2016 YUKON JUDICIAL COMPENSATION COMMISSION

Government of Yukon

And

Territorial Court of Yukon

REPORT OF THE COMMISSION

Timothy S. Preston, Q.C.

Commissioner

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Yukon Judicial Compensation Commission 2016

1. Composition of the Commission

This Commission was established pursuant to Order-in–Council (OIC) 2017/90 dated May 11, 2017. Under s.13 of the Territorial Court Act, RSY 2002, c.217, as amended (TCA), a commission is to be appointed every third year.

The commission is to consist of either one commissioner or three commissioners to be appointed by the Commissioner-in-Executive Council in accordance with Part 3 of the TCA. Under s.21 of the TCA, the Minister and the Chief Judge are mandated to endeavor to agree and to make every effort to recommend the appointment of a single commissioner.

The parties represented at the proceedings before this Commission entered into a document entitled “Letter of Understanding” (LOU) dated January 2005, wherein they agreed to a process with a view of agreeing on the appointment of a single commissioner for JCC proceedings. The LOU is attached at Tab 3 of the Supporting Materials. That LOU remains in effect. Pursuant to the TCA and the LOU, a single commissioner, Tim Preston, was appointed to the 2016 JCC.

It should be stated that a prior OIC 2016/22 had established the 2016 JCC, however, due to health issues of the commissioner that had been appointed, it was necessary to abolish that commission and re-establish a new commission under the first mentioned OIC. This process, as a matter of course, caused significant delay in the proceeding and the filing of the report and recommendations of the 2016 JCC.

However, the parties agreed that no detriment or benefit would accrue to any party as a result of delay in the proceedings, and in particular, all judges and justices of the peace would be duly compensated or remunerated with respect to any loss that may arise from delay in the proceedings. The Commission has been advised by the parties that a formula or process has been established in order to implement that agreement.

2. Parties to the Proceedings

The parties and their respective counsel or representative to this proceeding are as follows:

- Counsel for the Territorial Court Judges and Deputy Judges:
  - Joseph J. Arvay, O.C., Q.C.
  - Alison M. Latimer

- Counsel for the Yukon Government:
  - Gary L. Bainbridge, Q.C.

- Representative for Justices of the Peace:
  - Gary Burgess, President of Yukon Justices of the Peace Association

3. Applications to the Commission

On November 9, 2018, two applications were made by the parties to the Commission to approve two joint submissions, one with respect to the Judges and Deputy Judges ("Judges"), and a second one with respect to the hourly-rated Justices of the Peace ("Submissions").

The Submissions reference the Commission's jurisdiction to make recommendations concerning remuneration to Government pursuant to s. 14 of the TCA with respect to the Judges, and s. 58 of the TCA with respect to the Justices of the Peace.

The period of concern for this Commission is April 1, 2016 to March 31, 2019.

All of the parties attended the hearing of the application by way of telephone conference.

In support of the joint application, the parties provided the Commission the following materials:

1. Written memorandum entitled “Joint Submission of the Territorial Court Judiciary and the Yukon Government to the 2016 Judicial Compensation Commission” dated November 5, 2018 and signed by respective counsel for those parties (“Joint Submission”).

2. Written memorandum entitled “Submission of the Government of Yukon In Relation to the Territorial Court Judges And In Relation to the Hourly-Rated Justices of The Peace” dated November 6, 2018 and signed by counsel for the Government.

3. Written memorandum entitled “Written Submissions of The Territorial Court Judiciary In Relation To The Territorial Court Judges” dated November 8, 2018 and signed by the solicitors for the Territorial Court Judges and Deputy Judges.

4. Written memorandum entitled “Joint Submission of The Yukon Justices of The Peace Association And The Yukon Government to the 2016 Judicial Compensation Commission” dated November 5, 2018 and signed by counsel for the Government and the representative of the Association.

5. Two volumes of Supporting Materials.

Oral submissions in support of the Submissions were also made at the hearing by all the parties to the effect that the recommendations of the Commission would be binding on the Government pursuant to s. 17 of the TCA subject to certain “strings” or

conditions as setout in the TCA and the caselaw; and, the joint submissions are, so the parties submit, “justified” based on the facts, the legislation and the caselaw.

Counsel referenced s. 19 of the TCA and the caselaw, particularly the 2011 decision of the Supreme Court of Yukon of *Cameron v. Yukon*, [2011] Y.J. No. 37, a decision of V.A. Schuler J.

That case was an application for judicial review of recommendations of the 2007 Yukon Judicial Compensation Commission in which the commission accepted and incorporated into its recommendations to Government, a joint submission of the Judges and the Government on an appropriate increase in remuneration of the Judges and a separate submission of the salaried justice of the peace.

The parties did not present a joint submission as to the salary of the petitioner who was the Senior Presiding Justice of the Peace.

Of particular interest with respect to the application before this Commission, is the criteria that the *Cameron* case applies to Yukon judicial review commissions when presented with a joint submission. Further comment will follow concerning this case.

The Joint Submission with respect to the Judges submits salary increases and effective dates thereof, for the Judges as follows:

April 1, 2016:	$273,374.04	[2% increase]
April 1, 2017:	$280,208.39	[2.5% increase]
April 1, 2018:	$287,213.60	[2.5% increase]

With respect to Deputy Judges the Joint Submission submits *per diem* increases and effective dates thereof, as follows:

April 1, 2016:	$1,094.04	[2% increase]
April 1, 2017:	$1,121.39	[2.5% increase]

The Joint Submission with respect to Deputy Judges' *per diem* effective April 1, 2018, submits that the formula for calculating the rate should be changed by dividing the salary of the Judges at the time of sitting, by 235. The *per diem* rate effective April 1, 2018 would be:

April 1, 2018: $1,222.19 [effectively a 9% increase]

Certain "housekeeping" amendments to the *Territorial Court Pension Plan Act, 2003* have been agreed to by the parties.

- First, that the Act be amended to remove the notion of "actuarial reduction" and to instead provide for a 3% reduction per year.

- Second, that subsection 10(3) of Schedule 3 of the Act be amended to clarify that the 5 year guarantee applies to all pensions payable.

- Third, that Schedule 3 of the Act be amended that additional pension amounts in respect of children are payable under both the registered and supplemental plans.

It is submitted by the parties that all other benefits with respect to the Judges remain unchanged.

With respect to the Justices of the Peace, the parties (the Government and the Justices of the Peace Association) jointly submit that effective April 1, 2016, the pay rate for Justices of the Peace be increased $10.00 per hour as follows:

JP 1: from $35.00 per hour to $45.00 per hour
JP 2: from $40.00 per hour to $50.00 per hour
JP 3: from $60.00 per hour to $70.00 per hour

Secondly, the parties submit that the Order-in-Council expressing rate of pay where hourly-rated Justices of the Peace work on designated paid holidays, should express that rate of pay as time and one half of their regular hourly rate.

Thirdly, the parties submit that the "Commission should recommend that the Government compensate any hourly-rated Justice of the Peace who was underpaid for working on a designated paid holiday, due to the incorrect rate of pay being used at the relevant time".

Fourthly, the parties submit that all other benefits remain unchanged.

4. Mandate of the Commission and legislative framework

Judicial compensations commissions were established across the country as a result of the 1997 decision of the Supreme Court of Canada in *Reference re Remuneration of Judges of the Provincial Court (P.E.I.), [1997] 3 S.C.R. 3 ("PEI Reference").* The necessity for judicial independence in the Canadian form of liberal democratic government was the paramount issue in that case. Schuler, J. in the *Cameron* case reviewed the principle of judicial independence and wrote follows:

> [12] Judicial independence is protected by the common law and by the Canadian Constitution in the *Charter of Rights and Freedoms*, s. 11(d). Independence is necessary because the judiciary's role is to protect the Constitution and the values embodied in it. Judicial independence has an individual dimension relating to the independence of a particular judge and an institutional dimension relating to the independence of the court the judge sits on. Public confidence depends on the judiciary both being and being seen to be independent: *Provincial Court Judges' Assn. of New Brunswick v. New Brunswick (Minister of Justice),* [2005] S.C.J. No. 27, 2005 SCC 44 (CanLII) ("*New Brunswick*").
>
> [13] The components of judicial independence include financial security. The *PEI Reference* states that financial security entails three requirements: (i) judicial salaries can be maintained or changed only by recourse to an independent commission; (ii) no negotiations are permitted between the judiciary and the government; (iii) judicial salaries may not fall below a minimum level. Prior to the *PEI Reference*, in some provinces salary negotiations took place between provincial court judges or their associations and the government, sometimes resulting in public rhetoric and 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: *New Brunswick*.
>
> [14] The *PEI Reference* declared that compensation commissions were to be the forum for discussion, review and recommendations to the government on judicial compensation issues. It was hoped and expected that this would avoid confrontations between the judiciary and the government and depoliticize the relationship between the two by creating a new way and a new forum for setting judicial remuneration: *New Brunswick*.
>
> [15] The judicial compensation commissions are required to be independent, objective and effective. Their work must have a meaningful effect on the process of determining judicial remuneration, although their recommendations need not be binding on governments.

In August 1998 a report by The Honourable E.N. Hughes made recommendations to Government as to steps that should be taken to ensure compliance with *PEI Reference*. The TCA was amended wherein Part 3 of the Act provide for the establishment of a judicial compensation commission process for the Judges. Section 13 of the Act requires that a commission be established every three years. Section 14 states that the mandate of the commission is to inquire into and make recommendations respecting all matters relating to judicial remuneration of judges and respecting other matters as the Minister and the Chief Judge agree to submit to the commission. The Act was amended by R.S.Y. 2002, c. 217 to include salaried Justices of the Peace in the judicial compensation process established by Part 3 of the TCA.

It is apparent that the legislative framework of the TCA encourages, and in some cases mandates, the parties to work towards reaching agreement or consensus on issues that may arise between them. The legislative framework or intent is significant in circumstances of a joint application or submission because it influences the scope of review, or the standard of review, that the commission should apply in such applications.

The commission has a role or a duty to ensure that a joint submission complies with the legislation, as well as the principles enunciated in the caselaw. The caselaw describes that the role of the commission is to act as a filter or sieve between the parties to assist in fostering judicial independence in the area of financial security for the court. The joint

submissions make reference to the sections of the TCA that contemplate the use of mediation to encourage the parties to reach agreement on issues between the judges and the Government:

- Section 23 states that if practicable at least one of the commissioners should be skilled in mediation or other consensus process to resolve differences.

- Subsection 24(2) states that the commission shall make every effort to use mediation and other consensus processes to resolve differences.

- Subsection 25(4)(a) makes reference to the parties identifying “unresolved issues”.

- Subsection 25(4)(b) directs the commission to employ consensus processes to assist the government and judiciary in resolving their differences.

- Other provisions of the TCA not only encourage the parties to seek agreement or consensus but, indeed, subject certain legislative provisions to the consensus process.

- Section 20 lists certain categories of persons ineligible for appointment as a commissioner “Unless otherwise agreed to by the Minister and the chief judge….”.

- Under section 21, the selection and appointment of commissioners directs the Minster and the chief judge to endeavor to reach agreement.

It is clear that the scheme of the legislation is to implement a consensus model with respect to s. 14 issues (remuneration and other related matters). That does not necessarily mean that the commission does not have a role in the circumstances where the parties have reached consensus on all issues, however, it does suggest that the

role of the commission is circumscribed by the consensus model. Indeed, the jurisprudence would indicate that the commission's role or duty varies in such circumstances.

It is instructive in considering the legislative scheme of Part 3 of the TCA with respect to the issue of mediation and dispute resolution processes by and between the parties, that S. 19 does not specifically enumerate consensus of the parties as a mandatory matter to be addressed in the commission report. The section requires the commission to address in its report "…submissions presented to it regarding…" the mandated issues. It specifically mandates "…any submissions by the public filed under section 26".
It should be stated that no submissions were received from the public under s. 26, or otherwise, with respect to any of the matters before this Commission despite public advertisement inviting submissions.

The preamble to s. 19 states that the commission shall address in the report "any matter it considers relevant". Obviously, the commission would consider relevant any agreement the parties reached on s.14 issues.

And, Part 3 of the TCA must be interpreted in the context of the principles established by the caselaw, particularly *PEI Reference* case. That case addresses the constitutional imperative of establishing an "institutional sieve" or filter in the negotiation process between the government and the courts in fixing remuneration for the judges to ensure that the negotiating process does not involve traditional "horse-trading" that is typical in industrial labour relations. The rationale for preventing that style of negotiations is explained in the *PEI Reference* case.

5. *Cameron* Case

In *Cameron*, Madame Justice Schuler considered the role of the commission in circumstances where the parties reached consensus with respect to remuneration issues.

The court cited the Supreme Court of Canada decision in *New Brunswick* and referenced the mandate of the commission as set out in s. 14 of the TCA.

At paragraph 100 of *Cameron* the court writes:

> [100] In *New Brunswick*, the Supreme Court referred to the judicial compensation commission process as neither adjudicative interest arbitration nor judicial decision making. Instead, its focus is to be on identifying the appropriate remuneration for the judicial office in question (paragraph 14). Section 14 of the *Territorial Court Act* provides that the mandate of the JCC is to "inquire into and make recommendations respecting all matters relating to judicial remuneration of judges". Agreement by the parties as to what is appropriate is clearly relevant and if the JCC also considers it appropriate based on the evidence and information provided, there is no reason why a joint submission should not be adopted by the JCC if it is not unreasonable, illogical or otherwise questionable. The JCC clearly is not obliged to adopt a joint submission, but considering, as I have said, that what the JCC is dealing with is not an exact science, there is no reason why it should not do so.

In *Cameron*, the court also refers to the *PEI Reference* case with respect to agreements made between the government and the judges. The court in the *PEI Reference* case stated that such agreements promote the objective or principle of judicial independence:

> [102] In the *PEI Reference*, the Supreme Court declined to set in stone the form that a judicial compensation commission can take. I will refer to this in more detail in considering the Petitioner's submissions about the 2007 JCC being a single commissioner. In discussing that issue, the Supreme Court considered the Schedule to Ontario's *Courts of Justice Act*, which embodies an agreement between the government and the provincial court judges to establish, among other things, a binding process for determination of the judges' compensation. The Court said that agreements of this sort promote, rather than diminish, judicial independence. Although it did not comment specifically on it, the agreement includes clause 18, which states, "The parties agree that representatives of the Judges and the Lieutenant Governor in Council may confer prior to, during or following the conduct of an inquiry and may file such agreements with the Commission as they may be advised". That the Supreme Court did not comment

> adversely on this clause suggests that it did not view the making of agreements by the parties to be contrary to the judicial compensation commission process.

With respect to the duty of the commission in circumstances in which the parties present to the commission a joint submission on all of the issues between the parties, the court in *Cameron* stated that "it is preferable that reasonably detailed reasons be given for a commission's recommendation, even when it has accepted a joint submission, in part because the reasons may be of assistance to the work of the future commissions." (para 104).

Those comments, in this Commission's view, are consistent with sections 14 and 19 of the TCA. Section 19 states that "the commission shall, in addition to considering any matter it considers relevant, address in its report submissions presented to it regarding" the enumerated or mandated matters.

This Commission is of the view that s. 19 should not be interpreted to apply only to "unresolved issues" (as that phrase is used in s. 25) that are submitted to the Commission. It is a fair interpretation of the section that it makes the assumption that the submissions from the parties do address the enumerated matters even in circumstances, as is the current case, where the submissions are joint; that is, where there is no disagreement or dispute or joinder of the issues between the parties.

In the case before this Commission, the Joint Submission references the sections of the TCA that encourage mediation and dispute resolution to attempt to achieve consensus. It states that it is not uncommon in JCC proceedings where agreement has been reached that a joint submission "be placed before the Commission for approval, if considered appropriate."

The Joint Submission with respect to the Judges then sets out the agreement with respect to salary for the court Judges, Deputy Judges, pension benefits and submits that all other benefits are to remain unchanged.

The joint submission with respect to the Justices of the Peace sets out the pay rate, holiday rate, retroactive holiday pay, and states that all other benefits are to remain unchanged.

The written joint submissions were supplemented with oral submissions at the hearing. These joint submissions are similar, in terms of process, to those considered in *Cameron* (para 96).

Reference was also made to para 89 of *Cameron* in which the petitioner in that case asserted that in determining whether a joint submission is appropriate, the commission must be independent, effective and objective, in the sense that the commission must make an independent inquiry as to the appropriateness of the joint submission. The court wrote that the *PEI Reference* case does not prohibit agreement so long as it is not arrived at by negotiation of the give and take sort. It should be said that there is no evidence before this Commission that such prohibited negotiations occurred. And, indeed, the parties represented that no such prohibited negotiations occurred. Those representations are accepted by this Commission. This Commission is not in a position to conduct an independent inquiry into the facts surrounding the negotiations that occurred between the parties, nor does the legislative mandate give this Commission the powers to do so. Section 19 of the TCA requires the commission to "address the submissions presented to it". The Commission must rely upon the submissions and representations of the parties, and the documents and evidence the parties present to it, when considering the process, as well as the substance, of any agreement that the parties have reached.

6. Issues before the Commission

Applying the *Cameron* test when considering or reviewing the subject joint submissions, the issues before this Commission can be described as follows:

1. Based on the evidence and information provided, are the recommendations concerning remuneration appropriate, and if so;

2. Are the recommendations, or any of them, unreasonable, illogical or otherwise questionable.

The Commission is of the opinion that it should not be substituting its opinion for that of the parties, nor should it be second guessing the recommendations contained in the joint submissions, if those recommendations meet the test, or criteria, as above stated.

There is no right or wrong answer to these matters; what may considered to be "appropriate" would normally fall within a scope or range. Just as what may be considered to be "reasonable" would normally fall within a scope or range. As Schuler J. stated, "what the JCC is dealing with is not an exact science". A recommendation that would be considered to be unreasonable, would usually be one that falls outside the boundaries of a range or scope. For example, if the joint submissions contained a recommendation that included a salary increase of, say 2.5%, but the commission was of the opinion that a 2% increase would be better or more appropriate, the commission should not necessarily substitute its view for that of the parties, unless it considered the 2.5% to be unreasonable or not appropriate; that is, unreasonable in the sense that 2.5% would fall outside the range of reasonableness, or not appropriate in the sense that it would fall outside the range of being appropriate. Both of the words "appropriate" and "reasonable" are somewhat elastic words that do not imply a precise or exact measure.

It must be remembered that the Government and the Judges in this case are represented by experienced, skillful and knowledgeable counsel. And the parties they represent are highly sophisticated in matters of law and procedure. The Commission should be cautious in substituting its opinion for that of the parties with respect to issues of remuneration and benefits. It should not do so unless it is convinced that same are unreasonable, illogical or otherwise questionable, as stated by the court in *Cameron*.

Cameron is the only case that counsel has referenced that has judicially considered Part 3 the TCA, and the duties and obligations of commissions established thereunder.

7. Consideration of Joint Submissions and Evidence

The joint submissions state that the parties reached agreement pursuant to the process set out in the LOU found at Tab 3 to the Supporting Materials. The process established by the LOU, and the constitutionality thereof, was considered and approved by Schuler J. in *Cameron*. As stated earlier, there is no evidence of any impropriety in the manner in which the agreement was reached or the negotiations conducted.

I. Submissions re Judges

The salary for Judges as of 2015 was $268,014. The Joint Submissions agree to an increase of 2% for 2016, a further 2.5% increase for 2017, and a 2.5% increase for 2018. The actually salaries would then be:

For 2016: $273,374.03
For 2017: $280,208.39
For 2018: $287,213.60

The table below for Territorial Court Judges salaries and for comparator jurisdictions has been set out at paragraph 85 of the brief of Government:

PROVINCIAL AND TERRITORIAL COURT JUDGES'

Salaries for Comparator Jurisdictions	2012	2013	2014	2015	2016	2017	2018
Yukon	$250,103	$257,606	$262,759	$268,014	$273,374.03 *Proposed (2%)*	$280,208.39 *Proposed (2.5%)*	$287,213.60 *Proposed (2.5%)*
NWT	$249,582	$252,414	$256,055	$260,302	$272,000	2016 salary + 1.5% + CPI	2017 salary + 1.5% + CPI
Alta.	$263,731	$273,000	$279,825	$286,821	$293,991	*[TBD]*	*[TBD]*
Sask.	$248,090	2012 salary + Sask. CPI + 1%	$260,819	$272,295	2015 salary + 2% + Sask CPI of 2015	$290,848 (=2016 salary + 2% + Sask CPI of 2016)	2017 salary + Sask CPI of 2017
BC19	$231,138	$242,464	$236,950	$240,504	$244,112	$273,000	$277,095

The table shows that the agreed salary rates are neither the highest nor the lowest in the comparator jurisdictions. Paragraph 86 of the brief of Government shows the salary rates for provincial court judges in non-comparable provinces for 2015/2016 as follows:

- Manitoba: $249,277 (April 1, 2015)
- Ontario: $287,345 (April 1, 2015)
- Quebec: $241,955 (July 1, 2015)
- NB: $246,880 (April 1, 2015)
- PEI: $250,049.90 (April 1, 2015)
- NS: $240,297 (April 1, 2015)
- Nfld/Lab: $247,545.88 (2016)

The brief of the Judges states as follows:

1. The parties are in agreement that the Commission should recommend the following salaries for a Territorial Court Judge, effective the following dates:

a. April 1, 2016: $273,374.04 [2% increase];
b. April 1, 2017: $280,208.39 [2.5% increase]; and
c. April 1, 2018: $287,213.60 [2.5% increase].

2. The proposed increases in salary, it would amount to a 7% increase over three years.

3. The Yukon *Territorial Court Act*, R.S.Y. 2002, c. 217 requires this Commission to have regard to the so-called "comparator jurisdictions" - in the words of the *Act*, "to judges in the Northwest Territories and British Columbia, Alberta, and Saskatchewan". The proposed increase would position the salary of Yukon Territorial Judges closer to the range of their two most salient comparators, being the Northwest Territories ("**NWT**") and Saskatchewan, although still behind those jurisdictions. Although not set out in the Chart at paragraph 85 of the submission of the Government of Yukon ("**YG**"), as of April 1, 2018 the salary of puisne judges in Saskatchewan is $295,792, and in NWT it is $289,732.93. As set out in the Chart, the salary in Alberta as of two years ago is $293,991.

A number of points are made in the briefs of the parties in support of the proposed increases:

- over the past 16 years Judges in Yukon have enjoyed a 97% increase in income;

- the proposed increase of 7% over three years ensures the level of compensation remains above the level required to maintain judicial independence;

- the proposed increases will suffice to attract and keep qualified applicants;

- the current financial stability of Government is sufficient to absorb the proposed increases;

- the proposed increases fall within a range of compensation that would ensure public confidence in the independence of the judiciary and, accordingly, would satisfy that portion of the PEI Reference case criteria;

- the proposed increases are generally consistent with what other public employees have received over the subject years. Management and legal officers of Government received wage increases of 2.00%, 2.00%, and 1.75% for the period January 2013 to January 2015;

- the judicial pension plan is considered more beneficial than similar plans for territorial and federal employees;

- there is little risk that qualified candidates would be deterred from applying for a position of a Judge on the basis that the proposed compensation was inadequate;

- it is acknowledged that because Whitehorse is a smaller community, social isolation for members of the judiciary is a reality that plays a factor in assessing remuneration;

- Judges face restraints on their ability to earn income from other sources or endeavors that are not faced by lawyers in private practice;

- an appointment to the bench is viewed as a long-term commitment and generally impedes other income earning opportunities;

- lawyers likely to be appointed are usually entering their most lucrative years of practice and this opportunity must be foregone;

- judicial remuneration must be sufficient to not only attract the best-qualified candidates, but also to retain and motivate those candidates;

- given the smaller population of the Yukon, a greater proportion of cases are reported by the media, and hence are more frequent comment by the media,

public and political. This can result in social isolation, restriction on their freedom of expression, and their community activity and relationships;

- Government policy of community and restorative justice can place additional demands on the judiciary including attending community meetings and developing alternative court procedures to accommodate the interests of the community;

II. Submissions re Deputy Judges

With respect to the Deputy Judges, the table at paragraph 87 of the brief of the Government sets out the *per diem* for the Yukon and the comparable jurisdictions, except B.C. which does not seem to have relief judges and *per diem* rates:

PROVINCIAL AND TERRITORIAL COURT PER DIEM

RATES FOR DEPUTY OR RELIEF JUDGES and PROPORTION OF ANNUAL JUDICIAL SALARY PER DAY	**2015**	**2016**	**2017**	**2018**
Yukon – Currently 1/250 of annual salary	$1072.59	$1094.04 (proposed)	$1,121.39 (proposed)	$1222.19 (proposed move to 1/235 of annual salary)
NWT – Currently 1/210 of annual salary			$1,239.53	$1,295.24
Alberta – Currently 1/207.5 of annual salary	$1,382.27	$1,416.82	*TBD*	*TBD*
Saskatchewan – Currently 1/220 of annual salary			$1,237.70	$1,322.04
BC	No	-	-	-

The brief of the Judges starting at paragraph 26 with respect to the *per diem* rates of the Deputy Judges states:

> 26. Deputy Judges are paid a *per diem* sitting rate based on the following formula: the salary of a Territorial Court Judge (at the time of sitting) divided by 250. The parties are in agreement that the Commission should recommend, firstly, that the *per diem* sitting rate for Deputy Judges (currently $1,072.06) be increased annually by the same percentage increases applicable to Territorial Court Judges per #1 above, and therefore the *per diem* sitting rates over the next two years will be as follows:
>
> d. April 1, 2016: $1,093.50 [2% increase];

e. April 1, 2017: $1,120.84 [2.5% increase].

27. Secondly, the parties are in agreement that the Commission should recommend that effective April 1, 2018, the formula for calculating a Deputy Judge's *per diem* sitting rate will change, such that their *per diem* sitting rate from and after April 1, 2018 will be based on the following formula: the salary of a Territorial Court Judge (at the time of sitting) divided by **235**. Therefore, the *per diem* sitting rate effective April 1, 2018 will be as follows: April 1, 2018: $1,222.19 [effectively a 9.04% increase].

28. In other appropriate comparator jurisdictions, the denominator is lower - 209 days in NWT, 220 days in Saskatchewan, and 207 days in Alberta – which results in higher daily rates.

The brief of Government states that the proposed *per diem* increases are sufficient to keep pace with inflation (para 130).

III. Submissions re Pension Changes for Territorial Court Judiciary Pension Plan

The changes to the pension plan for the Judges has been characterized as "housekeeping" changes. These changes are seen by the Commission as more technical than substantive in nature. They are summarized in the brief of the Judges as follows:

Pension Benefits

29. The parties are agreed that the Commission should recommend three areas of change to the *Territorial Court Judiciary Pension Plan Act, 2003*, S.Y 2003, c. 29.

30. First, that Schedule 3 of the *Act* be amended to remove the notion of an "actuarial reduction" and to instead provide for a 3% reduction per year for the shorter of: (a) the period to age 60; (b) the period to 30 years of service; or (c) the period to age plus years of service is 80. The rationale for this change is consistency and simplicity. With respect to early retirement, the registered plan sets out a 3% penalty per year (0.25% per month). In contrast, the supplemental plan speaks to the early retirement pension amount being determined on an actuarially equivalent basis (Schedule 3, s. 9(1)). The intent was that both registered and supplemental pensions be the same. In almost all cases, Judges will be entitled to the maximum pension amounts reduced by 3% per year from the earlier of age 60 and the date on which age plus service would have reached 80 years. The single exception, which is unlikely to arise, is for an individual who retires before age 52 with

pensionable service between 16 and 24 years of service. That individual's pension entitlement would be based on the formula pension and the reduction would be 5% per year to age 60.

31. Second, that subsection 10(5) of Schedule 3 of the *Act* be amended to clarify that the 5 year guarantee applies to all pensions payable, including for joint and survivor pensions for a Judge with a spouse. The rationale for this change is that while a strict interpretation of subsection 10(5) of Schedule 3 is that the 5 year guarantee applies to all pensions payable, there is some uncertainty based on other language in Schedule 3. The parties therefore seek confirmation that the 5 year guarantee applies to all pensions payable, including for joint and survivor pensions for a Judge with a spouse.

32. Third, that Schedule 3 of the *Act* be amended to clarify that additional pension amounts in respect of children (child benefits) are payable under both plans (registered and supplemental).

33. We note that Section 11 of Schedule 2 provides that any pension payable under the Judiciary Retirement Compensation Arrangement (which includes supplementary pensions) is payable "in the same form as that payable to them under the judiciary registered pension plan."

IV. Submissions re Justices of the Peace

The submissions in this regard state that both the Government and the Justices of the Peace Association believe that the proposed increases are warranted to keep pace with the cost of living increases since the last increase as recommended by the 2013 JCC. The proposed increased is $10.00 per hour across the board. It amounts to an increase of between approximately 16.7% and 28.6% for the three JP classes described above.

The second matter arising concerning the Justices of the Peace is the for working on designated holidays. It is submitted that such work "should be remunerated at the equivalent of time-and-a–half (1.5x) at the then-contemporary hourly rate of pay." Rather than expressing a multiple of 1.5 of the hourly rate, the previous JCC expressed dollar values of the hourly rate of pay on designated paid holidays. Because of this, the recent Orders in Council specify an hourly rate instead of a multiplier for those holidays. To rectify this matter, the parties recommend a 1.5x multiplier for the designated paid holidays.

The third matter concerning the Justices of the Peace arises from the second. They submit that there should be a rectification of the underpayment for working on a designated holiday due to the incorrect rate of pay being used at the relevant time.

All other terms, benefits, allowances, stipends in effect for the hourly-rated Justices of the Peace, it is submitted, should remain unchanged.

The parties submit that the increases and changes proposed for the Justices of the Peace are "justified on an objective basis and bear an appropriate relationship to compensation in the comparator jurisdictions given the cost of living and the economic growth rates in Yukon compared to those jurisdictions."(para 142 Submission of Government)

It should be stated that no submissions were received form the public under s. 26 or otherwise with respect to any of the matters before this commission despite public advertisement inviting submissions.

8. Conclusions and Recommendations

The Commission has carefully reviewed and considered the materials and submissions presented by the parties. Applying the test or criteria setout in the *Cameron* case, the Commission is of the opinion and concludes that the joint submissions of the parties are appropriate.

With respect to the process in reaching the terms of the proposed remuneration, the Commission concludes that there is no evidence that the process was questionable or inappropriate or contrary to the applicable principles regarding process.

With respect to the substance or quantum of the proposed remuneration, the Commission concludes that there is no evidence to suggest that same is unreasonable,

illegal or otherwise questionable. Indeed, the Commission concludes that the proposed remuneration is appropriate and reasonable.

Accordingly, the Commission approves the terms of the two joint submissions and makes the following recommendations:

1. Salary for Territorial Court Judges be as follows, effective the following dates:

April 1, 2016:	$273,374.04
April 1, 2017:	$280,208.39
April 1, 2018:	$287,213.60

2. The *per diem* sitting rates for Deputy Judges be as follows, effective the following dates:

April 1, 2016:	$1,094.04
April 1, 2017:	$1,121.39

3. Effective April 1, 2018, the formula for calculating a Deputy Judge's *per diem* sitting rate be changed such that their *per diem* sitting rate from and after April 1, 2018 will be based on the following formula: the salary of a Territorial Court Judge (at the time of sitting) divided by 235.

4. The *Territorial Court Judicial Pension Plan Act, 2003* be changed as follows:

    - First, that Schedule 3 of the Act be amended to remove the notion of an "actuarial reduction" and to instead provide for a 3% reduction per year (0.25% per month) for the shorter of: (a) the period to age 60; (b) the period to 30 years of service; or (c) the period to age plus years of service is 80.

- Second, that subsection 10(5) of Schedule 3 of the Act be amended to clarify that the 5 year guarantee applies to all pensions payable, including for joint and survivor pensions for a judge with a spouse.

- Third, that Schedule 3 of the Act be amended to clarify that additional pension amounts in respect of children (child benefits) are payable under both plans (registered and supplemental).

5. All other terms, benefits, allowances, stipends and related remuneration in effect for members of the Yukon Territorial Court remain unchanged.

6. Effective April 1, 2016, the pay rate for hourly-rated Justices of the Peace be increased ten ($10) dollars per hour, as follows:

   JP 1: from $35.00 per hour to $45.00 per hour
   JP 2: from $40.00 per hour to $50.00 per hour
   JP 3: from $60.00 per hour to $70.00 per hour

7. The Order-in-Council expressing rate of pay where hourly-rated Justices of the Peace work on designated paid holidays, should express that rate of pay as time and one half of their regular hourly rate.

8. Government should compensate any hourly-rated Justice of the Peace who was underpaid for working on a designated paid holiday since April 1, 2013, to correct an incorrect rate of pay being used since that time.

9. All other terms, benefits, allowances, stipends and related remuneration in effect for hourly-rated Justices of the Peace remain unchanged.

Because this is a joint submission and the parties have put before the Commission proposed recommendations, the Commission intends to have the parties, through their

respective counsel and representative, consent to and approve the wording of the above recommendations. The Commission views these recommendations in the nature of a consent court order and adopts the practice applicable thereto.

9. Concluding Remarks

The Commission wishes to thank and commend counsel and Mr. Burgess for their professionalism, courtesy and efficiency. The submissions and the materials delivered to the Commission were thorough, organized, pertinent, and of great assistance.

The Commission would also like to thank the staff of the Department of Justice who provided excellent assistance and support to the Commission.

ALL OF WHICH IS RESPCETFULLY SUBMITTED

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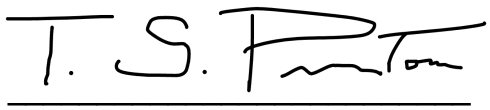

Timothy S. Preston, Q.C.
Commissioner

This 18th day of January, 2019