ and the CCCJ. The Commission does not see its role as recommending specific opportunities or meetings, or the number of courses a judge can take, as a means of rationalizing the undetermined cost of those items.

[118] The Commission would be more inclined to consider recommending amounts for CPD, in the form of individual allowance or a global fund as proposed by the Minister. However, this recommendation would have to be based on complete information and made with due consideration of section 5.1. In this case, the Commission is presented with neither. There is no indication as to whether specified training items are currently budgeted or implemented under section 5.1, as opposed to qualifying as "other benefits" for the Commission to consider under section 12.4. Without this information, it is impossible to fix amounts for a CPD fund or allowances.

[119] There is also no indication as to why the GNWT is not receiving federal funding for French language training for judges. This appears to be a funding source which other small jurisdictions have been able access. If any pending application for federal money is successful, the Minister's concerns regarding CPD costs may be addressed. Again, without knowing whether federal money is available, the Commission cannot reasonably fix amounts for a CPD fund or allowances.

[120] The information from other jurisdictions is not entirely clear, but it seems to suggest there are two types of funding for judicial CPD. There is funding for core training, which sometimes includes in-house or regional conferences. Then there are additional allowances for individual judges. If this is how funding is delineated elsewhere, the relevance of the distinction should be outlined in submissions to any future Commission dealing with this issue.

[121] Based on the information presented, the Commission recognizes judges have CPD requirements which exceed those of the average GNWT employee, as indicated by hours recommended by the CAPCJ. Judges also pursue French language training specific to their function. Total expenses for CPD have remained consistent within a range since 2014-15. There is no suggestion the status quo will not continue if the Commission does not make a recommendation.

Conclusion:

[122] The Commission is not persuaded that CPD is appropriately deemed a benefit to be provided directly to individual judges, and indeed CPD has not been addressed as a benefit by previous Commissions to date. Either party may revisit this issue with future Commissions, to the extent Commissions have the authority to address CPD as "other benefits" under section 12.4 of the *Territorial Court Act*.

Extended Health Benefits:

[123] The Minister introduced the issue of extended health benefits for current and retired judges in this inquiry. In the case of current judges, extended health benefits are provided through Alberta Blue Cross. In the case of retired judges and their spouses, extended health benefits are provided through a plan administered by Green Shield Canada.

[124] The Minister asks the Commission to recommend direction on what benefits to provide to current and retired judges respectively. Specifically, the Minister asks the Commission to approve the Alberta Blue Cross plan for current judges, and the Green Shield Canada plan for retired judges and their surviving spouses.

[125] The territorial judges and retired Judge Brian Bruser both asked the Commission to table the issue of extended health benefits for future consideration.

[126] Retired Judge Bruser did not attend the hearing on January 13, 2020. He did, however, present written submissions to the Commission as an interested person on behalf of himself and his spouse, Deborah Bruser.

[127] Retired Judge Bruser claims entitlement to disclosure of efforts by the GNWT to obtain benefits equivalent to those of Deputy Ministers under the Public Service Health Care Plan (PHSCP), as recommended by the 2004 Commission.¹⁷ He asks the Commission to appoint its own actuary to assess the extended health benefits issue. If the current plans are approved, he asks that retired judges be grandfathered to maintain entitlement to benefits as recommended in the past. Retired Judge Bruser takes the position that the GNWT has not fulfilled its commitments on this issue.

[128] At the hearing, territorial judges' counsel indicated other retired judges may have an interest and should have a chance to weigh in on this issue. Counsel for the Minister agreed and proposed a meeting with current and retired judges to provide an overview and explanation of benefits.

[129] On February 6, 2020, the Commission notified the parties the issue was tabled with reasons to follow. The Commission's reasons, as outlined below, do not require a review of the particulars of the Alberta Blue Cross and Green Shield Canada plans, or consideration of submissions advanced after the hearing on January 13, 2020.

¹⁷ Joint Book of Documents, Tab 6: 2004 Report of the Northwest Territories Judicial Remuneration Commission, at p. 17.

Reasons for Decision – Extended Health Benefits:

[130] The Commission is not prepared to address judges' extended health benefits in its current report. The hearing ended with counsel for the judges and counsel for the Minister agreeing to discuss the matter further, with the participation of retired judges. The Commission encouraged this discussion.

[131] The Commission relies on counsel to frame the issues that it needs to decide. The Commission's proceedings take place within statutory timeframes, such that parties can anticipate hearings on a regular four-year cycle. There should be time for counsel to clearly identify issues for the Commission to decide, and present evidence the Commission can use to base its recommendations.

[132] In this case, it is not entirely clear what the parties are seeking in terms of the Commission's scope of inquiry when it comes to extended health benefits.

[133] The Minister is obviously seeking certainty when it asks the Commission to recommend approval of Alberta Blue Cross for current judges and Green Shield Canada for retired judges. Setting specific policies would resolve ongoing differences as to whether current policies achieve the equivalency with benefits provided to Deputy Ministers under the PHSCP, as recommended by the 2004 Commission.

[134] Retired Judge Bruser appears to be seeking a broader inquiry, to address the perceived failure of the GNWT to fulfill this recommendation. He submits the Minister must disclose efforts to obtain equivalent plans since 2004, which might be appropriate if the Commission were adjudicating appropriateness the Minister's efforts to implement past recommendations. He suggests the Commission retain an independent actuary, for an open-ended inquiry into appropriate benefits.

[135] The current judges' position on the substantive issues is undefined. This is understandable if current judges, who are in a different plan than retired judges, have not identified the same questions or concerns as retired Judge Bruser. It does, however, make it difficult for the Commission to contemplate the issue in a way that is conducive to issuing a forward-looking recommendation applicable to all territorial judges.

[136] The Commission cannot proceed without better definition of the issues. The Commission typically hears evidence and argument from the Minister, territorial judges or their representative, and any other interested person or body. The Commission then issues prospective, forward-looking, recommendations to establish salary and benefits for all territorial judges. It does not adjudicate or engage in dispute resolution over the implementation of past Commission recommendations or initiate its own inquiry into appropriate benefits.

[137] The Commission also requires greater clarity as to standing and representation. Normally, the Commission receives an initial submission from the Minister and another from the territorial judges. The *Territorial Court Act* defines "territorial judges" to generally include deputy territorial judges. The Commission understands most retired judges serve as deputy territorial judges. In these proceedings, judges' counsel appeared for current judges and retired Judge Bruser made separate submissions as an interested person.

[138] If the Commission is to address extended health benefits, judges' counsel should be able to clearly indicate whether they represent all territorial judges, including retired or deputy territorial judges. All parties should be prepared to indicate whether retired judges have standing to advance individual positions on salaries and benefits, as interested persons under subsection 12.7(c) of the *Territorial Court Act*.

[139] The Commission, finally, may not be able to address extended health benefits without a clearer distinction between evidence from argument. In this inquiry, the Minister's initial submission generated responses from territorial judges, as well as from retired Judge Bruser. The Commission was provided information about the contents of the Alberta Blue Cross and Green Shield Canada plans, inextricably mixed with position statements and argument as to whether the extended health benefits achieve equivalency with benefits provided to Deputy Ministers under the PSHCP.

[140] Within the timeframes mandated for the hearing of this inquiry, the Commission could not meaningfully consider everything advanced by the Minister, the territorial judges and retired Judge Bruser. The exchange between the parties, as it unfolded before and after the hearing, did not sufficiently frame the case. It did not clearly establish the issues to be decided or enable the Commission to assess what information is relevant and reliable for its deliberations. The Commission's strict statutory timelines require parties to anticipate issues, provide notice to interested persons, and prepare their evidence well in advance of the hearing of an inquiry.

Conclusions:

[141] The Commission concludes it is premature to consider a recommendation to approve existing plans, or to direct what benefits the Minister should provide, or to retain its own actuary. Discussions between the Minister and the territorial judges clearly need to happen, not to negotiate extended health benefits, as this would be fundamentally at odds with judicial independence,¹⁸ but at least to ensure the effective sharing of information about the plans.

[142] The Commission accepts the notion that all retired territorial judges should have notice that extended health benefits have been raised as an issue in these proceedings. The Commission itself has no vested interest in the issue, and so leaves it to the Minister and the Chief Judge to ensure retired territorial judges have notice of any opportunities to meet with government officials to discuss questions about their extended health benefits.

[143] In the circumstances, there was no reasonable prospect of the Commission addressing extended health benefits in the current report, given the manner and timing in which the issue was presented. The Commission's regular mandate ends upon completion of this report, so the issue is tabled indefinitely. The Minister or the Chief Judge may request a separate inquiry at any time between the submission of this report and the next Commission.¹⁹ Otherwise, the next opportunity to frame the issue will be with next Commission.

¹⁸ Joint Book of Documents, Tab 12: PEI Reference, at para. 8

¹⁹ *Territorial Court Act*, R.S.N.W.T. 1988, c. T-2, section 12.92

Summary of Conclusions:

[144] Territorial judges' salaries should remain in the top quartile nationally. This can be achieved through adjustments equal to CPI increases for each of the next four years. In addition, territorial judges' salaries are to be protected from erosion in the event of any CPI decreases.

[145] Territorial judges should also be eligible for LTD benefits until the earlier of resignation, death or retirement. This includes all judges of working age who have not yet attained the age of receiving mandatory pension.

[146] The Commission therefore has recommendations with respect to salary and LTD, as outlined in the Summary of Recommendations below.

[147] With respect to CPD, the Commission does not have grounds to change the existing approach. Either party may revisit this issue in future, to the extent Commissions have the authority to address CPD under section 12.5 of the *Territorial Court Act*.

[148] It is premature to consider a recommendation on extended health benefits. The Commission has encouraged discussion, with participation of retired judges, and continues to encourage that discussion.

[149] Section 12.92 of the *Territorial Court Act* provides a mechanism which allows the Minister or the Chief Judge to request inquiry to address extended health benefits at any time between the submission of this report and the next Commission.²⁰

[150] This mechanism is also available to the Minister or the Chief Judge to request an inquiry into any of the issues outlined in this report, due to any unforeseen implications of the COVID-19 pandemic on the factors that go into determining territorial judges' salaries and benefits.

²⁰ *Territorial Court Act*, R.S.N.W.T. 1988, c. T-2, section 12.92

Summary of Recommendations:

[151] The following is a summary of the Commission's recommendations:

1. The Minister will adjust territorial judges' salaries by an amount equal to the average percentage increase in CPI for Yellowknife over the preceding calendar year, ending December 31, for each of 2020/21, 2021/22, 2022/23 and 2023/24.
2. The Minister will not reduce territorial judges' salaries in the event of negative average percentage increases in CPI for Yellowknife over the preceding calendar year, ending December 31, for any of 2020/21, 2021/22, 2022/23 or 2023/24.
3. The Minister will make long-term disability benefits available to judges until the earlier resignation, death, or attaining the age for mandatory receipt of pension, at age 69, effective April 1, 2020.

Dated this 30th day of March 2020 at the City of Yellowknife Northwest Territories.

"David Gilday"

"Gerald Avery"

"Peter Vician"

David Gilday

Gerald Avery

Peter Vician

Puisne Judges Salaries Across Canada from 2012, as at September 2024															
Jurisdiction	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
Federal [1]	288,100	295,500	300,800	308,600	314,100	315,300	321,600	329,900	338,800	361,100	372,200	383,700	396,700 & 2024 JCC	IAI & 2024 JCC	IAI & 2024 JCC
British Columbia [2]	231,138	242,464	244,889	248,562	252,290	262,000	266,000	270,000	276,000	282,500	288,000	343,000	360,000	CPI	2026 JCC
Alberta [3]	263,731	273,000	279,825	286,821	293,991	293,392	302,304	309,500	318,500	321,685	328,119	337,963	348,102	2025 JCC	2025 JCC
Saskatchewan [4]	248,010	254,458	260,819	272,295	282,184	290,848	295,792	304,074	312,286	316,970	343,045	353,590	364,515	376,865	95% of 2025 federal
Manitoba [5]	224,104	230,155	239,000	249,277	254,263	259,000	265,475	272,908	280,500	292,001	301,345	327,000	341,715	AWE for MB	2026 JCC
Ontario[6]	267,355	274,574	279,791	287,345	290,793	292,829	300,600	310,337	320,742	344,020	350,212	361,000	IAI & next JCC	IAI & next JCC	IAI & next JCC
Québec [7] (from July 1 to June 30)	230,723	236,722	238,379	241,955	250,000	251,500	254,518	263,000	277,900	293,500	310,000	2023 JCC	2023 JCC	2023 JCC	2026 JCC
New Brunswick [8]	204,700	204,700	204,700	246,880	251280	252240	257,280	263,920	271,040	288,880	297,760	306,960	next JRC	next JRC	next JRC
Nova Scotia [9]	216,183	222,993	231,500	234,509	236,151	249,021	251,875	257,472	269,198	270,890	283,076	306,960	317,360	80% federal salary	2026 JCC
Prince Edward Island [10]	235,080	239,472	243,538	250,050	258,734	263,685	271,832	276,677	279,699	285,134	302,010	324,245	national average	national average	national average
Newfoundland & Labrador [11]	215,732	222,204	228,870	238,025	247,546	247546	247546	251507	260,561	273,315	277,377	Maritime Average	Maritime Average	Maritime Average	Maritime Average
Northwest Territories [12]	249,582	252,414	256,055	260,302	272,000	278,828	289,733	299,869	304,699	304,918	311,724	333,456	350,129	365,885	CPI for Yellowknife
Yukon [13]	250,103	257,606	262,758	268,013	273,373	280,208	287,213	298,702	304,676	307,722	2022 JCC	2022 JCC	2022 JCC	2025 JCC	2025 JCC

Puisne Judges Salaries Across Canada
from 2012, as at September 2024

All Salaries run from April 1 to March 31 in each fiscal year, except as noted for Quebec.

[1] The next federal commission will be appointed in 2024. The last federal commission recommended that annual adjustments based on IAI should continue for federally appointed judges, pursuant to section 25 of the *Judges' Act*.

[2] The 2019 JCC recommended salaries of \$287,000, \$297,000 and \$307,000 for the three years commencing April 1, 2020. The BC Government substituted the salaries shown in the chart. A judicial review was filed and the Government's response was quashed, but this decision was overturned on appeal. The deadline for seeking leave to appeal to the SCC is September 23, 2024. The 2022 BC JCC issued its report on April 28, 2023. The salary recommended for 2025/26 is the 2024/25 salary plus a percentage increase equivalent to the annual average percentage change in BC CPI for 2024. The BC Government accepted the recommendations.

[3] The 2021 Alberta JCC provided its Report on June 15, 2023 and recommended the following salaries for the fiscal years 2021 and following: \$328,500; \$348,000; \$362,000; and \$372,500. On October 26, 2023, the LGIC responded and has substituted the salaries shown on the table. A judicial review has been filed and is scheduled to be heard in May 2025.

[4] The 2020 Saskatchewan JCC made recommendations for April 1, 2020 to March 31, 2023, and were accepted by Government in full. As of April 1, 2021 and continuing thereafter, Saskatchewan judges are paid 95% of the prior year's federal salary. The Saskatchewan Provincial Court Act was amended to provide that for each annual period commencing on or after April 1, 2024, there is a presumption that the salary is 95% of the prior year's federal salary, subject to certain extraordinary circumstances.

[5] The 2023 Manitoba JCC issued its report on November 21, 2022 with recommendations for the period April 1, 2023 to March 31, 2026. The recommendations were accepted by the Government of Manitoba.

[6] The 2014-2021 Ontario JCC has adopted the Joint Submission of the Government and the Ontario judges' association for the period commencing April 1, 2014 and following. Judicial salaries are adjusted annually based on the IAI up to the 2017 fiscal year. Effective April 1, 2018, the salary increased to 93.47% of the s.96 judges' salary, 94.07% effective April 1, 2019, 94.67% effective April 1, 2020, and 95.27% effective April 1, 2021. Another Ontario JCC is due to be appointed.

[7] The Quebec salaries are effective on July 1st of each year, not April 1st as in the other jurisdictions.

[8] The 2016 NB JRC's Report adopted the joint proposal of the Government and the Association for a salary of 80% of federal judicial salaries. The salary recommendations were accepted. The subsequent JRC recommended the continuation of the 80% relationship with the federal salary and the recommendations were accepted by the Government on April 11, 2023.

[9] Following 5 years of litigation over the salaries for the 2017-2022 fiscal years, the Government and the judges' association made a joint recommendation to the 2023 JCC for a salary equal to 80% of the federal salary. This was adopted by the JCC and implemented by Government.

[10] In PEI, successive commissions have recommended that PEI judges should be paid a salary equal to the national average. The salaries are determined by averaging the salaries actually paid in each jurisdiction except Nunavut. The calculation is usually finalized in the fall for the preceding April 1st.

[11] The most recent Tribunal's Report was issued on November 30, 2022, and made recommendations for the period April 1, 2021 to March 31, 2027. The recommendation was for an adjustment for 2021 and 2022 to the known Maritime Average, but that the salaries should be adjusted again once the salaries are finalized in each of the Maritime jurisdictions. Then, adjustments for each subsequent year of not less than CPI, with an eventual adjustment to the Maritime Average once the Maritime salaries are finalized. The Lieutenant Governor in Council varied the recommendations on January 27, 2023, such that the salaries in 2021/22 and 2022/23 apply as of July 1, rather than April 1, and the salaries for April 1, 2023 to March 31, 2027 will be the Maritime Average rather than the greater of the Maritime Average or CPI as of April 1 of that year. The Association filed an application for judicial review of the Government's response. A hearing has been scheduled for February 2025.

[12] The 2019 NWT JRC reported in April 2020. Its recommendations for CPI-based adjustments (based on the % change in the CPI for Yellowknife in the preceding calendar year) are binding.

[13] The 2022 Yukon JCC is underway.

O.C. 182/2023

October 26, 2023

The Lieutenant Governor in Council makes the Provincial Judges and Applications Judges Compensation Order in the attached Appendix.

For Information only

Recommended by: Minister of Justice

Authority: Provincial Judges and Applications Judges 2021 Compensation Commission
Regulation
(section 5.8)

APPENDIX

PROVINCIAL JUDGES AND APPLICATIONS JUDGES COMPENSATION ORDER

1. In this Order,

- (a) “2021 Commission” means the 2021 Alberta Judicial Compensation Commission established under the Regulation;
- (b) “2021 Commission Report” means the Report and Recommendations of the 2021 Alberta Judicial Compensation Commission, as amended July 5, 2023, that was prepared by the Commission pursuant to the Regulation;
- (c) “Government” means the Government of Alberta;
- (d) “Recommendations” means the recommendations of the 2021 Commission as set out in the 2021 Commission Report;
- (e) “Regulation” means the *Provincial Judges and Applications Judges 2021 Compensation Commission Regulation* (AR 65/2021);
- (f) “Schedule” means the Schedule to this Order.

2. Pursuant to section 5.8 of the Regulation, the Lieutenant Governor in Council hereby makes the following decisions:

- (a) to reject the recommendation that annual salaries for Justices of the Alberta Court of Justice and Applications Judges of the Court of King’s Bench be:

April 1, 2021 – March 31, 2022:	\$328,500
April 1, 2022 – March 31, 2023:	\$348,000
April 1, 2023 – March 31, 2024:	\$362,000
April 1, 2024 – March 31, 2025:	\$372,500
- (b) to set the annual salaries for Justices of the Alberta Court of Justice and Applications Judges of the Court of King’s Bench as:

April 1, 2021 – March 31, 2022:	\$321,685
April 1, 2022 – March 31, 2023:	\$328,119
April 1, 2023 – March 31, 2024:	\$337,963
April 1, 2024 – March 31, 2025:	\$348,102

3. The reasons of the Lieutenant Governor in Council for the decisions described in section 2 of this Order are set out in the Schedule.

Schedule

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Government response

Overview of the commission process

1. To meet the constitutional requirements of judicial independence, the Supreme Court of Canada has held that judicial compensation must be set through an independent, effective, and objective commission process.^[1] The 2021 Alberta Judicial Compensation Commission ["2021 Commission"] was established to conduct an inquiry and prepare a report of recommendations for the compensation of justices of the Alberta Court of Justice and applications judges of the Court of King's Bench of Alberta [collectively, "judges"] for the period of April 1, 2021, to March 31, 2025.^[2] The 2021 Commission's mandate is carried out in accordance with the following principles:
 - (a) the need for an independent, objective and effective process for determining judicial compensation;
 - (b) the need to present an objective and fair set of recommendations dictated by the public interest; and
 - (c) the constitutional guarantee of judicial independence.^[3]
2. The Supreme Court of Canada has highlighted the need to keep the public interest foremost in mind when approaching matters of judicial independence:

[I]t must be considered that the conditions of independence are intended to protect the interests of the public. Judicial independence serves not as an end in itself, but as a means to safeguard our constitutional order and to maintain public confidence in the administration of justice... The principle exists for the benefit of the judged, not the judges. If the conditions of independence are not "interpreted in light of the public interests they were intended to serve, there is a danger that their application will wind up hurting rather than enhancing public confidence in the courts."^[4]

3. Relevant public interest goals to the setting of judicial compensation include public confidence in the judiciary, maintenance of the rule of law, and fiscal responsibility.^[5] Ensuring public confidence in the judiciary requires both protecting the financial security of judges^[6] and for judges to “shoulder a fair share of the economic realities faced by all Albertans.”^[7]
4. In making its recommendations, the 2021 Commission was required to consider the following criteria:
 - (a) the constitutional law of Canada and the need to maintain the independence of justices and applications judges;
 - (b) the generally accepted current and expected economic conditions in Alberta, and the resulting impact on the price of labour in Alberta;
 - (c) the change in the cost of living in Alberta;
 - (d) the current and expected financial position of the Government over the fiscal years that are the subject of the recommendations;
 - (e) the level of increases or decreases, or both, provided to other programs and persons funded by the Government;
 - (f) the roles, duties and jurisdiction of justices and applications judges;
 - (g) compensation provided to justices and applications judges in other Canadian jurisdictions, having regard to the differences between those jurisdictions and Alberta, especially as they relate to differences in the matters referred to in criteria (b), (c) and (d) in respect of those other jurisdictions;
 - (h) the need to attract highly qualified applicants as justices and applications judges.^[8]
5. While a government may reject recommendations made by a judicial compensation commission, the Supreme Court of Canada has established a three-part test which any such rejection must pass:
 - (a) Has the government articulated a legitimate reason for departing from the commission’s recommendations?
 - (b) Do the government’s reasons rely upon a reasonable factual foundation?
 - (c) Viewed globally, has the commission process been respected and have the purposes of the commission — preserving judicial independence and depoliticizing the setting of judicial remuneration — been achieved?^[9]
6. This Schedule sets out the Government’s reasons for departing from the 2021 Commission’s recommendations and the factual foundation for those reasons.

Recommendations of the 2021 Commission

7. The 2021 Commission held hearings on February 1 and 2, 2023. Submissions were made by the Minister of Justice [“the Minister”] and the Alberta Provincial Justices’ Association [“the APJA”], among others. The only aspect of compensation at issue was salary.^[10] The annual judicial salary as of March 31, 2021, immediately prior to the start of the 2021 Commission’s mandate, was \$318,500. The Minister proposed a four-year cumulative salary increase of 5.3%. The APJA proposed setting Alberta judicial salaries at 96% of federal judicial salaries, which would have resulted in a four-year cumulative salary increase of approximately 19.9%.

8. The 2021 Commission presented its report of recommendations [“2021 Commission Report”] to the Minister and the APJA on July 5, 2023.^[11] The 2021 Commission has recommended the following salary increases:

Table 1: 2021 Commission recommendations

	April 1, 2021	April 1, 2022	April 1, 2023	April 1, 2024	Cumulative
Recommended salary	328,500	348,000	362,000	372,500	
Recommended increase	3.1%	5.9%	4.0%	2.9%	17.0%

9. In its analysis, the 2021 Commission concluded:^[12]
- (a) Three criteria do not support an increase:
 - the constitutional law of Canada and the need to maintain judicial independence (criterion (a))
 - the current and expected financial position of the Government (criterion (d))
 - level of increases or decreases for others funded by Government (criterion (e))
 - (b) The main drivers of the recommended increases are:
 - the current and expected economic conditions in Alberta (criterion (b)) and cost of living (criterion (c)): “... the economic conditions in Alberta are strong and lead the country in most metrics. Those economic conditions support an increase in salaries, but those increases should be somewhat tempered to avoid unduly sheltering judges from the impact of cost of living increases experienced by all Albertans.”^[13]
 - judicial salaries in other jurisdictions in Canada (criterion (g)): judicial salaries in Alberta should not be tied by a fixed percentage to federal judicial salaries, but the gap between them should not be too large, particularly considering the 92% to 94% range of the past ten years.^[14]
 - (c) The “principal concern” in relation to the two remaining criteria is the gap between federal and provincial judicial salaries:
 - roles, duties and jurisdiction (criterion (f)); and
 - the need to attract highly qualified applicants (criterion (h)).^[15]
10. The projected additional cost to the public purse of the recommended salary increases over the four years of the 2021 Commission’s mandate would be \$33.0 million.

Reasons for departure

11. Under the test developed by the Supreme Court of Canada, if a government departs from the recommendations of a judicial compensation commission, it must provide rational reasons based on a factual foundation.^[16] Those reasons and facts must justify a different weighing of the evidence from that adopted by the commission.^[17]

12. A government reviewing a judicial compensation commission's recommendations appropriately brings to bear its accumulated expertise and constitutional responsibility for management of the province's finances.^[18] At the same time, for the judicial compensation commission process to be effective, the Government must respond and give weight to the commission's recommendations and reasoning.^[19] This does not mean that the Government necessarily agrees with or adopts the commission's analysis. Within the unique constitutional confines of the judicial compensation commission process, the Government is bound to engage with the analysis of the report, subject to the rational reasons and factual foundations set out in the Government's response that justify departure, in order to give effect to the independence and objectivity of the process.
13. Within that context, the Government has determined that a departure from the 2021 Commission recommendations is justified for the following reasons:

- A. In light of Alberta's policy of significant fiscal restraint in compensation of individuals funded by Government, criterion (e) supports a tempering of the increase in judicial salaries (as opposed to simply not of itself supporting an increase, as concluded by the 2021 Commission).
- B. While the 2021 Commission found that consideration of changes in the cost of living supported an increase in judicial salaries, they also concluded judges should not be unduly sheltered from the effects of inflation as compared to Albertans generally. Contrary to that finding, the recommended judicial salary increases significantly exceed the cost of living, effectively more than sheltering the judges from the economic realities Albertans have had to face, thereby potentially jeopardizing public confidence in the judiciary.
- C. The 2021 Commission adopted Statistic's Canada's "Fixed weighted index of average hourly earnings" (FWI) as the appropriate metric for measuring the impact of economic changes on Albertans, but lacked any detailed evidence on that metric over the relevant years. The Government remains of the view that FWI is not the appropriate metric for this, but even considering the 2021 Commission's conclusion, the cumulative FWI increase of 11.6% is far lower than the recommended 17.0% increase in judicial salaries.
- D. The recommended increases do not place sufficient weight on the economic hardships caused by the pandemic and the subsequent period of recovery, which make 2021 and 2022 inappropriate years for large salary increases for those paid from the public purse.
- E. Less weight should be given to following the 2021 jump in federal judicial salaries, given that this was a result of indexing to Average Weekly Earnings (AWE), which spiked during the pandemic due to the temporary elimination of lower paying jobs from the workforce.

Reason A – Public sector compensation

A. In light of Alberta’s policy of significant fiscal restraint in compensation of individuals funded by Government, criterion (e) supports a tempering of the increase in judicial salaries (as opposed to simply not of itself supporting an increase, as concluded by the 2021 Commission).

14. Criterion (e) requires the 2021 Commission to consider the level of increases or decreases, or both, provided to other programs and persons funded by the Government.
15. Evidence provided in the 2021 Commission hearing showed that, historically, judges have received levels of compensation increases that far exceed the levels of increases provided to others funded by government.^[20] As a result, it would be highly improbable that this criterion would ever be the driving force behind a large increase in judicial salaries. Where a commission finds that the levels of increase provided to others during the relevant period are significantly less than the increases being contemplated for judicial officers, as was the case with the 2021 Commission, the only logical conclusion would be that this criterion supports a tempering of the increase in judicial salaries.
16. In the section of the 2021 Commission Report where this criterion is discussed, immediately after pointing out the APJA’s submissions that the level of increases provided to others funded by the Government must be seen as evidence of what the Government was willing to pay given political considerations, the 2021 Commission stated:

It reminds us of Chief Justice Lamer’s view that the use of public funds is inherently political, and the purpose of [judicial compensation commissions] is to act as an institutional sieve to depoliticize, to the greatest extent possible, the setting of judicial compensation.^[21]
17. Although, as the 2021 Commission pointed out, the Supreme Court of Canada has emphasized that the purpose of the judicial compensation commission process is to depoliticize the setting of judicial compensation, the Supreme Court of Canada has also made it clear that levels of compensation provided to others funded by Government are a relevant consideration for judicial compensation commissions, even going so far as to say:

Across-the-board measures which affect substantially every person who is paid from the public purse, in my opinion, are prima facie rational. For example, an across-the-board reduction in salaries that includes judge will typically be designed to effectuate the government’s overall fiscal priorities, and hence will usually be aimed at furthering some sort of larger public interest.^[22]
18. In the 2021 decision *Provincial Court Judges’ Association of British Columbia v British Columbia (Attorney General)*,^[23] the British Columbia Court of Appeal concluded that the government had legitimate reasons for arguing that the judicial compensation commission in that case had not given sufficient weight to a similar factor, “changes in the compensation of others paid by provincial funds in British Columbia”. The Court of Appeal took note of the fact that in their

report, the commission provided very little analysis of the factor and had expressed the view that because compensation changes to public sector employees are the result of political decisions, a comparison would risk politicizing the process of setting judicial compensation.

19. At the end of the discussion of this criterion, the 2021 Commission stated:

It is clear that Alberta's fiscal policy has been to exercise significant restraint with public-sector wages in the last few years. That of course is for the Government to determine taking into account the various political, fiscal policy and other considerations. In the case of judicial salaries, we must consider the levels of these payments, but we are not bound to mirror them. We must assess all of the criteria several of which are interrelated, and act as a "sieve" to depoliticize the setting of judicial compensation. On balance, we consider this criteria does not of itself justify judicial salary increases.^[24]

20. Despite the 2021 Commission's conclusion that the Alberta Government had implemented a fiscal policy of significant restraint with public-sector wages in the last few years, the 2021 Commission Report contains no transparent analysis of the relevant evidence provided.

21. In light of the above quotes from the 2021 Commission Report and the lack of analysis of the relevant evidence, it appears that, although the 2021 Commission concluded that the Alberta Government has exercised significant restraint in the last few years to public-sector wages, it is not apparent what weight, if any, they assigned to that finding. Instead, in referring to the political nature of public compensation and the need for the commission to depoliticize judicial compensation, the 2021 Commission acted in a similar fashion to the judicial compensation commission in the British Columbia Court of Appeal decision.

22. Having found that that the Alberta Government had implemented a fiscal policy of significant restraint with respect to increasing the levels of compensation provided to others funded by Government, the 2021 Commission should have concluded that this criterion supported a tempering of the judicial salary increases.

Reason B – Cost of living

B. While the 2021 Commission found that consideration of changes in the cost of living supported an increase in judicial salaries, they also concluded judges should not be unduly sheltered from the effects of inflation as compared to Albertans generally. Contrary to that finding, the recommended judicial salary increases significantly exceed the cost of living, effectively more than sheltering the judges from the economic realities Albertans have had to face, thereby potentially jeopardizing public confidence in the judiciary

23. Criterion (c) requires consideration of "the change in the cost of living in Alberta" when determining the appropriate compensation for judges. Although the Supreme Court of Canada left it to each jurisdiction to determine what to include in their list of criteria designed to ensure a commission's objectivity, included in the examples provided was "increases in the cost of living".^[25]

24. It is important for a judicial compensation commission to consider changes in the cost of living because it allows the commission to consider the effect that inflation changes have on the purchasing power of individuals over time. Generally speaking, increases in the cost of living result in a decline in real spending power.

25. The 2021 Commission stated that their obligation was “to weigh the important impact of inflation on judicial salaries, while recognizing that Justices should shoulder a fair share of the economic realities faced by all Albertans.”^[26] That statement signals agreement with the Minister’s arguments that:
- it would not be consistent with the public interest to entirely shield judges from the effect of high inflation; and
 - the principle of judicial independence does not require shielding judges from the effects of inflation, so long as their level of compensation remains above the guaranteed minimum that would create an impression of susceptibility due to economic manipulation.
26. Although cost of living is difficult to measure, the economic experts for both parties presented similar evidence regarding a common proxy metric, the Statistics Canada’s Consumer Price Index [“CPI”]. The Minister’s submissions cautioned that there are limitations to using changes in CPI as a proxy for changes in the cost of living which must be taken into consideration.^[27] Those limitations include the fact that CPI measures the change in cost of a fixed basket of goods rather than measuring price changes required to maintain a certain standard of living, as well as the fact that CPI increases have a significantly greater impact on low-income households compared to high-income households. As a result of these limitations, the impact of changes in CPI on the purchasing power of individuals varies to some degree. The lower an individual’s income level, the greater the negative impact of CPI increases on their purchasing power will be. The 2021 Commission accepted CPI as an appropriate way to measure changes in the cost of living for the purpose of making compensation recommendations, but also acknowledged that the limitations of CPI as a metric identified by the Minister should be kept in mind.^[28]
27. The 2021 Commission commented that both economic expert reports presented a similar picture of current and forecast changes in CPI in Alberta, described in the APJA’s expert’s report as a brief period of high inflation that will subsequently return to target levels (i.e., below 3%) by 2024, which will result in wages growing slower than inflation through 2025 and a potentially permanent and material reduction in the purchase power of individual incomes.^[29]
28. With regard to the percentage increases of CPI, the evidence showed the actual increases for the calendar years 2020 and 2021 as set out below. For the calendar years 2022, 2023, and 2024, there were some minor differences in the forecasts of the two economic experts, and the 2021 Commission cited the forecasts identified by the APJA’s expert, set out in the table below, for 2023 and 2024.^[30] Statistics Canada has since published the actual CPI numbers for the 2022 calendar year.^[31] The actual increase of 6.4% for 2022, given below, is not materially different than the forecasts in evidence before the 2021 Commission (6.7% by the APJA’s expert and 6.46% by the Minister’s expert).^[32]

Table 2: Percentage increase of CPI per calendar year

Calendar year	CPI increase
2020	1.1%
2021	3.2%
2022	6.4%
2023f	3.2%
2024f	2.3%

29. After reviewing the evidence presented regarding the CPI percentage increases, the 2021 Commission concluded that “this criteria of the change in the cost of living supports an increase in judicial salaries, but requires some tempering to avoid unduly sheltering Justices from the impact of inflation.”^[33]
30. Appropriate judicial compensation is not determined by a mathematical formula and the 2021 Commission did not provide any explanation regarding how each of the regulated criteria they found to be the main drivers of their recommendations contributed to the actual salary increases they recommended. However, at the end of the 2021 Commission Report, when summarizing the cumulative effect of their consideration of the regulated criteria, the 2021 Commission stated:
- ... [T]he economic conditions in Alberta are strong and lead the country in most metrics. Those economic conditions support an increase in judicial salaries, but those increases should be somewhat tempered to avoid unduly sheltering Justices from the impact of cost of living increases experienced by all Albertans.^[34]
31. Given the 2021 Commission’s conclusion, the logical expectation would be that the recommended judicial salary increases would not be significantly higher than cost of living increases, especially considering the fact that the 2021 Commission acknowledged that CPI, as a measure of cost of living, has a significantly greater impact on households with low-income earners compared to households with high-income earners such as the judges.
32. When comparing salary increases with CPI percentage increases, it is necessary to establish a correspondence between the calendar year of an economic measure and the fiscal year of a salary increase. This Schedule uses the approach referred to in the 2021 Commission Report of comparing the annual April 1 increase to the prior calendar year’s percentage increase of CPI.^[35] ^[36] This is comparable to the timing used by the indexing of federal judicial compensation, which applies an indexed increase based on an economic index measured over the previous calendar year.
33. On that basis, the comparison between the recommended salary increases with the actual and forecast CPI percentage increases is as follows:

Table 3: 2021 Commission recommendations compared to CPI increases

	April 1, 2021	April 1, 2022	April 1, 2023	April 1, 2024	Cumulative
(A) Recommended salary	328,500	348,000	362,000	372,500	
(B) Recommended increase	3.1%	5.9%	4.0%	2.9%	17.0%
(C) CPI increase (previous calendar year)	1.1%	3.2%	6.4%	3.2%	14.6%
(D) Salary if indexed to CPI	322,004	332,308	353,575	364,890	
(E) Recommended salary as percentage of indexed salary (A/D)	102.0%	104.7%	102.4%	102.1%	

34. It is clear from the above table that the recommended salaries (A) are significantly higher than they would be if the salaries were indexed to CPI (D). Over the course of the mandate period, the cumulative CPI increase is approximately 14.6% (C), while the cumulative recommended salary increase would be 17.0% (B), with judicial salaries ending 2.1% higher than they would be if indexed to CPI. Since the recommended salary increases significantly exceed the cost of living, the judges would not only be completely sheltered from the economic realities Albertans have had to face, but they would also have a sizeable increase in their real income and therefore spending power. Taking into consideration the fact that CPI changes have a significantly greater impact on households with low-income earners compared to households with high-income earners, the recommended salary increases would, in fact, unduly shelter the judges from the economic realities faced by other Albertans.
35. The recommended increases are out of step with the economic times, which would potentially jeopardize public confidence in the judiciary. As stated above, ensuring public confidence in the judiciary requires both protecting the financial security of judges and for judges to shoulder a fair share of the economic realities faced by Albertans.

Reason C – Impact of economic changes on Albertans’ average income

C. The 2021 Commission adopted Statistic’s Canada’s “Fixed weighted index of average hourly earnings” (FWI) as the appropriate metric for measuring the impact of economic changes on Albertans, but lacked any detailed evidence on that metric over the relevant years. The Government remains of the view that FWI is not the appropriate metric for this, but even considering the 2021 Commission’s conclusion, the cumulative FWI increase of 11.6% is far lower than the recommended 17.0% increase in judicial salaries.

36. Criterion (b) requires consideration of the generally accepted current and expected economic conditions in Alberta, and the resulting impact on the price of labour in Alberta. The Minister’s expert witness submitted detailed evidence on a price of labour metric that focuses on growth in base pay rates, excluding progression through a salary range, overtime, commissions, bonuses, etc. The APJA’s expert witness argued that those additional components are relevant and proposed using instead Statistics Canada’s “Fixed weighted index of average hourly

earnings” (FWI).^[37] The 2021 Commission concluded that FWI was the appropriate metric.

^[38] ^[39]

However, the only FWI numbers in evidence were a chart covering 2013-2021 and a statement that FWI was, on average over that period, 1 percent higher than price of labour as

measured by base pay only.^[40] Adoption of FWI combined with the lack of detailed numbers over the relevant period left the 2021 Commission unable to fully analyze and give appropriate weight to this criterion. The extent of the conclusion that the 2021 Commission was able to draw with respect to price of labour was that, noting Alberta has the highest income per capita in Canada, “the economic conditions have a positive impact on the price of labour in

Alberta.”^[41]

37. The focus of criterion (b) is not the economy in abstract, but how changes in the economy are experienced by individual Albertans. That comparison is the heart of this criterion, as it is what directly connects it to the public interest goal of ensuring judges share with other Albertans in both good and bad economic times. While the Government remains of the view that the base pay rate approach is the more appropriate metric, whether “price of labour” is interpreted as proposed by the Minister’s expert or the APJA’s expert, it is necessary to compare, directly and in detail, the chosen metric to the proposed judicial salaries.

Table 4: 2021 Commission recommendations compared to FWI increases

	April 1, 2021	April 1, 2022	April 1, 2023	April 1, 2024	Cumulative
Recommended increase	3.1%	5.9%	4.0%	2.9%	17.0%
FWI increase (previous calendar year) ^[42]	2.6%	2.0%	3.0%	3.5%*	11.6%

38. The 2021 Commission identified criterion (b) as one of the main drivers of its recommendations, saying “the economic conditions in Alberta are strong and lead the country in most metrics. Those economic conditions support an increase in judicial salaries, but those increases should be somewhat tempered to avoid unduly sheltering Justices from the impact of

cost of living increases experienced by all Albertans.”^[43] But when this criterion is analyzed in the crucial context of the economic experience of Albertans on average (as measured by the 2021 Commission’s preferred metric of FWI), the magnitude of the increase it supports is much lower than that recommended by the 2021 Commission, even if accepting their overall finding that Alberta’s strong economy supports a significant increase. Over the calendar years 2020 to 2023 inclusive, Albertans’ average 11.6% average increase was more than offset by the 14.6% increase in the cost of living. In these circumstances, it would be unfair to ask Albertans experiencing an average 11.6% increase to fund a 17.0% increase for judges.

Reason D – Pandemic and recovery years

D. The recommended increases do not place sufficient weight on the economic hardships caused by the pandemic and the subsequent period of recovery, which make 2021 and 2022 inappropriate years for large salary increases for those paid from the public purse.

39. In submissions to the 2021 Commission, the Minister took the position that recent periods of economic contraction, a reduction in Alberta’s economic lead over other provinces, and ongoing risk and volatility all justified very measured increases in judicial salaries, proposing a cumulative increase of 5.3%. In reaching its recommendation for a 17.0% increase, the 2021 Commission’s analysis of criterion (b) focused on Alberta’s economic strengths, making the following conclusions:

- The risk and volatility due to reliance on oil and gas should not be given excess weight: “...[O]ver the period of our mandate, the economic conditions in Alberta will lead the country.”^[44]
- It is appropriate to focus more on absolute comparisons than changes in the size of the difference when comparing Alberta to other provinces: “...[T]he rate of decline and recovery in Alberta has been worse than other parts of the country, but the level of economic conditions remains the highest.”^[45]
- “The Minister’s concern that Alberta is not expected to see a return to the boom period between 2010 and 2014 is noted, but of limited value given that period is nine to thirteen years ago.”^[46]
- “[T]he Economists agree that real GDP, real GDP per capita, the employment rate and the labour force participation rate in Alberta lead all other provinces, even though the gap for some of these measures may have narrowed.”^[47]

40. Even if accepting the 2021 Commission’s conclusion that overall economic strength justifies higher increases in judicial compensation,^[48] those increases should not come on the heels of extraordinarily difficult years, when Albertans (and indeed, the entire world) were still feeling the profound negative consequences of the pandemic.

41. The 2021 Commission’s analysis treats the disruption of the pandemic as a thing very much in the past. The 2021 Commission hearings were held in February 2023, with the expert reports

prepared in late 2022. The 2021 Commission analysis is primarily forward-looking, focusing on the strengths as they were by that point in time:

The Minister's submissions place significant emphasis on (1) a cautious concern about risk arising from Alberta's reliance on oil and gas extraction revenues and an uncertain global market, (2) the impact of the 2015-2016 recession followed by the impact of the pandemic, and (3) the importance of a careful fiscal response. We understand the views expressed by the Minister, but in assessing this criteria with the information from the economists makes it clear that Alberta is in a leading economic position in Canada now which is projected to continue for the balance of the term of our mandate.^[49] (emphasis added)

42. It is well-demonstrated in the economic evidence that 2020 was a year of widespread economic disruption and hardship. While the 2021 Commission acknowledges the past decline and some degree of ongoing weakness, their overall conclusion is one of strength over the term of their mandate. However, the growth experienced in 2021 and much of 2022 constituted recovery from that deep hole, simply gaining back what had been lost. The 2021 Commission treated the province's post-pandemic economic recovery as the sort of widespread economic prosperity in which judges should share. It was not, because judicial salaries did not suffer from the effects of the downswing in the first place.

43. To illustrate this point, it is helpful to consider two specific measures: real GDP and unemployment rates.

44. With respect to GDP, the 2021 Commission concluded:

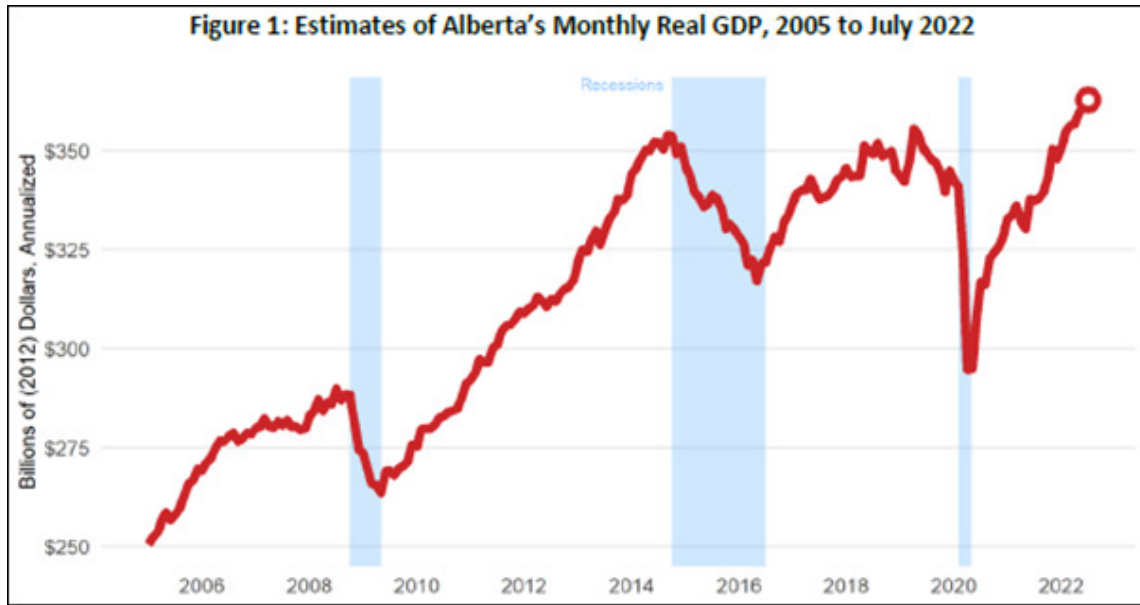
...[A] wide variety of private and public forecasters project that Alberta will continue to produce higher GDP per capita than any other province. We accept Dr. Tombe's opinion that while there are, of course, still some features of weakness, overall economic conditions are exceptionally strong relative to other Canadian provinces over the term of our mandate.^[50]

45. Dr. Tombe's evidence establishes the following picture of real GDP:

Alberta's economy contracted more than any other in Canada during COVID, falling 7.9% in 2020 as compared to 2019. But Alberta's economy is on a strong upward trajectory and now materially exceeds its pre-COVID and pre-recession peak.^[51]

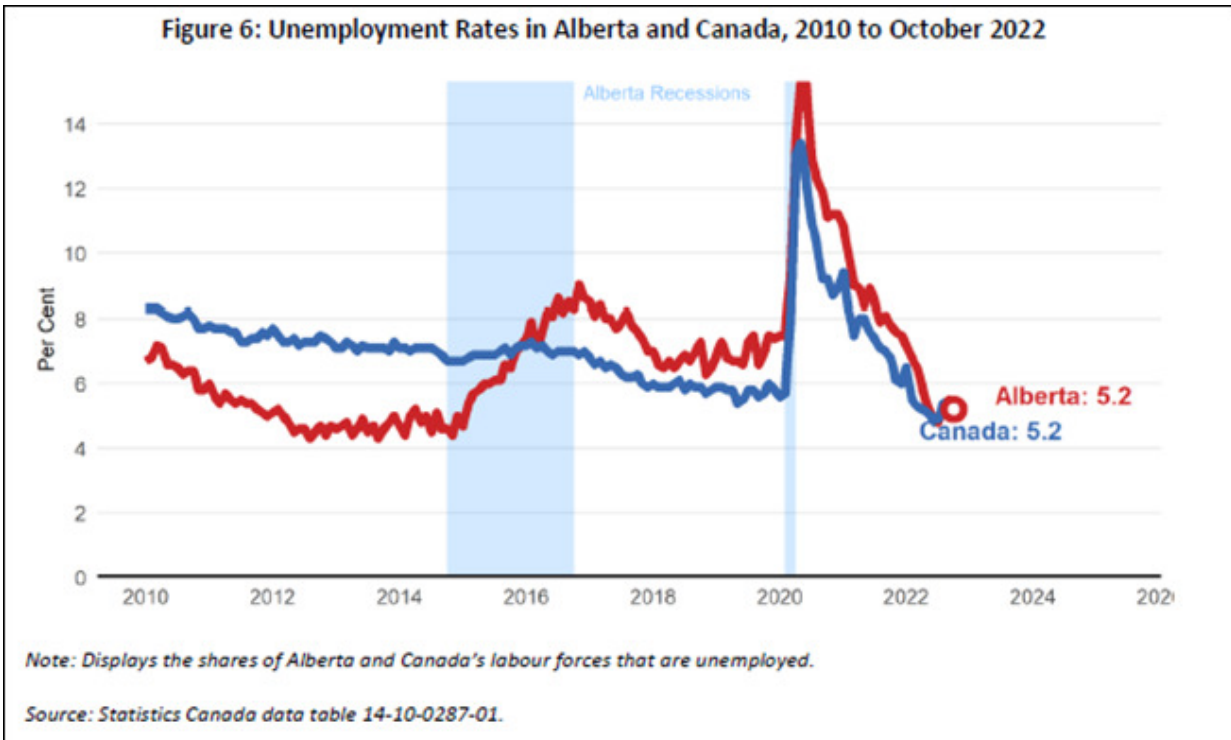
[52]
Table 5: Real GDP growth rate

Calendar year	Real GDP growth rate
2020	-7.9%
2021F	5.1%
2022F	5.1%



Source: Tombe Report at 3

46. While it was true that real GDP “grew to record highs by mid 2022”,^[53] all of the growth in 2021 and much of the growth in 2022 was recovery from a devastating decline. It takes too narrow a view to characterize this period of recovery as a period of economic strength.
47. When considering the unemployment rate, the 2021 Commission concluded, “The unemployment rate in Alberta has stabilized, is below the national average, and is forecast to remain near that level.”^[54] This reflects Dr. Tombe’s evidence that “[i]n July 2022, Alberta’s unemployment rate dropped back below five percent and—for the first time in many years—fell below the national average.”^[55] However, while the rate may have stabilized by mid-2022, the prior two and a half years to get to that point were the antithesis of stability.



Source: Tombe Report at 10

48. As stated by the Supreme Court of Canada: “Nothing would be more damaging to the reputation of the judiciary and the administration of justice than a perception that judges were not shouldering their share of the burden in difficult economic times.”^[56] The 2021 Commission’s analysis of criterion (b) focuses on Alberta’s lead over other provinces and a strong position going forward, but lacks sufficient weight on the recent economic upheaval as experienced by Albertans. In recognition of the economic hardship of the pandemic and recovery years, the Government cannot accept the recommended increases of 3.1% for April 1, 2021, and 5.9% for April 1, 2022.

Reason E – Flawed foundation of AWE indexing

- E. Less weight should be given to following the 2021 jump in federal judicial salaries, given that this was a result of indexing to Average Weekly Earnings (AWE), which spiked during the pandemic due to the temporary elimination of lower paying jobs from the workforce.

49. The 2021 Commission gave significant weight to the gap between federally and provincially appointed judges in Alberta.^[57] The federal judicial salary was central to their conclusions under three different criteria:

- the roles, duties and jurisdiction of justices and applications judges (criterion (f)):

In assessing this criteria, we find ourselves most concerned with the gap between salaries for these Judges and Judges in the Court of King's Bench. While we accept the position of the Minister and the Association that a gap is appropriate, the current and anticipated role of Judges during the period of our mandate should not be too large. Fairness dictates that the gap be moderate and not allowed to widen, unless there are demonstrable reasons to do so.^[58]

- compensation provided to justices and application judges in other Canadian jurisdictions, having regard to the differences between those jurisdictions and Alberta, especially as they relate to differences in the matters referred to in criteria (b), (c), and (d) in respect of those other jurisdictions (criterion (g)):

In our view, this criteria weighs in favour of an increase in salaries for Alberta Justices. While we are of the view that fixing salaries to a percentage of federal Judges' salaries is unwise in Alberta, the Minister's proposal of salaries in the 86% to 88% range is not fair or appropriate. That is too large a gap, representing a material drop from the 92% to 94% range that has existed since 2013.^[59]

- the need to attract highly qualified applicants as judges and applications judges (criterion (h)):

It is true that in endeavouring to attract highly qualified applicants, the Alberta Court of Justice is competing to some degree with the Court of King's Bench, and to a much lesser extent with the Alberta Court of Appeal, the Federal Court of Canada, and the Tax Court of Canada. This criteria requires us to ensure, to the best of our ability, that any gap in compensation is fair and appropriate. ... In our view, the gap in salaries between Justices and federally paid Judges is the most significant influence in assessing this criteria, and weighs in favour of an increase in judicial salaries.^[60]

50. The Minister's submissions highlighted that federal judicial salaries had increased significantly in 2021, by 6.6%, due to being indexed to Average Weekly Earnings (AWE) for the prior calendar year. The cause of this spike was set out in the Minister's expert evidence:

Another clear example occurred in early 2020, during the height of the recession related shutdowns. At that time, most professional services workers kept their employment and salaries, while many lower paid workers, in food and accommodation services for example, were laid off. As such, despite massive job losses, the average wage in the province surged by nearly 5 per cent in the second quarter of 2020. Simply because there was a greater proportion of high paid workers employed than in the previous quarter.^[61]

51. In addressing this issue, the 2021 Commission concluded the following:

During the pandemic, the Minister submits economic damage occurred in Canada which caused lower paying jobs to be removed from the workforce which caused the AWE to spike. The Minister points to that spike in the AWE index leading to increases in salaries effective April 1, 2021 for federally appointed Judges of 6.6%, and for Ontario Judges of 7.3%, and for Saskatchewan Judges an increase of 8.2% effective April 1, 2022. The Minister argues those increases were a direct result of severe economic harm, and should be given no weight, as to do so would risk significant damage to public confidence in the judiciary.

The federal government under the *Judges Act* utilizes this metric to automatically increase federal Judicial salaries in the time between federal [judicial compensation commissions]. Those increases are considered in the federal [judicial compensation commission] process. The provinces of Ontario and Saskatchewan have decided to connect provincial Justices' salaries to federal Judges' salaries by

application of a fixed percentage. In considering this criteria, we are obliged to consider those comparisons. We have kept in mind the Minister's concern.^[62]

52. It is correct that the 2021 Commission is obliged to consider the comparison with federal judicial salaries and that the increases are reviewed by federal compensation commissions. Neither of those observations addresses the Minister's argument that an increase in judicial salaries as a direct result of widespread economic harm risks damage to public confidence in the judiciary. The 2021 Commission is required to consider comparator salaries, and also empowered to determine how much weight the comparison should be given in consideration of all relevant circumstances. If the intent of indexing to AWE is to allow judges to share in good and bad economic times, it is inescapable that the April 1, 2021, increase in federal judicial salaries was fundamentally contrary to that purpose.
53. The 2021 Commission refers to the concept of fairness in their analysis of the gap between provincial and federal judicial salaries under all three criteria listed above, "Fairness dictates that the gap be moderate and not allowed to widen, unless there are demonstrable reasons to do so."^[63] However, if federal judicial salaries were artificially inflated in certain years due to a fundamental misalignment between the indexing factor and what it is supposed to measure, it can hardly be concluded that it would be unfair for provincial judges not to share in that increase. A pandemic-driven spike in salaries is a demonstrable reason to allow the gap to widen.
54. The 2021 Commission found the appropriate range for provincial salaries is between 92% and 94% of federal salaries, based on the range since 2013. They did not provide reasons for why this timeframe was chosen, or why it would be inappropriate to return to the size of gap in place in years prior to 2013, in which provincial salaries were often below 90% of federal. The 2021 Commission's recommendations for April 1, 2021, are below the 92%-94% range, indicating flexibility in its application of the designated range. For the reasons set out above, the Government has determined that remaining below the identified range is appropriate.
55. In addition to analyzing the gap from the perspective of fairness, the 2021 Commission also found that there is a need for provincial judicial salaries to remain competitive with federal salaries. The practical implications of this finding would remain regardless of how federal judicial salaries are set. The Government has given weight to this consideration in determining its response.

Government response

56. Based on the reasons set out above, the Government rejects the salary levels recommended by the 2021 Commission, and must determine the appropriate salary levels to implement in their place. As noted by the 2021 Commission, the determination of judicial salary from the criteria is not formulaic and requires a consideration of all factors.^[64] The factors must be "interpreted

in light of the public interests they were intended to serve,”^[65] chief among which is public confidence in the judiciary.

57. As concluded by the 2021 Commission, criterion (a), which deals with the need to protect judicial independence, does not support an increase.
58. Criteria (b), (c), (d), and (e) deal with the broader economic and fiscal context. Even considering the 2021 Commission’s conclusion that Alberta’s strong economy warrants an increase, criterion (b) does not support an increase higher than that experienced by Albertans on average as measured by the 2021 Commission’s chosen metric of FWI. The appropriate level of increase should then be moderated by the 2021 Commission’s finding of restraint in compensation for those paid from the public purse. Judges should not be unduly sheltered from cost of living increases as compared to Albertans generally, or those paid from the public purse specifically. At current salary levels, sheltering them from cost of living increases is not required to protect the financial security of judges. On balance, increases that are out of step with the economic times would hurt rather than enhance public confidence in the judiciary.
59. Criteria (f), (g), and (h) deal with the judicial role specifically, including comparisons with other judges and the need to recruit highly qualified candidates. The 2021 Commission’s analysis under all three criteria is primarily focused on comparison with federal judicial salaries. As discussed in Reason E, the Government has determined that AWE is a fundamentally flawed metric for indexing compensation, and that flaw is a justification for a wider gap between provincial and federal judicial salaries (and between judicial salaries in Alberta and those in provinces indexed to federal salaries). The Government has considered the 2021 Commission’s concerns about achieving fairness between Alberta judges and other judges. However, in the Government’s determination, fairness does not require that judicial salaries in Alberta follow increases in comparator salaries that are set by a metric that does not align with the governing public interest goals. When the goal of enhancing public confidence in the judiciary is kept foremost in mind, the overriding concern is not fairness as measured amongst judges, but fairness between Alberta judges and Albertans as a whole.
60. Considering the analysis and recommendations of the 2021 Commission in light of the above reasons, the Government has determined that the following judicial salary levels are fair and appropriate, reflecting the objective criteria and dictated by the public interest.

Table 6: Government response

	April 1, 2021	April 1, 2022	April 1, 2023	April 1, 2024	Cumulative
Implemented salary	321,685	328,119	337,963	348,102	
Implemented increase	1.0%	2.0%	3.0%	3.0%	9.3%

61. The projected cost of the implemented salary increases to the public purse over the four years of the 2021 Commission’s mandate will be \$14.9 million, compared to \$33.0 million for the recommended salaries.

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- [1] *Reference re Remuneration of Judges of the Provincial Court (PEI)*, [1997] 3 SCR 3 [*PEI Reference*].
- [2] *Provincial Judges and Applications Judges 2021 Compensation Commission Regulation*, Alta Reg 65/2021 [2021 JCC Regulation], s 4(1) & (2).
- [3] 2021 JCC Regulation, s 4(3).
- [4] *Ell v Alberta*, 2003 SCC 35 at para 29.
- [5] *PEI Reference* at paras 10 & 184.
- [6] *PEI Reference* at para 9: “Financial security must be understood as merely an aspect of judicial independence, which in turn is not an end in itself. Judicial independence is valued because it serves important societal goals — it is a means to secure those goals.”
- [7] *Report and Recommendations of the 2021 Judicial Compensation Commission* [2021 Commission Report] at 36. See also *PEI Reference* at para 196: “Nothing would be more damaging to the reputation of the judiciary and the administration of justice than a perception that judges were not shouldering their share of the burden in difficult economic times.”
- [8] 2021 JCC Regulation, s 5.3(2).
- [9] *Bodner v Alberta*, 2005 SCC 44 [*Bodner*] at para 31.
- [10] The Minister’s written submissions also proposed changes to travel expense reimbursement. By agreement of the 2021 Commission, Minister, and APJA, that issue will be dealt with at a later date.
- [11] The 2021 Commission presented its initial report on June 15, 2023, and an amended report on July 5, 2023.
- [12] 2021 Commission Report at 65-67.
- [13] 2021 Commission Report at 67.
- [14] 2021 Commission Report at 61 & 65.
- [15] 2021 Commission Report at 65.
- [16] *Bodner* at para 31.
- [17] *Alberta Provincial Judges’ Association v Alberta*, 2022 ABQB 415 [*APJA v Alberta*] at para 142.
- [18] *Bodner* at para 30.
- [19] *APJA v Alberta* at para 35.
- [20] 2021 Commission Submissions: *Joint Book of Agreed Facts and Exhibits*, Tab C.5 and Tab C.6.
- [21] 2021 Commission Report at 42.
- [22] *PEI Reference* at 184.
- [23] 2021 BCCA 295.
- [24] 2021 Commission Report at 42-43.
- [25] *PEI Reference* at para 173.
- [26] 2021 Commission Report at 36.
- [27] 2021 Commission Submissions: *Written Submissions of the Minister of Justice in and for the Province of Alberta* at para 43.
- [28] 2021 Commission Report at 36.

[29] 2021 Commission Submissions: Trevor Tombe, *An Analysis of Alberta's Economic and Fiscal Situation* (December 9, 2022) [*Tombe Report*] at 29-30.

[30] 2021 Commission Report at 35.

[31] Statistics Canada, *Table 18-10-0005-01 Consumer Price Index, annual average, not seasonally adjusted*, <https://doi.org/10.25318/1810000501-eng>, retrieved on September 22, 2023.

[32] 2021 Commission Submissions: Conference Board of Canada, *Alberta's Economic Outlook* (December 9, 2022) [*CBoC Report*], Appendix 1 at 4.

[33] 2021 Commission Report at 36.

[34] 2021 Commission Report at 67.

[35] 2021 Commission Report at 34-35.

[36] For example, the increase on April 1, 2021, is compared to the CPI percentage increase for the 2020 calendar year.

[37] FWI measures earnings, controlling for changes in hours worked and employment composition. 2021 Commission Submissions: Trevor Tombe, *Brief Response to the Conference Board Report* [*Tombe Rebuttal*] at 2.

[38] 2021 Commission Report at 33. The 2021 Commission concluded that, even if FWI was outside the intended concept of "price of labour" in criterion (b), it would still be given weight by them under the *2021 JCC Regulation*, section 5.3(2)(b).

[39] The 2021 Commission also had evidence on growth in "wages and salaries per employee". (2021 Commission Report at 27; *Tombe Report* at 31.) This is a distinct metric from FWI.

[40] *Tombe Rebuttal* at 2.

[41] 2021 Commission Report at 34.

[42] Actual FWI for 2020, 2021, and 2022 calculated from: Statistics Canada, *Table 14-10-0213-01 Fixed weighted index of average hourly earnings for all employees, by industry, monthly* (<https://doi.org/10.25318/1410021301-eng>), by averaging monthly average hourly earnings by year to calculate the year-over-year percentage change. *At time of writing, FWI is available through July 2023. Value for 2023 represents percentage change from average of January to July 2022 (178.6) to average of January to July 2023 (184.9).

[43] 2021 Commission Report at 67.

[44] 2021 Commission Report at 31.

[45] 2021 Commission Report at 31.

[46] 2021 Commission Report at 31.

[47] 2021 Commission Report at 31.

[48] As moderated by Reasons A, B, and C. This reason for departing from the 2021 Commission's recommendations focuses not on their overall conclusion that the strength of Alberta's economy supports a large increase in judicial salaries, but on the timing of that increase.

[49] 2021 Commission Report at 32.

[50] 2021 Commission Report at 32.

[51] 2021 Commission Report at 24.

[52] *Tombe Report* at 4.

[53] *Tombe Report* at 47; quoted by 2021 Commission Report at 50.

[54] 2021 Commission Report at 31-32.

[55] *Tombe Report* at 10.

[56] *PEI Reference* at para 196.

[57] Judges of the Court of Appeal of Alberta and Court of King's Bench of Alberta are federally appointed, and their compensation is set by a federal compensation commission.

[58] *2021 Commission Report* at 45.

[59] *2021 Commission Report* at 61.

[60] *2021 Commission Report* at 63-64.

[61] *CBoC Report* at 6.

[62] *2021 Commission Report* at 51.

[63] *2021 Commission Report* at 45.

[64] *2021 Commission Report* at 12.

[65] *Ell v Alberta*, 2003 SCC 35 at para 29.

2021 Justices of the Peace Compensation Commission

Justice of the Peace Compensation in Canadian Jurisdictions¹

	Alberta	British Columbia ²	Nova Scotia	Ontario	Quebec	Saskatchewan	Yukon
How is compensation determined?	Commission	Commission	Commission	Commission	Commission	Commission	Commission
Status of Commission	2021-2025 JPCC hearing is to take place on February 8 and 9, 2024.	2023-2027 Report issued April 28, 2023 and recommendations came into force as of 2023-11-28	2020-2025 Report issued March 2023 and recommendations accepted May 2023	2015-2023 Report issued April 16, 2018 based on joint submissions of JPs and Government. Next Commission in the beginning stage.	2019-2022 Report issued September 27, 2021 and Government Response issued February 9, 2022 Next Commission is being appointed.	2019-2025 Report issued on December 31, 2018	2019–2022 Repot issued in October 2021 Next Commission is in the beginning stage.
JP Categories	Full-time Part-time Ad hoc	Full-time Per Diem	Legislation provides for full-time and part-time, but in practice, only part-time are appointed.	Full-time Part-time	Full-time Part-time	Full-time Part-time	Part-time only
Are JPs Legally Trained?	Yes with at least 5 years experience	Yes with at least 5 years experience	Yes with at least 5 years experience	No, but some are ³	Yes with at least 10 years experience	No, but some are ⁴	No
Full-time Salary			Not Applicable				Not Applicable
2013/2014	\$144,830	\$ 99,525		\$123,804	\$137,792	\$121,525	
2014/2015	\$148,089	\$105,967		\$125,661	\$138,757	\$124,685	
2015/2016	\$150,310	\$108,087		\$128,426	\$140,838	\$127,801	
2016/2017	\$151,813	\$110,249		\$131,123	\$142,387	\$133,425	
2017/2018	\$151,813	\$118,000		\$132,828	\$143,241	\$138,270	
2018/2019	\$151,813	\$120,000		\$136,165	\$144,960	\$142,516	
2019/2020	\$151,813	\$122,000		\$141,282	\$156,000	\$150,854	
2020/2021	\$151,813	\$125,750		\$148,962	\$174,100	\$155,078	

¹ New Brunswick as well as Newfoundland and Labrador do not have JPs; Northwest Territories, Nunavut and Prince Edward Island and Manitoba do not have judicial compensation commission processes for JPs – instead JP compensation is set unilaterally by Government as an hourly rate, an honorarium, or in Manitoba’s case, as a percentage of a PCJ salary (currently 43%).

² British Columbia’s equivalent to JPs are called Judicial Justices

³ Ontario Government does not keep track of # of JPs who have legal training, but the proportion of lawyers as a percentage of total JP appointments was 58.82% in 2018, no JP appointments in 2019, 19.5% in 2020, no JP appointments in 2021, and 23.07% in 2022.

⁴ In Saskatchewan currently 1 Justice of the Peace out of 64 has legal training and 15 out of 15 Senior Justices of the Peace have legal training. There is a policy requirement that all Senior Justices of the Peace have legal training.

	Alberta	British Columbia ²	Nova Scotia	Ontario	Quebec	Saskatchewan	Yukon
2021/2022	TBD	\$129,500		\$168,570	\$194,400	\$159,266	
2022/2023	TBD	\$133,500		⁵ \$172,010	\$217,000	\$161,655	
2023/2024	TBD	\$172,000		TBD	TBD	51% of PCJ	
2024/2025	TBD	\$177,000		TBD	TBD	51% of PCJ	
2025/2026	TBD	\$182,000		TBD	TBD	51% of PCJ	
2026/2027	TBD	\$187,000		TBD	TBD	51% of PCJ	
Part-time Wage	Per diem (8 hrs) ⁶	Per diem ⁷	Hourly x 8	Calculation based on full-time salary ¹⁰	Per Diem ¹¹	Per Diem ¹²	Per Diem (8 hrs) ¹³
2013/2014		\$ 652	\$ 584		\$ 556	\$ 552	\$ 480
2014/2015	\$ 907	\$ 689	\$ 584 ⁸		\$ 560	\$ 567	\$ 480
2015/2016	\$ 939	\$ 702	\$ 592		\$ 568	\$ 581	\$ 480
2016/2017	\$ 953	\$ 714	\$ 596		\$ 574	\$ 606	\$ 560
2017/2018	\$ 962	\$ 759	\$ 604		\$ 578	\$ 629	\$ 560
2018/2019	\$ 962	\$ 771	\$ 611		\$ 585	\$ 648	\$ 560
2019/2020	\$ 962	\$ 782	\$ 620		\$ 629	\$ 686	\$ 571
2020/2021	\$ 962	\$ 809	\$ 679 ⁹		\$702	\$ 705	\$ 583
2021/2022	TBD	\$ 831	\$ 681		\$784	\$ 724	\$ 594
2022/2023	TBD	\$ 854	\$ 716		\$ 875	\$735	TBD
2023/2024	TBD	\$1,114	\$ 773		TBD	1/220 of full-time JP	TBD
2024/2025	TBD	\$1,143	55% of PCJ		TBD	1/220 of full-time JP	TBD
2025/2026	TBD	\$1,173	TBD		TBD	TBD	TBD
2026/2027	TBD	\$1,202	TBD		TBD	TBD	TBD
Administrative Stipend	+ 5% of full-time salary	+ 6% of full-time salary	Not Applicable	+ \$10,200 for Senior Advisory JP + \$5,110 for Senior JP	+ 8% of full-time	+ 7.5% of full-time for Supervising JP (plus 12 extra paid days off) + 5% of full-time for Assistant Supervising	Not Applicable

⁵ Ontario - The joint submissions to the 2015-2023 Commission established linkage of salaries to PCJs increasing each year until 2022/2023 when JPs began receiving 50% of PCJ salaries

⁶ In Alberta, the per diem calculation = Full-time JP salary + 13.1% in lieu of pension + 20% for office and overhead + \$5,000 for benefits ÷ 215.25 working days per year

⁷ In BC, the per diem calculation = Full-time JJ salary + 22% (in lieu of benefits) ÷ 207 working days per year + \$100 for office and overhead

⁸ In NS, the 2014-2019 Report recommended compensation at 55% of the hourly per diem rate of a PCJ to be increased by the % increase in the Consumer Price Index for the Province for previous fiscal year.

⁹ In NS, the 2020-2025 Report recommended compensation continue at 55% of the hourly per diem rate of a PCJ to be increased by the % increase in the Consumer Price Index for the Province for previous fiscal year.

¹⁰ Annual salary of part-time JP is calculated by multiplying the full-time JP salary by the % that the # of hours per week assigned to the JP is of the # of hours per week normally assigned to a full-time JP ÷ 219

¹¹ Per diem = 1/248 of full-time JP salary

¹² Per diem = 1/220 of full-time JP salary

¹³ There are 3 levels of pay per hour – only highest level used in Chart.

	Alberta	British Columbia ²	Nova Scotia	Ontario	Quebec	Saskatchewan	Yukon
Pension	Full-time receive + 13.1% of salary in lieu of pension For part-time and ad hoc, salary in lieu of pension is built into per diem calculation	Full time participate in Public Service Pension Plan For per diem, salary in lieu of pension is built into per diem calculation	None	All JPs have pension benefits	Full-time have pension benefits	All JPs have pension benefits	None
Shift Premiums	All JPs receive shift premiums per specified shift worked: Weekday evening = \$54.25 Weekday night = \$134.69 Weekend day = \$54.24 Weekend evening = \$82.45 Weekend night = \$188.94 Holiday day = \$82.45 Holiday evening = \$108.49 Holiday night = \$243.19	\$245 per shift worked on specified holidays: <ul style="list-style-type: none">• New Year's Day• Family Day• Good Friday• Easter Monday• Victoria Day• Canada Day• BC Day• Labour Day• National Day for Truth & Reconciliation• Thanksgiving Day• Remembrance Day• Boxing Day \$320 for Christmas Day \$75 for weekend shift \$75 for court closure days	Paid day off for working a statutory holiday	None	None	None	No, but JPs get paid 150% when statutory holidays are worked
Professional Allowance	\$3,500 per year for all JPs	\$3,250 per year for all JJs	None	\$1,250 per year for all JPs	\$4,000 per year for JPs \$6,000 per year for Supervisory JP	None	\$3,000 per year
Paid Education Days	10 paid education days for full-time and part-time JPs	7 paid education days for full-time JJs	None	None	None	None	If approved by supervising judge = \$100 per day at training college and \$30 per hour at other training.

	Alberta	British Columbia ²	Nova Scotia	Ontario	Quebec	Saskatchewan	Yukon
Judicial Attire	Provided	Not specified	Not specified	Provided	Not specified	Not specified	Not specified

NOTE: There are additional benefits provided to JPs in certain jurisdictions that are difficult to quantify, including:

- In Alberta, in addition to the benefits in the chart:
 - All JPs are reimbursed for travel and subsistence expenses at the same rates as ministers, deputy ministers, senior government officials, and government employees.
 - Full-time JPs are entitled to: annual health spending allowance of \$950; 30 paid vacation days per year; 10 days paid casual illness per year; 80 days general illness per year (100% of salary for first 60 days and 70% of salary for last 20 days); all statutory holidays and additional Christmas Closure Days; paid long term disability income plan; and can participate in the same health and dental group plans as senior government employees.
 - The per diem formula for part-time and per diem JPs includes consideration of benefits (Full-time JP Salary + 13.1% in lieu of pension + 20% for office and overhead + \$5,000 for benefits ÷ 215.25 working days per year)
- In BC, in addition to the benefits in the chart:
 - All JJs are reimbursed for travel expenses at the same rates as MLAs.
 - The per diem formula includes consideration of benefits (Full-time JJ Salary + 22% in lieu of benefits ÷ 207 working days per year + \$100 for office and overhead)
- In Ontario, JPs are entitled to benefits such as: paid vacation days; paid sick days; paid disability coverage; parental leave with pay (17 weeks); additional salary for working a special assignment of not more than six (6) months; travel allowance; leave with pay for up to 6 months; and pre-retirement leave with pay (5 days) after 25 years of service.
- In Saskatchewan, JPs are entitled to: leave of absence with pay for 30 vacation days per year; leave of absence with pay for 10 public holidays and 2 Saskatchewan public service employee holidays; paid sick leave; and paid travel time and compensation for travel and meal expenses.
- In Manitoba, in addition to receiving compensation as a percentage of a PCJ salary (currently 43% - see Footnote 1), full-time JPs have pension benefits.

JUSTICES OF THE PEACE ACT

R-070-2022

2022-11-25

**REMUNERATION AND
ALLOWANCES REGULATIONS,
amendment**

The Commissioner in Executive Council, under section 19 of the *Justices of the Peace Act* and every enabling power, orders as follows:

1. The *Remuneration and Allowances Regulations*, established by regulation numbered R-056-98, are amended by these regulations.

2. That portion of subsection 1(1) preceding paragraph (a) is amended by striking out "\$480" and substituting "\$540".

3. Subsection 2(1) is amended

- (a) in paragraph (a), by striking out "\$55 each hour to a maximum of \$335 each day" and substituting "\$62 each hour to a maximum of \$377 each day"; and**
- (b) in paragraph (b), by striking out "\$65 each hour to a maximum of \$395 each day" and substituting "\$73 each hour to a maximum of \$443 each day".**

4. Section 2.1 is amended by striking out "\$65" and substituting "\$73".

5. (1) Subsection 3(1) is amended

- (a) in paragraph (a), by striking out "\$55 each hour to a maximum of \$335 each day" and substituting "\$62 each hour to a maximum of \$377 each day"; and**
- (b) in paragraph (b), by striking out "\$65 each hour to a maximum of \$395 each day" and substituting "\$73 each hour to a maximum of \$443 each day".**

(2) Subsection 3(1.1) is amended

- (a) by striking out "\$65 each hour" and substituting "\$73 each hour"; and**
- (b) by striking out "\$395 each day" and substituting "\$443 each day".**

LOI SUR LES JUGES DE PAIX

R-070-2022

2022-11-25

**RÈGLEMENT SUR
LA RÉMUNÉRATION ET LES
ALLOCATIONS—Modification**

La commissaire en Conseil exécutif, en vertu de l'article 19 de la *Loi sur les juges de paix* et tout pouvoir habilitant, décrète :

1. Le *Règlement sur la rémunération et les allocations*, pris par le règlement n° R-056-98, est modifié par le présent règlement.

2. Le passage introductif du paragraphe 1(1) est modifié par suppression de «480 \$» et par substitution de «540 \$».

3. Le paragraphe 2(1) est modifié par :

- a) suppression de «55 \$ de l'heure, jusqu'à un maximum de 335 \$ par jour», à l'alinéa a), et par substitution de «62 \$ de l'heure, jusqu'à un maximum de 377 \$ par jour»;**
- b) suppression de «65 \$ de l'heure, jusqu'à un maximum de 395 \$ par jour», à l'alinéa b), et par substitution de «73 \$ de l'heure, jusqu'à un maximum de 443 \$ par jour».**

4. L'article 2.1 est modifié par suppression de «65 \$» et par substitution de «73 \$».

5. (1) Le paragraphe 3(1) est modifié par :

- a) suppression de «55 \$ par heure jusqu'à un maximum de 335 \$ par jour», à l'alinéa a), et par substitution de «62 \$ de l'heure jusqu'à un maximum de 377 \$ par jour»;**
- b) suppression de «65 \$ par heure jusqu'à un maximum de 395 \$ par jour», à l'alinéa b), et par substitution de «73 \$ de l'heure jusqu'à un maximum de 443 \$ par jour».**

(2) Le paragraphe 3(1.1) est modifié par :

- a) suppression de «65 \$ par heure» et par substitution de «73 \$ de l'heure»;**
- b) suppression de «395 \$ par jour» et par substitution de «443 \$ par jour».**

JUSTICES OF THE PEACE ACT

**REMUNERATION AND ALLOWANCES
REGULATIONS**

R-056-98

AMENDED BY

R-040-2003

R-056-2005

R-013-2006

R-066-2013

In force October 1, 2013

R-015-2016

R-095-2019

R-070-2022

LOI SUR LES JUGES DE PAIX

**RÈGLEMENT SUR LA
RÉMUNÉRATION ET LES
ALLOCATIONS**

R-056-98

MODIFIÉ PAR

R-040-2003

R-056-2005

R-013-2006

R-066-2013

En vigueur le 1^{er} octobre 2013

R-015-2016

R-095-2019

R-070-2022

This consolidation is not an official statement of the law. It is an office consolidation prepared by Legislation Division, Department of Justice, for convenience of reference only. The authoritative text of regulations can be ascertained from the *Revised Regulations of the Northwest Territories, 1990* and the monthly publication of Part II of the *Northwest Territories Gazette*.

This consolidation and other G.N.W.T. legislation can be accessed on-line at

<https://www.justice.gov.nt.ca/en/browse/laws-and-legislation/>

La présente codification administrative ne constitue pas le texte officiel de la loi; elle n'est établie qu'à titre documentaire par les Affaires législatives du ministère de la Justice. Seuls les règlements contenus dans les *Règlements révisés des Territoires du Nord-Ouest (1990)* et dans les parutions mensuelles de la Partie II de la *Gazette des Territoires du Nord-Ouest* ont force de loi.

La présente codification administrative et les autres lois et règlements du G.T.N.-O. sont disponibles en direct à l'adresse suivante :

<https://www.justice.gov.nt.ca/en/browse/laws-and-legislation/>

JUSTICES OF THE PEACE ACT

REMUNERATION AND ALLOWANCES REGULATIONS

The Commissioner in Executive Council, under section 7 of the *Justices of the Peace Act* and every enabling power, makes the *Remuneration and Allowances Regulations*.

1. (1) An honorarium of \$540 each year shall be paid, in two equal semi-annual payments, to each justice of the peace who

- (a) is designated as active by the Chief Judge; and
- (b) does not carry out the duties described in subsection (2) as an employee of the Government of the Northwest Territories.

(2) The honorarium represents payment for the following:

- (a) receiving informations;
- (b) confirming or cancelling appearance notices, promises to appear and recognizances;
- (c) issuing or cancelling summons, warrants for arrest and subpoenas.

(3) Notwithstanding subsection (1), if a justice of the peace performs any of the duties referred to in subsection (2), over the course of six consecutive months and in a volume that exceeds 4.5 hours of work, the Chief Judge may authorize the justice of the peace to claim fees under paragraph 2(1)(a) for the difference between the honorarium and the actual time worked. R-040-2003,s.2; R-066-2013,s.2; R-095-2019,s.2; R-070-2022,s.2.

2. (1) The following fees are payable to a justice of the peace for exercising the powers and performing the duties referred to in section 14 of the *Justices of the Peace Act*, other than those powers and duties listed in subsection 1(2):

- (a) where the Chief Judge has authorized the justice of the peace to act at an administrative level, \$62 each hour to a maximum of \$377 each day;
- (b) where the Chief Judge has authorized the justice of the peace to act at a presiding level, \$73 each hour to a maximum of

LOI SUR LES JUGES DE PAIX

RÈGLEMENT SUR LA RÉMUNÉRATION ET LES ALLOCATIONS

Le commissaire en Conseil exécutif, en vertu de l'article 7 de la *Loi sur les juges de paix* et de tout pouvoir habilitant, prend le *Règlement sur la rémunération et les allocations*.

1. (1) Des honoraires d'un montant de 540 \$ par an sont payés, en deux paiements semestriels égaux, à tout juge de paix qui :

- a) est désigné comme étant actif par le juge en chef;
- b) ne remplit pas les fonctions décrites au paragraphe (2) en tant que fonctionnaire du gouvernement des Territoires du Nord-Ouest.

(2) Les honoraires représentent la rémunération pour :

- a) la réception de renseignements;
- b) la confirmation ou l'annulation d'avis de citation à comparaître, de promesses de comparution et d'engagements;
- c) la délivrance ou l'annulation d'assignation, de mandats d'arrêt et de subpoenas.

(3) Malgré le paragraphe (1), si un juge de paix exerce l'une ou l'autre des fonctions visées au paragraphe (2) au cours de six mois consécutifs et que le volume de travail excède 4,5 heures, le juge en chef peut autoriser le juge de paix à réclamer des droits en vertu de l'alinéa 2(1)a) pour la différence entre les honoraires et les heures réellement travaillées. R-040-2003, art. 2; R-066-2013, art. 2; R-095-2019, art. 2; R-070-2022, art. 2.

2. (1) Les droits suivants sont payables au juge de paix qui exerce les attributions, autres que celles indiquées au paragraphe 1(2), mentionnées à l'article 14 de la *Loi sur les juges de paix* :

- a) 62 \$ de l'heure, jusqu'à un maximum de 377 \$ par jour, lorsque le juge en chef a autorisé le juge de paix à agir dans une fonction administrative;
- b) 73 \$ de l'heure, jusqu'à un maximum de 443 \$ par jour, lorsque le juge en chef a autorisé le juge de paix à agir à titre de président.

\$443 each day.

(1.1) A justice of the peace to whom fees are payable under subsection (1) is entitled to be paid fees for a period of at least 1.5 hours on each occasion on which he or she is required to exercise powers or perform duties.

(2) No fee is payable under subsection (1) to a person exercising the powers and carrying out the duties referred to in subsection (1) as an employee of the Government of the Northwest Territories. R-040-2003,s.3; R-056-2005,s.2; R-066-2013,s.3; R-015-2016,s.2; R-095-2019,s.3; R-070-2022,s.3.

2.1. In addition to any fees payable under section 2, a fee of \$73 is payable to a justice of the peace for each 24-hour period that he or she is on call at the request of the Chief Judge. R-095-2019,s.4; R-070-2022,s.4.

3. (1) The following allowance is payable to a justice of the peace for attending training or a meeting of a committee where the attendance is approved by the Chief Judge:

- (a) where the Chief Judge has authorized the justice of the peace to act at an administrative level, \$62 each hour to a maximum of \$377 each day;
- (b) where the Chief Judge has authorized the justice of the peace to act at a presiding level, \$73 each hour to a maximum of \$443 each day.

(1.1) An allowance is payable to a justice of the peace for attending a mentored sitting where the attendance is approved by the Chief Judge at a rate of \$73 each hour to a maximum of \$443 each day.

(2) No allowance is payable under subsection (1) to a person who attends a training seminar referred to in subsection (1) as an employee of the Government of the Northwest Territories. R-040-2003,s.4; R-013-2006,s.2; R-066-2013,s.5; R-095-2019,s.5; R-070-2022,s.5.

4. Repealed, R-013-2006,s.2.

(1.1) Le juge de paix à qui des droits sont payables en vertu du paragraphe (1) a le droit de recevoir les droits pour une période d'au moins 1,5 heures chaque fois qu'il doit exercer des attributions; R-095-2019, art. 3.

(2) Aucun droit n'est payable en vertu du paragraphe (1) à une personne qui exerce les attributions visées au paragraphe (1) en tant que fonctionnaire du gouvernement des Territoires du Nord-Ouest. R-040-2003, art. 3; R-056-2005, art. 2; R-066-2013, art. 3; R-015-2016, art. 2; R-095-2019, art. 3; R-070-2022, art. 3.

2.1. En plus des droits payables en vertu de l'article 2, un droit de 73 \$ est payable au juge de paix, pour chaque période de 24 heures pendant lesquelles, à la demande du juge en chef, il est disponible sur appel. R-095-2019, art. 4; R-070-2022, art. 4.

3. (1) Les allocations suivantes sont payables au juge de paix qui participe à une formation ou une rencontre de comité lorsque sa participation est approuvée par le juge en chef :

- a) lorsque le juge en chef a autorisé le juge de paix à agir dans une fonction administrative, 62 \$ de l'heure jusqu'à un maximum de 377 \$ par jour;
- b) lorsque le juge en chef a autorisé le juge de paix à agir à titre de président, 73 \$ de l'heure jusqu'à un maximum de 443 \$ par jour.

(1.1) Une allocation est payable au juge de paix qui participe à une session supervisée lorsque sa participation est approuvée par le juge en chef au taux de 73 \$ de l'heure jusqu'à un maximum de 443 \$ par jour.

(2) Aucune allocation n'est payable en vertu du paragraphe (1) à une personne qui participe à un séminaire de formation visé au paragraphe (1) en tant que fonctionnaire du gouvernement des Territoires du Nord-Ouest. R-040-2003, art. 4; R-013-2006, art. 2; R-066-2013, art. 5; R-095-2019, art. 5; R-070-2022, art. 5.

4. Abrogé, R-013-2006, art. 2.

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Consumer Price Index 2023

Highlights:

- The all-items Consumer Price Index (CPI) for Whitehorse increased 4.9% on an annual average basis in 2023 following a 6.8% increase in 2022; Canada's CPI increased 3.9% in 2022 following a 6.8% increase in 2022.
- In 2023, prices in Whitehorse increased for all major CPI components except Household operations, furnishings and equipment; prices in Canada increased for all components.

Changes in the Consumer Price Index

The annual average of the all-items Consumer Price Index (CPI) for Whitehorse increased by 4.9% in 2023; nationally, the all-items CPI increased by 3.9% in 2023.

The 2023 annual CPI growth for Whitehorse (4.9%) was 1.9 percentage points lower than in 2022 (6.8%). Canada's annual CPI growth in 2023 (3.9%) was 2.9 percentage points lower than in 2022 (6.8%). Compared to all provinces and territories, Whitehorse's all-items CPI increase (4.9%) was the highest in Canada.

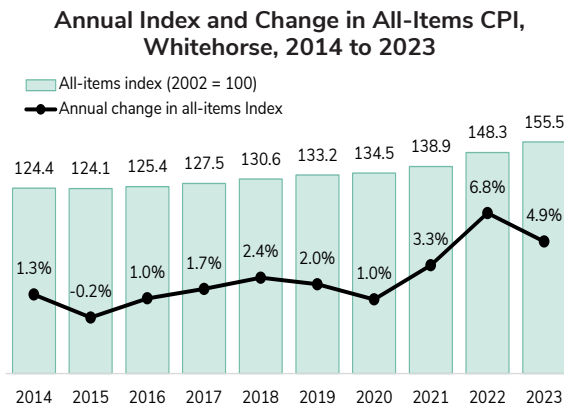
During the past ten years (2014 to 2023), the all-items CPI for Whitehorse has increased every year except 2015, when it decreased by 0.2%. During this period, the all-items CPI for Canada has increased every year.

Comparing 2023 to 2014, the all-items CPI in Whitehorse increased by 25.0%, equivalent to a compound annual rate of 2.3% per year.

From 2014 to 2020, the all-items CPI growth for Whitehorse fluctuated between a high of 2.4% in 2018 and a low of -0.2% in 2015.

Following the COVID-19 pandemic, the all-items CPI for Whitehorse, as in other provinces and territorial capitals, started increasing at a higher rate: 3.3% in 2021 and 6.8% in 2022.

In 2023, the all-items CPI growth in Whitehorse (4.9%) slowed compared to 2022. However, this growth was still substantially higher than the 2014 to 2020 average.



	Whitehorse, Yukon	Canada
2023	4.9%	3.9%
2022	6.8%	6.8%
2021	3.3%	3.4%
2020	1.0%	0.7%
2019	2.0%	1.9%
2018	2.4%	2.3%
2017	1.7%	1.6%
2016	1.0%	1.4%
2015	-0.2%	1.1%
2014	1.3%	2.0%

Province/Territory	2023 Annual Change (%)
NU*	2.5%
PEI	2.9%
AB	3.3%
NWT*	3.3%
NFLD	3.3%
MB	3.5%
NB	3.6%
ON	3.8%
BC	3.9%
SK	4.0%
NS	4.0%
QC	4.5%
YT*	4.9%

* CPIs for territories are estimated for capital cities only.

Notes on Consumer Price Index:

The Consumer Price Index (CPI) is a measure of the rate of price change for goods and services bought by Canadian consumers. It is the most widely used indicator of price changes in Canada. CPI is not a cost-of-living index.

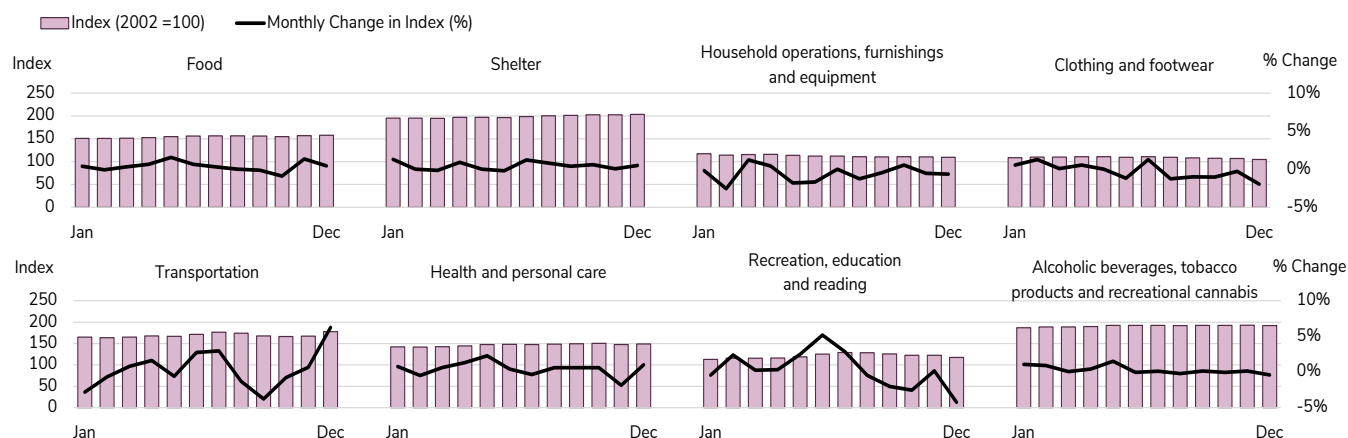
The CPI should be thought of as a measure of the percentage change over time of the average cost of a large basket of goods and services purchased by Canadians. The CPI does not count the price of each item equally but weights each according to its share of total household expenditures in the base period.

The quantity and quality of the goods and services in the basket remain the same. Therefore, changes in the cost of the basket over time are not due to changes in the quantity and/or quality of the goods and services observed, but are purely due to price movements.

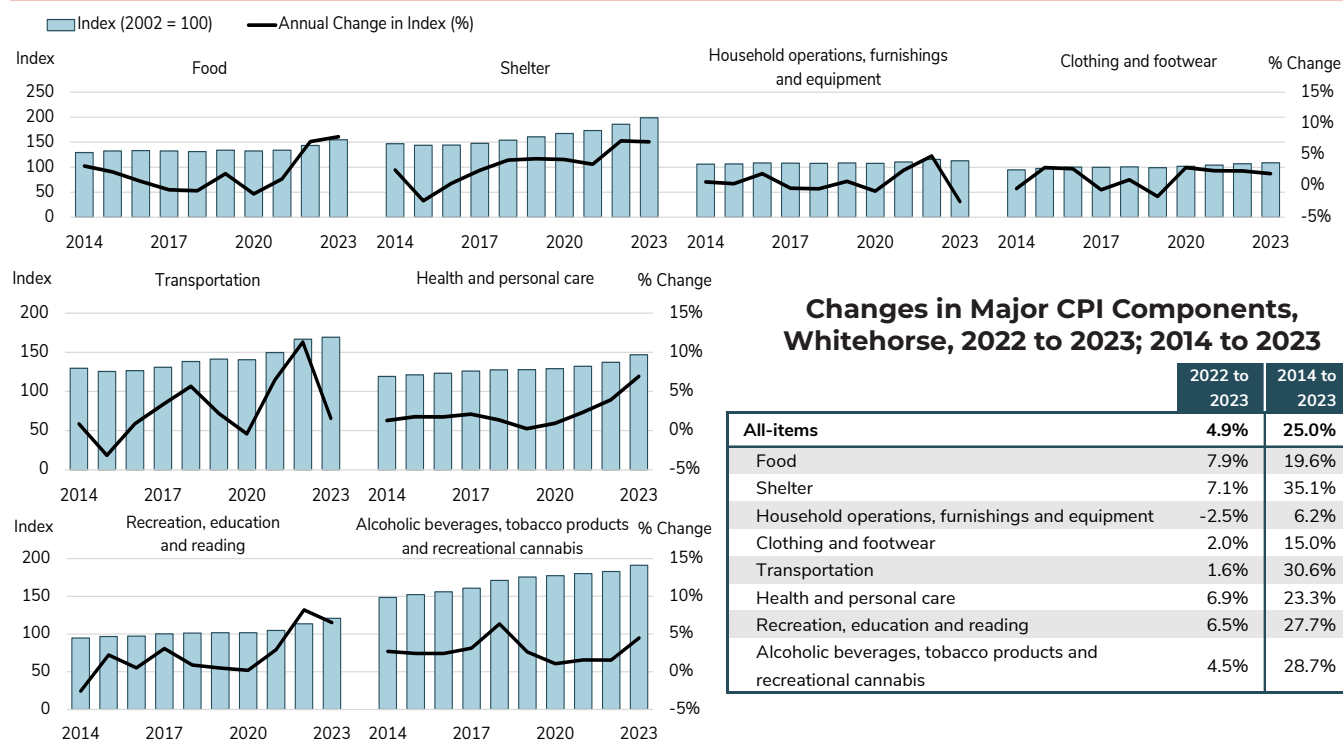
Related Links

- [Statistics Canada's The Canadian Consumer Price Index Reference Paper](#)
- [Yukon Monthly Statistical Review - including the Community Spatial Price Index](#)
- [Monthly Yukon Fuel Price Survey](#)
- [Statistics Canada's Consumer Price Index: Annual Review 2023](#)

Changes in Major CPI Components, Whitehorse, January to December 2023



Changes in Major CPI Components, Whitehorse, 2014 to 2023



Changes in Major CPI Components, Whitehorse, 2022 to 2023; 2014 to 2023

	2022 to 2023	2014 to 2023
All-items	4.9%	25.0%
Food	7.9%	19.6%
Shelter	7.1%	35.1%
Household operations, furnishings and equipment	-2.5%	6.2%
Clothing and footwear	2.0%	15.0%
Transportation	1.6%	30.6%
Health and personal care	6.9%	23.3%
Recreation, education and reading	6.5%	27.7%
Alcoholic beverages, tobacco products and recreational cannabis	4.5%	28.7%

Index Weighting

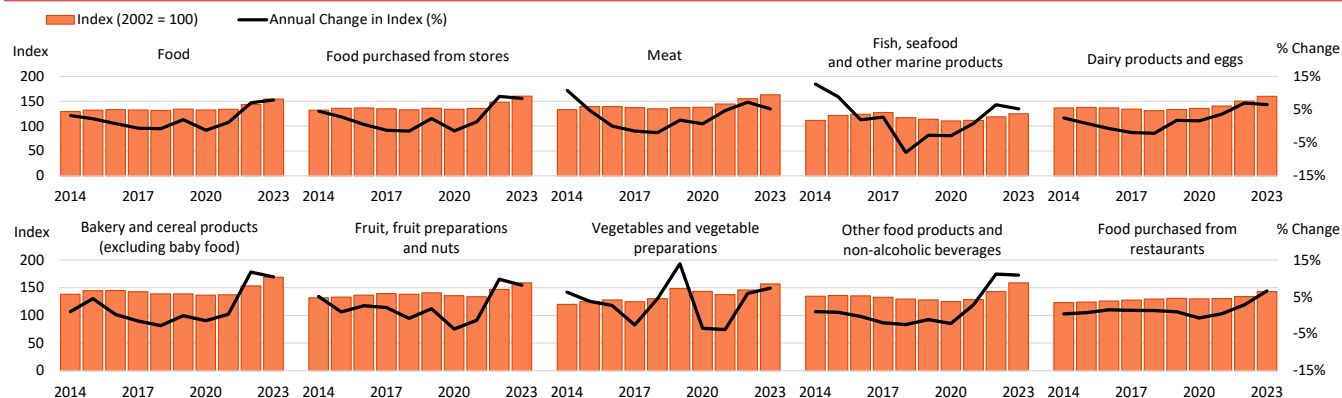
The weighting of the Consumer Price Index is based on consumer spending patterns within each geographic area; the weighting of the Whitehorse CPI is unique to Whitehorse residents' spending patterns.

For example, on average, Whitehorse residents spend 27.48 cents of every dollar of their household expenditures on Shelter, while spending 3.38 cents on Clothing and footwear.

The index is reweighted periodically to reflect changes in consumer behaviour. For example, comparing the 2022 basket weights to 2017, the weight attributed to Shelter increased by 2.94 percentage points (from 24.54% to 27.48%) to reflect an increase in the proportion of household expenditure that Whitehorse residents allocated to Shelter.

Major Components	Whitehorse CPI Weighting (2022 Basket)	Change in Index Weight 2021 to 2022	Change in Index Weight 2017 to 2022
All-items	100.00	...	...
Shelter	27.48	0.51	2.94
Food	16.32	-1.43	0.61
Recreation, education and reading	14.86	-1.33	4.56
Household operations, furnishings and equipment	13.73	1.91	-1.02
Transportation	13.02	0.87	-7.52
Alcoholic beverages, tobacco products and recreational	6.91	-0.52	2.59
Health and personal care	4.30	0.08	-0.22
Clothing and footwear	3.38	-0.09	-1.94

CPI for Food and Sub-Components, Whitehorse, 2014 to 2023



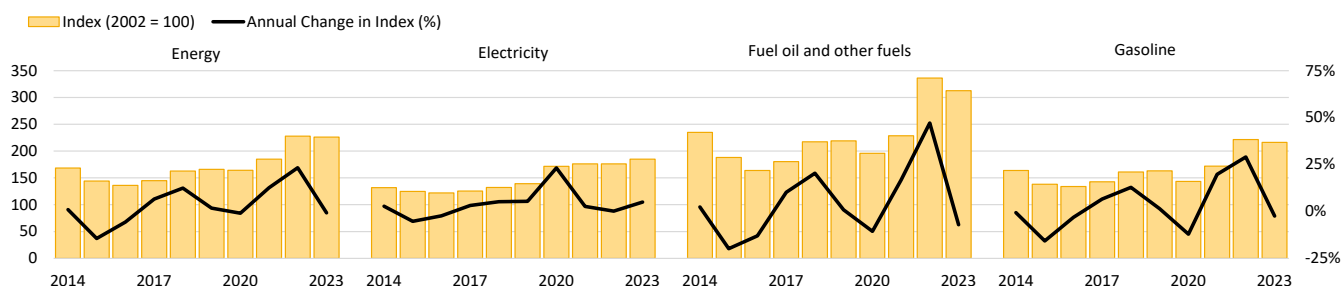
Comparing 2023 to 2022, the CPI for Food increased by 7.9%. During this period, the CPI for all sub-components of Food increased. The largest increase were in:

- Other food products and non-alcoholic beverages (10.9%);
- Bakery and cereal products (excl. baby food) (10.4%); and
- Fruit, fruit preparations and nuts (8.2%).

Comparing 2023 to 2014, the CPI for Food increased by 19.6%. During this period, the CPI for all sub-components of Food increased. The largest increase were in:

- Vegetables, and vegetable preparations (30.6%);
- Meat (22.5%); and
- Bakery and cereal products (excl. baby food) (22.3%).

CPI for Energy and Sub-Components, Whitehorse, 2014 to 2023



The special aggregate of Energy includes the sub-components Electricity, Fuel oil and other fuels, Gasoline, Natural gas (no data available) and Fuel, parts and supplies for recreational vehicles (no data available).

The CPI for Energy decreased by 0.8% in 2023 compared to 2022, and increased by 34.3% compared to 2014.

In 2023, the CPI for Fuel oil and other fuels decreased by 7.0% compared to 2022, and increased by 33.1% compared to 2014.

In 2023, the CPI for Gasoline decreased by 2.4% compared to 2022, and increased by 31.9% compared to 2014.

In 2023, the CPI for Electricity increased by 5.0% compared to 2022, and increased by 40.5% compared to 2014.

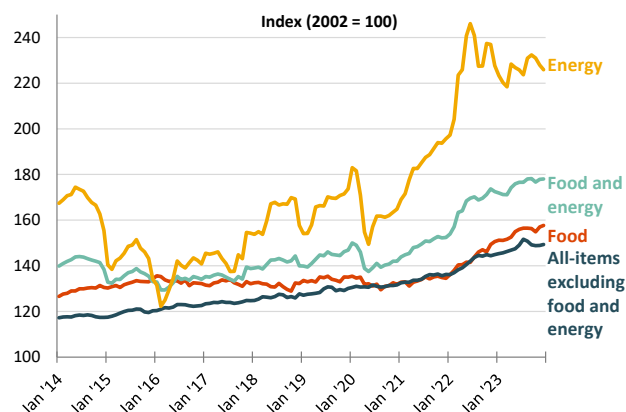
CPI Aggregates, by Month, Whitehorse, January 2014 to December 2023

In general, Food prices and Energy prices are the two most volatile components of the CPI.

In the past ten years, the CPI for Energy was the lowest in February 2016 and the highest in June 2022. Comparing December 2023 to December 2019, Energy prices increased by 30.1%.

During the past ten years, the CPI for Food, which was the lowest in January 2014, increased until January 2016. From 2016 until the middle of 2021, Food prices were relatively stable. After this, Food prices began to increase at a faster rate, reaching a ten year high in December 2023.

The All-items excluding food and energy index was at its lowest level in the past ten years in January 2014 and reached its highest level in July 2023.



Changes in All Available CPI Components, Whitehorse, 2023 Compared to 2022

Food	7.9%	Household operations, furnishings and equipment	-2.5%	Transportation, cont'd	
Food purchased from stores	8.4%	Household operations	-4.2%	Public transportation	-4.4%
Meat	5.2%	Communications	-10.5%	Local and commuter transportation	3.6%
Fresh or frozen meat (excluding poultry)	6.2%	Telephone services	-11.1%	City bus and subway transportation	0.0%
Fresh or frozen beef	7.0%	Internet access services (200212=100) 10	-8.3%	Taxi and other local and commuter transportation services	7.3%
Fresh or frozen pork	5.5%	Child care and housekeeping services	-52.2%	Inter-city transportation	-5.3%
Fresh or frozen poultry	4.7%	Household cleaning products	7.0%		
Fresh or frozen chicken	3.4%	Paper, plastic and aluminum foil supplies	8.7%	Health and personal care	6.9%
Processed meat	4.8%	Other household goods and services	7.8%	Health care	4.3%
Fish, seafood and other marine products	5.2%	Financial services (200212=100)	5.6%	Health care goods	3.9%
Fish	7.9%	Household furnishings and equipment	0.1%	Medicinal and pharmaceutical products	4.3%
Dairy products and eggs	6.5%	Furniture and household textiles	-2.6%	Prescribed medicines (excluding medicinal cannabis)	2.1%
Dairy products	6.5%	Furniture	-4.0%	Non-prescribed medicines	6.4%
Fresh milk	4.7%	Household textiles	9.5%	Health care services	4.9%
Butter	10.2%	Household equipment	1.4%	Personal care	9.6%
Cheese	5.5%	Household appliances	1.5%	Personal care supplies and equipment	10.3%
Eggs	6.5%	Non-electric kitchen utensils, tableware and cookware	-3.3%	Personal care services	6.2%
Bakery and cereal products (excl. baby food)	10.4%				
Bakery products	11.0%	Clothing and footwear	2.0%	Recreation, education and reading	6.5%
Cereal products (excluding baby food)	9.5%	Clothing	1.3%	Recreation	6.7%
Fruit, fruit preparations and nuts	8.2%	Women's clothing	1.3%	Recreational equipment and services (excl. rec. veh.)	2.6%
Fresh fruit	6.1%	Men's clothing	3.2%	Purchase and operation of recreational vehicles	3.0%
Preserved fruit and fruit preparations	10.4%	Children's clothing	-2.3%	Home entertainment equipment, parts and services	8.7%
Vegetables and vegetable preparations	7.4%	Footwear	0.2%	Travel services	13.0%
Fresh vegetables	7.0%	Clothing accessories, watches and jewellery	3.6%	Traveller accommodation	14.3%
Preserved vegetables and vegetable preparations	9.1%	Clothing material, notions and services	5.1%	Other cultural and recreational services	-2.8%
Other food products and non-alcoholic beverages	10.9%			Education and reading	4.6%
Sugar and confectionery	9.9%	Transportation	1.6%	Reading material (excluding textbooks)	7.8%
Edible fats and oils	13.5%	Private transportation	2.1%		
Coffee and tea	8.9%	Purchase, leasing and rental of passenger vehicles	3.7%	Alcoholic beverages, tobacco products and recreational cannabis	4.5%
Non-alcoholic beverages	8.3%	Purchase and leasing of passenger vehicles	4.1%	Alcoholic beverages	5.9%
Food purchased from restaurants	6.6%	Purchase of passenger vehicles	4.0%	Alcoholic beverages served in licensed establishments	8.2%
		Operation of passenger vehicles	0.6%	Alcoholic beverages purchased from stores	4.6%
Shelter	7.1%	Gasoline	-2.4%	Beer purchased from stores	4.2%
Water, fuel and electricity	0.7%	Passenger vehicle parts, maintenance and repairs	5.0%	Wine purchased from stores	8.7%
Electricity	5.0%	Other passenger vehicle operating expenses	1.6%	Liquor purchased from stores	2.1%
Water	2.5%	Passenger vehicle insurance premiums	1.8%	Tobacco products and smokers' supplies	7.4%
Fuel oil and other fuels	-7.0%	Passenger vehicle registration fees	0.0%	Cigarettes	7.4%

Data sources to this point in the publication include: Statistics Canada Tables 18-10-0004-01; 18-10-0005-01; and 18-10-0007-01

Community Spatial Price Index (Whitehorse = 100), 2023

The Community Spatial Price Index is produced quarterly (two periods' data are presented below) by Yukon Bureau of Statistics to compare prices of regularly purchased items in Whitehorse to prices in other Yukon communities. For example, in July 2023, if the selected items in this table totalled \$100.00 in Whitehorse, the same items would cost \$118.10 in Carmacks, \$121.10 in Dawson City, \$111.40 in Faro, \$126.60 in Haines Junction, \$119.80 in Mayo, \$123.70 in Ross River, \$122.90 in Teslin and \$119.20 in Watson Lake.

	Carmacks		Dawson City		Faro		Haines Junction		Mayo		Old Crow		Ross River		Teslin		Watson Lake	
	Jan	Jul	Jan	Jul	Jan	Jul	Jan	Jul	Jan	Jul	Jan	Jul	Jan	Jul	Jan	Jul	Jan	Jul
Total Survey Items	113.1	118.1	113.7	121.1	109.6	111.4	117.3	126.6	116.5	119.8	..	..	116.4	123.7	114.9	122.9	114.4	119.2
Meat	112.6	112.0	105.1	110.5	94.4	93.4	105.5	102.3	112.2	111.4	..	..	103.6	105.5	114.6	130.9	105.1	107.5
Dairy/eggs	104.0	106.9	123.8	130.7	135.8	114.0	123.9	129.5	117.2	116.5	..	..	116.6	116.9	118.9	119.3	118.7	126.9
Fruit/vegetables	125.8	134.7	103.2	113.4	107.5	108.6	107.4	129.1	126.5	130.3	..	..	127.0	138.8	117.2	124.4	117.0	124.8
Bread/cereal	122.2	121.0	130.4	140.8	119.2	118.8	123.0	137.7	124.0	127.9	..	..	116.5	124.0	133.4	134.5	121.7	125.6
Other foods	118.4	118.9	116.8	129.8	117.5	123.1	127.3	125.6	121.4	123.2	..	..	127.3	145.0	120.9	132.7	124.9	127.6
Household operations	126.5	138.2	116.3	122.5	114.7	117.5	129.4	133.8	126.6	132.4	..	..	131.2	132.3	132.7	139.4	122.2	127.0
Health & personal care	110.6	121.4	143.5	147.1	112.1	120.0	145.4	150.3	124.4	128.5	..	..	113.7	117.0	123.2	130.2	125.1	124.5
Gasoline/Diesel	108.1	107.0	109.0	109.5	107.5	105.7	104.8	105.1	104.0	107.8	..	..	109.1	107.1	101.5	102.7	101.7	102.2
Cigarettes	102.3	100.1	..	99.2	93.7	96.0	..	..	105.4	101.5	..	..	111.9	107.6	100.6	94.4	107.0	103.3
Home Heating Fuel	99.5	101.5	106.7	106.2	101.0	105.0	99.5	101.5	105.0	102.2	99.1	105.1	99.5	101.3	101.9	104.4

.. = data not available

Source: Yukon Bureau of Statistics

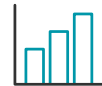
February 2024

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Yukon Bureau of Statistics



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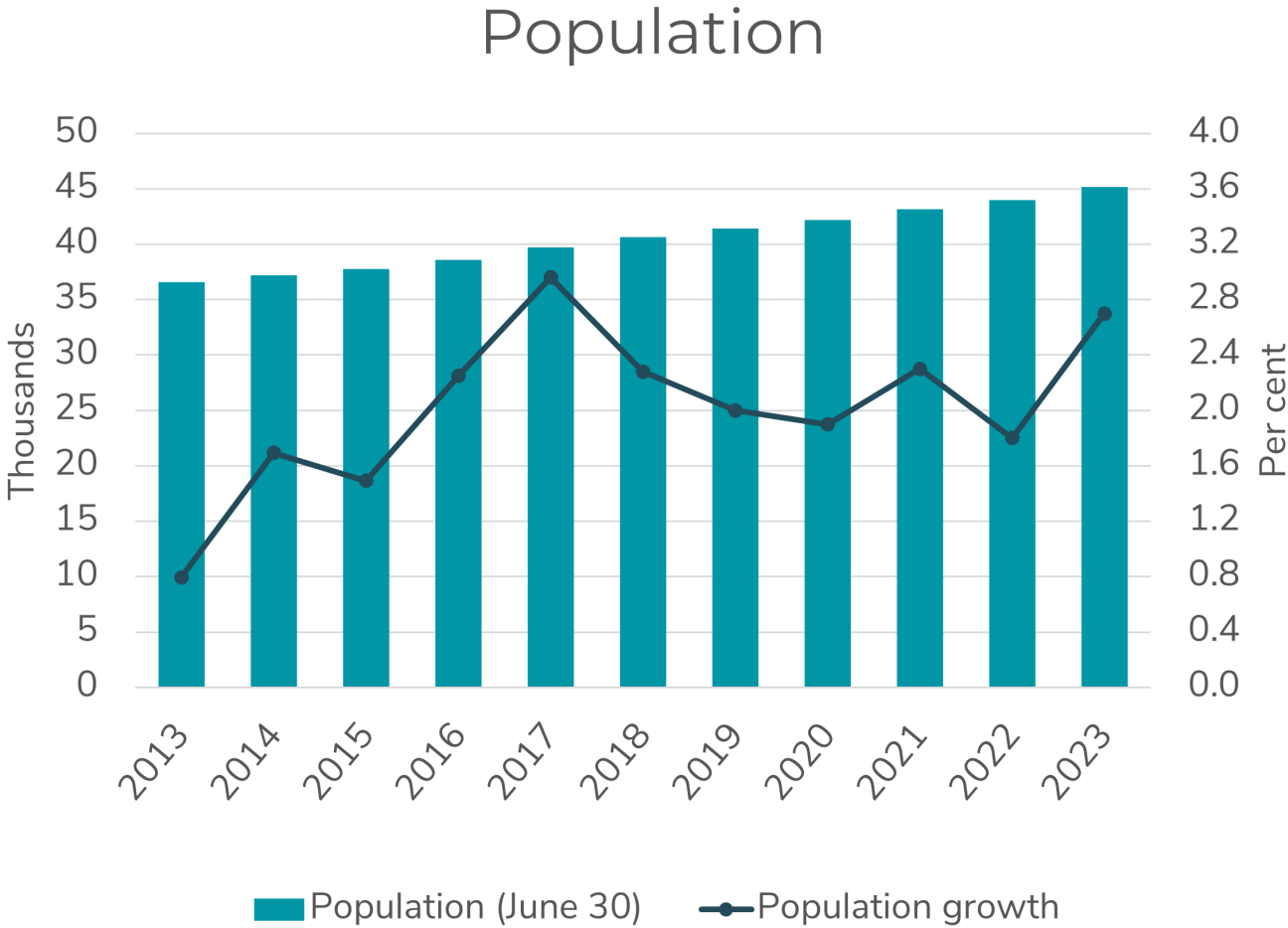
Access the [Yukon Fact Sheet](#)



Population (March 2024)	46,259
GDP by Industry Growth (2022 to 2023 ^P)	up 1.6%
Unemployment Rate (July 2024)	3.0%
Real Estate Transactions (2024-Q1)	\$48.7 million
Change in CPI (July'23 to July '24)	up 1.4%
Retail Sales (June 2023 to June 2024 ^P)	up 3.9%

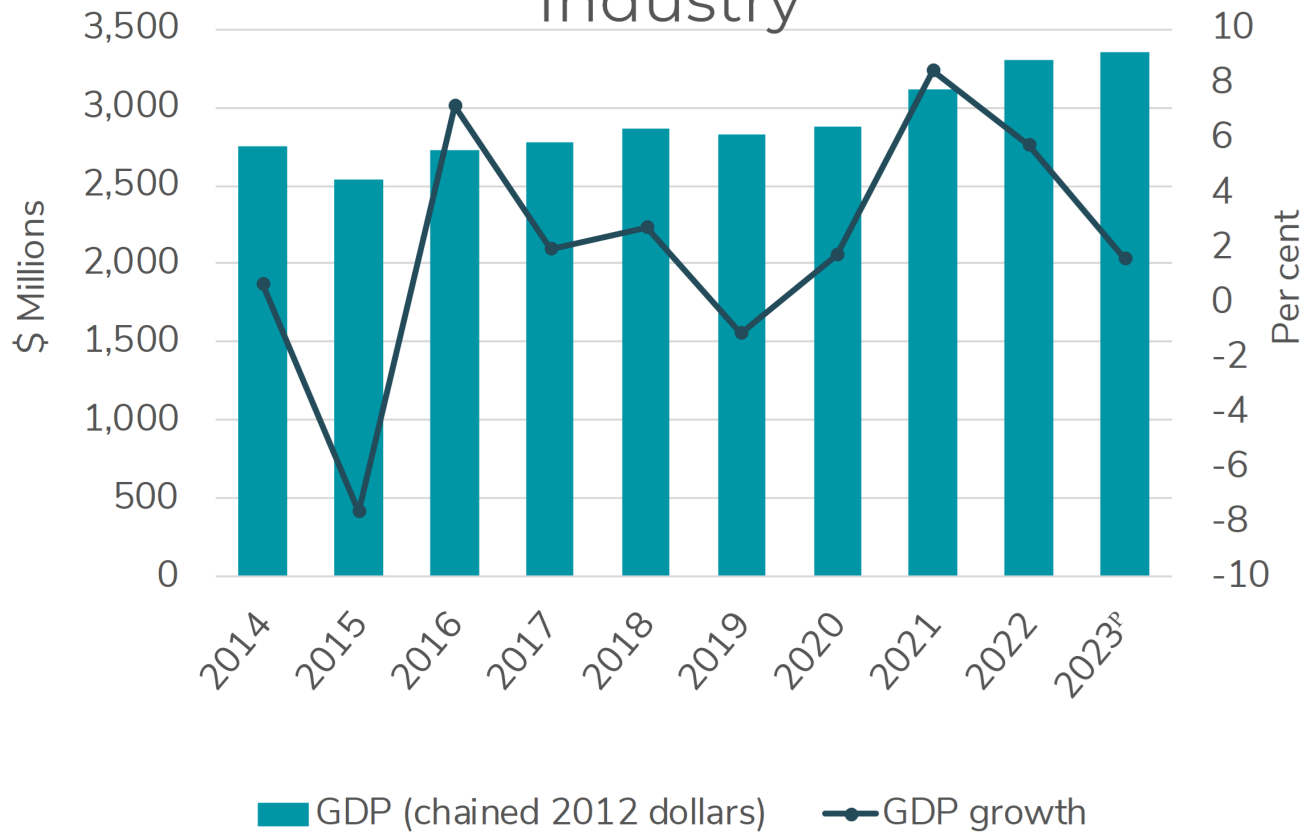


^P = Preliminary

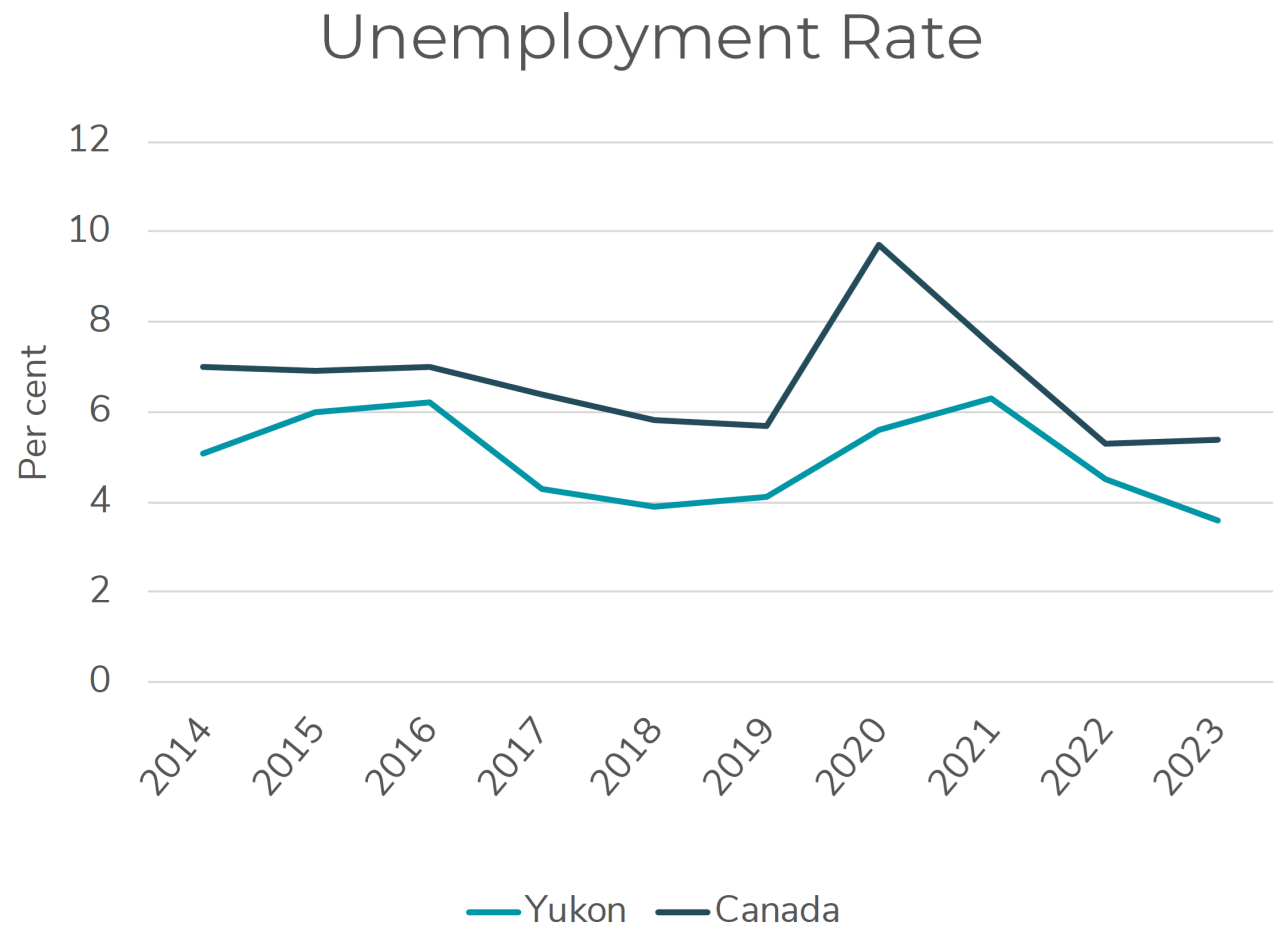


Population (June 2023) 45,169.

Gross Domestic Product (GDP) by Industry

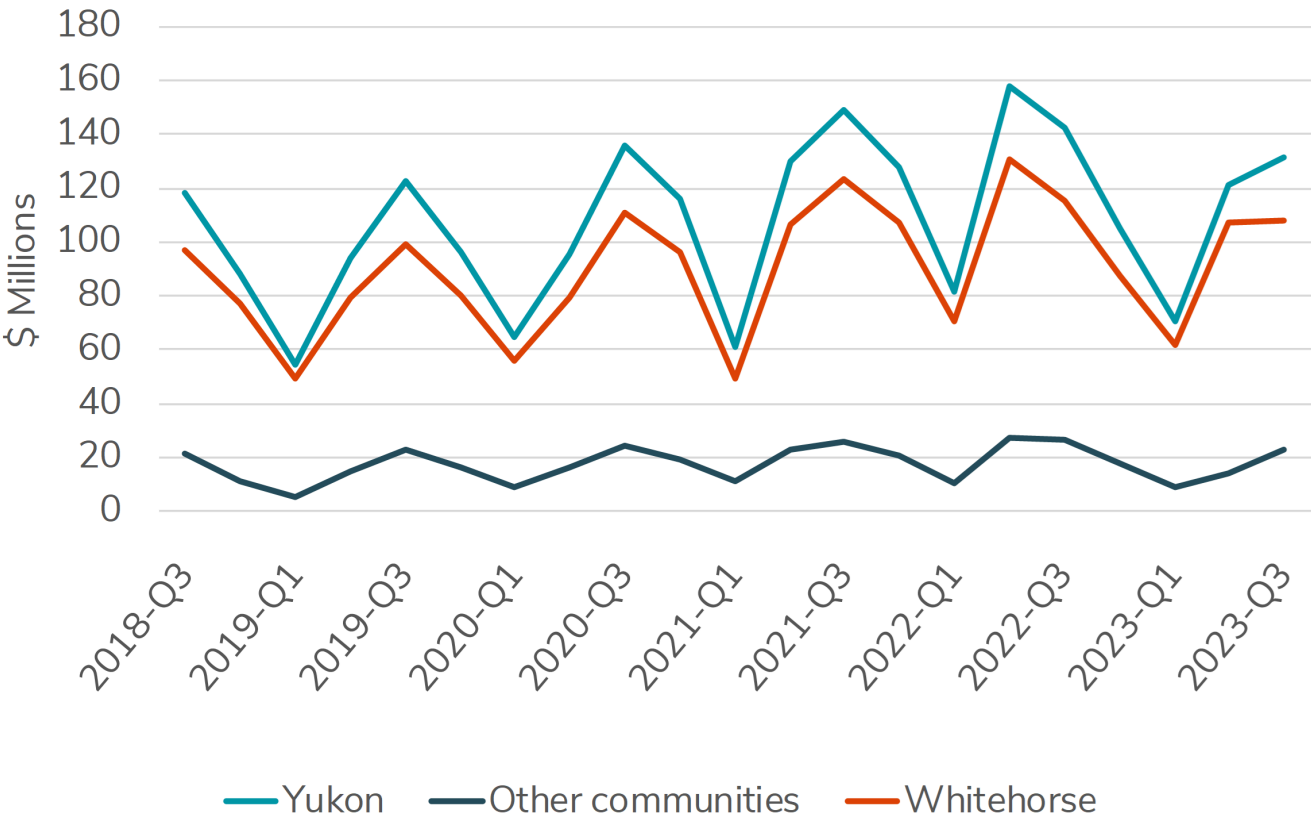


GDP by industry growth (2022 to 2023 preliminary estimates) up 1.6%.

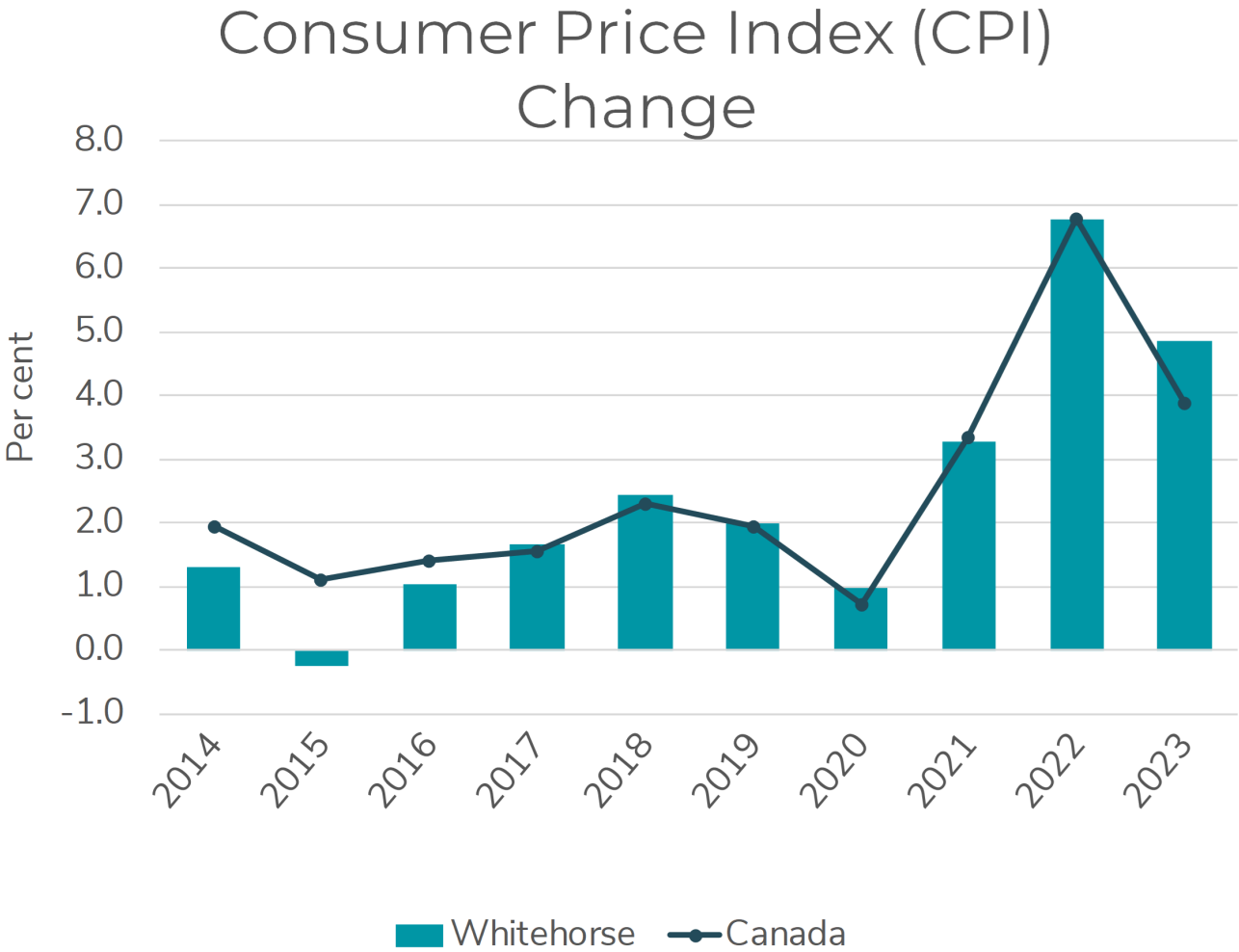


Unemployment rate (January) 4.3%.

Value of Real Estate Transactions

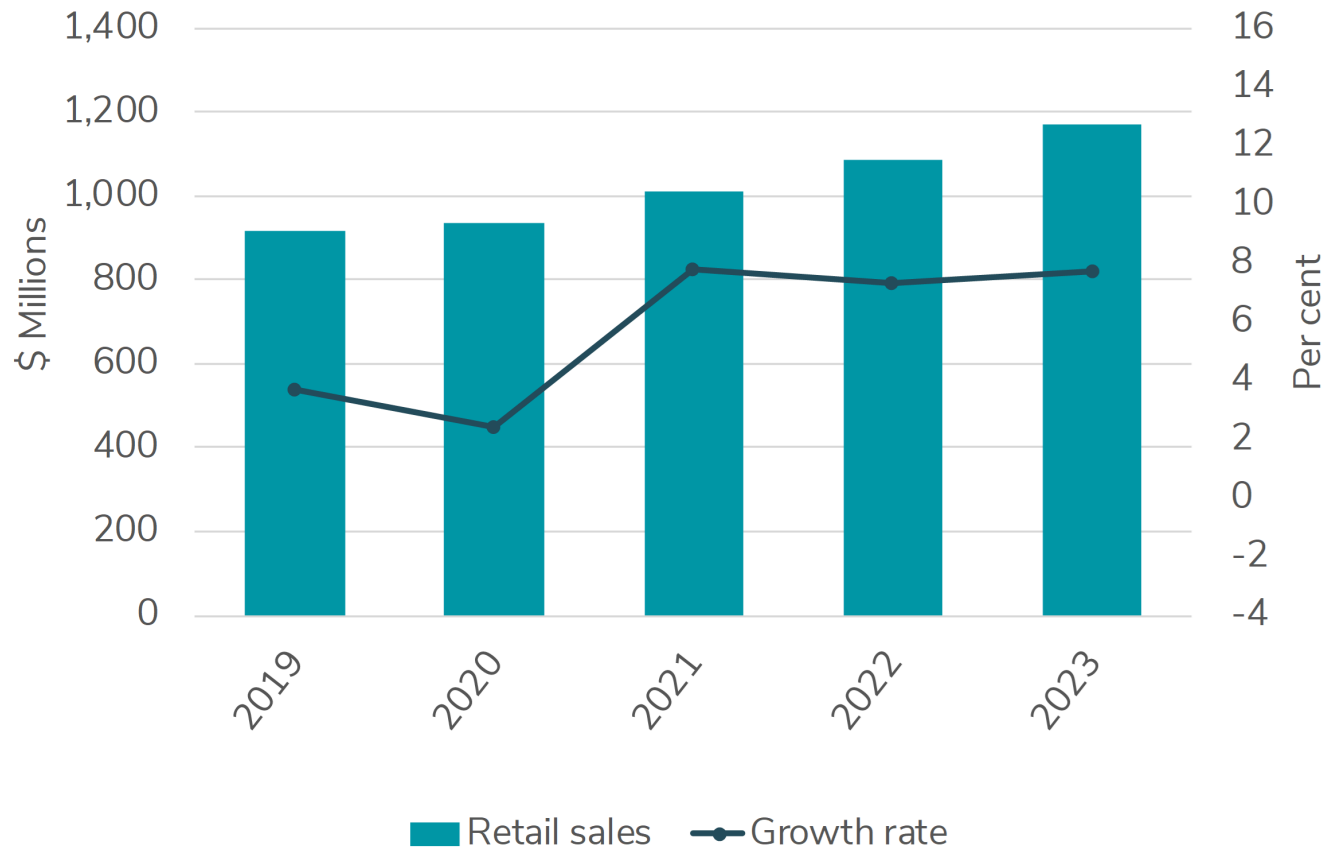


Real estate transactions third quarter (2023) \$131.1 million.



Change in CPI in Whitehorse (2023) up 4.9%.

Retail Sales



Retail sales (2023) up 7.7%.

Find more information

For more information on Yukon's key indicators read:

- [population reports;](#)
- [gross domestic product \(GDP\) by industry growth reports;](#)
- [employment rate reports;](#)
- [real estate transaction reports;](#)
- [change in consumer price index \(CPI\) reports;](#) and
- [retail sales reports.](#)

Other indicators can be found in the latest [Monthly Statistical Review](#).

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