2025 YUKON JUDICIAL COMPENSATION COMMISSION

JOINT BOOK OF DOCUMENTS AND AUTHORITIES

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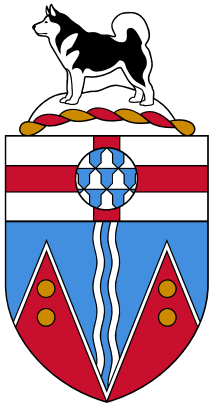
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UNOFFICIAL CONSOLIDATION OF THE STATUTES OF YUKON

LOI SUR LA COUR TERRITORIALE

LRY 2002, ch. 217

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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For information concerning the date of assent or coming into force of the Act or any amendments, please see the Table of Public Statutes and the Annual Acts on the laws.yukon.ca web site. Links to amending legislation, where appropriate, are provided at the end of each section in this document.

If you find any errors or omissions in this consolidation, please contact:

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LOI SUR LA COUR TERRITORIALE

LRY 2002, ch. 217; modifiée par LY 2003, ch. 16; LY 2012, ch. 3; LY 2013, ch. 15; LY 2018, ch. 7; LY 2018, ch. 16; LY 2019, ch.6; LY 2023, ch. 7

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TERRITORIAL COURT ACT

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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]

« **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 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]

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 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

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]

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 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]

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 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,

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]

(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 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]

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]

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 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*]

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 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.

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]

(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 partisanes.

(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]

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]

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]

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 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]

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 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]

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 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.]

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]

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 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]

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 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;

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]

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 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

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]

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

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

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 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]

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 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

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]

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 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]

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 31e 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 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.

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]

(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 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]

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 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]

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]

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 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]

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 proposants.

[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]

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 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]

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 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]

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]

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 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]

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]

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]

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]

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 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]

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 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).

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]

(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 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]

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 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]

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 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]

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 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]

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]

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 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]

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 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]

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]

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 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.

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]

(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 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]

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 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]

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 (Canad*a).

[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 PRÉSIDENCE 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]

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 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]

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]

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 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]

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

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

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]

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 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]

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 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]

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;

(e) the remuneration to be paid to justices who are paid on an hourly or *per diem* rate;

(e.1) the functions of a staff justice;

(f) providing for the safekeeping, inspection, and destruction of books, documents, papers, and records of the court and judges;

(g) governing the remission of money paid to or collected by the court, a judge, or a justice;

(h) providing for the appointment and employment of stenographic reporters to take down evidence in respect of proceedings in the court;

(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

(j) defining the class of matters in which stenographic reporters may be used.

(2) The Minister may, after consultation with the chief judge and on the recommendation of the chief judge, make regulations

(a) prescribing the administrative duties of the chief judge and other members of the court;

(b) prescribing the locations for court facilities, or the facilities that may be used by the court;

(c) requiring and governing the making of returns and reports by judges and clerks;

(d) prescribing the records that shall be maintained by the court;

(e) prescribing the duties of clerks and other employees;

(f) establishing a system of statistical records relating to the court;

(g) prescribing the forms to be used in the court or issued by the court; and

e) fixer la rémunération des juges de paix qui sont payés selon un tarif horaire ou sur une base quotidienne;

e.1) fixer les fonctions d'un juge de paix de la fonction publique;

f) prévoir la conservation, l'inspection et la destruction des livres, documents, pièces et dossiers de la Cour et des juges;

g) régir la remise des sommes consignées à la Cour ou perçues par la Cour, par un juge ou par un juge de paix;

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;

i) prévoir la nomination des préposés à l'enregistrement et à la transcription des témoignages rendus au cours des instances tenues devant la Cour;

j) définir les catégories d'affaires auxquelles peuvent être affectés des sténographes judiciaires.

(2) Le ministre peut, par règlement, après avoir consulté le juge en chef et sur la recommandation de celui-ci :

a) préciser les fonctions administratives du juge en chef et des autres juges de la Cour;

b) préciser les emplacements des installations de la Cour ou des installations qu'elle peut utiliser;

c) régir les rapports que les juges et les greffiers doivent faire;

d) préciser les dossiers que la Cour doit tenir;

e) préciser les fonctions des greffiers et des autres employés;

f) constituer un système de dossiers statistiques portant sur les activités de la Cour;

g) préciser les formulaires à utiliser à la Cour ou que celle-ci utilise;

(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]

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 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 (Canad*a) 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]

74 Poursuite des instances

(1) Le juge ou le juge de paix présidant 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 présidant 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 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]

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 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.

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]

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

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

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]

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 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]

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 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]

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 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;

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]

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 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]

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]

TAB 2

LETTER OF UNDERSTANDING

on the process for Judicial Compensation Commissions among the Government of Yukon, the Yukon Territorial Court Judges, the Senior Presiding Justice of the Peace, and the Justice of the Peace Association.

1.0 Definitions

"JCC" means a Judicial Compensation Commission as defined in the *Territorial Court Act* and may mean a single commissioner or three commissioners, depending on the context;

"parties" means the Government of Yukon, the Yukon Territorial Court Judges, the Senior Presiding Justice of the Peace and the Justice of the Peace Association;

"Yukon" means the Government of Yukon;

"*Act*" means the *Territorial Court Act*; and

"representation costs" means lawyer's fees and disbursements.

2.0 Background

As a result of previous JCC experiences and their related high costs, the parties agreed to explore an informal JCC procedure that is consistent with the principles referred to in the *Act*.

3.0 Purpose

The purpose of this Letter of Understanding is to establish such an informal procedure that will apply to the establishment and conduct of a JCC.

If, with respect to the establishment and conduct of a particular JCC the informal procedure proves unworkable, the formal procedure established by the *Act* applies.

4.0 Principles

The parties agree to the following principles:

4.1 The JCC procedure should be cost effective, involving minimal use of legal counsel and proceeding by way of consensus whenever possible.

4.2 Based on previous experience, the parties recognize that unexpected delays can occur and agree that no party should benefit from this.

4.3 Cost effectiveness can be achieved by the parties in a number of ways, including but not limited to the following.

4.3.1 The parties will identify outstanding issues at an early stage of the proceedings.

4.3.2 The parties will agree at an early stage on the information (reports, data, etc) to be provided to the JCC.

4.3.3 If a consultant is required to provide advice or a report on an issue, the parties will make every attempt to agree on one consultant who will be the JCC's witness.

4.3.4 The parties will make full disclosure of all relevant information.

5.0 Single Commissioner

Unless otherwise agreed, the parties will make every attempt to agree on a single commissioner, preferably one with mediation experience.

6.0 Effective Date of JCC Recommendations

The recommendations of a JCC will be effective April 1st, of the year in which the JCC is established.

7.0 Summary Process

The parties agree on the following summary process for the establishment and conduct of a JCC:

7.1 By November 30 of the year proceeding the JCC, the parties will identify an individual or individuals (representatives) who have authority to make decisions on their behalf.

7.2 By December 31 the representatives will generate a list of possible commissioners with a view to agreeing on a single commissioner for the JCC.

7.3 By January 31 of the JCC year, the parties will agree on a single commissioner, and Yukon will proceed with the appointment of this individual in accordance with the *Act*.

7.4 Between January and March, the representatives will meet in order to disclose information (reports and data) and identify the issues they believe will be relevant to the JCC process.

7.5 The representatives will identify any additional information that should be obtained and how it should be obtained. This may include a discussion about the use of outside consultants. All relevant information obtained by one representative must be disclosed to the others, whether it is intended to be relied upon or not.

7.6 By May 31 the parties will advise each other of their position and rationale on issues they intend to put to the JCC. Each party will endeavor to provide its written response as quickly as possible.

7.7 By August 31, the representatives will meet with a view to identifying common ground and exploring the possibility of joint submissions on agreed upon issues.

7.8 During September, the JCC will convene to informally address any outstanding issues among the parties.

7.9 If agreement on outstanding issues cannot be reached informally, then a formal hearing will be conducted as and when directed by the JCC.

7.10 By mutual agreement, the parties may change the dates set out in this section.

8.0 Costs

8.1 With the exception of representation costs and subject to an appropriation by the Legislature, one hundred percent of the reasonable summary process costs for all of the parties will be paid by Yukon.

8.2 Subject to an appropriation by the Legislature, Yukon agrees to pay one hundred percent of the combined reasonable representation costs of the Territorial Court Judges, Senior Justice of the Peace and the Justice of the Peace Association related to a JCC up to a maximum of $50,000 (fifty thousand dollars).

8.3 If these representation costs exceed $50,000, the remainder shall be paid in accordance with the formula set out in the *Act*.

9.0 Modification or Termination

9.1 By agreement of the parties, the informal procedure set out in this letter with respect to the establishment and conduct of a JCC may be modified.

9.2 This Letter of Understanding may be terminated by any party, with written notice to all other parties at least twelve (12) months prior to the date of the intended termination.

Dennis Cooley, Deputy Minister of Justice
On behalf of Yukon

Jan. 13, 2005
Date

Chief Judge Heino Lilles
On behalf of the Territorial Court Judges

January 12, 2005
Date

Dean Cameron, Senior Presiding Justice of the Peace

Jan 12-05
Date

Justice of the Peace Gary Burgess
On behalf of the Justice of the Peace Association

Jan 13/05
Date

TAB 3

LETTER OF AUTHORIZATION

Name of JP: ..... **Level:** .....

Community: ..... **Date of Appointment:** .....

Valid until revoked or altered **Revoked on:** .....

Authorizations	**Date Granted**	**Authorization Granted by**
Level 1: Administrative		
Weddings		
Commissioner of Oaths		
Receiving Informations from Peace Officer (ss. 504 & 505)		
Reading Court Documents to Accused		
Confirming Process (s. 508)		
Level 2: Judicial		
Issuing Process (Summons and Arrest Warrants) (ss. 507, 512, 512.1, 512.2, 512.3)		
Issuing In-Territory Subpoenas		
Reports to a Justice (s. 489.1) and issuing Detention Orders (s. 490)		
Authorize execution of a warrant from another jurisdiction (s. 528)		
Auto convictions (s. 21 *Summary Convictions Act*)		
Time to Pay applications		
Feeney Warrants		
Small Claims Pre-trial Conferences		
Level 3: Presiding		
Docket Court (arraignments, pleas, adjournments)		
Sentencings		
Bail Hearings		
Peace Bond Hearings		
Summary Convictions Act Trials		
Designated Justice of the Peace under the *Family Violence Prevention Act ("FVPA")*		
Child and Family Services Act ("CFSA") Presentation Hearing		
CFSA Warrants		
CFSA Supervision, Temporary Custody, and Continuing Care Orders (not to exceed 3 months except with consent of all parties)		

Additional authorities may be granted, by special letter, at the discretion of the Chief Judge and Supervising Judge

TAB 4

Indexed as:

Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island; Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island
R. v. Campbell; R. v. Ekmecic; R. v. Wickman
Manitoba Provincial Judges Assn. v. Manitoba (Minister of Justice)

IN THE MATTER of a Reference from the Lieutenant Governor in Council pursuant to Section 18 of the Supreme Court Act, R.S.P.E.I. 1988, Cap. S-10, Regarding the Remuneration of Judges of the Provincial Court of Prince Edward Island and the Jurisdiction of the Legislature in Respect Thereof
AND IN THE MATTER of a Reference from the Lieutenant Governor in Council pursuant to Section 18 of the Supreme Court Act, R.S.P.E.I. 1988, Cap. S-10, Regarding the Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island
Merlin McDonald, Omer Pineau and Robert Christie, appellants;
v.
The Attorney General of Prince Edward Island, respondent;
and
The Attorney General of Canada, the Attorney General of Quebec, the Attorney General of Manitoba, the Attorney General for Saskatchewan, the Attorney General for Alberta, the Canadian Association of Provincial Court Judges, the Conférence des juges du Québec, the Saskatchewan Provincial Court Judges Association, the Alberta Provincial Judges' Association, the Canadian Bar Association and the Federation of Law Societies of Canada, interveners;
And between
Her Majesty The Queen, appellant;
v.
Shawn Carl Campbell, respondent;
And between
Her Majesty The Queen, appellant;
v.
Ivica Ekmecic, respondent;
And between

Her Majesty The Queen, appellant;
v.
Percy Dwight Wickman, respondent;
and
The Attorney General of Canada, the Attorney General of Quebec, the Attorney General of Manitoba, the Attorney General of Prince Edward Island, the Attorney General for Saskatchewan, the Canadian Association of Provincial Court Judges, the Conférence des juges du Québec, the Saskatchewan Provincial Court Judges Association, the Alberta Provincial Judges' Association, the Canadian Bar Association and the Federation of Law Societies of Canada, interveners;
And between
The Judges of the Provincial Court of Manitoba as represented by the Manitoba Provincial Judges Association, Judge Marvin Garfinkel, Judge Philip Ashdown, Judge Arnold Conner, Judge Linda Giesbrecht, Judge Ronald Myers, Judge Susan Devine and Judge Wesley Swail, and the Judges of the Provincial Court of Manitoba as represented by Judge Marvin Garfinkel, Judge Philip Ashdown, Judge Arnold Conner, Judge Linda Giesbrecht, Judge Ronald Myers, Judge Susan Devine and Judge Wesley Swail, appellants
v.
Her Majesty The Queen in right of the province of Manitoba as represented by Rosemary Vodrey, the Minister of Justice and the Attorney General of Manitoba, and Darren Praznik, the Minister of Labour as the Minister responsible for The Public Sector Reduced Work Week and Compensation Management Act, respondent;
and
The Attorney General of Canada, the Attorney General of Quebec, the Attorney General of Prince Edward Island, the Attorney General for Saskatchewan, the Attorney General for Alberta, the Canadian Judges Conference, the Canadian Association of Provincial Court Judges, the Conférence des juges du Québec, the Saskatchewan Provincial Court Judges Association, the Alberta Provincial Judges' Association, the Canadian Bar Association and the Federation of Law Societies of Canada, interveners.

[1997] 3 S.C.R. 3

[1997] S.C.J. No. 75

File Nos.: 24508, 24778, 24831, 24846.

Supreme Court of Canada

1996: December 3, 4; 1997: September 18 *.

Present: Lamer C.J. and La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory and Iacobucci JJ.

ON APPEAL FROM THE PRINCE EDWARD ISLAND SUPREME COURT, APPEAL DIVISION ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

* Reasons for judgment on rehearing reported at [1998] 1 S.C.R. 3.

Constitutional law -- Judicial independence -- Whether express provisions in Constitution exhaustive written code for protection of judicial independence -- True source of judicial independence -- Whether judicial independence extends to Provincial Court judges -- Constitution Act, 1867, preamble, ss. 96 to 100 -- Canadian Charter of Rights and Freedoms, s. 11(d).

Constitutional law -- Judicial independence -- Components of institutional financial security -- Constitution Act, 1867, s. 100 -- Canadian Charter of Rights and Freedoms, s. 11(d).

Courts -- Judicial independence -- Provincial Courts -- Changes or freezes to judicial remuneration -- Provincial governments and legislatures reducing salaries of Provincial Court judges as part of overall economic measure -- Whether reduction constitutional -- Procedure to be followed to change or freeze judicial remuneration -- Canadian Charter of Rights and Freedoms, ss. 1, 11(d) -- Provincial Court Act, R.S.P.E.I. 1988, c. P-25, s. 3(3) -- Provincial Court Judges Act, S.A. 1981, c. P-20.1, s. 17(1) -- Payment to Provincial Judges Amendment Regulation, Alta. Reg. 116/94 -- Public Sector Reduced Work Week and Compensation Management Act, S.M. 1993, c. 21, s. 9(1).

Constitutional law -- Charter of Rights -- Independent and impartial tribunal -- Provincial Courts -- Institutional financial security -- Changes or freezes to judicial remuneration -- Provincial governments and legislatures reducing salaries of Provincial Court judges as part of overall economic measure -- Whether reduction infringed judicial independence -- If so, whether infringement justifiable -- Procedure to be followed to change or freeze judicial remuneration -- Canadian Charter of Rights and Freedoms, ss. 1, 11(d) -- Provincial Court Act, R.S.P.E.I. 1988, c. P-25, s. 3(3) -- Provincial Court Judges Act, S.A. 1981, c. P-20.1, s. 17(1) -- Payment to Provincial Judges Amendment Regulation, Alta. Reg. 116/94 -- Public Sector Reduced Work Week and Compensation Management Act, S.M. 1993, c. 21, s. 9(1).

Constitutional law -- Charter of Rights -- Independent and impartial tribunal -- Provincial Courts -- Individual financial security -- Provincial legislation providing that Lieutenant Governor in Council "may" set judicial salaries -- Whether legislation infringes judicial independence -- If so, whether infringement justifiable -- Canadian Charter of Rights and

Freedoms, ss. 1, 11(d) -- Provincial Court Judges Act, S.A. 1981, c. P-20.1, s. 17(1).

Constitutional law -- Charter of Rights -- Independent and impartial tribunal -- Provincial Courts -- Individual financial security -- Discretionary benefits -- Provincial legislation conferring on Lieutenant Governor in Council discretion to grant leaves of absence due to illness and sabbatical leaves -- Whether legislation infringes judicial independence -- Canadian Charter of Rights and Freedoms, s. 11(d) -- Provincial Court Act, R.S.P.E.I. 1988, c. P-25, ss. 12(2), 13.

Constitutional law -- Charter of Rights -- Independent and impartial tribunal -- Provincial Courts -- Salary negotiations -- Whether provincial government violated judicial independence of Provincial Court by attempting to engage in salary negotiations with Provincial Judges Association -- Canadian Charter of Rights and Freedoms, s. 11(d).

Courts -- Judicial independence -- Provincial Courts -- Salary negotiations -- Provincial legislation permitting negotiations "between a public sector employer and employees" -- Whether negotiation provisions applicable to Provincial Court judges -- Public Sector Pay Reduction Act, S.P.E.I. 1994, c. 51, s. 12(1).

Constitutional law -- Charter of Rights -- Independent and impartial tribunal -- Provincial Courts -- Administrative independence -- Closure of Provincial Court -- Whether closure of Provincial Court by provincial government for several days infringed judicial independence -- If so, whether infringement justifiable -- Canadian Charter of Rights and Freedoms, ss. 1, 11(d) -- Public Sector Reduced Work Week and Compensation Management Act, S.M. 1993, c. 21, s. 4.

Constitutional law -- Charter of Rights -- Independent and impartial tribunal -- Provincial Courts -- Administrative independence -- Provincial Court located in same building as certain departments which are part of executive -- Provincial Court judges not administering their own budget -- Designation of place of residence of Provincial Court judges -- Attorney General opposing funding for judges to intervene in court case -- Lieutenant Governor in Council having power to make regulations respecting duties and powers of Chief Judge and respecting rules of courts -- Whether these matters undermine administrative independence of Provincial Court -- Canadian Charter of Rights and Freedoms, s. 11(d) -- Provincial Court Act, R.S.P.E.I. 1988, c. P-25, ss. 4, 17.

Constitutional law -- Charter of Rights -- Independent and impartial tribunal -- Provincial Courts -- Administrative independence -- Place of residence -- Sittings of court -- Provincial legislation authorizing Attorney General to designate judges' place of residence and court's sitting days -- Whether legislation infringes upon administrative independence of Provincial Court -- If so, whether infringement justifiable -- Canadian Charter of Rights and Freedoms, ss. 1, 11(d) -- Provincial Court Judges Act, S.A. 1981, c. P-20.1, s. 13(1)(a), (b).

Courts -- Constitutionality of legislation -- Notice to Attorney General -- Constitutionality of provincial legislation not raised by counsel -- Superior court judge proceeding on his own initiative without giving required notice to Attorney General -- Whether superior court judge

erred in considering constitutionality of legislation.

Criminal law -- Appeals -- Prohibition -- Three accused challenging constitutionality of their trials before Provincial Court arguing that court not an independent and impartial tribunal -- Accused seeking various remedies including prohibition in superior court -- Superior court judge making declarations striking down numerous provisions found in provincial legislation and regulations -- Superior court judge concluding that declarations removed source of unconstitutionality and ordering trials of accused to proceed or to continue -- Court of Appeal dismissing Crown's appeals for want of jurisdiction -- Whether s. 784(1) of Criminal Code limited to appeals by unsuccessful parties -- Whether declarations prohibitory in nature and within scope of s. 784(1) -- Criminal Code, R.S.C., 1985, c. C-46, s. 784(1).

These four appeals raise a range of issues relating to the independence of provincial courts, but are united by a single issue: whether and how the guarantee of judicial independence in s. 11(d) of the Canadian Charter of Rights and Freedoms restricts the manner by and the extent to which provincial governments and legislatures can reduce the salaries of provincial court judges. In these appeals, it is the content of the collective or institutional dimension of financial security for judges of Provincial Courts which is at issue.

In P.E.I., the province, as part of its budget deficit reduction plan, enacted the Public Sector Pay Reduction Act and reduced the salaries of Provincial Court judges and others paid from the public purse in the province. Following the pay reduction, numerous accused challenged the constitutionality of their proceedings in the Provincial Court, alleging that as a result of the salary reductions, the court had lost its status as an independent and impartial tribunal under s. 11(d) of the Charter. The Lieutenant Governor in Council referred to the Appeal Division of the Supreme Court two constitutional questions to determine whether the Provincial Court judges still enjoyed a sufficient degree of financial security for the purposes of s. 11(d). The Appeal Division found the Provincial Court judges to be independent, concluding that the legislature has the power to reduce their salary as part of an "overall public economic measure" designed to meet a legitimate government objective. Despite this decision, accused persons continued to raise challenges based on s. 11(d) to the constitutionality of the Provincial Court. The Lieutenant Governor in Council referred a series of questions to the Appeal Division concerning all three elements of the judicial independence of the Provincial Court: financial security, security of tenure, and administrative independence. The Appeal Division answered most of the questions to the effect that the Provincial Court was independent and impartial but held that Provincial Court judges lacked a sufficient degree of security of tenure to meet the standard set by s. 11(d) of the Charter because s. 10 of the Provincial Court Act (as it read at the time) made it possible for the executive to remove a judge without probable cause and without a prior inquiry.

In Alberta, three accused in separate and unrelated criminal proceedings in Provincial Court challenged the constitutionality of their trials. They each brought a motion before the Court of Queen's Bench, arguing that, as a result of the salary reduction of the Provincial Court judges pursuant to the Payment to Provincial Judges Amendment Regulation and s.

17(1) of the Provincial Court Judges Act, the Provincial Court was not an independent and impartial tribunal for the purposes of s. 11(d). The accused also challenged the constitutionality of the Attorney General's power to designate the court's sitting days and judges' place of residence. The accused requested various remedies, including prohibition and declaratory orders. The superior court judge found that the salary reduction of the Provincial Court judges was unconstitutional because it was not part of an overall economic measure -- an exception he narrowly defined. He did not find s. 17 of the Provincial Court Judges Act, however, to be unconstitutional. On his own initiative, the superior court judge considered the constitutionality of the process for disciplining Provincial Court judges and the grounds for their removal and concluded that ss. 11(1)(b), 11(1)(c) and 11(2) of the Provincial Court Judges Act violated s. 11(d) because they failed to adequately protect security of tenure. The superior court judge also found that ss. 13(1)(a) and 13(1)(b) of that Act, which permit the Attorney General to designate the judges' place of residence and the court's sitting days, violated s. 11(d). In the end, the superior court judge declared the provincial legislation and regulations which were the source of the s. 11(d) violations to be of no force or effect, thus rendering the Provincial Court independent. As a result, although the Crown lost on the constitutional issue, it was successful in its efforts to commence or continue the trials of the accused. The Court of Appeal dismissed the Crown's appeals, holding that it did not have jurisdiction under s. 784(1) of the Criminal Code to hear them because the Crown was "successful" at trial and therefore could not rely on s. 784(1), and because declaratory relief is non-prohibitory and is therefore beyond the ambit of s. 784(1).

In Manitoba, the enactment of The Public Sector Reduced Work Week and Compensation Management Act ("Bill 22"), as part of a plan to reduce the province's deficit, led to the reduction of the salary of Provincial Court judges and of a large number of public sector employees. The Provincial Court judges through their Association launched a constitutional challenge to the salary cut, alleging that it infringed their judicial independence as protected by s. 11(d) of the Charter. They also argued that the salary reduction was unconstitutional because it effectively suspended the operation of the Judicial Compensation Committee ("JCC"), a body created by The Provincial Court Act whose task it is to issue reports on judges' salaries to the legislature. Furthermore, they alleged that the government had interfered with judicial independence by ordering the withdrawal of court staff and personnel on unpaid days of leave, which in effect shut down the Provincial Court on those days. Finally, they claimed that the government had exerted improper pressure on the Association in the course of salary discussions to desist from launching this constitutional challenge, which also allegedly infringed their judicial independence. The trial judge held that the salary reduction was unconstitutional because it was not part of an overall economic measure which affects all citizens. The reduction was part of a plan to reduce the provincial deficit solely through a reduction in government expenditures. He found, however, that a temporary reduction in judicial salaries is permitted under s. 11(d) in case of economic emergency and since this was such a case, he read down Bill 22 so that it only provided for a temporary suspension in compensation, with retroactive payment due after the Bill expired. The Court of Appeal rejected all the constitutional challenges.

Held (La Forest J. dissenting): The appeal from the Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island should be allowed in part.

Held (La Forest J. dissenting on the appeal): The appeal and cross-appeal from the Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island should be allowed in part.

Held: The appeal in the Alberta cases from the Court of Appeal's judgment on jurisdiction should be allowed.

Held (La Forest J. dissenting in part): The appeal in the Alberta cases on the constitutional issues should be allowed in part.

Held (La Forest J. dissenting in part): The appeal in the Manitoba case should be allowed.

Per Lamer C.J. and L'Heureux-Dubé, Sopinka, Gonthier, Cory and Iacobucci JJ.: Sections 96 to 100 of the Constitution Act, 1867, which only protect the independence of judges of the superior, district and county courts, and s. 11(d) of the Charter, which protects the independence of a wide range of courts and tribunals, including provincial courts, but only when they exercise jurisdiction in relation to offences, are not an exhaustive and definitive written code for the protection of judicial independence in Canada. Judicial independence is an unwritten norm, recognized and affirmed by the preamble to the Constitution Act, 1867 -- in particular its reference to "a Constitution similar in Principle to that of the United Kingdom" -- which is the true source of our commitment to this foundational principle. The preamble identifies the organizing principles of the Constitution Act, 1867 and invites the courts to turn those principles into the premises of a constitutional argument that culminates in the filling of gaps in the express terms of the constitutional text. The same approach applies to the protection of judicial independence. Judicial independence has now grown into a principle that extends to all courts, not just the superior courts of this country.

Since these appeals were argued on the basis of s. 11(d) of the Charter, they should be resolved by reference to that provision. The independence protected by s. 11(d) is the independence of the judiciary from the other branches of government, and bodies which can exercise pressure on the judiciary through power conferred on them by the state. The three core characteristics of judicial independence are security of tenure, financial security, and administrative independence. Judicial independence has also two dimensions: the individual independence of a judge and the institutional or collective independence of the court of which that judge is a member. The institutional role demanded of the judiciary under our Constitution is a role which is now expected of provincial courts. Notwithstanding that they are statutory bodies, in light of their increased role in enforcing the provisions and in protecting the values of the Constitution, provincial courts must enjoy a certain level of institutional independence.

While s. 11(d) of the Charter does not, as a matter of principle, automatically provide the same level of protection to provincial courts as s. 100 and the other judicature provisions of the Constitution Act, 1867 do to superior court judges, the constitutional parameters of the

power to change or freeze superior court judges' salaries under s. 100 are equally applicable to the guarantee of financial security provided by s. 11(d) to provincial court judges.

Financial security has both an individual and an institutional dimension. The institutional dimension of financial security has three components. First, as a general constitutional principle, the salaries of provincial court judges can be reduced, increased, or frozen, either as part of an overall economic measure which affects the salaries of all or some persons who are remunerated from public funds, or as part of a measure which is directed at provincial court judges as a class. However, to avoid the possibility of, or the appearance of, political interference through economic manipulation, a body, such as a commission, must be interposed between the judiciary and the other branches of government. The constitutional function of this body would be to depoliticize the process of determining changes to or freezes in 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. Provinces are thus under a constitutional obligation to establish bodies which are independent, effective and objective. Any changes to or freezes in judicial remuneration made without prior recourse to the body are unconstitutional. Although the recommendations of the body are non-binding they should not be set aside lightly. If the executive or legislature chooses to depart from them, it has to justify its decision according to a standard of simple rationality -- if need be, in a court of law. Across-the-board measures which affect substantially every person who is paid from the public purse are prima facie rational, whereas a measure directed at judges alone may require a somewhat fuller explanation. Second, under no circumstances is it permissible for the judiciary -- not only collectively through representative organizations, but also as individuals -- to engage in negotiations over remuneration with the executive or representatives of the legislature. Any such negotiations would be fundamentally at odds with judicial independence. That does not preclude chief justices or judges, or bodies representing judges, however, from expressing concerns or making representations to governments regarding judicial remuneration. Third, any reductions to judicial remuneration cannot take those salaries below a basic minimum level of remuneration which is required for the office of a judge. Public confidence in the independence of the judiciary would be undermined if judges were paid at such a low rate that they could be perceived as susceptible to political pressure through economic manipulation. In order to guard against the possibility that government inaction could be used as a means of economic manipulation, by allowing judges' real salaries to fall because of inflation, and in order to protect against the possibility that judicial salaries will fall below the adequate minimum guaranteed by judicial independence, the body must convene if a fixed period of time has elapsed since its last report, in order to consider the adequacy of judges' salaries in light of the cost of living and other relevant factors. The components of the institutional dimension of financial security need not be adhered to in cases of dire and exceptional financial emergency precipitated by unusual circumstances.

Prince Edward Island

The salary reduction imposed by s. 3(3) of the Provincial Court Act, as amended by s. 10

of the Public Sector Pay Reduction Act, was unconstitutional since it was made by the legislature without recourse to an independent, objective and effective process for determining judicial remuneration. In fact, no such body exists in P.E.I. However, if in the future, after P.E.I. establishes a salary commission, that commission were to issue a report with recommendations which the legislature declined to follow, a salary reduction such as the impugned one would probably be prima facie rational, and hence justified, because it would be part of an overall economic measure which reduces the salaries of all persons who are remunerated by public funds. Since the province has made no submissions on the absence of an independent, effective and objective process to determine judicial salaries, the violation of s. 11(d) is not justified under s. 1 of the Charter.

Section 12(1) of the Public Sector Pay Reduction Act, which permits negotiations "between a public sector employer and employees" to find alternatives to pay reductions, does not contravene the principle of judicial independence since the plain meaning of a public sector employee does not include members of the judiciary.

Sections 12(2) and 13 of the Provincial Court Act, which confer a discretion on the Lieutenant Governor in Council to grant leaves of absence due to illness and sabbatical leaves, do not affect the individual financial security of a judge. Discretionary benefits do not undermine judicial independence.

The question concerning the lack of security of tenure created by s. 10 of the Provincial Court Act has been rendered moot by the adoption in 1995 of a new s. 10 which meets the requirements of s. 11(d) of the Charter.

The location of the Provincial Court's offices in the same building as certain departments which are part of the executive, including the Crown Attorneys' offices, does not infringe the administrative independence of the Provincial Court because, despite the physical proximity, the court's offices are separate and apart from the other offices in the building. As well, the fact that the Provincial Court judges do not administer their own budget does not violate s. 11(d). This matter does not fall within the scope of administrative independence, because it does not bear directly and immediately on the exercise of the judicial function. For the same reason, the Attorney General's decision both to decline to fund and to oppose an application to fund legal counsel for the Chief Judge and judges of the Provincial Court as interveners in a court case did not violate the administrative independence of the court. The designation of a place of residence of a particular Provincial Court judge, pursuant to s. 4 of the Provincial Court Act, does not undermine the administrative independence of the judiciary. Upon the appointment of a judge to the Provincial Court, it is necessary that he or she be assigned to a particular area. Furthermore, the stipulation that the residence of a sitting judge only be changed with that judge's consent is a sufficient protection against executive interference. Finally, s. 17 of the Provincial Court Act, which authorizes the Lieutenant Governor in Council to make regulations respecting the duties and powers of the Chief Judge (s. 17(b)) and respecting rules of court (s. 17(c)), must be read subject to s. 4(1) of that Act, which confers broad administrative powers on the Chief Judge, including the assignment of judges, sittings of the court and court lists, the allocation of courtrooms, and the direction of administrative staff carrying out these functions. Section 4(1) therefore vests with the Provincial Court, in

the person of the Chief Judge, control over decisions which touch on its administrative independence. In light of the broad provisions of s. 4(1), s. 17 does not undermine the administrative independence of the court.

Alberta

The Court of Appeal had jurisdiction to hear the Crown's appeals under s. 784(1) of the Criminal Code. First, it is unclear that only unsuccessful parties can avail themselves of s. 784(1). In any event, even if this limitation applies, the Court of Appeal had jurisdiction. Although the Crown may have been successful in its efforts to commence and continue the trials against the accused, it lost on the underlying findings of unconstitutionality. Second, this is a case where the declaratory relief was essentially prohibitory in nature, and so came within the scope of s. 784(1), because the trial judgment granted relief sought in proceedings by way of prohibition. This Court can thus exercise the Court of Appeal's jurisdiction and consider the present appeal.

The salary reduction imposed by the Payment to Provincial Judges Amendment Regulation for judges of the Provincial Court is unconstitutional because there is no independent, effective and objective commission in Alberta which recommends changes to judges' salaries. However, if in the future, after Alberta establishes a salary commission, that commission were to issue a report with recommendations which the provincial legislature declined to follow, a salary reduction such as the impugned one would probably be prima facie rational because it would be part of an overall economic measure which reduces the salaries of all persons who are remunerated by public funds.

Section 17(1) of the Provincial Court Judges Act, which provides that the Lieutenant Governor in Council "may" set judicial salaries, violates s. 11(d) of the Charter. Section 17(1) does not comply with the requirements for individual financial security because it fails to lay down in mandatory terms that Provincial Court judges shall be provided with salaries.

Section 13(1)(a) of the Provincial Court Judges Act, which confers the power to "designate the place at which a judge shall have his residence", and s. 13(1)(b), which confers the power to "designate the day or days on which the Court shall hold sittings", are unconstitutional because both provisions confer powers on the Attorney General to make decisions which infringe upon the administrative independence of the Provincial Court. Section 13(1)(a)'s constitutional defect lies in the fact that it is not limited to the initial appointment of judges. Section 13(1)(b) violates s. 11(d) because the administrative independence of the judiciary encompasses, inter alia, "sittings of the court".

The province having made no submissions on s. 1 of the Charter, the violations of s. 11(d) are not justified. The Payment to Provincial Judges Amendment Regulation is therefore of no force or effect. However, given the institutional burdens that must be met by Alberta, this declaration of invalidity is suspended for a period of one year[1]. Sections 13(1)(a) and (b) and 17(1) of the Provincial Court Judges Act are also declared to be of no force or effect.

Since the accused did not raise the constitutionality of s. 11(1)(b), (c) and (2) of the Provincial Court Judges Act, it was not appropriate for the superior court judge to proceed on his own initiative, without the benefit of submissions and without giving the required notice to the Attorney General of the province, to consider their constitutionality, let alone make declarations of invalidity.

Manitoba

The salary reduction imposed by s. 9(1) of Bill 22 violated s. 11(d) of the Charter, because the government failed to respect the independent, effective and objective process -- the JCC -- for setting judicial remuneration which was already operating in Manitoba. Moreover, at least for the 1994-95 financial year, s. 9(1)(b) effectively precluded the future involvement of the JCC. Although Manitoba may have faced serious economic difficulties in the time period preceding the enactment of Bill 22, the evidence does not establish that it faced sufficiently dire and exceptional circumstances to warrant the suspension of the involvement of the JCC. Since Manitoba has offered no justification for the circumvention of the JCC before imposing the salary reduction on Provincial Court judges, the effective suspension of the operation of the JCC is not justified under s. 1 of the Charter. The phrase "as a judge of The Provincial Court or" should be severed from s. 9(1) of Bill 22 and the salary reduction imposed on the Provincial Court judges declared to be of no force or effect. Even though Bill 22 is no longer in force, that does not affect the fully retroactive nature of this declaration of invalidity. Mandamus should be issued directing the Manitoba government to perform its statutory duty, pursuant to s. 11.1(6) of The Provincial Court Act, to implement the report of the standing committee of the provincial legislature, which had been approved by the legislature. If the government persists in its decision to reduce the salaries of Provincial Court judges, it must remand the matter to the JCC. Only after the JCC has issued a report, and the statutory requirements laid down in s. 11.1 of The Provincial Court Act have been complied with, is it constitutionally permissible for the legislature to reduce the salaries of the Provincial Court judges.

The Manitoba government also violated the judicial independence of the Provincial Court by attempting to engage in salary negotiations with the Provincial Judges Association. The purpose of these negotiations was to set salaries without recourse to the JCC. Moreover, when the judges would not grant the government an assurance that they would not launch a constitutional challenge to Bill 22, the government threatened to abandon a joint recommendation. The surrounding circumstances indicate that the Association was not a willing participant and was effectively coerced into these negotiations. No matter how one-sided, however, it was improper for government and the judiciary to engage in salary negotiations. The expectations of give and take, and of threat and counter-threat, are fundamentally at odds with judicial independence. It raises the prospect that the courts will be perceived as having altered the manner in which they adjudicate cases, and the extent to which they will protect and enforce the Constitution, as part of the process of securing the level of remuneration they consider appropriate. The attempted negotiations between the government and the judiciary were not authorized by a legal rule and thus are incapable of being justified under s. 1 of the Charter because they are not prescribed by law.

Finally, the Manitoba government infringed the administrative independence of the Provincial Court by closing it on a number of days. It was the executive, in ordering the withdrawal of court staff, pursuant to s. 4 of Bill 22, several days before the Chief Judge announced the closing of the Provincial Court, that shut down the court. Section 4 is therefore unconstitutional. Even if the trial judge had been right to conclude that the Chief Judge retained control over the decision to close the Provincial Court throughout, there would nevertheless have been a violation of s. 11(d), because the Chief Judge would have exceeded her constitutional authority when she made that decision. Control over the sittings of the court falls within the administrative independence of the judiciary. Administrative independence is a characteristic of judicial independence which generally has a collective or institutional dimension. Although certain decisions may be exercised on behalf of the judiciary by the Chief Judge, important decisions regarding administrative independence cannot be made by the Chief Judge alone. The decision to close the Provincial Court was precisely this kind of decision. Manitoba has attempted to justify the closure of the Provincial Court solely on the basis of financial considerations, and for that reason, the closure of the court cannot be justified under s. 1. Although reading down s. 4 of Bill 22 to the extent strictly necessary would be the normal solution in a case like this, this is difficult in relation to violations of s. 11(d) because, unlike other Charter provisions, s. 11(d) requires that judicial independence be secured by "objective conditions or guarantees". To read down s. 4 to its proper scope would in effect amount to reading in those objective conditions and guarantees. This would result in a fundamental rewriting of the legislation. If the Court, however, were to strike down s. 4 in its entirety, the effect would be to prevent its application to all those employees of the Government of Manitoba who were required to take leave without pay. The best solution in the circumstances is to read s. 4(1) as exempting provincial court staff from it. This is the remedy that best upholds the Charter values involved and will occasion the lesser intrusion on the role of the legislature.

Per La Forest J. (dissenting in part): There is agreement with substantial portions of the majority's reasons but not with the conclusions that s. 11(d) of the Charter prohibits salary discussions between governments and judges, and forbids governments from changing judges' salaries without first having recourse to "judicial compensation commissions". There is also disagreement with the assertion concerning the protection that provincially appointed judges, exercising functions other than criminal jurisdiction, are afforded by virtue of the preamble to the Constitution Act, 1867. Only minimal reference was made to this issue by counsel and, in such circumstances, the Court should avoid making far-reaching conclusions that are not necessary to the case before it. Nevertheless, in light of the importance that will be attached to the majority's views, the following comments are made. At the time of Confederation, there were no enforceable limits on the power of the British Parliament to interfere with the judiciary. By expressing, by way of preamble, a desire to have "a Constitution similar in Principle to that of the United Kingdom", the framers of the Constitution Act, 1867 did not give courts the power to strike down legislation violating the principle of judicial independence. The framers did, however, by virtue of ss. 99-100 of the Constitution Act, 1867, entrench the fundamental components of judicial independence set out in the Act of Settlement of 1701. Because only superior courts fell within the ambit of the Act of Settlement and under "constitutional" protection in

the British sense, the protection sought to be created for inferior courts in the present appeals is in no way similar to anything found in the United Kingdom. Implying protection for judicial independence from the preambular commitment to a British-style constitution, therefore, entirely misapprehends the fundamental nature of that constitution. To the extent that courts in Canada have the power to enforce the principle of judicial independence, this power derives from the structure of Canadian, and not British, constitutionalism. Our Constitution expressly contemplates both the power of judicial review (in s. 52 of the Constitution Act, 1982) and guarantees of judicial independence (in ss. 96-100 of the Constitution Act, 1867 and s. 11(d) of the Charter). Given that the express provisions dealing with constitutional protection for judicial independence have specifically spelled out their application, it seems strained to extend the ambit of this protection by reference to a general preambular statement. It is emphasized that these express protections for judicial independence are broad and powerful. They apply to all superior court and other judges specified in s. 96 of the Constitution Act, 1867 as well as to inferior (provincial) courts exercising criminal jurisdiction. Nothing presented in these appeals suggests that these guarantees are not sufficient to ensure the independence of the judiciary as a whole. Should the foregoing provisions be found wanting, the Charter may conceivably be brought into play.

While salary commissions and a concomitant policy to avoid discussing remuneration other than through the making of representations to commissions may be desirable as matters of legislative policy, they are not mandated by s. 11(d). To read these requirements into that section represents both an unjustified departure from established precedents and a partial usurpation of the provinces' power to set the salaries of inferior court judges pursuant to ss. 92(4) and 92(14) of the Constitution Act, 1867. The guarantee of judicial independence inhering in s. 11(d) redounds to the benefit of the judged, not the judges. Section 11(d) therefore does not grant judges a level of independence to which they feel they are entitled. Rather, it guarantees only that degree of independence necessary to ensure that tribunals exercising criminal jurisdiction act, and are perceived to act, in an impartial manner. Judicial independence must include protection against interference with the financial security of the court as an institution. However, the possibility of economic manipulation arising from changes to judges' salaries as a class does not justify the imposition of judicial compensation commissions as a constitutional imperative. By employing the reasonable perception test, judges are able to distinguish between changes to their remuneration effected for a valid public purpose and those designed to influence their decisions. Although this test applies to all changes to judicial remuneration, different types of changes warrant different levels of scrutiny. Changes to judicial salaries that apply equally to substantially all persons paid from public funds would almost inevitably be considered constitutional. Indeed, a reasonable, informed person would not view the linking of judges' salaries to those of civil servants as compromising judicial independence. Differential increases to judicial salaries would warrant a greater degree of scrutiny, and differential decreases would invite the highest level of review. In determining whether a differential change raises a perception of interference, regard must be had to both the purpose and the effect of the impugned salary change. In considering the effect of differential changes on judicial independence, the question is whether the distinction between judges and other persons paid from public funds amounts to a

"substantial" difference in treatment. Trivial or insignificant differences are unlikely to threaten judicial independence. Finally, in most circumstances, a reasonable, informed person would not view direct consultations between the government and the judiciary over salaries as imperiling judicial independence. If a government uses salary discussions to attempt to influence or manipulate the judiciary, the government's actions will be reviewed according to the same reasonable perception test that applies to salary changes.

Since the governments of P.E.I. and Alberta were not required to have recourse to a salary commission, the wage reductions they imposed on Provincial Court judges as part of an overall public economic measure were consistent with s. 11(d) of the Charter. There is no evidence that the reductions were introduced in order to influence or manipulate the judiciary. A reasonable person would not perceive them, therefore, as threatening judicial independence. As well, since salary commissions are not constitutionally required, the Manitoba government's avoidance of the commission process did not violate s. 11(d). Although Bill 22 treated judges differently from most other persons paid from public funds, there is no evidence that the differences evince an intention to interfere with judicial independence. Differences in the classes of persons affected by Bill 22 necessitated differences in treatment. Moreover, the effect of the distinctions on the financial status of judges vis-à-vis others paid from public monies is essentially trivial. The Manitoba scheme was a reasonable and practical method of ensuring that judges and other appointees were treated equally in comparison to civil servants. A reasonable person would not perceive this scheme as threatening the financial security of judges in any way. However, the Manitoba government's refusal to sign a joint recommendation to the JCC, unless the judges agreed to forego their legal challenge of Bill 22, constituted a violation of judicial independence. The government placed economic pressure on the judges so that they would concede the constitutionality of the planned salary changes. The financial security component of judicial independence must include protection of judges' ability to challenge legislation implicating their own independence free from the reasonable perception that the government might penalize them financially for doing so.

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By Lamer C.J.

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APPEAL and CROSS-APPEAL from a judgment of the Prince Edward Island Supreme Court, Appeal Division (1995), 130 Nfld. & P.E.I.R. 29, 405 A.P.R. 29, 124 D.L.R. (4th)

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APPEAL from a judgment of the Alberta Court of Appeal (1995), 169 A.R. 178, 97 W.A.C. 178, 31 Alta. L.R. (3d) 190, 100 C.C.C. (3d) 167, [1995] 8 W.W.R. 747, [1995] A.J. No. 610 (QL), dismissing for want of jurisdiction the Crown's appeal from a judgment of the Court of Queen's Bench (1994), 160 A.R. 81, 25 Alta. L.R. (3d) 158, [1995] 2 W.W.R. 469, [1994] A.J. No. 866 (QL), declaring certain sections of the Provincial Court Judges Act of no force or effect. Appeal on issue of jurisdiction allowed. Appeal on constitutional issues allowed in part, La Forest J. dissenting in part.

APPEAL from a judgment of the Manitoba Court of Appeal (1995), 102 Man. R. (2d) 51, 93 W.A.C. 51, 37 C.P.C. (3d) 207, 125 D.L.R. (4th) 149, 30 C.R.R. (2d) 326, [1995] 5 W.W.R. 641, [1995] M.J. No. 170 (QL), allowing the Crown's appeal and dismissing the Provincial Court judges' cross-appeal from a judgment of the Court of Queen's Bench (1994), 98 Man. R. (2d) 67, 30 C.P.C. (3d) 31, [1994] M.J. No. 646 (QL), dismissing the Provincial Court judges' application to have The Public Sector Reduced Work Week and Compensation Management Act declared unconstitutional, but reading down the legislation. Appeal allowed, La Forest J. dissenting in part.

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John A. Legge, for the respondents Campbell and Ekmecic.
R. S. Prithipaul, for the respondent Wickman.
Robb Tonn and M. B. Nepon, for the appellants the Judges of the Provincial Court of Manitoba.
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Edward R. Sojonky, Q.C., and Josephine A. L. Palumbo, for the intervener the Attorney General of Canada.
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Graeme G. Mitchell and Gregory Wm. Koturbash, for the intervener the Attorney General for Saskatchewan.
Richard F. Taylor, for the intervener the Attorney General for Alberta.
John P. Nelligan, Q.C., and J. J. Mark Edwards, for the intervener the Canadian Association of Provincial Court Judges.
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Raynold Langlois, Q.C., for the intervener the Conférence des juges du Québec.
Robert McKercher, Q.C., and Michelle Ouellette, for the intervener the Saskatchewan Provincial Court Judges Association.
D.O. Sabey, Q.C., Bradley G. Nemetz and Scott H. D. Bower, for the intervener the Alberta Provincial Judges' Association.
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Solicitors for the intervener the Alberta Provincial Judges' Association: Bennett Jones Verchere, Calgary.
Solicitors for the intervener the Canadian Bar Association: McCarthy Tétrault, Toronto.
Solicitors for the intervener the Federation of Law Societies of Canada: Torkin, Manes, Cohen & Arbus, Toronto.

The judgment of Lamer C.J. and L'Heureux-Dubé, Sopinka, Gonthier, Cory and Iacobucci JJ. was delivered by

THE CHIEF JUSTICE:--

I. Introduction

1 The four appeals handed down today -- Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island (No. 24508), Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island (No. 24778), R. v. Campbell, R. v. Ekmecic and R. v. Wickman (No. 24831), and Manitoba Provincial Judges Assn. v. Manitoba (Minister of Justice) (No. 24846) -- raise a range of issues relating to the independence of provincial courts, but are united by a single issue: whether and how the guarantee of judicial independence in s. 11(d) of the Canadian Charter of Rights and Freedoms restricts the manner by and the extent to which provincial governments and legislatures can reduce the salaries of provincial court judges. Moreover, in my respectful opinion, they implicate the broader question of whether the constitutional home of judicial independence lies in the express provisions of the Constitution Acts, 1867 to 1982, or exterior to the sections of those documents. I am cognizant of the length of these reasons. Although it would have been possible to issue a set of separate but interrelated judgments, since many of the parties intervened in each other's cases, I find it convenient to deal with these four appeals in one set of reasons. Given the length and complexity of these reasons, I thought it would be useful and convenient to provide a summary, which is found at para. 287.

2 The question of judicial independence, not only under s. 11(d) of the Charter, but also under ss. 96-100 of the Constitution Act, 1867, has been the subject of previous decisions of this Court. However, the aspect of judicial independence which is engaged by the impugned reductions in salary -- financial security -- has only been dealt with in any depth by Valente v. The Queen, [1985] 2 S.C.R. 673, and Beauregard v. Canada, [1986] 2 S.C.R. 56. The facts of the current appeals require that we address questions which were left unanswered by those earlier decisions.

3 Valente was the first decision in which this Court gave meaning to s. 11(d)'s guarantee of judicial independence and impartiality. In that judgment, this Court held that s. 11(d) encompassed a guarantee, inter alia, of financial security for the courts and tribunals which come within the scope of that provision. This Court, however, only turned its mind to the nature of financial security which is required for individual judges to enjoy judicial independence. It held that for individual judges to be independent, their salaries must be secured by law, and not be subject to arbitrary interference by the executive. The question which arises in these appeals, by contrast, is the content of the collective or institutional dimension of financial security for judges of provincial courts, which was not at issue in Valente. In particular, I will address the institutional arrangements which are comprehended by the guarantee of collective financial security.

4 Almost a year after Valente was heard, but before it had been handed down, this Court heard the appeal in Beauregard. In that case, the Court rejected a constitutional

challenge to federal legislation establishing a contributory pension scheme for superior court judges. It had been argued that the pension scheme amounted to a reduction in the salaries of those judges during their term of office, and for that reason contravened judicial independence and was beyond the powers of Parliament. Although the Court found that there had been no salary reduction on the facts of the case, the judgment has been taken to stand for the proposition that salary reductions which are "non-discriminatory" are not unconstitutional.

5 There are four questions which arise from Beauregard, and which are central to the disposition of these appeals. The first question is what kinds of salary reductions are consistent with judicial independence -- only those which apply to all citizens equally, or also those which only apply to persons paid from the public purse, or those which just apply to judges. The second question is whether the same principles which apply to salary reductions also govern salary increases and salary freezes. The third question is whether Beauregard, which was decided under s. 100 of the Constitution Act, 1867, a provision which only guarantees the independence of superior court judges, applies to the interpretation of s. 11(d), which protects a range of courts and tribunals, including provincial court judges. The fourth and final question is whether the Constitution -- through the vehicle of s. 100 or s. 11(d) -- imposes some substantive limits on the extent of permissible salary reductions for the judiciary.

6 Before I begin my legal analysis, I feel compelled to comment on the unprecedented situation which these appeals represent. The independence of provincial court judges is now a live legal issue in no fewer than four of the ten provinces in the federation. These appeals have arisen from three of those provinces -- Alberta, Manitoba, and Prince Edward Island ("P.E.I.") -- in three different ways. In Alberta, three accused persons challenged the constitutionality of their trials before judges of the Provincial Court; in Manitoba, the Provincial Judges Association proceeded by way of civil action; in P.E.I., the provincial cabinet brought two references. In British Columbia, the provincial court judges association has brought a civil suit on a similar issue. I hasten to add that that latter case is not before this Court, and I do not wish to comment on its merits. I merely refer to it to illustrate the national scope of the question which has come before us in these appeals.

7 Although the cases from the different provinces are therefore varied in their origin, taken together, in my respectful view, they demonstrate that the proper constitutional relationship between the executive and the provincial court judges in those provinces has come under serious strain. Litigation, and especially litigation before this Court, is a last resort for parties who cannot agree about their legal rights and responsibilities. It is a very serious business. In these cases, it is even more serious because litigation has ensued between two primary organs of our constitutional system -- the executive and the judiciary -- which both serve important and interdependent roles in the administration of justice.

8 The task of the Court in these appeals is to explain the proper constitutional relationship between provincial court judges and provincial executives, and thereby assist in removing the strain on this relationship. The failure to do so would undermine "the web of institutional relationships... which continue to form the backbone of our constitutional system" (Cooper v. Canada (Human Rights Commission), [1996] 3 S.C.R. 854, at para. 3).

9 Although these cases implicate the constitutional protection afforded to the financial security of provincial court judges, the purpose of the constitutional guarantee of financial security -- found in s. 11(d) of the Charter, and also in the preamble to and s. 100 of the Constitution Act, 1867 -- is not to benefit the members of the courts which come within the scope of those provisions. The benefit that the members of those courts derive is purely secondary. 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.

10 One of these goals is the maintenance of public confidence in the impartiality of the judiciary, which is essential to the effectiveness of the court system. Independence contributes to the perception that justice will be done in individual cases. Another social goal served by judicial independence is the maintenance of the rule of law, one aspect of which is the constitutional principle that the exercise of all public power must find its ultimate source in a legal rule. It is with these broader objectives in mind that these reasons, and the disposition of these appeals, must be understood.

II. Facts

A. Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island and Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island

11 These two cases, which were heard together in these proceedings, arose out of two references which were issued by the Lieutenant Governor in Council of P.E.I. to the Appeal Division of the P.E.I. Supreme Court.

12 The first reference, Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, was issued on October 11, 1994 by Order in Council No. EC646/94, pursuant to s. 18 of the Supreme Court Act, R.S.P.E.I. 1988, c. S-10, and came about as a result of reductions in the salaries of judges of the P.E.I. Provincial Court by the Public Sector Pay Reduction Act, S.P.E.I. 1994, c. 51. This statute reduced the salaries of the judges and others paid from the public purse in P.E.I. by 7.5 percent effective May 17, 1994. The Act was part of the province's plan to reduce its budget deficit. Following the pay reduction, numerous accused persons challenged the constitutionality of proceedings before them in the Provincial Court, alleging that as a result of the salary reductions, the court had lost its status as an independent and impartial tribunal under s. 11(d) of the Charter. In response to the uncertainty created by these challenges, the provincial government issued a reference to elucidate the constitutional contours of the power of the provincial legislature to decrease, increase or otherwise adjust the remuneration of judges of the Provincial Court, and to determine whether the judges of the Provincial Court still enjoyed a sufficient degree of financial security for the purposes of s. 11(d). The Appeal Division rendered judgment on December 16, 1994: (1994), 125 Nfld. & P.E.I.R. 335, 389 A.P.R. 335, 120 D.L.R. (4th) 449, 95 C.C.C. (3d) 1, 33 C.P.C. (3d) 76, [1994] P.E.I.J. No. 123 (QL). For present purposes, it is sufficient to simply state that the court found the judges of the Provincial Court to be independent.

13 The second reference, Reference re Independence and Impartiality of Judges of the

Provincial Court of Prince Edward Island, was issued on February 13, 1995, by Order in Council No. EC132/95, and arose out of the controversy surrounding the first reference. Despite the Appeal Division's decision in the first reference, accused persons continued to raise challenges based on s. 11(d) to the constitutionality of the P.E.I. Provincial Court. In particular, Plamondon Prov. Ct. J. (formerly Chief Judge) issued a judgment in which he strongly criticized the Appeal Division's decision, and refused to follow it: R. v. Avery, [1995] P.E.I.J. No. 42 (QL).

14 The second reference was much more comprehensive in nature, and contained a series of questions concerning all three elements of the judicial independence of the P.E.I. Provincial Court: financial security (the issue in the first reference), security of tenure, and institutional (or administrative) independence. The Appeal Division rendered judgment on May 4, 1995, and answered most of the questions to the effect that the Provincial Court was independent and impartial: (1995), 130 Nfld. & P.E.I.R. 29, 405 A.P.R. 29, 124 D.L.R. (4th) 528, 39 C.P.C. (3d) 241, [1995] P.E.I.J. No. 66 (QL). The appellants (who are the same appellants as in the first reference) appeal from this holding. However, the court did hold that Provincial Court judges lacked a sufficient degree of security of tenure to meet the standard set by s. 11(d) of the Charter. The respondent Crown cross-appeals from this aspect of the judgment.

15 Because of their length and complexity, I have chosen to append the questions put in the two P.E.I. references as Appendices "A" and "B".

B. R. v. Campbell, R. v. Ekmecic and R. v. Wickman

16 This appeal arises out of three separate and unrelated criminal proceedings commenced against the respondents Shawn Carl Campbell, Ivica Ekmecic, and Percy Dwight Wickman in the province of Alberta. Campbell was charged with unlawful possession of a prohibited weapon, contrary to s. 90(1) of the Criminal Code, R.S.C., 1985, c. C-46, and subsequently, in connection with the charge of unlawful possession, with failing to attend court in contravention of s. 145(5) of the Criminal Code. Wickman was charged with two different offences -- operating a motor vehicle while his ability to operate that vehicle was impaired by alcohol, in violation of s. 253(a) of the Criminal Code, and operating a motor vehicle after having consumed alcohol in such a quantity that his blood alcohol level exceeded 80 milligrams, in contravention of s. 253(b) of the Criminal Code. Ekmecic was charged with unlawful assault contrary to s. 266 of the Criminal Code.

17 The three respondents pled not guilty, and the Crown elected to proceed summarily in all three cases. The accused appeared, in separate proceedings, before the Alberta Provincial Court. At various points in their trials, they each brought a motion before the Alberta Court of Queen's Bench, arguing that the Provincial Court was not an independent and impartial tribunal for the purposes of s. 11(d). The trials for Campbell and Ekmecic were both adjourned before they commenced. Wickman, by contrast, moved for and was granted an adjournment after the Crown had completed its case and six witnesses had testified for the defence, including the accused. Amongst the three of them, the respondents sought orders in the nature of prohibition, certiorari, declarations, and stays.

18 The allegations of unconstitutionality, inter alia, dealt with a 5 percent reduction in the salaries of judges of the Provincial Court brought about by the Payment to Provincial Judges Amendment Regulation, Alta. Reg. 116/94, and s. 17(1) of the Provincial Court Judges Act, S.A. 1981, c. P-20.1, which is the statutory basis for the aforementioned regulation. The 5 percent reduction was accomplished by a 3.1 percent direct salary reduction, and by 5 unpaid days leave of absence. The respondents also attacked the constitutionality of changes to the judges' pension plan by the Provincial Judges and Masters in Chambers Pension Plan Amendment Regulation, Alta. Reg. 29/92, and the Management Employees Pension Plan, Alta. Reg. 367/93, which respectively had the effect of reducing the base salary for calculating pension benefits, and limiting cost of living increases to 60 percent of the Consumer Price Index. In addition, the respondents challenged the constitutionality of the power of the Attorney General to designate the court's sitting days and judges' place of residence. McDonald J., on the motions, also put at issue the process for disciplining Provincial Court judges and the grounds for removal of judges of the Provincial Court.

19 Finally, and in large part, the constitutional challenges seem to have been precipitated by the remarks of Premier Ralph Klein during a radio interview. Mr. Klein stated that a judge of the provincial youth court, who had indicated that he would not sit in protest over his salary reduction, should be "very, very quickly fired".

20 All three motions were heard by McDonald J., who found that the Alberta Provincial Court was no longer independent: (1994), 160 A.R. 81, 25 Alta. L.R. (3d) 158, [1995] 2 W.W.R. 469, [1994] A.J. No. 866 (QL). However, he obviated the need for a stay by issuing a declaration that provincial legislation and regulations which were the source of the s. 11(d) violation were of no force or effect. As a result, although the Crown lost on the constitutional issue, it won on the issue of the stay. The Crown appealed to the Alberta Court of Appeal, which held that it did not have jurisdiction to hear the appeals, and therefore did not consider the merits of the arguments: (1995), 169 A.R. 178, 97 W.A.C. 178, 31 Alta. L.R. (3d) 190, 100 C.C.C. (3d) 167, [1995] 8 W.W.R. 747, [1995] A.J. No. 610 (QL). The Crown now appeals to this Court, both on the question of the Court of Appeal's jurisdiction and the merits of the constitutional issue. I stated constitutional questions on June 26, 1996. These questions can be found in Appendix "C".

C. Manitoba Provincial Judges Assn. v. Manitoba (Minister of Justice)

21 This appeal deals with reductions to the salaries of judges of the Manitoba Provincial Court, by The Public Sector Reduced Work Week and Compensation Management Act, S.M. 1993, c. 21, otherwise known as "Bill 22". Bill 22 led to the reduction of the salaries of a large number of public sector employees, including employees of Crown corporations, hospitals, personal care homes, child and family services agencies, municipalities, school boards, universities and colleges. The legislation was passed as part of a plan to reduce the province's deficit. Bill 22 provided for different treatment of the several classes of employees to which it applied. It provided that public sector employers "may" require employees to take unpaid days of leave. However, judges of the Provincial Court, along with persons who received remuneration as members of a Crown agency or a board, commission or committee to which they were appointed by the government, received a

mandatory reduction of 3.8 percent in the 1993-94 fiscal year. For the next fiscal year, Bill 22 provided that judges' salaries were to be reduced

> by an amount that is generally equivalent to the amount by which the wages of employees under a collective agreement with Her Majesty in right of Manitoba are reduced in the same period as a result of a requirement to take days or portions of days of leave without pay in that period.

In the second year, the pay reduction of judges of the Provincial Court could have been achieved by days of leave without pay. Similar provisions governed the salary reduction for members of the provincial legislature. By contrast, medical practitioners were dealt with by a different set of provisions in Bill 22, which fixed the total payments for 1993-94 at 98 percent of the total payments in the 1992-93 fiscal year, and payments for the 1994-95 year by an amount obtained by multiplying the payment for the 1993-94 year by a factor laid down in regulation. Bill 22 was time-limited legislation, and is no longer in effect.

22 The Manitoba Provincial Judges Association launched a constitutional challenge to the salary cut, alleging that it infringed their judicial independence as protected by s. 11(d) of the Charter. They also argued that the salary reduction was unconstitutional because it effectively suspended the operation of the Judicial Compensation Committee, a body created by The Provincial Court Act, R.S.M. 1987, c. C275, whose task it is to issue reports on judges' salaries to the provincial legislature. Furthermore, they alleged that the government had interfered with judicial independence by ordering the withdrawal of court staff and personnel on unpaid days of leave ("Filmon Fridays"), which in effect shut down the Provincial Court on those days. Finally, they claimed that the government had exerted improper pressure on the Association in the course of salary discussions to desist from launching this constitutional challenge, which also allegedly infringed their judicial independence. The trial judge held that the salary reduction violated s. 11(d), but read down Bill 22 so that it only provided for a temporary suspension in compensation, with retroactive payment due after the Bill expired: (1994), 98 Man. R. (2d) 67, 30 C.P.C. (3d) 31, [1994] M.J. No. 646 (QL). The Court of Appeal rejected all the constitutional challenges: (1995), 102 Man. R. (2d) 51, 93 W.A.C. 51, 37 C.P.C. (3d) 207, 125 D.L.R. (4th) 149, 30 C.R.R. (2d) 326, [1995] 5 W.W.R. 641, [1995] M.J. No. 170 (QL). The Judges of the Provincial Court, as represented by the Association, now appeal to this Court. I stated constitutional questions on June 18, 1996. These questions can be found in Appendix "D".

III. Decisions Below

A. Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island and Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island

(1) Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island: Decision of the Appeal Division of the P.E.I. Supreme Court (1994), 125 Nfld. & P.E.I.R. 335

23 The Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island contains two questions; the text of the reference can be found in Appendix "A". The first question asks if the provincial legislature has the power to decrease, increase, or otherwise adjust the remuneration of judges of the P.E.I. Provincial Court either as part of an "overall public economic measure" or "in certain circumstances established by law". If the first question is answered in the affirmative, the second question must be answered. That question asks whether judges of the Provincial Court enjoy sufficient financial security for that court to be an independent and impartial tribunal for the purposes of s. 11(d) of the Charter and any other such sections as may be applicable.

24 The judgment of the court was given by Mitchell J.A., who answered both questions in the affirmative. He began his judgment by sketching the factual background to the reference -- that the salary reduction of judges of the Provincial Court occurred at a time when the provincial government "was faced with a severe deficit problem and saw an urgency to cutting its spending so as to get the Province's finances into acceptable order" (p. 337). Accordingly, he characterized the Public Sector Pay Reduction Act, the legislation whereby judges' salaries had been reduced, as a deficit reduction measure.

25 Mitchell J.A. then proceeded to canvass this Court's judgments in Valente, Beauregard, and R. v. Généreux, [1992] 1 S.C.R. 259, to draw out the proposition that the provincial legislature had the authority to reduce the salary and benefits of Provincial Court judges if three conditions were met: the reduction was part of an "overall public economic measure", the reduction did not "remove the basic degree of financial security which is an essential condition" for judicial independence, and the reduction did not amount to "arbitrary interference with the judiciary in the sense that it [was] being enacted for an improper or colourable purpose, or that it discriminate[d] against judges vis-à-vis other citizens" (p. 340). A public economic measure, he held, could include a general pay reduction for all those who hold public office, including judges. Furthermore, the change to judges' salaries could not alter the basic requirement of financial security, that salaries be established by law and be beyond arbitrary interference by the government in a manner that could affect the independence of the individual judge.

26 Relying on this analysis, Mitchell J.A. gave the answer of a "qualified yes" to question 1. Legislatures were constitutionally competent to adjust judicial salaries, as long as they adhered to the requirements of s. 11(d).

27 Mitchell J.A. then turned to question 2, but characterized it as dealing not with the level of salary that judges receive, but rather with both the means which the provincial legislature had employed to reduce that salary and the reasons for that reduction. He concluded that judges of the P.E.I. Provincial Court were still independent for the purposes of s. 11(d), because of the circumstances surrounding the adoption of the Public Sector Pay Reduction Act. The Act had reduced their salaries as part of an overall public economic measure designed to meet a legitimate government objective. It was non-discriminatory in that it applied generally to virtually everyone paid from the public purse. Furthermore, after the salary reduction, the right of judges to their salaries remained established by law and was beyond arbitrary interference by the government. Finally, there was no evidence that the Act had been enacted for an improper or colourable purpose.

Mitchell J.A. therefore answered "yes" to question 2.

(2) Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island: Decision of the Appeal Division of the P.E.I. Supreme Court (1995), 130 Nfld. & P.E.I.R. 29

(a) Introduction

28 This reference consists of eight questions, which can be found in Appendix "B". In this paragraph, I will outline the structure and content of these questions. The first question is framed in general terms, and asks the court to determine whether judges of the P.E.I. Provincial Court have sufficient security of tenure, institutional independence, and financial security to constitute an independent and impartial tribunal for the purposes of s. 11(d) of the Charter. The next three questions (questions 2, 3, and 4) ask whether specific provisions of the legislation governing Provincial Court judges (the Provincial Court Act, R.S.P.E.I. 1988, c. P-25), particular amendments thereto, and the organization and operation of the provincial court system in the province undermine the security of tenure (question 2), institutional independence (question 3), and financial security (question 4) of Provincial Court judges. Question 5 is a residual question, which asks if there is any other factor or combination of factors which undermines the independence of judges of the P.E.I. Provincial Court. Question 6 asks whether s. 11(d) of the Charter requires Provincial Court judges to have the same level of remuneration as superior court judges. Question 7 is predicated upon an affirmative answer to question 6, and asks in what particular respect or respects it would be necessary to provide the same level of remuneration to the two groups of judges. Question 8 asks whether the violations of s. 11(d), if any, can be justified under s. 1 of the Charter.

(b) Statement of Facts

29 Appended to the second reference is a lengthy statement of facts. According to the terms of the reference, this Court is expected to have regard to this statement of facts in answering questions 1, 2, 3, 4 and 5. It is therefore necessary to give an account of what that statement of facts says.

30 The statement of facts begins by adverting to the concern about the state of judicial independence in the P.E.I. Provincial Court, following the enactment of the Public Sector Pay Reduction Act. The degree of concern is indicated by the fact that over 70 cases before the Provincial Court were adjourned to allow defendants to apply to the Supreme Court of P.E.I. for a determination of the independence of Provincial Court judges. At the time of the issuing of the reference, 20 such cases were pending before the P.E.I. Supreme Court.

31 The statement of facts then proceeds to explain how judges of the P.E.I. Provincial Court are remunerated. At the time of this reference, the three members of the Provincial Court of P.E.I. were paid an annual salary of $98,243. The statement of facts also contrasts the salaries of Provincial Court judges with the per capita income averages across Canada and in P.E.I., and provides some data on income distribution within a

number of provinces, including P.E.I. These statistics convey the general impression that Provincial Court judges in P.E.I., even after the salary reductions, are paid very well relative to the population as a whole, particularly in P.E.I.

32 The statement of facts then moves on to discuss the manner in which the salaries of judges of the Provincial Court of P.E.I. are set. Until the mid-1980s, the salaries of Provincial Court judges were established by the Executive Council (i.e., the cabinet) of P.E.I., after informal consultations by the Attorney General and the Deputy Attorney General with the judges. It was customary for Provincial Court judges to receive the same salary increases as senior members of the public sector, whose salary increases were in turn generally "in line" with those increases received by other public sector employees. However, in 1986-87, the government commissioned a report by Professor Wade MacLauchlan to examine the remuneration of Provincial Court judges. The report's recommendation that Provincial Court judges' salaries should be equal to the average of provincial court judges' salaries across Canada, was implemented through an amendment to the Provincial Court Act in 1988 (An Act to Amend the Provincial Court Act, S.P.E.I. 1988, c. 54).

33 The statement of facts then goes on to discuss how the government arrived at the conclusion that it should reduce its provincial deficit. The basic thrust is that the province's annual deficit in the early 1990s had been significantly greater than expected. As a result, the province had sought to control the provincial deficit through salary reductions, culminating in the Public Sector Pay Reduction Act. The statement notes that in the years before the enactment of the Act, there had been discussions between the judges of the P.E.I. Provincial Court and the government in which the judges agreed to a pay reduction and then a salary freeze. As well, immediately before the enactment of the Act, the government had indicated a willingness to discuss alternative measures whereby the reduction in remuneration envisioned by the Act could be achieved with the judges. The statement acknowledges that Chief Judge Plamondon indicated his desire to meet with the government; however, for reasons not explained, the requested meeting did not take place.

34 The next portion of the statement of facts seeks to explain the role of the provincial government in the administration of the P.E.I. Provincial Court. The picture which emerges is that administrators make many of the important day-to-day decisions at the court, including those which directly affect the working conditions of judges (e.g., the hiring, dismissal, setting of work hours, and management of sick leaves of staff), and also ensure that the Provincial Court operates within a budget set by the province. However, Provincial Court judges have discretion with respect to the hours of their work, holidays and time off, continuing legal education, and the setting and maintaining control and operation of their own schedules and dockets. Collectively, they assign dockets, arraignment days and courtrooms for cases. As well, a government official, the Director of Legal and Judicial Services, represents the Attorney General on a committee consisting of the Chief Justices of the P.E.I. Supreme Court Appeal and Trial Divisions and the Chief Judge of the Provincial Court. This committee meets periodically to discuss general administration and budgeting issues for the court system.

35 The last portion of the statement of facts sheds some light on the role of then Chief Judge Plamondon. It appears that Chief Judge Plamondon sought and was granted intervener status for the Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, and retained counsel. However, although his legal fees were initially paid for by the Legal Aid Plan, which assured him that it would continue to do so, he was subsequently denied legal aid, apparently according to the direct orders of the Attorney General of P.E.I. A motion for government funded counsel before the Appeal Division failed. The then Chief Judge subsequently withdrew as an intervener in that reference. He has since retired.

(c) Question 1

36 As I mentioned above, question 1 asks in general terms if judges of the P.E.I. Provincial Court enjoy sufficient security of tenure, financial security, and administrative independence for the purposes of s. 11(d) of the Charter. Mitchell J.A., speaking for the Appeal Division, answered "no", but solely on the ground that Provincial Court judges lacked sufficient security of tenure. The lack of security of tenure arose as a result of s. 10 of the Provincial Court Act, which provided for the removal of Provincial Court judges by the Lieutenant Governor in Council. According to Mitchell J.A., the effect of the provision was to allow the removal of a judge without an independent inquiry to establish cause, in circumstances where a judge was suspended because the Lieutenant Governor in Council had "reason to believe that a judge" was "guilty of misbehaviour or" was "unable to perform his duties properly", and the judge did not request an inquiry. Relying on Valente, Mitchell J.A. held that s. 10 undermined judicial independence, which requires that a judge be removable only for cause, and in all circumstances that the cause be subject to independent review.

(d) Question 2

37 Question 2 raises a series of questions about security of tenure. Mitchell J.A. grouped questions 2(a), (d), and (e) together, and answered "no" to all three questions. Question 2(a) asks whether the pension provision in s. 8(1)(c) of the Provincial Court Act infringes the judges' security of tenure; question 2(d) asks whether s. 12(2) of the Act, which confers a discretion on the Lieutenant Governor in Council to grant a leave of absence to a Provincial Court judge, infringes security of tenure; question 2(e) asks the same question, but with respect to a similar provision of the Act which governed sabbatical leaves (s. 13). In answering in the negative, Mitchell J.A. stated (at p. 51) that "[s]imilar and, in some instances, even less ideal measures were in issue in Valente" but were nevertheless upheld by this Court.

38 Mitchell J.A. also answered "no" to questions 2(b) and 2(c). Question 2(b) asks whether security of tenure had been affected by changes to the remuneration of P.E.I. Provincial Court judges; Mitchell J.A. held that this question had already been answered in the Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island. Question 2(c) queries the constitutionality of the provisions in the Provincial Court Act governing the disciplining and removal of Provincial Court judges, which Mitchell J.A. discussed under question 1. As a result, he held that this question had already been

addressed.

39 Question 2(f) asks whether future alterations to the pension provisions in s. 8 of the Provincial Court Act, which increased or decreased pension benefits, changed the contributions payable by the government and judges of the P.E.I. Provincial Court, increased or decreased the years of service required to be entitled to a pension, or increased or decreased the indexing of pension benefits or provided for the use of some alternative index, would infringe upon security of tenure. Mitchell J.A. held, relying on Beauregard, that unless such alterations were enacted for an improper or colourable purpose, or were discriminatory vis-à-vis other citizens, they would be constitutional.

40 Finally, Mitchell J.A. gave a negative answer to question 2(g), which asks whether setting the salaries of Provincial Court judges in P.E.I. at the average of the remuneration of provincial court judges in the other Atlantic provinces (Nova Scotia, New Brunswick, and Newfoundland) violates security of tenure. He simply stated that this method for calculating remuneration had no bearing on judicial independence and impartiality.

(e) Question 3

41 Question 3 poses a series of questions regarding the institutional independence of the P.E.I. Provincial Court. He grouped questions 3(a), (b), (c), (d), (f), and (g), together, and answered "no", because they addressed matters which did not bear immediately and directly on the court's adjudicative function. These questions ask whether the following matters undermine the institutional independence of the Provincial Court: the location of the Provincial Courts in relation to the offices of superior courts, legal aid offices, Crown Attorneys' offices, and the offices of the representatives of the Attorney General (question 3(a)); the fact that the judges do not administer the budget of the court (question 3(b)); the designation of a place of residence of a particular Provincial Court judge (question 3(c)); communication between a Provincial Court judge, the Director of Legal and Judicial Services in the Office of the Attorney General or the Attorney General on issues relating to the administration of justice (question 3(d)); the denial of legal aid to Chief Judge Plamondon in Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island (question 3(f)); and a regulation enacted pursuant to the Public Sector Pay Reduction Act in order to clarify that Provincial Court judges did not fall within those provisions of the Act which allow public sector employees to negotiate alternatives to simple pay reductions (question 3(g)).

42 Mitchell J.A. also answered question 3(e) in the negative. That question asks whether the vacancy of the position of Chief Judge undermined the institutional independence of the P.E.I. Provincial Court. Mitchell J.A. held that as long as the duties of the Chief Judge which bore upon the administrative independence of the court were not exercised by persons other than judges of that court, institutional independence was not compromised.

(f) Question 4

43 Question 4 poses a series of questions regarding the financial security of judges of

the Provincial Court. Mitchell J.A. answered question 4(a) in the negative, referring to his judgment in Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island. This question asks whether a general pay reduction for all persons paid from the public purse which is enacted by the provincial legislature infringes on the financial security of the members of the court.

44 Mitchell J.A. then grouped questions 4(b), (c), (d), (e), (f), (g), (i), (j) and (k) together, and answered "no" to all of them, merely stating that he was relying on the authorities cited by counsel, including Valente, and MacKeigan v. Hickman, [1989] 2 S.C.R. 796. These questions ask about the effect on the financial security of the P.E.I. Provincial Court of: a remuneration freeze for all persons paid from the public purse, including Provincial Court judges (question 4(b)); the fact that Provincial Court judges' salaries are not automatically adjusted annually to account for inflation (question 4(c)); the ability of Provincial Court judges to negotiate any aspect of their remuneration (question 4(d)); the fact that the formula for establishing the salaries of Provincial Court judges allows the legislative assemblies of other provinces to establish the salaries of P.E.I. Provincial Court judges (question 4(e)); the conferral of a discretion by s. 12(2) of the Provincial Court Act on the Lieutenant Governor in Council to grant a leave of absence for illness to Provincial Court judges (question 4(f)); a provision conferring a similar discretion to provide sabbatical leave (question 4(g)); the amendment of the formula to determine the salaries of Provincial Court judges by the Act to Amend the Provincial Court Act, S.P.E.I. 1994, c. 49, which provides that the salary of judges of the P.E.I. Provincial Court shall be the average of the salaries of provincial court judges in Nova Scotia, New Brunswick and Newfoundland on April 1 of the preceding year (question 4(i)); the denial of legal aid to Chief Judge Plamondon for his intervention in Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island (question 4(j)); and a regulation enacted pursuant to the Public Sector Pay Reduction Act in order to clarify that Provincial Court judges did not fall within those provisions of the Act which allow public sector employees to negotiate alternatives to simple pay reductions (question 4(k)).

45 Finally, Mitchell J.A. held that he had already answered question 4(h), which deals with potential alterations to pension provisions identical to those raised by question 2(f).

(g) Question 5

46 Mitchell J.A. declined to answer this question, which asks if there is any other factor or combination of factors which undermines the independence of judges of the P.E.I. Provincial Court, because it was too nonspecific.

(h) Question 6

47 Question 6 asks whether s. 11(d) of the Charter requires that provincial court judges be entitled to the same level of remuneration as superior court judges. Simply stating that he was relying on Valente and Généreux, Mitchell J.A. answered "no".

(i) Question 7

48 Question 7 is predicated on an affirmative answer to question 6. Given his answer to question 6, Mitchell J.A. found it unnecessary to answer this question.

(j) Question 8

49 Question 8 asks whether the infringements of s. 11(d) of the Charter, if there are any, are justified under s. 1. Mitchell J.A. held that they could not be, because to try a person charged with an offence before a tribunal which was not independent and impartial "would be completely incompatible with the notion of a free and democratic society" (p. 55).

B. R. v. Campbell, R. v. Ekmecic and R. v. Wickman

(1) Decision of the Court of Queen's Bench of Alberta (1994), 160 A.R. 81

50 The Alberta Court of Queen's Bench, per McDonald J., addressed all three aspects of judicial independence: financial security, security of tenure, and institutional independence. McDonald J. found that each of these aspects of judicial independence was lacking in the Alberta Provincial Court. I confine my description of his judgment to those issues which were pursued on appeal.

(a) Financial Security

51 McDonald J. first considered the constitutional contours of s. 11(d), as they pertained to reductions in the salaries of judges. His analysis proceeded in three stages. First, relying on the preamble to and s. 100 of the Constitution Act, 1867 he concluded that the salaries of superior court judges, once ascertained and established, may not be reduced, either through a direct reduction or by the failure to adjust those salaries to keep pace with inflation, and that the same level of protection should apply to provincial court judges. Second, he arrived at the same conclusion by reference to the purposes of s. 11(d). Third, despite the general rule against reductions in judges' salaries, he accepted that judges' salaries could be reduced by an "overall economic measure".

52 McDonald J. held that the salaries of superior court judges could not be reduced, either through a direct reduction or by the failure to maintain the real value of those salaries, on the basis of a number of different sources. One source was the British Constitution. In his opinion, the principle that judges' salaries could not be reduced was a constitutional rule in the United Kingdom, which had been established by the Act of Settlement of 1701, 12 & 13 Will. 3, c. 2, and the Commissions and Salaries of Judges Act of 1760, 1 Geo. 3, c. 23, and which had in turn become part of the Canadian Constitution through the operation of the preamble to the Constitution Act, 1867, which states that Canada has a constitution "similar in Principle to that of the United Kingdom".

53 Another source was s. 100 of the Constitution Act, 1867. McDonald J. made two arguments here. His first argument relied on the text of s. 100, which provides that superior court judges' salaries shall be "fixed" by Parliament. McDonald J. interpreted "fixed" to be equivalent to "cannot be reduced" (p. 122). He buttressed this argument with a second --

that Beauregard had already held that judges' salaries could not be reduced.

54 Having concluded that superior court judges' salaries could not be reduced, McDonald J. held that the same rule should apply to provincial court judges' salaries. He reasoned that if provincial court judges received a lesser degree of constitutional protection, accused persons who appeared before them might have the impression that they were receiving second-class justice. McDonald J. appreciated the difficulty with this holding -- that it contradicts language in Valente which suggests that s. 11(d) does not automatically provide the same degree of protection for the independence of provincial court judges as the judicature provisions of the Constitution Act, 1867, provide to superior court judges. McDonald J., however, confined the scope of Valente, holding that it had only considered the means whereby judges' salaries are set, not the substantive issue of what level of remuneration judges are entitled to.

55 McDonald J. also arrived at the conclusion that the salaries of provincial court judges could not be reduced by an entirely different route -- through a purposive analysis of s. 11(d). In his view, there are two purposes behind the guarantee of judicial independence in s. 11(d): to promote judicial productivity, since judges with a sense of financial security are "more likely to work above and beyond the call of duty" (p. 130), and to recruit to the bench "lawyers of great ability and first-class reputation" (p. 131). Reductions in judges' salaries were prohibited by s. 11(d), in his opinion, because they undermined those purposes.

56 Although McDonald J. articulated a general rule against the reduction of judges' salaries, he accepted that judges' salaries could be reduced as part of an overall economic measure. However, he defined that exception in very narrow terms, so that judges' salaries could be reduced only by a general income tax or "a graduated income tax which is applicable overall to all citizens who are at the same level of earnings" (p. 138). In support, he cited Beauregard, where the pension scheme at issue was similar to other pension schemes which had been established for a substantial number of other Canadians.

57 Applying these principles to the facts of the case before him, McDonald J. declared the 5 percent salary reduction for judges of the Alberta Provincial Court brought about by the Payment to Provincial Judges Amendment Regulation, Alta. Reg. 116/94, to be unconstitutional. Although his reasoning is not entirely clear on this point, it seems that the reduction fell afoul of s. 11(d) because it was not an overall economic measure -- it only applied to Provincial Court judges. In addition, he found that the government's failure to increase judges' salaries in accordance with increases in the cost of living violated judges' financial security, because it amounted to a de facto reduction.

58 However, McDonald J. rejected a challenge to s. 17(1) of the Provincial Court Judges Act, which provides that the Lieutenant Governor in Council "may make regulations... fixing the salaries to be paid to judges". That provision had been challenged because it was permissive and did not require salaries to be provided, because it did not prevent the executive branch from decreasing salaries or benefits, because it did not prevent the executive from providing different salaries to different types of judges, and because it did not prohibit remuneration on the basis of job performance. McDonald J. rejected all of these arguments. Some he rejected by reading down s. 17(1), so that the provision

required the setting of salaries, did not authorize the reduction of salaries except as part of an overall economic measure, and did not authorize performance related remuneration. He also held that s. 11(d) did not prohibit different salaries for different judges.

59 McDonald J. then turned to two other issues relating to financial security. First, he addressed the process for determining judges' salaries. He held that judicial independence required neither an independent committee, nor a set formula to determine salaries. What the guarantee of financial security provided to judges, in his opinion, was an assurance that their salaries would not be reduced except as part of an overall economic measure, and that they would be increased to take into account changes in the cost of living. The mechanism for setting the salary is not integral to achieving this goal. Furthermore, since s. 11(d) did not mandate a particular process for setting judges' salaries, McDonald J. also held that judicial independence would not be undermined by salary negotiations between the judiciary and the executive.

60 Second, McDonald J. addressed the question of changes to judges' pensions. He held that the same restriction which applied to reductions in salaries also applied to reductions in pensions -- those reductions must be part of an overall economic measure which applies to the population as a whole. In addition, as for salaries, the failure to increase pensions to keep pace with inflation was tantamount to a reduction, and was therefore prohibited by s. 11(d) of the Charter unless the failure to index was part of an overall economic measure. However, in the absence of sufficient evidence, he declined to determine if changes to the pension plan of the judges of the Alberta Provincial Court had violated s. 11(d).

(b) Security of Tenure

61 McDonald J. found that two different sets of provisions of the Provincial Court Judges Act violated s. 11(d) of the Charter, because they provided insufficient security of tenure. The first set of provisions relates to the membership of the Judicial Council, the body charged with considering complaints made against judges of the Alberta Provincial Court. Sections 10(1)(d) and 10(1)(e) permit non-judges to be members of the Judicial Council. McDonald J. held that the presence of non-judges on the Judicial Council contravened s. 11(d), because Valente had held that security of tenure required that judges only be dismissed after a "judicial inquiry". A judicial inquiry, according to McDonald J., is an inquiry by judges only. As a result, he found ss. 11(1)(c) and 11(2) of the Act, which empower the Council to investigate complaints, make recommendations to the Minister of Justice and Attorney General, and refer complaints to the Chief Judge of the Court or a committee of the Judicial Council for inquiry and report, to be unconstitutional.

62 The second set of provisions related to the grounds for the removal of judges of the Alberta Provincial Court. Section 11(1)(b) of the Provincial Court Judges Act provides that "lack of competence" and "conduct" are grounds for removal. McDonald J. held that these provisions are overbroad, because they potentially impugn conduct which may be unrelated to the capacity of a judge to perform his or her official duties. At worst, the provisions could be used to dismiss judges for the inability to "interpret and apply the law correctly... whether in a specific case or in more than one case" (p. 161).

(c) Institutional Independence

63 Finally, McDonald J. held that the provisions of the Provincial Court Judges Act which permit the Attorney General to designate the place of residence (s. 13(1)(a)) and the sitting days (s. 13(1)(b)) of judges of the Alberta Provincial Court violated s. 11(d). He arrived at this conclusion on the basis of the view that the purpose of institutional independence is to safeguard the ability of the court to use its judicial resources as efficiently as possible, in order to ensure a timely trial for accused persons. As well, he cited Valente's explicit statement that control over sittings of the court is an essential component of institutional independence.

(d) Disposition

64 Although he made several findings of unconstitutionality, McDonald J. denied the stays sought by Campbell and Ekmecic, on the ground that his declarations removed the source of the unconstitutionality and had rendered the Alberta Provincial Court independent. Furthermore, although Wickman's trial had already proceeded before a non-independent judge, he denied the request for orders in the nature of certiorari and prohibition, because to do otherwise would be to countenance an abuse of process, since the defence had waited to the end of the trial to raise these constitutional issues.

(e) Remarks of Premier Klein

65 McDonald J. held that the remarks of Premier Klein did not amount to a violation of judicial independence. Although the Premier's comments may have been unwise, they did not give rise to a reasonable apprehension that the executive would interfere with the independence of the Alberta Provincial Court.

(2) Decision of the Court of Appeal of Alberta (1995), 169 A.R. 178

66 The Crown appealed. The decision of the Court of Appeal dealt solely with the question of whether that court had jurisdiction to hear the case. A majority of the court (Conrad J.A. dissenting), held that it did not have jurisdiction.

67 There was a consensus on the court that the Crown's appeal required a statutory basis to proceed. The interpretive debate focussed on the meaning and scope of s. 784(1) of the Criminal Code, which provides that:

> 784. (1) An appeal lies to the court of appeal from a decision granting or refusing the relief sought in proceedings by way of mandamus, certiorari or prohibition.

Two issues were addressed by the court: first, whether a successful party (in this case, the Crown) could rely on s. 784(1) to appeal a decision which granted it relief, but not the relief sought; and second, whether a declaration was a form of relief sufficiently akin to mandamus, certiorari or prohibition to come within the scope of the provision.

68 Harradence J.A. answered both questions in the negative. His starting point was that a provision which allowed a successful party to appeal was sufficiently unusual that it would have to be explicitly and very clearly spelled out in the Criminal Code. Section 784(1), in his opinion, did not meet the requisite standard of clarity. O'Leary J.A. concurred with him on this point. Furthermore, speaking alone, Harradence J.A. rejected the argument that the declarations were in effect prohibitory in nature. Although the declaratory orders may have removed a flaw in the jurisdiction of the Alberta Provincial Court, he reasoned that they did not affect the proceedings taken or proposed to be taken before the Provincial Court.

69 By contrast, Conrad J.A. (dissenting) answered both questions in the affirmative. Addressing the second issue first, she held that the declarations made by McDonald J. at trial were equivalent to prohibitions, and therefore came within the scope of s. 784(1). Her argument seemed to be that the trial judge, through the declarations, effectively prohibited "the commencement, or continuation, of the subject trials in front of a court subject to the impugned provisions" (p. 193 (emphasis in original)). With respect to the first issue, she held that s. 784(1) was not limited to appeals by unsuccessful parties, but instead permitted appeals from decisions which granted or refused the relief sought. Conceivably, this could include an appeal from a party who was successful but did not receive the relief desired, like the Crown in this case.

C. Manitoba Provincial Judges Assn. v. Manitoba (Minister of Justice)

(1) Decision of the Court of Queen's Bench of Manitoba (1994), 98 Man. R. (2d) 67

70 The central issue at trial was the nature of the protection for financial security provided by s. 11(d), and whether the provisions of Bill 22 met that constitutional standard. Two questions were addressed: first, whether s. 11(d) permits reductions in judges' salaries, and if so, under what circumstances; and second, whether s. 11(d) mandates any particular process for the setting of judges' salaries.

71 On the first question, Scollin J. took the same position as McDonald J. in Campbell -- that judges' salaries may be reduced only as part of an overall economic measure which affects all citizens. As such, the reduction of judges' salaries by Bill 22 was unconstitutional, because it was part of a plan to reduce the provincial deficit solely through a reduction in government expenditures.

72 However, Scollin J. then proceeded to part company with McDonald J.'s judgment in one crucial respect -- he held that the standard set by s. 11(d) is only required for permanent reductions in judicial salaries. In economic emergencies, temporary reductions, by contrast, are allowed. Scollin J. held that the facts of this case disclosed an economic emergency, which he defined (at p. 77) as a situation

> [w]here, in the judgment of the Government, fiscal demands on the public treasury can be met only by immediate but determinate restraints on the

Government's own spending....

Thus, in his disposition of the appeal, Scollin J. read down Bill 22 to provide for the temporary suspension of full compensation, and the full retroactive repayment of all compensation when Bill 22 expired.

73 The second question was addressed in the context of s. 11.1 of The Provincial Court Act, which establishes an independent commission (the Judicial Compensation Committee) that makes recommendations to the provincial legislature on salaries of judges of the Manitoba Provincial Court. It was argued that Bill 22 effectively rendered the commission inoperative, by imposing a salary reduction without the legislature first receiving the commission's report, and therefore violated s. 11(d) because the statutory provisions creating the commission had "quasi-constitutional" status which allowed those provisions to prevail over Bill 22. Scollin J. rejected this argument on two grounds: first, that Bill 22 did not purport to disband or disrupt the work of the Judicial Compensation Committee, and therefore the question of any conflict between the Bill and the provisions creating the Committee did not arise; and second, that the Committee process did not have quasi-constitutional status, and so could not prevail over Bill 22.

74 It was also argued at trial that there had been a violation of judicial independence because of the decision to close down the courts on days which the government had designated as unpaid days of leave for its employees ("Filmon Fridays"). Scollin J. rejected this argument, because the decision to close down the courts was not taken by the executive (in the person of the Attorney General), but by the Chief Judge of the Manitoba Provincial Court. A number of factors were determinative: the Chief Judge was consulted about the withdrawal of court staff; the Chief Judge directed that the courts be closed down on those days, and had the Chief Judge decided that the Provincial Court would remain open on those days, the government had given an assurance that sufficient staff would be made available.

75 Finally, the trial judge considered and rejected an argument that the government had exerted improper pressure on the judges of the Provincial Court. The allegation arose out of a request by the government that the judges state whether they intended to challenge Bill 22, in advance of the government agreeing to present a joint submission with the judges to the Judicial Compensation Committee. Scollin J. held that the request was "indiscreet" but "immaterial" (p. 79).

(2) Decision of the Court of Appeal of Manitoba (1995), 102 Man. R. (2d) 51

76 The Court of Appeal's views on the nature of the guarantee of financial security are not entirely clear. At one point, the court stated that s. 11(d) protects judges against "arbitrary interference" by the legislature or the executive which is "motivated by an improper or colourable purpose" (p. 63), at another that s. 11(d) prohibits the "discriminatory treatment of judges". However, despite this ambiguity, the court rejected the submission that a salary cut for judges is constitutional only if it is part of an overall economic measure, although it accepted that the fact that a reduction is part of such a measure would go to a finding that the reduction "was not enacted for an improper or

colourable purpose" (p. 65).

77 The court then went on to apply the standard of discriminatory treatment, and addressed the argument that Bill 22 was unconstitutional because of the distinctions it drew among different persons who were paid from the public purse. On the facts, the court found that differences in the classes of persons affected by Bill 22 necessitated different treatment, and were therefore not discriminatory. In particular, the court pointed to the fact that other persons governed by Bill 22 were in a collective bargaining relationship with the government, a situation from which "judges would undoubtedly resile" (p. 66).

78 In addition to determining whether Bill 22 discriminated against judges of the Manitoba Provincial Court, the court asked how the reasonable person would perceive the cuts. It concluded that since the cuts were of a broadly based nature, and were motivated by budgetary concerns, they would not create the impression that judicial independence had been compromised.

79 As the trial judge had done, the Court of Appeal rejected the argument that the provisions creating the Judicial Compensation Committee somehow received constitutional protection against Bill 22, and expressly agreed with Scollin J. that Bill 22 did not conflict with those provisions. Moreover, it pointed out that s. 3 of Bill 22 provides that the Bill prevails over any conflicting legislation.

80 The Court of Appeal confined its analysis of the alleged unconstitutionality of the closing of the Manitoba Provincial Court to the decision of the Attorney General that Crown attorneys take unpaid days of leave ("Filmon Fridays") as part of the deficit reduction scheme centred around Bill 22. To the court, this particular decision did not interfere with the institutional independence of the Provincial Court, because it did not touch upon that court's adjudicative function. Rather, it concerned the prosecution of criminal offences, for which the executive has constitutional responsibility.

81 The court agreed with the trial judge's conclusion that the pressure exerted on the judges' association by the government was immaterial.

IV. Financial Security

A. Introduction: The Unwritten Basis of Judicial Independence

82 These appeals were all argued on the basis of s. 11(d), the Charter's guarantee of judicial independence and impartiality. From its express terms, s. 11(d) is a right of limited application -- it only applies to persons accused of offences. Despite s. 11(d)'s limited scope, there is no doubt that the appeals can and should be resolved on the basis of that provision. To a large extent, the Court is the prisoner of the case which the parties and interveners have presented to us, and the arguments that have been raised, and the evidence that we have before us, have largely been directed at s. 11(d). In particular, the two references from P.E.I. are explicitly framed in terms of s. 11(d), and if we are to answer the questions contained therein, we must direct ourselves to that section of the Constitution.

83 Nevertheless, while the thrust of the submissions was directed at s. 11(d), the respondent Wickman in Campbell et al. and the appellants in the P.E.I. references, in their written submissions, the respondent Attorney General of P.E.I., in its oral submissions, and the intervener Attorney General of Canada, in response to a question from Iacobucci J., addressed the larger question of where the constitutional home of judicial independence lies, to which I now turn. Notwithstanding the presence of s. 11(d) of the Charter, and ss. 96-100 of the Constitution Act, 1867, I am of the view that judicial independence is at root an unwritten constitutional principle, in the sense that it is exterior to the particular sections of the Constitution Acts. The existence of that principle, whose origins can be traced to the Act of Settlement of 1701, is recognized and affirmed by the preamble to the Constitution Act, 1867. The specific provisions of the Constitution Acts, 1867 to 1982, merely "elaborate that principle in the institutional apparatus which they create or contemplate": Switzman v. Elbling, [1957] S.C.R. 285, at p. 306, per Rand J.

84 I arrive at this conclusion, in part, by considering the tenability of the opposite position -- that the Canadian Constitution already contains explicit provisions which are directed at the protection of judicial independence, and that those provisions are exhaustive of the matter. Section 11(d) of the Charter, as I have mentioned above, protects the independence of a wide range of courts and tribunals which exercise jurisdiction over offences. Moreover, since well before the enactment of the Charter, ss. 96-100 of the Constitution Act, 1867, separately and in combination, have protected and continue to protect the independence of provincial superior courts: Cooper, supra, at para. 11; MacMillan Bloedel Ltd. v. Simpson, [1995] 4 S.C.R. 725, at para. 10. More specifically, s. 99 guarantees the security of tenure of superior court judges; s. 100 guarantees the financial security of judges of the superior, district, and county courts; and s. 96 has come to guarantee the core jurisdiction of superior, district, and county courts against legislative encroachment, which I also take to be a guarantee of judicial independence.

85 However, upon closer examination, there are serious limitations to the view that the express provisions of the Constitution comprise an exhaustive and definitive code for the protection of judicial independence. The first and most serious problem is that the range of courts whose independence is protected by the written provisions of the Constitution contains large gaps. Sections 96-100, for example, only protect the independence of judges of the superior, district, and county courts, and even then, not in a uniform or consistent manner. Thus, while ss. 96 and 100 protect the core jurisdiction and the financial security, respectively, of all three types of courts (superior, district, and county), s. 99, on its terms, only protects the security of tenure of superior court judges. Moreover, ss. 96-100 do not apply to provincially appointed inferior courts, otherwise known as provincial courts.

86 To some extent, the gaps in the scope of protection provided by ss. 96-100 are offset by the application of s. 11(d), which applies to a range of tribunals and courts, including provincial courts. However, by its express terms, s. 11(d) is limited in scope as well -- it only extends the envelope of constitutional protection to bodies which exercise jurisdiction over offences. As a result, when those courts exercise civil jurisdiction, their independence would not seem to be guaranteed. The independence of provincial courts adjudicating in

family law matters, for example, would not be constitutionally protected. The independence of superior courts, by contrast, when hearing exactly the same cases, would be constitutionally guaranteed.

87 The second problem with reading s. 11(d) of the Charter and ss. 96-100 of the Constitution Act, 1867 as an exhaustive code of judicial independence is that some of those provisions, by their terms, do not appear to speak to this objective. Section 100, for example, provides that Parliament shall fix and provide the salaries of superior, district, and county court judges. It is therefore, in an important sense, a subtraction from provincial jurisdiction over the administration of justice under s. 92(14). Moreover, read in the light of the Act of Settlement of 1701, it is a partial guarantee of financial security, inasmuch as it vests responsibility for setting judicial remuneration with Parliament, which must act through the public means of legislative enactment, not the executive. However, on its plain language, it only places Parliament under the obligation to provide salaries to the judges covered by that provision, which would in itself not safeguard the judiciary against political interference through economic manipulation. Nevertheless, as I develop in these reasons, with reference to Beauregard, s. 100 also requires that Parliament must provide salaries that are adequate, and that changes or freezes to judicial remuneration be made only after recourse to a constitutionally mandated procedure.

88 A perusal of the language of s. 96 reveals the same difficulty:

> 96. The Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick.

Section 96 seems to do no more than confer the power to appoint judges of the superior, district, and county courts. It is a staffing provision, and is once again a subtraction from the power of the provinces under s. 92(14). However, through a process of judicial interpretation, s. 96 has come to guarantee the core jurisdiction of the courts which come within the scope of that provision. In the past, this development has often been expressed as a logical inference from the express terms of s. 96. Assuming that the goal of s. 96 was the creation of "a unitary judicial system", that goal would have been undermined "if a province could pass legislation creating a tribunal, appoint members thereto, and then confer on the tribunal the jurisdiction of the superior courts": Re Residential Tenancies Act, 1979, [1981] 1 S.C.R. 714, at p. 728. However, as I recently confirmed, s. 96 restricts not only the legislative competence of provincial legislatures, but of Parliament as well: MacMillan Bloedel, supra. The rationale for the provision has also shifted, away from the protection of national unity, to the maintenance of the rule of law through the protection of the judicial role.

89 The point which emerges from this brief discussion is that the interpretation of ss. 96 and 100 has come a long way from what those provisions actually say. This jurisprudential evolution undermines the force of the argument that the written text of the Constitution is comprehensive and definitive in its protection of judicial independence. The only way to explain the interpretation of ss. 96 and 100, in fact, is by reference to a deeper set of unwritten understandings which are not found on the face of the document itself.

90 The proposition that the Canadian Constitution embraces unwritten norms was recently confirmed by this Court in New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly), [1993] 1 S.C.R. 319. In that case, the Court found it constitutional for the Nova Scotia House of Assembly to refuse the media the right to record and broadcast legislative proceedings. The media advanced a claim based on s. 2(b) of the Charter, which protects, inter alia, "freedom of the press and other media of communication". McLachlin J., speaking for a majority of the Court, found that the refusal of the Assembly was an exercise of that Assembly's unwritten legislative privileges, that the Constitution of Canada constitutionalized those privileges, and that the constitutional status of those privileges therefore precluded the application of the Charter.

91 The relevant part of her judgment concerns the interpretation of s. 52(2) of the Constitution Act, 1982, which defines the "Constitution of Canada" in the following terms:

> 52. ...
>
> (2) The Constitution of Canada includes
>
> (a) the Canada Act 1982, including this Act;
> (b) the Acts and orders referred to in the schedule; and
> (c) any amendment to any Act or order referred to in paragraph (a) or (b). [Emphasis added.]

The media argued that parliamentary privileges did not enjoy constitutional status, and hence, were subject to Charter scrutiny like any other decision of a legislature, because they were not included within the list of documents found in, or referred to by, s. 52(2). McLachlin J. rejected this argument, in part on the basis of the wording of s. 52(2). She held that the use of the word "includes" indicated that the list of constitutional documents in s. 52(2) was not exhaustive.

92 Although I concurred on different grounds, and still doubt whether the privileges of provincial assemblies form part of the Constitution (Harvey v. New Brunswick (Attorney General), [1996] 2 S.C.R. 876, at para. 2), I agree with the general principle that the Constitution embraces unwritten, as well as written rules, largely on the basis of the wording of s. 52(2). Indeed, given that ours is a Constitution that has emerged from a constitutional order whose fundamental rules are not authoritatively set down in a single document, or a set of documents, it is of no surprise that our Constitution should retain some aspect of this legacy.

93 However, I do wish to add a note of caution. As I said in New Brunswick Broadcasting, supra, at p. 355, the constitutional history of Canada can be understood, in part, as a process of evolution "which [has] culminated in the supremacy of a definitive written constitution". There are many important reasons for the preference for a written constitution over an unwritten one, not the least of which is the promotion of legal certainty and through it the legitimacy of constitutional judicial review. Given these concerns, which go to the heart of the project of constitutionalism, it is of the utmost importance to articulate what the source of those unwritten norms is.

94 In my opinion, the existence of many of the unwritten rules of the Canadian Constitution can be explained by reference to the preamble of the Constitution Act, 1867. The relevant paragraph states in full:

> Whereas the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom:

Although the preamble has been cited by this Court on many occasions, its legal effect has never been fully explained. On the one hand, although the preamble is clearly part of the Constitution, it is equally clear that it "has no enacting force": Reference re Resolution to Amend the Constitution, [1981] 1 S.C.R. 753, at p. 805 (joint majority reasons). In other words, strictly speaking, it is not a source of positive law, in contrast to the provisions which follow it.

95 But the preamble does have important legal effects. Under normal circumstances, preambles can be used to identify the purpose of a statute, and also as an aid to construing ambiguous statutory language: Driedger on the Construction of Statutes (3rd ed. 1994), by R. Sullivan, at p. 261. The preamble to the Constitution Act, 1867, certainly operates in this fashion. However, in my view, it goes even further. In the words of Rand J., the preamble articulates "the political theory which the Act embodies": Switzman, supra, at p. 306. It recognizes and affirms the basic principles which are the very source of the substantive provisions of the Constitution Act, 1867. As I have said above, those provisions merely elaborate those organizing principles in the institutional apparatus they create or contemplate. As such, the preamble is not only a key to construing the express provisions of the Constitution Act, 1867, but also invites the use of those organizing principles to fill out gaps in the express terms of the constitutional scheme. It is the means by which the underlying logic of the Act can be given the force of law.

96 What are the organizing principles of the Constitution Act, 1867, as expressed in the preamble? The preamble speaks of the desire of the founding provinces "to be federally united into One Dominion", and thus, addresses the structure of the division of powers. Moreover, by its reference to "a Constitution similar in Principle to that of the United Kingdom", the preamble indicates that the legal and institutional structure of constitutional democracy in Canada should be similar to that of the legal regime out of which the Canadian Constitution emerged. To my mind, both of these aspects of the preamble explain many of the cases in which the Court has, through the normal process of constitutional interpretation, stated some fundamental rules of Canadian constitutional law which are not found in the express terms of the Constitution Act, 1867.

97 I turn first to the jurisprudence under the division of powers, to illustrate how the process of gap-filling has occurred and how it can be understood by reference to the preamble. One example where the Court has inferred a fundamental constitutional rule which is not found in express terms in the Constitution is the doctrine of full faith and credit. Under this doctrine, the courts of one province are under a constitutional obligation to

recognize the decisions of the courts of another province: Hunt v. T & N PLC, [1993] 4 S.C.R. 289. The justification for this rule has been aptly put by Professor Hogg (Constitutional Law of Canada (3rd ed. 1992 (loose-leaf)), vol. 1, at p. 13-18):

> Within a federal state, it seems obvious that, if a provincial court takes jurisdiction over a defendant who is resident in another province, and if the court observes constitutional standards..., the resulting judgment should be recognized by the courts of the defendant's province.

Speaking for the Court in Hunt, La Forest J. identified a number of sources for reading the doctrine of full faith and credit into the scheme of the Constitution: a common citizenship, interprovincial mobility of citizens, the common market created by the union, and the essentially unitary structure of our judicial system. At root, these factors combined to evince "the obvious intention of the Constitution to create a single country": Morguard Investments Ltd. v. De Savoye, [1990] 3 S.C.R. 1077, at p. 1099. An alternative explanation of the decision, however, is that the Court was merely giving effect to the "[d]esire" of the founding provinces "to be federally united into One Dominion", an organizing principle of the Constitution that was recognized and affirmed in the preamble, and which was given express form in the provisions identified by La Forest J.

98 Another example where the Court has inferred a basic rule of Canadian constitutional law despite the silence of the constitutional text is the doctrine of paramountcy. Simply stated, the doctrine asserts that where both the Parliament of Canada and one or more of the provincial legislatures have enacted legislation which comes into conflict, the federal law shall prevail. The doctrine of paramountcy is of fundamental importance in a legal system with more than one source of legislative authority, because it provides a guide to courts and ultimately to citizens on how to reconcile seemingly inconsistent legal obligations. However, it is nowhere to be found in the Constitution Act, 1867. The doctrinal origins of paramountcy are obscure, although it has been said that it "is necessarily implied in our constitutional act": Huson v. Township of South Norwich (1895), 24 S.C.R. 145, at p. 149. I would venture that the doctrine of paramountcy follows from the desire of the confederating provinces "to be federally united into One Dominion". Relying on the preamble explains, for example, why federal laws are paramount over provincial laws, not the other way around.

99 The preamble, by its reference to "a Constitution similar in Principle to that of the United Kingdom", points to the nature of the legal order that envelops and sustains Canadian society. That order, as this Court held in Reference re Manitoba Language Rights, [1985] 1 S.C.R. 721, at p. 749, is "an actual order of positive laws", an idea that is embraced by the notion of the rule of law. In that case, the Court explicitly relied on the preamble to the Constitution Act, 1867, as one basis for holding that the rule of law was a fundamental principle of the Canadian Constitution. The rule of law led the Court to confer temporary validity on the laws of Manitoba which were unconstitutional because they had been enacted only in English, in contravention of the Manitoba Act, 1870. The Court developed this remedial innovation notwithstanding the express terms of s. 52(1) of the Constitution Act, 1982, that unconstitutional laws are "of no force or effect", a provision that suggests that declarations of invalidity can only be given immediate effect. The Court did

so in order to not "deprive Manitoba of its legal order and cause a transgression of the rule of law" (p. 753). Reference re Manitoba Language Rights therefore stands as another example of how the fundamental principles articulated by preamble have been given legal effect by this Court.

100 Finally, the preamble also speaks to the kind of constitutional democracy that our Constitution comprehends. One aspect of our system of governance is the importance of "parliamentary institutions, including popular assemblies elected by the people at large in both provinces and Dominion": Saumur v. City of Quebec, [1953] 2 S.C.R. 299, at p. 330, per Rand J. Again, the desire for Parliamentary government through representative institutions is not expressly found in the Constitution Act, 1867; there is no reference in that document, for example, to any requirement that members of Parliament or provincial legislatures be elected. Nevertheless, members of the Court, correctly in my opinion, have been able to infer this general principle from the preamble's reference to "a Constitution similar in Principle to that of the United Kingdom".

101 One implication of the preamble's recognition and affirmation of Parliamentary democracy is the constitutionalization of legislative privileges for provincial legislatures, and most likely, for Parliament as well. These privileges are necessary to ensure that legislatures can perform their functions, free from interference by the Crown and the courts. Given that legislatures are representative and deliberative institutions, those privileges ultimately serve to protect the democratic nature of those bodies. The Constitution, once again, is silent on this point. Nevertheless, and notwithstanding the reservations I have expressed above, the majority of this Court grounded the privileges of the Nova Scotia Legislative Assembly in the preamble's reference to "a Constitution similar in Principle to that of the United Kingdom": New Brunswick Broadcasting, supra. It argued that since those privileges inhered in the Parliament in Westminster, the preamble indicated that the intention of the Constitution Act, 1867 was that "the legislative bodies of the new Dominion would possess similar, although not necessarily identical, powers" (p. 375). Similarly, in discussing the jurisdiction of courts in relation to the exercise of privileges of the Senate or one of its committees, Iacobucci C.J. (as he then was) considered the significance of the preamble's reference to "a Constitution similar in Principle to that of the United Kingdom" in Southam Inc. v. Canada (Attorney General), [1990] 3 F.C. 465 (C.A.), at pp. 485-86:

> Strayer J. was of the opinion that courts had such a jurisdiction and found, in particular, that the adoption of the Charter fundamentally altered the nature of the Canadian Constitution such that it is no longer "similar in Principle to that of the United Kingdom" as is stated in the preamble to the Constitution Act, 1867. Accepting as we must that the adoption of the Charter transformed to a considerable extent our former system of Parliamentary supremacy into our current one of constitutional supremacy, as former Chief Justice Dickson described it, the sweep of Strayer J.'s comment that our Constitution is no longer similar in principle to that of the United Kingdom is rather wide. Granted much has changed in the new constitutional world of the Charter. But just as purists of

> federalism have learned to live with the federalist constitution that Canada adopted in 1867 based on principles of parliamentary government in a unitary state such that the United Kingdom was and continues to be, so it seems to me that the British system of constitutional government will continue to co-exist alongside the Charter if not entirely, which it never did, but certainly in many important respects. The nature of [sic] scope of this co-existence will depend naturally on the jurisprudence that results from the questions brought before the courts.

102 Another implication of the preamble's recognition of Parliamentary democracy has been an appreciation of the interdependence between democratic governance and freedom of political speech. Thus, members of the Court have reasoned that Parliamentary democracy brought with it "all its social implications" (Switzman, supra, at p. 306, per Rand J.), including the implication that these institutions would

> wor[k] under the influence of public opinion and public discussion... [because] such institutions derive their efficacy from the free public discussion of affairs, from criticism and answer and counter-criticism, from attack upon policy and administration and defence and counter-attack, from the freest and fullest analysis and examination from every point of view of political proposals.

(Reference re Alberta Statutes, [1938] S.C.R. 100, at p. 133, per Duff C.J.)

Political freedoms, such as the right to freedom of expression, are not enumerated heads of jurisdiction under ss. 91 and 92 of the Constitution Act, 1867; the document is silent on their very existence. However, given the importance of political expression to national political life, combined with the intention to create one country, members of the Court have taken the position that the limitation of that expression is solely a matter for Parliament, not the provincial legislatures: Reference re Alberta Statutes, supra, at p. 134, per Duff C.J., and at p. 146, per Cannon J.; Saumur, supra, at pp. 330-31, per Rand J., and at pp. 354-56, per Kellock J.; Switzman, supra, at p. 307, per Rand J., and at p. 328, per Abbott J.

103 The logic of this argument, however, compels a much more dramatic conclusion. Denying jurisdiction over political speech to the provincial legislatures does not limit Parliament's ability to do what the provinces cannot. However, given the interdependence between national political institutions and free speech, members of the Court have suggested that Parliament itself is incompetent to "abrogate this right of discussion and debate": Switzman, supra, at p. 328, per Abbott J.; also see Rand J. at p. 307; Saumur, supra, at p. 354, per Kellock J.; OPSEU v. Ontario (Attorney General), [1987] 2 S.C.R. 2, at p. 57, per Beetz J. In this way, the preamble's recognition of the democratic nature of Parliamentary governance has been used by some members of the Court to fashion an implied bill of rights, in the absence of any express indication to this effect in the constitutional text. This has been done, in my opinion, out of a recognition that political institutions are fundamental to the "basic structure of our Constitution" (OPSEU, supra, at p. 57) and for that reason governments cannot undermine the mechanisms of political

accountability which give those institutions definition, direction and legitimacy.

104 These examples -- the doctrines of full faith and credit and paramountcy, the remedial innovation of suspended declarations of invalidity, the recognition of the constitutional status of the privileges of provincial legislatures, the vesting of the power to regulate political speech within federal jurisdiction, and the inferral of implied limits on legislative sovereignty with respect to political speech -- illustrate the special legal effect of the preamble. The preamble identifies the organizing principles of the Constitution Act, 1867, and invites the courts to turn those principles into the premises of a constitutional argument that culminates in the filling of gaps in the express terms of the constitutional text.

105 The same approach applies to the protection of judicial independence. In fact, this point was already decided in Beauregard, and, unless and until it is reversed, we are governed by that decision today. In that case (at p. 72), a unanimous Court held that the preamble of the Constitution Act, 1867, and in particular, its reference to "a Constitution similar in Principle to that of the United Kingdom", was "textual recognition" of the principle of judicial independence. Although in that case, it fell to us to interpret s. 100 of the Constitution Act, 1867, the comments I have just reiterated were not limited by reference to that provision, and the courts which it protects.

106 The historical origins of the protection of judicial independence in the United Kingdom, and thus in the Canadian Constitution, can be traced to the Act of Settlement of 1701. As we said in Valente, supra, at p. 693, that Act was the "historical inspiration" for the judicature provisions of the Constitution Act, 1867. Admittedly, the Act only extends protection to judges of the English superior courts. However, our Constitution has evolved over time. In the same way that our understanding of rights and freedoms has grown, such that they have now been expressly entrenched through the enactment of the Constitution Act, 1982, so too has judicial independence grown into a principle that now extends to all courts, not just the superior courts of this country.

107 I also support this conclusion on the basis of the presence of s. 11(d) of the Charter, an express provision which protects the independence of provincial court judges only when those courts exercise jurisdiction in relation to offences. As I said earlier, the express provisions of the Constitution should be understood as elaborations of the underlying, unwritten, and organizing principles found in the preamble to the Constitution Act, 1867. Even though s. 11(d) is found in the newer part of our Constitution, the Charter, it can be understood in this way, since the Constitution is to be read as a unified whole: Reference re Bill 30, An Act to amend the Education Act (Ont.), [1987] 1 S.C.R. 1148, at p. 1206. An analogy can be drawn between the express reference in the preamble of the Constitution Act, 1982 to the rule of law and the implicit inclusion of that principle in the Constitution Act, 1867: Reference re Manitoba Language Rights, supra, at p. 750. Section 11(d), far from indicating that judicial independence is constitutionally enshrined for provincial courts only when those courts exercise jurisdiction over offences, is proof of the existence of a general principle of judicial independence that applies to all courts no matter what kind of cases they hear.

108 I reinforce this conclusion by reference to the central place that courts hold within the Canadian system of government. In OPSEU, as I have mentioned above, Beetz J. linked limitations on legislative sovereignty over political speech with "the existence of certain political institutions" as part of the "basic structure of our Constitution" (p. 57). However, political institutions are only one part of the basic structure of the Canadian Constitution. As this Court has said before, there are three branches of government -- the legislature, the executive, and the judiciary: Fraser v. Public Service Staff Relations Board, [1985] 2 S.C.R. 455, at p. 469; R. v. Power, [1994] 1 S.C.R. 601, at p. 620. Courts, in other words, are equally "definitional to the Canadian understanding of constitutionalism" (Cooper, supra, at para. 11) as are political institutions. It follows that the same constitutional imperative -- the preservation of the basic structure -- which led Beetz J. to limit the power of legislatures to affect the operation of political institutions, also extends protection to the judicial institutions of our constitutional system. By implication, the jurisdiction of the provinces over "courts", as that term is used in s. 92(14) of the Constitution Act, 1867, contains within it an implied limitation that the independence of those courts cannot be undermined.

109 In conclusion, the express provisions of the Constitution Act, 1867 and the Charter are not an exhaustive written code for the protection of judicial independence in Canada. Judicial independence is an unwritten norm, recognized and affirmed by the preamble to the Constitution Act, 1867. In fact, it is in that preamble, which serves as the grand entrance hall to the castle of the Constitution, that the true source of our commitment to this foundational principle is located. However, since the parties and interveners have grounded their arguments in s. 11(d), I will resolve these appeals by reference to that provision.

B. Section 11(d) of the Charter

110 As I mentioned earlier, these appeals were heard together because they all raise the question of whether and how s. 11(d) of the Charter restricts the manner by and extent to which provincial governments and legislatures can reduce the salaries of provincial court judges. Before I can address this specific question, I must make some general comments about the jurisprudence under s. 11(d).

111 The starting point for my discussion is Valente, where in a unanimous judgment this Court laid down the interpretive framework for s. 11(d)'s guarantee of judicial independence and impartiality. Le Dain J., speaking for the Court, began by drawing a distinction between impartiality and independence. Later cases have referred to this distinction as "a firm line": Généreux, supra, at p. 283. Impartiality was defined as "a state of mind or attitude of the tribunal in relation to the issues and the parties in a particular case" (Valente, supra, at p. 685 (emphasis added)). It was tied to the traditional concern for the "absence of bias, actual or perceived". Independence, by contrast, focussed on the status of the court or tribunal. In particular, Le Dain J. emphasized that the independence protected by s. 11(d) flowed from "the traditional constitutional value of judicial independence", which he defined in terms of the relationship of the court or tribunal "to others, particularly the executive branch of government" (p. 685). As I expanded in R. v. Lippé, [1991] 2 S.C.R. 114, the independence protected by s. 11(d) is the independence of

the judiciary from the other branches of government, and bodies which can exercise pressure on the judiciary through power conferred on them by the state.

112 Le Dain J. went on in Valente to state that independence was premised on the existence of a set of "objective conditions or guarantees" (p. 685), whose absence would lead to a finding that a tribunal or court was not independent. The existence of objective guarantees, of course, follows from the fact that independence is status oriented; the objective guarantees define that status. However, he went on to supplement the requirement for objective conditions with what could be interpreted as a further requirement: that the court or tribunal be reasonably perceived as independent. The reason for this additional requirement was that the guarantee of judicial independence has the goal not only of ensuring that justice is done in individual cases, but also of ensuring public confidence in the justice system. As he said (at p. 689):

> Without that confidence the system cannot command the respect and acceptance that are essential to its effective operation. It is, therefore, important that a tribunal should be perceived as independent, as well as impartial, and that the test for independence should include that perception.

However, it would be a mistake to conclude that Le Dain J. intended the objective guarantees and the reasonable perception of independence to be two distinct concepts. Rather, the objective guarantees must be viewed as those guarantees that are necessary to ensure a reasonable perception of independence. As Le Dain J. said himself, for a court or tribunal to be perceived as independent, that "perception must... be a perception of whether the tribunal enjoys the essential objective conditions or guarantees of judicial independence" (p. 689).

113 Another point which emerges from Valente relates to the question of whose perceptions count. The answer given is that of the reasonable and informed person. This standard was formulated by de Grandpré J. in Committee for Justice and Liberty v. National Energy Board, [1978] 1 S.C.R. 369, at p. 394, with respect to a reasonable apprehension of bias, and was cited with approval in Valente, supra, at p. 684:

> ... the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically -- and having thought the matter through -- conclude...."

That test was adapted to the determination of judicial independence by Howland C.J.O. in his judgment in the Ontario Court of Appeal in R. v. Valente (No. 2) (1983), 2 C.C.C. (3d) 417, at pp. 439-40:

> The question that now has to be determined is whether a reasonable person, who was informed of the relevant statutory provisions, their

> historical background and the traditions surrounding them, after viewing the matter realistically and practically would conclude [that the tribunal or court was independent].

To my mind, the decisions of Howland C.J.O. in Valente, and de Grandpré J. in National Energy Board, correctly establish the standard for the test of reasonable perception for the purposes of s. 11(d).

114 After establishing these core propositions, Le Dain J. in Valente went on to discuss two sets of concepts; the three core characteristics of judicial independence, and what I term the two dimensions of judicial independence.

115 The three core characteristics identified by Le Dain J. are security of tenure, financial security, and administrative independence. Valente laid down (at p. 697) two requirements for security of tenure for provincial court judges: those judges could only be removed for cause "related to the capacity to perform judicial functions", and after a "judicial inquiry at which the judge affected is given a full opportunity to be heard". Unlike the judicature provisions of the Constitution Act, 1867, which govern the removal of superior court judges, s. 11(d) of the Charter does not require an address by the legislature in order to dismiss a provincial court judge.

116 Financial security was defined in these terms (at p. 706):

> The essential point, in my opinion, is that the right to salary of a provincial court judge is established by law, and there is no way in which the Executive could interfere with that right in a manner to affect the independence of the individual judge. [Emphasis added.]

Once again, the Court drew a distinction between the requirements of s. 100 of the Constitution Act, 1867 and s. 11(d); whereas the former provision requires that the salaries of superior court judges be set by Parliament directly, the latter allows salaries of provincial court judges to be set either by statute or through an order in council.

117 Finally, the Court defined the administrative independence of the provincial court, as control by the courts "over the administrative decisions that bear directly and immediately on the exercise of the judicial function" (p. 712). These were defined (at p. 709) in narrow terms as

> assignment of judges, sittings of the court, and court lists -- as well as the related matters of allocation of court rooms and direction of the administrative staff engaged in carrying out these functions....

Although this aspect of judicial independence was also referred to as "institutional independence" in Valente at p. 708, that term, as I explain below, has a distinct meaning altogether, and should not be confused with administrative independence.

118 The three core characteristics of judicial independence -- security of tenure,

financial security, and administrative independence -- should be contrasted with what I have termed the two dimensions of judicial independence. In Valente, Le Dain J. drew a distinction between two dimensions of judicial independence, the individual independence of a judge and the institutional or collective independence of the court or tribunal of which that judge is a member. In other words, while individual independence attaches to individual judges, institutional or collective independence attaches to the court or tribunal as an institutional entity. The two different dimensions of judicial independence are related in the following way (Valente, supra, at p. 687):

> The relationship between these two aspects of judicial independence is that an individual judge may enjoy the essential conditions of judicial independence but if the court or tribunal over which he or she presides is not independent of the other branches of government, in what is essential to its function, he or she cannot be said to be an independent tribunal.

119 It is necessary to explain the relationship between the three core characteristics and the two dimensions of judicial independence, because Le Dain J. did not fully do so in Valente. For example, he stated that security of tenure was part of the individual independence of a court or tribunal, whereas administrative independence was identified with institutional or collective independence. However, the core characteristics of judicial independence, and the dimensions of judicial independence, are two very different concepts. The core characteristics of judicial independence are distinct facets of the definition of judicial independence. Security of tenure, financial security, and administrative independence come together to constitute judicial independence. By contrast, the dimensions of judicial independence indicate which entity -- the individual judge or the court or tribunal to which he or she belongs -- is protected by a particular core characteristic.

120 The conceptual distinction between the core characteristics and the dimensions of judicial independence suggests that it may be possible for a core characteristic to have both an individual and an institutional or collective dimension. To be sure, sometimes a core characteristic only attaches to a particular dimension of judicial independence; administrative independence, for example, only attaches to the court as an institution (although sometimes it may be exercised on behalf of a court by its chief judge or justice). However, this need not always be the case. The guarantee of security of tenure, for example, may have a collective or institutional dimension, such that only a body composed of judges may recommend the removal of a judge. However, I need not decide that particular point here.

121 What I do propose, however, is that financial security has both an individual and an institutional or collective dimension. Valente only talked about the individual dimension of financial security, when it stated that salaries must be established by law and not allow for executive interference in a manner which could "affect the independence of the individual judge" (p. 706). Similarly, in Généreux, speaking for a majority of this Court, I applied Valente and held that performance-related pay for the conduct of judge advocates and members of a General Court Martial during the Court Martial violated s. 11(d), because it could reasonably lead to the perception that those individuals might alter their conduct

during a hearing in order to favour the military establishment.

122 However, Valente did not preclude a finding that, and did not decide whether, financial security has a collective or institutional dimension as well. That is the issue we must address today. But in order to determine whether financial security has a collective or institutional dimension, and if so, what collective or institutional financial security looks like, we must first understand what the institutional independence of the judiciary is. I emphasize this point because, as will become apparent, the conclusion I arrive at regarding the collective or institutional dimension of financial security builds upon traditional understandings of the proper constitutional relationship between the judiciary, the executive, and the legislature.

C. Institutional Independence

123 As I have mentioned, the concept of the institutional independence of the judiciary was discussed in Valente. However, other than stating that institutional independence is different from individual independence, the concept was left largely undefined. In Beauregard this Court expanded the meaning of that term, once again by contrasting it with individual independence. Individual independence was referred to as the "historical core" of judicial independence, and was defined as "the complete liberty of individual judges to hear and decide the cases that come before them" (p. 69). It is necessary for the fair and just adjudication of individual disputes. By contrast, the institutional independence of the judiciary was said to arise out of the position of the courts as organs of and protectors "of the Constitution and the fundamental values embodied in it -- rule of law, fundamental justice, equality, preservation of the democratic process, to name perhaps the most important" (p. 70). Institutional independence enables the courts to fulfill that second and distinctly constitutional role.

124 Beauregard identified a number of sources for judicial independence which are constitutional in nature. As a result, these sources additionally ground the institutional independence of the courts. The institutional independence of the courts emerges from the logic of federalism, which requires an impartial arbiter to settle jurisdictional disputes between the federal and provincial orders of government. Institutional independence also inheres in adjudication under the Charter, because the rights protected by that document are rights against the state. As well, the Court pointed to the preamble and judicature provisions of the Constitution Act, 1867, as additional sources of judicial independence; I also consider those sources to ground the judiciary's institutional independence. Taken together, it is clear that the institutional independence of the judiciary is "definitional to the Canadian understanding of constitutionalism" (Cooper, supra, at para. 11).

125 But the institutional independence of the judiciary reflects a deeper commitment to the separation of powers between and amongst the legislative, executive, and judicial organs of government: see Cooper, supra, at para. 13. This is also clear from Beauregard, where this Court noted (at p. 73) that although judicial independence had historically developed as a bulwark against the abuse of executive power, it equally applied against "other potential intrusions, including any from the legislative branch" as a result of legislation.

126 What follows as a consequence of the link between institutional independence and the separation of powers I will turn to shortly. The point I want to make first is that the institutional role demanded of the judiciary under our Constitution is a role which we now expect of provincial court judges. I am well aware that provincial courts are creatures of statute, and that their existence is not required by the Constitution. However, there is no doubt that these statutory courts play a critical role in enforcing the provisions and protecting the values of the Constitution. Inasmuch as that role has grown over the last few years, it is clear therefore that provincial courts must be granted some institutional independence.

127 This role is most evident when we examine the remedial powers of provincial courts with respect to the enforcement of the Constitution. Notwithstanding that provincial courts are statutory bodies, this Court has held that they can enforce the supremacy clause, s. 52 of the Constitution Act, 1982. A celebrated example of the use of s. 52 by provincial courts is R. v. Big M Drug Mart Ltd. (1983), 25 Alta. L.R. (2d) 195 (Prov. Ct.) (upheld by this Court in [1985] 1 S.C.R. 295), which became one of the seminal cases in Charter jurisprudence. Provincial courts, moreover, frequently employ the remedial powers conferred by ss. 24(1) and 24(2) of the Charter, because they are courts of competent jurisdiction for the purposes of those provisions: Mills v. The Queen, [1986] 1 S.C.R. 863. Thus, provincial courts have the power to order stays of proceedings: e.g., R. v. Askov, [1990] 2 S.C.R. 1199. As well, provincial courts can exclude evidence obtained in violation of a Charter right: e.g., R. v. Collins, [1987] 1 S.C.R. 265. They use ss. 24(1) and 24(2) because of their dominant role in the adjudication of criminal cases, where the need to resort to those remedial provisions most often arises.

128 In addition to enforcing the rights in ss. 7-14 of the Charter, which predominantly operate in the criminal justice system, provincial courts also enforce the fundamental freedoms found in s. 2 of the Charter, such as freedom of religion (Big M) and freedom of expression (Ramsden v. Peterborough (City), [1993] 2 S.C.R. 1084). As well, they police the federal division of powers, by interpreting the heads of jurisdiction found in ss. 91 and 92 of the Constitution Act, 1867: e.g., Big M and R. v. Morgentaler, [1993] 3 S.C.R. 463. Finally, many decisions on the rights of Canada's aboriginal peoples, which are protected by s. 35(1) of the Constitution Act, 1982, are made by provincial courts: e.g., R. v. Sparrow, [1990] 1 S.C.R. 1075.

129 It is worth noting that the increased role of provincial courts in enforcing the provisions and protecting the values of the Constitution is in part a function of a legislative policy of granting greater jurisdiction to these courts. Often, legislation of this nature denies litigants the choice of whether they must appear before a provincial court or a superior court. As I explain below, the constitutional response to the shifting jurisdictional boundaries of the courts is to guarantee that certain fundamental aspects of judicial independence be enjoyed not only by superior courts but by provincial courts as well. In other words, not only must provincial courts be guaranteed institutional independence, they must enjoy a certain level of institutional independence.

130 Finally, although I have chosen to emphasize that judicial independence flows as a consequence of the separation of powers, because these appeals concern the proper

constitutional relationship among the three branches of government in the context of judicial remuneration, I do not wish to overlook the fact that judicial independence also operates to insulate the courts from interference by parties to litigation and the public generally: Lippé, supra, at pp. 152 et seq., per Gonthier J. As Professor Shetreet has written (in "Judicial Independence: New Conceptual Dimensions and Contemporary Challenges", in S. Shetreet and J. Deschênes, eds., Judicial Independence: The Contemporary Debate (1985), 590, at p. 599):

> Independence of the judiciary implies not only that a judge should be free from executive or legislative encroachment and from political pressures and entanglements but also that he should be removed from financial or business entanglement likely to affect or rather to seem to affect him in the exercise of his judicial functions.

D. Collective or Institutional Financial Security

(1) Introduction

(a) Summary of General Principles

131 Given the importance of the institutional or collective dimension of judicial independence generally, what is the institutional or collective dimension of financial security? To my mind, financial security for the courts as an institution has three components, which all flow from the constitutional imperative that, to the extent possible, the relationship between the judiciary and the other branches of government be depoliticized. As I explain below, in the context of institutional or collective financial security, this imperative demands that the courts both be free and appear to be free from political interference through economic manipulation by the other branches of government, and that they not become entangled in the politics of remuneration from the public purse.

132 I begin by stating these components in summary fashion.

133 First, as a general constitutional principle, the salaries of provincial court judges can be reduced, increased, or frozen, either as part of an overall economic measure which affects the salaries of all or some persons who are remunerated from public funds, or as part of a measure which is directed at provincial court judges as a class. However, any changes to or freezes in judicial remuneration require prior recourse to a special process, which is independent, effective, and objective, for determining judicial remuneration, to avoid the possibility of, or the appearance of, political interference through economic manipulation. What judicial independence requires is an independent body, along the lines of the bodies that exist in many provinces and at the federal level to set or recommend the levels of judicial remuneration. Those bodies are often referred to as commissions, and for the sake of convenience, we will refer to the independent body required by s. 11(d) as a commission as well. Governments are constitutionally bound to go through the commission process. The recommendations of the commission would not be binding on the executive or the legislature. Nevertheless, though those recommendations are non-binding, they

should not be set aside lightly, and, if the executive or the legislature chooses to depart from them, it has to justify its decision -- if need be, in a court of law. As I explain below, when governments propose to single out judges as a class for a pay reduction, the burden of justification will be heavy.

134 Second, under no circumstances is it permissible for the judiciary -- not only collectively through representative organizations, but also as individuals -- to engage in negotiations over remuneration with the executive or representatives of the legislature. Any such negotiations would be fundamentally at odds with judicial independence. As I explain below, salary negotiations are indelibly political, because remuneration from the public purse is an inherently political issue. Moreover, negotiations would undermine the appearance of judicial independence, because the Crown is almost always a party to criminal prosecutions before provincial courts, and because salary negotiations engender a set of expectations about the behaviour of parties to those negotiations which are inimical to judicial independence. When I refer to negotiations, I utilize that term as it is traditionally understood in the labour relations context. Negotiations over remuneration and benefits, in colloquial terms, are a form of "horse-trading". The prohibition on negotiations therefore does not preclude expressions of concern or representations by chief justices and chief judges, and organizations that represent judges, to governments regarding the adequacy of judicial remuneration.

135 Third, and finally, any reductions to judicial remuneration, including de facto reductions through the erosion of judicial salaries by inflation, cannot take those salaries below a basic minimum level of remuneration which is required for the office of a judge. Public confidence in the independence of the judiciary would be undermined if judges were paid at such a low rate that they could be perceived as susceptible to political pressure through economic manipulation, as is witnessed in many countries.

136 I note at the outset that these appeals raise the issue of judges' salaries. However, the same principles are equally applicable to judges' pensions and other benefits.

137 I also note that the components of the collective or institutional dimension of financial security need not be adhered to in cases of dire and exceptional financial emergency precipitated by unusual circumstances, for example, such as the outbreak of war or pending bankruptcy. In those situations, governments need not have prior recourse to a salary commission before reducing or freezing judges' salaries.

(b) The Link Between the Components of Institutional or Collective Financial Security and the Separation of Powers

138 These different components of the institutional financial security of the courts inhere, in my view, in a fundamental principle of the Canadian Constitution, the separation of powers. As I discussed above, the institutional independence of the courts is inextricably bound up with the separation of powers, because in order to guarantee that the courts can protect the Constitution, they must be protected by a set of objective guarantees against intrusions by the executive and legislative branches of government.

139 The separation of powers requires, at the very least, that some functions must be exclusively reserved to particular bodies: see Cooper, supra, at para. 13. However, there is also another aspect of the separation of powers -- the notion that the principle requires that the different branches of government only interact, as much as possible, in particular ways. In other words, the relationships between the different branches of government should have a particular character. For example, there is a hierarchical relationship between the executive and the legislature, whereby the executive must execute and implement the policies which have been enacted by the legislature in statutory form: see Cooper, supra, at paras. 23 and 24. In a system of responsible government, once legislatures have made political decisions and embodied those decisions in law, it is the constitutional duty of the executive to implement those choices.

140 What is at issue here is the character of the relationships between the legislature and the executive on the one hand, and the judiciary on the other. These relationships should be depoliticized. When I say that those relationships are depoliticized, I do not mean to deny that they are political in the sense that court decisions (both constitutional and non-constitutional) often have political implications, and that the statutes which courts adjudicate upon emerge from the political process. What I mean instead is the legislature and executive cannot, and cannot appear to, exert political pressure on the judiciary, and conversely, that members of the judiciary should exercise reserve in speaking out publicly on issues of general public policy that are or have the potential to come before the courts, that are the subject of political debate, and which do not relate to the proper administration of justice.

141 To be sure, the depoliticization of the relationships between the legislature and the executive on the one hand, and the judiciary on the other, is largely governed by convention. And as I said in Cooper, supra, at para. 22, the conventions of the British Constitution do not have the force of law in Canada: Reference re Resolution to Amend the Constitution, supra. However, to my mind, the depoliticization of these relationships is so fundamental to the separation of powers, and hence to the Canadian Constitution, that the provisions of the Constitution, such as s. 11(d) of the Charter, must be interpreted in such a manner as to protect this principle.

142 The depoliticized relationships I have been describing create difficult problems when it comes to judicial remuneration. On the one hand, remuneration from the public purse is an inherently political concern, in the sense that it implicates general public policy. Even the most casual observer of current affairs can attest to this. For example, the salary reductions for the judges in these appeals were usually part of a general salary reduction for all persons paid from the public purse designed to implement a goal of government policy, deficit reduction. The decision to reduce a government deficit, of course, is an inherently political decision. In turn, these salary cuts were often opposed by public sector unions who questioned the underlying goal of deficit reduction itself. The political nature of the salary reductions at issue here is underlined by the fact that they were achieved through legislation, not collective bargaining and contract negotiations.

143 On the other hand, the fact remains that judges, although they must ultimately be paid from public monies, are not civil servants. Civil servants are part of the executive;

judges, by definition, are independent of the executive. The three core characteristics of judicial independence -- security of tenure, financial security, and administrative independence -- are a reflection of that fundamental distinction, because they provide a range of protections to members of the judiciary to which civil servants are not constitutionally entitled.

144 The political nature of remuneration from the public purse has been recognized by this Court before, in the area of public sector labour relations. In Lavigne v. Ontario Public Service Employees Union, [1991] 2 S.C.R. 211, we held that the Charter applied to collective agreements to which the government was a party. In arriving at this conclusion, the Court considered the argument that the Charter ought not to apply because public sector employment relationships were private and non-public in nature. This argument was rejected. La Forest J., speaking for the majority on this point, said at p. 314:

> ... government activities which are in form "commercial" or "private" transactions are in reality expressions of government policy....

145 With respect to the judiciary, the determination of the level of remuneration from the public purse is political in another sense, because it raises the spectre of political interference through economic manipulation. An unscrupulous government could utilize its authority to set judges' salaries as a vehicle to influence the course and outcome of adjudication. Admittedly, this would be very different from the kind of political interference with the judiciary by the Stuart Monarchs in England which is the historical source of the constitutional concern for judicial independence in the Anglo-American tradition. However, the threat to judicial independence would be as significant. We were alive to this danger in Beauregard, supra, when we held (at p. 77) that salary changes which were enacted for an "improper or colourable purpose" were unconstitutional. Moreover, as I develop below, changes to judicial remuneration might create the reasonable perception of political interference, a danger which s. 11(d) must prevent in light of Valente.

146 The challenge which faces the Court in these appeals is to ensure that the setting of judicial remuneration remains consistent -- to the extent possible given that judicial salaries must ultimately be fixed by one of the political organs of the Constitution, the executive or the legislature, and that the setting of remuneration from the public purse is, as a result, inherently political -- with the depoliticized relationship between the judiciary and the other branches of government. Our task, in other words, is to ensure compliance with one of the "structural requirements of the Canadian Constitution": Hunt, supra, at p. 323. The three components of the institutional or collective dimension of financial security, to my mind, fulfill this goal.

(2) The Components of Institutional or Collective Financial Security

(a) Judicial Salaries Can Be Reduced, Increased, or Frozen, but not Without Recourse to an Independent, Effective and Objective Commission

147 As a general principle, s. 11(d) allows that the salaries of provincial court judges

can be reduced, increased, or frozen, either as part of an overall economic measure which affects the salaries of all persons who are remunerated from public funds, or as part of a measure which is directed at provincial court judges as a class. However, 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. The constitutional function of this body would be to depoliticize the process of determining changes to or freezes in 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. As well, in order to guard against the possibility that government inaction could be used as a means of economic manipulation by allowing judges' real salaries to fall because of inflation, and also to protect against the possibility that judges' salaries will drop below the adequate minimum required by judicial independence, the commission must convene if a fixed period of time (e.g., three to five years) has elapsed since its last report, in order to consider the adequacy of judges' salaries in light of the cost of living and other relevant factors.

(l) Reductions and Increases to, and Freezes in the Salaries of Judges Raise Concerns Regarding Judicial Independence

148 I arrive at these propositions through an argument that begins with the question of whether superior court judges, whose independence is protected by s. 100 of the Constitution Act, 1867, may be reduced at all. That question faced us in Beauregard. That case involved a constitutional challenge to s. 29.1 of the Judges Act, R.S.C. 1970, c. J-1, which makes it mandatory for superior court judges to contribute a percentage of their salary to a pension plan. Prior to the enactment of s. 29.1, the pension plan had been non-contributory. Justice Beauregard challenged the constitutionality of s. 29.1, alleging that it reduced judicial remuneration, and for that reason undermined the independence of the judiciary.

149 The Court dismissed the constitutional challenge. However, there was considerable debate among the parties to this litigation as to the basis of that decision. Some of the parties suggested that Beauregard stands for the view that the salaries of superior court judges may not be reduced at all. They argued that the Court upheld s. 29.1 only because, on the facts, there was no net reduction of judicial remuneration, and that the basic submission made by Justice Beauregard -- that salaries may not be reduced -- was not disagreed with. In support they pointed to the Court's statement that the contributory scheme "did not diminish, reduce or impair the financial position of federally-appointed judges" (p. 78), because it was implemented as part of a package of substantial salary increases.

150 However, this is an erroneous interpretation of Beauregard. In fact, that decision stands for exactly the opposite position -- that Parliament can reduce the salaries of superior court judges. This conclusion is implicit in the analogy drawn and relied upon by the Court between the contributory scheme and income tax, another measure which imposed financial burdens on judges. The Court pointed out that the imposition of income tax on judges had withstood constitutional challenge (Judges v. Attorney-General of

Saskatchewan, [1937] 2 D.L.R. 209 (P.C.)), and then stated that the pension scheme was not relevantly different. Although both schemes could reduce the take-home pay of judges, neither of them impaired judicial independence. As Dickson C.J. said at p. 77:

> It is very difficult for me to see any connection between... judicial independence and Parliament's decision to establish a pension scheme for judges and to expect judges to make contributions toward the benefits established by the scheme.

151 It is therefore clear from Beauregard that s. 100 permits reductions to the salaries of superior court judges. However, as I outlined in my introductory remarks, the decision raises four questions which we must answer in order to resolve these appeals. I deal with three of these questions here, and return to the fourth later on in these reasons.

152 The first question addresses the issue of what kinds of salary reductions are consistent with the principle of judicial independence, as protected by s. 100. Beauregard held that reductions which were enacted for an improper or colourable purpose are prohibited by s. 100. Some of the parties to this litigation pointed to passages in Beauregard which suggest, in addition, that s. 100 prohibits reductions in judicial remuneration except through measures which apply to the population as a whole, such as income tax or sales tax. They noted that Dickson C.J. placed a great deal of weight on the fact that contributory pension schemes for judges treated judges "in accordance with standard, widely used and generally accepted pension schemes in Canada", that there were "similar pension schemes for a substantial number of other Canadians" (p. 77), and that "pension schemes are now widespread in Canada" (p. 78). More importantly, they emphasized that Dickson C.J. stated that reductions in judges' salaries would be unconstitutional if they amounted to the "discriminatory treatment of judges vis-à-vis other citizens" (p. 77 (emphasis added)).

153 However, Beauregard should not be read so literally. It is important to recall that the contributory pension scheme for superior court judges at issue there was not part of a scheme for the public at large, and in this sense discriminated against the judiciary vis-à-vis other citizens. Moreover, not only was the Court very much aware of this fact, it did not regard this fact to be constitutionally significant. This is clear from the Court's comparison of income tax and mandatory contributions to the Canada Pension Plan, on the one hand, and the impugned pension scheme, on the other, which the Court conceded were factually different in the following terms, at p. 77:

> These two liabilities [i.e., income tax and mandatory contributions to the Canada Pension Plan] are, of course, general in the sense that all citizens are subject to them whereas the contributions demanded by s. 29.1 of the Judges Act are directed at judges only. [Emphasis added.]

This factual difference, however, did not translate "into any legal consequence" (p. 77).

154 I take Beauregard's reference to the principle of non-discrimination to mean that judges' salaries may be reduced even if that reduction is part of a measure which only

applies to substantially every person who is paid directly from the public purse. This interpretation is consistent with the views of numerous commentators on the constitutionality of reductions to judicial salaries under s. 100. Professor Hogg, supra, at p. 7-6, for example, dismisses the argument that s. 100 prohibits a reduction in judicial remuneration which is non-discriminatory in the sense that it applies "to the entire federal civil service as well". Similarly, Professor Lederman suggests (in "The Independence of the Judiciary" (1956), 34 Can. Bar Rev. 1139, at p. 1164) that a "general income tax of ten per cent on all public salaries... including the judicial salaries" would be constitutionally valid.

155 What I have just said, however, does not mean that Parliament is constitutionally prohibited, in all circumstances, from reducing judicial remuneration in a manner which does not extend to all persons paid from the public purse. As I now discuss, although identical treatment may be preferable, it is not required in all circumstances.

156 To explain how I arrive at this conclusion, I return to one of the goals of financial security -- to ensure that the courts be free and appear to be free from political interference through economic manipulation. To be sure, a salary cut for superior court judges which is part of a measure affecting the salaries of all persons paid from the public purse helps to sustain the perception of judicial independence precisely because judges are not being singled out for differential treatment. As Professor Renke has explained (in Invoking Independence: Judicial Independence as a No-cut Wage Guarantee (1994), at p. 30):

> Financial security is an essential condition of judicial independence. It must not, however, be considered abstractly. It must be considered in relation to its purpose, which is, ultimately, to protect the judiciary from economic manipulation by the legislature or executive. Where economic measures apply equally to clerks, secretaries, managers, public sector workers of all grades and departments, as well as judges, how could judges be manipulated?

Conversely, if superior court judges alone had their salaries reduced, one could conclude that Parliament was somehow meting out punishment against the judiciary for adjudicating cases in a particular way.

157 However, many parties to these appeals presented a plausible counter-argument by turning this position on its head -- that far from securing a perception of independence, salary reductions which treat superior court judges in the same manner as civil servants undermine judicial independence precisely because they create the impression that judges are merely public employees and are not independent of the government. This submission has a kernel of truth to it. For example, as I have stated above, if judges' salaries were set by the same process as the salaries of public sector employees, there might well be reason to be concerned about judicial independence.

158 What this debate illustrates is that judicial independence can be threatened by measures which treat judges either differently from, or identically to, other persons paid from the public purse. Since s. 100 clearly permits identical treatment (Beauregard), I am driven to the conclusion that it is illogical for it to prohibit differential treatment as well. That

is not to say, however, that the distinction between differential and identical treatment is a distinction without a difference. In my opinion, the risk of political interference through economic manipulation is clearly greater when judges are treated differently from other persons paid from the public purse. This is why we focussed on discriminatory measures in Beauregard. As Professor Renke, supra, has stated in the context of current appeals (at p. 19):

> ... if judges were spared compensation decreases affecting other public sector groups, a reasonable person might well conclude that the judges had engaged in some behind-the-scenes lobbying. The judges' exemption could be thought to be the result of secret deals, or secret commitments to favour the government. An exemption of judges from across-the-board pay cuts is as likely to generate suspicions concerning judicial independence as the reduction of judicial compensation in the context of general public sector reductions.

159 The second question which emerges from Beauregard arises from the first -- whether the danger of political interference through economic manipulation can arise not only from reductions in the salaries of superior court judges, but also from increases and freezes in judicial remuneration. To my mind, it can. Manipulation and interference most clearly arise from reductions in remuneration; those reductions provide an economic lever for governments to wield against the courts. But salary increases can be powerful economic levers as well. For this reason, salary increases also have the potential to undermine judicial independence, and engage the guarantees of s. 100. Salary freezes for superior court judges raise questions of judicial independence as well, because salary freezes, when the cost of living is rising because of inflation, amount to de facto reductions in judicial salaries, and can therefore be used as means of political interference through economic manipulation.

160 The third question which arises from Beauregard is the applicability of the jurisprudence under s. 100 of the Constitution Act, 1867, to the interpretation of s. 11(d) of the Charter. Section 100, along with the rest of the judicature provisions, guarantees the independence of superior court judges. Section 11(d), by contrast, guarantees the independence of a wide range of tribunals and courts, including provincial courts, and for the reasons explained above, is the central constitutional provision in these appeals. Since Beauregard defines the scope of Parliament's powers with respect to the remuneration of superior court judges, it was argued before this Court that it had no application to the cases at bar.

161 To some extent, this question was dealt with in Valente, where the Court held that s. 11(d) did not entitle provincial court judges to a number of protections which were constitutionally guaranteed to superior court judges. For example, while superior court judges may only be dismissed by a resolution of both Houses of Parliament, this Court expressly rejected the need for the dismissal of provincial court judges by provincial legislatures. As well, whereas the salaries of superior court judges must ultimately be fixed by Parliament, the Court held that the salaries of provincial court judges may be set either by legislation or by order in council.

162 However, Valente should not be read as having decided that the jurisprudence under s. 100 is of no assistance in shaping the contours of judicial independence as it is protected by s. 11(d). Rather, all that Valente held is that s. 11(d) does not, as a matter of principle, automatically provide the same level of protection to provincial courts as s. 100 and the other judicature provisions do to superior court judges. In the particular circumstances, though, s. 11(d) may in fact provide the same level of protection to provincial court judges as the judicature provisions do to superior court judges.

163 The relevance of the judicature provisions, and s. 100 in particular, to the interpretation of s. 11(d) emerges from their shared commitment to judicial independence. The link between these two sets of provisions can be found in Beauregard itself, where the Court developed the distinction between individual independence and institutional independence by reference to Valente. I also alluded to the link between these two sets of provisions in my separate reasons in Cooper. As I have suggested, this link arises in part as a function of the fact that both ss. 11(d) and 100 are expressions of the unwritten principle of judicial independence which is recognized and affirmed by the preamble to the Constitution Act, 1867.

164 What the link between s. 11(d) and the judicature provisions means is that certain fundamental aspects of judicial independence are enjoyed not only by superior courts, but by provincial courts as well. In my opinion, the constitutional parameters of the power to change or freeze judges' salaries under s. 100, as defined by Beauregard and developed in these reasons, fall into this category.

165 In conclusion, the requirements laid down in Beauregard and developed in these reasons with respect to s. 100 and superior court judges, are equally applicable to the guarantee of financial security provided by s. 11(d) to provincial court judges. Just as Parliament can change or freeze the salaries of superior court judges, legislatures and executives of the provinces can do the same to the salaries of provincial court judges.

(ii) Independent, Effective and Objective Commissions

166 Although provincial executives and legislatures, as the case may be, are constitutionally permitted to change or freeze judicial remuneration, those decisions have the potential to jeopardize judicial independence. 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.

167 I do not wish to dictate the exact shape and powers of the independent commission here. These questions of detailed institutional design are better left to the executive and the legislature, although it would be helpful if they consulted the provincial judiciary prior to creating these bodies. Moreover, different provinces should be free to choose procedures

and arrangements which are suitable to their needs and particular circumstances. Within the parameters of s. 11(d), there must be scope for local choice, because jurisdiction over provincial courts has been assigned to the provinces by the Constitution Act, 1867. This is one reason why we held in Valente, supra, at p. 694, that "[t]he standard of judicial independence for purposes of s. 11(d) cannot be a standard of uniform provisions".

168 Before proceeding to lay down the general guidelines for these independent commissions, I must briefly comment on Valente. There is language in that decision which suggests that s. 11(d) does not require the existence of independent commissions to deal with the issue of judicial remuneration. In particular, Le Dain J. stated that he did "not consider the existence of such a committee to be essential to security of salary for purposes of s. 11(d)" (p. 706). However, that question was not before the Court, since Ontario, the province where Valente arose, had an independent commission in operation at the time of the decision. As a result, the remarks of Le Dain J. were strictly obiter dicta, and do not bind the courts below and need not today be overruled by this Court.

169 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. I will address these criteria in turn, by reference, where possible, to commissions which already exist in many Canadian provinces to set or recommend the levels of judicial remuneration.

170 First and foremost, these commissions must be independent. 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.

171 There are several different aspects to the independence required of salary commissions. First, the members of these bodies must have some kind of security of tenure. In this context, security of tenure means that the members of commissions should serve for a fixed term, which may vary in length. Thus, in Manitoba, the term of office for the Judicial Compensation Committee is two years (Provincial Court Act, s. 11.1(1)), whereas the term of office for British Columbia's Judicial Compensation Committee and Ontario's Provincial Judges Remuneration Commission is three years (Provincial Court Act, R.S.B.C. 1979, c. 341, s. 7.1(1); Courts of Justice Act, R.S.O. 1990, c. C.43, Schedule (Appendix A of Framework Agreement), para. 7), and in Newfoundland, the term of its salary tribunal is four years (Provincial Court Act, 1991, S.N. 1991, c. 15, s. 28(3)). In my opinion, s. 11(d) does not impose any restrictions on the membership of these commissions. Although the independence of these commissions would be better served by ensuring that their membership stood apart from the three branches of government, as is the case in Ontario (Courts of Justice Act, Schedule, para. 11), this is not required by the Constitution.

172 Under ideal circumstances, it would be desirable if appointments to the salary commission were not made by any of the three branches of government, in order to

guarantee the independence of its members. However, the members of that body would then have to be appointed by a body which must in turn be independent, and so on. This is clearly not a practical solution, and thus is not required by s. 11(d). As we said in Valente, supra, at p. 692:

> It would not be feasible... to apply the most rigorous and elaborate conditions of judicial independence to the constitutional requirement of independence in s. 11(d) of the Charter....

What s. 11(d) requires instead is that the appointments not be entirely controlled by any one of the branches of government. The commission should have members appointed by the judiciary, on the one hand, and the legislature and the executive, on the other. The judiciary's nominees may, for example, be chosen either by the provincial judges' association, as is the case in Ontario (Courts of Justice Act, Schedule, para. 6), or by the Chief Judge of the Provincial Court in consultation with the provincial judges' association, as in British Columbia (Provincial Court Act, s. 7.1(2)). The exact mechanism is for provincial governments to determine. Likewise, the nominees of the executive and the legislature may be chosen by the Lieutenant Governor in Council, although appointments by the Attorney General as in British Columbia (Provincial Court Act, s. 7.1(2)), or conceivably by the legislature itself, are entirely permissible.

173 In addition to being independent, 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 be best achieved by requiring that the commission receive and consider submissions from the judiciary, the executive, and the legislature. In Ontario, for example, the Provincial Judges' Remuneration Commission is bound to consider submissions from the provincial judges' association and the government (Courts of Justice Act, Schedule, para. 20). 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 relevant 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.

174 Finally, and most importantly, the commission must also be effective. The effectiveness of these bodies must be guaranteed in a number of ways. First, there is a constitutional obligation for governments not to change (either by reducing or increasing) or freeze judicial remuneration until they have received the report of the salary commission. Changes or freezes of this nature secured without going through the commission process are unconstitutional. The commission must convene to consider and report on the proposed change or freeze. Second, in order to guard against the possibility that government inaction might lead to a reduction in judges' real salaries because of

inflation, and that inaction could therefore be used as a means of economic manipulation, the commission must convene if a fixed period of time has elapsed since its last report, in order to consider the adequacy of judges' salaries in light of the cost of living and other relevant factors, and issue a recommendation in its report. Although the exact length of the period is for provincial governments to determine, I would suggest a period of three to five years.

175 Third, the reports of the commission must have a meaningful effect on the determination of judicial salaries. Provinces which have created salary commissions have adopted three different ways of giving such effect to these reports. One is to make a report of the commission binding, so that the government is bound by the commission's decision. Ontario, for example, requires that a report be implemented by the Lieutenant Governor in Council within 60 days, and gives a report of the Provincial Judges' Remuneration Commission statutory force (Courts of Justice Act, Schedule, para. 27). Another way of dealing with a report is the negative resolution procedure, whereby the report is laid before the legislature and its recommendations are implemented unless the legislature votes to reject or amend them. This is the model which has been adopted in British Columbia (Provincial Court Act, s. 7.1(10)) and Newfoundland (Provincial Court Act, 1991, s. 28(7)). The final way of giving effect to a report is the affirmative resolution procedure, whereby a report is laid before but need not be adopted by the legislature. As I shall explain below, until the adoption of Bill 22, this was very similar to the procedure followed in Manitoba (Provincial Court Act, s. 11.1(6)).

176 The model mandated as a constitutional minimum by s. 11(d) is somewhat different from the ones I have just described. My starting point is that s. 11(d) does not require that the reports of the commission be binding, because decisions about the allocation of public resources are generally within the realm of the legislature, and through it, the executive. The expenditure of public funds, as I said above, is an inherently political matter. Of course, it is possible to exceed the constitutional minimum mandated by s. 11(d) and adopt a binding procedure, as has been done in some provinces.

177 For the same reasons, s. 11(d) does not require a negative resolution procedure, although it does not preclude it. Although the negative resolution procedure still leaves the ultimate decision to set judicial salaries in the hands of the legislature, it creates the possibility that in cases of legislative inaction, the report of the commission will determine judicial salaries in a binding manner. In my opinion, s. 11(d) does not require that this possibility exist.

178 However, whereas the binding decision and negative resolution models exceed the standard set by s. 11(d), the positive resolution model on its own does not meet that standard, because it requires no response to the commission's report at all. The fact that the report need not be binding does not mean that the executive and the legislature should be free to ignore it. On the contrary, for collective or institutional financial security to have any meaning at all, and to be taken seriously, the commission process must have a meaningful impact on the decision to set judges' salaries.

179 What judicial independence requires is that the executive or the legislature,

whichever is vested with the authority to set judicial remuneration under provincial legislation, must formally respond to the contents of the commission's report within a specified amount of time. Before it can set judges' salaries, the executive must issue a report in which it outlines its response to the commission's recommendations. If the legislature is involved in the process, the report of the commission must be laid before the legislature, when it is in session, with due diligence. If the legislature is not in session, the government may wait until a new sitting commences. The legislature should deal with the report directly, with due diligence and reasonable dispatch.

180 Furthermore, if after turning its mind to the report of the commission, the executive or the legislature, as applicable, chooses not to accept one or more of the recommendations in that report, it must be prepared to justify this decision, if necessary in a court of law. The reasons for this decision would be found either in the report of the executive responding to the contents of the commission's report, or in the recitals to the resolution of the legislature on the matter. An unjustified decision could potentially lead to a finding of unconstitutionality. The need for public justification, to my mind, emerges from one of the purposes of s. 11(d)'s guarantee of judicial independence -- to ensure public confidence in the justice system. A decision by the executive or the legislature, to change or freeze judges' salaries, and then to disagree with a recommendation not to act on that decision made by a constitutionally mandated body whose existence is premised on the need to preserve the independence of the judiciary, will only be legitimate and not be viewed as being indifferent or hostile to judicial independence, if it is supported by reasons.

181 The importance of reasons as the basis for the legitimate exercise of public power has been recognized by a number of commentators. For example, in "Developments in Administrative Law: The 1992-93 Term" (1994), 5 S.C.L.R. (2d) 189, at p. 243, David Dyzenhaus has written that

> what justifies all public power is the ability of its incumbents to offer adequate reasons for their decisions which affect those subject to them. The difference between mere legal subjects and citizens is the democratic right of the latter to require an accounting for acts of public power.

Frederick Schauer has made a similar point ("Giving Reasons" (1995), 47 Stan. L. Rev. 633, at p. 658):

> ... when decisionmakers... expect respect for decisions because the decisions are right rather than because they emanate from an authoritative source, then giving reasons... is still a way of showing respect for the subject....

182 I hasten to add that these comments should not be construed as endorsing or establishing a general duty to give reasons, either in the constitutional or in the administrative law context. Moreover, I wish to clarify that the standard of justification required under s. 11(d) is not the same as that required under s. 1 of the Charter. Section 1 imposes a very rigorous standard of justification. Not only does it require an important

government objective, but it requires a proportionality between this objective and the means employed to pursue it. The party seeking to uphold the impugned state action must demonstrate a rational connection between the objective and the means chosen, that the means chosen are the least restrictive means or violate the right as little as reasonably possible, and that there is a proportionality between the effect of the measure and its objective so that the attainment of the legislative goal is not outweighed by the abridgment of the right.

183 The standard of justification here, by contrast, is one of simple rationality. It requires that the government articulate a legitimate reason for why it has chosen to depart from the recommendation of the commission, and if applicable, why it has chosen to treat judges differently from other persons paid from the public purse. A reviewing court does not engage in a searching analysis of the relationship between ends and means, which is the hallmark of a s. 1 analysis. However, the absence of this analysis does not mean that the standard of justification is ineffectual. On the contrary, it has two aspects. First, it screens out decisions with respect to judicial remuneration which are based on purely political considerations, or which are enacted for discriminatory reasons. Changes to or freezes in remuneration can only be justified for reasons which relate to the public interest, broadly understood. Second, if judicial review is sought, a reviewing court must inquire into the reasonableness of the factual foundation of the claim made by the government, similar to the way that we have evaluated whether there was an economic emergency in Canada in our jurisprudence under the division of powers (Reference re Anti-Inflation Act, [1976] 2 S.C.R. 373).

184 Although the test of justification -- one of simple rationality -- must be met by all measures which affect judicial remuneration and which depart from the recommendation of the salary commission, some will satisfy that test more easily than others, because they pose less of a danger of being used as a means of economic manipulation, and hence of political interference. 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 judges 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. By contrast, a measure directed at judges alone may require a somewhat fuller explanation, precisely because it is directed at judges alone.

185 By laying down a set of guidelines to assist provincial legislatures in designing judicial compensation commissions, I do not intend to lay down a particular institutional framework in constitutional stone. What s. 11(d) requires is an institutional sieve between the judiciary and the other branches of government. Commissions are merely a means to that end. In the future, governments may create new institutional arrangements which can serve the same end, but in a different way. As long as those institutions meet the three cardinal requirements of independence, effectiveness, and objectivity, s. 11(d) will be complied with.

(b) No Negotiations on Judicial Remuneration Between the Judiciary and the Executive and Legislature

186 Negotiations over remuneration are a central feature of the landscape of public sector labour relations. The evidence before this Court (anecdotal and otherwise) suggests that salary negotiations have been occurring between provincial court judges and provincial governments in a number of provinces. However, from a constitutional standpoint, this is inappropriate, for two related reasons. First, as I have argued above, negotiations for remuneration from the public purse are indelibly political. For the judiciary to engage in salary negotiations would undermine public confidence in the impartiality and independence of the judiciary, and thereby frustrate a major purpose of s. 11(d). As the Manitoba Law Reform Commission has noted (in the Report on the Independence of Provincial Judges (1989), at p. 41):

> ... it forces them [i.e. judges] into the political arena and tarnishes the public perception that the courts can be relied upon to interpret and apply our laws without concern for the effect of their decisions on their personal careers or well-being (in this case, earnings).

187 Second, negotiations are deeply problematic because the Crown is almost always a party to criminal prosecutions in provincial courts. Negotiations by the judges who try those cases put them in a conflict of interest, because they would be negotiating with a litigant. The appearance of independence would be lost, because salary negotiations bring with them a whole set of expectations about the behaviour of the parties to those negotiations which are inimical to judicial independence. The major expectation is of give and take between the parties. By analogy with Généreux, the reasonable person might conclude that judges would alter the manner in which they adjudicate cases in order to curry favour with the executive. As Professor Friedland has written in A Place Apart: Judicial Independence and Accountability in Canada (1995), at p. 57, "head-to-head bargaining between the government and the judiciary [creates]... the danger of subtle accommodations being made". This perception would be heightened if the salary negotiations, as is usually the case, were conducted behind closed doors, beyond the gaze of public scrutiny, and through it, public accountability. Conversely, there is the expectation that parties to a salary negotiation often engage in pressure tactics. As such, the reasonable person might expect that judges would adjudicate in such a manner so as to exert pressure on the Crown.

188 When I refer to negotiations, I use that term as it is understood in the labour relations context. Negotiation over remuneration and benefits involves a certain degree of "horse-trading" between the parties. Indeed, to negotiate is "to bargain with another respecting a transaction" (Black's Law Dictionary (6th ed. 1990), at p. 1036). That kind of activity, however, must be contrasted with expressions of concern and representations by chief justices and chief judges of courts, or by representative organizations such as the Canadian Judicial Council, the Canadian Judges Conference, and the Canadian Association of Provincial Court Judges, on the adequacy of current levels of remuneration. Those representations merely provide information and cannot, as a result, be said to pose a danger to judicial independence.

189 I recognize that the constitutional prohibition against salary negotiations places the judiciary at an inherent disadvantage compared to other persons paid from the public

purse, because they cannot lobby the executive and the legislature with respect to their level of remuneration. The point is put very well by Douglas A. Schmeiser and W. Howard McConnell in The Independence of Provincial Court Judges: A Public Trust (1996), at p. 13:

> Because of the constitutional convention that judges should not speak out on political matters, judges are at a disadvantage vis-à-vis other groups when making a case to governments for increments in salaries.

I have no doubt that this is the case, although to some extent, the inability of judges to engage in negotiations is offset by the guarantees provided by s. 11(d). In particular, the mandatory involvement of an independent commission serves as a substitute for negotiations, because it provides a forum in which members of the judiciary can raise concerns about the level of their remuneration that might have otherwise been advanced at the bargaining table. Moreover, a commission serves as an institutional sieve which protects the courts from political interference through economic manipulation, a danger which inheres in salary negotiations.

190 At the end of the day, however, any disadvantage which may flow from the prohibition of negotiations is a concern which the Constitution cannot accommodate. The purpose of the collective or institutional dimension of financial security is not to guarantee a mechanism for the setting of judicial salaries which is fair to the economic interests of judges. Its purpose is to protect an organ of the Constitution which in turn is charged with the responsibility of protecting that document and the fundamental values contained therein. If judges do not receive the level of remuneration that they would otherwise receive under a regime of salary negotiations, then this is a price that must be paid.

191 Finally, it should be noted that since these cases are only concerned with remuneration, the above prohibition addresses only negotiations which directly concern that issue. I leave to another day the question of other types of negotiations. For example, the judiciary and government can negotiate the form that the commission is to take, as was done in Ontario, where the Courts of Justice Act, Schedule, embodies an agreement between the government and the provincial court judges designed "to establish a framework for the regulation of certain aspects of the relationship between the executive branch of the government and the Judges, including a binding process for the determination of Judges' compensation" (para. 2). Agreements of this sort promote, rather than diminish, judicial independence.

(c) Judicial Salaries May Not Fall Below a Minimum Level

192 Finally, I turn to the question of whether the Constitution -- through the vehicle of either s. 100 or s. 11(d) -- imposes some substantive limits on the extent of salary reductions for the judiciary. This point was left unanswered by Beauregard. I note at the outset that neither the parties nor the interveners submitted that judicial salaries were close to those minimum limits here. However, since I have decided to lay down the parameters of the guarantee of collective or institutional financial security in these reasons, I will address this issue briefly.

193 I have no doubt that the Constitution protects judicial salaries from falling below an acceptable minimum level. The reason it does is for financial security to protect the judiciary from political interference through economic manipulation, and to thereby ensure public confidence in the administration of justice. If salaries are too low, there is always the danger, however speculative, that members of the judiciary could be tempted to adjudicate cases in a particular way in order to secure a higher salary from the executive or the legislature or to receive benefits from one of the litigants. Perhaps more importantly, in the context of s. 11(d), there is the perception that this could happen. As Professor Friedland has written, supra, at p. 53:

> We do not want judges put in a position of temptation, hoping to get some possible financial advantage if they favour one side or the other. Nor do we want the public to contemplate this as a possibility.

I want to make it very clear that the guarantee of a minimum salary is not meant for the benefit of the judiciary. Rather, financial security is a means to the end of judicial independence, and is therefore for the benefit of the public. As Professor Friedland has put it, speaking as a concerned citizen, it is "for our sake, not for theirs" (p. 56).

194 The idea of a minimum salary has been recognized in a number of international instruments. Article 11 of the Basic Principles on the Independence of the Judiciary, which was adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, states that:

> 11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law. [Emphasis added.]

The U.N. Basic Principles were endorsed by the United Nations General Assembly on November 29, 1985 (A/RES/40/32), which later invited governments "to respect them and to take them into account within the framework of their national legislation and practice" (A/RES/40/146) on December 13, 1985. A more recent document is the Draft Universal Declaration on the Independence of Justice, which the United Nations Commission on Human Rights invited governments to take into account when implementing the U.N. Basic Principles (resolution 1989/32). Article 18(b) provides that:

> The salaries and pensions of judges shall be adequate, commensurate with the status, dignity and responsibility of their office, and shall be periodically reviewed to overcome or minimize the effect of inflation.

195 I offer three final observations. First, I do not address the question of what the minimum acceptable level of judicial remuneration is. We shall answer that question if and when the need arises. However, I note that this Court has in the past accepted its expertise to adjudicate upon rights with a financial component, such as s. 23 of the Charter (see Mahe v. Alberta, [1990] 1 S.C.R. 342). Second, although the basic minimum salary provides financial security against reductions in remuneration by the executive or the

legislature, it is also a protection against the erosion of judicial salaries by inflation.

196 Finally, I want to emphasize that the guarantee of a minimum acceptable level of judicial remuneration is not a device to shield the courts from the effects of deficit reduction. 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. Rather, as I said above, financial security is one of the means whereby the independence of an organ of the Constitution is ensured. Judges are officers of the Constitution, and hence their remuneration must have some constitutional status.

E. Application of Legal Principles

197 I shall now measure the salary reductions in P.E.I., Alberta, and Manitoba according to the procedural and substantive aspects of the collective or institutional financial security of the judiciary. As we shall see shortly, the reductions in each of these provinces fall short of the standard set down by s. 11(d). What remedial consequences follow from these findings of unconstitutionality, however, are another matter entirely, to which I shall turn at the conclusion of this judgment.

(1) Prince Edward Island

(a) Salary Reduction

198 The salaries of Provincial Court judges in P.E.I. were and continue to be set by s. 3(3) of the Provincial Court Act. Until May 1994, s. 3(3) of the Provincial Court Act provided that:

> 3. ...
>
> (3) The remuneration of judges for any year shall be determined by calculating the average of the remuneration of provincial court judges in the other provinces of Canada as of April 1 in that year.

What this provision did was to fix the salaries of judges of the P.E.I. Provincial Court judges at a level equal to the average of the salaries of provincial court judges across the country.

199 However, s. 3(3) was amended in two ways on May 19, 1994. First, for judges appointed on or after April 1, 1994, the formula for calculating salaries was changed from the national average to the average of the three other Atlantic provinces in the preceding year, by s. 1 of An Act to Amend the Provincial Court Act, S.P.E.I. 1994, c. 49. Second, and more importantly, s. 3(3) was amended by the addition of the words "less 7.5%" at the end of the salary formula, by s. 10 of the Public Sector Pay Reduction Act. As amended, s. 3(3) now reads in full:

3. ...

(3) The remuneration of judges for any year shall be determined

(a) in respect of judges appointed before April 1, 1994, by calculating the average of the remuneration of provincial court judges in the other provinces of Canada as of April 1 in that year, less 7.5%;
(b) in respect of judges appointed on or after April 1, 1994, by calculating the average of the remuneration of provincial court judges in the provinces of Nova Scotia, New Brunswick and Newfoundland on April 1 of the immediately preceding year, less 7.5%.

The evidence we have before us demonstrates that the net effect of these changes was to reduce judges' salaries by approximately 7.5 percent from $106,123.14 in 1993, to $98,243 as of May 17, 1994.

200 These changes were made by the legislature without recourse having first been made to an independent, objective, and effective process for determining judicial remuneration. In fact, no such body exists in P.E.I. Salaries cannot be reduced without first considering the report of a salary commission; if they are, then the reduction is unconstitutional. It is evident that the 7.5 percent reduction was therefore unconstitutional.

201 However, if in the future, after P.E.I. establishes a salary commission, that commission were to issue a report with recommendations which the provincial legislature declined to follow, a salary reduction such as the impugned one would probably be prima facie rational, and hence justified, because it would be part of an overall economic measure which reduces the salaries of all persons who are remunerated by public funds. I arrive at this view on the basis of an analysis of the Public Sector Pay Reduction Act. As the statement of facts which is appended to the Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island indicates, the Act was an overall measure which was directed at everyone who is paid from the public purse. The Act draws a distinction between "Public Sector Employees" and "Persons Paid From Public Funds"; Provincial Court judges fall into the latter group. Public sector employees are governed by Part II of the Act. The definition of public sector employees is very inclusive, and can be gleaned from s. 1(d), which defines the public sector employers who are covered by the Act. Included in this list are the provincial government, school boards, Crown agencies and corporations, health and community services councils and regional authorities, universities, and colleges. Section 6(1) provides that public sector employees who are paid more than $28,000 per year had their salaries reduced by 7.5 percent (to a minimum of $26,950 -- see s. 6(2)); and the salaries of those who made less than $28,000 annually were reduced by 3.75 percent. I do not consider the smaller salary reduction of those paid considerably less than Provincial Court judges to be of any significance for the disposition of these appeals.

202 There is no comparable definition of persons paid from public funds, who are governed by Part III of the Act, to the definition of those persons governed by Part II. The approach of Part III is to deal with different categories of persons separately, partly because these persons are paid in different ways. However, notwithstanding these differences, a 7.5 percent reduction is applied in one way or another to all of these persons. For example, the annual, daily, or periodical allowances of members of provincial tribunals, commissions, and agencies are reduced by 7.5 percent (s. 9). Salary reductions for physicians are achieved by a 7.5 percent reduction of the envelope of funding set aside for the P.E.I. Medical Society (s. 11). Finally, a 7.5 percent reduction is achieved for judges of the P.E.I. Provincial Court by s. 10, which I have described above.

203 In sum, the Public Sector Pay Reduction Act imposed an across-the-board cut which reduced the salaries of substantially every person remunerated from public funds, including members of the P.E.I. Provincial Court. On its face, it is therefore prima facie rational. The facts surrounding the enactment of the Act support this initial conclusion. The Act was enacted as part of a government policy to reduce the provincial deficit, and was therefore designed to further the public interest. Although it is hard to assess the reasonableness of the factual foundation for this claim in the absence of a trial record, the statement of facts appended to the Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island suffices for the purposes of this illustrative discussion.

(b) Other Issues Regarding Financial Security

204 The appellants raised a number of objections to the treatment of Provincial Court judges by the Public Sector Pay Reduction Act and the Provincial Court Act. I have dealt with most of them in the course of my general analysis on collective or institutional financial security. Moreover, a number of the reference questions address specific aspects of financial security which I have also dealt with in my general analysis. However, there are two that I would like to address here, if only briefly.

(I) Negotiations

205 First, the appellants object that the Public Sector Pay Reduction Act is unconstitutional because it provides for the possibility of salary negotiations between judges of the P.E.I. Provincial Court and the executive. The appellants centre their submissions on s. 12(1), which is found in Part IV, entitled "Saving for Future Negotiations". According to the appellants, s. 12(1) permits negotiations between any persons whose salaries are reduced by the Act and the government to find alternatives to pay reductions. If s. 12(1) had this effect, I would agree with the appellants that it contravened the principle of judicial independence. I note that this view of the Act has been taken by MacDonald C.J. of the P.E.I. Supreme Court, Trial Division in Lowther v. Prince Edward Island (1994), 118 D.L.R. (4th) 665. Moreover, as the court below pointed out in Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, the Lieutenant Governor in Council of P.E.I. enacted a regulation subsequent to the decision in Lowther to clarify that the negotiation provisions did not cover Provincial Court judges (Regulation EC631/94).

206 However, I doubt whether the enactment of that regulation was necessary. I arrive at this conclusion on the basis of both the plain wording of s. 12(1) and the structure of the Act. Section 12(1) is limited to negotiations "between a public sector employer and employees". The plain meaning of a public sector employee does not include members of the judiciary. This interpretation of s. 12(1) is reinforced by the organization of the Act. Public sector employees are governed by Part II of the Act; by contrast, judges of the P.E.I. Provincial Court are governed by Part III, which is entitled "Persons Paid from Public Funds". Given the attempt of the Act to draw a distinction between persons like judges on the one hand, and public sector employees on the other, I have little doubt that the negotiation provisions, which expressly refer to public sector employees, do not apply to judges.

(ii) Miscellaneous Provisions

207 The appellants also object to ss. 12(2) and 13 of the Provincial Court Act, which confer a discretion on the Lieutenant Governor in Council to grant leaves of absence due to illness and sabbatical leaves, respectively. It is unclear what the precise objection is to s. 13, other than making sabbatical leaves a matter for executive discretion. The objection to s. 12(2) is directed at the ability of the Lieutenant Governor in Council to grant leave "on such terms as he [sic] may consider appropriate". Both the objections to ss. 12(2) and 13 implicate individual financial security. However, they are without merit. To understand why, I return to Valente, where the question of discretionary benefits for judges was considered. A number of discretionary benefits were at issue: unpaid leave, permission to take on extra-judicial employment, special leave, and paid leave. The Court dismissed the concern that discretionary benefits undermined judicial independence, at p. 714:

> While it may well be desirable that such discretionary benefits or advantages, to the extent that they should exist at all, should be under the control of the judiciary rather than the Executive... I do not think that their control by the Executive touches what must be considered to be one of the essential conditions of judicial independence for purposes of s. 11(d) of the Charter.... [I]t would not be reasonable to apprehend that a provincial court judge would be influenced by possible desire for one of these benefits or advantages to be less than independent in his or her adjudication.

To my mind, the same reasoning applies here.

(2) Alberta

(a) Jurisdiction of the Alberta Court of Appeal

208 Next, I turn to the salary reduction in Alberta. As a preliminary point, I will consider whether the Alberta Court of Appeal was correct in declaring that it was without jurisdiction to hear the Crown's appeals under s. 784(1) of the Criminal Code. I conclude that s. 784(1) was applicable in this instance, and that the court below should have considered the merits of these appeals. Notwithstanding this error, we can assume the jurisdiction that the Court

of Appeal had, and pronounce upon the merits ourselves, rather than send the matter back to be dealt with by the Alberta Court of Appeal. This Court would only be without jurisdiction to do so if the parties had appealed directly from the decision of the Alberta Court of Queen's Bench, which, through the operation of s. 784(1), was not the court of final resort in Alberta: Dagenais v. Canadian Broadcasting Corp., [1994] 3 S.C.R. 835; R. v. Laba, [1994] 3 S.C.R. 965.

209 In order to understand why s. 784(1) is at issue, I must recapitulate some aspects of the proceedings below. The three respondents had been charged with offences under the Criminal Code, and all pled not guilty. The Crown elected to proceed summarily in all three cases. The three accused appeared, in separate proceedings, before the Alberta Provincial Court. They then sought recourse to the Alberta Court of Queen's Bench to advance their constitutional arguments, but at different stages in the proceedings before them.

210 Ekmecic and Campbell challenged the constitutionality of their trials in the Alberta Provincial Court before those trials had started. In their notices of motion, filed in the Alberta Court of Queen's Bench on May 5, 1994, the respondents Campbell and Ekmecic requested stays pursuant to s. 24(1) of the Charter, on the basis of an alleged violation of s. 11(d). These notices of motion were subsequently amended on May 11, 1994, during the proceedings before the Alberta Court of Queen's Bench, to include a request for an order in the nature of a prohibition as an alternative to the stay. The prohibition was sought to prevent Ekmecic and Campbell from being tried before the Alberta Provincial Court.

211 By contrast, Wickman brought his motion before the superior court after the Crown had completed its case and six witnesses had testified for the defence, including Wickman. On May 8, 1994, Wickman filed a notice of motion in the Alberta Court of Queen's Bench for an order in the nature of certiorari quashing the information and proceedings at trial, an order in the nature of a prohibition to prevent the Alberta Provincial Court from proceeding further with his trial, and a series of declarations for alleged violations of s. 11(d). On May 9, 1994, he filed an amended notice of motion, asking for such further and other relief that the court deemed fit.

212 The difficulty which we now face arises from the mixed results of the trial judgment of the Alberta Court of Queen's Bench. On the one hand, the Crown lost, and the respondents won, because McDonald J. found that the Alberta Provincial Court was not an independent and impartial tribunal for the purposes of s. 11(d), and made a series of declarations of invalidity against the provincial legislation and regulations which were the source of the alleged violation of s. 11(d). But on the other hand, the Crown won, and the respondents lost, because McDonald J. held that the declarations had the effect of removing the source of the s. 11(d) violations, and therefore rendered the Alberta Provincial Court independent. There was no need to prevent the trials against Campbell and Ekmecic from commencing, or to prevent the trial of Wickman from continuing.

213 The Crown appealed the trial judgment on the basis of s. 784(1) of the Criminal Code, which provides that:

> 784. (1) An appeal lies to the court of appeal from a decision granting or refusing the relief sought in proceedings by way of mandamus, certiorari or prohibition.

A majority of the Alberta Court of Appeal held that it did not have jurisdiction to hear the appeals because the Crown was "successful" at trial and therefore could not rely on s. 784(1) (per Harradence and O'Leary J.A.) and because declaratory relief is non-prohibitory, and is therefore beyond the ambit of s. 784(1) (per Harradence J.A.). Conrad J.A., dissenting, disagreed on both points, and held that s. 784(1) could be relied on by successful parties, and that the declaratory relief granted by McDonald J. was prohibitory in nature.

214 I find the arguments advanced in support of the view that s. 784(1) was unavailable to the Crown to be unconvincing. First, it is not clear to me that only unsuccessful parties can avail themselves of s. 784(1). But even if this limitation applies, the Court of Appeal had jurisdiction. Although the Crown may have been successful in its efforts to commence and continue the trials against the respondents, it lost on the underlying finding of unconstitutionality. A series of declarations was made which had the effect of striking down numerous provisions found in legislation and regulations. It was, at most, a Pyrrhic victory for the Crown.

215 Second, I agree with Conrad J.A. that this is a case where the declaratory relief was essentially prohibitory in nature, and so came within the scope of s. 784(1), because the trial judgment granted relief sought in proceedings by way of prohibition. As the Crown stated in its factum, the declaratory judgments "did, in substance, prohibit the commencement or continuation of the trials before a court subject to the impugned legislation". The prohibitory nature of declaratory relief has been recognized before: e.g., R. v. Paquette (1987), 38 C.C.C. (3d) 333 (Alta. C.A.); R. v. Yes Holdings Ltd. (1987), 40 C.C.C. (3d) 30 (Alta. C.A.). Indeed, Paquette is analogous to these appeals, because the accused sought a prohibition and declaration at trial, but was only granted a declaration. The Crown appealed. The Court of Appeal held that it had jurisdiction under s. 719(1) (now s. 784(1)) of the Criminal Code, because the declaration was "in effect and intent prohibitory" (pp. 337-38).

216 I therefore conclude that the Court of Appeal had jurisdiction to hear the appeals under s. 784(1). This Court can exercise the jurisdiction that the Court of Appeal had, and consider these appeals.

(b) The Salary Reduction

217 The salary reduction for judges of the Alberta Provincial Court is unconstitutional for the same reason as the impugned reduction in P.E.I. That is because there is no independent, effective, and objective commission in Alberta which recommends changes to judges' salaries.

218 The salaries and pensions of Provincial Court judges in Alberta are set down by regulations made by the Lieutenant Governor in Council. The source of this

regulation-making power is s. 17(1) of the Provincial Court Judges Act, which provides in part:

> 17(1) The Lieutenant Governor in Council may make regulations
>
> (a) fixing the salaries to be paid to judges;
>
> . . .
>
> (d) providing for the benefits to which judges are entitled, including,...
>
> (v) pension benefits for judges and their spouses or survivors;

According to the evidence before us, judges' remuneration was reduced by 5 percent from $113,964 in 1993 to $108,266 in 1994. This reduction was achieved through two different means. First, judges' salaries were directly reduced by 3.1 percent, by the Payment to Provincial Judges Amendment Regulation, Alta. Reg. 116/94. This regulation set the salary of the Chief Judge at $124,245, the Assistant Chief Judge at $117,338, and other members of the Provincial Court at $110,431. These salaries had previously been set at $128,220, $121,092, and $113,964 by Payment to Provincial Judges Amendment Regulation, Alta. Reg. 171/91. Second, an additional 1.9 percent reduction was achieved through five unpaid days of leave (two unpaid statutory holidays and three unpaid work days). Unfortunately, we have not been pointed to the legal instrument through which those days of leave were imposed on members of the Provincial Court. I can only assume that these days of leave were achieved pursuant to s. 17(1)(d)(iii) of the Provincial Court Judges Act, which authorizes the Lieutenant Governor in Council to provide for leaves of absence.

219 The absence of an independent, effective, and objective procedure for reviewing a government proposal to reduce judicial salaries in Alberta, which is what s. 11(d)'s guarantee of judicial independence requires, means that the salary reduction in Alberta is unconstitutional. However, if in the future, after Alberta establishes a salary commission, that commission were to issue a report with recommendations which the provincial legislature declined to follow, a salary reduction such as the impugned one would probably be prima facie rational because it would be part of an overall economic measure which reduces the salaries of all persons who are remunerated by public funds.

220 The parties to this appeal engaged in a debate over how widespread and how uniform the salary reductions in the Alberta public sector were. To buttress their respective arguments, they attempted to adduce extrinsic evidence which had not been adduced in the courts below. We denied the motions to introduce this evidence, because the establishment of a factual record is a matter for trial courts, not courts of appeal. Moreover, nothing turns on this question, because we are not issuing judgment on the rationality of the salary reduction. For present purposes, it is sufficient to note that the trial judge

proceeded on the basis that the salary reductions did apply across the public sector. Accordingly, the salary reduction in Alberta would likely have been prima facie rational. However, in the absence of a complete factual record, for the purposes of this illustration, I would be unable to reach the ultimate conclusion that there was a reasonable factual foundation for the government's claim, and hence that the pay reduction was in fact rational.

(c) Miscellaneous Provisions

221 The respondents and interveners raised a number of objections to the scheme governing the remuneration of judges of the Alberta Provincial Court, which I shall now consider. Several of them centred on the permissive language in s. 17(1) of the Provincial Court Judges Act, which provides that the Lieutenant Governor in Council "may" set judicial salaries. The respondents submit that s. 17(1) violates s. 11(d) of the Charter because, on its plain language, it does not require the government to fix salaries and pensions. Applying the standard of the reasonable and informed person, the respondents argue that the permissive language of s. 17(1) creates a perception of a lack of judicial independence, because the independence of Provincial Court judges is not guaranteed by "objective conditions or guarantees" (Valente, supra, at p. 685).

222 What these arguments implicate are the requirements for individual financial security. As I stated above, Valente laid down two requirements: that salaries be established by law, and that they not be subject to arbitrary or discretionary interference by the executive. The appellant argues that both of these conditions are met by s. 1 of the Payment to Provincial Judges Amendment Regulation, Alta. Reg. 116/94, which provides that judges "shall" be paid specified salaries. I agree that the regulation complies with the requirements for individual financial security. However, s. 17(1) of the Act does not. Its principal defect is the failure to lay down in mandatory terms that Provincial Court judges shall be provided with salaries.

223 The intervener Alberta Provincial Judges' Association raises a different issue -- the pension scheme for Alberta Provincial Court judges. Its submissions are somewhat unclear, but in the end, appear to assert that numerous changes to the operation of the pension plan demonstrate the "financial vulnerability of the judiciary". However, this analysis relies entirely on extrinsic evidence which was not accepted by this Court. As a result, I can do no more than agree with the trial judge, who found that there was insufficient evidence before him to properly consider whether the pension scheme complied with s. 11(d) of the Charter.

(3) Manitoba

(a) Bill 22 and the Salary Reduction

224 Finally, I turn to the salary reduction in Manitoba. I find that this salary reduction violates s. 11(d), because the salaries were reduced without the use of an independent, effective, and objective commission process for determining judicial salaries. Unlike in Alberta and P.E.I., where no such process existed, Manitoba had created a salary

commission, the Judicial Compensation Committee ("JCC"). The unconstitutionality of the salary reduction in that province arises from the fact that the government ignored the JCC process.

225 The remuneration of the judges of the Manitoba Provincial Court was reduced by Bill 22. Section 9(1) of Bill 22 provided that:

> 9(1) The amount that would otherwise be paid to every person who receives remuneration as a judge of The Provincial Court... shall be reduced
>
> (a) for the period commencing on April 1, 1993 and ending on March 31, 1994, by 3.8%; and
> (b) for the period commencing on April 1, 1994 and ending on March 31, 1995, by an amount that is generally equivalent to the amount by which the wages of employees under a collective agreement with Her Majesty in right of Manitoba are reduced in the same period as a result of a requirement to take days or portions of days of leave without pay in that period. [Emphasis added.]

On a plain reading of s. 9(1), it is clear that the pay reduction for Provincial Court judges was mandatory for the 1993-94 fiscal year, and perhaps for the 1994-95 year, depending on the outcome of public sector collective bargaining.

226 Bill 22 imposed a salary reduction on members of the Manitoba Provincial Court. It was therefore necessary for the government to have prior recourse to an independent salary commission, which would have reported on the proposed reduction, before that legislation was enacted. Such a body already existed in Manitoba -- the JCC. The JCC is a statutory body, created by s. 11.1 of The Provincial Court Act. As the trial judge noted, s. 11.1 was enacted in partial response to the recommendation of the Manitoba Law Reform Commission, supra, chapter 4. The Commission expressed its concern with the setting of judicial remuneration by order in council, because it created the perception of a dependent relationship between the executive and the judiciary. It recommended the creation of an independent committee for determining judicial remuneration, operating according to the negative resolution procedure I described earlier. The Manitoba legislation, however, only empowers the independent committee to make non-binding recommendations to the legislature.

227 Section 11.1 lays down the membership and powers of the JCC. There are three members, all appointed by the Lieutenant Governor in Council. Two members are designated by the responsible Minister, and the remaining member is designated by the judges of the Manitoba Provincial Court (s. 11.1(2)). The Lieutenant Governor in Council appoints one of these three to be the chair (s. 11.1(2)). The term of office is two years (s. 11.1(1)). Once appointed, the JCC is charged with the mandate of reviewing and issuing a report to the Minister on the salaries and benefits payable to judges, including pensions, vacations, sick leave, travel expenses and allowances (s. 11.1(1)). Once this report is

submitted, it must be tabled by the Minister before the provincial legislature within 30 days if the legislature is in session, or within 30 days of the legislature commencing a new session (s. 11.1(4)). Within 30 days of being tabled, the report must be referred to a standing committee of the legislature, which in turn must report back on the recommendations of the JCC within 60 days (s. 11.1(5)). It is then left to the legislature to determine whether it will accept the report of the standing committee (s. 11.1(6)). If the legislature adopts that report, all acts, regulations, and administrative practices are deemed to be amended as necessary to implement the report (s. 11.1(6)).

228 The evidence presented by the parties indicates that there have been two JCC's since s. 11.1 was added to The Provincial Court Act in 1990. In the same year, the first JCC was appointed by order in council (895/90). It held public hearings in January 1991, and issued its report in June 1991. That report was eventually laid before the legislature, which in turn referred it to a standing committee. The standing committee's report was adopted by the legislature on June 24, 1992. The report incorporated the recommendations of the JCC with respect to changes in judicial remuneration. It provided for a 3 percent increase for Manitoba Provincial Court judges effective April 3, 1993.

229 The first JCC seems to have operated in the manner envisioned by The Provincial Court Act -- changes were made to judicial remuneration after the JCC had issued its report, which was duly considered by a committee of the legislature. However, the problem in this appeal is that Bill 22 displaced the operation of the second JCC. As required by s. 11.1(1), a new JCC was appointed in October 1992, pursuant to an order in council (865/92). The second JCC received submissions from both the Provincial Court judges and the government in May 1993. However, before the JCC had convened or issued its report, the legislature enacted Bill 22 on July 27, 1993. The salaries of Manitoba Provincial Court judges were altered by s. 9 of the Bill, which I have cited above.

230 There was considerable debate among the parties over the interaction between s. 9 of Bill 22 and the JCC. The appellants argued that the JCC had constitutional status, and that Bill 22 violated s. 11(d) because it suspended the operation of the JCC and had therefore "effective[ly] repeal[ed] s. 11.1". In particular, they drew attention to the fact that Bill 22 changed salaries for a period of time (April 1, 1993 to March 31, 1994) which had been the object of a JCC report that had already been accepted by the legislature.

231 The respondent, in addition to rejecting the submission that the JCC had any constitutional status, placed a great deal of weight on the argument that there was in fact no conflict between Bill 22 and the continued operation of the JCC. Not only did Bill 22 not preclude the operation of the JCC; it in fact allowed for that process to continue. The respondent draws support for its submission from the wording of s. 9(1) of Bill 22, which provides that the 3.8 percent reduction is to apply to "[t]he amount that would otherwise be paid" (emphasis added). This language, it is said, was apparently intended to permit the continued operation of the JCC, which could have recommended increases to judges' salaries; these recommendations in turn, could have been accepted by the legislature.

232 I reject the submission of the respondent on this point. Bill 22 is constitutionally defective in two respects. First, s. 9(1)(a) reduced the salary for the 1993-94 financial year

which had been set by the legislature on the basis of the previous JCC's recommendation without further recourse to that body. Second, s. 9(1)(b) effectively precluded the future involvement of the JCC, at least for the 1994-95 financial year.

233 I first consider s. 9(1)(a). That provision reduced the salaries that the judges would have otherwise received commencing April 1, 1993 by 3.8 percent, for the 1993-94 year. The base salary to which the 3.8 percent reduction applied was the salary arrived at as a result of the report of the first JCC; this is the significance of the words "would otherwise be paid" in s. 9(1). What is important is that this reduction was imposed without the benefit of a report from the second JCC, which had been constituted at the time. In fact, the second JCC was left out of the process entirely. Section 11(d) of the Charter requires that that change only be made after the report of an independent salary commission. The circumvention of the JCC by the province therefore violated an essential procedural requirement of the collective or institutional guarantee of financial security.

234 Moreover, I do not accept that s. 9(1)(b) of Bill 22 accommodated the possibility of a report from another JCC for a further salary increase, which the legislature could then accept, for 1994-95. The respondent's argument has theoretical appeal. However, that appeal is just that -- theoretical. It ignores the simple political reality that s. 11.1 of The Provincial Court Act leaves the ultimate decision on judicial remuneration with the provincial legislature, the same body that enacted Bill 22. It is exceedingly unlikely that the same legislature which sought to reduce judges' salaries in 1994-95 by enacting s. 9(1)(b) would then turn around and approve a JCC report which would potentially recommend increases to judges' salaries.

235 Finally, I consider whether the economic circumstances facing Manitoba were sufficiently serious to warrant the reduction of judges' salaries without recourse to the JCC. Scollin J. held, at trial, that there was an economic emergency in Manitoba. However, he defined (at p. 77) an economic emergency in much broader terms than I have above, as a situation

> [w]here, in the judgment of the Government, fiscal demands on the public treasury can be met only by immediate but determinate restraints on the Government's own spending....

By contrast, I have defined an economic emergency as a dire and exceptional situation precipitated by unusual circumstances, for example, such as the outbreak of war or pending bankruptcy. Although Manitoba may have faced serious economic difficulties in the time period preceding the enactment of Bill 22, the evidence tendered by the government does not establish that Manitoba faced sufficiently dire and exceptional circumstances to warrant the suspension of the involvement of the JCC.

236 In conclusion, the salary reduction imposed by s. 9(1) of Bill 22 violated s. 11(d) of the Charter, because the government failed to respect the independent, effective, and objective process for setting judicial remuneration which was already operating in Manitoba. The appellants also submitted that Bill 22 was unconstitutional because it discriminated against members of the judiciary. The provisions governing salary reductions

for the judiciary, they note, are mandatory; s. 9 provides that judges' salaries "shall" be reduced. By contrast, s. 4, which governs persons employed in the broader public sector, is framed in permissive terms. It provides that public sector employers "may" require their employers to take up to 15 days of unpaid leave.

237 I decline to consider these submissions, because they go to the question of whether the government would have been justified in enacting legislation with terms identical to Bill 22 in rejection of the report of the JCC. Unlike cuts such as those in P.E.I. and Alberta, whose prima facie rationality is evident on their face because they apply across-the-board, the differential treatment of judges under Bill 22 is a matter better left, in its entirety, for future litigation, because the factual issues involved are by definition more complex. I note in passing, though, that s. 11(d) allows for differential treatment of judges, and hence does not require that mandatory salary reductions for judges be accompanied by salary reductions for absolutely every person who is paid from the public purse. It may be necessary to adopt different arrangements for different groups of persons, depending on the nature of the employment relationship they have with the government.

(b) The Conduct of the Executive in Manitoba

238 I now turn to the highly inappropriate conduct of the Manitoba provincial government, in the time period following the implementation of the salary reductions in that province. This conduct represents either an ignorance of, or a complete disrespect for judicial independence.

239 Earlier on in these reasons, I stated why it was improper for governments and the judiciary to engage in salary negotiations. The separation of powers demands that the relationship between the judiciary and the other branches be depoliticized. Moreover, remuneration from the public purse is an inherently political issue. It follows that judges should not negotiate changes in remuneration with executives and legislatures, because they would be engaging in political activity if they were to do so. Moreover, salary negotiations would undermine the appearance of independence, because those negotiations would bring with them a whole set of expectations about the behaviour of the parties to those negotiations which are inimical to judicial independence.

240 Salary negotiations between judges and the executive and legislature are clearly unacceptable. However, the record before this Court indicates that the Government of Manitoba initiated negotiations with the Manitoba Provincial Judges Association, and furthermore that those negotiations had the express purpose of setting salaries without recourse to the JCC. The first piece of documentary evidence is a letter from Chief Judge Webster to judges of the Manitoba Provincial Court, dated March 11, 1994. That letter describes an offer from the Minister of Justice for a salary increase of 2.3 percent. The letter also quotes the Minister as having made the offer "[o]n the condition that the Judicial Compensation Committee hearings do not proceed".

241 The President of the Manitoba Provincial Judges Association instructed counsel to accept the offer on March 31, 1994. This letter confirms that negotiations were to replace the JCC as the means whereby salaries were set. There seems to have been the

expectation that the JCC would merely rubber-stamp the salary increase negotiated by the parties:

> The judges agree that this acceptance of this offer requires a joint recommendation to the Judicial Compensation Committee which ought to proceed forthwith and really without any hearing. It is also expected that the Compensation Committee will recommend to the Legislature adoption of the joint recommendation without further comment.

Alternatively, the Association also seems to have thought that the JCC would not convene at all. In a letter dated March 31, 1994, counsel for the Association informed counsel for the government that the judges accepted the offer "[subject to] the condition that the Judicial Compensation Committee hearings do not proceed". A few days later, on April 6, 1994, counsel for the Association sent a draft of a joint recommendation to be submitted to the JCC to counsel for the government. It is clear that both parties intended a negotiated salary increase to be an alternative to proceeding through the JCC.

242 I must confess that I am somewhat disturbed by this course of events, because it creates the impression that the Manitoba Provincial Judges Association was a willing participant in these negotiations, and thus compromised its own independence. If the Association had acted in this manner, its conduct would have been highly problematic. However, the surrounding circumstances have led me to conclude that the Association was effectively coerced into these negotiations. The offer of March 11, 1994 must be viewed against the background of Bill 22. As I mentioned earlier, Bill 22 violated s. 11(d) because it changed judicial remuneration without first proceeding through the JCC, and because it effectively precluded the future operation of the JCC for the 1994-95 financial year. Faced with the prospect of a JCC which was destined to be completely ineffectual, if not inoperative, the Association had little choice but to enter into salary discussions. An indication of the Association's relatively weak position is the fact that they accepted the government's offer without requesting any modifications.

243 That negotiations occurred between the provincial government and the Association, no matter how one-sided, was bad enough. What happened next was even worse, and illustrates why the Constitution must be read to prohibit negotiations between the judiciary and the other branches of government. The government seems to have learned that the Association was considering a constitutional challenge to Bill 22. It then refused to agree to making a joint submission with the Association to the JCC until the Association clarified its intentions regarding potential litigation.

244 Thus, on May 3, 1994, counsel for the government wrote that in light of the Association's failure to give an assurance that it would not be challenging Bill 22, the government "had to reconsider the draft recommendation" in order to clarify that the 2.3 percent increase would be subject to Bill 22. The government then proposed that the Association accept one of two alternative changes to the proposed draft recommendation to address its concerns. The Association accepted one of these changes on May 4, 1994, but made it clear that it wished to treat the joint recommendation and a possible challenge to Bill 22 as separate issues. Counsel for the government then replied, on May 5, 1994,

that the government would not sign the joint recommendation unless it received "a clear and unequivocal statement" of the Association's intentions with regard to Bill 22. The clear implication of this letter, as of a letter sent by counsel for the government on May 19, 1994, was that the government would not proceed with the joint recommendation unless the Association agreed to forego litigation on Bill 22. No such assurance was given, and the joint recommendation was never made.

245 The overall picture which emerges is that the Government of Manitoba initiated negotiations with the Manitoba Provincial Judges Association, the purpose of which was to set salaries without recourse to the independent, effective, and objective process centred on the JCC. Moreover, when the judges would not grant the government an assurance that they would not launch a constitutional challenge to Bill 22, the government threatened to abandon the joint recommendation.

246 The facts of this appeal vividly illustrate why salary negotiations between the judiciary and the other branches of government are unconstitutional. Negotiations force the organs of government to engage in conduct which is inconsistent with the character of the relationship between them. For example, the Manitoba government relied on pressure tactics of the sort which are characteristic of salary negotiations. Those tactics created an atmosphere of acrimony and discord, and were intended to induce a concession from the judiciary. Alternatively, the judiciary may have responded with a pressure tactic of its own. The expectations of give and take, and of threat and counter-threat, are fundamentally at odds with judicial independence. They raise the prospect that the courts will be perceived as having altered the manner in which they adjudicate cases, and the extent to which they will protect and enforce the Constitution, as part of the process of securing the level of remuneration they consider appropriate. In this light, the conduct of the Manitoba government was unacceptable.

V. Other Issues Raised in These Appeals

247 As I mentioned earlier, the issue which unites these appeals is whether and how s. 11(d)'s guarantee of judicial independence restricts and manner and extent by and to which provincial governments and legislatures can reduce the salaries of provincial court judges. This is a question of financial security. However, each of these appeals also implicates the other two aspects of judicial independence, security of tenure and administrative independence, to which I will now turn.

A. Prince Edward Island

(1) Security of Tenure

248 The appellants direct their submissions at the alleged lack of security of tenure created by s. 10 of the Provincial Court Act, as it stood at the time of the reference to the court below. They argue that the provision is constitutionally deficient in two respects: first, it permits the executive to suspend a judge if it has reason to believe that a judge is guilty of misbehaviour, or is unable to perform his or her duties properly, without requiring

probable cause, and second, it is possible to remove judges without a prior inquiry. For these reasons, they submit that questions 1 and 2(c) of the Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island should be answered in the negative.

249 These arguments have been rendered moot by repeal and replacement of s. 10 by the Provincial Affairs and Attorney General (Miscellaneous Amendments) Act, S.P.E.I. 1995, c. 32. The amended legislation now requires that there be an inquiry in every case by a judge of the P.E.I. Supreme Court (s. 10(1)), that the judge whose conduct is being investigated be given notice of the hearing and a full opportunity to be heard (s. 10(3)), and that a finding of misbehaviour or inability to perform one's duties be a precondition to any recommendation for disciplinary measures. Because there will now always be a judicial inquiry before the removal of a judge, and because that removal must be based on actual cause, the new legislation meets the standard set down by Valente. It is unnecessary to consider the constitutionality of the former provisions.

250 Finally, I turn to question 2 of Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island, which purports to raise a series of questions about security of tenure. Aside from question 2(c), which addresses the provisions I have just described, the rest of these questions raise issues which fall outside the ambit of security of tenure. Since the sole focus of question 2 is security of tenure, whatever other aspects of judicial independence those questions might touch on is irrelevant for the purpose of answering that question. However, to some extent, questions 2(a) and (f) (pensions), questions 2(b) and (g) (the remuneration of Provincial Court judges), and questions 2(d) and (e) (discretionary benefits), which all touch on financial security, are dealt with by the various parts of question 4.

(2) Administrative Independence

251 The administrative independence of the P.E.I. Provincial Court was the subject of question 3 of the Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island. The appellants also raised in question 5, the residual question, a concern about administrative independence which was not addressed by the specific parts of question 3. To frame the analysis which follows, I will begin by recalling the meaning given to administrative independence in Valente. The Court defined administrative independence in rather narrow terms, at p. 712, as "[t]he essentials of institutional independence which may be reasonably perceived as sufficient for purposes of s. 11(d)". That essential minimum was defined (at p. 709) as control by the judiciary over

> assignment of judges, sittings of the court, and court lists -- as well as the related matters of allocation of court rooms and direction of the administrative staff engaged in carrying out these functions....

These matters "bear directly and immediately on the exercise of the judicial function" (p. 712). Le Dain J. took pains to contrast the scope of s. 11(d) with claims for an increased measure of autonomy for the courts over financial and personnel aspects of administration.

Although Le Dain J. may have been sympathetic to judicial control over these aspects of administration, he clearly held that they were not within the ambit of s. 11(d), because they were not essential for judicial independence, at pp. 711-12:

> Although the increased measure of administrative autonomy or independence that is being recommended for the courts, or some degree of it, may well be highly desirable, it cannot in my opinion be regarded as essential for purposes of s. 11(d) of the Charter.

It is against this background that I analyse these questions.

252 I first address question 3. Question 3(a) asks whether the location of the P.E.I. Provincial Court with respect to the offices, inter alia, of Legal Aid, Crown Attorneys and representatives of the Attorney General undermines the administrative independence of the Provincial Court. These entities and departments are part of the executive, from which the judiciary must remain independent, but are located in the same building as the Provincial Court. The concern underlying this question is that this physical proximity may somehow undermine judicial independence. The statement of facts appended to the Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island, however, shows that these fears are unfounded, because the Provincial Court's offices are "separate and apart" from the other offices in the building. I therefore find that the location of the P.E.I. Provincial Court does not violate s. 11(d).

253 Question 3(b) asks whether it is a violation of s. 11(d) for P.E.I. Provincial Court judges not to administer their own budget. It is clear from Valente that while it may be desirable for the judiciary to have control over the various aspects of financial administration, such as "budgetary preparation and presentation and allocation of expenditure" (pp. 709-10), these matters do not fall within the scope of administrative independence, because they do not bear directly and immediately on the exercise of the judicial function. I therefore conclude that it does not violate s. 11(d) for judges of the P.E.I. Provincial Court not to administer their own budget.

254 Question 3(c) asks whether "the designation of a place of residence of a particular Provincial Court Judge" undermines the administrative independence of the judiciary. Although the question does not refer to specific provisions of the Provincial Court Act, it seems that the relevant section is s. 4. Section 4(1)(b) authorizes the Chief Judge to "designate a particular geographical area in respect of which a particular judge shall act". Furthermore, under s. 4(2), "[w]here the residence of a judge has been established for the purpose of servicing a particular geographical area pursuant to clause (1)(b), that residence shall not be changed except with the consent of the judge".

255 Section 4 is constitutionally sound. Upon the appointment of a judge to the Provincial Court, it is necessary that he or she be assigned to a particular area. Furthermore, the stipulation that the residence of a sitting judge only be changed with that judge's consent is a sufficient protection against executive interference.

256 Question 3(d) asks if communications between a judge of the P.E.I. Provincial Court

and the executive on issues relating to the administration of justice undermine the administrative independence of the judiciary. I decline to answer this question, because it is too vague -- it does not offer sufficient detail on the subject-matter of the communication. However, I do wish to note that the separation of powers, which s. 11(d) protects, does not prevent the different branches of government from communicating with each other. This was acknowledged in the Court of Appeal's judgment in Valente, supra, at p. 433, in a passage which was cited with approval by Le Dain J. at p. 709:

> The heads of the judiciary have to work closely with the representatives of the Executive unless the judiciary is given full responsibility for judicial administration.

257 Question 3(e) asks whether the vacancy in the position of the Chief Judge undermines the administrative independence of the P.E.I. Provincial Court. The statement of facts does not refer to a vacancy in this position, although it appears that Chief Judge Plamondon resigned on November 2, 1994, in connection with the dispute which led to this litigation. Nor does the statement of facts provide any detail on who was exercising the functions of the Chief Judge after he had resigned. The appellants contend that the Attorney General assumed the duties of the Chief Judge, whereas the respondent states that the duties of the Chief Judge were carried out by Provincial Court judges. In the absence of sufficient information, I decline to answer this question.

258 Question 3(f) asks whether the decision of the Attorney General both to decline to fund and to oppose an application to fund legal counsel for the Chief Judge and judges of the P.E.I. Provincial Court as interveners in the Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island violated the administrative independence of the court. It did not. As I stated above, the administrative independence of the judiciary encompasses control over those matters which "bear directly and immediately on the exercise of the judicial function". I do not see how the receipt of legal aid funding for judges to intervene in a court case furthers this purpose.

259 In contrast to the specific issues raised in question 3, the argument advanced under question 5 is much more substantive. The appellants allege that s. 17 of the Provincial Court Act authorizes serious intrusions into the administrative independence of the P.E.I. Provincial Court. I set out that provision in full:

> 17. The Lieutenant Governor in Council may make regulations for the better carrying out of the intent and purpose of this Act, and without limiting the generality thereof, may make regulations
>
> (a) respecting inquiries and the form and content of reports under section 10;
> (b) respecting the duties and powers of the Chief Judge;
> (c) respecting rules of court governing the operation and conduct of a court presided over by a judge or by a justice of the peace; and
> (d) respecting the qualifications, duties, responsibilities and jurisdiction

of justices of the peace.

The appellants attack s. 17(b), (c), and (d). The first thing to note is that s. 17(d) is irrelevant to this appeal, because the Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island is confined to the independence of judges of the P.E.I. Provincial Court, and does not touch on justices of the peace. However, that aside, parss. 17(b) and (c) of s. 17 do appear to give broad regulatory power to the executive with respect to matters that might fall within the ambit of administrative independence.

260 However, s. 17 has to be read subject to s. 4(1), which confers broad administrative powers on the Chief Judge:

> 4. (1) The Chief Judge has the power and duty to administer the provincial court, including the power and duty to
>
> (a) designate a particular case or other matter or class of cases or matters in respect of which a particular judge shall act;
> (b) designate a particular geographical area in respect of which a particular judge shall act;
> (c) designate which court facilities shall be used by particular judges;
> (d) assign duties to judges.

The matters over which the Chief Judge is given power by s. 4(1) are almost identical to the list of matters which Le Dain J. held, in Valente, to constitute administrative independence: the assignment of judges, sittings of the court and court lists, the allocation of courtrooms, and the direction of administrative staff carrying out these functions. Section 4(1) therefore vests with the P.E.I. Provincial Court, in the person of the Chief Judge, control over decisions which touch on its administrative independence. In light of the broad provisions of s. 4(1), I see no problem with s. 17.

261 I hasten to add that by regarding the powers of the Chief Judge under s. 4(1) as a guarantee of the collective or institutional administrative independence of the P.E.I. Provincial Court as a whole, I do not suggest that the Chief Judge can in all circumstances make administrative decisions for the entire court. For reasons that I develop below, there are limits to the Chief Judge's ability to make such decisions on behalf of his or her colleagues.

B. Alberta

(1) Security of Tenure

262 The trial judge found two sets of provisions of the Provincial Court Judges Act to violate s. 11(d) for failing to adequately protect security of tenure. He held that the presence of non-judges on the Judicial Council, the body with the power to receive and

investigate complaints against members of the Alberta Provincial Court, violated s. 11(d) because Valente had held that judges could only be removed after a "judicial inquiry". As a result, he declared ss. 11(1)(c) and 11(2) of the Act, which empower the Council to investigate complaints, make recommendations to the Minister of Justice and Attorney General, and refer complaints to the Chief Judge of the Court or a committee of the Judicial Council for inquiry and report, to be of no force or effect. As well, he held that use of "lack of competence" and "conduct" as grounds of removal in s. 11(1)(b) of the Act also violated s. 11(d) of the Charter, because those grounds were unconstitutionally broad, and declared that provision to be of no force or effect.

263 The parties made submissions on both of these sets of provisions before this Court. However, we need not consider the merits of their arguments, because the constitutionality of those provisions was not properly before the trial judge. The respondents did not raise the constitutionality of these provisions at trial. Rather, as the trial judge conceded, they only sought remedies against provisions in the Provincial Court Judges Act governing the removal of supernumerary judges. Nevertheless, without the benefit of submissions, and without giving the required notice to the Attorney General for Alberta under s. 25 of the Judicature Act, R.S.A. 1980, c. J-1, the trial judge held (at p. 160) that he was

> at liberty to decide generally (and not limited to supernumerary judges) whether the statutory removal procedure fails to satisfy the security of tenure condition which is guaranteed by s. 11(d).

264 With respect, I cannot agree. It was not appropriate for the trial judge to proceed on his own motion to consider the constitutionality of these provisions, let alone make declarations of invalidity. As I will indicate at the conclusion of this judgment, this part of his reasons cannot stand.

(2) Administrative Independence

265 However, I do agree with the trial judge's holdings that ss. 13(1)(a) and 13(1)(b) of the Provincial Court Judges Act are unconstitutional. Both of these provisions confer powers on the Attorney General and Minister of Justice (or a person authorized by him or her) to make decisions which infringe upon the administrative independence of the Alberta Provincial Court.

266 Section 13(1)(a) confers the power to "designate the place at which a judge shall have his residence". Counsel for the appellant rightly points out that it is reasonable (although not necessary) to vest responsibility for designating the residence of judges with the executive, because that decision concerns the proper allocation of court resources. However, my concern is that, as it is presently worded, s. 13(1)(a) creates the reasonable apprehension that it could be used to punish judges whose decisions do not favour the government, or alternatively, to favour judges whose decisions benefit the government. Section 13(1)(a)'s constitutional defect lies in the fact that it is not limited to the initial appointment of judges. The appellant tried to demonstrate that s. 13(1)(a), when properly interpreted, was so confined. However, the words of the provision are not qualified in the manner in which the appellant suggests. Section 13(1)(a) authorizes the Minister of Justice

and the Attorney General to designate a judge's place of residence at any time, including his initial appointment or afterward. It therefore violates s. 11(d) of the Charter.

267 Section 13(1)(b) is also unconstitutional. It confers the power to "designate the day or days on which the Court shall hold sittings". This provision violates s. 11(d) because it flies in the face of explicit language in Valente, supra, at p. 709, which held that the administrative independence of the judiciary, encompasses, inter alia, "sittings of the court".

268 I do, however, wish to make one further comment in respect of this issue. The strongest argument made by the appellant in favour of the constitutionality of s. 13(1)(b) is that giving the executive control over sitting days enables the executive to give specific dates to defendants for their first appearance in criminal proceedings. The implication of this argument is that judicial control of the dates of court sittings would preclude the establishment of a system to inform defendants when they must first appear. This argument, however, is incorrect, because it ignores the fact that the courts can and should coordinate their sitting days with the relevant government authorities.

C. Manitoba: The Closing of the Provincial Court

269 One of the issues raised at trial in the Manitoba case, and pursued on appeal, is whether the Government of Manitoba infringed the administrative independence of the Manitoba Provincial Court by effectively shutting down those courts on a number of days known as "Filmon Fridays". The trial judge made a specific finding of fact that control over sitting days had remained with the judiciary, largely because the Chief Judge had been consulted on the withdrawal of court staff, and because the government had assured the Chief Judge that had she decided that the Provincial Court would remain open on those days, adequate staff would have been provided.

270 However, a careful perusal of the record has led me to conclude that Scollin J. made an overriding and palpable error in making this factual finding. The record shows that the government effectively shut down the Manitoba Provincial Court by ordering the withdrawal of court staff several days before the Chief Judge announced the closing of the Manitoba Provincial Court. As well, the government also shut down the courts by rescheduling trials involving accused persons who had already been remanded by the court. These acts constituted a violation of the administrative independence of the Manitoba Provincial Court. Moreover, even if Scollin J. were correct in finding that the Chief Judge had retained control throughout, I would nevertheless find that there had been a violation of s. 11(d), because it was not within her constitutional authority unilaterally to shut down the Manitoba Provincial Court.

271 The chronology of events illustrates how it was the executive, not the judiciary, that shut down the Manitoba Provincial Court. Bill 22 was enacted on July 27, 1993. Section 4 of the Bill conferred the power on public sector employers, including the province of Manitoba, to require employees to take days of leave without pay. It appears that the government used s. 4 to order its employees to take 10 unpaid days of leave in 1993, and on these days, the Provincial Court of Manitoba, with the exception of one adult custody

docket court and one youth custody docket court, was closed down.

272 However, the events which concern me here transpired in the spring of 1994. On March 1, 1994, letters were sent from the Manitoba Civil Service Commission to the Crown Attorneys of Manitoba Association, the Legal Aid Lawyers' Association, and the Manitoba Government Employees' Union. These letters gave these groups notice that they would be required to take 10 unpaid days of leave, pursuant to Bill 22. The dates for the unpaid days of leave were announced by the Assistant Deputy Minister, Marvin Bruce, on March 24, 1994:

> 2. Office closures will be on 7 Fridays in the summer months commencing July 8, 1994 to and including August 19, 1994 and 3 days during Christmas time, that is, December 28, 29 and 30th, 1994.

Almost two weeks passed before a memorandum was sent from Chief Judge Webster to all members of the Manitoba Provincial Court on April 6, 1994. Her memorandum states in full:

> Further to my memo of March 24th, the following 10 days have been designated as reduced work week days:
>
> July 8, 15, 22, 29; August 5, 12, 19; December 28, 29, 30.
>
> During the 10 days on which the government offices are closed ALL PROVINCIAL COURTS will be closed with the exception of the two custody courts:
>
> -One at 408 York
> -One at the Manitoba Youth Centre.
>
> (Signature)

The days on which the Provincial Court were closed was identical to the days on which the Manitoba government required its employees to take unpaid days of leave.

273 These facts clearly demonstrate that the decision to withdraw court staff was taken almost two weeks before the Chief Judge ordered the closure of the Manitoba Provincial Court. As well, the court was closed on the same days as the unpaid days of leave for court staff. Moreover, it is the uncontroverted evidence of Judge Linda Giesbrecht, which was presented at trial, that the Manitoba Provincial Court could not function "without the assistance and presence of Courts' staff including Court clerks, Crown Attorneys, Legal Aid lawyers and Sheriff's officers and other administrative personnel". The only conclusion I can draw is that the government, through its decision of March 24, 1994, effectively

forced Chief Judge Webster to close the Manitoba Provincial Court by her decision of April 6, 1994.

274 I reject the argument that the government would have provided the necessary staff to keep the Manitoba Provincial Court open if the Chief Judge had so requested. Although it had apparently made this offer in conversations with the Chief Judge before the closure was announced, the letter from Marvin Bruce announcing the dates of closure makes no reference to the possibility of staff being required on days designated as unpaid days of leave. Moreover, this conclusion is strengthened by the fact that Crown attorneys rescheduled trials that were set to be held on "Filmon Fridays" before Chief Judge Webster announced the closure of the Manitoba Provincial Court. In particular, the record indicates that on March 22, 1994, a trial scheduled for Friday, July 8, 1994, was moved to September 28, 1994, on the motion of a Crown attorney.

275 Even if the trial judge had been right to conclude that the Chief Judge retained control over the decision to close the Manitoba Provincial Court throughout, there would nevertheless have been a violation of s. 11(d), because the Chief Judge would have exceeded her constitutional authority when she made that decision. As this Court held in Valente, control over the sittings of the court falls within the administrative independence of the judiciary. And as I indicated above, administrative independence is a characteristic of judicial independence which normally has a collective or institutional dimension. It attaches to the court as a whole. Although certain decisions may be exercised on behalf of the judiciary by the Chief Judge, it is important to remember that the Chief Judge is no more than "primus inter pares": Ruffo v. Conseil de la magistrature, [1995] 4 S.C.R. 267, at para. 59. Important decisions regarding administrative independence cannot be made by the Chief Judge alone. In my opinion, the decision to close the Manitoba Provincial Court is precisely this kind of decision.

276 In conclusion, the closure of the Manitoba Provincial Court on "Filmon Fridays" violated s. 11(d) of the Charter. Since s. 4 of Bill 22 authorized the withdrawal of court staff on "Filmon Fridays", and hence enabled the government to close the Manitoba Provincial Court on those days, that provision is therefore unconstitutional. It is worth emphasizing that s. 4 cannot be read down in such a precise way so as not to authorize conduct which violates the Charter. Although reading down the impugned legislation to the extent strictly necessary would be the normal solution in a case like this (Slaight Communications Inc. v. Davidson, [1989] 1 S.C.R. 1038), this is very difficult in relation to violations of s. 11(d) because, unlike other Charter provisions, it requires that judicial independence be secured by "objective conditions or guarantees" (Valente, supra, at p. 685). Objective guarantees are the means by which the reasonable perception of independence is secured and, hence, any legislative provision which does not contain those objective guarantees is unconstitutional. In effect, then, to read down the legislation to its proper scope would amount to reading in those objective conditions and guarantees. This would result in a fundamental rewriting of the legislation. On the other hand, if the Court were to strike down the legislation in its entirety, the effect would be to prevent its application to all those employees of the Government of Manitoba who were required to take leave without pay. In the circumstances, the best solution would be to read down the legislation so that it would

simply not apply to government workers employed in the Manitoba Provincial Court. In other words, the provision should be read as exempting provincial court staff from it. This is the remedy that best upholds the Charter values involved and will occasion the lesser intrusion on the role of the legislature. See Osborne v. Canada (Treasury Board), [1991] 2 S.C.R. 69, at p. 105. Accordingly, s. 4 should be read as follows:

> 4(1) Notwithstanding any Act, regulation, collective agreement, employment contract or arrangement, arbitral or other award or decision or any other agreement or arrangement of any kind, an employer may, subject to subsection (2) and the other provisions of this Part, require employees of the employer, except employees of the Provincial Court, to take days or portions of days as leave without pay at any point within a 12-month period authorized in subsection (2), provided that the combined total of days and portions of days required to be taken does not exceed 15 days in the 12-month period for any one employee.

VI. Section 1

277 I must now consider whether any of the violations of s. 11(d) can be justified under s. 1 of the Charter.

A. Prince Edward Island

278 The respondent, the Attorney General of P.E.I., has offered no submissions on the absence of an independent, effective, and objective process to determine judicial salaries. For this reason, I conclude that there are inadequate submissions upon which to base a s. 1 analysis. Since the onus is on the Crown to justify the infringement of Charter rights, the violation of s. 11(d) is not justified under s. 1.

B. Alberta

279 The appellant Attorney General for Alberta has made no submissions on s. 1. Since the onus rests with the Crown under s. 1, I must conclude that the violations of s. 11(d) are not justified.

C. Manitoba

280 The respondent Attorney General of Manitoba has offered brief submissions attempting to justify the infringements of s. 11(d) by Bill 22 under s. 1. However, the respondent has offered no justification whatsoever either for the circumvention of the independent, effective, and objective process for recommending judicial salaries that centres on the JCC before imposing the salary reduction on members of the Manitoba Provincial Court, or for the attempt to engage in salary negotiations with the Provincial Judges Association. Instead, its submissions focussed on the closure of the courts. I therefore have no choice but to conclude that the effective suspension of the operation of the JCC, and the attempted salary negotiations, are not justified under s. 1. Moreover,

since the attempted negotiations were not authorized by a legal rule, be it a statute, a regulation, or a rule of the common law (R. v. Thomsen, [1988] 1 S.C.R. 640, at pp. 650-51), they are incapable of being justified under s. 1 because they are not prescribed by law.

281 The respondent attempted to justify the closure of the Manitoba Provincial Court as a measure designed to reduce the provincial deficit. Thus, it has chosen to characterize this decision as a financial measure. However, this begs the prior question of whether measures whose sole purpose is budgetary can justifiably infringe Charter rights. This Court has already answered this question in the negative, because it has held on previous occasions that budgetary considerations do not count as a pressing and substantial objective for s. 1. In Singh v. Minister of Employment and Immigration, [1985] 1 S.C.R. 177, at p. 218, Wilson J. speaking for the three members of the Court who addressed the Charter (including myself), doubted that "utilitarian consideration[s]... [could] constitute a justification for a limitation on the rights set out in the Charter" (emphasis added). The reason behind Wilson J.'s scepticism was that "the guarantees of the Charter would be illusory if they could be ignored because it was administratively convenient to do so". I agree.

282 I expressed the same view in Schachter v. Canada, [1992] 2 S.C.R. 679, where I spoke for the Court on this point. In Schachter, I clarified that while financial considerations could not be used to justify the infringement of Charter rights, they could and should play a role in fashioning an appropriate remedy under s. 52 of the Constitution Act, 1982. As I said at p. 709:

> This Court has held, and rightly so, that budgetary considerations cannot be used to justify a violation under s. 1. However, such considerations are clearly relevant once a violation which does not survive s. 1 has been established, s. 52 is determined to have been engaged and the Court turns its attention to what action should be taken thereunder. [Emphasis added.]

283 While purely financial considerations are not sufficient to justify the infringement of Charter rights, they are relevant to determining the standard of deference for the test of minimal impairment when reviewing legislation which is enacted for a purpose which is not financial. Thus, in Irwin Toy Ltd. v. Quebec (Attorney General), [1989] 1 S.C.R. 927, at p. 994, the Court stated that "the distribution of scarce government resources" was a reason to relax the strict approach to minimal impairment taken in R. v. Oakes, [1986] 1 S.C.R. 103; the impugned legislation was aimed at the protection of children. In McKinney v. University of Guelph, [1990] 3 S.C.R. 229, where the issue was the constitutionality of a provision in provincial human rights legislation, La Forest J. stated at p. 288 that "the proper distribution of scarce resources must be weighed in a s. 1 analysis". Finally, in Egan v. Canada, [1995] 2 S.C.R. 513, where a scheme for pension benefits was under attack, Sopinka J. stated at para. 104 that

> government must be accorded some flexibility in extending social benefits.... It is not realistic for the Court to assume that there are

unlimited funds to address the needs of all.

284 Three main principles emerge from this discussion. First, a measure whose sole purpose is financial, and which infringes Charter rights, can never be justified under s. 1 (Singh and Schachter). Second, financial considerations are relevant to tailoring the standard of review under minimal impairment (Irwin Toy, McKinney and Egan). Third, financial considerations are relevant to the exercise of the court's remedial discretion, when s. 52 is engaged (Schachter).

285 In this appeal, the Manitoba government has attempted to justify the closure of the Manitoba Provincial Court solely on the basis of financial considerations, and for that reason, the closure of the Provincial Court cannot be justified under s. 1. Given this conclusion, it is not necessary for me to consider the parties' submissions on rational connection, minimal impairment, and proportionate effect. Were I to do so, however, I would hold that the closure of the courts did not minimally impair the right to be tried by an impartial and independent tribunal, because it had the effect of absolutely denying access to the courts for the days on which they were closed.

VII. The Remarks of Premier Klein

286 On a final note, I have decided not to comment on the remarks made by Premier Klein in the time period following the implementation of the salary reduction in Alberta, except to say that they were unfortunate and reflect a misunderstanding of the theory and practice of judicial independence in Canada. If the Premier had concerns regarding the conduct of a Provincial Court judge, the proper course of action would have been for him to lodge a complaint with the Judicial Council, not to take up the matter himself during a radio interview. I note, and am comforted by the fact, that Premier Klein effectively distanced himself from those remarks later on in a letter he sent to Chief Judge Wachowich of the Alberta Provincial Court, in which he stated that he was "well aware" of the process established to deal with judicial conduct, and that he had "no intention or desire to interfere with that process".

VIII. Summary

287 Given the length and complexity of these reasons, I summarize the major principles governing the collective or institutional dimension of financial security:

1. It is obvious to us that governments are free to reduce, increase, or freeze the salaries of provincial court judges, either as part of an overall economic measure which affects the salaries of all or some persons who are remunerated from public funds, or as part of a measure which is directed at provincial court judges as a class.
2. Provinces are under a constitutional obligation to establish bodies which are independent, effective, and objective, according to the criteria that I have laid down in these reasons. Any changes to or freezes in judicial remuneration require prior recourse to the independent body, which will review the proposed reduction or

increase to, or freeze in, judicial remuneration. Any changes to or freezes in judicial remuneration made without prior recourse to the independent body are unconstitutional.

3. As well, in order to guard against the possibility that government inaction could be used as a means of economic manipulation, by allowing judges' real wages to fall because of inflation, and in order to protect against the possibility that judicial salaries will fall below the adequate minimum guaranteed by judicial independence, the commission must convene if a fixed period of time (e.g. three to five years) has elapsed since its last report, in order to consider the adequacy of judges' salaries in light of the cost of living and other relevant factors.
4. The recommendations of the independent body are non-binding. However, if the executive or legislature chooses to depart from those recommendations, it has to justify its decision according to a standard of simple rationality -- if need be, in a court of law.
5. Under no circumstances is it permissible for the judiciary to engage in negotiations over remuneration with the executive or representatives of the legislature. However, that does not preclude chief justices or judges, or bodies representing judges, from expressing concerns or making representations to governments regarding judicial remuneration.

IX. Conclusion and Disposition

A. Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island and Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island

(1) Answers to Reference Questions (Appendices "A" and "B")

288 The answers to the reference questions are as follows:

(a) Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island

Question 1

(a): No. Without prior recourse to an independent, effective, and objective salary commission, the Legislature of P.E.I. cannot, even as part of an overall public economic measure, decrease, increase, or otherwise adjust the remuneration of Judges of the P.E.I. Provincial Court.

(b): Yes.

Question 2: No.

(b) Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island

Question 1

(a): Yes.
(b): Yes.
(c): No.

Question 2

(a): No.
(b): No.
(c): Since this question has been rendered moot by the amendment of s. 10 of the Provincial Court Act, I decline to answer this question.

(d): No.
(e): No.
(f)
(I): No.
(ii): No.
(iii): No.
(iv): No.
(g): No.

Question 3

(a): No.
(b): No.
(c): No.
(d): This question is too vague to answer.
(e): There is insufficient information to answer this question.
(f): No.
(g): No.

Question 4

(a): Yes. The explanation for this answer is the same as for the answer to question 1(a) of the Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island.

(b): Yes. The explanation for this answer is the same as for the answer to question 1(a) of the Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island.

(c): No.
(d): No. Although salary negotiations are prohibited by s. 11(d), on the facts, no such negotiations took place, and so the independence of the judges of the P.E.I. Provincial Court was not undermined.

(e): Yes. The explanation for this answer is the same as for the answer to question 1(a) of the Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island.

(f): No.
(g): No.
(h)
(I): No.
(ii): No.
(iii): No.
(iv): No.
(I): Yes.
(j): No.
(k): No.
Question 5: No.
Question 6: No.
Question 7: Because I have answered question 6 in the negative, it is not necessary to answer this question.

Question 8: No.

(2) Disposition

289 I would allow the appeals in Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, with respect to questions 1(a) and 2, and in Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island, with respect to questions 1(c), 4(a), (b), (e) and (i), and 8. I would also allow the cross-appeal on question 1(a) of the Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island. I award costs to the appellants throughout.

B. R. v. Campbell, R. v. Ekmecic and R. v. Wickman

(1) Answers to Constitutional Questions (Appendix "C")

290 The answers to the constitutional questions are as follows:

Question 1: Question 2: Question 3:	Yes. Yes. The constitutionality of these provisions was not properly before the Court.
Question 4:	The constitutionality of these provisions was not properly before the Court.

Question 5: Yes.

Question 6: Yes.

Question 7: No.

(2) Disposition

291 I would allow the appeal by the Crown from the decision of the Alberta Court of Appeal that it was without jurisdiction to hear these appeals under s. 784(1) of the Criminal Code. I would also allow the appeal by the Crown from McDonald J.'s holding that ss. 11(1)(c), 11(2) and 11(1)(b) of the Provincial Court Judges Act were unconstitutional. However, I would dismiss the Crown's appeal from McDonald J.'s holdings that the 5 percent pay reduction imposed on members of the Alberta Provincial Court by the Payment to Provincial Judges Amendment Regulation, Alta. Reg. 116/94, and ss. 13(1)(a) and 13(1)(b) of the Provincial Court Judges Act, were unconstitutional. Finally, I would declare s. 17(1) of the Provincial Court Judges Act to be unconstitutional.

292 The Payment to Provincial Judges Amendment Regulation, Alta. Reg. 116/94, is therefore of no force or effect. However, given the institutional burdens that must be met by Alberta, I suspend this declaration of invalidity for a period of one year[2]. I also declare ss. 13(1)(a), 13(1)(b) and 17(1) of the Alberta Provincial Court Judges Act to be of no force or effect. As there were no submissions as to costs, none shall be awarded.

C. Manitoba Provincial Judges Assn. v. Manitoba (Minister of Justice)

(1) Answers to Constitutional Questions (Appendix "D")

293 The answers to the constitutional questions are as follows:

Question 1
(a): Yes.
(b): No.
Question 2
(a): Yes.
(b): No.
Question 3
(a): Yes.
(b): No.

(2) Disposition

294 I would sever the phrase "as a judge of The Provincial Court or" from s. 9 of Bill 22, and would accordingly declare the salary reduction imposed on judges of the Manitoba Provincial Court to be of no force or effect. Even though Bill 22 is no longer in force, that does not affect the fully retroactive nature of this declaration of invalidity. I would also issue mandamus, directing the government to perform its statutory duty, pursuant to s. 11.1(6) of The Provincial Court Act, to implement the report of the standing committee of the provincial legislature which recommended a 3 percent increase to judges' salaries effective April 3, 1993, and which was approved by the provincial legislature on June 24, 1992. If the government wishes to persist in its decision to reduce the salaries of Manitoba Provincial Court judges for the 1993-94 year by 3.8 percent, and for the 1994-95 year by an amount generally equivalent to the amount by which the salaries of employees under a collective agreement with the Crown in right of Manitoba were reduced, it must remand the matter to the JCC. Only after the JCC has issued a report, and the statutory requirements laid down in s. 11.1 of The Provincial Court Act have been complied with, is it constitutionally permissible for the provincial legislature to reduce the salaries of Provincial Court judges as it sought to do through Bill 22. I also issue a declaration that the requirement that the staff of the Provincial Court take unpaid leave and the resulting closure of the Provincial Court during the summer of 1994 on "Filmon Fridays" violated the judicial independence of that court, and direct that s. 4(1) of Bill 22 be read in the way I have described above. Finally, I issue a declaration that the Manitoba government violated the judicial independence of the Provincial Court by attempting to engage in salary negotiations with the Manitoba Provincial Judges Association.

295 I would allow therefore the appeal in Manitoba Provincial Judges Assn. v. Manitoba (Minister of Justice), with respect to the salary reduction imposed on members of the Manitoba Provincial Court, the closure of the Manitoba Provincial Court, and the attempt by the provincial executive to engage in salary negotiations with the judges of the Provincial Court. Costs are awarded to the appellants throughout.

The following are the reasons delivered by

LA FOREST J. (dissenting in part):--

I. Introduction

296 The primary issue raised in these appeals is a narrow one: has the reduction of the salaries of provincial court judges, in the circumstances of each of these cases, so affected the independence of these judges that persons "charged with an offence" before them are deprived of their right to "an independent and impartial tribunal" within the meaning of s. 11(d) of the Canadian Charter of Rights and Freedoms? I have had the advantage of reading the reasons of the Chief Justice who sets forth the facts and history of the litigation. Although I agree with substantial portions of his reasons, I cannot concur with his conclusion that s. 11(d) forbids governments from changing judges' salaries without first having recourse to the "judicial compensation commissions" he describes. Furthermore, I do not believe that s. 11(d) prohibits salary discussions between governments and judges. In my view, reading these requirements into s. 11(d) represents both an unjustified departure from established precedents and a partial usurpation of the provinces' power to set the salaries of inferior court judges pursuant to ss. 92(4) and 92(14) of the Constitution Act, 1867. In addition to these issues, the Chief Justice deals with a number of other questions respecting the independence of provincial court judges that were raised by the parties to these appeals. I agree with his disposition of these issues.

297 But if the Chief Justice and I share a considerable measure of agreement on many of the issues raised by the parties, that cannot be said of his broad assertion concerning the protection provincially appointed judges exercising functions other than criminal jurisdiction are afforded by virtue of the preamble to the Constitution Act, 1867. Indeed I have grave reservations about the Court entering into a discussion of the matter in the present appeals. Only minimal reference was made to it by counsel who essentially argued the issues on the basis of s. 11(d) of the Charter which guarantees that anyone charged with an offence is entitled to a fair hearing by "an independent and impartial tribunal". I observe that this protection afforded in relation to criminal proceedings is expressly provided by the Charter.

298 I add that, in relation to prosecutions for an offence, there are compelling reasons for including this guarantee to supplement the specific constitutional protection for the federally appointed courts set out in ss. 96-100 of the Constitution Act, 1867. Being accused of a crime is one of the most momentous encounters an individual can have with the power of the state. Such persons are the sole beneficiaries of the rights set out in s. 11(d). No explanation is required as to why it is essential that the fate of accused persons be in the hands of independent and impartial adjudicators.

299 Whether, and to what extent, other persons appearing before inferior courts are entitled to such protection is a difficult and open question; one which may have significant implications for the administration of justice throughout the land. Before addressing such an important constitutional issue, it is, in my view, critical to have the benefit of full submissions from counsel.

300 My concern arises out of the nature of judicial power. As I see it, the judiciary derives its public acceptance and its strength from the fact that judges do not initiate recourse to the law. Rather, they respond to grievances raised by those who come before them seeking to have the law applied, listening fairly to the representations of all parties, always subject to the discipline provided by the facts of the case. This sustains their

impartiality and limits their powers. Unlike the other branches of the government, the judicial branch does not initiate matters and has no agenda of its own. Its sole duty is to hear and decide cases on the issues presented to it in accordance with the law and the Constitution. And so it was that Alexander Hamilton referred to the courts as "the least dangerous" branch of government: The Federalist, No. 78.

301 Indeed courts are generally reluctant to comment on matters that are not necessary to decide in order to dispose of the case at hand. This policy is especially apposite in constitutional cases, where the implications of abstract legal conclusions are often unpredictable and can, in retrospect, turn out to be undesirable. After adverting to a number of decisions of this Court endorsing this principle, Sopinka J. stated the following for the majority in Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy), [1995] 2 S.C.R. 97, at para. 9:

> The policy which dictates restraint in constitutional cases is sound. It is based on the realization that unnecessary constitutional pronouncements may prejudice future cases, the implications of which have not been foreseen. Early in this century, Viscount Haldane in John Deere Plow Co. v. Wharton, [1915] A.C. 330, at p. 339, stated that the abstract logical definition of the scope of constitutional provisions is not only "impracticable, but is certain, if attempted, to cause embarrassment and possible injustice in future cases".

See also Attorney General of Quebec v. Cumming, [1978] 2 S.C.R. 605; The Queen in Right of Manitoba v. Air Canada, [1980] 2 S.C.R. 303; Winner v. S.M.T. (Eastern) Ltd., [1951] S.C.R. 887; Law Society of Upper Canada v. Skapinker, [1984] 1 S.C.R. 357. Notably, Sopinka J. uttered this admonition in a case in which the relevant legal issue was fully argued in both this Court and in the court below. The policy of forbearance with respect to extraneous legal issues applies, a fortiori, in a case where only the briefest of allusion to the issue was made by counsel.

302 I am, therefore, deeply concerned that the Court is entering into a debate on this issue without the benefit of substantial argument. I am all the more troubled since the question involves the proper relationship between the political branches of government and the judicial branch, an issue on which judges can hardly be seen to be indifferent, especially as it concerns their own remuneration. In such circumstances, it is absolutely critical for the Court to tread carefully and avoid making far-reaching conclusions that are not necessary to decide the case before it. If the Chief Justice's discussion was of a merely marginal character -- a side-wind so to speak -- I would abstain from commenting on it. After all, it is technically only obiter dicta. Nevertheless, in light of the importance that will necessarily be attached to his lengthy and sustained exegesis, I feel compelled to express my view.

II. The Effect of the Preamble to the Constitution Act, 1867

303 I emphasize at the outset that it is not my position that s. 11(d) of the Charter and ss. 96-100 of the Constitution Act, 1867 comprise an exhaustive code of judicial

independence. As I discuss briefly later, additional protection for judicial independence may inhere in other provisions of the Constitution. Nor do I deny that the Constitution embraces unwritten rules, including rules that find expression in the preamble of the Constitution Act, 1867; see New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly), [1993] 1 S.C.R. 319. I hasten to add that these rules really find their origin in specific provisions of the Constitution viewed in light of our constitutional heritage. In other words, what we are concerned with is the meaning to be attached to an expression used in a constitutional provision.

304 I take issue, however, with the Chief Justice's view that the preamble to the Constitution Act, 1867 is a source of constitutional limitations on the power of legislatures to interfere with judicial independence. In New Brunswick Broadcasting, supra, this Court held that the privileges of the Nova Scotia legislature had constitutional status by virtue of the statement in the preamble expressing the desire to have "a Constitution similar in Principle to that of the United Kingdom". In reaching this conclusion, the Court examined the historical basis for the privileges of the British Parliament. That analysis established that the power of Parliament to exclude strangers was absolute, constitutional and immune from regulation by the courts. The effect of the preamble, the Court held, is to recognize and confirm that this long-standing principle of British constitutional law was continued or established in post-Confederation Canada.

305 There is no similar historical basis, in contrast, for the idea that Parliament cannot interfere with judicial independence. At the time of Confederation (and indeed to this day), the British Constitution did not contemplate the notion that Parliament was limited in its ability to deal with judges. The principle of judicial independence developed very gradually in Great Britain; see generally W. R. Lederman, "The Independence of the Judiciary" (1956), 34 Can. Bar Rev. 769 and 1139. In the Norman era, judicial power was concentrated in the hands of the King and his immediate entourage (the Curia Regis). Subsequent centuries saw the emergence of specialized courts and a professional judiciary, and the king's participation in the judicial function had by the end of the fifteenth century effectively withered. Thus Blackstone in his Commentaries was able to state:

> ... at present, by the long and uniform usage of many ages, our kings have delegated their whole judicial power to the judges of their several courts; which are the grand depository of the fundamental laws of the kingdom, and have gained a known and stated jurisdiction, regulated by certain established rules, which the crown itself cannot now alter but by act of parliament.

(Sir William Blackstone, Commentaries on the Laws of England (4th ed. 1770), Book 1, at p. 267.)

306 Despite these advances, kings retained power to apply pressure on the judiciary to conform to their wishes through the exercise of the royal power of dismissal. Generally speaking, up to the seventeenth century, judges held office during the king's good pleasure (durante bene placito). This power to dismiss judges for political ends was wielded most liberally by the Stuart kings in the early seventeenth century as part of their

effort to assert the royal prerogative powers over the authority of Parliament and the common law. It was thus natural that protection against this kind of arbitrary, executive interference became a priority in the post-revolution settlement. Efforts to secure such protection in legislation were scuttled in the two decades following 1688, but at the turn of the century William III gave his assent to the Act of Settlement, 12 & 13 Will. 3, c. 2, which took effect with the accession of George I in 1714. Section 3, para. 7 of that statute mandated that "Judges Commissions be made Quandiu se bene gesserint [during good behaviour], and their Salaries ascertained and established; but upon the Address of both Houses of Parliament it may be lawful to remove them". Further protection was provided by an Act of 1760 (Commissions and Salaries of Judges Act, 1 Geo. 3, c. 23), which ensured that the commissions of judges continued notwithstanding the demise of the king. Prior to this enactment, the governing rule provided that all royal appointees, including judges, vacated their offices upon the death of the king.

307 Various jurists have asserted that these statutes and their successors have come to be viewed as "constitutional" guarantees of an independent judiciary. Professor Lederman writes, for example, that it would be "unconstitutional" for the British Parliament to cut the salary of an individual superior court judge during his or her commission or to reduce the salaries of judges as a class to the extent that it threatened their independence (supra, at p. 795). It has thus been suggested that the preamble to the Constitution Act, 1867, which expresses a desire to have a Constitution "similar in Principle to that of the United Kingdom" is a source of judicial independence in Canada: Beauregard v. Canada, [1986] 2 S.C.R. 56, at p. 72.

308 Even if it is accepted that judicial independence had become a "constitutional" principle in Britain by 1867, it is important to understand the precise meaning of that term in British law. Unlike Canada, Great Britain does not have a written constitution. Under accepted British legal theory, Parliament is supreme. By this I mean that there are no limitations upon its legislative competence. As Dicey explains, Parliament has "under the English constitution, the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament" (A. V. Dicey, Introduction to the Study of the Law of the Constitution (10th ed. 1959), at pp. 39-40). This principle has been modified somewhat in recent decades to take into account the effect of Great Britain's membership in the European Community, but ultimately, the British Parliament remains supreme; see E. C. S. Wade and A. W. Bradley, Constitutional and Administrative Law (11th ed. 1993), by A. W. Bradley and K. D. Ewing, at pp. 68-87; Colin Turpin, British Government and the Constitution (3rd ed. 1995), at pp. 298-99.

309 The consequence of parliamentary supremacy is that judicial review of legislation is not possible. The courts have no power to hold an Act of Parliament invalid or unconstitutional. When it is said that a certain principle or convention is "constitutional", this does not mean that a statute violating that principle can be found to be ultra vires Parliament. As Lord Reid stated in Madzimbamuto v. Lardner-Burke, [1969] 1 A.C. 645 (P.C.), at p. 723:

> It is often said that it would be unconstitutional for the United

> Kingdom Parliament to do certain things, meaning that the moral, political or other reasons against doing them are so strong that most people would regard it as highly improper if Parliament did these things. But that does not mean that it is beyond the power of Parliament to do such things. If Parliament chose to do any of them the courts could not hold the Act of Parliament invalid.

See also:

Manuel v. Attorney-General, [1983] Ch. 77 (C.A.).

310 This fundamental principle is illustrated by the debate that occurred when members of the English judiciary complained to the Prime Minister in the early 1930s about legislation which reduced the salaries of judges, along with those of civil servants, by 20 percent as an emergency response to a financial crisis. Viscount Buckmaster, who vigorously resisted the notion that judges' salaries could be diminished during their term of office, admitted that Parliament was supreme and could repeal the Act of Settlement if it chose to do so. He only objected that it was not permissible to effectively repeal the Act by order in council; see U.K., H.L. Parliamentary Debates, vol. 90, cols. 67-68 (November 23, 1933). It seems that the judges themselves also conceded this point; see R. F. V. Heuston, Lives of the Lord Chancellors 1885-1940 (1964), at p. 514.

311 The idea that there were enforceable limits on the power of the British Parliament to interfere with the judiciary at the time of Confederation, then, is an historical fallacy. By expressing a desire to have a Constitution "similar in Principle to that of the United Kingdom", the framers of the Constitution Act, 1867 did not give courts the power to strike down legislation violating the principle of judicial independence. The framers did, however, entrench the fundamental components of judicial independence set out in the Act of Settlement such that violations could be struck down by the courts. This was accomplished, however, by ss. 99-100 of the Constitution Act, 1867, not the preamble.

312 It might be asserted that the argument presented above is merely a technical quibble. After all, in Canada the Constitution is supreme, not the legislatures. Courts have had the power to invalidate unconstitutional legislation in this country since 1867. If judicial independence was a "constitutional" principle in the broad sense in nineteenth-century Britain, and that principle was continued or established in Canada as a result of the preamble to the Constitution Act, 1867, why should Canadian courts resile from enforcing this principle by striking down incompatible legislation?

313 One answer to this question is the ambit of the Act of Settlement. The protection it accorded was limited to superior courts, specifically the central courts of common law; see Lederman, supra, at p. 782. It did not apply to inferior courts. While subsequent legislation did provide limited protection for the independence of the judges of certain statutory courts, such as the county courts, the courts there were not regarded as within the ambit of the "constitutional" protection in the British sense. Generally the independence and impartiality of these courts were ensured to litigants through the superintendence exercised over them by the superior courts by way of prerogative writs and other extraordinary remedies. The

overall task of protection sought to be created for inferior courts in the present appeals seems to me to be made of insubstantial cloth, and certainly in no way similar to anything to be found in the United Kingdom.

314 A more general answer to the question lies in the nature of the power of judicial review. The ability to nullify the laws of democratically elected representatives derives its legitimacy from a super-legislative source: the text of the Constitution. This foundational document (in Canada, a series of documents) expresses the desire of the people to limit the power of legislatures in certain specified ways. Because our Constitution is entrenched, those limitations cannot be changed by recourse to the usual democratic process. They are not cast in stone, however, and can be modified in accordance with a further expression of democratic will: constitutional amendment.

315 Judicial review, therefore, is politically legitimate only insofar as it involves the interpretation of an authoritative constitutional instrument. In this sense, it is akin to statutory interpretation. In each case, the court's role is to divine the intent or purpose of the text as it has been expressed by the people through the mechanism of the democratic process. Of course, many (but not all) constitutional provisions are cast in broad and abstract language. Courts have the often arduous task of explicating the effect of this language in a myriad of factual circumstances, many of which may not have been contemplated by the framers of the Constitution. While there are inevitable disputes about the manner in which courts should perform this duty, for example by according more or less deference to legislative decisions, there is general agreement that the task itself is legitimate.

316 This legitimacy is imperiled, however, when courts attempt to limit the power of legislatures without recourse to express textual authority. From time to time, members of this Court have suggested that our Constitution comprehends implied rights that circumscribe legislative competence. On the theory that the efficacy of parliamentary democracy requires free political expression, it has been asserted that the curtailment of such expression is ultra vires both provincial legislatures and the federal Parliament: Switzman v. Elbling, [1957] S.C.R. 285, at p. 328 (per Abbott J.); OPSEU v. Ontario (Attorney General), [1987] 2 S.C.R. 2, at p. 57 (per Beetz J.); see also: Reference re Alberta Statutes, [1938] S.C.R. 100, at pp. 132-35 (per Duff C.J.), and at pp. 145-46 (per Cannon J.); Switzman, supra, at pp. 306-7 (per Rand J.); OPSEU, supra, at p. 25 (per Dickson C.J.); Fraser v. Public Service Staff Relations Board, [1985] 2 S.C.R. 455, at pp. 462-63 (per Dickson C.J.); RWDSU v. Dolphin Delivery Ltd., [1986] 2 S.C.R. 573, at p. 584 (per McIntyre J.).

317 This theory, which is not so much an "implied bill of rights", as it has so often been called, but rather a more limited guarantee of those communicative freedoms necessary for the existence of parliamentary democracy, is not without appeal. An argument can be made that, even under a constitutional structure that deems Parliament to be supreme, certain rights, including freedom of political speech, should be enforced by the courts in order to safeguard the democratic accountability of Parliament. Without this limitation of its powers, the argument runs, Parliament could subvert the very process by which it acquired its legitimacy as a representative, democratic institution; see F. R. Scott, Civil Liberties and

Canadian Federalism (1959), at pp. 18-21; Dale Gibson, "Constitutional Amendment and the Implied Bill of Rights" (1966-67), 12 McGill L.J. 497. It should be noted, however, that the idea that the Constitution contemplates implied protection for democratic rights has been rejected by a number of eminent jurists as being incompatible with the structure and history of the Constitution; see Attorney General for Canada and Dupond v. Montreal, [1978] 2 S.C.R. 770, at p. 796 (per Beetz J.); Bora Laskin, "An Inquiry into the Diefenbaker Bill of Rights" (1959), 37 Can. Bar Rev. 77, at pp. 100-103; Paul C. Weiler, "The Supreme Court and the Law of Canadian Federalism" (1973), 23 U.T.L.J. 307, at p. 344; Peter W. Hogg, Constitutional Law of Canada (3rd ed. 1992 (loose-leaf)), vol. 2, at pp. 31-12 and 31-13.

318 Whatever attraction this theory may hold, and I do not wish to be understood as either endorsing or rejecting it, it is clear in my view that it may not be used to justify the notion that the preamble to the Constitution Act, 1867 contains implicit protection for judicial independence. Although it has been suggested that guarantees of political freedom flow from the preamble, as I have discussed in relation to judicial independence, this position is untenable. The better view is that if these guarantees exist, they are implicit in s. 17 of the Constitution Act, 1867, which provides for the establishment of Parliament; see Gibson, supra, at p. 498. More important, the justification for implied political freedoms is that they are supportive, and not subversive, of legislative supremacy. That doctrine holds that democratically constituted legislatures, and not the courts, are the ultimate guarantors of civil liberties, including the right to an independent judiciary. Implying protection for judicial independence from the preambular commitment to a British-style constitution, therefore, entirely misapprehends the fundamental nature of that constitution.

319 This brings us back to the central point: to the extent that courts in Canada have the power to enforce the principle of judicial independence, this power derives from the structure of Canadian, and not British, constitutionalism. Our Constitution expressly contemplates both the power of judicial review (in s. 52 of the Constitution Act, 1982) and guarantees of judicial independence (in ss. 96-100 of the Constitution Act, 1867 and s. 11(d) of the Charter). While these provisions have been interpreted to provide guarantees of independence that are not immediately manifest in their language, this has been accomplished through the usual mechanisms of constitutional interpretation, not through recourse to the preamble. The legitimacy of this interpretive exercise stems from its grounding in an expression of democratic will, not from a dubious theory of an implicit constitutional structure. The express provisions of the Constitution are not, as the Chief Justice contends, "elaborations of the underlying, unwritten, and organizing principles found in the preamble to the Constitution Act, 1867" (para. 107). On the contrary, they are the Constitution. To assert otherwise is to subvert the democratic foundation of judicial review.

320 In other words, the approach adopted by the Chief Justice, in my view, misapprehends the nature of the Constitution Act, 1867. The Act was not intended as an abstract document on the nature of government. The philosophical underpinnings of government in a British colony were a given, and find expression in the preamble. The Act

was intended to create governmental and judicial structures for the maintenance of a British system of government in a federation of former British colonies. Insofar as there were limits to legislative power in Canada, they flowed from the terms of the Act (it being a British statute) that created them and vis-à-vis Great Britain the condition of dependency that prevailed in 1867. In considering the nature of the structures created, it was relevant to look at the principles underlying their British counterparts as the preamble invites the courts to do.

321 In considering the nature of the Canadian judicial system in light of its British counterpart, one should observe that only the superior courts' independence and impartiality were regarded as "constitutional". The independence and impartiality of inferior courts were, in turn, protected through the superintending functions of the superior courts. They were not protected directly under the relevant British "constitutional" principles.

322 This was the judicial organization that was adopted for this country, with adaptations suitable to Canadian conditions, in the judicature provisions of the Constitution Act, 1867. In reviewing these provisions, it is worth observing that the courts given constitutional protection are expressly named. The existing provincial inferior courts are not mentioned, and, indeed, the Probate Courts of some provinces were expressly excluded. Given that the express provisions dealing with constitutional protection for judicial independence have specifically spelled out their application, it seems strained to extend the ambit of this protection by reference to a general preambular statement. As the majority stated in McVey (Re), [1992] 3 S.C.R. 475, at p. 525, "it would seem odd if general words in a preamble were to be given more weight than the specific provisions that deal with the matter".

323 This is a matter of no little significance for other reasons. If one is to give constitutional protection to courts generally, one must be able to determine with some precision what the term "court" encompasses. It is clear both under the Constitution Act, 1867 as well as under s. 11(d) of the Charter what courts are covered, those under the Constitution Act, 1867 arising under historic events in British constitutional history, those in s. 11(d) for the compelling reasons already given, namely protection for persons accused of an offence. But what are we to make of a general protection for courts such as that proposed by the Chief Justice? The word "court" is a broad term and can encompass a wide variety of tribunals. In the province of Quebec, for example, the term is legislatively used in respect of any number of administrative tribunals. Are we to include only those inferior courts applying ordinary jurisdiction in civil matters, or should we include all sorts of administrative tribunals, some of which are of far greater importance than ordinary civil courts? And if we do, is a distinction to be drawn between different tribunals and on the basis of what principles is this to be done?

324 These are some of the issues that have persuaded me that this Court should not precipitously, and without the benefit of argument of any real relevance to the case before us, venture forth on this uncharted sea. It is not as if the law as it stands is devoid of devices to ensure independent and impartial courts and tribunals. Quite the contrary, I would emphasize that the express protections for judicial independence set out in the Constitution are broad and powerful. They apply to all superior court and other judges

specified in s. 96 of the Constitution Act, 1867 as well as to inferior (provincial) courts exercising criminal jurisdiction. Nothing presented in these appeals suggests that these guarantees are not sufficient to ensure the independence of the judiciary as a whole. The superior courts have significant appellate and supervisory jurisdiction over inferior courts. If the impartiality of decisions from inferior courts is threatened by a lack of independence, any ensuing injustice may be rectified by the superior courts.

325 Should the foregoing provisions be found wanting, the Charter may conceivably be brought into play. Thus it is possible that protection for the independence for courts charged with determining the constitutionality of government action inheres in s. 24(1) of the Charter and s. 52 of the Constitution Act, 1982. It could be argued that the efficacy of those provisions, which empower courts to grant remedies for Charter violations and strike down unconstitutional laws, respectively, depends upon the existence of an independent and impartial adjudicator. The same may possibly be said in certain cases involving the applicability of the guarantees of liberty and security of the person arising in a non-penal setting. I add that these various possibilities may be seen to be abetted by the commitment to the rule of law expressed in the preamble to the Charter. These, however, are issues I would prefer to explore when they are brought before us for decision.

III. Financial Security

326 I turn now to the main issue in these appeals: whether the governments of Prince Edward Island, Alberta and Manitoba violated s. 11(d) of the Charter by compromising the financial security of provincial court judges. In Valente v. The Queen, [1985] 2 S.C.R. 673, this Court held that the guarantee of an independent judiciary set out in s. 11(d) requires that tribunals exercising criminal jurisdiction exhibit three "essential conditions" of independence: security of tenure, financial security and institutional independence. The Court also found that judicial independence involves both individual and institutional relationships. It requires, in other words, both the individual independence of a particular judge and the institutional or collective independence of the tribunal of which that judge is a member.

327 Building on Valente, the Chief Justice concludes in the present appeals that the financial security component of judicial independence has both individual and institutional dimensions. The institutional dimension, in his view, has three components. One of these -- the principle that reductions to judicial remuneration cannot diminish salaries to a point below a basic minimum level required for the office of a judge -- is unobjectionable. As there has been no suggestion in these appeals that the salaries of provincial court judges have been reduced to such a level, I need not comment further on this issue.

328 The Chief Justice also finds, as a general principle, that s. 11(d) of the Charter permits governments to reduce, increase or freeze the salaries of provincial court judges, either as part of an overall economic measure which affects the salaries of all persons paid from the public purse, or as part of a measure directed at judges as a class. I agree. He goes on to hold, however, that before such changes can be made, governments must consider and respond to the recommendations of an independent "judicial compensation commission". He further concludes that s. 11(d) forbids, under any circumstances,

discussions about remuneration between the judiciary and the government.

329 I am unable to agree with these conclusions. While both salary commissions and a concomitant policy to avoid discussing remuneration other than through the making of representations to commissions may be desirable as matters of legislative policy, they are not mandated by s. 11(d) of the Charter. I begin with an examination of the text of the Constitution. Section 11(d) of the Charter provides as follows:

> 11. Any person charged with an offence has the right
>
> . . .
>
> (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal; [Emphasis added.]

By its express terms, s. 11(d) grants the right to an independent tribunal to persons "charged with an offence". The guarantee of judicial independence inhering in s. 11(d) redounds to the benefit of the judged, not the judges; see Gratton v. Canadian Judicial Council, [1994] 2 F.C. 769 (T.D.), at p. 782; Philip B. Kurland, "The Constitution and the Tenure of Federal Judges: Some Notes from History" (1968-69), 36 U. Chi. L. Rev. 665, at p. 698. Section 11(d), therefore, does not grant judges a level of independence to which they feel they are entitled. Rather, it guarantees only that degree of independence necessary to ensure that accused persons receive fair trials.

330 This Court has confirmed that s. 11(d) does not guarantee an "ideal" level of judicial independence. After referring to a number of reports and studies on judicial independence calling for increased safeguards, Le Dain J. had this to say in Valente, supra, at pp. 692-93:

> These efforts, particularly by the legal profession and the judiciary, to strengthen the conditions of judicial independence in Canada may be expected to continue as a movement towards the ideal. It would not be feasible, however, to apply the most rigorous and elaborate conditions of judicial independence to the constitutional requirement of independence in s. 11(d) of the Charter, which may have to be applied to a variety of tribunals. The legislative and constitutional provisions in Canada governing matters which bear on the judicial independence of tribunals trying persons charged with an offence exhibit a great range and variety. The essential conditions of judicial independence for purposes of s. 11(d) must bear some reasonable relationship to that variety. Moreover, it is the essence of the security afforded by the essential conditions of judicial independence that is appropriate for application under s. 11(d) and not any particular legislative or constitutional formula by which it may be provided or guaranteed. [Emphasis added].

Similarly, in R. v. Lippé, [1991] 2 S.C.R. 114, at p. 142, Lamer C.J. concluded that while

the Quebec municipal court system, which allowed judges to continue to practice as lawyers was not "ideal", it was sufficient for the purposes of s. 11(d). He remarked:

> I admit that a system which allows for part-time judges is not the ideal system. However, the Constitution does not always guarantee the "ideal". Perhaps the ideal system would be to have a panel of three or five judges hearing every case; that may be the ideal, but it certainly cannot be said to be constitutionally guaranteed. [Emphasis in original.]

As Lamer C.J. stated in R. v. Kuldip, [1990] 3 S.C.R. 618, at p. 638, "[t]he Charter aims to guarantee that individuals benefit from a minimum standard of fundamental rights. If Parliament chooses to grant protection over and above that which is enshrined in our Charter, it is always at liberty to do so."

331 I also note that s. 11(d) expressly provides that accused persons have a right to a hearing that is both "independent" and "impartial". As the Court explained in Valente, supra, independence and impartiality are discrete concepts; see also R. v. Généreux, [1992] 1 S.C.R. 259, at p. 283. "Impartiality", Le Dain J. stated for the Court in Valente, at p. 685, "refers to a state of mind or attitude of the tribunal in relation to the issues and the parties in a particular case". Impartial adjudicators, in other words, base their decisions on the merits of the case, not the identity of the litigants. Independence, in contrast, "connotes not merely a state of mind or attitude in the actual exercise of judicial functions, but a status or relationship to others, particularly to the executive branch of government, that rests on objective conditions or guarantees" (p. 685).

332 That being said, it is important to remember that judicial independence is not an end in itself. Independence is required only insofar as it serves to ensure that cases are decided in an impartial manner. As Lamer C.J. wrote in Lippé, supra, at p. 139:

> The overall objective of guaranteeing judicial independence is to ensure a reasonable perception of impartiality; judicial independence is but a "means" to this "end". If judges could be perceived as "impartial" without judicial "independence", the requirement of "independence" would be unnecessary. However, judicial independence is critical to the public's perception of impartiality. Independence is the cornerstone, a necessary prerequisite, for judicial impartiality.

333 From the foregoing, it can be stated that the "essential objective conditions" of judicial independence for the purposes of s. 11(d) consist of those minimum guarantees that are necessary to ensure that tribunals exercising criminal jurisdiction act, and are perceived to act, in an impartial manner. Section 11(d) does not empower this or any other court to compel governments to enact "model" legislation affording the utmost protection for judicial independence. This is a task for the legislatures, not the courts.

334 With this general principle in mind, I turn to the first question at hand: does s. 11(d) require governments to establish judicial compensation commissions and consider and respond to their recommendations before changing the salaries of provincial court judges?

As noted by the Chief Justice in his reasons, this Court held unanimously in Valente, supra, that such commissions were not required for the purposes of s. 11(d). This holding should be followed, in my opinion, not simply because it is authoritative, but because it is grounded in reason and common sense. As I have discussed, the Chief Justice asserts that the financial security component of judicial independence has both an individual and an institutional or collective dimension. In Valente, the Court focused solely on the individual dimension, holding at p. 706 that "the essential point" of financial security "is that the right to salary of a provincial court judge is established by law, and there is no way in which the Executive could interfere with that right in a manner to affect the independence of the individual judge".

335 I agree that financial security has a collective dimension. Judicial independence must include protection against interference with the financial security of the court as an institution. It is not enough that the right to a salary is established by law and that individual judges are protected against arbitrary changes to their remuneration. The possibility of economic manipulation also arises from changes to the salaries of judges as a class.

336 The fact that the potential for such manipulation exists, however, does not justify the imposition of judicial compensation commissions as a constitutional imperative. As noted above, s. 11(d) does not mandate "any particular legislative or constitutional formula": Valente, supra, at p. 693; see also Généreux, supra, at pp. 284-85. This Court has repeatedly held that s. 11(d) requires only that courts exercising criminal jurisdiction be reasonably perceived as independent. In Valente, supra, Le Dain J. wrote the following for the Court at p. 689:

> Although judicial independence is a status or relationship resting on objective conditions or guarantees, as well as a state of mind or attitude in the actual exercise of judicial functions, it is sound, I think, that the test for independence for the purposes of s. 11(d) of the Charter should be, as for impartiality, whether the tribunal may be reasonably perceived as independent. Both independence and impartiality are fundamental not only to the capacity to do justice in a particular case but also to individual and public confidence in the administration of justice. Without that confidence the system cannot command the respect and acceptance that are essential to its effective operation. It is, therefore, important that a tribunal should be perceived as independent, as well as impartial, and that the test for independence should include that perception. The perception must, however, as I have suggested, be a perception of whether the tribunal enjoys the essential objective conditions or guarantees of judicial independence, and not a perception of how it will in fact act, regardless of whether it enjoys such conditions or guarantees.

See also: Lippé, supra, at p. 139; Généreux, supra, at p. 286.

337 In my view, it is abundantly clear that a reasonable, informed person would not perceive that, in the absence of a commission process, all changes to the remuneration of provincial court judges threaten their independence. I reach this conclusion by considering

the type of change to judicial salaries that is at issue in the present appeals. It is simply not reasonable to think that a decrease to judicial salaries that is part of an overall economic measure which affects the salaries of substantially all persons paid from public funds imperils the independence of the judiciary. To hold otherwise is to assume that judges could be influenced or manipulated by such a reduction. A reasonable person, I submit, would believe judges are made of sturdier stuff than this.

338 Indeed, as support for his conclusion that s. 11(d) does not prohibit non-discriminatory reductions, the Chief Justice cites a number of commentators who argue that such reductions are constitutional; see Hogg, supra, vol. 1, at p. 7-6; Lederman, supra, at pp. 795, 1164; Wayne Renke, Invoking Independence: Judicial Independence as a No-cut Wage Guarantee (1994), at p. 30. As stated by Professor Renke, "[w]here economic measures apply equally to clerks, secretaries, managers, public sector workers of all grades and departments, as well as judges, how could judges be manipulated?" If this is the case, why is it necessary to require the intervention of an independent commission before the government imposes such reductions?

339 The Chief Justice addresses this question by expressing sympathy for the view that salary reductions that treat judges in the same manner as civil servants undermine judicial independence "precisely because they create the impression that judges are merely public employees and are not independent of the government" (para. 157 (emphasis in original)). Judicial independence, he concludes, "can be threatened by measures which treat judges either differently from, or identically to, other persons paid from the public purse" (para. 158). In order to guard against this threat, the argument goes, governments are required to have recourse to the commission process before any changes to remuneration are made.

340 With respect, I fail to see the logic in this position. In Valente, supra, this Court rejected the argument that the institutional independence of provincial court judges was compromised by the fact that they were treated as civil servants for the purposes of pension and other financial benefits and the executive exercised control over the conferring of such discretionary benefits as post-retirement reappointment, leaves of absence and the right to engage in extra-judicial appointments. The contention was that the government's control over these matters was calculated to make the court appear as a branch of the executive and the judges as civil servants. This impression, it was argued, was reinforced by the manner in which the court and its judges were associated with the Ministry of the Attorney General in printed material intended for public information.

341 In Valente, the Court held that none of these factors could reasonably be perceived to compromise the institutional independence of the judiciary. All that is required, Le Dain J. stated for the Court at p. 712, is that the judiciary retain control over "the administrative decisions that bear directly and immediately on the exercise of the judicial function". Similarly, the fact that changes to judicial salaries are linked, along with other persons paid from the public purse, to changes made to the remuneration of civil servants does not create the impression that judges are public employees who are not independent from government. It must be remembered that the test for judicial independence incorporates the perception of the reasonable, informed person. As noted by the Chief Justice in his reasons, the question is "whether a reasonable person, who was informed of the relevant

statutory provisions, their historical background and the traditions surrounding them, after viewing the matter realistically and practically would conclude (that the tribunal or court was independent)" (para. 113). In my view, such a person would not view the linking of judges' salaries to those of civil servants as compromising judicial independence.

342 The threat to judicial independence that arises from the government's power to set salaries consists in the prospect that judges will be influenced by the possibility that the government will punish or reward them financially for their decisions. Protection against this potentiality is the raison d'être of the financial security component of judicial independence. There is virtually no possibility that such economic manipulation will arise where the government makes equivalent changes to the remuneration of all persons paid from public funds. The fact that such a procedure might leave some members of the public with the impression that provincial court judges are public servants is thus irrelevant. A reasonable, informed person would not perceive any infringement of the judges' financial security.

343 In his reasons, the Chief Justice asserts that, where the government chooses to depart from the recommendations of the judicial compensation commission, it must justify its decision according to a standard of rationality. He goes on to state, however, that across-the-board measures affecting substantially every person who is paid from the public purse are prima facie rational because they are typically designed to further a larger public interest. If this is true, and I have no doubt that it is, little is gained by going through the commission process in these circumstances. Under the Chief Justice's approach, governments are free to reduce the salaries of judges, in concert with all other persons paid from public funds, so long as they set up a commission whose recommendations they are for all practical purposes free to ignore. In my view, this result represents a triumph of form over substance.

344 Although I have framed my argument in terms of reductions to judicial salaries that are part of across-the-board measures applying throughout the public sector, the same logic applies, a fortiori, to salary freezes and increases. In my view, furthermore, governments may make changes to judicial salaries that are not parallelled by equivalent changes to the salaries of other persons paid from public funds. As I will develop later, changes, and especially decreases, to judicial salaries that are not part of an overall public measure should be subject to greater scrutiny than those that are. Under the reasonable perception test, however, commissions are not a necessary condition of independence. Of course, the existence of such a process may go a long way toward showing that a given change to judges' salaries does not threaten their independence. Requiring commissions a priori, however, is tantamount to enacting a new constitutional provision to extend the protection provided by s. 11(d). Section 11(d) requires only that tribunals exercising criminal jurisdiction be independent and impartial. To that end, it prohibits governments from acting in ways that threaten that independence and impartiality. It does not require legislatures, however, to establish what in some respects is a virtual fourth branch of government to police the interaction between the political branches and the judiciary. Judges, in my opinion, are capable of ensuring their own independence by an appropriate application of the Constitution. By employing the reasonable perception test, judges are

able to distinguish between changes to their remuneration effected for a valid public purpose and those designed to influence their decisions.

345 As I have noted, although the reasonable perception test applies to all changes to judicial remuneration, different types of changes warrant different levels of scrutiny. Although each case must be judged on its own facts, some general guiding principles can be articulated. Changes to judicial salaries that apply equally to substantially all persons paid from public funds, for example, would almost inevitably be considered constitutional. Differential increases to judicial salaries warrant a greater degree of scrutiny, although in most cases it would be relatively easy to link the increase to a legitimate governmental purpose such as a desire to attract, or continue to attract, highly qualified lawyers to the bench. Differential decreases to judicial remuneration would invite the highest level of review. This approach receives support from the fact that the constitutions of many states and a number of international instruments contain provisions prohibiting reductions of judicial salaries.

346 Determining whether a differential change raises a perception of interference is, in my view, analogous to determining whether government action is discriminatory under s. 15 of the Charter. In its equality jurisprudence, this Court has emphasized that discrimination means more than simply different treatment; see Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143. To constitute discrimination, the impugned difference in treatment must implicate the purpose of the constitutional protection in question. It is not enough to say, in other words, that judges and non-judges are treated differently. What is important is that this disparate treatment has the potential to influence the adjudicative process.

347 In determining this question, regard must be had to both the purpose and the effect of the impugned salary change. The reasonable perception test contemplates the possibility that a court may be found to lack independence despite the fact that the government did not act with an improper motive; see Généreux, supra, at p. 307. Purpose is nevertheless relevant. As Dickson C.J. noted in Beauregard, supra, at p. 77, legislation dealing with judges' salaries will be suspect if there is "any hint that... [it] was enacted for an improper or colourable purpose". Conversely, he stated, legislation will be constitutional where it represents an attempt "to try to deal fairly with judges and with judicial salaries and pensions" (p. 78).

348 In considering the effect of differential changes on judicial independence, the question that must be asked is whether the distinction between judges and other persons paid from public funds amounts to a "substantial" difference in treatment. Trivial or insignificant differences are unlikely to threaten judicial independence. If the effect of the change on the financial position of judges and others is essentially similar, a reasonable person would not perceive it as potentially influencing judges to favour or disfavour the government's interests in litigation.

349 I now turn to the question of discussions between the judiciary and the government over salaries. In the absence of a commission process, the only manner in which judges may have a say in the setting of their salaries is through direct dialogue with the executive.

The Chief Justice terms these discussions "negotiations" and would prohibit them, in all circumstances, as violations of the financial security component of judicial independence. According to him, negotiations threaten independence because a "reasonable person might conclude that judges would alter the manner in which they adjudicate cases in order to curry favour with the executive" (para. 187).

350 In my view, this position seriously mischaracterizes the manner in which judicial salaries are set. Valente establishes that the fixing of provincial court judges' remuneration is entirely within the discretion of the government, subject, of course, to the conditions that the right to a salary be established by law and that the government not change salaries in a manner that raises a reasonable apprehension of interference. There is no constitutional requirement that the executive discuss, consult or "negotiate" with provincial court judges. As stated by McDonald J. in the Alberta cases, the government "might exercise [this] discretion quite properly (i.e., without reliance upon constitutionally irrelevant considerations such as the performance of the judges) without ever soliciting or receiving the view of the Provincial Court judges" ((1994), 160 A.R. 81, at p. 144). Provincial judges associations are not unions, and the government and the judges are not involved in a statutorily compelled collective bargaining relationship. While judges are free to make recommendations regarding their salaries, and governments would be wise to seriously consider them, as a group they have no economic "bargaining power" vis-à-vis the government. The atmosphere of negotiation the Chief Justice describes, which fosters expectations of "give and take" and encourages "subtle accommodations", does not therefore apply to salary discussions between government and the judiciary. The danger that is alleged to arise from such discussions -- that judges will barter their independence for financial gain -- is thus illusory.

351 Of course, some persons may view direct consultations between the government and the judiciary over salaries to be unseemly or inappropriate. It may be that making representations to an independent commission better reflects the position of judges as independent from the political branches of government. A general prohibition against such consultations, however, is not required by s. 11(d) of the Charter. In most circumstances, a reasonable, informed person would not view them as imperiling judicial independence. As stated by McDonald J. (at p. 145):

> ... a reasonable, well-informed, right-minded person would not regard such a process as one that would impair the independence of the court. In the absence of evidence that the judges had improperly applied the law, no reasonable, right-minded person would have even a suspicion that the judges' independence had been bartered. It must be remembered that there is an appellate process in which either judges of the Court of Queen's Bench or of the Court of Appeal would soon become aware of any colourable use of judicial power, and correct it. Any reasonable, right-minded person would add that safeguard to his or her presumption that the integrity of the Provincial Court judges would prevail.

352 Although there is no general constitutional prohibition against salary discussions between the judiciary and the government, the possibility remains that governments may

use such discussions to attempt to influence or manipulate the judiciary. In such cases, the actions of the government will be reviewed according to the same reasonable perception test that applies to salary changes.

IV. Application to the Present Appeals

1. Prince Edward Island

353 The Chief Justice finds that the wage reduction in Prince Edward Island was unconstitutional on the basis that it was made without recourse having first been made to an independent salary commission. He states, however, that if such a commission had been established, and the legislature had decided to depart from its recommendations and enact the reduction that it did, the reduction would probably be prima facie rational, and hence justified, because it would be part of a broadly based deficit reduction measure reducing the salaries of all persons who are remunerated by public funds.

354 I agree with the Chief Justice's conclusion that the reduction to the salaries of Provincial Court judges in Prince Edward Island was part of an overall public economic measure. Because I would not require governments to have recourse to salary commissions, I find the reduction was consistent with s. 11(d) of the Charter. Based on the statement of facts appended to the Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island, there is no evidence that the reduction was introduced in order to influence or manipulate the judiciary. A reasonable person would not perceive it, therefore, as threatening judicial independence.

2. Alberta

355 The Chief Justice concludes that the wage reduction imposed on Provincial Court judges in Alberta violated s. 11(d) for the same reason that he finds the reduction in Prince Edward Island unconstitutional: it was effected without recourse to a salary commission process. Again, however, he opines that had such a process been followed, the reduction would likely be prima facie rational because it would be part of an overall economic measure that reduces the salaries of all persons remunerated by public funds. For the reasons already given, I do not think a reasonable person would perceive this reduction as compromising judicial independence. As a result, I find the reduction did not violate s. 11(d).

356 One of the interveners in these appeals, the Alberta Provincial Court Judges' Association, alleges that the wage reductions in Alberta were not as widespread and uniform as assumed in the Agreed Statement of Facts that forms the factual foundation of the litigation. Before this Court, the intervener sought to introduce extrinsic evidence to support this allegation. In response, the Attorney General for Alberta attempted to adduce evidence in rebuttal. As noted by the Chief Justice, the Court denied both these motions.

357 In my view, it is not necessary to consider this factual dispute. The conclusion I have reached is based entirely on the Agreed Statement of Facts reproduced in the reasons of McDonald J. In any future litigation involving this issue, the parties will be free

to adduce whatever evidence they feel is appropriate and a factual record will be developed accordingly.

3. Manitoba

358 The situation in Manitoba is more complicated. As noted by the Chief Justice, there the legislature had established a judicial compensation commission process, which had been in effect since 1990. In 1993, the government passed legislation reducing the salaries of Provincial Court judges in a manner I shall describe later. The government instituted this reduction before the commission had convened or issued its report. For this reason, the Chief Justice finds that the reduction violated s. 11(d) of the Charter.

359 Because I do not believe that commissions are constitutionally required, I find that the Manitoba government's avoidance of the commission process did not violate s. 11(d). Unlike the situations in Prince Edward Island and Alberta, however, the legislation in Manitoba treated judges differently from most other persons paid from public funds. The Public Sector Reduced Work Week and Compensation Management Act, S.M. 1993, c. 21 ("Bill 22"), permitted, but did not require, public sector employers to impose up to 15 days leave without pay upon their employees during the fiscal years 1993-94 and 1994-95. The definition of public sector "employer" was very broad, encompassing the government itself as well as Crown corporations, hospitals, personal care homes, child and family services agencies, municipalities, school boards, universities and colleges. In contrast, the remuneration of Provincial Court judges, along with members of Crown agencies, boards, commissions and committees appointed by the Lieutenant Governor in Council, was reduced by 3.8 percent for the fiscal year 1993-94, and for the next fiscal year, by an amount equivalent to the number of leave days imposed on unionized government employees. A provision of Bill 22 allowed this reduction to be effected by the taking of specific approved days of leave without pay. Members of the Legislative Assembly were treated in essentially the same manner as judges and other appointees.

360 Two aspects of the legislation are potentially problematic. First, the legislation permitted, but did not compel, government employers to mandate unpaid leaves for their employees. The salary reduction imposed on judges and other appointees, in contrast, was mandatory. In practice, the reduced work week was imposed on all civil servants and most other public sector employees. Some employers, including certain school divisions and health care facilities, dealt with funding reductions in other ways. Second, Bill 22 specified that reductions imposed by public employers were to be effected in the form of unpaid leave. In the case of judges and other appointees, salaries were reduced directly.

361 There is no evidence, however, that these differences evince an intention to interfere with judicial independence. As Philp J.A. stated for the Manitoba Court of Appeal, "differences in the classes of persons affected by Bill 22 necessitated differences in treatment" ((1995), 102 Man. R. (2d) 51, at p. 66). In the case of the permissive-mandatory distinction, the evidence establishes that it served a rational and legitimate purpose. Though all those affected by Bill 22 were in one form or another "paid" from public funds, their relationship to government differed markedly. A number of the "employers" under Bill 22, such as school boards, Crown corporations, municipalities,

universities and health care facilities, though ultimately dependent on government funding, have traditionally enjoyed a significant amount of financial autonomy. Generally speaking, the provincial government does not set the salaries of employees of these institutions. The legislation respects the autonomy of those bodies by permitting them to cope with reduced funding in alternative ways. Judges, though obviously required to be independent from government in specific, constitutionally guaranteed ways, are paid directly by the government. In this limited sense, they are analogous to civil servants and not to employees of other public institutions such as school boards, universities or hospitals. Notably, the provincial government, as an "employer" under Bill 22, required its civil servants to take unpaid leaves. Moreover, unlike many public employees, judges are not in a collective bargaining relationship with the government. The government may have felt that permitting judges to "negotiate" the manner in which they would absorb reductions to their remuneration would have been inappropriate.

362 The purpose of the unpaid leave-salary reduction distinction is also benign. The government may have considered the imposition of mandatory leave without pay to violate judicial independence. There are certainly weighty reasons for doing so. At all events, it is certainly less intrusive to simply reduce judges' salary than to require them to take specific days off without pay. Section 9(2) of Bill 22 permits, but does not require, judges to substitute unpaid leave on "specific approved days" for the salary reduction. Presumably, "specific approved days" refers to those days designated by the government for unpaid leave in the civil service (including employees of the courts and Crown prosecutors' offices). In my view, to the extent that this provision evinces any intention at all, it is to defer to judges' preferences on this matter and not, as the appellants suggest, to subject them to the discretion of the executive.

363 The effect of these distinctions on the financial status of judges vis-à-vis others paid from public monies, moreover, is essentially trivial. It is true that the salaries of some categories of public employees were not reduced or were reduced by a lesser amount than those of judges. However, as mentioned earlier, there are sufficient reasons to justify this distinction. What is important is that judges received the same reduction as civil servants. As conceded by the appellants, the 3.8 percent reduction in the first year parallelled the number of leave days the government had decided to impose on civil servants in anticipation of the Bill being passed. In the second year, the judges salaries were to be reduced by an amount equivalent to the reduction applied to employees under a collective agreement. This scheme, in my view, was a reasonable and practical method of ensuring that judges and other appointees were treated equally in comparison to civil servants. As the Manitoba Court of Appeal unanimously held, a reasonable person would not perceive this scheme as threatening the financial security of judges in any way.

364 In addition to the claim based on the reduction of their salaries, the Provincial Court judges in Manitoba also contended that their independence was violated by the conduct of the executive in refusing to sign a joint recommendation to the Judicial Compensation Committee unless the judges agreed to forego their legal challenge of Bill 22. As already noted, the fact that the government and judges discuss remuneration issues is not necessarily unconstitutional. Nevertheless, in my view, the government's actions in this

particular case constituted a violation of judicial independence.

365 The economic pressure placed on the judges was not intended to induce judges to favour the government's interests in litigation. Rather, it was designed to pressure them into conceding the constitutionality of the planned salary reduction. The judges, however, had bona fide concerns about the constitutionality of Bill 22. They had a right, if not a duty, to defend the principle of independence in the superior courts. The financial security component of judicial independence must include protection of judges' ability to challenge legislation implicating their own independence free from the reasonable perception that the government might penalize them financially for doing so. In my view, the executive's decision not to sign the joint recommendation was made for an improper purpose and constituted arbitrary interference with the process by which judges' salaries were established: Valente, supra, at p. 704.

V. Conclusion and Disposition

1. Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island and Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island

(a) Answers to Reference Questions

366 The answers to the relevant reference questions, which are appended to the reasons of the Chief Justice as Appendices "A" and "B" respectively, are as follows:

(i) Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island

Question 1

(a) and (b): Yes. Subject to the principles outlined in my reasons, the legislature of Prince Edward Island may increase, decrease or otherwise adjust the remuneration of Provincial Court Judges, whether or not such adjustment is part of an overall public economic measure.

Question 2: Yes.

(ii) Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island

Question 1(c): Yes.

...

Question 4:

(a) and (b): No. The explanation for these answers is the same as for the answer to question 1 of the Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island.

...

(d): No.

(e): No. The explanation for this answer is the same as for the answer to question 1 of the Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island.

...

(l): No.

...

Question 8: Given my answers to the foregoing questions, it is not necessary to answer this question.

367 For all other questions, my answers are the same as those set out by the Chief Justice.

(b) Disposition

368 I would dismiss the appeals in Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island and in Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island. I would allow the cross-appeal on question 1(a) of the Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island.

2. R. v. Campbell, R. v. Ekmecic and R. v. Wickman

(a) Answers to Constitutional Questions

369 The answers to the relevant questions, which are appended to the reasons of the Chief Justice as Appendix "C," are as follows:

Question 1: No.

Question 2: No.

370 For all other questions, my answers are the same as those set out by the Chief Justice.

(b) Disposition

371 For the reasons given by the Chief Justice, I would allow the appeal by the Crown from the decision of the Alberta Court of Appeal that it was without jurisdiction to hear these appeals under s. 784(1) of the Criminal Code, R.S.C., 1985, c. C-46. I would also allow the appeal by the Crown from McDonald J.'s holding that ss. 11(1)(c), 11(2) and 11(1)(b) of the Provincial Court Judges Act were unconstitutional. I would also dismiss the Crown's appeal from McDonald J.'s holding that ss. 13(1)(a) and 13(1)(b) of the Provincial Court Judges Act were unconstitutional and declare these provisions to be of no force or effect. Unlike the Chief Justice, however, I would allow the Crown's appeal from McDonald J.'s holding that the 5 percent pay reduction imposed on members of the Alberta Provincial Court by the Payment to Provincial Judges Amendment Regulation, Alta. Reg. 116/94, was unconstitutional and declare s. 17(1) of the Provincial Court Judges Act to be constitutional.

3. Manitoba Provincial Judges Assn. v. Manitoba (Minister of Justice)

(a) Answers to Constitutional Questions

372 The answers to the relevant questions, which are appended to the reasons of the Chief Justice as Appendix "D" are as follows:

Question 1:

(a): No.

(b): Given my response to Question 1(a), it is not necessary to answer this question.

Question 2:

(a): No.

(b): Given my response to Question 2(a), it is not necessary to answer this question.

373 For all other questions, my answers are the same as those set out by the Chief Justice.

(b) Disposition

374 For the reasons of the Chief Justice, I would issue a declaration that the closure of the Provincial Court during the summer of 1994 on "Filmon Fridays" violated the independence of the court. I would also issue a declaration that the Manitoba government violated the independence of the Provincial Court by refusing to sign a joint recommendation to the Judicial Compensation Committee unless the judges agreed to forego their legal challenge of Bill 22.

375 I would therefore allow the appeal in respect of the closure of the Manitoba Provincial Court and the attempt of the government to induce the judges to abstain from legal action. I would dismiss the appeal with respect to the wage reduction.

* * * * *

Appendix "A"

Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, October 11, 1994

1. Can the Legislature of the Province of Prince Edward Island make laws such that the remuneration of Judges of the Provincial Court may be decreased, increased, or otherwise adjusted, either:

(a) as part of an overall public economic measure, or
(b) in certain circumstances established by law?

2. If the answer to 1(a) or (b) is yes, then do the Judges of the Provincial Court of Prince Edward Island currently enjoy a basic or sufficient degree of financial security or remuneration such that they constitute an independent and impartial tribunal within the meaning of section 11(d) of the Canadian Charter of Rights and Freedoms and such other sections as

may be applicable?

* * * * *

Appendix "B"

Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island, February 13, 1995

1. Having regard to the Statement of Facts, the original of which is on file with the Supreme Court of Prince Edward Island, can a Judge of the Provincial Court of Prince Edward Island (as appointed pursuant to the Provincial Court Act, R.S.P.E.I. 1988, Cap. P-25, as amended) be perceived as having a sufficient or basic degree of:

(a) security of tenure, or
(b) institutional independence with respect to matters of administration bearing on the exercise of the Judge's judicial function, or
(c) financial security,

such that the Judge is an independent and impartial tribunal within the meaning of section 11(d) of the Canadian Charter of Rights and Freedoms?

2. Having regard to the said Statement of Facts, with respect to "security of tenure", is the independence and impartiality of a Judge of the Provincial Court of Prince Edward Island affected to the extent that he is no longer an independent and impartial tribunal within the meaning of section 11(d) of the Canadian Charter of Rights and Freedoms by:

(a) the pension provision in section 8(1)(c) of the Provincial Court Act, supra?
(b) the fact that the Legislative Assembly of the Province of Prince Edward Island has increased, decreased or otherwise adjusted the remuneration of Provincial Court Judges in the Province of Prince Edward Island?
(c) the provision for possible suspension or removal of a Provincial Court Judge from office by the Lieutenant Governor in Council pursuant to section 10 of the Provincial Court Act, supra?
(d) section 12(2) of the Provincial Court Act, supra, which provides for a leave of absence to a Provincial Court Judge, due to illness, at the discretion of the Lieutenant Governor in Council?
(e) section 13 of the Provincial Court Act, supra, which provides for

sabbatical leave to a Provincial Court Judge at the discretion of the Lieutenant Governor in Council?

(f) alteration(s) to the pension provisions provided in section 8 of the Provincial Court Act, supra, which could result in:

(i) an increase or decrease in the pension benefits payable?
(ii) making the plan subject to no more than equal contributions by Provincial Court Judges and the Government of Prince Edward Island?
(iii) an increase or decrease in the years of service required for entitlement to the pension benefits?
(iv) an increase or decrease in the level of indexing of pension benefits, or the use of some alternative index?

(g) remuneration of Provincial Court Judges appointed on or after April 1, 1994, being determined for any year by calculating the average of the remuneration of Provincial Court Judges in the Provinces of Nova Scotia, New Brunswick and Newfoundland on April 1 of the immediately preceding year?

and, if so affected, specifically in what way?

3. Having regard to the said Statement of Facts, with respect to "institutional independence", is the independence and impartiality of a Judge of the Provincial Court of Prince Edward Island affected to the extent that he is no longer an independent and impartial tribunal within the meaning of section 11(d) of the Canadian Charter of Rights and Freedoms by:

(a) the location of the Provincial Courts, the offices of the Judges of the Provincial Court, the staff and court clerks associated with the Provincial Court, in relation to the offices of other Judges of Superior Courts, Legal Aid offices, Crown Attorneys' offices, or the offices of representatives of the Attorney General?
(b) the fact that the Provincial Court Judges do not administer their own budget as provided to the Judicial Services Section of the Office of the Attorney General for the Province of Prince Edward Island?
(c) the designation of a place of residence of a particular Provincial Court Judge?
(d) communication between a Provincial Court Judge and the Director of Legal and Judicial Services in the Office of the Attorney General or the Attorney General for the Province of Prince Edward Island on issues relating to the administration of justice in the Province?
(e) the position of the Chief Judge being vacant?
(f) the fact that the Attorney General, via the Director of Legal and

Judicial Services, declined to fund, and opposed an application to fund, legal counsel for the Chief Judge of the Provincial Court or Provincial Court Judges, as intervenor(s) in Reference re Remuneration of Provincial Court Judges and the Jurisdiction of the Legislature and Related Matters dated October 11, 1994?

(g) Regulation No. EC631/94 enacted pursuant to the Public Sector Pay Reduction Act, S.P.E.I. 1994, Cap. 51?

and, if so affected, specifically in what way?

4. Having regard to the said Statement of Facts, with respect to "financial security", is the independence and impartiality of a Judge of the Provincial Court of Prince Edward Island affected to the extent that he is no longer an independent and impartial tribunal within the meaning of section 11(d) of the Canadian Charter of Rights and Freedoms by:

(a) a general pay reduction for all public sector employees, and for all who hold public office, including Judges, which is enacted by the Legislative Assembly of Prince Edward Island?

(b) a remuneration freeze for all public sector employees, and for all who hold public office, including Judges, which is implemented by the Government of Prince Edward Island or is enacted by the Legislative Assembly of Prince Edward Island?

(c) the fact that Judges' salaries are not automatically adjusted annually to account for inflation?

(d) Provincial Court Judges having the ability to negotiate any aspect of their remuneration package?

(e) Provincial Court Judges' salaries being established directly by the Legislative Assembly for the Province of Prince Edward Island and per the Provincial Court Act, supra, indirectly by other legislative assemblies in Canada?

(f) section 12(2) of the Provincial Court Act, supra, which provides for a leave of absence to a Provincial Court Judge, due to illness, at the discretion of the Lieutenant Governor in Council?

(g) section 13 of the Provincial Court Act, supra, which provides for sabbatical leave to a Provincial Court Judge at the discretion of the Lieutenant Governor in Council?

(h) alteration(s) to the pension provisions provided in section 8 of the Provincial Court Act, supra, which could result in:

(i) an increase or decrease in the pension benefits payable?

(ii) making the plan subject to no more than equal contributions by Provincial Court Judges and the Government of Prince Edward Island?

(iii) an increase or decrease in the years of service required for

entitlement to the pension benefits?

(iv) an increase or decrease in the level of indexing of pension benefits, or the use of some alternative index?

(i) An Act to Amend the Provincial Court Act, assented to May 19, 1994, which provides, inter alia, that the remuneration of Provincial Court Judges appointed on or after April 1, 1994, shall be determined for any year by calculating the average of the remuneration of Provincial Court Judges in the Provinces of Nova Scotia, New Brunswick and Newfoundland on April 1 of the immediately preceding year?

(j) the fact that the Attorney General, via the Director of Legal and Judicial Services, declined to fund, and opposed an application to fund, legal counsel for the Chief Judge of the Provincial Court or Provincial Court Judges, as intervenor(s) in Reference re Remuneration of Provincial Court Judges and the Jurisdiction of the Legislature and Related Matters dated October 11, 1994?

(k) Regulation No. EC631/94 enacted pursuant to the Public Sector Pay Reduction Act, supra?

and, if so affected, specifically in what way?

5. Notwithstanding the individual answers to the foregoing questions, is there any other factor or combination of factors arising from the said Statement of Facts that affects the independence and impartiality of a Judge of the Provincial Court of Prince Edward Island to the extent that he is no longer an independent and impartial tribunal within the meaning of section 11(d) of the Canadian Charter of Rights and Freedoms? If so affected, specifically in what way?
6. Is it necessary for a Judge of the Provincial Court of Prince Edward Island appointed pursuant to the Provincial Court Act, supra, to have the same level of remuneration as a Judge of the Supreme Court of Prince Edward Island appointed pursuant to the Judges Act, R.S.C. 1985, c. J-1, in order to be an independent and impartial tribunal within the meaning of section 11(d) of the Canadian Charter of Rights and Freedoms?
7. If the answer to question 6 is yes, in what particular respect or respects is it so necessary?
8. If any of the foregoing questions are answered "yes", are any possible infringements or denials of any person's rights and freedoms as guaranteed by section 11(d) of the Canadian Charter of Rights and Freedoms within reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society within the meaning of section 1 of the Canadian Charter of Rights and Freedoms?

* * * * *

Appendix "C"

Constitutional questions in R. v. Campbell, R. v. Ekmecic, and R. v. Wickman, June 26, 1996

1. Does the provision made in s. 17(1) of the Provincial Court Judges Act, S.A. 1981, c. P-20.1, for the remuneration of judges of the Provincial Court of Alberta, when read on its own or in conjunction with the regulations enacted thereunder (with the exception of the regulation referred to in question 2), fail to provide a sufficient degree of financial security to constitute that court an independent and impartial tribunal within the meaning of s. 11(d) of the Canadian Charter of Rights and Freedoms?
2. Does the 5% salary reduction imposed by the Payment to Provincial Judges Amendment Regulation, Alta. Reg. 116/94, infringe the right to be tried by an independent and impartial tribunal guaranteed by s. 11(d) of the Canadian Charter of Rights and Freedoms?
3. Do s. 11(1)(c) and s. 11(2) of the Provincial Court Judges Act, S.A. 1981, c. P-20.1, relating to the handling by the Judicial Council of complaints against judges of the Provincial Court of Alberta, when read in light of s. 10(1)(e) and s. 10(2) of the Act, infringe the right to be tried by an independent and impartial tribunal guaranteed by s. 11(d) of the Canadian Charter of Rights and Freedoms?
4. Does the inclusion of "lack of competence" and "conduct" in s. 11(1)(b) of the Provincial Court Judges Act, S.A. 1981, c. P-20.1, infringe the right to be tried by an independent and impartial tribunal guaranteed by s. 11(d) of the Canadian Charter of Rights and Freedoms?
5. Does s. 13(1)(a) of the Provincial Court Judges Act, S.A. 1981, c. P-20.1, authorizing the Minister of Justice to designate the place at which a judge shall have his residence, infringe the right to be tried by an independent and impartial tribunal guaranteed by s. 11(d) of the Canadian Charter of Rights and Freedoms?
6. Does s. 13(1)(b) of the Provincial Court Judges Act, S.A. 1981, c. P-20.1, authorizing the Minister of Justice to designate the Court's sitting days, infringe the right to be tried by an independent and impartial tribunal guaranteed by s. 11(d) of the Canadian Charter of Rights and Freedoms?
7. If any of the foregoing questions are answered "yes", are any of the provisions justified under s. 1 of the Canadian Charter of Rights and Freedoms?

* * * * *

Appendix "D"

Constitutional questions in Manitoba Provincial Judges Assn. v. Manitoba (Minister of Justice), June 18, 1996

1.

(a) Does s. 9 of The Public Sector Reduced Work Week and Compensation Management Act, S.M. 1993, c. 21 ("Bill 22"), relating to the remuneration of the judges of the Provincial Court of Manitoba, violate in whole or in part the rule of law and/or the requirement of an independent and impartial tribunal imposed by s. 11(d) of the Canadian Charter of Rights and Freedoms?

(b) If so, can the provision be justified as a reasonable limit under s. 1 of the Canadian Charter of Rights and Freedoms?

2.

(a) To the extent that s. 9 of Bill 22 repeals or suspends the operation of s. 11.1 of The Provincial Court Act, R.S.M. 1987, c. C275, does it violate in whole or in part the rule of law and/or the requirement of an independent and impartial tribunal imposed by s. 11(d) of the Canadian Charter of Rights and Freedoms?

(b) If so, can the provision be justified as a reasonable limit under s. 1 of the Canadian Charter of Rights and Freedoms?

3.

(a) To the extent that s. 4 of Bill 22 authorizes the withdrawal of court staff and personnel on days of leave, does that provision violate in whole or in part the rule of law and/or requirement of an independent and impartial tribunal imposed by s. 11(d) of the Canadian Charter of Rights and Freedoms?

(b) If so, can the provision be justified as a reasonable limit under s. 1 of the Canadian Charter of Rights and Freedoms?

1 See [1998] 1 S.C.R. 3, para. 15.

2 See [1998] 1 S.C.R. 3, para. 15.

TAB 5

** Preliminary Version **

Case Name:

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. Quebec (Attorney General); Minc v. Quebec (Attorney General)

Provincial Court Judges' Association of New Brunswick, Honourable Judge Michael McKee and Honourable Judge Steven Hutchinson, appellants;

v.

Her Majesty The Queen in Right of the Province of New Brunswick, as represented by the Minister of Justice, respondent, and

Attorney General of Canada, Attorney General of Ontario, Attorney General of Quebec, Attorney General of British Columbia, Attorney General for Saskatchewan, Attorney General of Alberta, Canadian Association of Provincial Court Judges, Ontario Conference of Judges and Federation of Law Societies of Canada, interveners.

And between

Ontario Judges' Association, Ontario Family Law Judges' Association and Ontario Provincial Court (Civil Division) Judges' Association, appellants;

v.

Her Majesty The Queen in Right of the Province of Ontario, as represented by the Chair of Management Board, respondent, and

Attorney General of Quebec, Attorney General of Alberta, Canadian Bar Association and Federation of Law Societies of Canada, interveners.

And between

Her Majesty The Queen in Right of Alberta and the Lieutenant Governor in Council, appellants;

v.

Chereda Bodner, Robert Philp, Timothy Stonehouse, William Martin, Waldo B. Ranson, Glenn Morrison, Q.C., Johnathan H.B. Moss, David M. Duggan, Mark W. Gruman,

Patrick McIlhargy, John R. Shaw and Gregory Francis, respondents, and
Attorney General of Canada, Attorney General of Ontario, Attorney General of Quebec, Attorney General of New Brunswick, Attorney General of British Columbia, Attorney General for Saskatchewan, Canadian Superior Court Judges Association, Ontario Conference of Judges, Conférence des juges du Québec, Canadian Association of Provincial Court Judges, Association of Justices of the Peace of Ontario, Judicial Justice of the Peace Association of British Columbia and Federation of Law Societies of Canada, interveners.
And between
Attorney General of Quebec and Minister of Justice of Quebec, appellants;
v.
Conférence des juges du Québec, Maurice Abud, Claude C. Boulanger, Marc Vanasse, Gilles Gagnon, Jacques R. Roy, Gérald Laforest, Jean-François Gosselin, Hubert Couture, Michael Sheehan, Yvan Mayrand, Dominique Slater, Guy Gagnon, Mireille Allaire, Anne Laberge, Armando Aznar, Jean-Pierre Lortie, Guy Lecompte, Huguette St-Louis, Rémi Bouchard, Michel Jasmin, Jacques Lachapelle, Louise Provost, Michèle Rivet, Paule Lafontaine, Rosaire Larouche, Réal R. Lapointe, Claude Chicoine, Céline Pelletier, René de la Sablonnière, Gabriel de Pokomandy, Jean R. Beaulieu, Michel Beauchemin, Jacques Trudel, Denis Bouchard, Ruth Veillet, Gilson Lachance, Claude Parent, Michel L. Auger, Lise Gaboury and Jean Alarie, respondents, and
Attorney General of New Brunswick and Federation of Law Societies of Canada, interveners.
And between
Attorney General of Quebec and Minister of Justice of Quebec, appellants;
v.
Morton S. Minc, Denis Boisvert, Antonio Discepola, Yves Fournier, Gilles Gaumond, Louise Baribeau, Jean-Pierre Bessette, Pierre D. Denault, René Déry, Gérard Duguay, Pierre Fontaine, Pierre Gaston, Denis Laliberté, Louis-Jacques Léger, Jean Massé, Evasio Massignani, Ronald Schachter, Bernard Caron, Jean Charbonneau and Raymonde Verreault, respondents, and
Attorney General of New Brunswick and Federation of Law Societies of Canada, interveners.
And between

Conférence des juges municipaux du Québec, appellant;
v.
Conférence des juges du Québec and Attorney General of Quebec, respondents, and
Attorney General of New Brunswick and Federation of Law Societies of Canada, interveners.

[2005] S.C.J. No. 47

[2005] A.C.S. no 47

2005 SCC 44

2005 CSC 44

[2005] 2 S.C.R. 286

[2005] 2 R.C.S. 286

85 O.R. (3d) 79

255 D.L.R. (4th) 513

336 N.R. 201

[2006] 1 W.W.R. 407

J.E. 2005-1362

49 Alta. L.R. (4th) 211

367 A.R. 300

288 N.B.R. (2d) 202

201 O.A.C. 293

30 Admin. L.R. (4th) 1

14 C.P.C. (6th) 1

135 C.R.R. (2d) 55

141 A.C.W.S. (3d) 213

2005 CarswellNB 405

File Nos.: 30006, 30148, 29525, 30477.

Supreme Court of Canada

Heard: November 9, 10, 2004;
Judgment: July 22, 2005.

Present: McLachlin C.J. and Major, Bastarache, Binnie, LeBel, Deschamps, Fish, Abella and Charron JJ.

(171 paras.)

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR NEW BRUNSWICK

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Subsequent History:

NOTE: This document is subject to editorial revision before its reproduction in final form in the Canada Supreme Court Reports.

Catchwords:

Constitutional law -- Judicial independence -- Judicial remuneration -- Nature of judicial compensation commissions and their recommendations -- Obligation of government to respond to recommendations -- Scope of judicial review of government's response -- Remedies.

Constitutional law -- Judicial independence -- Judicial remuneration -- Government departing from compensation commission's recommendations on salary and benefits -- Whether government's reasons for departing from recommendations satisfy rationality test -- Three-stage analysis for determining rationality of government's response.

Evidence -- Admissibility -- Judicial review of government's response to compensation commission's recommendations -- Government seeking to have affidavits admitted in evidence -- Whether affidavits admissible -- Whether affidavits introduce evidence and facts not contained in government's response.

Courts -- Judges -- Remuneration -- Compensation committee -- Mandate -- Committee recommending elimination salary parity between judges of Court of Québec and municipal court judges -- Whether committee had mandate to consider parity issue.

Civil procedure -- Application for leave to intervene in Court of Appeal -- Conférence des

juges municipaux du Québec not mounting a court challenge to government's response to compensation committee's recommendations on salary of municipal court judges outside Laval, Montreal and Quebec City -- Conférence unsuccessfully seeking leave to intervene in related cases at Court of Appeal -- Whether leave to intervene should have been granted.

Summary:

These appeals raise the question of judicial independence in the context of judicial remuneration, and the need to clarify the principles of the compensation commission process in order to avoid future conflicts.

In New Brunswick, a Commission established under the *Provincial Court Act* recommended increasing the salary of Provincial Court judges from $142,000 in 2000 to approximately $169,000 in 2003. The Government rejected this recommendation, arguing (1) that the Commission had misunderstood its mandate; (2) that it was inappropriate to link the Provincial Court judges' salary to that of federally appointed judges; and (3) that the judges' existing salary was adequate. The appellant Association applied for judicial review of the Government's response, and the Government successfully applied to have four affidavits admitted in evidence. On the salary issue, the reviewing judge found the Government's reasons for rejecting the Commission's recommendation to be rational. The Court of Appeal reversed the reviewing judge's decision on the admissibility of the affidavits, but upheld his decision on the salary issue.

In Ontario, the remuneration Commission made a binding recommendation that a salary increase of approximately 28 percent over three years be awarded and also made certain optional pension recommendations. Ontario retained an accounting firm to determine the cost of the pension options and subsequently refused to adopt any of the pension recommendations, listing several reasons, including: (1) that the 28 percent salary increase, which had automatically increased the value of the pension by 28 percent, was appropriate; (2) that no significant demographic changes had occurred since the 1991 review of the pension plan; and (3) that the Government's current fiscal responsibilities required a continued commitment to fiscal restraint. The judges applied for judicial review. In support of its position, Ontario filed affidavits from the accounting firm and they were held to be admissible. The Divisional Court dismissed the application, holding that Ontario's reasons for rejecting the pension recommendations were clear, logical and relevant. The Court of Appeal upheld the decision.

In Alberta, the compensation Commission issued a report recommending, among other things, a substantial increase in salary for Justices of the Peace. Although Alberta accepted that salaries and per diem rates ought to be increased, it rejected the specific increases recommended by the Commission and proposed a modified amount. Alberta's reasons stressed that it had a duty to manage public resources and act in a fiscally responsible manner, and that the overall level of increase recommended was greater than that of other publicly funded programs and significantly exceeded those of individuals in comparative groups. The Court of Queen's Bench allowed the respondents' application challenging the constitutionality of the changes, holding that Alberta's reasons for rejecting

the Commission's recommendations did not pass the test of simple rationality. The Court of Appeal upheld the decision.

In Quebec, the judicial compensation Committee established under the *Courts of Justice Act* recommended raising the salary of judges of the Court of Québec from $137,000 to $180,000 and adjusting their pension. The report also recommended eliminating the salary parity of municipal court judges in Laval, Montreal and Quebec City with judges of the Court of Quebec and suggested a lower pay scale. A second panel of the Committee addressed the compensation of judges of the municipal courts to which the *Act respecting municipal courts* applies -- namely, the judges of municipal courts outside Laval, Montreal and Quebec City -- and, on the assumption that parity should be abandoned, set the fee schedule at a scale reflecting responsibilities less onerous than those of full-time judges. In its response, the Government proposed that the most important recommendations be rejected. It limited the initial salary increase of judges of the Court of Quebec to 8 percent, with small additional increases in 2002 and 2003. The response accepted the elimination of parity for municipal judges, limited the raise in their salaries to 4 percent in 2001 and granted them the same adjustments as judges of the Court of Quebec in 2002 and 2003. It accordingly adjusted the fees payable to judges of municipal courts to which the *Act respecting municipal courts* applies rather than accepting the fee scales recommended by the Committee. The Conférence des juges du Québec, which represents the judges of the Court of Québec and the judges of the municipal courts of Laval, Montreal and Quebec City, challenged the Government's response in court. Both the Superior Court and the Court of Appeal held that the response did not meet the test of rationality. The Conférence des juges municipaux du Québec, which represents municipal court judges outside Laval, Montreal and Quebec City and which had not challenged the Government's response, was denied leave to intervene in the Court of Appeal.

Held: The appeals in the New Brunswick and Ontario cases should be dismissed.

Held: The appeal in the Alberta case should be allowed.

Held: The appeals of the Attorney General of Quebec and the Minister of Justice of Quebec should be dismissed. Those portions of the orders below which are not in accordance with these reasons must be set aside and the matter must be remitted to the government of Quebec and the National Assembly for reconsideration in accordance with these reasons.

Held: The appeal of the Conférence des juges municipaux du Québec should be allowed in part, and the application for leave to intervene should be granted.

General Principles

Judicial salaries can be maintained or changed only by recourse to a commission that is independent, objective and effective. Unless the legislature provides otherwise, a commission's report is consultative, not binding. Its recommendations must be given weight, but the government retains the power to depart from the recommendations as long as it justifies its decision with rational reasons in its response to the recommendations.

Reasons that are complete and that deal with the commission's recommendations in a meaningful way will meet the standard of rationality. The reasons must also rely upon a reasonable factual foundation. If different weights are given to relevant factors, this difference must be justified. The use of a particular comparator must also be explained. If it is called upon to justify its decision in a court of law, the government may not advance reasons other than those mentioned in its response, though it may provide more detailed information with regard to the factual foundation it has relied upon. [para. 8] [para. 21] [paras. 26-27]

The government's response is subject to a limited form of judicial review by the superior courts. The reviewing court is not asked to determine the adequacy of judicial remuneration but must focus on the government's response and on whether the purpose of the commission process has been achieved. A three-stage analysis for determining the rationality of the government's response should be followed: (1) Has the government articulated a legitimate reason for departing from the commission's recommendations? (2) Do the government's reasons rely upon a reasonable factual foundation? (3) 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? [paras. 29-31]

If the reviewing court concludes that the commission process has not been effective, the appropriate remedy will generally be to return the matter to the government for reconsideration. If problems can be traced to the commission, the matter can be referred back to it. Courts should avoid issuing specific orders to make the recommendations binding unless the governing statutory scheme gives them that option. [para. 44]

New Brunswick

Although the part of the Government's response questioning the Commission's mandate is not legitimate, the portion relating to the adequacy of the judges' existing salary and the excessiveness of the recommended raise meets the standard of rationality. First, the Government's reasons on these two points cannot be characterized as being purely political or as an attempt to avoid the process, and there is no suggestion that the Government has attempted to manipulate the judiciary. Second, the Government's response does not lack a reasonable factual foundation. While some parts of the response may appear dismissive, others have a rational basis. On the one hand, the Government's rejection of the recommended increase on the basis that it is excessive is amply supported by a reasonable factual foundation. On the other hand, the arguments in support of the adequacy of the current salary were not properly dealt with by the Commission. Consequently, the Government was justified in restating its position that the existing salary was sufficient to attract qualified candidates. The Government's reliance on this factual foundation was reasonable. Third, while the Government's justification for its departure from the recommendations is unsatisfactory in several respects, the response, viewed globally and with deference, shows that it took the process seriously. [para. 67-69] [para. 76] [para. 81] [para. 83]

The affidavits filed by the Government before the reviewing judge were admissible.

Although all the reasons upon which the Government relies in rejecting the Commission's recommendations must be stated in its public response, these affidavits do not advance arguments that were not previously raised. They simply go into the specifics of the factual foundation relied upon by the Government. [para. 62] [para. 64]

Ontario

The Ontario government's reasons rejecting the Commission's optional pension recommendations pass the rationality test. The reasons outlined in the Government's response do not reveal political or discriminatory motivations or any improper motive. They reveal a consideration of the judicial office and an intention to deal with it appropriately. Also, Ontario relied upon a reasonable factual foundation by alleging the need for fiscal restraint and suggesting that no significant demographic change had occurred warranting a change to the pension plan structure. Lastly, in its reasons, examined globally, Ontario has clearly respected the commission process, taken it seriously and given it a meaningful effect. Ontario's engagement of an accounting firm was not a distortion of the process but, rather, demonstrates Ontario's good faith and the serious consideration given to the Commission's recommendations. [paras. 95-101]

The admission of the accounting firm's affidavits was proper. These affidavits do not add a new position. They merely illustrate Ontario's commitment to taking the Commission's recommendations seriously. [para. 103]

Alberta

The judicial independence of Justices of the Peace warrants the same degree of constitutional protection that is provided by an independent, objective commission. Since Alberta has already provided an independent commission process through the *Justices of the Peace Compensation Commission Regulation*, this process must be followed. [para. 122]

Alberta's reasons for rejecting the specific level of salary increase satisfy the rationality test. The reasons do not reveal political or discriminatory motivations, and are therefore legitimate. They consider the overall level of increase recommended, comment upon the Government's responsibility to properly manage fiscal affairs, and examine various comparator groups. The reasons illustrate Alberta's desire to compensate its Justices of the Peace in a manner consistent with the nature of the office. They clearly state the reasons for variation and explain why Alberta attributed different weights to the comparator groups. Further, the factual basis upon which the Government sought to rely is indicated and its reliance is, for the most part, rational. In its reasons, Alberta discusses general fiscal policy, various comparator groups, and the roles and responsibilities of Justices of the Peace. Finally, viewed globally, it appears that the process of the Commission, as a consultative body created to depoliticize the issue of judicial remuneration, has been effective. [paras. 123-127] [para. 129] [para. 132]

Quebec

The Government's response does not meet the standard of rationality. While the response does not evidence any improper political purpose or intent to manipulate or influence the judiciary, it fails to address the Committee's most important recommendations and the justifications given for them. The Government appears to have been content to restate its original position before the Committee, and in particular the point that no substantial salary revision was warranted because the recommendations of the previous Committee, which led to a substantial increase in judges' salaries, had just been implemented. Once the Committee had decided to conduct a broad review of the judicial compensation of provincial judges, as it was entitled to do, the constitutional principles governing the response required the Government to give full and careful attention to the recommendations and to the justifications given for them. The failure to do so impacted on the validity of the essentials of the response. [paras. 159-160] [para. 163] [para. 165]

With respect to the issue of salary parity for municipal court judges, the Government did not have to state the reasons for its agreement with recommendations which were well explained. Moreover, the Committee did not exceed its mandate or breach any principle of natural justice in examining the issue of parity. [paras. 167-169]

The appeal and the application for leave to intervene of the Conférence des juges municipaux du Québec should be allowed for the sole purpose of declaring that the response is also void in respect of the compensation of the judges of municipal courts to which the *Act respecting municipal courts* applies. The recommendations concerning the three groups of judges are closely linked, and the complete constitutional challenge launched by the other two groups of judges benefits the members of the Conférence. [paras. 170-171]

Cases Cited

Applied: Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, [1997] 3 S.C.R. 3; Reference re Anti-Inflation Act, [1976] 2 S.C.R. 373; referred to: Valente v. The Queen, [1985] 2 S.C.R. 673; Beauregard v. Canada, [1986] 2 S.C.R. 56; Ell v. Alberta, [2003] 1 S.C.R. 857, 2003 SCC 35; Mackin v. New Brunswick (Minister of Finance), [2002] 1 S.C.R. 405, 2002 SCC 13; Conférence des juges du Québec v. Québec (Procureur général), [2000] R.J.Q. 744; Conférence des juges du Québec v. Québec (Procureur général), [2000] R.J.Q. 2803.

Statutes and Regulations Cited

Alberta Order in Council, 174/2000, s. 2, Sch. 1, 6, 7.

Act respecting municipal courts, R.S.Q., c. C-72.01.

Canadian Charter of Rights and Freedoms, ss. 1, 11(d).

Constitution Act, 1867, Preamble.

Courts of Justice Act, R.S.O. 1990, c. C.43, Schedule (Appendix A of Framework

Agreement).

Courts of Justice Act, R.S.Q., c. T-16, ss. 246.29, 246.30, 246.31, 246.42, 246.43, 246.44.

Judicature Act, R.S.A. 1980, c. J-1 [am. S.A. 1998, c. 18].

Justices of the Peace Compensation Commission Regulation, Alta. Reg. 8/2000, ss. 3(1), 5(1), 16, 21(2).

Provincial Court Act, R.S.N.B. 1973, c. P-21, s. 22.03(1), (6).

History and Disposition:

APPEAL from a judgment of the New Brunswick Court of Appeal (Turnbull, Larlee and Robertson JJ.A.) (2003), 231 D.L.R. (4th) 38, 260 N.B.R. (2d) 201, 5 Admin. L.R. (4th) 45, 40 C.P.C. (5th) 207, [2003] N.B.J. No. 321 (QL), 2003 NBCA 54, affirming a decision of Boisvert J. (2002), 213 D.L.R. (4th) 329, 249 N.B.R. (2d) 275, 42 Admin. L.R. (3d) 275, [2002] N.B.J. No. 156 (QL), 2002 NBQB 156. Appeal dismissed.

APPEAL from a judgment of the Ontario Court of Appeal (O'Connor C.J. and Borins and MacPherson JJ.A.) (2003), 67 O.R. (3d) 641, 233 D.L.R. (4th) 711, 8 Admin. L.R. (4th) 222, 38 C.C.P.B. 118, 112 C.R.R. (2d) 58, [2003] O.J. No. 4155 (QL), affirming a decision of O'Driscoll, Then and Dunnet JJ. (2002), 58 O.R. (3d) 186, 157 O.A.C. 367, 33 C.C.P.B. 83, [2002] O.J. No. 533 (QL). Appeal dismissed.

APPEAL from a judgment of the Alberta Court of Appeal (Côté, Picard and Paperny JJ.A.) (2002), 222 D.L.R. (4th) 284, 16 Alta. L.R. (4th) 244, 317 A.R. 112, 36 C.P.C. (5th) 1, [2003] 9 W.W.R. 637, [2002] A.J. No. 1428 (QL), 2002 ABCA 274, affirming a decision of Clark J. (2001), 93 Alta. L.R. (3d) 358, 296 A.R. 22, 10 C.P.C. (5th) 157, [2001] 10 W.W.R. 444, [2001] A.J. No. 1033 (QL), 2001 ABQB 650, with supplementary reasons (2001), 3 Alta. L.R. (4th) 59, 300 A.R. 170, 19 C.P.C. (5th) 242, [2002] 8 W.W.R. 152, [2001] A.J. No. 1565 (QL), 2001 ABQB 960. Appeal allowed.

APPEAL from a judgment of the Quebec Court of Appeal (Robert C.J. and Brossard, Proulx, Rousseau-Houle and Morissette JJ.A.), [2004] R.J.Q. 1450, [2004] Q.J. No. 6622 (QL), affirming a decision of Guibault J., [2003] R.J.Q. 1488, [2003] Q.J. No. 3947 (QL). Appeal dismissed.

APPEALS from judgments of the Quebec Court of Appeal (Robert C.J. and Brossard, Proulx, Rousseau-Houle and Morissette JJ.A.), [2004] R.J.Q. 1475, [2004] Q.J. No. 6626 (QL) and [2004] Q.J. No. 6625 (QL), reversing a decision of Guibault J., [2003] R.J.Q. 1510, [2003] Q.J. No. 3948 (QL). Appeals dismissed.

APPEAL from a judgment of the Quebec Court of Appeal (Robert C.J. and Brossard, Proulx, Rousseau-Houle and Morissette JJ.A.), [2004] R.J.Q. 1450, [2004] Q.J. No. 6622 (QL), dismissing the intervention of the Conférence des juges municipaux du Québec. Appeal allowed in part.

Counsel:

Susan Dawes and Robb Tonn, for the appellants the Provincial Court Judges' Association of New Brunswick, the Honourable Judge Michael McKee and the Honourable Judge Steven Hutchinson.

Gaétan Migneault and Nancy Forbes, for the respondent Her Majesty the Queen in Right of the Province of New Brunswick, as represented by the Minister of Justice.

C. Michael Mitchell and Steven M. Barrett, for the appellants the Ontario Judges' Association, the Ontario Family Law Judges' Association and the Ontario Provincial Court (Civil Division) Judges' Association.

Lori R. Sterling, Sean Hanley and Arif Virani, for the respondent Her Majesty the Queen in Right of the Province of Ontario, as represented by the Chair of Management Board.

Phyllis A. Smith, Q.C., Kurt Sandstrom and Scott Chen, for the appellants Her Majesty the Queen in Right of Alberta and the Lieutenant Governor in Council.

Alan D. Hunter, Q.C., and S.L. Martin, Q.C., for the respondents Chereda Bodner et al.

Claude-Armand Sheppard, Annick Bergeron and Brigitte Bussières, for the appellant/respondent/intervener the Attorney General of Quebec and the appellant the Minister of Justice of Quebec.

Raynold Langlois, Q.C., and Chantal Chatelain, for the respondent/intervener Conférence des juges du Québec, the respondents Maurice Abud et al., and the intervener the Canadian Association of Provincial Court Judges.

William J. Atkinson and Michel Gagné, for the respondents Morton S. Minc et al.

André Gauthier and Raymond Nepveu, for the appellant Conférence des juges municipaux du Québec.

Robert J. Frater and Anne M. Turley, for the intervener the Attorney General of Canada.

Janet Minor, Sean Hanley and Arif Virani, for the intervener the Attorney General of Ontario.

Gaétan Migneault, for the intervener the Attorney General of New Brunswick.

George H. Copley, Q.C., and Jennifer Button, for the intervener the Attorney General of British Columbia.

Graeme G. Mitchell, Q.C., for the intervener the Attorney General for Saskatchewan.

Kurt Sandstrom, for the intervener the Attorney General of Alberta.

F. William Johnson, Q.C., for the intervener the Canadian Bar Association.

Louis Masson, Michel Paradis and Valerie Jordi, for the intervener the Federation of Law Societies of Canada.

Pierre Bienvenu, for the intervener the Canadian Superior Court Judges Association.

Steven M. Barrett and C. Michael Mitchell, for the intervener the Ontario Conference of Judges.

Paul B. Schabas and Catherine Beagan Flood, for the intervener the Association of Justices of the Peace of Ontario.

[Editor's note: A corrigendum was published by the Court July 29, 2005. The corrections have been incorporated in this document and the text of the corrigendum is appended to the end of the judgment.]

The following is the judgment delivered by

THE COURT:--

I. Introduction

1 These appeals again raise the important question of judicial independence and the need to maintain independence both in fact and in public perception. Litigants who engage our judicial system should be in no doubt that they are before a judge who is demonstrably independent and is motivated only by a search for a just and principled result.

2 The concept of judicial independence has evolved over time. Indeed, "[c]onceptions have changed over the years as to what ideally may be required in the way of substance and procedure for securing judicial independence ... . Opinions differ on what is necessary or desirable, or feasible"; *Valente v. The Queen*, [1985] 2 S.C.R. 673, at p. 692, *per* Le Dain J.

3 This evolution is evident in the context of judicial remuneration. In *Valente*, at p. 706, Le Dain J. held that what was essential was not that judges' remuneration be established by an independent committee, but that a provincial court judge's right to a salary be established by law. By 1997 this statement had proved to be incomplete and inadequate. In the *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3 ("*Reference*"), this Court held that independent commissions were required to improve the process designed to ensure judicial independence but that the commissions' recommendations need not be binding. These commissions were intended to remove the amount of judges' remuneration from the political sphere and to avoid confrontation between governments and the judiciary. The *Reference* has not provided the anticipated solution, and more is needed.

II. General Principles

A. *The Principle of Judicial Independence*

4 The basis for the principle of judicial independence can be found in both our common law and the Canadian Constitution; see *Beauregard v. Canada*, [1986] 2 S.C.R. 56, at pp. 70-73; *Ell v. Alberta*, [2003] 1 S.C.R. 857, 2003 SCC 35, at paras. 18-23. Judicial independence has been called "the lifeblood of constitutionalism in democratic societies" (*Beauregard*, at p. 70), and has been said to exist "for the benefit of the judged, not the judges" (*Ell*, at para. 29). Independence is necessary because of the judiciary's role as protector of the Constitution and the fundamental values embodied in it, including the rule of law, fundamental justice, equality and preservation of the democratic process; *Beauregard*, at p. 70.

5 There are two dimensions to judicial independence, one individual and the other institutional. The individual dimension relates to the independence of a particular judge. The institutional dimension relates to the independence of the court the judge sits on. Both dimensions depend upon objective standards that protect the judiciary's role; *Valente*, at p. 687; *Beauregard*, at p. 70; *Ell*, at para. 28.

6 The judiciary must both be and be seen to be independent. Public confidence depends on both these requirements being met; *Valente*, at p. 689. "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"; *Ell*, at para. 29.

7 The components of judicial independence are: security of tenure, administrative independence and financial security; see *Valente*, at pp. 694, 704 and 708; the *Reference*, at para. 115; *Ell*, at para. 28.

8 The *Reference*, at paras. 131-135, states that financial security embodies three requirements. First, judicial salaries can be maintained or changed only by recourse to an independent commission. Second, no negotiations are permitted between the judiciary and the government. Third, salaries may not fall below a minimum level.

9 The *Reference* arose when salaries of Provincial Court judges in Prince Edward Island were statutorily reduced as part of the government's budget deficit reduction plan. Following this reduction, numerous accused challenged the constitutionality of their proceedings in provincial court alleging that the court had lost its status as an independent and impartial tribunal. Similar cases involving provincial court judges in other provinces were joined in the *Reference*. Prior to the *Reference*, salary review was between provincial court judges, or their association, and the appropriate minister of the provincial Crown. Inevitably, disagreements arose.

10 The often spirited wage negotiations and the resulting public rhetoric had the potential to deleteriously affect the public perception of judicial independence. However independent judges were in fact, the danger existed that the public might think they could be influenced either for or against the government because of issues arising from salary

negotiations. The *Reference* reflected the goal of avoiding such confrontations. Lamer C.J.'s hope was to "depoliticize" the relationship by changing the methodology for determining judicial remuneration (para. 146).

11 Compensation commissions were expected to become the forum for discussion, review and recommendations on issues of judicial compensation. Although not binding, their recommendations, it was hoped, would lead to an effective resolution of salary and related issues. Courts would avoid setting the amount of judicial compensation, and provincial governments would avoid being accused of manipulating the courts for their own purposes.

12 Those were the hopes, but they remain unfulfilled. In some provinces and at the federal level, judicial commissions appear, so far, to be working satisfactorily. In other provinces, however, a pattern of routine dismissal of commission reports has resulted in litigation. Instead of diminishing friction between judges and governments, the result has been to exacerbate it. Direct negotiations no longer take place but have been replaced by litigation. These regrettable developments cast a dim light on all involved. In order to avoid future conflicts such as those at issue in the present case, the principles of the compensation commission process elaborated in the *Reference* must be clarified.

B. *The Fundamental Principles of the Commission Process*

13 The principles stated in the *Reference* remain valid. The *Reference* focussed on three themes: the nature of compensation commissions and their recommendations; the obligation of the government to respond; and the scope of judicial review of the government's response and the related remedies.

(1) The Nature of the Compensation Commission and its Recommendations

14 The *Reference* laid the groundwork to ensure that provincial court judges are independent from governments by precluding salary negotiations between them and avoiding any arbitrary interference with judges' remuneration. The commission process is an "institutional sieve" (*Reference*, at paras. 170, 185 and 189) - a structural separation between the government and the judiciary. The process is neither adjudicative interest arbitration nor judicial decision making. 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.

15 Each commission must make its assessment in its own context. However, this rule does not mean that each new compensation commission operates in a void, disregarding the work and recommendations of its predecessors. The reports of previous commissions and their outcomes form part of the background and context that a new compensation committee should consider. A new commission may very well decide that, in the circumstances, its predecessors conducted a thorough review of judicial compensation and that, in the absence of demonstrated change, only minor adjustments are necessary.

If on the other hand, it considers that previous reports failed to set compensation and benefits at the appropriate level due to particular circumstances, the new commission may legitimately go beyond the findings of the previous commission, and after a careful review, make its own recommendations on that basis.

16 It is a constitutional requirement that commissions be independent, objective and effective. One requirement for independence is that commission members serve for a fixed term which may vary in length. Appointments to a commission are not entrusted exclusively to any one of the branches of government. The appointment process itself should be flexible. The commission's composition is legislated but it must be representative of the parties.

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.

18 A number of criteria that must be met to ensure effectiveness are identified in the *Reference.* Once the process has started, the commission must meet promptly and regularly. As well there must be no change in remuneration until the commission has made its report public and sent it to the government. The commission's work must have a "meaningful effect"on the process of determining judicial remuneration (*Reference*, at para. 175).

19 What is a "meaningful effect"? Some of the appellants submit that "meaningful effect" means a binding effect on the government. A number of Attorneys General, by contrast, submit that "meaningful effect" requires a public and open process of recommendation and response. They urge that governments be permitted to depart from the report for a rational reason, but not to manipulate the judiciary. The essence of this appeal depends on whether "meaningful effect" means a binding effect or refers to an open process. For the reasons that follow, we conclude that it is the latter.

20 "Meaningful effect" does not mean binding effect. In the *Reference*, the Court addressed this question and stated that a recommendation could be effective without being binding. It held that the Constitution does not require that commission reports be binding, as decisions about the allocation of public resources belong to legislatures and to the executive (para. 176).

21 A commission's report is consultative. The government may turn it into something more. Unless the legislature provides that the report is binding, the government retains the power to depart from the commission's recommendations as long as it justifies its decision with rational reasons. These rational reasons must be included in the government's response to the commission's recommendations.

(2) <u>The Government's Response to the Recommendations</u>

22 If the government departs from the commission's recommendations, the *Reference* requires that it respond to the recommendations. Uncertainties about the nature and scope

of the governments' responses are the cause of this litigation. Absent statutory provisions to the contrary, the power to determine judicial compensation belongs to governments. That power, however, is not absolute.

23 The commission's recommendations must be given weight. They have to be considered by the judiciary and the government. The government's response must be complete, must respond to the recommendations themselves and must not simply reiterate earlier submissions that were made to and substantively addressed by the commission. The emphasis at this stage is on what the commission has recommended.

24 The response must be tailored to the commission's recommendations and must be "legitimate" (*Reference*, at paras. 180-83), which is what the law, fair dealing and respect for the process require. The government must respond to the commission's recommendations and give legitimate reasons for departing from or varying them.

25 The government can reject or vary the commission's recommendations, provided that legitimate reasons are given. Reasons that are complete and that deal with the commission's recommendations in a meaningful way will meet the standard of rationality. Legitimate reasons must be compatible with the common law and the Constitution. The government must deal with the issues at stake in good faith. Bald expressions of rejection or disapproval are inadequate. Instead, the reasons must show that the commission's recommendations have been taken into account and must be based on facts and sound reasoning. They must state in what respect and to what extent they depart from the recommendations, articulating the grounds for rejection or variation. The reasons should reveal a consideration of the judicial office and an intention to deal with it appropriately. They must preclude any suggestion of attempting to manipulate the judiciary. The reasons must reflect the underlying public interest in having a commission process, being the depoliticization of the remuneration process and the need to preserve judicial independence.

26 The reasons must also rely upon a reasonable factual foundation. If different weights are given to relevant factors, this difference must be justified. Comparisons with public servants or with the private sector may be legitimate, but the use of a particular comparator must be explained. If a new fact or circumstance arises after the release of the commission's report, the government may rely on that fact or circumstance in its reasons for varying the commission's recommendations. It is also permissible for the government to analyse the impact of the recommendations and to verify the accuracy of information in the commission's report.

27 The government's reasons for departing from the commission's recommendations, and the factual foundations that underlie those reasons, must be clearly and fully stated in the government's response to the recommendations. If it is called upon to justify its decision in a court of law, the government may not advance reasons other than those mentioned in its response, though it may provide more detailed information with regard to the factual foundation it has relied upon, as will be explained below.

(3) The Scope and Nature of Judicial Review

28 Once the commission has made its recommendations and the government has responded, it is hoped that, with the guidance of these reasons for judgment, the courts will rarely be involved. Judicial review must nonetheless be envisaged.

29 The *Reference* states that the government's response is subject to a limited form of judicial review by the superior courts. The government's decision to depart from the commission's recommendations must be justified according to a standard of rationality. The standard of judicial review is described in the *Reference* as one of "simple rationality" (paras. 183-84). The adjective "simple" merely confirms that the standard is rationality alone.

30 The reviewing court is not asked to determine the adequacy of judicial remuneration. Instead, it must focus on the government's response and on whether the purpose of the commission process has been achieved. This is a deferential review which acknowledges both the government's unique position and accumulated expertise and its constitutional responsibility for management of the province's financial affairs.

31 In the *Reference*, at para. 183, a two-stage analysis for determining the rationality of the government's response is set out. We are now adding a third stage which requires the reviewing judge to view the matter globally and consider whether the overall purpose of the commission process has been met. The analysis should be as follows:

(1) Has the government articulated a legitimate reason for departing from the commission's recommendations?
(2) Do the government's reasons rely upon a reasonable factual foundation? and
(3) 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?

32 The first stage of the process described in the *Reference* is a screening mechanism. It requires the government to provide a "legitimate" reason for any departure from the commission's recommendation. What constitutes a "legitimate" reason is discussed above (paras. 23-27).

33 The second stage of the review consists of an inquiry into the reasonableness and sufficiency of the factual foundation relied upon by the government in rejecting or varying the commission's recommendations. The *Reference* states that this inquiry is to be conducted in a manner similar to the Court's assessment of the "economic emergency" in *Reference re Anti-Inflation* Act, [1976] 2 S.C.R. 373 ("*Anti-Inflation Reference*").

34 Lamer C.J.'s mention of the *Anti-Inflation Reference* must be read in context. His statement was not meant to incorporate the circumstances of that case (i.e. an emergency) and, hence, does not require that the legislature or the executive establish the existence of "exceptional circumstances" in order to justify a departure from the recommendations. What Lamer C.J. intended was that a reviewing court is to assess the

factual foundation relied upon by the government in a manner similar to how this Court, in the *Anti-Inflation Reference*, assessed whether there were "exceptional circumstances" that provided a rational basis for the government's legislation under the "peace, order and good government" head of power.

35 In the *Anti-Inflation Reference*, the analysis focussed on two factors: first, whether the government had indicated that this was the factual basis upon which it was enacting the legislation and, second, whether on the face of the evidence before the Court, it was rational for the government to rely on such facts. The analysis required a deferential standard; see p. 423, *per* Laskin C.J.:

> In considering such material and assessing its weight, the Court does not look at it in terms of whether it provides proof of the exceptional circumstances as a matter of fact. The matter concerns social and economic policy and hence governmental and legislative judgment. It may be that the existence of exceptional circumstances is so notorious as to enable the Court, of its own motion, to take judicial notice of them without reliance on extrinsic material to inform it. Where this is not so evident, the extrinsic material need go only so far as to persuade the Court that there is a rational basis for the legislation which it is attributing to the head of power invoked in this case in support of its validity.

36 In analysing these two factors as part of the second stage of the judicial review process, the reviewing court must determine whether the government has explained the factual foundation of its reasons in its response. Absent new facts or circumstances, as a general rule, it is too late to remedy that foundation in the government's response before the reviewing court. Nevertheless, the government may be permitted to expand on the factual foundation contained in its response by providing details, in the form of affidavits, relating to economic and actuarial data and calculations. Furthermore, affidavits containing evidence of good faith and commitment to the process, such as information relating to the government's study of the impact of the commission's recommendations, may also be admissible.

37 The reviewing court should also, following the *Anti-Inflation Reference*, determine whether it is rational for the government to rely on the stated facts or circumstances to justify its response. This is done by looking at the soundness of the facts in relation to the position the government has adopted in its response.

38 At the third stage, the court must consider the response from a global perspective. Beyond the specific issues, it must weigh the whole of the process and the response in order to determine whether they demonstrate that the government has engaged in a meaningful way with the process of the commission and has given a rational answer to its recommendations. Although it may find fault with certain aspects of the process followed by the government or with some particular responses or lack of answer, the court must weigh and assess the government's participation in the process and its response in order to determine whether the response, viewed in its entirety, is impermissibly flawed even after the proper degree of deference is shown to the government's opinion on the issues.

The focus shifts to the totality of the process and of the response.

39 It is obvious that, on the basis of the test elaborated above, a bald expression of disagreement with a recommendation of the commission, or a mere assertion that judges' current salaries are "adequate", would be insufficient. It is impossible to draft a complete code for governments, and reliance has to be placed on their good faith. However, a careful application of the rationality standard dispenses with many of the rules that have dominated the discourse about the standard since the *Reference*. The test also dispenses with the "rules" against other methods for rejecting a commission's recommendations, such as prohibiting the reweighing of factors previously considered by the commission. The response can reweigh factors the commission has already considered as long as legitimate reasons are given for doing so. The focus is on whether the government has responded to the commission's recommendations with legitimate reasons that have a reasonable factual foundation.

40 In a judicial review context, the court must bear in mind that the commission process is flexible and that, while the commission's recommendations can be rejected only for legitimate reasons, deference must be shown to the government's response since the recommendations are not binding. If, in the end, the reviewing court concludes that the response does not meet the standard, a violation of the principles of judicial independence will have been made out.

41 In the *Reference*, Lamer C.J. briefly commented in passing on the justification under s. 1 of the *Canadian Charter of Rights and Freedoms* (paras. 277-85). Since the parties have not raised this issue in the case at bar, consideration of it, if it is indeed applicable, should await the proper case. We will now consider the remedies that are available in cases in which the constitutional standard is not met.

(4) Remedies

42 The limited nature of judicial review dictates the choice of remedies. The remedies must be consistent with the role of the reviewing court and the purpose of the commission process. The court must not encroach upon the commission's role of reviewing the facts and making recommendations. Nor may it encroach upon the provincial legislature's exclusive jurisdiction to allocate funds from the public purse and set judicial salaries unless that jurisdiction is delegated to the commission.

43 A court should not intervene every time a particular reason is questionable, especially when others are rational and correct. To do so would invite litigation, conflict and delay. This is antithetical to the object of the commission process. If, viewed globally, it appears that the commission process has been effective and that the setting of judicial remuneration has been "depoliticized", then the government's choice should stand.

44 In light of these principles, if the commission process has not been effective, and the setting of judicial remuneration has not been "depoliticized", then the appropriate remedy will generally be to return the matter to the government for reconsideration. If problems can be traced to the commission, the matter can be referred back to it. Should the commission

no longer be active, the government would be obliged to appoint a new one to resolve the problems. Courts should avoid issuing specific orders to make the recommendations binding unless the governing statutory scheme gives them that option. This reflects the conclusion in *Mackin v. New Brunswick (Minister of Finance)*, [2002] 1 S.C.R. 405, 2002 SCC 13, that it is "not appropriate for this Court to dictate the approach that should be taken in order to rectify the situation. Since there is more than one way to do so, it is the government's task to determine which approach it prefers" (para. 77).

III. Application of the Principles to the Cases

45 Provincial Court judges in New Brunswick, Ontario and Quebec, justices of the peace in Alberta and municipal court judges in Quebec have sought judicial review of their provincial governments' decisions to reject certain compensation commission recommendations relating to their salaries and benefits. We will apply the principles set out above to the facts of each of these cases.

A. *New Brunswick*

46 Before the *Reference*, the New Brunswick government ("Government") negotiated directly with Provincial Court judges. Although these negotiations led to salary changes in some years, the judges' salary was usually treated on the same basis as the salaries of non-bargaining civil service employees, notably those of senior civil servants. After the *Reference*, the New Brunswick legislature amended the province's *Provincial Court Act*, R.S.N.B. 1973, c. P-21, in order to establish the process recommended by our Court (ss. 22.03(1)). The new legislation sets out the factors to be considered by the Commission in making its recommendations:

> **22.03**(6) In making its report and recommendations, the Commission shall consider the following factors:
>
> (*a*) the adequacy of judges' remuneration having regard to the cost of living or changes in real per capita income,
>
> (*a.1*) the remuneration of other members of the judiciary in Canada as well as the factors which may justify the existence of differences between the remuneration of judges and that of other members of the judiciary in Canada,
>
> (*b*) economic fairness, including the remuneration of other persons paid out of the Consolidated Fund,
>
> (*c*) the economic conditions of the Province, and

> (*d*) any other factors the Commission considers relevant to its review.

These factors now provide the basis for the assessment that is to be conducted by New Brunswick's judicial remuneration commissions.

47 When the first commission was appointed in 1998, the salary of New Brunswick's provincial court judges was $100,000. In its representations to the 1998 Commission, the Provincial Court Judges' Association of New Brunswick ("Association") submitted that an increase was justified in view of its members' increased workload resulting from a number of legislative changes. It maintained that their work was as important as the work of judges of the Court of Queen's Bench and consequently asked that they receive the same remuneration. The 1998 Commission recommended salary increases to $125,000 as of April 1, 1998 and to approximately $142,000 in 2000. It relied on two principal factors: "both the nature of the work and the workload of Provincial Court judges have changed dramatically" and "the current salary and benefits paid to a Provincial Court judge in New Brunswick is insufficient to attract the number and quality of candidates which is appropriate for the Court". The Commission mentioned the salary of federally appointed judges, but only for purposes of comparison with the salary of Provincial Court judges.

48 In its response to the 1998 Commission's report, the Government accepted only the $25,000 increase. However, the salary was further increased to the recommended level on October 27, 2000, just a few months before the appointment of the 2001 Commission.

49 By an Order in Council published on February 14, 2001, the Government appointed the members of a commission whose term would end on December 31, 2003. The Association renewed the argument based on a comparison with other provincial court judges and a link with federally appointed judges. It again relied on the increase in the number, length and complexity of the cases its members decide. The Government took the position that the remuneration of Provincial Court judges was fair and that it was sufficient to attract qualified candidates. It asserted that since the last increase, there had been no changes that would justify another increase of the judges' compensation. The Government provided the Commission with indexes, information on economic factors in New Brunswick and salary trends in the public sector, and comparisons with others judges in Canada. It specifically rejected parity with federally appointed judges.

50 In its report, the 2001 Commission mentioned the judges' increased workload. It noted that the Government had not given any indication of being in financial difficulty and highlighted increases granted to public service employees in excess of the wage restraint policy. It dealt expressly with the parity argument. The following extract from the report reflects the gist of the justification for the recommendation on salary:

> Without wishing to debate the merits of the development of the court system over the past 300 years, the Commission feels that the wage difference between PCJ and members of the Court of Queen's Bench cannot be ignored.

The only persons, in fact, whose job and method of appointment are similar to the PCJ in New Brunswick are judges of the Court of Queen's Bench.

However, recognising this is different from insisting either on parity with the salaries or in establishing some lock-step arrangement which would keep PCJ remuneration at a constant percentage, either above or below Court of Queen's Bench salaries.

...

In their submission, the Province notes that since the PCJ received a 40% increase within the last six months or so, there is no reason to consider a further increase.

The effect that this would be to freeze the salaries of PCJ for three years, except, presumably, for a cost-of-living adjustment which all employees get.

The reason that this large increase occurred when it did, was that the Province did not pay what the last Commission recommended.

...

It is the view of this Commission that the suggestion made by the Province that nothing be paid for a further three years would be in violation of the Supreme Court ruling.

...

According to figures contained in the submission of the Province to this Commission, New Brunswick reported personal income per capita in 1999 equal to 85% of the Canadian average.

Considering these factors and the prospect of salaries of Judges of the Queen's Bench rising to just over $200,000, and continuing to rise by about $2,000, it is proposed that PCJ receive 8% in the first year and a further 5% in the succeeding two years to keep them in reasonable relationship to judges of the Court of Queen's Bench. This would result in an annual salary as follows, beginning January 1, 2001 and effective on the same date in the succeeding two years:

2001 - $154,018

2002 - $161,709
2003 - $169,805

> In addition, the Commission recommends that the Province apply to these annual salary amounts, the New Brunswick Industrial Aggregate Index... .
>
> In this third year, the annual salaries of PCJ would be approximately $30,000 less than the salaries of judges of the Court of Queen's Bench, and marginally lower than the percentage that New Brunswick's personal income per capita was in 1999 of the national average.

51 The Commission also made a number of recommendations with respect to pensions, vacations, health care and life insurance.

52 The Government rejected all the Commission's recommendations with regard to remuneration except for the increase based on the province's Industrial Aggregate Index. The Government's response took the form of recitals, which are reproduced in the appendix and will be dealt with at greater length below. These 29 recitals can be condensed into three main reasons: in the Government's view, (1) the Commission misunderstood its mandate, (2) it is inappropriate to link the Provincial Court judges' salary to that of federally appointed judges, and (3) the judges' existing salary is adequate.

(1) Judicial History

53 The reviewing judge found the Government's reasons for rejecting the Commission's salary recommendations to be rational, but held that its reasons for rejecting the recommendations relating to pensions and benefits were not ((2002), 249 N.B.R. (2d) 275). The recommendations relating to vacations, pensions and health benefits were declared to be binding upon the Government.

54 The reviewing judge stressed that the review process should focus on the reasons set out in the Government's response rather than on the adequacy of the Commission's recommendations: "I note parenthetically that this court is not called upon to determine whether or not the recommendations of the 2001 Commission are adequate, insufficient or over generous. Rather, the role of this court is simply to determine if the Government has justified its decision according to the criterion which was set by the Supreme Court of Canada in the *P.E.I. Reference*" (para. 20). He considered that the question he had to answer was whether judicial independence had been preserved despite the Government's rejection of the recommended raise: "... would a reasonable person, appearing before the Provincial Court, fear that he or she is not being heard by an independent tribunal because the Government of this Province declined to raise the presiding judge's salary from $141,206 to $169,805 by this time next year? I would have to answer 'no' to the question" (para. 52).

55 In considering whether judicial independence had been preserved, the judge looked at the proposed increases through the lens of the reasonable person standard. This led him to focus on a quantitative evaluation to determine whether judicial independence was threatened. The Provincial Court judges appealed to the Court of Appeal. The Government did not appeal the order relating to pensions and benefits.

56 The Court of Appeal stated that the Commission's mandate was to insulate the process from political interference and to depoliticize the determination of changes to remuneration (para. 60). It stressed that the Commission's responsibility was to make recommendations as to the appropriate compensation for judges based on the relevant factors (para. 69). The court distanced itself from a standard of deference to the Commission. It instead referred to a need to defer to the Government's response: "In conclusion, the simple rationality test requires deference to the Government's factual justification for its rejection decision" (para. 113). The court criticized the Government for relying in its response on economic constraints that had not been raised in its submissions to the Commission. It also faulted the Government for insisting that the salary was adequate but said that this failing could be explained by a weakness in the Commission's report:

> The Government insists that the present salary level is adequate in the sense that there has been no material change in circumstances since implementation of the 40% salary increase recommended by the 1998 Commission: see Recital 1. In my view, this bald assertion fails the simple rationality test. For example, the Government does not deal with the fact that the salaries of other provincial and federal judges have risen since implementation of the 1998 Commission's salary recommendation. That being said, I must confess that the manner in which the Commission disposed of this argument is flawed. [para. 138]

57 The Court of Appeal then identified major problems in the Commission's report, and in particular its conclusion that to deny an increase would be in violation of the *Reference*. The court stressed that the Government could have identified the Commission's errors in law in its response (para. 141). It noted that such errors might have been avoided had the Commission been provided with independent legal counsel to assist the lay tribunal in its deliberations. The Court of Appeal also addressed the Government's contention that the recommended salary increase is excessive, particularly when compared with the increases received by civil servants. It concluded that the comparison was inappropriate and that the response, in this regard, failed to meet the standard of rationality. It then reviewed the argument based on parity with federally appointed judges and found that the Government was right to reject the link between the salary of federally appointed judges and that of Provincial Court judges. At this point, the court conducted its own analysis to determine whether the salary was sufficient to attract qualified candidates. It concluded that the Government's position met the rationality standard and that it could be reasserted in the response because the Commission had not dealt with it properly.

58 Having concluded that two cogent reasons had been advanced for refusing to implement the Commission's report, namely the rejection of parity and the ability to attract

qualified candidates, the Court of Appeal found that the reasons met the rationality standard and dismissed the appeal. The Association appealed to this Court.

59 For the reasons that follow, the appeal should be dismissed. The justifications for rejecting the 2001 Commission's recommendations given by the Government in its response to the Commission's report meet the rationality standard. To explain this conclusion, the Government's response will be reviewed in light of the principles set out above. The questions are: first, whether the response contains legitimate reasons based on the public interest; second, whether it is based on a sufficient factual foundation; and finally, whether the Government's reasons, viewed globally, show that the purposes of the commission process have been achieved. But before turning to the analysis of the Government's response, a preliminary issue must be addressed - namely the admissibility of affidavits submitted by the Government at the trial level in support of its response to the Commission's report.

(2) Admissibility of Affidavits

60 In the Court of Queen's Bench, the Government sought to have four affidavits admitted. In one, Bryan Whitfield, the Senior Policy Advisor in the Department of Justice's Research and Planning Branch, detailed his estimate of the costs arising from the implementation of the Commission's recommendations. In a second affidavit, Conrad Ferguson, an actuary in private practice, provided the annual cost of the judges' salary and benefits at various salary levels. Next, James Turgeon, the Executive Director of the Department of Finance's Economic and Fiscal Policy Division, outlined the economic conditions in the province. Finally, Lori Anne McCracken, an employee of the Government's office of Human Resources, addressed salary increases granted within the civil service.

61 The appellants contested the admissibility of the Government's four affidavits, arguing that they advanced additional evidence and new reasons for rejecting the Commission's salary recommendations. The reviewing judge admitted the affidavits in the record. The Court of Appeal reversed the lower court's decision and held that the affidavits were not admissible on the basis that they introduced evidence and facts not contained in the Government's response.

62 In the *Reference*, this Court stated that the government's response must be complete. In other words, all the reasons upon which the government relies in rejecting the commission's recommendations must be stated in its public response. As a result, once the matter is before the reviewing court, it is too late for the government to bolster its response by including justifications and reasons not previously mentioned in the response.

63 This is not to say that the government's response must set out and refer to all the particulars upon which its stated reasons are based. The objective of an open and transparent public process would not be furthered if governments were required to answer commission recommendations by, for example, producing volumes of economic and actuarial data. It is enough that the government's reasons provide a response to the commission's recommendations that is sufficient to inform the public, members of the

legislature and the reviewing court of the facts on which the government's decision is based and to show them that the process has been taken seriously.

64 In the present case, the affidavits do not advance arguments that were not previously raised by the Government in its submissions to the Commission; nor do they add to the reasons given in the Government's response. They simply go into the specifics of the factual foundation relied upon by the Government. They show how calculations were made and what data were available. They contribute to showing the consideration given to the recommendation. This is permissible, and the documents are admissible.

(3) Application of the Principles

65 As has already been mentioned, the Government's response points to three reasons for rejecting the recommendations. Those reasons will now be analysed through the prism of the test elaborated above. The first reason given by the Government is that the Commission misunderstood its mandate. The Government takes the position that, when making salary recommendations, the Commission's primary purpose is to ensure that compensation levels do not fall below the adequate minimum required to guarantee judicial independence. Second, the Government considers the recommended raise to be excessive because it fails to take account of economic conditions in New Brunswick and is instead based on a desire to maintain partial parity with federally appointed judges. Third, the Government states that the judges' existing salary is adequate. In making this assertion, it relies on indexes and economic data and on the ability to attract qualified candidates with the existing salary. It takes the position that an increase based on inflation would be sufficient to maintain the adequacy of the judges' remuneration.

66 The first stage of the analysis consists of screening the government's reasons to determine if they are legitimate. This is done by ascertaining whether the reasons are simply bald rejections or whether they are guided by the public interest, and by ensuring that they are not based on purely political considerations.

67 The Government's questioning and reformulation of the Commission's mandate are inadequate. As we have already mentioned and as the Court of Appeal correctly pointed out, the Commission's purpose is to depoliticize the remuneration process and to avoid direct confrontation between the government and the judiciary. Therefore, the Commission's mandate cannot, as the Government asserts, be viewed as being to protect against a reduction of judges' salaries below the adequate minimum required to guarantee judicial independence. The Commission's aim is neither to determine the minimum remuneration nor to achieve maximal conditions. Its role is to recommend an appropriate level of remuneration. The Government's questioning of the Commission's mandate is misguided and its assertion regarding the Commission's role is incorrect. The part of the response in which the Government questions the Commission's mandate is not legitimate. It does nothing to further the public interest and accordingly fails at the first stage of the analysis.

68 However, the Government's reasons relating to the adequacy of the judges' existing salary and the excessiveness of the recommended raise cannot be characterized, at the

first stage of the analysis, as being purely political or as an attempt to avoid the process. Furthermore, there is no suggestion that the Government has attempted to manipulate the judiciary. As for the reasons relating to the appropriateness of the salary recommendations, although some of the recitals may seem dismissive of the process, the reviewing judge was on the whole right to conclude at the first stage (at para. 58):

> By declining to accept the 2001 Commission's salary recommendation, there is no evidence that the executive intended to manipulate the bench or politically interfere with it. There is no indication that the government's policy of fiscal restraints constituted measures directed at judges alone. There is no suggestion that the refusal to grant a salary increase amounts to unscrupulous measures whereby the provincial government utilized "its authority to set judges' salaries as a vehicle to influence the course and outcome of adjudication" (*P.E.I. Reference*, at para. 145).

69 Since the portion of the Government's response relating to the adequacy of the judges' existing salary and the excessiveness of the recommended raise is legitimate, the reasons given must be examined further to determine if they rely upon a sufficient factual foundation. This second stage of the rationality test requires the court to determine, first, whether the government has set out sufficient facts to support its reasons for rejecting the recommendations on remuneration and, second, whether it is rational for the government to rely on the stated facts to justify its response.

70 The two justifications raised by the Government must be addressed separately -- after all, the excessiveness of a recommended salary increase is not necessarily commensurate with the appropriateness of the judges' existing salary. However, the facts relied upon by the Government in support of both these justifications can be examined together insofar as the evidence adduced by the Government to show that the recommended increase is excessive supports, to some extent at least, its contention that the remuneration is adequate.

71 The Government objected to the salary increase because it believed that in granting an increase of this magnitude, the Commission was in fact giving effect to the Provincial Court judges' argument that they should be granted parity or partial parity. Even though the Commission explicitly stated that it did not accept the parity argument, there is, in reality, an obvious connection between the recommended increase and the salary of federally appointed judges that transcends the report: the recommended increase would result in the judges' salary equalling 85 percent of the salary of federally appointed judges. This figure corresponds to the Government's submission, mentioned by the Commission in its report, that the average per capita income in New Brunswick is equal to 85 percent of the Canadian average. This would account for the figure, not otherwise explained, chosen by the Commission for the recommended increase. The Court of Appeal correctly highlighted the facts relied on by the Government and the weakness of the Commission's report in this regard (at para. 159):

> Historically, federal judicial remuneration commissions have

> consistently accepted that the federal salary should be uniform and, with one exception, not reflect geographic differences. Additionally, federal commissions have consistently recognized that the uniform salary must be set at a level that is capable of attracting highly qualified candidates. This factor is problematic with respect to potential applicants practising law in Canada's larger metropolitan centres. Their incomes and salary expectations are understandably greater than those practising in smaller communities. Rather than recommending a salary differential based on the geographic location of a judge's residence, federal commissions have concluded that the salary level must be set at a level which does not have a chilling effect on recruitment in the largest metropolitan areas of the country. For this reason, the recommended federal salary is adjusted to reflect this geographic disparity.

72 The role of the reviewing court is not to second-guess the appropriateness of the increase recommended by the Commission. It can, however, consider the fact that the salaries of federally appointed judges are based on economic conditions and lawyers' earnings in major Canadian cities, which differ from those in New Brunswick. As a result, while the Commission can consider the remuneration of federally appointed judges as a factor when making its recommendations, this factor alone cannot be determinative. In fact, s. 22.03(6)(*a.1*) of the *Provincial Court Act* requires the Commission to consider factors which may justify the existence of differences between the remuneration of Provincial Court judges and that of other members of the judiciary in Canada, yet the Commission chose not to address this. Moreover, it is inappropriate to determine the remuneration of Provincial Court judges in New Brunswick by applying the percentage ratio of average incomes in New Brunswick to those in Canada to the salary of federally appointed judges, because the salary of federally appointed judges is based on lawyers' earnings in major Canadian cities, not the average Canadian income.

73 The Government also asserts that economic conditions in the province do not support the salary increase of 49.24 percent between 1990 and 2000, which rises to 68.16 percent when combined with the recommended increase for 2001. In its view this increase far exceeds changes in economic indicators in New Brunswick. The Government compares the increase to the 18.93 percent increase granted to senior civil servants between 1990 and 2000. It relies on the fact that the recommendation would give New Brunswick's judges the third highest salary among provincial court judges in the country after their counterparts in Ontario and Alberta, while the average earner in New Brunswick is ranked eighth out of ten. The economic data on which the Government relies were set out in its representations to the Commission, but the Commission did not discuss them. The calculation of the value of the recommended increase was included in the affidavits that it sought to have admitted.

74 Except for the reason relating to the Commission's failure to cost its recommendations, the arguments raised in the Government's response may at first glance appear to be a restatement of its position before the Commission. However, as a result of two particular circumstances, the Government can rely on them. First, the Commission did

not discuss the data set out in the Government's representations and, second, the report did not explain how economic fairness and economic conditions in the province had been taken into consideration, even though these are two important factors that the *Provincial Court Act* requires the Commission to consider. The deficiencies of the Commission's report are such that the Government cannot be prevented from relying on a relevant factual foundation, not even one that was included in the representations it made to the Commission.

75 In its response, the Government correctly points to several facts that legitimately support its position that the increase is excessive, namely, the fact that the recommendations are not based on economic conditions in New Brunswick but correspond to a percentage of the salary of federally appointed judges; the fact that such a raise would constitute preferential treatment in comparison with the raises received by senior civil servants in New Brunswick and most other provincial court judges in Canada; and finally, the fact that the increase would far exceed changes in economic indicators since the 1998 recommendations were implemented. Accordingly, the Government can legitimately refuse to implement the recommended salary increase on the ground that it is excessive.

76 In rejecting the Commission's salary recommendations, the Government also relies on its assessment that the judges' existing salary is adequate. This argument also formed part of the Government's submissions to the 2001 Commission. In its report, however, the Commission dismissed this argument on the ground that to accept it would lead to a salary freeze in violation of the principles stated in the *Reference*. In taking this position, the Commission committed an error of law. The *Reference* did not make salary increases mandatory. Consequently, the Government was justified in restating its position that the existing salary was adequate insofar as it relied on a reasonable factual foundation.

77 In its response, the Government relies on three facts in support of this assertion: that nothing has changed since the recommendations of the 1998 Commission that would warrant a further increase, that the existing remuneration is sufficient to attract qualified candidates, and that judges are currently in the top 5 percent of wage earners in New Brunswick. We will deal with each of these facts in turn.

78 The 2001 Commission rejected the Government's argument that nothing had occurred since the salary increase granted a few months before the Commission was appointed. It faulted the Government for having delayed implementation of the previous commission's salary recommendations. In these circumstances, if the Government's stance on the adequacy of remuneration can be said to have a reasonable factual foundation, it is not because of its reliance upon the fact that nothing has changed since the last increase.

79 The Government also states in its response that the judges' existing salary is adequate because it is sufficient to attract a number of qualified candidates for appointment to the bench. The Commission did not assess this argument or the facts in support of it, except to say that provincial court judges are chosen from the same pool of lawyers as Court of Queen's Bench judges. The figure of 50 qualified candidates advanced by the Government was questioned at one point, but the Court of Appeal found that there

were at least 30, thus showing that the salary, in combination with the pension plan, was sufficient to attract qualified candidates. The Court of Appeal correctly found that the Commission's report did not adequately address the Government's position. The Government's reliance on this factual foundation is reasonable.

80 Finally, the Government's argument that the salary increase should be rejected because judges are currently among the top 5 percent of the province's wage earners bears little weight in itself. This information is meaningless because salaries in the group in question may vary widely. The reference to the top 5 percent of the province's wage earners can be traced to the Government's submissions to the 2001 Commission, in which it stated that the average salary in this category is approximately $92,000. That amount is less than the salary earned by the judges even before the 1998 Commission started its process. As the Court of Appeal stated, now is not the time to rewind the clock.

81 In conclusion, the Government's response cannot be struck down for lack of a reasonable factual foundation. While some parts of the Government's response may appear dismissive, others have a rational basis. On the one hand, the Government's rejection of the recommended increase on the basis that it is excessive is amply supported by a reasonable factual foundation. On the other hand, the arguments in support of the *status quo* were not properly dealt with by the Commission. The Commission also failed to adequately address the Association's submissions in support of a reasonable increase, namely those relating to the judges' increased workload and to the salaries of provincial court judges in other jurisdictions. These omissions may have occurred because the parity argument advanced by the Association had blurred the Commission's focus.

82 This being said, a reviewing court cannot substitute itself for the Commission and cannot proceed to determine the appropriate salary where the Commission has neglected to do so. However, deference should not undermine the process. Whereas a commission's report can normally be relied upon by a subsequent commission to have set an appropriate level of compensation, in certain circumstances, such as where the earlier commission neglected to consider all the criteria enumerated in the *Provincial Court Act* or where it encountered constraints preventing it from giving full effect to one or more criteria, the subsequent commission may reconsider the earlier commission's findings or recommendations when conducting its own review. This may be one such case in which a future commission will have greater latitude than it would otherwise have had.

83 At the third stage of the rationality analysis, the government's reasons must be examined globally in order to determine whether the purposes of the commission process have been achieved. The Government's justification for its departure from the Commission's recommendations is unsatisfactory in several respects. However, at this stage, the response must be viewed globally and with deference. From this perspective, the response shows that the Government took the process seriously. In some respects, it had to rely on the representations it had made to the Commission, since the Commission had failed to deal with them properly. Thus, the Government has participated actively in the process and it must be shown greater deference than if it had ignored the process.

84 Overall, the analysis shows that the principles of the *Reference* have been respected

and that the criticisms of the Government's response were properly dismissed.

85 For these reasons, the appeal is dismissed with disbursement costs to the respondent, as requested by the latter.

B. *Ontario*

86 The Ontario Judges' Association, the Ontario Family Law Judges' Association and the Ontario Provincial Court (Civil Division) Judges' Association (together "Judges") are the appellants in this appeal. Her Majesty the Queen in Right of the Province of Ontario, as represented by the Chair of Management Board ("Ontario"), is the respondent.

87 Under the statutory regime in Ontario, a commission's salary recommendations are binding on the government. However, the commission's pension recommendations are not. This case involves pension recommendations. For the reasons that follow, the appeal is dismissed.

(1) Background

88 The Fourth Triennial Provincial Judges Remuneration Commission (1998-2001) ("Commission") was established by Appendix A of the Framework Agreement set out in the Schedule to the *Courts of Justice Act*, R.S.O. 1990, c. C.43. The Framework Agreement sets out the jurisdiction and terms of reference of each triennial commission. Before the Commission, the Judges sought higher salaries and a better pension. In particular, they sought to reduce the disparity between federally and provincially appointed judges. Ontario submitted before the Commission that salary and benefits should not be increased. It also argued that the Judges' salaries, pensions and benefits were at a fair and appropriate level.

89 The Commission recommended a salary increase of approximately 28 percent over three years. This recommendation was binding in Ontario by virtue of the Framework Agreement. The majority of the Commission also set out three optional pension recommendations. These were (1) to increase the provincial Judges' pension plan to the level of the federal judges' plan; (2) to change to a 20-year accrual rate of 3.3 percent so that after 20 years of service a provincial judge could retire at 65 years of age with a pension of 66 2/3 percent of his salary at the date of retirement; or (3) to provide an across-the-board pension benefit increase of 10 percent. The majority also recommended that Ontario consider either (1) adopting a "Rule of 80" that would entitle a judge to retire with a full pension any time after his or her age plus years of service equalled 80; or (2) reducing the early retirement penalties.

90 The Commission did not retain actuaries to cost out its pension recommendations in light of the 28 percent salary increase. The only costings referred to in the Commission's report involved the estimated costs of the pension enhancements and were done before the salary increase was taken into account. The minority of the Commission did not support the pension recommendations.

91 In order to consider the Commission's optional pension recommendations, Ontario retained PricewaterhouseCoopers ("PwC") to determine the cost. Ontario ultimately concluded that the 28 percent salary increase, which in turn automatically increased the value of the pension by 28 percent, was sufficient. It refused to adopt any of the pension recommendations. On February 1, 2000, Ontario sent its response to the chair of the Commission. It listed seven reasons why it was not implementing the pension recommendations, including the fact that the current pension entitlements were appropriate and their value had already increased as a result of the salary increase awarded by the Commission (i.e. 28 percent). However, Ontario's reasons for rejecting the Commission's recommendations made no reference to it having retained PwC or to any alleged error or incompleteness in costings made by the Commission.

92 The Judges applied for judicial review. In support of its position, Ontario filed affidavits from Owen M. O'Neil of PwC detailing PwC's work for the Government. The Judges objected to Ontario's retention of PwC. They also objected to the admissibility of the affidavits. They accused Ontario of engaging in a "Unilateral and Secretive Post-Commission Process". They argued that this rendered the commission process ineffective. Evidently, the parties disagreed on the real purpose of the PwC retainer.

(2) Judicial History

(a) *Ontario Superior Court of Justice (Divisional Court)* ((2002), 58 O.R. (3d) 186)

93 The Ontario Divisional Court dismissed the Judges' application. It held that the affidavit evidence respecting the PwC costing was admissible because, according to the *Reference*, a government is entitled to "justify its decision in a court of law". The court considered the *Reference* and concluded that Ontario's reasons for rejecting the pension recommendations were clear, logical, relevant and consistent with the position taken before the Commission. There was no evidence that the decision was purely political, was discriminatory or lacked a rational basis. Paragraph 28 of the Framework Agreement contemplates a return to the Commission if the Commission had failed to deal with any matter properly arising from the inquiry or if an error is apparent in the report. However, this is merely permissive. In any event, the Divisional Court was not persuaded that the Commission erred in either of these regards.

(b) *Court of Appeal* ((2003), 67 O.R. (3d) 641)

94 The Ontario Court of Appeal upheld the dismissal of the Judges' application. MacPherson J.A. explained that the Divisional Court did not err by concluding that Ontario's engagement of PwC did not undermine the effectiveness of the commission process. Instead, it showed that Ontario intended to conduct a serious analysis with respect to those recommendations. The court considered each of Ontario's seven reasons for rejecting the pension recommendations. It concluded that the reasons were clear, logical, relevant and consistent with Ontario's position taken before the Commission.

(3) Analysis

(a) *Do Ontario's Reasons Satisfy the "Rationality" Test?*

95 As outlined above, Ontario rejected all the Commission's optional pension recommendations. Its reasons for doing so are set out in the letter from the Honourable Chris Hodgson, Chair of the Management Board, to Mr. Stanley M. Beck, Q.C., Chair of the Commission ("Letter"). These seven reasons are essentially (1) the automatic 28 percent increase is appropriate; (2) the Judges' pensions will not erode over time due to the benefit formula; (3) the increase in the Judges' salary (which, in turn, automatically increased the pension) has narrowed the gap between provincial and federal judges' salaries; (4) no significant demographic changes have occurred since the 1991 independent Commission reviewed the structure of the Judges' pension plan and presented a design which was accepted; (5) a 75 percent replacement ratio is achieved under the current pension arrangement when the likely pre-appointment savings of the Judges are considered; (6) the Ontario Judges' pension plan is superior to the pensions provided in all other provinces and territories; and (7) the Government's current fiscal responsibilities and competing demands for limited resources require a continued commitment to fiscal restraint to strengthen Ontario's economy.

96 Do these reasons pass the test of "rationality"? To pass the test of rationality, the reasons must be legitimate. The Letter sets out seven reasons for rejecting the optional pension recommendations. The reasons outlined in the Letter do not reveal political or discriminatory motivations. They note the fact that the 28 percent salary increase automatically increases the value of the pension. They also note that no demographic changes have occurred since the pension structure was reviewed by the Second Triennial Commission in 1991. They explain that Ontario is in a period of fiscal restraint and that many areas are facing reduction. In this regard, the Judges are getting a 28 percent increase in salary and pension, and it implicitly appears that they are being treated fairly. The reasons are not political or discriminatory.

97 Ontario's reasons do not reveal any improper motive. They are not bald expressions of rejection or disapproval. They reveal a consideration of the judicial office and an intention to deal with it appropriately. The reasons reflect the underlying public interest in having a commission process, being the depoliticization of the remuneration process and the need to preserve judicial independence. Therefore, this branch of the "rationality" test is satisfied.

98 Next, it must be determined whether the reasons rely upon a reasonable factual foundation. In determining whether the reasons rely upon a reasonable factual foundation, the test is one of a deferential standard to the government. It does not require the government to demonstrate exceptional circumstances. It simply asks: (1) Did the government indicate the factual basis upon which it sought to rely? (2) On the face of the evidence, was this reliance rational? In this case, Ontario's reasons allege the need for fiscal restraint and point to reductions in other expenditures. The rejection of the recommended additional pension benefits for the Judges is consistent with this reasonable

factual foundation. Likewise, in its reasons, Ontario suggests that no significant demographic changes have occurred warranting a change to the pension plan structure. This is also a reasonable factual foundation upon which a government can base its reasons for rejecting the Commission's recommendations.

99 We conclude that Ontario's reasons rely upon a reasonable factual foundation.

100 Finally, the government's reasons must be examined globally to ensure that the objectives of the commission process have been achieved. Here, a reviewing court also plays a limited role. In this case, it appears that the commission process has been effective. Under the Framework Agreement, the Commission's salary recommendations are binding. The pension recommendations are not. Through the binding salary recommendations, the value of the Judges' pension has increased by 28 percent. In its reasons, Ontario has clearly respected the commission process, taken it seriously and given it a meaningful effect.

101 We also agree with the Ontario Divisional Court and the Court of Appeal that Ontario's engagement of PwC was not a distortion of the process. To the contrary, it is the opposite. It demonstrates Ontario's good faith and the serious consideration given to the Commission's recommendations.

102 Ontario's reasons, viewed globally, meet the "rationality" test.

(b) *Admissibility of the PwC Affidavits*

103 In addition to their objection to the engagement of PwC, the Judges objected to the admissibility of the PwC affidavits. We agree with the Ontario Divisional Court and the Court of Appeal that the admission of the affidavits was proper. The Judges called upon Ontario to justify its reasons "in a court of law". This was done. The affidavits do not add a new position. They merely illustrate Ontario's good faith and its commitment to taking the Commission's recommendations seriously. The fact that the Letter does not refer to Ontario's engagement of PwC is irrelevant. The PwC retainer is not advanced as a key reason for rejecting the Commission's pension recommendations. The reasons which are relevant are those contained within the Letter itself. These reasons met the "rationality" test.

104 The appeal is dismissed with costs.

C. *Alberta*

105 The respondents in this appeal are Justices of the Peace in Alberta. Her Majesty the Queen in Right of Alberta and the Lieutenant Governor in Council (together "Alberta") are the appellants. The issue is whether Alberta's partial departure from the Justices of the Peace Compensation Commission's ("Commission") recommended salary increase violates the principle of judicial independence. The respondents say it does. Alberta disagrees. For the reasons which follow, we conclude that it does not.

(1) Background

106 On April 30, 1998 amendments to the *Judicature Act*, R.S.A. 1980, c. J-1 (am. S.A. 1998, c. 18) came into force which provided for, among other things, the establishment of an independent compensation commission for Justices of the Peace. Section 3(1) of the *Justices of the Peace Compensation Commission Regulation*, Alta. Reg. 8/2000, provides that the Commission's task is to review remuneration and benefits paid to Alberta's Justices of the Peace. Section 16 sets out the relevant criteria to be considered. The Commission's recommendations are non-binding (see ss. 5(1) and 21(2) of the Regulation).

107 In this case, the Commission received submissions for the period of April 1,1998 to March 31, 2003. On February 29, 2000, it issued a report recommending, among other things, a substantial increase in salary (*The Justices of the Peace Compensation Commission: Commission Report* (2000)). In its opinion, the compensation for Justices of the Peace should be approximately two thirds of the amount given to Provincial Court judges.

108 When the Commission made its recommendations, the salary of full time sitting Justices of the Peace was approximately $55,008 per annum. Per diem rates for part time sitting and presiding Justices of the Peace were $250 and $220 respectively. These amounts have not changed since 1991. In its report, the Commission noted that it did not consider the current levels of compensation to be helpful. They were out of line with the comparator groups and not the product of any type of independent inquiry process. The Commission made the following recommendations:

> Full Time Sitting or Presiding Justices of the Peace
>
> April 1, 1998 -- $95 000 per annum April 1, 1999 -- $95 000 per annum
> April 1, 2000 -- $100 000 per annum April 1, 2001 -- $100 000 per annum
> April 1, 2002 -- $105 000 per annum
>
> together, in each year, with a continuation of the current benefits and an amount equal to an additional 10% in lieu of pension and an increase in vacation entitlement from 3 to 4 weeks.
>
> Part time Sitting and Part time Presiding Justices of the Peace
>
> April 1, 1998 -- $600 per diem
> April 1, 1999 -- $600 per diem
> April 1, 2000 -- $650 per diem
> April 1, 2001 -- $650 per diem
> April 1, 2002 -- $670 per diem

109 Alberta accepted the bulk of the Commission's recommendations. On May 17, 2000, Order in Council 174/2000 ("Order") was issued. In it, Alberta accepted that salaries and per diem rates ought to be increased (subject to the proposed modifications) (s. 2(a)); that current benefits for full-time Justices of the Peace ought to be continued (s. 2(b)); that vacation entitlement for full-time Justices of the Peace ought to be increased from three weeks to four weeks (s. 2(c)); that full-time Justices of the Peace ought to be paid an additional sum equal to 10 percent of annual salary in lieu of pension benefits (s. 2(d)); and that compensation for sitting and presiding Justices of the Peace ought to be determined on the same basis (s. 2(e)). While the Order recognized that some increase in salary was needed, it rejected the specific increases recommended by the Commission (s. 2(f)). Instead, it proposed a modified amount (s. 2(g)). The respondents challenge the constitutionality of ss. 2(a), 2(f) and 2(g).

110 Schedule 6 of the Order sets out Alberta's reasons for rejecting the specific increases recommended by the Commission. These reasons are contained under the following headings:

> **1 General comment** [raising the fact that the executive and legislative branches have the constitutional and political responsibility to properly manage fiscal affairs]
>
> **2 Overall level of the Increase** [comparing the overall level of increase with the current compensation and increases in other publicly funded programs]
>
> **3 Qualifications for eligibility and the determination of compensation as compared to Crown Counsel** [arguing that Crown counsel is an appropriate comparator for Justices of the Peace]
>
> **4 Lawyer compensation generally** [cautioning against using lawyers in private practice as a comparator, given the difference in working conditions, hours of work, client pressures and problems respecting the collection of legal fees that are not applicable to the office of Justice of the Peace]
>
> **5 Comparisons to legal aid tariff and ad hoc Crown Counsel** [agreeing that these are acceptable indicators but objecting to the amounts used by the commission as not reflecting the actual tariffs]
>
> **6 Comparison to compensation paid to senior Government employees** [cautioning against using senior government employees as a comparator group given the different responsibilities]

> **7 Comparison to Compensation Paid to Justices of the Peace in Other Jurisdictions in Canada** [comparing Justices of the Peace in Alberta and Justices of the Peace in other jurisdictions]
>
> **8 Comparison to Provincial Court Judges** [disagreeing with the Commission's conclusion that a 2/3 relationship with Provincial Court Judges is appropriate]

111 Alberta's reasons stress that it has a duty to manage public resources and act in a fiscally responsible manner. The reasons point out that the overall level of increase recommended is greater than that of other publicly funded programs and significantly exceeds those of individuals in comparative groups. The groups to which Alberta said Justices of the Peace were comparable included Crown counsel, lawyers paid according to the legal aid tariff and *ad hoc* Crown counsel, senior government employees and Justices of the Peace in other jurisdictions in Canada. Lawyers in private practice, it thought, should be distinguished. The reasons relating to the appropriateness of these comparator groups are consistent with Alberta's position before the Commission.

112 Section 2(g) of the Order establishes the modified annual increases which Alberta ultimately decided to implement after considering the Commission's recommendations. The increases for full-time sitting and presiding Justices of the Peace are as follows:

> Full Time Sitting [or Presiding] Justices of the Peace
>
> April 1, 1998 -- $75 000 per annum
>
> April 1, 1999 -- $80 000 per annum
>
> April 1, 2000 -- $80 000 per annum
>
> April 1, 2001 -- $85 000 per annum
>
> April 1, 2002 -- $85 000 per annum
>
> together, in each year, with a continuation of the current benefits and an amount equal to an additional 10% in lieu of pension and an increase in vacation entitlement from 3 to 4 weeks.

113 These increases are approximately $15,000 greater than what Alberta proposed in its submissions before the Commission. The reasons given for selecting these levels of increase are set out in Sch. 7 of the Order under the following headings:

1 Accounts for inflationary erosion

2 Recognizes the disadvantages of the 10-year term

3 Recognizes the roles and responsibilities of Justices of the Peace

4 Overall increase is significant

5 Phase in of the increase and certainty

114 Alberta also increased the per diem rate for part-time sitting and part-time presiding Justices of the Peace as follows:

> Part Time Sitting and Part Time Presiding Justices of the Peace
>
> April 1, 1998 -- $460 per diem
> April 1, 1999 -- $490 per diem
> April 1, 2000 -- $490 per diem
> April 1, 2001 -- $515 per diem
> April 1, 2002 -- $515 per diem

115 These increases are approximately $202 to $214 greater than what Alberta proposed in its submissions before the Commission. The reasons given for adopting these amounts are set out in Sch. 7.

116 Alberta's reasons for this increase in the per diem rate state that it is based upon a calculation derived from a base salary for full-time sitting Justices of the Peace, plus additional considerations set out in Sch. 7 of the Order. The reasons state that this level of increase accounts for inflationary erosion, recognizes the roles and responsibilities of Justices of the Peace, and represents a major increase in the allocation of public resources to part-time Justices of the Peace.

> (2) Judicial History
>
> (a) *Court of Queen's Bench* ((2001), 93 Alta. L.R. (3d) 358, 2001 ABQB 650; (2001), 3 Alta. L.R. (4th) 59, 2001 ABQB 960)

117 The respondents challenged the constitutionality of ss. 2(a), 2(f) and 2(g) of the Order. They claimed these sections violate the judicial independence of Alberta's Justices of the Peace. The trial judge allowed their application. He rejected Alberta's argument that some lesser standard of protection is required for Justices of the Peace. He then examined Alberta's reasons for rejecting the Commission's recommendations and found that they did not pass the test of simple rationality. He found that, apart from the alleged errors made by the Commission, there were no rational reasons for the rejection. The trial judge declared ss. 2(a), 2(f) and 2(g) of the Order to be unconstitutional. As a remedy, it was ordered that the Commission's report be binding and that solicitor-client costs be paid to the respondents.

(b) *Court of Appeal* ((2002), 16 Alta. L.R. (4th) 244, 2002 ABCA 274)

(i) Majority (Paperny and Picard JJ.A.)

118 The majority of the Alberta Court of Appeal agreed with the trial judge and dismissed Alberta's appeal. Paperny J.A. emphasized the constitutional nature of the commission process. She held that the reasons did not withstand scrutiny under the "constitutional microscope" (para. 81). On her interpretation of the *Reference*, the standard of simple rationality is a high standard. It demands "a thorough and searching examination of the reasons proffered" (para. 108). Her interpretation of the principles set out in the *Reference* is at paras. 111-15. Paperny J.A. found (at para. 149) that Alberta failed to demonstrate the "extraordinary circumstances" she thought were required to justify the rejection of any portion of the Commission's report. She held that Alberta's reasons did not meet the test of simple rationality. The appeal was dismissed with solicitor-client costs throughout.

(ii) Côté J.A. (Dissenting in Part)

119 Côté J.A., dissenting in part, stated that the standard of review is a fairly lax one, i.e. that of simple rationality. He examined each of the Government's reasons for rejecting the recommended salary increase and identified (a) Government reasons for rejection which recognize demonstrable errors made by the Commission; (b) Government reasons for rejection which, although not alleging demonstrable error by the Commission, pass the test of simple rationality; and (c) Government reasons for rejection which fail the test of simple rationality. He concluded that while some of the reasons were sufficient, others were not. This did not pass muster.

120 As a remedy, Côté J.A. would have ordered the Lieutenant Governor in Council to reconsider the matter in light of the court's special directions. He would not have awarded solicitor-client costs.

(3) Application

(a) *Do Alberta's Justices of the Peace Require Some Lesser Degree of Judicial Independence in the Commission Context?*

121 It was submitted by Alberta that the judicial independence of Justices of the Peace does not warrant the same degree of constitutional protection that is provided by an independent, objective commission. We disagree. As recognized in the Commission's report, at pp. 7-18, Justices of the Peace in Alberta exercise an important judicial role. Their function has expanded over the years and requires constitutional protection. See *Ell*, at paras. 17-27, *per* Major J. In any event, Alberta has already provided an independent commission process through the *Justices of the Peace Compensation Commission Regulation*. This process must be followed.

(b) *Do Alberta's Reasons Satisfy the "Rationality" Test?*

122 As outlined above, Alberta accepted the bulk of the Commission's recommendations. However, it rejected the specific level of increase and substituted a modified amount. Its reasons for doing so are set out in Schs. 6 and 7 of the Order. Do these reasons pass the test of "rationality"?

123 To pass the test of rationality, the reasons must be legitimate. At this stage, the role of the reviewing court is to ensure that the reasons for rejecting a commission's recommendations are not political or discriminatory. Schedule 6 of the Order sets out eight reasons for rejecting the specific level of increase recommended by the Commission. The reasons do not reveal political or discriminatory motivations. They consider the overall level of increase recommended, comment upon the Government's responsibility to properly manage fiscal affairs, and examine various comparator groups such as 5-year Crown counsel, directors and chief Crown prosecutors, *ad hoc* Crown counsel, lawyers paid according to the legal aid tariff, senior government employees, Justices of the Peace in other jurisdictions, and provincial court judges. In its reasons, Alberta disagreed with the two-thirds ratio of comparison which the Commission gave to provincial court judges. It gave reasons for its disagreement. These reasons included the differing nature of the judicial offices and the fact that many Justices of the Peace are not full time and carry on their law practices while continuing to hold office. The reasons in Sch. 6, when viewed as a whole, reveal neither political or discriminatory motivations.

124 Alberta's reasons are legitimate. They reflect the public interest in having a commission process, i.e. the depoliticization of the remuneration process and the need to preserve judicial independence. Alberta points to its duty to allocate public resources, but still accepts the Commission's recommendation that an increase in compensation is needed; see s. 2(a) of the Order and the reasons set out in Sch. 1.

125 The reasons given for rejecting the specific levels of compensation illustrate Alberta's desire to compensate its Justices of the Peace in a manner consistent with the nature of the office. They address the Commission's recommendations. They are not bald expressions of rejection or disapproval. They clearly state the reasons for variation and explain why Alberta attributed different weights to the comparator groups. They explain why these comparator groups are relevant.

126 Schedule 7 explains why Alberta chose the level of compensation it did. The reasons recognize the role and responsibilities of Justices of the Peace and reveal a genuine attempt to identify appropriate comparators for this judicial office. These reasons are in good faith and relate to the public interest. As a result, they satisfy this branch of the "rationality" test.

127 Next, it must be determined whether the reasons rely upon a reasonable factual foundation. In determining whether the reasons rely upon a reasonable factual foundation, the test is one of a deferential standard to the government. In this regard, the majority of the Court of Appeal erred. The test does not require the government to demonstrate exceptional circumstances. It simply asks: (1) Did the government indicate the factual basis upon which it sought to rely? (2) On the face of the evidence, was this reliance rational?

128 In its reasons, Alberta discusses general fiscal policy, various comparator groups, inflation and the roles and responsibilities of Justices of the Peace. The factual basis upon which the Government sought to rely is indicated, and its reliance is, for the most part, rational.

129 However, there is a questionable aspect. Specifically, reason 2 in Sch. 6 and reasons 3 to 5 in Sch. 7 compare the new level of compensation with the level at which compensation was frozen in 1991. The figures it is being compared with were not the product of an independent commission process. Since the 1991 amounts were not the product of an independent commission process, their utility as a guide is limited. However, these amounts do provide a general background for the context in which the commission was operating. To the extent that the 1991 compensation levels are used as a basis for comparison, the reasons lack a reasonable factual foundation. To the extent that the reasons are simply providing general background information, they are acceptable. It is difficult to determine precisely what effect this alleged error had on Alberta's decision to depart from the Commission's recommendation.

130 Finally, the government's reasons must be examined globally to ensure that the objective of the commission process has been achieved. Here, a reviewing court also plays a limited role.

131 It appears that the commission process in this case has been effective. Alberta accepted the bulk of the Commission's recommendations. The process was taken seriously. The reasons for variation are legitimate. Viewed globally, it appears that the process of the Commission, as a consultative body created to depoliticize the issue of judicial remuneration, has been effective.

(c) *Are Solicitor-Client Costs Appropriate?*

132 Both courts below awarded solicitor-client costs against Alberta. This was not warranted. Neither party has displayed reprehensible, scandalous or outrageous conduct. While the protection of judicial independence is a noble objective, it is not by itself sufficient to warrant an award of solicitor-client costs in the case at bar; see *Mackin*, at paras. 86-87, *per* Gonthier J.

(4) Remedy

133 Although the bulk of Alberta's reasons pass the test of "rationality", those which compare the new salary with the 1991 salary do not rely upon a reasonable factual foundation. This was objected to by the respondents, but without a compelling argument to support the objection. A court should not intervene every time a single reason is questionable, particularly when the others are rational. To do so would invite litigation, conflict and delay in implementing the individual salaries. This is antithetical to the object of the commission process. When viewed globally, the commission process appears to have been effective and the setting of judicial remuneration has been "depoliticized". As a result, the appeal is allowed with costs throughout.

D. *Quebec*

134 Three of the appeals that the Court heard together originate from the province of Quebec. In two of them, the Attorney General of Quebec seeks the reversal of judgments in which the Quebec Court of Appeal held that the responses of the Quebec government and National Assembly to a report of a compensation committee on the salaries and benefits of provincially appointed judges of the Court of Québec and the municipal courts of the cities of Laval, Montreal and Quebec City had not met the constitutional standard; the Court of Appeal ordered the Government and the Minister of Justice to follow and implement the compensation committee's first 11 recommendations (*Quebec (Attorney General) v. Conférence des juges du Québec*, [2004] R.J.Q. 1450, [2004] Q.J. No. 6622; *Minc v. Québec (Procureur général)*, [2004] R.J.Q. 1475). In a third appeal, the Conférence des juges municipaux du Québec, which represents municipal court judges outside Laval, Montreal and Quebec City, contests the dismissal by the Court of Appeal of its motion for leave to intervene in the Attorney General's appeal in respect of the municipal court judges of Laval, Montreal and Quebec City. These three appeals were joined.

135 The disposition of these Quebec appeals will require the Court to consider and apply the general principles set out above in respect of the nature and process of the judicial compensation committee within the legal framework established by the *Courts of Justice Act*, R.S.Q., c. T-16. In addition, in the appeal of the Conférence des juges municipaux, we will need to address specific issues concerning aspects of the civil procedure of Quebec which are raised in its motion for leave to intervene.

(1) Background

136 The cases under consideration are the latest episodes in a long-running history of difficulties and tension between the Government of Quebec and provincially appointed judges, both before and after our Court's ruling in the *Reference.* Although judicial compensation committees were set up as far back as 1984 and although they duly reported, their reports were mostly shelved or ignored, at least in respect of their key recommendations. Since the *Reference*, the responses to the successive reports of the Bisson and O'Donnell Committees have led to litigation. The litigation now before the Court results from the reports of the O'Donnell Committee (*Rapport du Comité de rémunération des juges de la Cour du Québec et des cours municipales* (2001)). In order to clarify the nature of this litigation and of the problems that it raises, we will briefly review the legal framework of the judicial compensation commissions in Quebec. We will then need to consider the work of the two committees that have been set up since the *Courts of Justice Act* was amended in response to the *Reference.*

(a) *The Courts of Justice Act and the Legal Framework of the Judicial Compensation Committees*

137 Amendments made to the *Courts of Justice Act* in 1997 (S.Q., c. 84) put in place the legal framework for setting up judicial compensation committees. They provide for the appointment, every three years, of a judicial compensation committee to consider issues

relating to salary, pension plan and other social benefits of judges of the Court of Quebec and the municipal courts of Laval, Montreal and Quebec City and of judges of other municipalities' courts which fall under the *Act respecting municipal courts*, R.S.Q., c. C-72.01. Judges appointed under the latter Act may continue to practise law and may remain members of the Bar. They often work part-time and are paid on a per-sitting basis. The compensation committee has four members who sit on two three-member panels. One of the panels reports on the judges of the Court of Quebec and the municipal courts of Laval, Montreal and Quebec City. The second one considers issues relating to the compensation of judges of municipal courts to which the *Act respecting municipal courts* applies (*Courts of Justice Act*, ss. 246.29, 246.30 and 246.31).

138 The committee must consider a number of factors in preparing its report:

> **246.42.** The committee shall consider the following factors:
>
> (1) the particularities of judges' functions;
> (2) the need to offer judges adequate remuneration;
> (3) the need to attract outstanding candidates for the office of the judge;
> (4) the cost of living index;
>
> (5) the economic situation prevailing in Québec and the general state of the Québec economy;
>
> (6) trends in real per capita income in Québec;
>
> (7) the state of public finances and of public municipal finances, according to the jurisdiction of each panel;
>
> (8) the level and prevailing trend of the remuneration received by the judges concerned, as compared to that received by other persons receiving remuneration out of public funds;
>
> (9) the remuneration paid to other judges exercising a similar jurisdiction in Canada;
>
> (10) any other factor considered relevant by the committee.
>
> The panel having jurisdiction with regard to the judges of the municipal courts to which the Act respecting municipal courts [c. C-72.01]

applies shall also take into consideration the fact that municipal judges exercise their functions mainly on a part-time basis.

139 The committee must report within six months. The Minister of Justice must then table the report in the National Assembly within ten days, if it is sitting. If the National Assembly is not sitting, this must be done within ten days of the resumption of its sittings (s. 246.43). The National Assembly may approve, reject or amend some or all of the committee's recommendations by way of a resolution, which must state the reasons for its decision. Should the National Assembly fail to adopt a resolution, the government must take the necessary measures to implement the report's recommendations (s. 246.44).

(b) *The Judicial Compensation Committee Process After 1997*

140 The judicial compensation committees which have reported since 1997 were created pursuant to the *Courts of Justice Act.* The first one was appointed late in 1997. Its chair was the Honourable Claude Bisson, a former Chief Justice of Quebec. The Bisson Committee reported in August 1998 (*Rapport du Comité de la rémunération des juges de la Cour du Québec et des cours municipales* (1998)). Its report recommended significant adjustments to judicial salaries and benefits. The initial response of the Quebec government was to reject the recommendations on salaries. Litigation ensued. The Superior Court of Quebec held that the response did not meet constitutional standards and remitted the matter to the National Assembly for reconsideration (*Conférence des juges du Québec v. Québec (Procureur général)*, [2000] R.J.Q. 744). The Government implemented this first report only after the Quebec Court of Appeal had held that it had a legal obligation to implement it, retroactively to July 1, 1998, in respect of judicial salaries (*Conférence des juges du Québec v. Québec (Procureur général)*, [2000] R.J.Q. 2803).

141 In September 1999, the Bisson Committee filed a second report, on the judges' pension plan and benefits, which lead to a new round of litigation (*Rapport du Comité de la rémunération des juges de la Cour du Québec et des cours municipales (Régime de retraite et avantages sociaux reliés à ce régime et aux régimes collectifs d'assurances)* (1999)). At first, the Government rejected the recommendations. After a constitutional challenge, it reversed its stand and stated its intention to implement the recommendations. Nevertheless, litigation in respect of this second report continued in the Superior Court and in the Court of Appeal until 2003; this litigation related to delays in implementation and to remedies.

142 In the meantime, in March 2001, as required by the *Courts of Justice Act*, the Quebec government appointed a second committee, chaired by Mr. J. Vincent O'Donnell, Q.C. The Committee was split into two panels, both chaired by Mr. O'Donnell. The first one was to report on the salaries and benefits of judges of the Court of Quebec and the municipal courts of Laval, Montreal and Quebec City. The mandate of the second one was limited to the compensation and benefits of the municipal judges to whom the *Act respecting municipal courts* applies. The two panels reported. The National Assembly responded. Litigation ensued. It has now reached our Court.

(c) *The Reports of the O'Donnell Committee's Panels*

143 The key part of the O'Donnell Committee report was drafted by the first panel. It dealt first with the salary and benefits of judges of the Court of Quebec. It then moved on to consider the remuneration of judges of the municipal courts of Laval, Montreal and Quebec City. The second part, drafted by the second panel, considered the particular aspects of the compensation of municipal court judges paid on a per-sitting basis.

144 The work of these panels appears to have been closely coordinated. The main recommendations concerned the salary of judges of the Court of Quebec. The recommendations specific to municipal court judges seem to have been based on a comparative analysis of the proposals in respect of judges of the Court of Quebec and the positions and responsibilities of the different categories of municipal court judges.

145 The government of Quebec had objected to any significant revision of the salaries recommended by the Bisson Committee. In its opinion, as it explained in its written representations, acceptance of the Bisson Committee's recommendations had led to a substantial increase in judges' salaries. It considered the role of the O'Donnell Committee to be to propose minor, incremental revisions and based on changes which might have taken place since the Bisson report. No in-depth review of judicial compensation was warranted. The Government's position paper recommended a 4 to 8 percent increase in the first year and minor cost-of-living adjustments in the next two years. The Government advocated maintaining a rough parity with a class of senior civil servants ("*administrateur d'État I, niveau 1*") that had existed since at least 1992. It expressed concerns about the impact of more substantial increases on its public sector compensation policy. It also argued that the precarious situation of the provinces's finances, which remained in a fragile and unstable condition even though the budget had recently been balanced, should be taken into account.

146 The report of the first O'Donnell panel expressed substantial disagreement with the position of the government of Quebec. In the panel's opinion, its legal mandate required it to consider issues relating to judicial compensation on their own merits, based on a proper consideration of all the relevant factors under s. 246.42 of the *Courts of Justice Act.* It gave considerable weight to the importance of the civil and criminal jurisdictions of the Court of Quebec. It noted that these jurisdictions were significantly broader than those of other provincial courts in Canada and that the compensation of provincially appointed judges was nevertheless substantially lower in Quebec than in most other provinces. The panel commented that the constraints arising out of the precarious state of the provinces's finances and of the provincial economy at the time of the Bisson Committee were no longer so compelling. It considered, in addition, that the need to increase the pool of potential candidates for vacant positions in the judiciary had to be addressed. In the end, it recommended raising the salary of judges of the Court of Quebec from $137,333 to $180,000, with further, but smaller increases in the next two years. It also recommended a number of adjustments to other aspects of the judges' compensation and benefits, and more particularly to their pension plan.

147 On the basis of its findings and opinions regarding the nature of the jurisdiction of judges of the Court of Quebec, the panel then considered the position of municipal court judges of Laval, Montreal and Quebec City. Based on a long-standing tradition, which had

been confirmed by legislative provisions, these municipal court judges received the same salary and benefits as their colleagues of the Court of Quebec. In the course of its review of judicial compensation, however, the O'Donnell Committee decided to raise the issue of parity and notified interested groups and parties that it intended to consider this issue. It called for submissions and representations on the question. It received a limited number of representations, and they recommended that parity be maintained. Some of them objected to any consideration of the issue whatsoever and took the position that it lay outside the Committee's remit. In the end, the report recommended eliminating parity and suggested a lower pay scale for municipal judges. In its authors' opinion, the jurisdiction of the municipal courts of the three cities was significantly narrower than the jurisdiction of the Court of Quebec, and this fact should be reflected in their salary and benefits.

148 The second O'Donnell Committee panel reported in September 2001 on the compensation of judges of the municipal courts to which the *Act respecting municipal courts* applies. These judges are paid on a per-sitting basis, with a yearly cap. They remain members of the Quebec Bar and may retain private practices. The panel considered their jurisdiction and the nature of their work. It found that their jurisdiction was narrower and their work usually less complex than those of judges of the Court of Quebec and full-time municipal judges. The report based its recommendation on the assumption that parity should be abandoned and the fee schedule set at a scale that would reflect responsibilities less onerous than those of full-time judges.

(d) *The Response of the National Assembly of Quebec*

149 On October 18, 2001, the Minister of Justice of Quebec tabled the report in the National Assembly. He abstained from any comment at the time. On December 13, 2001 he tabled a document in response to the two reports of the O'Donnell panels; it was entitled "*Réponse du gouvernement au Comité de la rémunération des juges de la Cour du Québec et des cours municipales*" (the "Response"). The Response stated the Government's position on the panels' recommendations. In it, the government proposed that the most important recommendations be rejected and attempted to explain its decision regarding the proposals in respect of judicial compensation. On December 18, 2001 after a debate, the National Assembly, by way of a resolution, adopted the Response without any changes.

150 The Response focussed on the recommended increase in judicial salaries. The government decided to limit the raise of judges of the Court of Quebec to 8 percent. Their salary would be fixed at $148,320, instead of $180,000 as of July 1, 2001, with further yearly increments of 2.5 percent and 2 percent in 2002 and 2003. The Response accepted the elimination of parity for municipal judges in Laval, Montreal and Quebec City, but limited the raise in their salary to 4 percent in 2001 and granted them the same adjustments as Court of Quebec judges in 2002 and 2003. It accordingly adjusted the fees payable to judges of municipal courts to which the *Act respecting municipal courts* applies rather than accepting the fee scales recommended by the O'Donnell Committee. The Response also rejected the recommendations in respect of the provincial judges' pension plan. It also dealt with several minor matters, in respect of which it accepted a number of recommendations of the O'Donnell Committee panels. The most important issues raised

by the Response were clearly salaries, pensions, and parity between judges of the Court of Quebec, full-time municipal judges and municipal judges paid on a per-sitting basis. The conclusion of the Response summarized the position of the government of Quebec as follows (at p. 24):

> [TRANSLATION] Although the government is adopting several of the O'Donnell Committee's recommendations, it is departing from them significantly in respect of salary.
>
> The Committee's recommendations are based to a large extent on the criteria of the *Courts of Justice Act* relating to the judicial function. The government considers that the previous compensation committee already took those criteria into account in 1998 and finds it hard to understand how the O'Donnell Committee, barely three years later, can recommend a 31% increase for 2001 after the judges obtained increases totalling 21% for the period from 1998 to 2001.
>
> The government also takes a different and more comprehensive view of the criteria set out in the *Courts of Justice Act*. It attaches the importance they merit under that Act to the criteria relating to the collective wealth of Quebeckers and to fairness considered in a broader sense than that applicable to only the legal community and the private practice of law. Finally, the government disputes the Committee's assessment of the criterion relating to the need to attract outstanding candidates and notes that the O'Donnell Committee committed certain errors in this respect that distorted its assessment.
>
> When all is said and done, the government is of the opinion that its position regarding the O'Donnell Committee's recommendations takes account, on the one hand, of the right of litigants to independent courts and, on the other hand, of the general interest of the Quebec community, of which it remains the guardian, and of that community's collective wealth.

(2) Judicial Challenges to the Response and their Outcome

151 The Response was quickly challenged in court. The Conférence des juges du Québec, which represents the judges of the Court of Quebec and the judges of the municipal courts of Laval, Montreal and Quebec City, filed two separate applications for judicial review of the Response in the Superior Court of Quebec. Both applications raised the issue of the rationality of the Response in respect of salaries, asserting that the Response did not meet the test of rationality established by the *Reference.* The application of the municipal court judges raised the additional issue of parity. In this respect, it was

more in the nature of an attack on the process and on the O'Donnell Committee's report than on the Response itself. It alleged that the question of parity had not been part of the mandate of the Committee, which had raised it *proprio motu*, and that there had been breaches of the principles of natural justice. The application thus faulted the rationality of the Response on the ground that it had failed to reject this particular recommendation. The judges of the other municipal courts did not apply for judicial review. As their counsel acknowledged at the hearing before our Court, they attempted to find solutions to their difficulties by other means, given the number of problems they were facing at the time and their limited resources.

152 The outcome of the litigation in the Quebec courts was that the Response was quashed. The Superior Court and the Court of Appeal held in their judgments that the Response did not meet the test of rationality. The Government would have been required to implement the O'Donnell Committee's first 11 recommendations if the judgments had not been appealed to our Court.

153 Despite disagreements on certain aspects of these cases, the Superior Court and the Court of Appeal agreed that the government of Quebec had failed to establish a rational basis for rejecting the O'Donnell Committee's recommendations in respect of judicial compensation and pensions. In their opinion, the Response had addressed neither the recommendations nor the basis for them. The Superior Court went further and would have imposed an additional burden on the appellants. It asserted that the Response should have demonstrated that the recommendations of the compensation Commission were unreasonable. The Court of Appeal disagreed on this point. Nevertheless, applying the simple rationality test, it held that the Government had not stated and demonstrated proper grounds for rejecting the recommendations. In its view, the Response came down to an expression of disagreement with the recommendations and a restatement of the positions advanced by the Government during the Committee's deliberations.

154 The Quebec courts also faulted the Response for failing to reject the recommendations on parity between judges of the Court of Quebec and judges of the municipal courts of Laval, Montreal and Quebec City. Their reasons for judgment targeted the process of the O'Donnell Committee. In their opinion, the Committee had no mandate even to consider the issue. Moreover, the way it had raised and reviewed the issue breached fundamental principles of natural justice. The courts below found that insufficient notice had been given and that interested parties had not been given a sufficient opportunity to make representations.

155 In its judgment, the Court of Appeal rejected a late attempt by the Conférence des juges municipaux du Québec to challenge the Response to the recommendations of the second O'Donnell Committee panel. The Conférence des juges municipaux had sought leave to intervene in the two appeals then pending before the court in order to bring before the court the concerns of its members about the validity of the Response and the Committee's process. The Court of Appeal refused to grant leave to intervene. It held that the application was an inadmissible attempt to challenge the constitutional validity of the Response after the normal time had expired, and in breach of all relevant rules of Quebec civil procedure.

(3) Analysis and Disposition of the Issues in the Quebec Appeals

(a) *The Issues*

156 The issues raised in these appeals are mostly related to the issues in the other cases that were joined with them for hearing by this Court. The main question remains whether the Response meets the rationality test we described above, within the framework set out in the *Courts of Justice Act*. We will consider this question first, before moving on to the narrower issues concerning municipal judges, parity and the fate of the application for leave to intervene of the Conférence des juges municipaux du Québec.

(b) *The Response in Respect of Judicial Compensation and Pensions*

157 The question of the rationality of the Response is critical to the fate of these appeals, subject to the particular procedural difficulties raised in the appeal of the Conférence des juges municipaux du Québec. The Attorney General of Quebec takes the position that the Government met the rationality test, because it gave legitimate reasons for rejecting the recommendations. He asserts that the Response addressed objectives which were in the public interest and were not discriminatory in respect of the judiciary. The Government's main disagreement, from which all the others flowed, was with what it viewed as an unreasonable and excessive salary increase.

158 According to the Attorney General, several factors justified rejecting the recommendations on judicial salaries. First, no substantial revision was warranted. The recommendations of the Bisson Committee had just been implemented and the judges had already had the benefit of substantial increases. In the absence of important changes in their duties and of evidence of difficulties in filling vacant positions, and given the prevailing economic conditions in Quebec, the limited 8 percent adjustment recommended in the Response was, in the Government's opinion, justified. Second, the Attorney General emphasizes that the Government was not bound by the weight given to relevant factors by the Committee. It could rely on its own assessment of the relative importance of these factors at the time. The judicial compensation committee process remained consultative. Responsibility for the determination of judicial remuneration rested with the Government and the National Assembly.

159 In our comments above, we emphasized the limited nature of judicial review of the Response. Courts must stand back and refrain from intervening when they find that legitimate reasons have been given. We recognize at this stage of our inquiry that the Response does not evidence any improper political purpose or intent to manipulate or influence the judiciary. Nevertheless, on the core issue of judicial salaries, the Response does not meet the standard of rationality. In part at least, the Response fails to address the O'Donnell Committee's most important recommendations and the justifications given for them. Rather than responding, the Government appears to have been content to restate its original position without answering certain key justifications for the recommendations.

160 The Government originally submitted that the Committee should not engage in a full review of judicial salaries, because one had recently been conducted by the Bisson

Committee. It also stressed the need to retain a linkage with the salaries paid to certain classes of senior civil servants. It underlined its concerns about the impact of the recommendations on its overall labour relations policy in Quebec's public sector. The submissions seemed to be focussed more on concerns about the impact of the judicial compensation committee process than on the objective of the process: a review on their merits of the issues relating to judicial compensation in the province. After the Committee submitted its report, the Government's perspective and focus remained the same. Its position is tainted by a refusal to consider the issues relating to judicial compensation on their merits and a desire to keep them within the general parameters of its public sector labour relations policy. The Government did not seek to consider what should be the appropriate level of compensation for judges, as its primary concerns were to avoid raising expectations in other parts of the public sector and to safeguard the traditional structure of its pay scales.

161 The O'Donnell Committee had carefully reviewed the factors governing judicial compensation. It was of the view that its role was not merely to update the Bisson Committee's recommendations and that the law gave it a broader mandate.

162 As we have seen, each committee must make its assessment in its context. In this respect, nothing in the *Courts of Justice Act* restricted the mandate of the O'Donnell Committee when it decided to conduct a broad review of the judicial compensation of provincial judges. The recommendations of the Bisson Committee appear to indicate that it had reached the opinion that the severe constraints resulting from the fiscal and economic situation of the province of Quebec at that time prevented it from recommending what would have been the appropriate level of compensation and benefits in light of all relevant factors. Because those economic and fiscal constraints were no longer so severe, the O'Donnell Committee came to the view that it should make its own complete assessment of judicial compensation in the province of Quebec. This was a proper and legitimate exercise of its constitutional and legal mandate. Once the O'Donnell Committee had decided to carry out its full mandate, the constitutional principles governing the Response required the Government to give full and careful attention to the recommendations and to the justifications given for them.

163 The O'Donnell Committee thus recommended a substantial readjustment of judicial salaries in addition to the Bisson Committee's recommendations. It is fair to say that the O'Donnell Committee's report considered all the factors enumerated in s. 246.42 of the *Courts of Justice Act.* It put particular emphasis on some of them, namely, the nature of the jurisdiction of the Court of Quebec, the comparison with federally appointed judges and provincial judges in other provinces, and the need to broaden the pool of applicants whenever there are vacancies to be filled. The Committee stressed that in its opinion, the Court of Quebec had a substantially broader jurisdiction in civil and criminal matters than provincial courts elsewhere in Canada. In fact, its jurisdiction had become closer to that of the superior courts. However, owing to the constraints placed on the Bisson Committee by the economic conditions of the period, there remained a considerable differential in comparison with the salary of Superior Court judges. In addition, the salary of Quebec's provincially appointed judges were found to be lower than in most other provinces. On that

basis, the O'Donnell Committee recommended the substantial adjustment that the Government rejected.

164 The Response failed to articulate rational reasons for rejecting the recommendations on judicial salaries. In particular, one is hard put to find any articulate argument about the scope of the civil and criminal jurisdictions of the Court of Quebec and the impact of that scope on its work. The only response was that the situation had not substantially changed since the time of the Bisson report. The issue was not only change, but whether the Government had properly answered the O'Donnell Committee's recommendations, thereby meeting constitutional standards in this respect. In the end, the Response failed to respond in a legitimate manner to the critical concerns which underpinned the main recommendations of the O'Donnell Committee. This failure went to the heart of the process. It impacted on the validity of the essentials of the Response, which meant that it did not meet constitutional standards, although it must be acknowledged that it was not wholly defective.

165 In some respects, we would not go as far as the Court of Appeal went in its criticism of the Response. We would not deny the Government's right to assign different weights to a number of factors, provided a reasoned response is given to the recommendations. This was the case for example with the criteria and comparators adopted to create and assess a pool of applicants. This was also the case with the rejection of the recommendations in respect of the pension plans. The Government set out the basis of its position and addressed the Committee's recommendations head-on. Nevertheless, an adequate answer on a number of more peripheral issues will not save a response which is flawed in respect of certain central questions. Thus, the overall assessment of the Response confirms that it does not meet the constitutional standard of rationality. The focus of our analysis must now shift to specific issues which are of interest only to municipal judges of the province of Quebec.

(c) *The Parity Issue*

166 We discussed the issue of salary parity for municipal court judges of Laval, Montreal and Quebec City above. In its Response, the Government accepted that this principle would be eliminated. Given the importance of this question for the future consideration and determination of judicial salaries, it must be addressed even if the Response is quashed. With respect for the views of the Court of Appeal, to accept the recommendation in the reports of the O'Donnell Committee's panels in this respect would not breach constitutional standards. The municipal court judges of Laval, Montreal and Quebec City contested the validity of the O'Donnell Committee's report through the narrow procedure of judicial review of the Response. In this respect the Response was rational. The Government did not have to state the reasons for its agreement with recommendations which were well explained. Disagreement and disappointment with the recommendations of a report on certain issues is not a ground for contesting a Response which accepts them.

167 In our opinion, this indirect challenge to the Committee's mandate and process was devoid of merit. Under the law, the Committee was given the task of reviewing all aspects

of judicial compensation. The Committee put considerable emphasis on the workload of the Court of Quebec. Although the issue had not been specifically mentioned, it was logical for the Committee to decide whether the same considerations should apply to municipal court judges. It was part of the review even though it might lead to the abandonment of a cherished tradition. Statutory recognition of the principle was not a bar to this review. After all, implementation of the judicial compensation committee's recommendations has often required amendments to a number of laws and regulations.

168 The respondents' other arguments regarding a breach of natural justice fails too. First, we observed above that the committees are not courts of law or adjudicative bodies. Their process is flexible and they have considerable latitude for initiative in conducting their investigations and deliberations. In any event, the Committee gave notice of its intention to consider the issue, called for submissions and heard those who wanted to appear before it. We find no fault with the Committee's process and no breach of any relevant principle of natural justice.

(d) *Procedural Issues in the Appeal of the Conférence des juges municipaux du Québec*

169 The municipal judges represented by the Conférence des juges municipaux du Québec were as dissatisfied as their colleagues on the municipal courts of Laval, Montreal and Quebec City with the Response to the reports of the O'Donnell Committee's panels. Nevertheless, they decided not to apply for judicial review. When their colleagues' applications reached the Court of Appeal, they tried to join the fray. They hit a procedural roadblock when they were denied leave to intervene in the litigation.

170 This outcome gives rise to an impossible situation given the result of the judicial review applications launched by the other parties. The recommendations concerning the three groups of judges are closely linked. The recommendations concerning compensation levels for full-time municipal judges are based on a comparative analysis with judges of the Court of Quebec. The situation of the Conférence's members is then compared with that of full-time municipal judges. Moreover, the Response is a comprehensive one. Those parts which deal with the compensation of this class of municipal judges are tainted by the flaws we discussed above. The relevant sections form but a part of a Response we have found to be constitutionally invalid. These specific parts do not stand on their own. They are no more valid than the rest of the Response. In this respect, the complete constitutional challenge launched by the other two groups of judges benefits the members of the Conférence. For this reason, their appeal and intervention should be allowed for the sole purpose of declaring that the Response is also void in respect of the compensation of judges of municipal courts to which the *Act respecting municipal courts* applies.

IV. Remedies and Disposition

171 For these reasons, we would dismiss the Attorney General's appeals with costs. However, those portions of the orders below which are not in accordance with these reasons must be set aside and the matter must be remitted to the Government and the National Assembly for reconsideration in accordance with these reasons. We would allow

the appeal of the Conférence des juges municipaux du Québec in part and grant its application for leave to intervene, with costs, for the sole purpose of declaring that the invalidity of the Response extends to those parts of it which affect judges of the municipal courts to which the *Act respecting municipal courts* applies.

* * * * *

Appendix

Government Response to the 2001 JRC Recommendations

The Government has carefully considered the report of the 2001 Judicial Remuneration Commission and regrets that it is unable to accept the recommendations in their entirety.

1. WHEREAS the previous JRC established a compensation level of $141,206 as adequate, in keeping with the Supreme Court of Canada decision on this issue, and nothing has changed since that recommendation to warrant further substantial increases;
2. WHEREAS the salaries of Provincial Court Judges rose 49.24 per cent from $94,614 to $141,206 in the decade from 1990 to 2000;
3. WHEREAS the salaries of provincially remunerated senior judicial officials and senior Deputy Ministers were identical until 1993;
4. WHEREAS the salaries of the most senior Deputy Ministers in New Brunswick rose by 18.93 per cent from $94,614 to $112,528 in the same decade;
5. WHEREAS economic conditions in New Brunswick since the previous JRC recommendations do not support the salary increase proposed by the 2001 JRC which would give Provincial Court judges a one-year increase of 12.67 per cent for a cumulative 11-year increase of 68.16 per cent since 1990;
6. WHEREAS the 2001 JRC appears to have failed to address the primary purpose of independently setting judicial compensation in order to ensure judicial independence and "to protect against the possibility that judicial salaries will fall below the adequate minimum guaranteed by judicial independence";
7. WHEREAS the 2001 JRC does not appear to have recognized the importance of setting judicial salaries within the New Brunswick context, especially since the increases proposed by the 2001 JRC far exceed changes in economic indicators in New Brunswick since the current salary was established;
8. WHEREAS the 2001 JRC appears to have made its assessment primarily upon the prospect of the salaries of federally appointed and remunerated Superior Court judges, as of 2001, rising to over $200,000 during the next three years;
9. WHEREAS the 2001 JRC appears to have accepted the proposition that salaries of Provincial Court Judges in New Brunswick should maintain a degree of parity with that of the Judges of the Court of Queen's Bench of New Brunswick, which is inconsistent with the positions that judicial remuneration commissions have taken in other provinces;
10. WHEREAS the issue of what the federal government pays the judges it appoints across Canada should not be so controlling a factor in setting salaries of judges paid by provinces;

11. WHEREAS the 2001 JRC does not appear to have recognized that the current salary of $141,206, when combined with a generous pension package, was recommended by the previous JRC and, furthermore, the 2001 JRC has not demonstrated that the financial security of Provincial Court Judges has been substantially eroded since that increase;
12. WHEREAS the 2001 JRC has failed to demonstrate that a further increase of nearly 13 per cent for 2001 is necessary to maintain or achieve that security;
13. WHEREAS the 2001 JRC appears to have recommended increases to $161,709 and $169,805 in the years 2002 and 2003 respectively, plus an additional cost of living increase, not to ensure financial security for Provincial Court judges but rather to maintain a degree of parity with the judges of the Court of Queen's Bench;
14. WHEREAS, even if it could be demonstrated that an increase of nearly 13 per cent for 2001 was necessary to achieve financial security, the 2001 JRC has not demonstrated that further increases that it has recommended in each of the next two years are warranted in order to maintain the financial security of the Provincial Court judiciary;
15. WHEREAS the recommendation of the 2001 JRC to amend the pension provisions of the Provincial Court Act runs counter to the recommendation of the 1998 JRC to give long-serving judges a choice between the old and new pension plans, a recommendation that was accepted as reasonable by the Provincial Court Judges' Association, especially since nothing has changed to warrant enriching the plan further;
16. WHEREAS the 2001 JRC appears to have given little, if any, weight to the substantial security afforded to Provincial Court judges by their pension plan;
17. WHEREAS the 2001 JRC failed to address the issue of whether the current remuneration is sufficient to place Provincial Court judges beyond the reasonable, or speculative, possibility that they may be tempted to gain some financial advantage in rendering decisions affecting the government and thereby lose the confidence of the public in their independence;
18. WHEREAS, as of January 31, 2001, the present remuneration package was sufficient to have attracted 50 fully qualified candidates, with an average of 20-45 years as members of the Bar, eligible for appointment to the Provincial Court of New Brunswick;
19. WHEREAS the salary recommendation of the 2001 JRC for the current year would make New Brunswick Provincial Court judges the third highest paid in the country, after Ontario and Alberta, while a New Brunswick wage earner is ranked eighth out of ten in average earnings;
20. WHEREAS Provincial Court judges have now accumulated nearly 2000 days of unused vacation, with a current liability to the Province of $1,080,859, for an average carryover in excess of 79 days per judge;
21. WHEREAS the private sector life insurance carrier will not provide the level of insurance coverage recommended by the 2001 JRC and will only provide enhanced coverage through a cost increase for all members of the provincial public service enrolled in the group life insurance plan;
22. WHEREAS New Brunswick Provincial Court judges are currently in the top 5

per cent of New Brunswick wage earners, based on their present salaries;

23. WHEREAS the Government accepted that the 1998 JRC established a salary that was commensurate with maintaining the status, dignity and responsibility of the office of a judge of the Provincial Court and that an adjustment based on the rate of inflation would be sufficient to maintain that status;
24. WHEREAS the recommendation of the 2001 JRC that the salary of a judge of the Provincial Court be increased by $12,812 plus the rate of inflation far exceeds the amount required to maintain the status, dignity and responsibility of the office;
25. WHEREAS historically Provincial Court judges in New Brunswick have never had their salaries tied to the salaries of federally appointed and remunerated judges;
26. WHEREAS non-bargaining members of the public service, unlike Provincial Court judges, have had their salary increases restricted to increase of 0.0 or 1.5 per cent per annum for over a decade, with no adjustment for the cost of living;
27. WHEREAS the JRC did not cost its recommendations and, therefore, could not know the impact these costs would have on the finances of the provincial government;
28. WHEREAS the known costs of the recommendations of the 2001 JRC for the three year period will amount to over $3 million and will have a significant negative impact on the budget of the Province; and
29. WHEREAS the Government of New Brunswick is responsible for and accountable to the taxpayers of the Province for the prudent financial management of the affairs of the Province.

Solicitors:

Solicitors for the appellants the Provincial Court Judges' Association of New Brunswick, the Honourable Judge Michael McKee and the Honourable Judge Steven Hutchinson: Myers Weinberg, Winnipeg.

Solicitor for the respondent Her Majesty the Queen in Right of the Province of New Brunswick, as represented by the Minister of Justice: Attorney General of New Brunswick, Fredericton.

Solicitors for the appellants the Ontario Judges' Association, the Ontario Family Law Judges' Association and the Ontario Provincial Court (Civil Division) Judges' Association: Sack Goldblatt Mitchell, Toronto.

Solicitor for the respondent Her Majesty the Queen in Right of the Province of Ontario, as represented by the Chair of Management Board: Attorney General of Ontario, Toronto.

Solicitors for the appellants Her Majesty the Queen in Right of Alberta and the Lieutenant Governor in Council: Emery Jamieson, Edmonton.

Solicitors for the respondents Chereda Bodner et al.: Code Hunter, Calgary.

Solicitors for the appellant/respondent/intervener the Attorney General of Quebec and the appellant the Minister of Justice of Quebec: Robinson Sheppard Shapiro, Montreal.

Solicitors for the respondent/intervener Conférence des juges du Québec, the respondents Maurice Abud et al., and the intervener the Canadian Association of Provincial Court Judges: Langlois Kronstrom Desjardins, Montreal.

Solicitors for the respondents Morton S. Minc et al.: McCarthy Tétrault, Montreal.

Solicitors for the appellant Conférence des juges municipaux du Québec: Cain Lamarre Casgrain Wells, Montreal.

Solicitor for the intervener the Attorney General of Canada: Attorney General of Canada, Ottawa.

Solicitor for the intervener the Attorney General of Ontario: Attorney General of Ontario, Toronto.

Solicitor for the intervener the Attorney General of New Brunswick: Attorney General of New Brunswick, Fredericton.

Solicitor for the intervener the Attorney General of British Columbia: Attorney General of British Columbia, Victoria.

Solicitor for the intervener the Attorney General for Saskatchewan: Attorney General for Saskatchewan, Regina.

Solicitor for the intervener the Attorney General of Alberta: Attorney General of Alberta, Edmonton.

Solicitors for the intervener the Canadian Bar Association: Gerrand Rath Johnson, Regina.

Solicitors for the intervener the Federation of Law Societies of Canada: Joli-Coeur, Lacasse, Geoffrion, Jetté, Saint-Pierre, Sillery.

Solicitors for the intervener the Canadian Superior Court Judges Association: Ogilvy Renault, Montreal.

Solicitors for the intervener the Ontario Conference of Judges: Sack Goldblatt Mitchell, Toronto.

Solicitors for the intervener the Association of Justices of the Peace of Ontario: Blake Cassels & Graydon, Toronto.

Solicitors for the intervener the Judicial Justice of the Peace Association of British Columbia: Berardino & Harris, Vancouver.

Written submissions only by W.S. Berardino, Q.C., for the intervener the Judicial Justice of the Peace Association of British Columbia.

* * * * *

Corrigendum, released July 29, 2005

In *Conférence des juges du Québec v. Quebec (Attorney General)*, 2005 SCC 44, released on July 22, 2005, the Court issued an Order on July 28, 2005 amending the reasons for judgment as follows:

1. The second sentence of paragraph 134 of the English version of the reasons should read as follows:

> In two of them, the Attorney General of Quebec seeks the reversal of judgments in which the Quebec Court of Appeal held that the responses of the Quebec government and National Assembly to a report of a compensation committee on the salaries and benefits of provincially appointed judges of the Court of Québec and the municipal courts of the cities of Laval, Montreal and Quebec City had not met the constitutional standard; the Court of Appeal ordered the Government and the Minister of Justice to follow and implement the compensation committee's first 11 recommendations (*Quebec (Attorney General) v. Conférence des juges du Québec*, [2004] R.J.Q. 1450, [2004] Q.J. No. 6622; *Minc v. Québec (Procureur général)*, [2004] R.J.Q. 1475).

2. The third sentence of paragraph 152 of the English version of the reasons should read as follows:

> The Government would have been required to implement the O'Donnell Committee's first 11 recommendations if the judgments had not been appealed to our Court.

4. The first sentence of paragraph 171 of the English version of the reasons is replaced with the following:

> For these reasons, we would dismiss the Attorney General's appeals with costs. However, those portions of the orders below which are not in accordance with these reasons must be set aside and the matter must be remitted to the Government and the

> National Assembly for reconsideration in accordance with these reasons.

The headnote is accordingly modified:

> The English version of the disposition relating to the Quebec appeal should read as follows:
>
> > *Held:* The appeals of the Attorney General of Quebec and the Minister of Justice of Quebec should be dismissed. Those portions of the orders below which are not in accordance with these reasons must be set aside and the matter must be remitted to the government of Quebec and the National Assembly for reconsideration in accordance with these reasons.

TAB 6

SUPREME COURT OF YUKON

Citation: *Cameron v. Yukon*, 2011 YKSC 35

Date: 20110419
S.C. No. 09-A0143
Registry: Whitehorse

Between:

**DEAN RICHARD CAMERON,
SENIOR PRESIDING JUSTICE OF THE PEACE**

Petitioner

And:

YUKON (COMMISSIONER IN EXECUTIVE COUNCIL)

Respondent

2011 YKSC 35 (CanLII)

Before: Madam Justice V.A. Schuler

Appearances:

Kimberly M. Eldred	Counsel for the Petitioner
Henry C. Wood, Q.C.	Counsel for the Respondent
Joseph J. Arvay, Q.C.	Counsel for the Territorial Court Judges

REASONS FOR JUDGMENT

Introduction

[1] The issue on this application is whether the process utilized by Yukon in 2007 for determining the remuneration of Territorial Court Judges and the Senior Presiding Justice of the Peace (the Petitioner) complies with the requirements set out by the Supreme Court of Canada in *Reference re Remuneration of Judges of the Provincial Court (P.E.I.)*, [1997] 3 S.C.R. 3 (the *"PEI Reference"*) and other decisions. The Petitioner argues that it did not comply while the Yukon Government and the Territorial Court Judges (collectively, "the Respondents") say that it did. The Petitioner also

argues that to the extent the governing Yukon legislation permits the process used in 2007, that legislation is unconstitutional.

[2] This decision is concerned with process. It is not for this Court to decide what remuneration the Territorial Court Judges or the Petitioner should receive or to assess the arguments in favour of various levels of remuneration.

Overview and relief sought

[3] The Petitioner and the Territorial Court Judges ("the Judges") are all members of the Territorial Court of Yukon pursuant to s. 2 of the *Territorial Court Act*, R.S.Y. 2002, c. 217. The *Act* provides that a judicial compensation commission will make recommendations to the Yukon Government (the "Government") with respect to the remuneration that should be paid to the Judges and to salaried justices of the peace. The Petitioner is a salaried justice of the peace.

[4] In 2007, the Judges and the Government presented a joint submission on an appropriate increase in the Judges' salary and other issues to the judicial compensation commission ("the 2007 JCC"). The 2007 JCC accepted the joint submission and incorporated it in its recommendation to the Government. The salary increase that had been recommended for the Territorial Court Judges was subsequently implemented by Order-in-Council 2008/170.

[5] The Petitioner and the Government did not present a joint submission on the Petitioner's salary. After hearing submissions from both parties, the 2007 JCC made a recommendation which was less than what the Petitioner sought and more than what the Government sought. The Yukon Government did not accept the recommendation. By Order-in-Council 2008/170, the same increase that had been proposed by the Government to the JCC was implemented. After the Petitioner commenced this action, that Order-in-Council was revoked in so far as it dealt with the Petitioner's salary by a

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new Order-in-Council 2010/154, which implemented the salary increase that had been recommended by the 2007 JCC.

[6] The Petitioner submits that there were three specific flaws in the 2007 JCC process: (i) the 2007 JCC permitted and endorsed negotiations between the Territorial Court Judges and the Yukon Government; (ii) the 2007 JCC was comprised of a single commissioner; and (iii) the 2007 JCC erred in holding that s. 17 of the *Territorial Court Act* limits the amount of salary increase the JCC can recommend.

[7] Based on these flaws, or any one of them, the Petitioner seeks relief which may be summarized as follows:

1. A declaration that the 2007 JCC did not function in a way that was independent, effective and objective as required by the Supreme Court of Canada and therefore was not a constitutional basis upon which the Yukon Government could alter judicial remuneration;

2. An order quashing or declaring invalid Orders-in-Council 2008/170 and 2010/154 to the extent that they set the Petitioner's remuneration;

3. To the extent that any of the alleged flaws are required or permitted by the *Territorial Court Act*, a declaration that those provisions in the said legislation are invalid as contrary to the principle of judicial independence as enshrined in the preamble to the *Constitution Act* and sections 7 and 11(d) of the *Canadian Charter of Rights and Freedoms*. The impugned sections are 21(a), 24(2), 25(4)(a), and 25(4)(b).

4. An order of mandamus compelling the Yukon Government to reconvene the 2007 JCC in accordance with this Court's direction to deal with remuneration of the Petitioner only.

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[8] In the alternative, the Petitioner seeks:

> 5. If none of the three flaws are established, a declaration that the aforementioned Orders-in-Council are *ultra vires* the Yukon Government because of the manner in which they came about, or
>
> 6. A declaration that the Government's actions offend the principle of judicial independence in regard to the obligations of a government when it departs from the recommendation of a judicial compensation commission.

[9] The Petitioner has also challenged the process undertaken in relation to the 2010 Judicial Compensation Commission. That challenge is the subject of action S.C.No. 10-A0057, for which a separate decision will be issued.

[10] The Yukon Government takes the position that much of the relief sought by the Petitioner is moot because the Government did in the end implement the recommendation of the 2007 JCC, by Order-in-Council 2010/154. The Government also says that the process followed by the 2007 JCC is constitutional. It concedes that the 2007 JCC did err in its interpretation of s. 17 of the *Territorial Court Act* but says that is an error that should be challenged by an application for review of the JCC's recommendation, which has not been advanced by the Petitioner, and in any event is not an issue of judicial independence, which is the sole ground of the Petitioner's challenge.

[11] The Territorial Court Judges take the same position as the Government. They also submit that the Petitioner has no standing to challenge the 2007 JCC process as it relates to the Territorial Court Judges because he pursued a separate process. The Territorial Court Judges take the position that the substance of the Petitioner's complaint is that he did not receive the same level of salary increase that the Judges received, which is not an issue of judicial independence.

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Historical and Legislative Framework

(i) The Principle of Judicial Independence

[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 ("*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

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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.

(ii) Judicial compensation commissions in the Yukon

[16] In 1997, the Honourable E.N. (Ted) Hughes was asked by Yukon's Minister of Justice to conduct an inquiry into the administration and operation of the Territorial Court. Among the issues he was asked to consider were the remuneration of judges and justices of the peace, how communications between the Court and the government, which had been characterized by tension in the past, should take place, and what steps should be taken to ensure compliance with the *PEI Reference*. The inquiry included consultations with the Territorial Court, the Government and the public.

[17] Among the recommendations in Mr. Hughes' August 28, 1998 report were the following: that the *Territorial Court Act* be amended to establish a judicial compensation commission which would consist of either one or three commissioners, at least one of whom should be skilled in mediation or other consensus processes to resolve differences; and that in carrying out its work the commission should be efficient, economical, informal and should endeavour to resolve differences through mediation or other consensus processes.

[18] The *Territorial Court Act* was subsequently amended: R.S.Y. 2002, c. 217. The amended *Act* continues the Territorial Court of Yukon and continues the Justice of the Peace Court as part of the Territorial Court (s. 2).

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[19] Judges of the Territorial Court are appointed by the Commissioner in Executive Council on the recommendation of the Minister of Justice. The Minister appoints justices of the peace, who are appointed to perform administrative or presiding duties or both: s. 53(1). A justice exercising presiding functions has jurisdiction to perform all the duties imposed on a Territorial Court Judge with certain restrictions as to the penalties that can be imposed in criminal matters (no custodial sentence in excess of 90 days and no conditional sentence in excess of 180 days) and the types of orders that can be made in child protection matters (permanent care and custody order and temporary care and custody order exceeding three months not to be made except on consent of the parties): s. 56.

[20] Part 3 of the *Act* provides for a judicial compensation commission process for Territorial Court Judges. Section 13 requires that a commission is to be established every three years which shall consist of either one commissioner or three commissioners. 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 related matters as the Minister of Justice and Chief Judge of the Territorial Court agree to submit to the commission.

[21] Section 21 of the *Act* provides for the selection and appointment of the commissioners. It requires that the Minister and the Chief Judge endeavour to recommend the appointment of a single commissioner, failing which a commission of three members shall be appointed. Section 23 provides that if practicable, at least one commissioner should be skilled in mediation or other consensus processes to resolve differences.

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[22] The operating principles and procedures of the commission are as follows:

> 24(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.
>
> 25(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) issue its final recommendations and provide these to the government through the Minister and to the court within 90 days of having been appointed.
>
> (6) When there are three commissioners, any recommendation concurred in by two commissioners shall be the recommendation of the commission.

[23] Section 17 of the *Act* is also important in this case:

> 17(1) Subject to subsection (2), recommendations made by the commission with respect to judicial remuneration in accordance with section 14 shall bind the government.

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> 17(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.
>
> 17(3) If the recommendation of the commission exceeds the highest total value of the 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.

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[24] The judicial compensation commission process applies also to salaried justices of the peace. Section 58 of the Act provides that judicial remuneration for salaried justices shall be set by the commission in accordance with Part 3 of the Act "modified to suit the case".

[25] Pursuant to the direction in s. 25(4)(b) that mediation and other consensus processes be used by the commission, the 2004 Judicial Compensation Commission issued a directive in its Report, establishing a mediation process called "Rules for the Informal Meetings". According to the Report, these Rules were established after consultation with the Yukon Government, the Yukon Justices of the Peace Association, the Petitioner and the Territorial Court Judges. The Rules provide for discussions mediated by the Commission with the goal of encouraging the parties to agree on a joint submission on all or some issues. The discussions are to be held on a without prejudice and confidential basis and are to form no part of the record before the Commission; the Commission will disregard the discussion when making its decision on issues. It appears that the intent was that the Rules would apply to consensus processes by future judicial compensation commissions.

[26] In January 2005, the Petitioner and representatives of the Yukon Government, the Territorial Court Judges and the justices of the peace signed a Letter of

Understanding (the "LOU"). The LOU states that as a result of previous experiences with the commissions and their related high costs, the parties agreed to explore an informal procedure that is consistent with the principles referred to in the *Territorial Court Act*. The purpose of the LOU was to establish an informal procedure that would apply to the establishment and conduct of a judicial compensation commission, while preserving the formal procedure contemplated by the *Act* if, in the case of a particular commission, the informal procedure proves unworkable.

[27] One of the principles set out in the LOU is that the commission procedure should be cost effective, involving minimal use of legal counsel and proceeding by consensus whenever possible. The parties are to attempt to agree on a single commissioner, preferably one with mediation experience. The LOU provides for a "Summary Process" which includes disclosure between the parties of issues, information and the positions they intend to advance to the commission. The representatives of the parties are to meet with a view to identifying common ground and exploring the possibility of joint submissions. The commission is to convene informally to address any outstanding issues between the parties and if agreement on those issues cannot be reached informally, a formal hearing will be conducted. Any party may terminate the LOU on notice to the others.

[28] It was indicated in argument that none of the parties have given notice of termination of the LOU. The Petitioner states in one of his affidavits that the focus of the LOU was on improving the negative aspects of the commission process and that it was an attempt to reduce costs and improve efficiency. The commissions that had operated prior to the LOU had each been comprised of three commissioners.

[29] The 2007 JCC process used by the Territorial Court Judges, which I describe below, was based on the informal process contemplated by the LOU.

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The standard of review

[30] Since this proceeding was brought as an application for judicial review, the standard of review must be addressed. The standard of review is also important as it gives context to the submissions regarding the Petitioner's standing and whether his application is moot.

[31] The Supreme Court has said that the response of a government to a judicial compensation commission is subject to a limited form of judicial review in the superior courts. A three-stage analysis must be undertaken as follows:

(1) Has the government articulated a legitimate reason for departing from the commission's recommendations?

(2) Do the government's reasons rely upon a reasonable factual foundation? and

(3) 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?

Provincial Court Judges' Assn. of New Brunswick v. New Brunswick (Minister of Justice), [2005] S.C.J. No. 27, 2005 SCC 44.

[32] Although the Petitioner does challenge the Government's initial rejection of the 2007 JCC's recommendation as to his salary, the grounds for many of his submissions invoke the third stage of the analysis - whether the commission process has been respected. At paragraph 38 of *New Brunswick*, the Supreme Court provides further detail as to what the third stage of the analysis entails:

> At the third stage, the court must consider the [government's] response from a global perspective. Beyond the specific issues, it must weigh the whole of the process

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> and the response in order to determine whether they demonstrate that the government has engaged in a meaningful way with the process of the commission and has given a rational answer to its recommendations. Although it may find fault with certain aspects of the process followed by the government or with some particular responses or lack of answer, the court must weigh and assess the government's participation in the process and its response in order to determine whether the response, viewed in its entirety, is impermissibly flawed even after the proper degree of deference is shown to the government's opinion on the issues. The focus shifts to the totality of the process and of the response.

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[33] Counsel did not argue that any other standard of review is applicable and directed their submissions to the process followed by the 2007 JCC. So the standard of review that I will apply is whether, viewed globally, the commission process was respected and the purposes of the commission - preserving judicial independence and depoliticizing the setting of judicial remuneration - achieved.

Does the Petitioner have standing?

[34] The Territorial Court Judges argue that the Petitioner does not have standing to challenge the JCC process in so far as it involved them because that process did not involve or affect the Petitioner. Therefore, they say, the Petition should be dismissed outright.

[35] I would not give effect to this argument. Pursuant to s. 2 of the *Territorial Court Act*, the Petitioner as a justice of the peace is a member of the Territorial Court. Recommendations as to his salary are made by the same commission that makes recommendations as to the salary of the Judges, even if the same process is not used for both. If, as the Petitioner argues, the 2007 JCC was not effective, objective and independent as required by the Supreme Court of Canada, and if as a consequence the determination of judicial remuneration for some members of the Territorial Court was conducted in a way that was unconstitutional, arguably that taints the JCC in relation to

the Court as a whole. If the remuneration for some members of the Court was determined in a way that was unconstitutional, and contrary to the principle of judicial independence in its institutional dimension, the Petitioner as a member of the same Court is affected by that.

[36] Accordingly, I rule that the Petitioner does have standing to challenge the process as it relates to the Territorial Court Judges.

Is the relief sought by the Petitioner or any aspect of it moot?

[37] The Respondents submit that most of the relief sought by the Petitioner is moot because Order-in-Council 2008/170, which reflects the rejection by the Government of the 2007 JCC's recommendation as to the Petitioner's salary, was subsequently revoked by Order-in-Council 2010/154. By the latter instrument, the Government implemented the recommendation.

[38] However, the relief sought by the Petitioner is not implementation of the recommendation of the 2007 JCC. He seeks a new JCC and a new hearing into his level of remuneration for the time period in question. He seeks that on the grounds that in 2007 the commission process was not respected and the purposes of the commission as explained in the *PEI Reference* and *New Brunswick* were not achieved. Should the Court rule in his favour, future judicial compensation commission proceedings may be affected. Accordingly, in my view the relief sought is not moot.

The 2007 Judicial Compensation Commission

[39] What occurred between the Yukon Government and the Territorial Court Judges is at the heart of the Petitioner's complaint and therefore I will describe it in some detail.

[40] There are some contradictions and uncertainties in the affidavit evidence as to some of the events surrounding the 2007 JCC. None of the affiants were cross-examined and therefore I am not in a position to make findings of credibility where their

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versions are different. Consequently, I have taken into account only the facts on which there is no dispute.

[41] In early 2007 after discussions between the interested parties, it was agreed between the Chief Judge of the Territorial Court and the Minister pursuant to s. 21(a) of the *Territorial Court Act* that the 2007 JCC would be comprised of a single commissioner. The identity of the commissioner had also been discussed and agreed on by the interested parties, or at least not objected to. The JCC was established by an Order-in-Council dated May 14, 2007.

[42] Prior to the 2007 JCC being established, Yukon's Deputy Minister of Justice asked the Territorial Court Judges and the Petitioner to identify issues for the 2007 JCC. In April 2007, each responded in writing. At this point none of the parties were represented by counsel; later in the process, both the Government and the Judges had counsel, while the Petitioner would represent himself throughout.

[43] The Judges' representative responded to the Deputy Minister in a "without prejudice" letter with the range of salary sought by the Judges and the rationale for that range. The rationale was mainly based on the salaries paid in the comparator jurisdictions set out in s. 17(2) of the *Territorial Court Act*. The Judges' representative expressed hope that a joint submission could be presented. The Deputy Minister responded, also on a without prejudice basis, with the Government's position, which was a 3 percent salary increase in each of the next three years, less than what the Judges were seeking. The rationale for the Government's position was also given. The Deputy Minister expressed the hope that the information would be of use to the Judges and allow them to proceed in an efficient fashion before the JCC, with a joint submission if possible.

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[44] The Petitioner wrote separately to the Deputy Minister, setting out the issues he intended to raise before the JCC, including an increase in salary, and his position on those issues. Although his letter was not expressed to be without prejudice, the Deputy Minister's reply was. The Government's position on his salary was the same as its position on the Judges' salary and would result in a lesser increase in salary than what the Petitioner said he would propose to the JCC. There is no reference in either letter to the possibility of a joint submission.

[45] Subsequently, the Petitioner and the Judges' representative wrote separately to the 2007 JCC identifying the issues they wanted to raise. The Judges elected to proceed with an informal procedure pursuant to the LOU. The Petitioner elected to proceed with the formal procedure set out in the *Territorial Court Act*. Dates were set for each to appear before the JCC in October 2007.

[46] In September 2007 there were communications between counsel for the Yukon Government and counsel for the Judges during which the desirability of reaching a consensus as contemplated by the LOU was discussed and it was agreed that if they were able to, they would make a joint submission to the JCC for its review and potential approval. At that time the Judges' position was that they would agree to a salary increase of 5 percent in the first year, followed by a 3 percent increase in each of the next two years. The Government's position remained that the increase should be 3 percent in each of the three years.

[47] Approximately a month prior to the JCC hearing, the Judges' counsel again communicated with the Government's counsel (letter of September 24, 2007), saying that they should try to formulate a joint submission and reach a consensus in the spirit of the principles agreed to in the LOU. Where they differed was on the salary increase in the first of the three years. Counsel for the Judges referred to increases that had

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been recommended for judges in British Columbia and Alberta by their respective judicial compensation committees; he asked the Government's counsel to consider the higher range of the average of those jurisdictions, giving reasons why that would be appropriate.

[48] In his reply (letter of October 5, 2007), counsel for the Government set out the Government's position on what would be an acceptable joint submission to the 2007 JCC. He gave reasons for disputing whether the British Columbia increase was settled and also how counsel for the Judges had calculated the average. The Government also took issue with some assumptions and numbers that had been relied on by counsel for the Judges. The Government's calculations resulted in a 4.55 percent increase in the first of the three years.

[49] Whether there were further verbal discussions between counsel about a joint submission is not completely clear from the evidence, but if there were they did not result in a joint submission.

[50] Prior to the hearing date, the parties filed their written submissions with the 2007 JCC. The Judges' submissions described the Northwest Territories as the most appropriate comparator. It proposed that the Judges receive the existing Northwest Territories salary plus 5 percent in the first year, stating that would achieve near parity with the Northwest Territories.

[51] The Yukon Government's submissions advanced the position that an increase to the salary level in the Northwest Territories was inappropriate because of the higher cost of living in the Northwest Territories. It proposed what the Government had originally stated: a 3 percent increase in the first year.

[52] The Judges' reply submissions took the position that the Government had presented no evidence to support some of its submissions, including the cost of living in

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the Northwest Territories. It also pointed out that the report of the 2001 JCC had stated that the parties should work toward parity with the territorial court judges in the Northwest Territories.

[53] There is no transcript of the JCC hearing that took place on October 22, 2007. From the affidavit evidence, it appears that the hearing commenced with oral submissions on some preliminary matters. Counsel for the Government told the JCC that he was taken by surprise by the Judges' submission for parity with the Northwest Territories; in his affidavit he refers to that submission as a "newly introduced proposition" that he was not prepared to deal with and needed additional time to respond to. Although it is not clear why the parity issue was a surprise since it had been referred to before the date of the hearing, counsel for the Judges seems to have agreed that further information was needed. With the approval of the Commissioner, counsel then agreed to go into an informal session without a court reporter but in the presence of the Commissioner and the Judges' representative.

[54] Counsel made their submissions based on their written materials. The Judges' representative, who was then the Chief Judge, voluntarily left the room when the Government's position on his stipend was being addressed. After the Government's counsel finished his submissions, he indicated that the parties had moved closer and although the Government would not agree to parity, it might be persuaded to move some more. The Commissioner, stating that he did not want to be tainted by hearing the details of any offers that might be discussed between the parties, left the room but encouraged counsel to discuss their respective positions.

[55] After the Commissioner left the room, counsel discussed their differences and very quickly reached a tentative agreement to "split the difference" between the Government's proposal of a 5.94 percent increase and the Judges' request for a 9.9

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percent increase in the first year. Splitting the difference meant a salary increase of 7.925 percent in the first year. Counsel then went before the Commissioner and asked that the hearing be adjourned so they could obtain instructions and put together a joint submission.

[56] The 9.9 percent increase sought by the Judges is equivalent to what territorial court judges in the Northwest Territories were then being paid plus 5 percent. However, since the Government's submissions proposed only a 3 percent increase, it is not clear, nor can I find any explanation, where the 5.94 percent figure comes from. The notes of the Government's counsel, which are attached to his affidavit, describe 5.94 as "our last offer", from which I infer that at some point along the way, the Government had conveyed to the Judges, presumably through discussions between counsel, that it was prepared to go that high, notwithstanding the 3 percent referred to in its submissions to the JCC.

[57] The uncontradicted evidence of the counsel who represented the Government is that throughout the events I have just described, the discussions were cordial and counsel were mindful of the need to avoid a confrontational labour relations style of negotiations. His evidence is that they tried to restrict their communications to informational exchanges and representations related to the adequacy of remuneration. Had they not been able to agree on a joint submission, each party was free to rely on the written and oral submissions made to the JCC.

[58] The joint submission was approved by the Chief Judge on behalf of the Territorial Court Judges. Counsel for the Government put the joint submission before Yukon's Management Board for approval and explained the difference in the cost implications between approving the joint submission and having a full hearing before the JCC. In his covering memorandum to the Board, counsel added, "There is also the intangible

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benefit of good will gained from reaching a consensus with the Territorial Court Judges about their compensation package".

[59] In a letter advising the JCC where matters stood, counsel for the Government stated that the proposed joint submission would be put before the JCC "in order that you may complete your report and conclude this matter in its entirety".

[60] The Management Board gave its approval to the joint submission in January 2008. Part of the joint submission relating to pension calculation had potential to affect the Petitioner's pension. The Petitioner was consulted and provided his written agreement to that aspect of the joint submission.

[61] In the cover letter to the JCC enclosing the joint submission, counsel stated "... the parties have now reached an agreement on placing all issues between them before you by way of a Joint Submission, so that a further hearing will not be required". The joint submission itself included the following statement: "As is not uncommon in JCC proceedings in Canada, the parties are in a position where they have agreed upon a Joint Submission, which follows, to be placed before the Commission for approval, if considered appropriate".

[62] The JCC accepted the joint submission and issued a report recommending the jointly submitted salary and benefits adjustments for the Territorial Court Judges. The recommendations were subsequently accepted by the Government and put into effect by Order-in-Council 2008/170.

[63] As I have indicated, the Petitioner's hearing before the JCC was conducted separately, before the same Commissioner but by way of a formal hearing, which took place on October 23, 2007. The Petitioner and the Government filed their respective submissions and also made oral submissions. There was no discussion about a joint submission.

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[64] The Government's position was the same for the Petitioner as it had originally been for the Territorial Court Judges - a 3 percent increase in each of the three years. The Petitioner sought to have his salary set as a percentage of the Territorial Court Judges' salary with increases tied to theirs.

[65] The JCC recommended a salary increase (5.606 percent in the first year and 3 percent in each of the following years) that was more than what the Government had proposed, but less than what the Petitioner sought; it rejected the Petitioner's position that his salary should be a percentage of the Judges' salary. The JCC also decided that section 17 of the *Territorial Court Act* limits the compensation that can be recommended for the Petitioner to the maximum total value of remuneration (salary and value of benefits) provided to justices of the peace in the comparator jurisdictions.

[66] The Government did not accept the JCC's recommendation with respect to the salary increase for the Petitioner and instead implemented an increase of 3 percent in each year, in other words what it had originally proposed to the JCC. This was done by Order-in-Council 2008/170. After the Petitioner commenced this litigation and without explanation, Order-in-Council 2010/154 revoked that increase and instead enacted the salary increase that had been recommended by the JCC.

[67] The Petitioner characterizes the discussions that took place between the Chief Judge and the Deputy Minister and between counsel for the Judges and counsel for the Government as negotiations. He questions why the Government started out with the same position (3 percent increase in each of the three years) for both the Judges and him but changed its position for the Judges. Although he concedes that he cannot point to any evidence that the Judges received an increase at his expense, the Petitioner says that is a conclusion that one might draw. He also submits that an observer might conclude that the Government was rewarding the Judges or punishing him.

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Did the 2007 JCC allow or endorse negotiations of the sort prohibited by the *PEI Reference*?

[68] The *PEI Reference* requires that an independent, effective and objective judicial compensation commission stand between the judiciary and the government so that there will not be negotiations between the two on the subject of judicial remuneration. Salary negotiations between the judiciary and government are constitutionally inappropriate because negotiations for remuneration from the public purse are political and would undermine public confidence in the impartiality and independence of the judiciary. Since the Crown is a litigant before the courts, negotiating with the Crown would put judges in a conflict of interest.

[69] Chief Justice Lamer, writing for the majority in the *PEI Reference*, explained what is meant by negotiations:

> When I refer to negotiations, I use that term as it is understood in the labour relations context. Negotiation over remuneration and benefits involves a certain degree of "horse-trading" between the parties. Indeed, to negotiate is "to bargain with another respecting a transaction" (Black's Law Dictionary (6th ed. 1990), at p. 1036). That kind of activity, however, must be contrasted with expressions of concern and representations by chief justices and chief judges of courts, or by representative organizations such as the Canadian Judicial Council, the Canadian Judges Conference, and the Canadian Association of Provincial Court Judges, on the adequacy of current levels of remuneration. Those representations merely provide information and cannot, as a result, be said to pose a danger to judicial independence. (paragraph 188)

[70] Chief Justice Lamer went on to say that the mandatory involvement of an independent commission serves as a substitute for negotiations because it provides a forum in which the judiciary can raise concerns about the level of their remuneration that might otherwise have been advanced at the bargaining table. The commission acts as

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"an institutional sieve" which protects the courts from political interference through economic manipulation (paragraph 189).

[71] The Supreme Court also addressed the nature of prohibited negotiations in *Mackin v. New Brunswick (Minister of Finance); Rice v. New Brunswick,* [2002] 1 S.C.R. 405, 2002 SCC 13, where it talked about negotiation "in the sense of trade-offs" (paragraph 58). It also said that the *PEI Reference* requires that any change made to the remuneration conditions of judges at any given time must necessarily pass through the institutional filter of an independent, effective and objective body so that the relationship between the judiciary and the government remain depoliticized as far as possible (at paragraph 69).

[72] In the *New Brunswick Reference*, the Supreme Court said that the goal reflected by the *PEI Reference* was that of avoiding the confrontations that had historically occurred in the "often spirited wage negotiations and the resulting public rhetoric" (paragraph 9). It clarified that the commission process as an institutional sieve means that it is a structural separation between the government and the judiciary (paragraph 14).

[73] The Petitioner says that what took place between the Yukon Government and the Territorial Court Judges both before and during the JCC process and whether through counsel or not, amounts to negotiations and contravenes the requirements of the *PEI Reference* and s. 11(d) Charter guarantee of judicial independence. Because the JCC permitted and endorsed at least some of what transpired, for example by allowing or encouraging counsel to discuss the possibility of agreement during the hearing on October 22, 2007, the JCC cannot be said to have been independent, effective and objective. The Petitioner says that the 2007 JCC was therefore tainted and that taint extends to the process as it applied to him.

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[74] It is true that some of the correspondence and documentation that passed between the Government and the Judges uses terms like offer and accept and is stated to be without prejudice, which can be a sign that negotiations are taking place. However, there is nothing in the evidence that supports characterization of any of the exchanges between the Government and the Judges as horse-trading or bargaining. Nowhere is there any suggestion that the Government will or will not do anything depending on whether the Judges accept the remuneration the Government proposes. Nowhere is there any suggestion that if the Judges do anything or refrain from doing anything the Government will react in a certain way in relation to their remuneration. Nor is there any suggestion that the Judges will act a certain way depending on what the Government does.

[75] It is helpful to compare what happened here to what had happened in Manitoba as described in the *PEI Reference*. The Manitoba government initiated negotiations with the Manitoba Provincial Judges Association, offering a salary increase on condition that judicial compensation commission hearings not proceed. That offer was accepted by the Judges. The Supreme Court of Canada found that it was clear that both parties intended a negotiated salary increase to be an alternative to proceeding through the commission and expected that the commission would either rubber-stamp the negotiated increase or not convene at all. The government then learned that the Association was considering a constitutional challenge to earlier legislation by which the government had reduced salaries and bypassed Manitoba's judicial compensation commission. The government refused to proceed with the joint submission unless the Association agreed to forego the litigation. The Association refused to do that and the joint submission did not proceed.

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[76] The Supreme Court described the overall picture as the Manitoba government having initiated negotiations with the Association for the purpose of setting salaries without recourse to the commission and then threatening to abandon the joint submission when the judges would not back away from the constitutional challenge. The government had, in the view of the Supreme Court, relied on pressure tactics of the sort which are characteristic of salary negotiations, creating an atmosphere of acrimony and discord. The tactics were intended to induce a concession from the judiciary. The Court referred to such "expectations of give and take, and of threat and counter-threat" as fundamentally at odds with judicial independence (paragraph 246, *PEI Reference)*.

[77] Nothing of that sort happened in this case. Initially there were exchanges of correspondence to discover the respective positions of the parties and examine the information each party had in support of its position. Each party made representations as to what it was seeking. The parties hoped they could agree on what would be appropriate. There was never any expectation that the 2007 JCC would be bypassed. The expectation on both sides was simply that if the Government and the Judges were of the same mind, they would present a joint submission to the JCC.

[78] There is no evidence of any acrimony or pressure from either side; the pressure tactics referred to by the Supreme Court in the *PEI Reference* as one of the characteristics of the labour relations type of negotiating that is not to take place are completely absent in this case. There is no evidence of anything that could be described as give and take or threat and counter-threat.

[79] In my view what occurred is consistent with the directions in the *PEI Reference*. The Chief Judge made representations as to the level of remuneration the Judges felt was appropriate and the reasons why they were taking that position. The Petitioner does not take issue with the appropriateness of the Chief Judge making such

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representations. The Government responded with the level of remuneration it felt was appropriate and the reasons for its position. Their respective positions changed as further information was obtained about salaries in other jurisdictions. There was probing and questioning of the reasoning behind each other's positions, but nothing that is suggestive of pressure or any trade-offs. Clearly efforts were made to determine whether each other's position was firm or flexible. All of this was in accordance with what the parties had agreed in the LOU, paragraph 7.7 of which requires their representatives to "meet with a view to identifying common ground and exploring the possibility of joint submissions on agreed upon issues".

[80] Exploring the possibility of a joint submission may or may not involve negotiating. If pressure, concessions or trade-offs take place in order to reach a joint submission, the requirements of the *PEI Reference* have not been observed. But if what takes place is simply a probing of the parties' respective positions and an effort to determine whether there is or can be common ground, that should not be characterized as the type of negotiations prohibited by the *PEI Reference*.

[81] All of the communications at issue took place in preparation for or while before the JCC in accordance with the processes that had been legislated in Yukon and agreed to in the LOU. Throughout, it is clear that the Government and the Judges intended that the JCC would ultimately consider and make recommendations on remuneration, a point I will address in more detail. The fact that it was open to either party to submit their position to the JCC without any communications with the opposing party beyond disclosing their position on the issues contradicts any notion of pressure. Nor is there any evidence here of any pressure being applied. It is noteworthy that the February 21, 2005 Report of the 2004 JCC states that that JCC accepted and considered the results of mediation and a joint submission made by the parties "as the

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free and voluntary action of the participants" (paragraph 3.1 of the Report). In my view, the joint submission reached by the parties and presented to the 2007 JCC should be characterized in the same way.

[82] I turn now to the "off the record" aspect of the proceedings. The 2007 JCC hearing in relation to the Judges' remuneration commenced as a public hearing. Counsel went off the record with the Commissioner and subsequently met in his absence, at his suggestion, as I have described above.

[83] The evidence before me is that no members of the public were present at the hearing, thus I need not consider the role of s. 25(1) of the *Territorial Court Act*, which requires the commission to ensure that the public has an adequate opportunity to participate in the hearing.

[84] The informal procedure and the attempt to reach consensus that were used are in line with what is contemplated by s. 24(2) of the *Act*, the LOU and the Rules for Informal Meetings developed by the 2004 JCC. From the evidence before me, it is clear that the main issue was parity with the Northwest Territories and the extent to which the parties could reach common ground on that issue.

[85] The *PEI Reference* says that the mandatory involvement of an independent commission serves as a substitute for negotiations because it provides a forum in which members of the judiciary can raise concerns about the level of their remuneration that might otherwise have been advanced at the bargaining table; the commission also serves as an institutional sieve which protects the courts from political interference through economic manipulation.

[86] In this case, the 2007 JCC was involved and was the forum, broadly speaking, in which the judiciary's concerns were raised. It was under the umbrella of the JCC process, that the parties discussed whether they could reach an agreement. Their

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agreement necessarily had to be reviewed and approved by the JCC, which had the ability to accept or reject it or ask that it be explained or justified. The JCC was not bypassed. In my view, the *PEI Reference* aimed at prohibiting labour relations-style bargaining between the government and the judiciary without an institutional sieve as protection. It did not intend to ban attempts to reach a common position to submit to a judicial compensation commission. Whether discussions for this purpose take place in private or before the commission is not important. What is important is that if the result of the discussions is an agreement, the agreement be examined by the commission and, if accepted by it, be disclosed in its report and recommendations.

[87] The Supreme Court chose to describe the judicial compensation commission as a sieve, or a filter, which suggests that the question of appropriate judicial remuneration is to pass through the commission before it is decided by the government instead of being hammered out at the bargaining table. The Court did not describe the commission as some sort of wall, which might be a more apt term if the intention was to keep the judiciary and the government from having any discussions at all about remuneration.

[88] Accordingly, I find that the communications that took place between the Government and the Judges in relation to the 2007 JCC were not negotiations in the sense prohibited by the *PEI Reference*.

Was the 2007 JCC flawed because it accepted the joint submission made by the Territorial Court Judges and the Yukon Government?

[89] The Petitioner takes the position that a joint submission as to remuneration agreed to by the government and the judiciary is contrary to the principles set out in the *PEI Reference* because it can only result from negotiations of the kind that the Supreme Court said must not take place. The Petitioner says that in this case the parties

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expected that the JCC would simply rubber-stamp the joint submission and the JCC did just that and made no independent inquiry as to whether it was appropriate. As evidence of this, the Petitioner points to a lack of analysis and reasons in the JCC's report. Because of this, the Petitioner says that the JCC was not independent, effective and objective.

[90] Many of the observations I have made in the preceding section on negotiations are applicable to the question whether a joint submission is prohibited by the *PEI Reference*. The *Territorial Court Act* [s. 24(2)] and the LOU encourage consensus processes and joint submissions. The Petitioner seems to say, however, that the only permissible consensus or joint submission is one that occurs solely by coincidence. I cannot agree with that proposition. In my view the *PEI Reference* does not prohibit agreement so long as it is not arrived at by negotiations of the give and take sort. If the parties come to a consensus because the information they have exchanged results in a voluntary change of position for one or both such that they are able to agree, that is a matter of each party exercising a choice.

[91] The Petitioner also submits that there is something improper and contrary to principle in the joint submission having been arrived at by the Government and the Judges splitting the difference between the amounts they had proposed in order to reach a joint submission. Again, I disagree. Splitting the difference in the context of what occurred simply means that the parties were able to agree on a figure that both were prepared to submit to the JCC as an appropriate salary increase. The setting of judicial remuneration is not an exact science. The 7.925 percent increase agreed in the joint submission brought the Judges closer to parity with the Northwest Territories, which was the main issue between the Government and the Judges.

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[92] The Petitioner also says that the correspondence from counsel to the JCC and to the Management Board clearly suggests that the parties expected that the JCC would accept the joint submission without questions and without the necessity of a further hearing. While one might infer that from some of the correspondence, the joint submission itself clearly states that it is for the JCC's approval, if considered appropriate. Thus, the parties acknowledged that the JCC would make the decision as to whether the amount agreed on would be recommended. If the JCC disagreed or wanted explanations, there was nothing to prevent it from calling the parties back before it for submissions or evidence. Indeed, it is clear that is exactly what the Judges' representative understood. In his affidavit, Judge Faulkner says he agreed that the hearing should be adjourned on the basis that if a joint submission was not reached, the matter would return for hearing before the JCC. He also understood that any joint submission would go to the JCC to be independently evaluated and accepted or rejected.

[93] The Petitioner also points to that part of the Memorandum to the Management Board, in which the Government's counsel sought approval of the proposed joint submission in part on the basis of the "intangible benefit of good will gained from reaching a consensus with the Judges about their compensation package". The Petitioner refers to this as exceedingly political and lacking any connection to the judicial compensation process.

[94] The impugned statement was made in the context of counsel for the Government explaining to the Management Board why it should approve the joint submission. The rationale provided was mainly that the joint submission would reduce the cost of the 2007 JCC by saving the expense of a full hearing. Minimizing cost is a legitimate consideration in the operation of a judicial compensation commission, pursuant to s.

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24(1) of the *Territorial Court Act*. Maintaining good will between parties who have an ongoing relationship is likely to promote efficiency, which is another consideration in s. 24(1). It was therefore a legitimate consideration and there is no evidence to support any other, improper motive behind the statement.

[95] I turn now to how the JCC dealt with the joint submission. The Petitioner submits that the entire process has the appearance of counsel for the Government and the Judges reaching a "back room deal" which the JCC accepted and recommended without any analysis or explanation.

[96] The joint submission itself does not provide an explanation for how the salary figures were arrived at. It simply says, with respect to salary, "The parties are in agreement that the Commission should recommend the following salaries for a Territorial Court Judge, effective the following dates: ..." and then it lists the agreed upon salary figures for the next three years.

[97] The 2007 JCC report refers to the fact that submissions had been made to the JCC. It also states, in section VII, Analysis and Recommendations, that consideration was given to the factors set out in s. 19 of the *Territorial Court Act* "as was submitted" in the evidence and submissions from counsel. I take this to be a reference to the review and analysis of those factors in the Government's and the Judges' written and oral submissions. Clearly, therefore, the JCC had considered the submissions that had been made to it.

[98] While the JCC report does not contain any analysis of its own, it would have been obvious that the figures proposed in the joint submission fell between the two positions advanced in the written submissions and would result in the Territorial Court Judges moving closer to parity with the Northwest Territories, which was the main point in the Judges' submissions.

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[99] The Petitioner submits, however, that the JCC should have adjudicated on what would be an appropriate salary increase and not simply accepted the increase proposed in the joint submission. The Petitioner argues that adoption of a joint submission may be appropriate in an adversarial process where the tribunal has to resolve an issue between parties, but not in an inquisitorial process where the tribunal is mandated to look into a matter and make a determination.

[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.

[101] Against the background of the submissions that had been made to it, and in light of the agreement of both parties as to what an appropriate salary increase would be, it is clear that the 2007 JCC also considered that increase to be appropriate. As the Judges' written submissions pointed out, the 2007 JCC was comprised of the same commissioner who, as a member of the 2001 JCC, had commented favourably on working toward parity with the Territorial Court Judges of the Northwest Territories. The salary increase proposed in the joint submission moves toward that goal.

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[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.

[103] The Petitioner also challenges the JCC's report because it does not explain its "disparate treatment" of the Petitioner. This challenge assumes that the Petitioner and the Territorial Court Judges should have received the same salary increase, even though their circumstances were and are different. They have different appointments. The main issue for the Judges was parity with the Northwest Territories. For the Petitioner it was whether his salary should be a percentage of the Judges' salary and his increases tied to theirs, an argument that had been rejected by past JCC's and was rejected by the 2007 JCC. Although the Government's starting position was the same for both the Judges and the Petitioner, that position changed as I describe elsewhere. In my view, there is no basis for an assumption that the Petitioner and the Judges should have received the same increase.

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[104] The report of the 2007 JCC was not perfect; it could have been more detailed with more analysis. 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 future commissions. However, I am satisfied that the reasons of the 2007 JCC can be inferred from the written and oral submissions that were made to it.

[105] The Petitioner also criticizes the joint submission as having resulted in a process that was not efficient, contrary to what the *Territorial Court Act* and the LOU require. After the hearing on October 22, 2007 was adjourned, it was not until mid-February 2008 that the joint submission was provided to the JCC. The JCC released its report on March 31, 2008. While one can only speculate as to how long the process would have taken had there been a hearing without a joint submission, I agree with the Respondents that the delay in this particular case is not cause to find that a joint submission is not acceptable.

[106] For the above reasons, I find that the 2007 JCC was not flawed because of the joint submission or the way the JCC dealt with it.

[107] I will also address the issue of perception that was raised by the Petitioner in relation to the communications before and during the 2007 JCC and the joint submission. While the analysis must ultimately be as set out in *New Brunswick* because this is an application for judicial review, the question of perception arises because the reason the judiciary and governments are not to negotiate is based on preservation of judicial independence, which is not only a matter of fact but also of perception. In the *PEI Reference,* the Supreme Court adopted as correct the following test articulated by Howland C.J.O. in *R. v. Valente (No. 2)* (1983), 2 C.C.C. (3d) 417 (Ont. C.A.):

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> The question that now has to be determined is whether a reasonable person, who was informed of the relevant statutory provisions, their historical background and the traditions surrounding them, after viewing the matter realistically and practically would conclude [that the tribunal or court was independent].

[108] In my view a reasonable person informed of the legislation, the historical background and the traditions, including Yukon's choices as to the processes, and apprised of what took place, and with the knowledge that the Judges and the Government both wanted to find common ground if possible, after viewing the matter realistically and practically would conclude that the judiciary acted of its own free will and that no pressure or bargaining was involved. That reasonable person would conclude that the Territorial Court was independent. In my view this perception would be reinforced by the knowledge that the Petitioner participated in the joint submission to the extent of the pension issue that might affect him. The Petitioner gives no evidence that he felt pressured to do this or compromised by it. A reasonable person would conclude that he acted voluntarily and that neither his nor the Territorial Court's independence was compromised.

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Was the 2007 JCC flawed because it was comprised of a single commissioner?

[109] The Petitioner submits that the 2007 JCC was flawed because it was composed of a single commissioner. He argues that a single commissioner was not contemplated by the Supreme Court in the *PEI Reference* and that a single commissioner is less likely to be truly independent than a panel of three commissioners.

[110] The Supreme Court spoke of a three member judicial compensation commission and how it should be selected, however it explicitly declined to set in stone the form

such commissions should take. Chief Justice Lamer stated at paragraph 167, *PEI Reference*:

> I do not wish to dictate the shape and powers of the independent commission here. These questions of detailed institutional design are better left to the executive and the legislature, although it would be helpful if they consulted the provincial judiciary prior to creating these bodies. Moreover, different provinces should be free to choose procedures and arrangements which are suitable to their needs and particular circumstances. Within the parameters of s. 11(d), there must be scope for local choice, because jurisdiction over provincial courts has been assigned to the provinces by the *Constitution Act, 1867*. This is one reason why we held in *Valente, supra,* at p. 694 [*Valente v. The Queen*, [1985] 2 S.C.R. 673] that [t]he standard of judicial independence for purposes of s. 11(d) cannot be a standard of uniform provisions".

[111] In paragraph 185 of the *PEI Reference*, the Court again confirmed that it did not intend to lay down a particular institutional framework in constitutional stone and that commissions are merely a means to the end, the end being an institutional sieve between the judiciary and the other branches of government. It foresaw that governments might create new institutional arrangements which would comply with s. 11(d) so long as they meet the requirements of independence, effectiveness and objectivity.

[112] Based on the recommendations of the Hughes Inquiry which included input from the territorial judiciary, Yukon has done exactly what the Supreme Court said it could. It has provided for a judicial compensation commission that consists of either one commissioner, or, if the Minister and the Chief Judge are unable to agree and recommend the appointment of a single commissioner, three commissioners (*Territorial Court Act*, ss. 13 and 21). The LOU signed by the Petitioner, the Judges' representative and the Government confirms that efforts should be made to select a single

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commissioner rather than three. Clearly Yukon has decided that a single commissioner is the preferable choice, so long as the Chief Judge and the Minister agree. Whether consisting of one commissioner or three commissioners (or some other number), the commission's function remains the same.

[113] The petitioner says that in a small jurisdiction like Yukon the preservation of judicial independence requires greater institutional safeguards and this is more likely to be served by a commission of three people than a single commissioner. The Respondents say, on the contrary, in a small jurisdiction with a small bench a commission comprised of one person may be more or just as efficient and effective. In my view, the different considerations that may come into play are precisely why the Supreme Court left it open to the provinces and territories to choose what shape their commissions would take.

[114] There is no basis for the conclusion that a single commissioner is likely to be less independent than three commissioners sitting together. When the *PEI Reference* speaks of the requirement that judicial compensation commissions be independent, it does so in the sense that they must not be under the control of the executive or the legislature. This means that they must have security of tenure in that the members of the commission serve for a fixed term and that the appointments not be entirely controlled by any one of the branches of government (paragraphs 170 to 172). Those requirements are observed in the *Territorial Court Act*, which provides that the commission's terms expires on the filing of its report and that the Chief Judge and the Minister agree on a single commissioner, failing which a nominee of each of them and a third person selected by those two nominees shall constitute a three-commissioner commission.

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[115] Nor is there any basis upon which to find that a single commissioner does not fulfill the criteria of being objective and effective. The *PEI Reference* says that objectivity can be promoted by ensuring that the commission is fully informed and that the enabling legislation includes a list of factors to guide the commission's deliberations (paragraph 173). A list of factors to be considered is provided for in the *Territorial Court Act,* s.19. The hearing process and the filing of submissions ensures that the commission is fully informed.

[116] The effectiveness of a commission is not determined by whether it consists of one or three commissioners. Effectiveness derives from the fact that the JCC's recommendations on judicial remuneration are binding on the Government except as set out in s. 17(2) of the *Act*.

[117] For the foregoing reasons, I find that the 2007 JCC was not flawed because it was comprised of only one commissioner.

What is the effect of the 2007 JCC's error as to the meaning of s. 17 of the *Territorial Court Act* in relation to the Petitioner?

[118] Section 17 of the *Territorial Court Act* provides that recommendations made by the JCC bind the government except to the extent that they exceed the highest total value of judicial remuneration provided to territorial or provincial judges of the comparator jurisdictions. If the JCC's recommendations do exceed that value, the Commissioner in Executive Council may substitute that value for the JCC's recommendation.

[119] The 2007 JCC interpreted section 17 as limiting the compensation that can be recommended by the JCC for the senior presiding justice of the peace to the maximum total value of remuneration (salary and value of benefits, in dollars) provided to a justice

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of the peace in the comparator jurisdictions. All parties agree that this interpretation is an error. The issue is the effect of that error.

[120] The Petitioner submits that because the Government had made the argument to the JCC that s. 17 puts a "salary cap" on what can be recommended, the JCC simply followed the Government's lead and therefore was not independent.

[121] The Government's written submissions to the JCC on this issue give the mistaken impression that the Government is also bound by the salary cap. The submissions state in part that the salary increase proposed by the Petitioner "would obviously contravene the limits imposed under the Act", and "it must be borne in mind that SPJP Cameron is extremely close to the maximum salary which is permitted by the legislation".

[122] Even accepting that the Government's erroneous argument led the JCC into error in its interpretation of s. 17, that cannot be characterized as an issue of independence, or lack thereof. It is nothing more than an error of interpretation. It does not call into question the independence of the JCC, just as a judge's acceptance of a flawed argument made by government counsel in the court room does not compromise that judge's independence.

[123] The Petitioner also submits that by accepting the salary cap, the JCC fettered its discretion and compromised its analysis of the remuneration issue. The Petitioner says that had the JCC not considered itself bound by the salary cap, it might have recommended an even greater increase in remuneration, perhaps even equivalent to the increase it recommended for the Territorial Court Judges.

[124] The Respondents say that notwithstanding the error, the total remuneration package did exceed the highest comparator and therefore the error had no practical effect. Even if it can be said that without the error, the JCC might have recommended a

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greater increase than it did, the Respondents say this Court should take no action because the Petitioner has not sought judicial review of the JCC's recommendation, but has challenged it only on the basis that the JCC was not independent and therefore the manner in which it dealt with the Petitioner's remuneration was unconstitutional.

[125] In relation to the s. 17 error, I note that the Amended Petition seeks the following relief: (i) a declaration that Order-in-Council 2008/170 as amended by 2010/154 offends the principle of judicial independence to the extent that it changes the remuneration of the Petitioner without recourse to a judicial compensation commission that is independent, objective and effective in that the 2007 JCC erroneously considered that s. 17 placed an upper limit on the remuneration the JCC could recommend; (ii) an order quashing the said Order-in-Council as offending the principle of judicial independence in that the 2007 JCC erroneously considered that s. 17 placed an upper limit on the remuneration the JCC could recommend; (iii) a declaration that s. 17(1) offends the principle of judicial independence to the extent it requires the Government to give effect to the recommendations of a JCC that is not independent, objective and effective.

[126] The Petitioner's challenge to the Orders-in-Council so far as it relies on the s. 17 error is thus based solely on the argument that the 2007 JCC was not independent. However, the erroneous interpretation given to s. 17 by the JCC does not raise an issue of independence, as I have already found.

[127] In any event, it is clear from the actuarial opinions in the evidence that both the Government's original position and the JCC's recommendation resulted in remuneration that exceeds the highest total value in the comparator jurisdictions set out in s. 17(2) of the *Territorial Court Act*. By Order-in-Council 2010/154, the JCC's recommendation has been implemented.

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[128] In argument, the Petitioner also challenged the interpretation of s. 17 as requiring that his remuneration be compared to the remuneration paid to justices of the peace in the comparator jurisdictions. He says that the comparison should instead be to provincial or territorial court judges. He points out that the 2007 JCC, as one may infer from its report, found it difficult to compare the Petitioner to justices of the peace in the comparator jurisdictions, because of differences in their duties, qualifications and benefits.

[129] Section 58 of the *Territorial Court Act* provides that judicial remuneration for salaried justices of the peace shall be set by the judicial compensation commission in accordance with Part 3 of the *Act* (which includes section 17) "modified to suit the case". The *Act* as a whole clearly distinguishes between territorial court judges and justices of the peace. Although the Petitioner performs many of the same functions performed by a territorial court judge, he is appointed as a justice of the peace and there are restrictions on what he can do as compared to a territorial court judge. The purpose of section 58 is clearly to provide the same process to deal with remuneration of salaried justices of the peace as is provided for territorial court judges, but modified to suit the case of salaried justices of the peace. In my view, in the context of the Act as a whole, that must mean that the comparator for remuneration is the salary paid to justices of the peace in the specified jurisdictions.

[130] In light of the extensive duties performed by the Petitioner, whether the comparator for a justice of the peace in his unique position should be the salary paid to judges rather than to justices of the peace is a matter for the legislature, not this Court.

[131] Notwithstanding the error as to s.17, the 2007 JCC recommended remuneration, now implemented, that exceeds the amount in s. 17(2). The increase in salary brought the Petitioner only $500.00 away from the salary paid to Alberta justices of the peace.

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The JCC report points out that, unlike the Petitioner, justices of the peace in Alberta must be legally trained with at least 5 years experience at the Bar. It is speculation to say that, absent the s.17 error, the JCC would have recommended a greater increase. In all the circumstances, and considering that no issue of judicial independence arises, this Court should not intervene and I decline to do so.

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Was the 2007 JCC process flawed by reason of the Government's initial rejection and subsequent adoption of the JCC's recommendation as to the Petitioner's salary?

[132] Counsel for the Yukon Government conceded that the Government did not provide a legitimate reason for rejecting the 2007 JCC's recommendation by way of Order-in-Council 2008/170. The sole reason given by the Government was that the recommendation exceeded the amount in s. 17(2) of the *Territorial Court Act*, yet so did the Government's proposed increase. However, the matter does not end there because by Order-in-Council 2010/154, on August 19, 2010, the JCC's recommendation was implemented. In my view the flaw arising from the Government's initial response has been remedied. In the end the recommendation of the 2007 JCC did have a meaningful effect on the Petitioner's remuneration, which is what the *PEI Reference* requires.

Conclusion

[133] In concluding my findings, I return to the standard of review as described in *New Brunswick*.

[134] On the first stage of the analysis, the Government, by its own admission, did not articulate a legitimate reason for departing from the recommendations of the 2007 JCC in relation to the Petitioner's salary; however, by Order-in-Council 2010/154, it has remedied the situation.

[135] For the same reason, i.e. since the Government has remedied the situation, I need not consider the second stage of the analysis.

[136] The third stage of the analysis is whether, viewed globally, the commission process has been respected and the purposes of the commission - preserving judicial independence and depoliticizing the setting of judicial remuneration - have been achieved.

[137] I have addressed the issues that were raised by the Petitioner regarding his hearing before the 2007 JCC. Overall, the commission process was respected, notwithstanding the Government's initial rejection of the JCC's recommendations. The purposes of the commission were achieved when the Government accepted the recommendation.

[138] I am also satisfied, for the reasons given, that the commission process was respected and its purposes achieved in relation to the Territorial Court Judges. Both the Government and the Judges engaged in a meaningful way with the commission process including the informal processes that are in place in Yukon. The commission process provided the parties with a framework within which to explore whether they could discover some common ground without the pressure and "give and take" inherent in labour relations type negotiations and subject always to the right of either side to cease discussions and direct their submissions to the JCC. The process adopted in Yukon, including its encouragement of consensus, is consistent with the constitutional principles set out in the *PEI Reference* and *New Brunswick.*

[139] As stated, I am satisfied that what occurred were not the kind of negotiations prohibited by the *PEI Reference*. Even so, in my view it is preferable that such communications not use terms like "offer" and "accept" so as to avoid any misinterpretation.

[140] Finally, there is no evidence from which to infer that the Judges' salary increase was obtained at the expense of the Petitioner or that the Judges were being rewarded

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or the Petitioner punished. I am satisfied that an informed, reasonable observer would not make that inference. I also conclude that such an observer would be satisfied that both the 2007 JCC and the Territorial Court were and are independent.

[141] It follows from the reasons given that the impugned provisions of the *Territorial Court Act* are valid. There is no basis for a declaration that Order-in-Council 2010/154 is *ultra vires*. The same applies to Order-in-Council 2008/170 because in so far as it affects the Petitioner's salary it has been revoked and replaced.

[142] In the result, the application is dismissed. Counsel may seek a date to make submissions on costs or, if they agree, they may propose a schedule for written submissions.

SCHULER J.

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TAB 7

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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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.

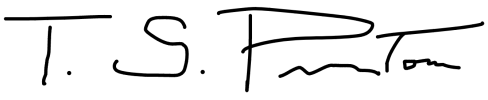
9. Concluding Remarks

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

.



Timothy S. Preston, Q.C.
Commissioner

This 18th day of January, 2019

TAB 8

Debra Fendrick, Commissioner
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March 5, 2021

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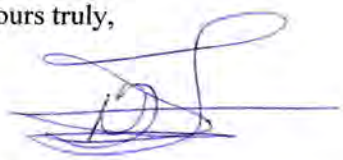
Re: Report and Recommendations of the 2019 Yukon Judicial Compensation Commission

I am pleased to provide you with the Commission's Report and Recommendations, dated March 5, 2021, containing written reasons for all of the Commission's final recommendations.

I confirm that under section 18 of the *Territorial Court Act*, upon the filing of these recommendations with you as representatives for the parties, the Commission's term of office ends.

I wish to sincerely thank you all for your excellent submissions and assistance to the Commission throughout the inquiry process.

Yours truly,



Debra Fendrick

Commissioner, 2019 Yukon Judicial Compensation Commission

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.

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

36. Prior to the Supreme Court of Canada's decision in the *PEI Reference* case[2], 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]

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[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:

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[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 uncertainly 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 will 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 COV ID – 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.

<u>Commission Analysis</u>

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.

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[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 compensation [13], what is most relevant is the salary paid to other judges, not other government or private sector positions[14]. 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**

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[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.

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[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 easy[18]. 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.

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[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 reasonableness[19], 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 set by legislation *Recommended*	 $293,991 *$296,382*	 $262,000 *$273,000*	$290,848	$278,828	$280,208
April 1, 2018 Set by legislation *Recommended*	 $293,991 *$302,304*	 $266,000 *$277,095*	$295,792	$289,733	$287,213
April 1, 2019 set by legislation *Recommended*	 $293,991 *$309,500*	 $270,000 *$281,251*	$304,075	$299.869	J: $301,213 YG: $288,650
April 1,2020 set by legislation *Recommended*	 $293,991 *$318,500*	 *$287,000*	$304,074 + CPI + 1% $312,286	2019 + CPI (1.6%) $304,667	J: 2019 + 0% or CPI YG: $290,093
April 1, 2021 *Recommended*	2021 JCC	 *$297,000*	2020 JCC $316,971	2020 + 0% or CPI	J: 2020 + 0 % or CPI YG: $291,543
April 1, 2022 *Recommended*	2021 JCC	 *$307,000*	2020 JCC .95% QBJ	2021 + 0% or CPI	2022 JCC
April 1, 2023			2020 JCC .95% QBJ	2022 + 0% or CPI	2022 JCC

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 objective[21]. 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

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[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 Report[26] 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;

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[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]

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[28] Yukon Monthly Statistical Review November 2020 https://yukon.ca/sites/yukon.ca/files/ybs/mr_nov2020.pdf, p 5

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 – 2017[31]

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[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 2016[32]
- 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 nationally[33]

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

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[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

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[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 COV ID-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 Corporation 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.**

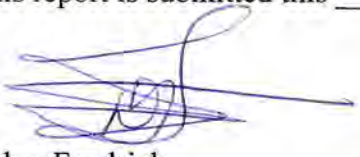
3. **That commencing April 1, 2021, the salaries of the Yukon Territorial Court Judge be increased by greater of 0% or a percentage increase equal to the CPI percentage increase for Whitehorse for the year ending December 31, 2020.**

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

TAB 9

2022 YUKON JUDICIAL COMPENSATION COMMISSION

REPORT AND RECOMMENDATIONS

Debbie P. Hoffman, Commissioner

February 7, 2025

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INTRODUCTION

1. The *Territorial Court Act*, RSY 2002, c. 217, as amended, (the "Act") requires the Yukon Government ("YG") and the Territorial Court Judges ("TCJs") to establish a Judicial Compensation Commission (the "JCC") in 2001 and every 3 years thereafter.

2. The last JCC prior to this one was established in 2019 and Debra Fendrick acted as the sole commissioner.

3. The 2022 Yukon JCC is the eighth Yukon JCC since 2001, established by Order in Council 2022/107 which became effective on June 14, 2022.

4. During the 2004 Yukon JCC, in January 2005, YG, the TCJs, the Senior Presiding Justice of the Peace and the Justices of the Peace Association (the "JPs"), signed a Letter of Understanding (the "LOU") outlining the process for the JCC among YG, the TCJs and the JPs (collectively referred to as the "Parties"). The purpose of the LOU was to establish a procedure based on agreed principles to support an informal process that is consensus driven, fair, and cost-effective.

5. Section 7 of the LOU sets out a summary process with timelines for the Parties and states that the proposed timeline may be changed with their consent (7.10).

6. To achieve a more cost-effective process, the Parties agreed in the LOU to:

    (a) Identify issues at an early stage (4.3.1).

    (b) Agree at an early stage about the information, including reports and data, to be provided to the JCC (4.3.2).

    (c) Make every attempt to agree to one consultant if a consultant is required to provide advice or to report on an issue, and any such consultant would be the witness of the JCC (4.3.3).

    (d) Make full disclosure of all relevant information (4.3.4).

7. Section 13 of the Act states that the Commissioner in Executive Council may appoint a JCC that is comprised of either one commissioner or three commissioners.

8. Section 23 of the Act states that:

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

9. Section 5 of the LOU urges the Parties to agree to a single commissioner, if possible, and preferably one with mediation experience.

10. Section 20 of the Act states that:

> "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…."

11. Debbie Hoffman was appointed as the sole commissioner of the 2022 Yukon JCC. She is called to the bar and practices collaborative law and mediation in the Yukon and Ontario. Although she is a practicing member of the Law Society of Yukon, the Parties agreed to her appointment. Debbie Hoffman currently resides in Waterloo, Ontario, no longer litigates, and has not appeared in the Yukon Territorial or Supreme Courts since 2017.

12. Counsel for YG is Nazeer Mitha, K.C. of the Mitha Law Group in Vancouver, B.C. Counsel for the TCJs and the JPs is Susan Dawes of Myers LLP in Winnipeg, Manitoba.

MANDATE OF THE JCC

13. According to Section 14 of the Act, the mandate of the JCC is 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."

14. Section 58 of the Act states that:

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

15. Section 19 of the Act lists the factors that must be considered by the JCC when fulfilling its mandate. These factors are in addition to any other matters the JCC considers relevant. The factors have been referred to by counsel in their written and oral submissions and will be outlined in detail later in this Report.

16. The JCC is mandated to deal with the matters outlined in sections 14 and 58 of the Act in the wake of the Supreme Court of Canada ("SCC") decision in the 1997 *PEI Reference Case*[1] ("*PEI")* wherein the SCC considered cases that originated in Alberta, Manitoba, and Prince Edward Island. The central issue raised in each of these cases was the independence of the judiciary.

17. The Act established an independent JCC whose recommendations are binding on YG except if the judicial remuneration exceeds the highest total value of judicial

[1] *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

remuneration provided to provincial or territorial court judges of British Columbia, Alberta, Saskatchewan, or the Northwest Territories (which is not the case here).

18. Counsel for the Parties each referred to *PEI* and highlighted the comments made by Chief Justice Lamer who outlined the three aspects of judicial independence: financial security, administrative independence, and security of tenure. The majority of the SCC held there is a constitutional obligation to establish bodies that are "independent, effective and objective" and went on to say, at paragraph 147 of *PEI*, that the constitutional purpose of these independent bodies is to "depoliticize the process of determining changes to or freezes in judicial remuneration." This purpose was restated by the SCC in *Bodner*[2].

19. Each JCC must make its own assessment, in its own context, however the SCC also stated in *Bodner* that a JCC does not operate in a vacuum. Rather, the work and recommendations of previous commissions forms part of the background and context that each new JCC should consider[3].

20. In addition, Madam Justice Schuler of the Supreme Court of Yukon held in *Cameron v. Yukon ("Cameron")* 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."[4]

21. Madam Justice Schuler set out the approach to be followed by a Commission when a joint submission is presented:

> "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 … what the JCC is dealing with is not an exact science, there is no reason why it should not do so."[5]

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[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. Quebec (Attorney General); Minc v. Quebec (Attorney General*), 2005 SCC 44 ("*Bodner*").
[3] *Bodner (SCC), supra,* at paragraph 15.
[4] *Cameron v. Yukon*, 2011 YKSC 36 at paragraph 104.
[5] *Cameron*, *supra*, at paragraph 100.

CONSENSUS, COST EFFECTIVENESS, & ENSURING INDEPENDENCE

22. The first Yukon JCC was established in 1998. The Parties had difficulty achieving resolution and the Minister of Justice called upon the Honourable E.N. ("Ted") Hughes[6], to examine the issues and make recommendations regarding possible resolution. According to the 1998 Yukon JCC's Report, former Justice Hughes:

> "identified considerable common ground and established the framework for the removal of irritants which had impacted adversely upon the relationship between the Territorial Court and the Government for many years."[7]

23. The 1998 Yukon JCC characterized the relations between the court and the government at that time as "strained". The 1998 Yukon JCC commended the Parties' efforts to reverse the antagonistic and strained nature of their relationship by retaining former Justice Hughes to inquire into the administration and operation of the Territorial Court, noting that doing so was "progressive and courageous" and that former Justice Hughes' involvement in addressing the differences between the Parties went a long way toward resolving them.

24. The other significant development at the time, referred to by the 1998 Yukon JCC, was the SCC's decision in *PEI* wherein the SCC held that, when making recommendations about judicial compensation, the Parties require the assistance of an independent compensation commission. The Yukon JCC was established, and by agreement between the Parties, it was given the mandate to make *binding* recommendations, thereby showing the Parties' commitment to respecting judicial independence, cost effectiveness, and consensus decision-making whenever possible.

25. The Act was subsequently amended to provide that in 2001 and in every third year thereafter, a JCC would be convened to address judicial remuneration. Section 17(1) of the Act states that the recommendations of the JCC are binding on the government unless (as already stated) the recommendations exceed the highest total value of judicial remuneration provided to provincial or territorial court judges of British Columbia, Alberta, Saskatchewan, or the Northwest Territories (section 17(2)).

26. Section 24(2) of the Act states:

> "The commission shall make every effort to use mediation and other consensus processes to resolve differences between the Parties."

[6] Hughes served as Yukon's Conflict of Interest Commissioner starting in 2001.
[7] *1998 Yukon JCC* at page 1

27. Section 4.1 of the LOU states that:

> "The JCC procedure should be cost effective, involving minimal use of legal counsel, and proceeding by way of consensus wherever possible."

28. Section 4.3 of the LOU outlines ways in which cost effectiveness can be achieved which include but are not limited to identifying outstanding issues early in the process, agreeing to the information (including reports from consultants or otherwise, data etc.) to be provided to the JCC, and the need for the Parties to make full disclosure.

29. Section 19 of the Act provides the factors that must be considered by the JCC when fulfilling its mandate, and the LOU outlines the process to be followed. The framework highlights the importance of consensus decision making, and by making the JCCs recommendations binding, the Parties are encouraged to reach a joint submission.

30. Joint submissions were made by the Parties to previous JCCs in the following years[8]:

(a) 2004
(b) 2007
(c) 2010
(d) 2013
(e) 2016
(f) 2019 (except regarding judges' salaries)

31. For the most part, the interplay of the Act and the LOU has achieved its intended goal, and the Parties have historically agreed to a joint submission.

32. The binding nature of the JCCs' recommendations helps to ensure that judicial independence is preserved.

33. As stated by the 2019 Yukon JCC at paragraph 34:

> "Judicial independence is an unwritten legal norm, recognized and affirmed under Canada's *Constitution* and *Charter of Rights and Freedoms*, s. 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."[9]

[8] Except for the remuneration for the Senior Justice of the Peace in 2004, 2007, 2010, and 2013.
[9] *2019 Yukon JCC* at paragraph 34 referencing *Cameron, supra,* at paragraph 12.

2022 JCC Process

34. When the 2022 Yukon JCC Process began, the Parties were not represented by their current counsel.

35. Although efforts were made by counsel previous to Ms. Dawes and Mr. Mitha, they were unable to achieve a joint submission. Throughout the fall of 2022, the JCC convened to discuss the issues and possible areas of agreement. The Parties were encouraged to work toward a joint submission as prompted by section 7.5 of the LOU. Section 7.5 also asks the Parties to consider whether additional information was needed to stimulate a joint submission (including the use of outside consultants). The Parties were canvassed about the utility of obtaining reports and additional information if it would assist them in their discussions.

36. In August 2023 the 2022 Yukon JCC was advised that YG was retaining new counsel and Mr. Mitha came onboard as counsel for YG later that month. Ms. Dawes was retained by the TCJs and JPs in the summer of 2024 following the appointment of their previous counsel, Alison Latimer, to the bench in May.

37. Shortly thereafter, on July 5, 2024, counsel for the Parties advised they had reached a joint submission. A pre-hearing conference was convened on July 18, 2024 to set dates for filing submissions and supporting materials and to set a public hearing date.

38. On October 9, 2024 a public hearing of the joint submission took place online via zoom. Prior to the commencement of the public hearing, members of the public were encouraged to provide written submissions, and to attend the online public hearing by way of advertisements in L'Aurora boréale on August 30, 2024, and in the Yukon News on September 12, 2024. Online ads were posted, and a Facebook event was created to encourage public participation. The deadline for providing written submissions was October 4, 2024. No submissions were received from the public.

39. No members of the public attended the public hearing. In addition to counsel for the Parties, a representative from YG and a representative from the TCJs were in attendance.

THE ISSUES BEFORE THE 2022 YUKON JCC

40. This 2022 Yukon JCC has been asked to make recommendations about appropriate compensation for the TCJs and JPs for the 3-year period beginning April 1, 2022.

41. The Parties reached a joint submission on each of the following issues, and they have presented their positions, together with their joint submission to the 2022 Yukon JCC for consideration:

    (a) For the TCJs:

        (i) Salaries

(ii) Stipend for the Chief Judge
(iii) Stipend for the Supervising Judge of the JPs

(b) For JPs:

(i) Salaries
(ii) Allowances and rates for training pay
(iii) Rates for standby pay

(c) Specific amendments to the *Territorial Court Act,* RSYT 2002, c. 217 and the *Act to Amend the Territorial Court Judicial Pension Plan Act (2021)*, SY 2021, c. 9.

SECTION 19 FACTORS THAT MUST BE CONSIDERED

42. As outlined in section 19 of the Act, in fulfilling its mandate, the JCC shall, in addition to considering any matter it considers relevant, address in its report submissions presented to it regarding the 8 factors outlined in the Act in sections 19(a) – (g). Counsel for the Parties provided written and oral submissions on each of the 8 factors.

The Current Financial Position of the Government (s. 19(a))

43. Counsel for YG referenced the *2024 - 2025 Fiscal and Economic Outlook for the Yukon Government* (the "*Economic Outlook*") to indicate YG's current financial position and submitted the following:

- The *Economic Outlook* notes that the Territory's economy is returning to normal with the return of tourism and the significant drop in inflation from the record levels reached during the pandemic (although inflation continues to be higher than pre-pandemic numbers).

- YG projects a surplus of $119 million in the 2024 - 2025 fiscal year due to its investment in tangible capital assets, the value of which will lead to an increase in the surplus notwithstanding the expectation that expenditures will be $33 million higher than total revenues in the forecast year, increasing the debt from $444.5 million to $488.8 million.

- The projected 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.[10]

- From the fiscal years 2013-14 to 2022-23, government spending outpaced revenue growth. It is forecast that this trend will reverse with revenues growing

[10] *Economic Outlook* at page 3.

at 3.6% annually between 2023-24 and 2028-29, which exceeds expenditure growth of 1.7% annually.[11]

44. Counsel for YG provided an update to the Economic Outlook prior to and during the public hearing on October 9, 2024 following the Eagle Gold Mine slide fallout:

- On October 2, 2024, the first day of the fall sitting of the Yukon Legislative Assembly the 2024-25 supplementary budget was tabled.

- The supplementary budget outlines spending that was unforeseen when the main budget was tabled during the spring sitting.

- The loss of Eagle Gold Mine production following the June 24, 2024 landslide at Victoria Gold Corporation's heap leach facility will result in a $1.5 billion drop in Yukon's GDP over a 5 year period.

- As reported in the Yukon News on October 4, 2024, the surplus is down, revenues are down, and net debt and expenses are up. As a result, YG is seeking to increase how much it can borrow from the federal government. Finance Minister Sandy Silver characterized this drop in GDP as a "hit" while pointing to the Yukon's diversified economy as a bit of a saving grace.[12]

45. Counsel for the TCJs and JPs referenced two sources to assist this JCC in understanding the current financial position of YG in 2022 – 2023, 2023 – 2024, and 2024 – 2025:

(a) The Conference Board of Canada's April 30, 2024 publication of *"Solid Foundations: Yukon's Outlook to 2045"* and

(b) the most recent Yukon Budget for 2024 – 2025 introduced in the spring sitting which includes the *Economic Outlook*[13].

46. Counsel for the TCJs and JPs submitted that:

- In each of the 3 years of the JCC, there has been an actual or forecast surplus, which speaks to the stability of the government's current financial position.

- As stated in *"Solid Foundations: Yukon's Outlook to 2045"*:

[11] *Economic Outlook* at page 5.
[12] https://www.yukon-news.com/news/loss-of-eagle-gold-mine-production-equates-to-15b-hit-to-yukon-gdp-7570146
[13] https://yukon.ca/sites/default/files/fin/fin-2024-25-budget-address.pdf

"Yukon's economic outlook is healthy. Despite recent turbulence in the mining sector, the territory's economy is benefiting from a resilient labour market and resurgent tourism sector."[14]

- The increase in federal transfer payments, the decrease in net debt with an anticipated leveling out in 2025 – 2026 and a significant decrease in 2027 – 2028, anticipated growth in expenditures, investment in tangible capital assets, and YG's AA double credit rating (should borrowing be required), among others, are indicators of a stable and healthy financial position and economic forecast.

- YG's *Economic Outlook* provides a Fiscal Summary showing:

    - Net debt increased because government spending outpaced revenue growth through the years 2013-14 to 2022-23, although the forecast years reverse this trend, with revenues plus recoveries growing at 3.6% annually between 2023-24 to 2028-29, and exceeding expenditure growth of 1.7 percent annually. As a result, Yukon's net debt position is forecast to "level out" in 2025/26 and decline significantly by 2028-29.

    - Projected revenue growth is being led by growth in federal transfers, as well as a positive outlook for the Yukon's economy and labour market, which will mean higher taxation revenue.

    - Expenditure growth for 2024/25 is driven by collective agreement negotiations, investments in health care, new funding for education, climate-related challenges, expenses related to the Minto Mine abandonment, and efforts to advance reconciliation with First Nations.

    - The budgets for both the 2023/24 and 2024/25 fiscal years have included a $50 million contingency fund, which is a "proven method to offset the cost of expected but undefined expenditures that arise throughout the fiscal year". Examples of such expenditures include flood or fire related costs arising from climate-related emergencies.

    - The Budget includes a significant infrastructure investment, which will become tangible capital assets, contributing to the surplus financial position.

    - While net debt is increasing in the short term, resulting in added borrowing costs, the Government does not foresee the need for borrowing beyond the short-term requirements, given strong revenue growth, a moderate capital plan, and a sustainable level of operations and maintenance growth. The Yukon is well-positioned to borrow, should

[14] Counsel cited the Conference Board of Canada: "Solid Foundations: Yukon's Outlook to 2045", April 30, 2024, TCYJ and JP's 2022 Book of Documents, Tab 4, ("Solid Foundations"), page 4.

that become necessary, due to its "AA Stable credit rating and its low net-debt-to-GDP ratio, which is among the lowest in Canada."[15]

- In addition, counsel for the TCJs and JPs references *"Solid Foundations: Yukon's Outlook to 2045" ("Yukon's Outlook to 2045")* which highlights the following points:

    - Yukon's economic outlook is healthy, supported by rising production of silver and gold, a busy construction sector, and a rebounding tourism industry.

    - Weaker hiring activity will temporarily weigh on employment growth. The next couple of years will see a modest rise in the unemployment rate, though conditions in the labour market are expected to remain relatively tight.

    - Household spending has shown resilience in the face of higher interest rates, but consumption growth will slow in 2024. Interest rate cuts are anticipated, supporting gains in consumer and business spending from 2025 onward.

    - An aging population and low fertility rate make Yukon increasingly dependent on migration for population growth. The lack of affordable housing creates a barrier to would be migrants and exacerbates labour supply challenges.

    - Yukon's tourism sector is emerging from the impact of COVID-19, and a recovery in international visits is expected to help restore total visits to pre-pandemic levels by 2025.

    - For the years 2025 through 2028, the forecast is for real GDP growth averaging 2.5%, aligning closely with the forecast for Canada as a whole throughout that period.[16]

47. Counsel for YG concluded at paragraph 75 of its submissions that:

> "The salary proposed for the TCJs…..(d) addresses the cost of living in the Yukon by proposing salaries which exceed the forecasted inflation."

48. Counsel for the TCJs and JPs concluded at paragraph 52 of their submissions that:

[15] TCYJ and JP 2022 Submissions at paragraph 48 and the *Economic Outlook*, March 2024, GY's Supplementary Materials, Tab 2, pages 3, 5 and 9.
[16] TCYJ and JP 2022 Submissions at paragraph 49 and *Yukon's Outlook to 2045*, TCYJ Book of Documents at Tab 4, "Key Findings" at page 3 and "Overview" at page 4.

"Overall, both the financial position of the government and the economic forecast are stable and healthy. As a result, it is submitted that the joint proposals of the parties can be accommodated within the current and forecasted financial position of the government."

JCC Analysis of Section 19(a)

49. As stated in the *Economic Outlook*:

- Following the pandemic, the Yukon's economy is returning to normal. Although it continues to be elevated, inflation has fallen significantly from recent highs, tourism is rebounding (with much improved performance in 2023)[17], and growth in wages is supporting more consumer spending.[18]

- The Yukon is currently the most populous of the Territories, experiencing a 2.7% increase in 2023 over 2022. This is the strongest annual increase since 2017 when a 3% increase was experienced.[19]

- After more than a year of local inflation being among the highest in Canada, growth in the Whitehorse CPI trended down throughout 2023 and is once again below the national rate. January 2024's inflation of 2.6% was the lowest since 1.1% in March 2021.[20]

- Although gold prices have been elevated for some time, they reached new highs in late 2023 (averaging $1,900 USD/ounce with the forecast for $2,000 USD/ounce in 2024). Silver and copper also performed well.[21] Placer mining, a consistent contributor to the Yukon's economy and mining sector, is forecast to moderately decline over the forecast period.[22] I note, however, that in 2023 the number of claims staked was more than double when compared to 2022.[23]

- Although YG spending outpaced revenues over the past 9 years between 2014 and 2023, 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% annually.[24]

- Increased production is also expected from Keno Hill Mine with a projected increase from 1.5 million ounces in 2023 to 3.0 million ounces in 2024.[25]

[17] *Economic Outlook* at page 31.
[18] *Economic Outlook* at page 1.
[19] *Economic Outlook* at page 17.
[20] *Economic Outlook* at page 19.
[21] *Economic Outlook* at pages 30-31.
[22] *Economic Outlook* at page 29; the anticipated decline is likely related to new regulations around water permitting as noted in the *Yukon's Outlook to 2045* at page 6.
[23] *Yukon's Outlook to 2045* at page 6.
[24] *Economic Outlook* at page 5.
[25] *Economic Outlook* at page 29.

50. The *Economic Outlook* mentions the expected increase in production from Eagle Gold Mine (Victoria Gold Corp.)[26] as does the *Yukon's Outlook to 2045* and assumes mine production will continue until 2034. Production was 166,700 ounces in 2023, an 11% increase over 2022.[27] I note that YG did not change its position on the joint submission following release of the updated information regarding the drop in the Yukon's GDP following the loss of production from Eagle Gold following the landslide.

51. Considering the relevant factors, the current state of the Yukon economy appears to be healthy. The financial position of YG also appears to be stable. While the mining sector is a significant contributor to the Yukon economy, the Yukon has been diversifying its economy over time and it is not solely reliant on the mining sector for its economic viability, health, and well-being.

52. The above-noted factors support the conclusion that the joint submission is appropriate, reasonable, and logical and that it is within the current and forecasted financial ability of YG to accommodate.

The Need to Provide Reasonable Compensation to Judges (s. 19(b))

53. Counsel for the TCJs points to the unique role of TCJs in the Yukon, the need for judicial independence, and the constraints placed upon TCJs to earn income outside of their role as judges as reasons that underpin the need to provide reasonable compensation.

54. At paragraph 28 of YG's submissions, counsel submits that determining what is "reasonable compensation" for judges must be considered in the context of the need for financial security, the range of what is "reasonable" to ensure public confidence in the independence of the judiciary, their higher pay in relation to other government employees (such as deputy ministers, senior lawyers, and the Yukon Premier), their robust pension and significant increases in judicial salaries over the last several years.

55. Counsel for the TCJs counters that the role of TCJs is unique and is based in a long-term commitment rather than a stepping-stone to another career path and submits that the role of the judiciary should not be compared to the roles and salaries of employees in the Yukon civil service such as deputy ministers. Further, counsel for the TCJs submits that the constraints placed upon the judiciary's ability to earn income outside of their role as judges, specifically noted in section 12(1) of the Act, are not constraints that are faced by lawyers in private practice who are "free to engage in businesses outside of their work."[28]

[26] *Economic Outlook* at page 27.
[27] *Yukon's Outlook to 2045* at page 6.
[28] TCYJ and JPs 2022 Submissions at paragraphs 56 and 57.

JCC Analysis of section 19(b)

56. Counsel for the TCJs points out that JCCs in other jurisdictions have rejected the comparison of judges to other civil servants and cites the 2001 Manitoba JCC. The 2001 Manitoba JCC mentions that in Ontario, the commission chair said that salaries paid to senior civil servants were a "relevant factor" to be considered. However, the 2001 Manitoba JCC goes on to state that:

> "In this context the type of work performed by the persons under consideration must be taken into account and, where possible, compared to the type of work done by other persons in comparable positions. For that reason, we think that comparison of Judges' compensation with the compensation of other Judges, whether provincially or federally appointed, is of far more relevance than a comparison of compensation paid to civil servants. We share the view, which we think is applicable when considering judicial compensation, of Professor Weiler (1988) that:
>
> > "The relevant comparison . . . is with earnings of people who have essentially the same training and responsibilities but who happen to work in other settings."
>
> In other words, the best comparators for judges are other judges."

57. The 2001 Manitoba JCC quotes the 1998 New Brunswick JCC which stated that "the only true comparison is with other judges."

58. Counsel for the TCJs refers to the 2001 Newfoundland & Labrador Provincial Court Judges' Salary and Benefit Tribunal's rejection of the comparator to deputy ministers. At page 9 (top right) of its decision, the 2001 Newfoundland & Labrador Tribunal said:

> "[I]t is time, at ten years post the new *Act,* to put the magisterial tradition and historically direct linkage of Provincial Court salaries to those of deputy ministers firmly behind us. While we would not go so far as to say that the compensation paid to members of the executive should not be considered, we are of the view that the Provincial Court judges' compensation should not be formally linked to that of the government executive."

59. In the 2010 Yukon JCC Report, Commissioner Patrick Michael stated at page 30:

> "Although the remuneration of the judiciary is not linked to remuneration in other sectors of the Yukon economy, the commission agrees with the government that it is helpful to survey some of those sectors when making an assessment of reasonable compensation. The government has stated in its submission that "the salaries of the Judges are considerably higher than the salaries of many other sectors of the workforce in the Yukon" and has provided figures to back that statement."

60. Section 19 of the Act, says I must consider the TCJs salary in comparison to judges in British Columbia, Saskatchewan, Alberta, and the Northwest Territories. That directive is an indicator to me that I should consider the salaries of other judges when considering what qualifies as "reasonable compensation" in accordance with section 19(b).

61. I note that the Court of Appeal in *Bodner* found that it was inappropriate to compare the increases in judge's salaries to the increases received by civil servants as submitted by the government and further held that the government's response in this regard failed to meet the standard of rationality.[29]

62. At paragraph 53 of their submissions, counsel for the TCJs and JPs states that the reasonableness of TCJ and JPs' remuneration must be considered in light of the unique role they play in the Yukon. Given the uniqueness of the role, and the difficulty of comparing the duties and responsibilities of deputy ministers, for example, the TCJs submitted that the reasonableness of their remuneration ought to focus on the attributes of the judicial positions at issue, rather than on comparators within the Yukon civil service.

63. I agree with this submission by counsel for the TCJs and JPs and with the 2001 Manitoba JCC which held that the best comparator for judges is other judges.

64. In the circumstances, the joint submission is appropriate, reasonable, and logical and meets the need to provide reasonable compensation to judges as required by section 19(b).

The Need to Build a Strong Court by Attracting Qualified Applicants (s. 19(c))

65. Counsel for YG and counsel for the TCJs and JPs both support the need to build a strong court by attracting qualified applicants because doing so is in the public interest. It would be difficult to argue otherwise.

66. At paragraphs 30 – 34 of its submissions, YG asks me to consider the following:

- The low turnover rate experienced in the Territorial Court.
- The fact that TCJs have traditionally retired following long public service.
- The ability of TCJs to have a meaningful impact on society, particularly in a smaller jurisdiction like the Yukon.
- The accumulation of a valuable pension plan.

67. At paragraphs 59 – 76 of their submissions, the TCJs ask me to consider the following:

[29] *Bodner (SCC), supra, at paragraph 57.*

- Lawyers who apply for the position of TCJ are entering their most lucrative years of practice.

- The Yukon has traditionally sought potential candidates from both within and outside of the Yukon, highlighting the need for a competitive salary when compared with other jurisdictions.

- The Yukon Territorial and Supreme Courts both recruit from the same pool of candidates.

- TCJs are experiencing increased caseloads and multi-day trials.

- The salaries of federally appointed judges have been used as a comparator in Saskatchewan, Ontario, New Brunswick, and Nova Scotia.

- Federally appointed judges accumulate a full judicial annuity (pension) over 15 years of service with an accrual rate of 4.4% per annum, while the judicial pension in Yukon requires 23.3 years of service with an annual accrual rate of 3%. A federally appointed judge's annuity is calculated based on what has already been noted to be a higher salary than the salary paid to a territorially appointed judge – all of which, it is submitted, will be considered by potential candidates.

- Federally appointed judges' annuities are calculated based on the salary being paid at retirement. By contrast, the pensionable salary used to calculate the Yukon judicial pension is the average of the two highest consecutive years of salary. The disparity between pensionable salary and the salary being paid at retirement is avoided only if the salary has been constant for the two years before retirement. Where there are significant differences in the territorial salary from year to year, the impact of averaging can be significant.

- If the Supreme Court offers overwhelmingly better salary and pension arrangements, lawyers will seek appointment to the Supreme Court, viewing the Territorial Court as a distinctly second-best choice.

JCC Analysis of Section 19(c)

68. Competitive salaries and pensions must be offered to attract qualified candidates. The desire to serve the public only goes so far when the position "is far from easy"[30] and takes a personal toll on those who are appointed. The Parties have recognized this in their respective submissions.

69. The need to provide competitive salaries and pensions is particularly so considering section 12(1) of the Act which prohibits the judiciary from carrying on directly or

[30] 1998 Yukon JCC at paragraph 4 on page 2.

indirectly any occupation, profession, or business other than their judicial responsibilities.

70. Candidates often apply and are chosen from the resident pool[31] which may have a positive influence on judicial retention and lower turnover. Resident candidates may be less likely to step down and move away from the Yukon after being appointed because they have already experienced the Yukon's unique nature and the impact of northern isolation firsthand. Prospective candidates from the resident pool will likely compare the remuneration and benefits offered by both the Supreme and Territorial Courts when applying for judicial appointment.

71. Conversely, although the pool of potential candidates from which both courts will be staffed may be small, vacancies on both courts have historically not occurred at the same time, making the application for appointment more competitive. In addition, the number of positions available is also small with only 3 judges per court or 6 positions total.

72. The 2019 Yukon JCC commented at paragraph 137 that:

> "Neither is the Commission comparing the level of responsibility or workloads of the two courts. The Supreme and Territorial Courts are constitutionally and practically two very distinct courts, each fulfilling a necessary and complementary role in the justice system."

73. It makes sense to lessen the gap in the salaries of Supreme and Territorial Court judges to encourage prospective candidates to apply to the court that best suits their skills, abilities, and aptitudes. When the gap in salaries is lessened, the attractiveness of the court and the work it performs may become the more dominant consideration and help to ensure the strongest candidates apply to each respective court.

74. Remuneration must also be sufficient to compensate for the workload and additional factors such as the social and geographic isolation of living and working in the North.

75. As submitted by counsel for the TCJs and JPs, and as noted by previous JCCs, judicial remuneration must be sufficient not only to attract the best-qualified candidates, but also to retain and motivate those candidates who are appointed[32].

76. As submitted by counsel for YG, additional factors that contribute to attracting qualified candidates are the candidate's desire to serve the public in a meaningful way, and the attractiveness of a stable court that experiences very little turnover[33].

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[31] This has been the case at least since Judge Karen Ruddy's appointment in 2004, save for (now retired) Judge Peter Chisholm, who had resided in the Yukon, moved, and returned to the Yukon following his appointment to the Territorial Court in 2013.
[32] TCYJ and JP 2022 Submissions at paragraph 76.
[33] YG 2022 Submissions at paragraphs 30 and 32.

77. Judicial remuneration is a significant factor when considering recruitment and retention of qualified candidates and must be sufficient to keep potential candidates who wish to advance their career in the Yukon in the court which best suits their aptitudes and abilities.

78. The joint submission recognizes the need to build a strong court by attracting qualified candidates and is appropriate, reasonable, and logical in the circumstances.

The Unique Nature of the Yukon (s. 19(d))

79. At paragraphs 78 – 85, counsel for the TCJs submits:

- The small number of TCJs (3) and the large area served results in the judiciary receiving phone calls at all hours from police officers in Whitehorse and rural detachments seeking search warrants, tele-warrants, and Feeney arrest warrants.

- The extensive travel schedule necessitated by the provision of circuit court throughout the Yukon makes the job of being a TCJ both physically demanding and exhausting. Time spent travelling and nights away from home and family were noted as having a substantial impact on a judge's life as are the lack of accommodation and meals when on the road.

- TCJs and JPs must face the daily strain of dealing with social problems and noted the toll is greater because members of the judiciary must consciously strive to avoid becoming jaded, callous, and cynical while remaining sensitive and responsive to the circumstances of the citizens who come before them.

- Governmental policy of community and restorative justice initiatives can place additional demands on the judiciary. The substantial First Nations population in the Territory requires the judiciary to be familiar with and sensitive to Indigenous culture, practices, morés and conventions, many of which vary among communities.

- The efforts of the Court in fostering community justice results in the judges participating in many meetings and training sessions in addition to the regular court sittings.

- Social isolation is a factor that was considered by the 2016 Yukon JCC. Given the small population, a greater proportion of cases are reported by the media and court matters, particularly criminal cases, are frequent topics of media, public and political comments. In a small community, the TCJs routinely encounter persons they have dealt with in court. For this reason, a TCJ or JP can also become socially isolated, as it is necessary for them to forego many activities and relationships they might otherwise wish to pursue. Just as freedom of association is curtailed, the TCJs face considerable restriction on their freedom of expression. This restriction extends far beyond the obvious necessity to

remain silent on political or public policy issues. The rights other citizens take for granted, for example, to write a letter to the newspaper or to sign a community petition, are similarly out of the question. These pressures and constraints add considerably to the stress of what is already a difficult job.

80. At paragraphs 35 – 41, counsel for YG submits:

- The social isolation and increased challenges faced by the judiciary when working in a territory with a smaller population and a significant First Nation population which requires judges to be familiar with and sensitive to traditional indigenous cultures and practices.

- The 2019 Yukon JCC which concluded that the unique nature of the Yukon, its social isolation, and increased challenges in carrying out judicial responsibilities was a relevant but not determinative factor in considering the adequacy of judicial compensation.

- The Yukon's rugged and beautiful nature; its vibrant arts, music, and theatrical community; and its capacity to provide residents with an active lifestyle make the Yukon a desirable place to work, live and raise a family.

- The accessibility to travel outside of the Yukon via direct flight connections to Vancouver, Edmonton, and Calgary.[34]

JCC Analysis of Section 19(d)

81. The Yukon is comprised of 8 municipalities (Whitehorse, Carmacks, Dawson, Faro, Haines Junction, Mayo, Teslin, and Watson Lake) and 9 larger communities (Beaver Creek, Destruction Bay, Burwash, Carcross, Pelly Crossing, Old Crow, Tagish, Marsh Lake, and Ross River) and is home to numerous additional smaller communities throughout its 482,443 sq km.

82. While the Supreme Court of Yukon is situated in Whitehorse, TCJs travel by road and plane in all types of weather to 13 of the Yukon's communities (Beaver Creek, Burwash, Carcross, Carmacks, Dawson, Faro, Haines Junction, Mayo, Old Crow, Pelly Crossing, Ross River, Teslin, and Watson Lake) to hold circuit court. This obviously requires extensive travel, often with limited availability of meals and accommodation.

83. The population of the Yukon as of September 30, 2023 is 45,597. Due to the Yukon's smaller population, it is not uncommon for judges to meet people who have appeared before them in court when they are in the community. Many Territorial Court cases are also reported in the media, often printed together with the judge's name and photograph.

[34] There are also year-round flights to Kelowna, and flights to Ottawa and Toronto (via Yellowknife) in the summer months.

84. There are 14 Yukon First Nations, 11 of which are self-governing. In 2021, just over 22% of the Yukon's population identified as indigenous. TCJs must be aware of and sensitive to First Nation culture, traditions and practices and they must carry out their role from a place of respect and cultural humility, mindful of the differences between each of the 14 Yukon First Nations.

85. The Territorial Court has long been involved in restorative and community justice initiatives and programs including the Domestic Violence Treatment Option Court, Integrated Restorative Justice Court, and the Community Wellness Court. The court's commitment to community justice often results in additional meetings and training sessions in addition to regular court sittings, as pointed out by counsel for the TCJs.

86. TCJs exercise jurisdiction over most of the criminal matters in the Yukon. TCJs also have jurisdiction over non-criminal matters including exclusive jurisdiction over child protection, Emergency Intervention Orders (at the first instance), Coroner's Inquests and Peace Bonds, thus exceeding the scope and jurisdiction of some of their provincial counterparts.

87. The demographics, expansiveness, geographical location, community size, increased scope and jurisdiction of the territorial court and the provision of circuit court in the communities each contribute to the Yukon's unique nature. The social isolation and increased challenges in carrying out judicial responsibilities are also relevant factors when considering what qualifies as reasonable judicial compensation.

88. The joint submission considers the unique nature of the Yukon and is appropriate, reasonable, and logical in all the circumstances.

The Compensation Provided to Judges in the NWT, BC, Alberta, and Saskatchewan (s. 19(e))

Alberta

89. At paragraph 44, YG submits that there is a difference in the scope of work performed by provincial court judges as compared to TCJs in that TCJs do not deal with custody (decision-making), access (parenting time) and child support while provincial court judges do.

90. Unlike the Yukon JCC, recommendations made by the Alberta JCC are not binding on the government. The 2021 Alberta JCC made recommendations on June 30, 2023, and recommended increases to judges' salaries in 2021-2022, 2022-2023 and 2023-2024, all of which were rejected by the Lieutenant-Governor in Council which substituted lower salaries for each of those years.

91. The TCJs state at paragraph 88 that an application for judicial review was filed by the Alberta Provincial Justices' Association in the Alberta Court of King's Bench, and the outcome is unknown at the date of this Report. The hearing is scheduled for May 2025.

British Columbia

92. The government of British Columbia has rejected the recommendations of three consecutive JCCs, the outcome of which has been subject to litigation. We are still waiting on the outcome of the litigation relating to the 2019 BC JCC for the years 2021-2022 and 2022-2023. The BC Supreme Court quashed the government's decision, and that decision was overturned by the BC Court of Appeal. The BC Provincial Judges' Association filed an Application for Leave to Appeal to the SCC, and the outcome is unknown at the date of this Report.

93. The government of British Columbia subsequently accepted the recommendations of the 2022 BC JCC for the first time since 2010.

Northwest Territories (NWT) and Nunavut

94. As pointed out by counsel for the TCJs, since the Act was passed, the NWT has split into two jurisdictions, the NWT, and Nunavut. The TCJs urge this JCC to consider Nunavut as a comparator jurisdiction as a matter of statutory interpretation and policy. The TCJs also made this submission to the 2019 Yukon JCC. YG is silent on the issue in its submissions in 2019 and 2022.

95. The TCJs also noted that the Territorial and Supreme Courts have been merged into one court in Nunavut and (now retired) Territorial Court Judge Robert Kilpatrick became the senior judge of the Nunavut court.

96. The salaries of judges in Nunavut were increased by 3% to $372,200 in 2022, 3% to $383,700 in 2023 and 3.4% to $396,700 in 2024 these salaries are in addition to the $12,000 Northern Living Allowance.

97. Like Yukon, the NWT Judicial Remuneration Commission (JRC) recommendations are binding. In 2020 the NWT JRC recommended increases for 2020-2021, 2021-2022 and 2022-2023 based on the percentage change in the CPI for Yellowknife in the preceding calendar year.

98. As noted by TCJ, the 2024 NWT JRC Territorial Court judges' salaries should remain in the "upper range amongst their peers", noting the "broad jurisdiction exercised within a challenging northern context, the high cost of living and the recent inflationary pressures."

Saskatchewan

99. The 2020 Saskatchewan JCC recommended that the remuneration of provincial and federally appointed judges be linked such that, following 3 years of consecutive increases, provincial court judges will have reached 95% of the previous year's salary paid to federally appointed judges. The 2020 Saskatchewan JCC also recommended that the legislation be amended to provide a statutory basis for the presumption that

provincial court judges will receive 95% of the federally appointed judges' salary in subsequent years with a stipulation that the JCC would review the 95% rate if extraordinary circumstances were present.

JCC Analysis of Section 19(e)

100. The TCJs submit that, due to the uncertainty in Alberta for the years in question, BC, Saskatchewan, and the NWT are the most useful and reliable comparators for the 2022 Yukon JCC.

101. At paragraph 101, the TCJs quote from paragraph 219 of the 2019 Yukon JCC, wherein Commissioner Debra Fendrick recommended salary increases that:

> "achieve the long-recognized goal of maintaining 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."

102. At paragraph 42, YG refers to the 2019 Yukon JCC's statement that:

> "the comparator groups [are] objective markers of reasonableness, while keeping in mind there are differences between those jurisdictions and the Yukon."[35]

103. YG also refers at paragraph 43 to Commissioner Fendrick's statement that:

> "The Commission considered the salaries of the Judges in the Northwest Territories 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."[36]

104. Counsel each provided information about the salaries in the comparator jurisdictions, and both noted the Alberta numbers are under review:

Jurisdiction	2022/2023	2023/2024	2024/2025	2025/2026
BC	$288,500	$343,000	$360,000	CPI
Alberta	*$328,119*	*$337,963*	*$348,102*	
Saskatchewan	$343,045	$353,590	$364,515	$376,865
NWT	$311,724	$333,456		
Nunavut	$372,200	$383,700	$396,700	
Proposed Yukon	$334,980	$345,330	90%	

105. The TCJs will be paid the second highest in 2022-2023 and 2023-2024, and the third highest in 2024-2025 when compared to the legislated comparator jurisdictions. When

[35] 2019 Yukon JCC at paragraph 151.
[36] 2019 Yukon JCC at paragraph 161.

Nunavut is added as a comparator, TCJs become the third highest in 2022-2023 and 2023-2024 and the fourth highest in 2024-2025.

106. Because it is a northern territory and because it was part of the NWT when the Act was amended, it is important for the JCC to be made aware of judicial remuneration in Nunavut. That being said, I note that Nunavut's territorial and supreme courts are unified and have a unified trial jurisdiction that is unique in Canada.[37] Nunavut also has separate Justice of the Peace and Youth Courts.

107. While it is important to be aware of current remuneration in the two other northern jurisdictions, I agree with the findings of the 2019 Yukon JCC which considered the salaries of judges in the NWT to be a relevant consideration carrying significant weight due to similarities in working conditions and workload as compared to the southern provinces.

108. It is also proposed by counsel for the Parties that if the recommended 90% of federally appointed judges results in a reduction the TCJs' salary then the salary will be the annual salary that was paid in the previous annual period. This joint submission is reasonable and meets the intention outlined in section 15 of the Act:

> "Subject to section 16[38], 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."

109. Based on the above, the joint submission is appropriate, reasonable, and logical in the circumstances and results in TCJ salaries being well placed within the comparator jurisdictions

The Laws of the Yukon section 19(f)

110. At paragraph 71, counsel for YG submits there are two possible interpretations of this section of the Act:

(a) That the commission is required to consider the number, nature, and complexity of the laws of the Yukon when setting the salaries of judges who must interpret and apply that law.

(b) Alternatively, the commission must look generally at the laws of the Yukon when interpreting how to apply this criterion.

111. Counsel for YG refers to paragraph 172 of the 2019 Yukon JCC, wherein the Commissioner concluded that she was required to take appropriate account of the laws of the Yukon generally and as they relate to the judges interpreting and applying those laws, in particular (in reference to the judges' workload).

[37] https://www.nunavutcourts.ca
[38] Section 16 of the Act deals with the universal austerity measure.

112. YG further submits at paragraph 74 that, given the joint recommendations, this factor does not have significant weight because the workload of the judiciary has been considered in arriving at the joint recommendations.

113. At paragraph 112, counsel for the TCJs references the TCJs' workload and submits that previous commissions have recognized that the laws of the Yukon have created a more extensive jurisdiction for TCJs than many provincial court judges. In addition, the smaller size of the Territorial Court (3 sitting judges) requires TCJs to deal with a wider range of matters than in other jurisdictions, like Alberta, where judges may be assigned to a specific court division (youth, family, or criminal, for example).

114. At paragraph 113, counsel for the TCJs submits that the laws of the Yukon place additional and somewhat unique responsibilities on the TCJs, including:

    (a) emergency intervention orders under the *Family Violence Prevention Act*;

    (b) reviewing Victim Assistance Orders, and other orders issued by JPs under the *Family Violence Prevention Act*;

    (c) Acting as review officers for vehicle impoundments and license suspensions under the *Motor Vehicles Act*;

    (d) exclusive jurisdiction for child protection matters, including apprehension after hours and on weekends, pursuant to the *Child and Family Service's Act*;

    (e) inquests under the *Coroners Act*;

    (f) applications under the *Mental Health Act*;

    (g) applications under the *Missing Persons Act*; and

    (h) hearing prosecutions under the *Environment Act*, the *Waters Act*, the *Forest Resources Act*, the *Wildlife Act*, the *Workers' Safety and Compensation Act* and many other regulatory statues.

115. At paragraph 114, counsel for the TCJs and JPs submits that additional duties are placed on TCJs due to government policies around community and restorative justice initiatives that require TCJs to attend meetings in the community, conduct Domestic Violence Treatment Option Court and Community Wellness Court.

116. When considering the need to build a strong court (outlined in section 19(c)) counsel for the TCJs and JPs submitted that cases coming before the Territorial Court are becoming increasingly complex resulting in an increasing number of multi-day trials. In the 2019 Yukon JCC process, the TCJs submitted that amendments to the criminal law in recent years are expected to lead to a greater case load for the Territorial Court. It was also

submitted that cases that would have gone before the Supreme Court of Yukon previously will appear in the Yukon Territorial Court. The TCJs submitted that Bill C-75, which limits an accused's right to a preliminary inquiry, may well result in more cases proceeding to trial in the Territorial Court, rather than the Supreme Court. As well, there are more opportunities for pre-trial applications, for example, in sexual assault cases under sections 276 and 278 of the Criminal Code. These applications give rise to the need for more comprehensive reasons, very often in writing resulting in the nature and function of judicial work showing greater similarities among the various levels of court.[39]

JCC Analysis of section 19(f)

117. As noted by the 2019 Yukon JCC at paragraph 168, YG and the TCJs have long held a difference of opinion regarding the interpretation of section 19(f).

118. The 2019 JCC also noted at paragraph 172 that the JCC must take appropriate account of the laws of the Yukon generally and how those laws relate to the judges' workload.

119. The 1998 Yukon JCC noted that 90% of criminal proceedings are heard by the Territorial Court.[40]

120. In 2019, Commissioner Debra Fendrick stated that it is part of the JCC's mandate to review any change in circumstance since the JCC's last report. The 2019 Yukon JCC considered the 2019 Police Reported Crime Statistics in Yukon. The comparison between 2019 and the 2022 Police Reported Crime Statistics in Yukon[41] is as follows:

2019	2022
10,939 criminal incidents	10,366 criminal incidents
2,088 (21.5%[42]) violent Criminal Code violations	2,264 (24%[43]) violent Criminal Code violations
4,560 (46.9%[44]) property crimes	4,475 (47.5%[45]) property crimes

[39] TCYJ and JP 2022 Submissions at paragraph 64.
[40] The Territorial Court website states that the TC deals with "most adult criminal prosecutions" under the criminal code and other federal statutes; all young offender matters and prosecutions under territorial laws – no percentage was indicated: https://www.yukoncourts.ca/en/territorial-court
[41] https://yukon.ca/sites/yukon.ca/files/ybs/fin-police-reported-crime-statistics-yukon-2022.pdf
[42] Compared to 21.7% Nationally in 2019.
[43] Compared to 24.1% Nationally in 2022.
[44] Compared to 59.8% Nationally in 2019.
[45] Compared to 58.5% Nationally in 2022.

3,072 (31.6%[46]) "other"[47] Criminal Code violations	2,688 (28.5%[48]) "other" Criminal Code violations
23,792 incidents per 100,000 population	22,874 incidents per 100,000

121. Yukon's 2022 crime rate[49] was the third highest in the country[50] at 21,528 incidents per 100,000 population (at the time of crime data release, Statistics Canada's estimate of Yukon's July 1, 2022 population was 43,454[51]).

122. While there was a decrease in the overall crime rate between 2019 and 2022, there was a 2.5% (573) increase in violent criminal code violations.

123. The 2022 Police-Reported Crime Rate was 5.9% lower than the revised 2021 rate and 6.0% lower than the 2020 rate.

124. However, by July 25, 2023, the Crime Severity Index[52] which measures the volume and severity of police-reported crime, increased by 2.5%[53] in 2023 compared to 2022.

125. The Police-Reported Crime Rate, which measures the volume of crime relative to the population size, increased by 2.6%[54] in the Yukon for 2023 (24,603 incidents per 100,000 population in 2023 compared to 23,979 incidents per 100,000 in 2022).

126. The significant increases that occurred between the convening of the 2019 Yukon JCC and the convening of the 2022 Yukon JCC are as follows:

    (a) The Crime Severity Index is up by 2.5% in 2023;

    (b) The police-reported crime rate is up by 2.6% in 2023; and

    (c) Violent Criminal Code violations are up from 21.5% in 2019 to 24% in 2022.

127. It is not a necessary pre-condition for the workload or complexity of the TCJs to have increased to warrant an increase in remuneration. However, it is worth noting that while

[46] Compared to 18.5% Nationally in 2019.
[47] While "other" Criminal Code violations typically include counterfeiting, weapons violations, child pornography, prostitution, disturb the peace and administration of justice, these "other" violations for the Yukon (2,688 incidents) mainly included "disturb the peace" (1,696 incidents) and "administration of justice violations" (712 incidents).
[48] Compared to 17.4% Nationally in 2022.
[49]Criminal Code traffic violations and federal statute violations are not included in the calculation of the crime rate (in 2022 there were 662 CC traffic violations and 277 federal statute violations).
[50] Following Nunavut and the NWT – this is the same as the November 2020 Yukon Monthly Statistical Review cited at paragraph 174 of the *2019 Yukon JCC*.
[51] As stated in paragraph 78 of this Report, as of September 30, 2023, the population in the Yukon increased to 45,597.
[52] https://yukon.ca/sites/yukon.ca/files/ybs/fin-police-reported-crime-statistics-yukon-2023.pdf
[53] Compared to a rise in the CSI of only 2.1% Nationally.
[54] Compared to a rise of only 1.2% Nationally.

the number of criminal incidents fell from 10,939 in 2019 to 10,366 in 2022, the increase in violent Criminal Code Violations during that same period followed by an increase in the Crime Severity Index and the Police-Reported Crime Rate have impacted the workload and complexity of cases appearing in the Territorial Court and this is a relevant consideration when determining reasonable compensation.

128. The 1998 Yukon JCC mentioned section 19(f) of the Act, however, it did not specifically refer to "the laws of the Yukon" in its reasons. The 1998 Yukon JCC noted that in addressing the compensation issue, the JCC "first required an understanding of the circumstances relevant to the performance of judicial functions" and stated that:

> "the court has responsibility for more than 90% of criminal proceedings in Yukon in addition to its jurisdiction in non-criminal matters which exceeds the scope of jurisdiction exercised by their colleagues in other provincial jurisdictions."[55]

129. Of the factors that must be considered, these comments made by the 1998 Yukon JCC seem to fit most readily with section 19(f) and the need to consider the "laws of the Yukon" when making recommendations.

130. Turning to the 2001 Yukon JCC, it stated that the JCC had considered "the laws of the Yukon" in reaching its decision but did not elaborate on what that entailed.

131. The 2004 Yukon JCC commented at paragraph 3.7 that:

> "…..fair compensation has regard to work done but more so to the level of responsibility. The Commission should consider both."

132. The 2004 Yukon JCC commented at paragraph 3.8 on page 6 that:

> "No particular law was drawn to our attention as being a complication, detriment or an advantage. In the view of the Commission, the overall legislative framework is neither so complex, simple or unique as to substantially affect performance or comparisons with other jurisdictions."

133. In 2010 and 2013, Commissioner Patrick Michael adopted the 2004 Yukon JCC's comment at paragraph 3.8 and noted that YG was the only party to make submissions on section 19(f) of the Act.

134. Counsel for YG references paragraph 172 of the 2019 Yukon JCC and notes Commissioner Debra Fendrick's conclusion that she was required to take appropriate account of the laws of the Yukon generally and as they relate to the judges interpreting and applying those laws, in particular (meaning workload).

135. In addition to the Criminal Code, the laws in force in the Yukon that must be interpreted and applied are referenced by the TCJs (in paragraph 113, above). Considering the

[55] 1998 Yukon JCC at paragraph 3 on page 2.

number, nature, and complexity of the laws that TCJs must interpret and apply, and generally considering the laws of the Yukon in effect at this time, the joint submission on remuneration is appropriate, reasonable, and logical in the circumstances.

The Cost of Living in the Yukon Including the Growth or Decline in Real Per Capita Income (s. 19(g))

Cost of Living in the Yukon

136. At paragraphs 63 – 70, counsel for YG submits that:

- As of January 2024, the inflation rate of 2.6% was the lowest since it reached 1.1% in March 2021, and it is currently below the national rate.
- The CPI is forecasted to be 3% for the 2024 fiscal year, 2.5% for the 2025 fiscal year and 2% for each year thereafter until 2028.
- The Yukon Bureau of Statistics looked at the Consumer Price Index for 2023 and the analysis shows that the CPI from 2014 to 2023 increased 25% which is equivalent to a compound annual rate of 2.3% per year.
- The summary of the Yukon's key indicators for 2024 lists the population, GDP by Industry Growth, Unemployment Rate, Real Estate Transactions, Change in CPI and Retail Sales.
- The cost of straight salary increases may at first glance appear modest, it cannot be forgotten that there is a "multiplier effect" in terms of the costs to the Government when the increased pension costs are factored in, as the TCJs are part of a defined benefit pension plan which allows a 70% pension after approximately 23 years of service.
- The CPI increased 25% from 2014 to 2023 and, by comparison, the salary of TCJs in 2014 was $262,758 and the joint recommendation proposes an increase to $345,330 10 years later. The difference is $82,572 or approximately 31%, outpacing the rate of inflation. YG submits this is significant considering that from 2021 to 2023, all areas of Canada, including the Yukon, suffered the highest rates of inflation in over 6 decades. The salaries for the TCJs will have increased at a rate that is higher than the rate of inflation despite this fact.

137. At paragraphs 116 – 125, counsel for the TCJs and JPs submits:

- The impact of inflation was specifically noted by Chief Justice Lamer in *PEI* as an important consideration.
- Changes in the cost of living are most often discussed in reference to CPI statistics published by Statistics Canada. The CPI tracks changes in the cost of a

fixed basket of consumer goods monthly. Statistics Canada calculates the change in the CPI for, among other things, each province as well as Canada as a whole. In the Yukon, Statistics Canada calculates the CPI only for Whitehorse.

Year	Whitehorse	Canada
2021	3.3%	3.6%
2022	6.8%	6.8%
2023	4.9%	3.9%
2024 forecast from the government's budget	3.0%	

- At paragraph 70 of its submission, YG looks back to the year 2014 and calculates that the judicial salary increases have outpaced inflation this is also true for employees in the Yukon, in that average weekly earnings rose 32% between 2014 and 2023, while CPI increased 25%. If the salary increases for the judiciary are recommended by the JCC, the salaries will have risen 31.4% over this period, slightly less than the average for employees.

- The TCJs' proposals will ensure increased compensation for both TCJs and JPs and protection from erosion due to inflation. Judicial compensation will also remain sufficient to maintain judicial independence, and public confidence in the independence of the judiciary (at para 54).

Growth or Decline in Real Per Capita Income

138. Counsel for the TCJs and JPs points out[56] that although real per capita income is referenced in section 19 of the Act, Statistics Canada has not tracked "real per capita income" since 2010.

139. Counsel for the TCJs and JPs points to other measures to track the growth and decline of income:

    - Median total family income has been consistently higher in the Yukon than other provinces in Canada apart from NWT and Nunavut. In 2022 the median after tax income for families and individuals was the 3rd highest in Canada at $84,500.

    - Average weekly earnings which exceed those of Canada as a whole:

Year	Yukon	Canada
2021	$1,299.40	$1,130.17
2022	$1,335.54	$1,165.29
2023	$1,376.77	$1,205.01

    - Household income which YG forecasts will rise significantly for each of the years captured by this JCC's mandate:

[56] TCYJ and JP 2022 Submissions at paragraph 121.

Year	Change in Primary Household Income
2022	7.2%
2023	9.3%
2024	7.2% (forecast - updated to 7.8%)

- At the oral hearing, counsel for the TCJs and JPs submitted that the updated percentage for 2024 is 7.8%.

- In summary, counsel submits that Yukon is among the leaders in Canada in various income measures and further increases have been seen or are anticipated during the years within this JCC's mandate, and beyond. These considerations support the joint proposals for increased compensation for Territorial Judges and JPs.

JCC Analysis of section 19(g)

140. In *PEI*, Chief Justice Lamer stated that:

> "…in order to guard against the possibility that government inaction could be used as a means of economic manipulation by allowing judges' real salaries to fall because of inflation, and also to protect against the possibility that judges' salaries will drop below the adequate minimum required by judicial independence, the commission must convene if a fixed period of time (e.g., three to five years) has elapsed since its last report, in order to consider the adequacy of judges' salaries in light of the cost of living and other relevant factors."[57]

141. The Parties both referenced the Consumer Price Index (CPI) for Whitehorse (which is the only community in the Yukon that is measured) in their submissions. The CPI measures inflation experienced by consumers on a day-to-day basis, measuring the average change in prices over time.

142. In 2022, the CPI for Whitehorse was 6.8% which was an increase of 3.5% over 2021, however the CPI for 2023 decreases to 4.9% with a forecast decrease to 3% for 2024.

143. Together with the increases in CPI in each of the years covered by the 2022 Yukon JCC, it is noted that household income is also increasing. In 2022 the median after tax income for families was the third highest in Canada which stands to reason given the higher cost of living and the increased isolation experienced by those who live and reside in the North.

144. If the incomes of civil servants (including deputy ministers, YG lawyers and the Premier) are to be considered by future JCCs, it may be appropriate to consider the

[57] *PEI* at paragraph 147.

increase or decrease in their incomes as part of a section 19(g) analysis rather than as direct comparators to TCJs' salaries.

145. The joint submission is appropriate, reasonable, and logical in the circumstances and considers the cost of living in the Yukon including the growth or decline in income as required by section 19(g) of the Act.

Any Submissions by the Public Filed Under Section 26 (s. 19(h))

146. There were no submissions filed by the public under section 26 of the Act.

JOINT SUBMISSION

Salaries of TCJs

147. The Parties make the following joint submission for the salaries of the TCJs:

April 1, 2022	$334,980
April 1, 2023	$345,330
April 1, 2024	90% of the current year salary of federally appointed justices of the Supreme Court of Yukon

148. Counsel for the TCJs submits that the increases are appropriate and reasonable considering the relevant factors outlined in section 19 of the Act and considering the reasoning of past JCCs, because the increases:

- fairly reflect the changed circumstances since implementation of the report of the previous commission (para 219 of the 2019 Yukon JCC);
- will maintain Yukon judges' salaries near parity with the salaries of judges in the identified comparator jurisdictions, including in particular the NWT (para 219 of the 2019 Yukon JCC);
- fairly account for the unique nature of the Yukon and its laws, including that because Whitehorse is a smaller community, social isolation is a reality that is a factor in assessing remuneration (page 19 of the 2016 Yukon JCC);
- that Judges face restraints on their ability to earn income from other sources or endeavors that are not faced by lawyers in private practice;
- will protect against erosion of judicial salary due to increases in the cost of living (para 219 of 2019 Yukon JCC);

- reflect that individuals in the Yukon economy earn incomes in the upper range of Canadians generally, which incomes have increased and will continue to increase through the conclusion of this JCC's mandate period;

- are appropriate given the stable nature of the Government's financial position and the economic situation generally (para 219 of 2019 Yukon JCC and page 18 of 2016 Yukon JCC);

- will ensure a strong Court, considering that the Territorial and Supreme Courts compete for applicants from the same pool of Yukon lawyers, and lawyers in other nearby jurisdictions (para 219 of 2019 Yukon JCC); and

- fall within the range of compensation that will protect judicial independence and ensure public confidence in the judiciary (referencing page 18 of 2016 Yukon JCC)[58].

149. Counsel for YG submits that the salary increases proposed for the TCJs:

- fall well within the comparator jurisdictions;

- address the need to provide reasonable compensation to the Judges;

- address the need to build a strong court by attracting and keeping qualified applicants by linking the TCJs salaries to those of Supreme Court Justices; and

- address the cost of living in the Yukon by proposing salaries which exceed the forecasted inflation

…thereby meeting the criteria set out in section 19 of the Act[59].

Increase Stipend for the Chief Judge

150. The Parties jointly submit that the stipend for the Chief Judge increase from $10,000 to $15,000.

151. Counsel for YG submits that the increases are appropriate and reasonable considering:

- In British Columbia, the Chief Judge receives an additional 12% of base salary. This is more than the stipend being proposed for the Chief Judge in the Yukon. However, in British Columbia the Chief Judge in British Columbia is responsible for approximately 122 fulltime Judges, and 22 senior (i.e., supernumerary) Judges. This is significantly more than the responsibility of the Chief Judge in the Yukon.

[58] TCYJ and JP 2022 Submissions at paragraph 130.
[59] YG 2022 Submissions at paragraph 75.

- In Alberta, the Chief Judge receives an additional 10% of base salary. However, there are some 160 Judges in Alberta.

- In Saskatchewan, the Chief Judge receives a stipend of 7.5% of a Judge's salary. There are approximately 48 Judges in addition to the Chief Judge.

- Finally, the Chief Judge in the Northwest Territories receives $15,000 per annum, and there are 3 Judges. The amount being proposed for the Chief Judge of the Yukon is the same as that of the Chief Judge of the Northwest Territories as they both are responsible for approximately the same number of judges[60].

152. Counsel for TCJ submits that the increases are appropriate and reasonable considering:

- The last time the Chief Judge's stipend was increased was effective April 1, 2007, when it increased from $8,000 to $10,000.

- The increase is reasonable considering the financial position of Government and the economic situation generally.

- It is necessary and appropriate to provide a stipend to Chief Judge, considering the increased duties assumed by the judge who undertakes this important role, to the benefit of the public that is served by the Court.

- The stipend will ensure the continuing ability to the Court to attract judges to undertake this role within the Court.

- an increase is necessary to account for erosion due to increases in the cost of living since 2007, when the stipends were last increased; and

- the Chief Judge's stipend is substantially lower than the stipend paid in the comparator jurisdictions:

    - NWT – effective April 1, 2024, the Chief Judge receives 7.5% of pay, which meant $26,260 in 2024, following the recommendations of the 2024 NWT JRC;

    - BC – the Chief Judge receives a 12% differential; and

    - Alberta and Saskatchewan – the Chief Judge receives an 8% differential[61].

153. At paragraph 80 of its submissions, counsel for YG states:

[60] YG 2022 Submissions at paragraphs 79 – 84.
[61] TCYJ and JP 2022 Submissions at paragraphs 135 – 136.

> "A review of the stipends in the comparator jurisdictions reveals that Yukon's stipend, which is a reflection of the additional administrative responsibilities that accompany the office of the Chief Judge of the Territorial Court, is appropriate when the size of the Court is taken into account. The stipend was $10,000 per annum. The joint recommendation proposes an increase to $15,000."

154. In response, counsel for TCJs states at paragraph 137:

> "The Territorial Judges dispute the assertion in paragraph 80 of the Government's Submission that the stipend reflects the differing duties of the Chief Judge given the size of the Court. As noted above, the Territorial Court of the NWT pays its Chief Judge 7.5% of pay, substantially more than the $15,000 despite that it too is a small Court (four versus the three judges in Yukon)[62]. Vis-à-vis the provincial comparators, despite the small size of the Yukon and NWT Territorial Courts, the Chief Judges have equivalent responsibility in relation to legal and administrative advancements, and participate equally in the Canadian Council of Chief Judges, and other organizations that advance the administration of justice. While the provinces may have larger numbers of judges, they also have Associate Chief Judges who undertake some of the duties performed by the Yukon's Chief Judge."

Increase Stipend for the Supervising Judge

155. The Parties jointly recommend that the stipend for the Supervising Judge of the JPs increase from $5,000 to $7,500 per year.

156. As outlined by counsel for YG, section 61 of the Act requires that the Chief Judge appoint a Supervising Judge, who is responsible for the supervision and training of all JPs.

157. The Supervising Judge is also responsible for referring any concerns about the training and deportment of justices to the council.

158. The Supervising Judge receives an annual stipend for these additional administrative duties.

159. YG submits that the increase for the Supervising Judge of the JPs recognizes the additional work required for this position.

160. The TCJs point out that the last time the stipend paid to the Supervising Judge increased was effective April 1, 2007 when it increased from $4,000 to $5,000, and:

[62] Following the recent appointment of Judge Elaine Cairns, the Territorial Court is comprised of 3 resident judges: Chief Judge Michael Cozens, Judge John Phelps and Judge Elaine Cairns plus 28 deputy judges.

- It is necessary and appropriate to provide a stipend to the Supervising Judge of the JPs considering the increased duties assumed by the judges who undertake this important role, to the benefit of the public that is served by the Court.

- The stipend will ensure the continuing ability to the Court to attract judges to undertake this role within the Court.

- An increase is necessary to account for erosion due to increases in the cost of living since 2007, when the stipend was last increased.

Changes to the *Territorial Court Act*, RSYT 2002, c. 217

161. The following amendments to the Act are requested by joint submission:

(a) Commencing April 1, 2025, link the salaries of TCJs to the current year salary of federally appointed Justices of the Supreme Court of Yukon.

(b) Create a presumption that for each annual period commencing on or after April 1, 2025, the specific linkage be 90 per cent of the current year salary of federally appointed Justices of the Supreme Court of Yukon.

(c) If this percentage results in a reduction in the salary of a TCJ, the salary to be paid to the TCJ is the annual salary that was paid in the previous annual period.

(d) The presumption of 90% will not apply in any of the following extraordinary circumstances:

i. If the TCJ salaries become either the highest or the lowest of the comparator jurisdictions, being British Columbia, Alberta, Saskatchewan, and the Northwest Territories.

ii. A failure to update the salary paid to the federally appointed the Supreme Court of Yukon as required pursuant to the Judges Act (Canada).

iii. a currently unforeseen significant increase or decrease in the scope of responsibilities of the TCJ; or

iv. an agreement between the Chief Territorial Court Judge and the Minister that there is an extraordinary situation that warrants commission review.

(e) It is understood that pensions, benefits, and allowances are not to be considered when determining whether the presumption applies.

(f) Except as necessary to implement the agreement as it relates to salaries, Territorial Court Act amendments will not be recommended which would authorize a decrease of judicial remuneration other than as provided for in section 15.

(g) In fulfilling its mandate, the commission shall, in addition to considering any matter it considers relevant, address in its report submissions presented addressing those factors presently set out at s. 19 of the Act (this is already stated in section 19).

(h) A change to the duration of the Judicial Compensation Commission from the current three years to four years for each Judicial Compensation Commission starting April 1, 2025.

Changes to the *Act to Amend the Territorial Court Judicial Pension Plan Act (2021)*, SY 2021, c. 9

162. The Parties jointly recommend that section 7(1) of the *Act to Amend the Territorial Court Judicial Pension Plan Act (2021)* be amended by removing the highlighted section of 2.01(a), below:

(2.01) If the member dies after the commencement of pension payments but before 60 monthly payments have been made, the pension payments under subsection (2) shall be continued without reduction until 60 monthly payments have been made in one of the following ways:

(a) ~~If the spouse or common law partner remains alive until the end of the 60 months,~~ the remaining monthly payments after the member's death are made to the spouse or partner

163. Counsel for the Parties agree that the *Act to Amend the Territorial Court Judiciary Pension Plan Act (2021)* has not been proclaimed into force and it is section 10(2) of Schedule 3 of the *Act to Amend* that the Parties are seeking to further amend before the previous amendments come into force.

Justices of the Peace

164. The parties jointly recommend increases for each of 2022, 2023, and 2024 to be the greater of zero percent or the percentage of change of the CPI for the preceding year for Whitehorse, which results in the following proposed hourly rate increases for JPs:

(a) Effective April 1, 2022, hourly rates will increase by the percentage of change of the CPI for Whitehorse for the 2021 calendar year;

(b) Effective April 1, 2023, hourly rates will increase by the percentage of change of the CPI for Whitehorse for the 2022 calendar year;

(c) On April 1, 2024, hourly rates will increase by the greater of 0% or the percentage of change of the CPI for Whitehorse for the 2023 calendar year.

165. According to the Justice of the Peace Compensation Order, as of April 1, 2021, there are three different hourly rates for JPs, as follows:

(a) JP1(applies to those with administrative responsibilities only): $47.75 per hour;

(b) JP2 (includes presiding and administrative responsibilities) $53.06 per hour; and

(c) JP3 (includes presiding and administrative responsibilities) $74.29 per hour.

166. The joint submission would result in the following increases for JPs:

Year	CPI Increase Based on the Previous Year
April 1, 2022	3.3%
April 1, 2023	6.8%
April 1, 2024	4.9%

167. At paragraph 144, counsel for the JPs submits that the proposed increases are supported by the following factors outlined in section 19 of the Act:

- the current financial position of the Yukon Government is stable, and the economic outlook is healthy;
- the hourly rates are sufficient to ensure the financial security of the JPs;
- JPs perform an important and essential role in Yukon's justice system and the increases will assist the Court in attracting and retaining qualified applicants to the position of JP;
- the hourly rates reflected in the proposal will ensure relative parity with the hourly rates paid to JPs in the NWT; but are lower than the salaries paid to JPs in BC, Alberta, and Saskatchewan where, by law or by practice, law degrees and legal experience are required of JPs prior to their appointment;
- JPs perform a broad range of duties, particularly in Yukon communities to which Judges travel only on circuit court; and
- the cost of living has increased in recent years and the increases are necessary to prevent erosion due to the cost of living.

168. Counsel for the JPs also submits at paragraph 77 that:

- the compensation for JPs must be sufficient to attract and retain the best possible qualified candidates for the position. JPs play an important role in the

administration of justice and, given the challenging conditions across the Yukon, the role of JPs is essential to ensure the delivery of justice in remote areas.

169. At paragraphs 58 and 90 – 91, counsel for YG submits that:

- The hourly rate paid to JPs was last increased by the 2019 Yukon JCC, and both Parties believe a further increase is warranted at this time;
- It is challenging to compare the salaries of JPs to those in the comparator jurisdictions because their qualifications are different;
- Neither Yukon nor the NWT require that a JP have a law degree; and
- The proposed increases are in line with the most notable comparator jurisdiction, namely, with which the Yukon is in relative parity - the NWT.

170. At paragraph 102, counsel for the JPs also notes that comparing the compensation to JPs in the comparator jurisdictions is more difficult due to differences in qualifications and work performed and whether there has been an independent commission established to make recommendations.

171. At Tab 11 of its supporting materials, YG provides a summary of the compensation paid to JPs in other jurisdictions and at Tab 12, the Regulation passed on November 25, 2022 setting out the hourly and per diem rates being paid to JPs in the NWT.

172. At paragraphs 103 – 111, counsel for the JPs sets out the amount of compensation received by JPs in Alberta, Saskatchewan and BC and notes that JPs must be legally trained in each of those jurisdictions. At paragraph 108 counsel for the JPs points out that, while similar in other ways, the NWT does not use an independent commission to set JPs' remuneration.

173. Counsel for the JPs submits that although two full-time JPs Nunavut are legally trained, legal training is not a requirement. Counsel for the JPs refers to the 2019 Yukon JCC which noted that the hourly rates jointly proposed to that JCC placed Yukon JPs "in relative parity with their counterparts in the NWT; the salaries are lower than in the provincial comparators, noting that two of the provinces require JPs to have law degrees and five years' experience as a lawyer, which is not a requirement in Yukon."[63]

174. The Parties jointly submit:

(a) an increase to the daily training allowance for JPs from $100 per day to $150 per day for a full day, or $75 for a half day starting April 1 2022; and

[63] TCYJ and JP 2022 Submissions at paragraph 111 and 2019 Yukon JCC at paragraph 70(e).

(b) an increase to the hourly rate for training from $30 to an amount equivalent of that paid to a JP1, starting April 1, 2022.

175. At paragraph 146, counsel for the JPs submits that, regarding the daily allowance:

- the daily allowance has not been increased in over 30 years. The last increase was in 1990 (M.O. 1990/01);
- an in-person JP College is usually held at least once/year in Whitehorse with half day colleges conducted via Zoom from time to time;
- attending the JP Colleges is critical to JPs developing and maintaining their skills and knowledge;
- many JPs are not called upon to perform their duties consistently and there is an ethical obligation for JPs to participate in these JP colleges.

176. Counsel for YG submits that these increases reflect the value that training provides for JPs.

177. The hourly rate for training is paid to JPs who are shadowing a judge or another JP when undergoing intensive training to become a presiding JP.

178. Counsel for the JPs submits that:

- the last increase in the hourly rate for training was in 2004;
- the rate was increased from $25.00 to $30.00 at that time and accordingly, based on the increases in the cost of living alone, a substantial increase is justified; and
- an increase in the hourly rate is necessary to recruit suitable candidates.

179. It is jointly proposed that there will be a change to allow for standby pay for JP3s for covering bail court on weekends and statutory holidays of a minimum of 4 hours, and at the applicable rate above 4 hours, starting April 1, 2022.

180. Counsel for the JPs submits that:

- it should be noted that this weekend/statutory holiday duty has been covered by two of the senior JPs for many years;
- 1 of the 2 senior JPs stepped away from that duty and the other JP reached the age of 75 in December 2022 and was no longer able to provide this very important service; and

- there is a pressing need to offer compensation that is appropriate to recruit potential candidates to cover this essential service.

JCC RECOMMENDATIONS AND ANALYSIS

181. I have carefully reviewed and considered the written submissions and books of authorities provided by counsel, listened to their oral submissions, and noted the common ground arrived at in the joint submission presented.

182. I have also applied the test set out in *Cameron*[64] and have determined that the joint submission of the Parties is appropriate for recommendation and that it is appropriate, reasonable, and logical in the circumstances.

183. There is no evidence that the process leading up to the offering of the joint submission was questionable or inappropriate. Each Party had its own reasons for supporting the joint submission, indicating an absence of pressure or coercion. The joint submission was arrived at by consensus among the Parties, consistent with the constitutional principles set out in *PEI*.

184. At the oral hearing, counsel for the Parties confirmed that they were each satisfied that full disclosure of all relevant information had been made as set out in paragraph 4.3.4 of the LOU.

Salaries for the TCJ:

185. That the salary increases for the TCJs be as follows:

(a) Effective April 1, 2022, salaries will increase to $334,980;

(b) Effective April 1, 2023, salaries will increase to $345,330;

(c) Effective April 1, 2024, salaries will increase to 90% of the current year salary of federally appointed Justices of the Supreme Court of Yukon.

OTHER RELEVANT CONSIDERATIONS - Linking Territorial Court Judges' Salaries to Federally Appointed Judges

186. YG and the TCJs have provided the JCC with a joint submission that the Act should be amended to provide that:

> "Commencing April 1, 2025, link the salaries of the TCJs to the current year salary of federally appointed Justices of the Supreme Court of Yukon;

[64] *Cameron, supra* at paragraph 104.

> Create a presumption that for each annual period commencing on or after April 1, 2025, the specific linkage be 90 per cent of the current year salary of federally appointed Justices of the Supreme Court of Yukon."

187. It was the government's submission in *Bodner*[65] that it would be inappropriate to link the Provincial Court judges' salaries to that of federally appointed judges and it rejected that submission. At paragraph 57 of *Bodner*, the SCC stated that:

> "The Court of Appeal also addressed the Government's contention that the recommended salary increase is excessive, particularly when compared with the increases received by civil servants. It concluded that the comparison was inappropriate and that the response, in this regard, failed to meet the standard of rationality. It then reviewed the argument based on parity with federally appointed judges and found that the Government was right to reject the link between the salary of federally appointed judges and that of Provincial Court judges."

188. At paragraph 71 of *Bodner*, the SCC stated that:

> "The Government objected to the salary increase because it believed that in granting an increase of this magnitude, the Commission was in fact giving effect to the Provincial Court judges' argument that they should be granted parity or partial parity. Even though the Commission explicitly stated that it did not accept the parity argument, there is, in reality, an obvious connection between the recommended increase and the salary of federally appointed judges that transcends the report: the recommended increase would result in the judges' salary equalling 85 percent of the salary of federally appointed judges. This figure corresponds to the Government's submission, mentioned by the Commission in its report, that the average per capita income in New Brunswick is equal to 85 percent of the Canadian average. This would account for the figure, not otherwise explained, chosen by the Commission for the recommended increase. The Court of Appeal correctly highlighted the facts relied on by the Government and the weakness of the Commission's report in this regard."

189. The Court of Appeal in *Bodner* found that the government was right to reject the link between provincial and federally appointed judges and said at paragraph 164:

> "The reality is that a salary recommendation based on full or partial parity with judges of another court means that other comparator groups are being ignored."

190. The Act mandates the Yukon JCC to consider the factors outlined in section 19. The current financial position of the government, the need to provide reasonable compensation to judges, the need to build a strong court by attracting qualified candidates, the unique nature of the Yukon, the comparator jurisdictions, the laws of the Yukon, the cost of living in the Yukon and any submissions made by the public must be

[65] *Bodner (SCC), supra*

considered in addition to any other matter the JCC considers relevant. These factors must be contemplated by future Yukon JCCs when considering whether the 90% parity with the federally appointed judges is appropriate, reasonable, and logical in the circumstances as required by *Cameron.*[66]

191. In addition, the Parties jointly submit that the 90% presumption does not apply in any of the following extraordinary circumstances:

    (a) If the TCJ salaries become either the highest or the lowest of the comparator jurisdictions of the Northwest Territories, British Columbia, Alberta and Saskatchewan;

    (b) A failure to update the salary paid to the federally appointed Justices of the Supreme Court of Yukon as required pursuant to the *Judges Act* (Canada);

    (c) A currently unforeseen significant increase or decrease in the scope of responsibilities of the TCJ; or

    (d) An agreement between the Chief Territorial Court Judge and the Minister that there is an extraordinary situation that warrants commission review.

192. In *Bodner*, the Court of Appeal found that the government's justifications in rejecting the 2001 New Brunswick JCC met the rationality standard outlined in *PEI*. The Court of Appeal went on to state at paragraph 165 that:

> "the Government advanced a legitimate reason why provincial judicial salaries should not be tied to that being paid to federally appointed judges. Admittedly, the 2001 Commission's Report acknowledges the Government's argument. What the Commission failed to do was address that argument, notwithstanding that it was required to do so under s. s. 22.03(6)(a.1) of the ***Provincial Court Act***. For these reasons, the Government's decision to reject the Commission's salary recommendation meets the simple rationality test."[67]

193. The SCC dismissed the Association's appeal. It outlined the questions that must be asked when determining whether the Government's rejection of the commission's recommendations met the rationality standard:

    (a) First, whether the response contains legitimate reasons based on the public interest;

    (b) Second, whether it is based on a sufficient factual foundation; and

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[66] *Cameron, supra,* at paragraph 104.

[67] *Provincial Court Judges' Association of New Brunswick v. New Brunswick (Minister of Justice) et al* 2003 NBCA 54 (Canlii).

(c) Finally, whether the Government's reasons, viewed globally, show that the purposes of the commission process have been achieved.[68]

194. The Court of Appeal and the SCC did not reject the notion of parity or partial parity in *Bodner.* Rather, in dismissing the appeal, the SCC held that the government's response could not be struck down for a lack of reasonable factual foundation. The SCC stated that the commission failed to address the Association's submissions in support and the Government's submissions in rejection of the proposed increase noting that:

> "These omissions may have occurred because the parity argument advanced by the Association had blurred the Commission's focus."[69]

195. The 2019 Yukon JCC stated at paragraph 136:

> "To be clear, the Commission is not recommending parity with the Supreme Court salaries as the caselaw states that it is not appropriate."

196. At page 31 of the 2010 Yukon JCC, Commissioner Patrick Michael stated the following regarding the SCC decision in *Bodner*:

> "The commission is aware that it has been suggested to some commissions that the remuneration of provincial or Territorial Court judges should be linked in some fashion to that of Superior Court Judges. That proposition has been sufficiently laid to rest by past judicial compensation commissions in their reports (see, for example, the report of the 2004 Yukon Judicial Compensation Commission) and by the Supreme Court of Canada (*Provincial Court Judges' Association of New Brunswick v. New Brunswick (Minister of Justice) et al* [2005] SCJ No. 44)."

197. It appears, however, that the SCC dismissed the appeal in *Bodner* because it found the government's response could not be struck down for lack of a reasonable factual foundation, not because the SCC agreed that the notion of parity had been or should be "laid to rest." Rather, the proposed increases were excessive and were not based on the economic conditions in New Brunswick at the time and therefore the rejection of parity in those circumstances met the rationality test.

198. The SCC held that reasons that rely upon a factual foundation, are complete and deal with the commission's recommendations in a meaningful way will meet the standard of rationality.[70] The SCC dismissed the appeal because the government had met that test.

199. The 2004 Yukon JCC stated that YG and the TCJ expressed differing opinions on the appropriateness of parity between the TCJ and the Supreme Court Judges in their written

[68] *Bodner, supra (SCC),* at paragraph 59.
[69] *Bodner, supra (SCC)*, at paragraph 81.
[70] *Bodner (SCC), supra,* at paragraph 25.

submissions[71] and noted that the issue of parity was not raised in oral submission since YG and TCJ had entered a joint submission. The 2004 Yukon JCC considered parity nonetheless because the JCC must consider what is fair and reasonable in the circumstances[72].

200. The 2004 Yukon JCC was clear in its intention not "to bind the hands of any future commissions" (which it could not do in any event). The 2004 Yukon JCC considered the work that is done and the level of responsibility that is provided to a general jurisdiction (Supreme) and a limited jurisdiction (Territorial) court. The 2004 Yukon JCC also noted that federally appointed judges' salaries are set by the Government of Canada for Judges across Canada and the criteria for doing so may differ from section 19 of the Act.

201. The 2004 Yukon JCC referenced a proposal made by retired Judge Barry Stuart that the JCC establish a formula for future salary changes to simplify the process. The 2004 Yukon JCC was concerned that establishing a formula likely exceeded the JCC's mandate and the formula would inevitably change as circumstances changed.[73]

202. Counsel for YG referenced the 2019 Yukon JCC where the Commissioner commented on the notion of linking TCJ salaries to those of Supreme Court Justices. At paragraph 134 of the 2019 Yukon JCC, the Commissioner noted that the appointments to the Supreme Court since 2000 have been local candidates. I note that recent appointments to the Territorial Court have also been local candidates, including the most recent appointment on May 30, 2024. When considering the appointment of local candidates to the Supreme Court, the 2019 Yukon JCC also found that the compensation paid to Yukon Supreme Court Judges to be relevant.

203. The pool of candidates in the Yukon is relatively small given the size of the local bar and considering that the last 3 appointments to the Supreme Court of Yukon and the last 3 appointments to the Yukon Territorial Court have all been resident candidates.

204. When considering whether to presumptively link TCJs salaries with the salaries of the Justices of the Supreme Court of Yukon in partial parity, I feel the need to consider whether making that recommendation could be viewed as this JCC "binding the hands of future JCCs" which was the concern expressed by the 2004 Yukon JCC.

205. I considered the 2004 Yukon JCC's concern in the context of *Bodner* where, at paragraph 15, the SCC stated that:

> "Each commission must make its assessment in its own context. However, this rule does not mean that each new compensation commission operates in a void, disregarding the work and recommendations of its predecessors. The reports of previous commissions and their outcomes form part of the background and context that a new compensation committee should consider. *A new commission*

[71] *2004 Yukon JCC* at paragraph 3.6.
[72] *2004 Yukon JCC* at paragraph 3.7.
[73] *2004 Yukon JCC* at paragraph 8.2.5.

may very well decide that, in the circumstances, its predecessors conducted a thorough review of judicial compensation and that, in the absence of demonstrated change, only minor adjustments are necessary. If on the other hand, it considers that previous reports failed to set compensation and benefits at the appropriate level due to particular circumstances, the new commission may legitimately go beyond the findings of the previous commission, and after a careful review, make its own recommendations on that basis" (emphasis added).

206. I recommend that there be a presumption that for each annual period commencing on or after April 1, 2025 the TCJs will receive 90% of the current year salary of federally appointed Justices of the Supreme Court of Yukon as outlined by the Parties (the "Presumption"). I have come to this recommendation considering the following factors:

    (a) The recommendation that this JCC adopt the Presumption is made by joint submission.

    (b) The Presumption is rebuttable and will be the starting point when looking at the factors set out in sections 17(2), 17(3) and section 19 of the Act.

    (c) Past JCC reports and recommendations (like the 2004 and 2010 Yukon JCCs) are informative and highly relevant, however, they are not binding on this JCC (see *Bodner*).

    (d) The SCC did not dismiss the government's appeal in *Bodner* because it disagreed with wage parity or partial parity, rather, it held that the government's response could not be struck down for lack of reasonableness on all the facts.

    (e) The Presumption will simplify the process. The anticipated result of simplification is greater cost effectiveness and the preservation of judicial independence.

    (f) The Presumption encourages the Parties to narrow the discussion at an early stage of the process (as required by the LOU), and it is anticipated this narrowing will encourage consensus decision-making.

207. I commend the Parties for bringing forward this innovative recommendation that will act as the starting point for counsel and future JCCs while not tying its hands.

Amendments to the *Territorial Court Act*, RSY, 2002, c. 217

208. Commencing April 1, 2025, link the salaries of the TCJs to the current year salary of federally appointed Justices of the Supreme Court of Yukon.

209. Create a presumption that for each annual period commencing on or after April 1, 2025, the specific linkage of 90% of the current year salary of federally appointed Justices of the Supreme Court of Yukon.

210. If the 90% linkage results in a reduction of the salary of a TCJ, the salary to be paid to the TCJ is the annual salary that was paid in the previous annual period.

211. The presumption of 90% does not apply in any of the following extraordinary circumstances:

    (a) If the TCJ salaries become either the highest or the lowest of the comparator jurisdictions of the Northwest Territories, British Columbia, Alberta and Saskatchewan;

    (b) A failure to update the salary paid to the federally appointed Justices of the Supreme Court of Yukon as required pursuant to the *Judges Act* (Canada);

    (c) A currently unforeseen significant increase or decrease in the scope of responsibilities of the TCJ; or

    (d) An agreement between the Chief Territorial Court Judge and the Minister that there is an extraordinary situation that warrants commission review.

212. Pensions, benefits, and allowances are not to be considered in determining whether the presumption applies.

213. Except as necessary to implement the joint submission, *Territorial Court Act* amendments will not be recommended which would authorize the decease of judicial remuneration other than as provided for in section 15 of the Act.

214. There shall be a legislative change to the duration of a JCC from the current 3 years to 4 years for each JCC starting April 1, 2025.

215. To be clear, no change to section 19 of the Act was proposed, and the Parties expressed a shared understanding that future JCCs would be obliged, in addition to considering any matters they consider relevant, to address in their report submissions presented addressing the factors set out in section 19 of the Act.

Amendments to *An Act to Amend the Territorial Court Judicial Pension Plan Act (2021)*, SY 2021, c. 9

216. The JCC accepts and recommends the Parties' joint recommendation that s.7(1) of the *Act to Amend the Territorial Court Judicial Pension Plan Act (2021)*, be amended, by removing the highlighted section of 2.01(a), below:

    (2.01) If the member dies after the commencement of pension payments but before 60 monthly payments have been made, the pension payments under subsection (2) shall be continued without reduction until 60 monthly payments have been made in one of the following ways:

(a) ~~If the spouse or common law partner remains alive until the end of the 60 months,~~ the remaining monthly payments after the member's death are made to the spouse or partner.

Increase in the Stipend for the Chief Judge

217. According to section 71 of the Act, the Chief Judge holds the position for a period of 3 years and is designated as the Chief Judge by the Commissioner in Executive Council.

218. It is my understanding that, every 3 years it has been the practice of the Territorial Court to rotate the position of Chief Judge from the judge who is just completing their term to the next most senior judge, followed by the third judge after which time the rotation starts anew.

219. Section 73 of the Act outlines the additional duties and powers of the Chief Judge, as follows:

> "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;
>
> (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."

220. The joint submission is appropriate, reasonable, and logical in the circumstances, and I recommend that the stipend for the Chief Judge increase from $10,000 to $15,000 per year.

Increase in the Stipend for the Supervising Judge

221. The last increase was on April 1, 2007, 15 years prior to the convening of this JCC.

222. An increase is reasonable due to the increased workload for the supervising judge, and it is necessary to account for erosion due to increases in the cost of living since 2007.

223. The joint submission is appropriate, reasonable, and logical and I recommend that the stipend for the judge who supervises the JPs will increase from $5,000 to $7,500 per year.

Salaries for the JPs

224. JPs are officers of the court and are entitled to financial security as noted by the 2019 Yukon JCC at paragraph 70(c).

225. As stated by counsel for the JPs at paragraph 144 of their submissions, the jointly proposed increases are supported by the following points, arising out of the factors set out in s.19 of the Act:

(a) the current financial position of the Yukon Government is stable, and the economic outlook is healthy;

(b) the hourly rates are sufficient to ensure the financial security of the Justices of the Peace;

(c) JPs perform an important and essential role in Yukon's justice system and the increases will assist the Court in attracting and retaining qualified applicants to the position of JP;

(d) the hourly rates reflected in the proposal will ensure relative parity with the hourly rates paid to JPs in the NWT; but are lower than the salaries paid to JPs in BC, Alberta, and Saskatchewan where, by law or by practice, law degrees and legal experience are required of JPs prior to their appointment;

(e) JPs perform a broad range of duties, particularly in Yukon communities to which Judges travel only on circuit court; and

(f) the cost of living has increased in recent years and the increases are necessary to prevent erosion due to the cost of living.

226. Having reviewed the submissions of the Parties and the factors set out in section 19 of the Act, the joint submission regarding increases for JPs is appropriate, reasonable, and logical in the circumstances and is therefore recommended.

227. Accordingly, the salary increases for the JPs will be as follows:

(a) Effective April 1, 2022, hourly rates will increase by the percentage of change of the CPI for Whitehorse for the 2021 calendar year.

(b) Effective April 1, 2023, hourly rates will increase by the percentage of change of the CPI for Whitehorse for the 2022 calendar year.

(c) On April 1, 2024, hourly rates will increase by the greater of 0% or the percentage of change of the CPI for Whitehorse for the 2023 calendar year.

Allowances and Hourly Rates for Training JPs

228. Starting April 1, 2022, the daily allowance for training at a JP College will increase from $100 per day to $150 per day for a full day and $75 for each half day.

229. Starting April 1, 2022, the hourly rate for training will increase from $30 to an amount equivalent to that paid to a JP1.

Standby Pay for JPs

230. There will be a change to allow for standby pay for JP3s when covering bail court on weekends and statutory holidays of a minimum of four hours, and at the applicable rate above four hours, starting April 1, 2022.

231. The joint submission to the increases to the hourly rates for training JPs and for JPs' standby pay is appropriate, reasonable, and logical in the circumstances and I recommend it.

ERROR OR OMISSION

232. For the convenience of the Parties, I have set out section 29 of the Act which states:

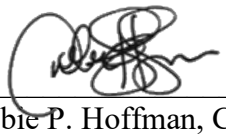
> "If the commission has failed to deal with a matter required of it under its mandate in its recommendations or if an error is otherwise manifest in its recommendations, the Minister or the chief judge may apply to the commission within seven days of their receipt of the recommendations to have the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

CLOSING REMARKS

233. I wish to express my sincere appreciation and gratitude to counsel for their exemplary work in relation to the comprehensive preparation of their written and oral submissions and supplementary materials. I also commend the Parties for providing counsel with instructions that allowed a joint submission to be made. The JCC process was intended by the Parties to be rooted in consensus decision-making from its inception in 1998, to the signing of the LOU in 2005, through to the present day. The Parties have respected and promoted both the spirit and intention of the JCC process by coming to a joint submission that lays the foundation for future processes to start from a place of

common ground, thereby meeting the additional principles set out in the Act and the LOU that the process should be consensus driven and cost-effective.

Respectfully submitted on February 7th, 2025



Debbie P. Hoffman, Commissioner
2022 Judicial Compensation Commission

TAB 10

TAB 10 A



Budget address 2026–27

presented by

Premier of Yukon
Minister of Finance
CURRIE DIXON

First Session of the Thirty-sixth Yukon Legislative Assembly

Whitehorse, Yukon
March 19, 2026

Madam Speaker,

it is my honour to table the Government of Yukon's 2026–27 budget.

Our territory is at a crossroads, Madam Speaker.

To put it bluntly, over the past few years, the Yukon has been spending far more than we can afford.

This has put us in a dangerous financial position.

Spending more than you can afford is no way to run your personal finances, let alone a government.

Madam Speaker, that changes today.

The budget I am introducing charts a responsible fiscal path for the territory.

This budget is a realistic and common-sense plan that will deliver actual results for Yukoners, while getting us back on a responsible fiscal track.

This plan draws on the resilience of Yukoners and the never-ending Yukon spirit.

Whether you are a born and raised Yukoner, or new to the territory, the Yukon offers many opportunities for you to build a future and thrive.

That starts with the land we call home.

The Yukon is a source of the minerals needed to fuel the modern Canadian economy.

This great territory has everything from gold and silver to copper and nickel to zinc and tungsten.

Even greater than our mineral resources, the Yukon is blessed with a young, educated, and highly ambitious population that wants to build a future here.

We have the natural resources and human resources to succeed.

Our government is committed to making common-sense decisions and implementing the right policies to secure a more prosperous future for all Yukoners.

The journey, however, will not be easy.

The Yukon faces strong headwinds, beginning with the pressure of record population growth.

Let me be clear: new Yukoners are a benefit to the territory, economically, culturally, and otherwise.

Between 2015 and 2025, our population grew from roughly 37,000 people to 48,000.

That is over 27 per cent growth in just ten years, and we have struggled to keep pace.

At this pace, the Yukon will be well over 60,000 people within a decade.

More people requires more investments in infrastructure, energy, roads, health care, and other services.

And just as it has with building a house or buying groceries, inflation has made all these things more expensive.

When I was sworn in as Premier, I made a promise to Yukoners: our government will be transparent and accountable in everything we do.

We will not delay difficult decisions to buy time.

We will not say one thing in public and another in private.

We will not temper the truth to make it more palatable.

And the truth today is this, Madam Speaker: the Yukon is in a period of significant fiscal pressure.

When we took office, we knew we were inheriting a challenging fiscal situation and that we would need to make some tough decisions as the new government.

Unfortunately, the situation is worse than we thought.

And it is much worse than was ever publicly communicated to Yukoners.

Nine years of reluctance to make tough decisions and prioritize means that the Yukon faces significant deficits in infrastructure and programming.

The needs in both areas are real, urgent, and growing.

That is why today, we are tabling the largest deficit recorded in the Yukon.

This is not what I envisioned when running for Premier.

Nor is this what my colleagues expected.

And this is certainly not what Yukoners want.

The reality is that the Yukon government has been on a trajectory of unsustainable spending for years.

These previous financial decisions, such as starving program spending to pay for poorly thought-out Confidence and Supply Agreements commitments that defined the last government, were ultimately funded by debt.

These decisions were made at the expense of the next generation of Yukoners' ability to fund essential infrastructure such as health care or power generation.

Debt isn't inherently bad.

People don't save up until they have the entire amount to buy a house, they get a mortgage.

But it simply isn't sustainable to put all of our day-to-day expenses on credit, with no intention of paying it back or establishing sustainable funding.

During the fall sitting, I shared that we were approaching our $1.2 billion debt limit.

While borrowing is a tool that can increase our flexibility, we need to manage within our limit.

With today's budget, the Yukon has reached this limit.

That means we cannot take on any more debt to fund our spending.

In other words, our credit card is maxed out.

And we aren't bringing in enough revenue to spend any more.

That is why I have asked the federal government to increase the Yukon's debt limit.

The approval timelines, however, are at Ottawa's discretion, and we cannot exceed our debt cap in the meantime.

To go over our debt cap would mean the territory would go into something similar to default or bankruptcy.

In practice, it could mean handing the keys over to the federal government and the end of decision-making by the Yukon's elected government.

That would be unacceptable.

Madam Speaker, this needs to be the worst budget the Yukon government ever tables.

Today's budget represents the low benchmark.

It is the floor from which we must get up off of.

It will shape the tough decisions needed to get us back on track.

We cannot jeopardize our children's and grandchildren's future by continuing down this costly path.

Madam Speaker, we must restore balance to the territory's finances.

A government's fiscal trajectory is determined by two fundamental factors: the revenues it collects and the expenditures it makes.

Restoring balance will require controlling and prioritizing spending to ensure the best value for Yukoners, while taking a measured, transparent approach to revenues.

It will also require that we work internally, with the business community, service partners and other governments to find ways to partner in our investments.

In doing so, we can stabilize the territory's finances, protect core services, and create the fiscal room for new investments.

In the longer term, however, we must also embark on a clear and credible path to surplus.

This is the only responsible and sustainable course.

Trading deficits for surpluses will allow us to lower debt-servicing costs, pay down debt, and create a strong and enduring fiscal dividend that can be reinvested in services and affordability for Yukoners.

Restoring fiscal balance will be more than a simple accounting exercise, Madam Speaker.

It will require doing government differently.

The status quo brought us into this difficult situation, so staying the course will result in more of the same.

If we want better outcomes, we need fresh thinking and bold actions.

Our government has already begun taking such steps.

During this sitting, we are introducing amendments to the *Financial Administration Act* to establish a voted contingency fund.

This will allow the government to respond quickly to emergencies and other unexpected events without needing special approvals or extra budgets, saving time and resources in the process, while adhering to the same robust planning and reporting requirements.

This is not a blank check.

This is an intentional approach to budgeting used across Canada instead of relying on supplementary budget requests in the fall.

It allows us to have spending authority to fund emergencies as they arise.

Unlike previous years where the budget would say one thing and the Public Accounts would show a dramatically different picture, what I have tabled today is our budget for the year.

We will ask departments to address emerging fiscal pressures by finding areas where they can reduce spending.

We will need to live within our means as responsible stewards of our territory's finances.

This means giving clear direction to the public service and saying no to things we can't afford quickly so we can refocus our efforts where they matter most to Yukoners.

Our government will also remove barriers between departments when it makes sense.

For example, you'll see in this budget a combined vote for the departments of Economic Development and Tourism and Culture.

These departments have a range of complementary objectives.

Bringing the two departments under a single vote will empower them to work together to improve services and programming, including marketing targeted at potential investors and tourists.

To be clear: this is not a job-cutting exercise.

The two departments will continue to work and serve their clients.

What will change is the level of collaboration in terms of planning, delivery and ultimately full integration.

This will also allow staff to work together to serve clients better through funding programs with greater flexibility and reduced administrative burdens.

Madam Speaker, these are just two examples of our government's willingness to do things differently to get better results.

In the coming year, we will begin a government-wide review to drive efficiencies and improve outcomes, beginning with cutting unnecessary red tape and simplifying regulations, wherever possible.

This work will be guided by a framework and legislation that embeds red tape reduction and accountability in everything we do.

From where we spend, to how and when we regulate, we will make it easier for the people we serve to access services, do their jobs and grow the economy.

We will strengthen the role of the private sector by reducing government activity in areas that are more appropriately delivered by private enterprises.

We will streamline operations to achieve scale, improve service delivery, and enhance fairness.

And finally, we will initiate a thorough review of programs and Transfer Payment Agreements to ensure fair, consistent delivery aligned to common timelines.

When the same service is delivered across multiple communities, we will set standards to ensure fair, consistent delivery aligned to common timelines.

This is not going to happen overnight.

It is going to take time to create the necessary conditions.

But as these private sector players emerge, there will be opportunities to deliver better service and programs to Yukoners for less.

We will focus government to support local business.

We will build on our efforts to review and improve government procurement policies.

We will also work with First Nations to improve the Yukon First Nations Procurement Policy to ensure it is meeting the needs of partners and stakeholders.

We remain committed to Chapter 22 of the Umbrella Final Agreement and economic reconciliation.

No matter the reform – be it cutting red tape, streamlining operations, or finding private – sector solutions–our government will be guided by three fundamental principles.

Protecting frontline services.

Ensuring fairness for all Yukoners no matter where they live.

And asking government to look for efficiencies before we ask more of Yukoners.

Budget 2026 begins this work by focusing spending on core priorities.

Non-negotiable priorities like improving timely access to health care services.

Protecting the integrity of our electricity grid and ensuring reliable power for Yukon families and businesses.

Increasing the affordability and availability of housing and land.

Putting the needs of students at the centre of our education system.

Restoring public safety and protecting communities.

And supporting a strong and vibrant private sector that will grow and diversify our economy.

Madam Speaker, as Yukoners, we treasure our publicly funded, universal health care system.

We are fortunate to have the most dedicated and skilled health care professionals in the world.

Unfortunately, our health care infrastructure has not kept pace with our growing and aging population.

Thousands of Yukoners do not have access to a family doctor or primary care provider, too many loved ones are waiting for surgeries, and rural health centres continue to face challenges.

In the last year, the Whitehorse General Hospital has operated at over 100 per cent bed capacity most days, forcing some patients to be cared for in hallways and meeting rooms.

Fixing these problems will not happen overnight, but we are taking action.

We have increased the number of appointments available at the Whitehorse Walk-In Clinic and expanded access to all Yukoners.

This will help reduce pressures on the Emergency Department in Whitehorse and give Yukoners another option to seek care.

We have also increased efforts to recruit health professionals within Canada, and these efforts are paying off.

We will see three new doctors from Quebec move to the Yukon later this year.

This will be welcome news for the Yukon's francophone community and will help to increase the availability of French language health services.

We are developing a new recruitment campaign to encourage health professionals in the United States to move to the Yukon.

We will make it easier for doctors trained in the United States to be licenced here.

These efforts will also help health care professionals with similarly high standards, including those from the United Kingdom, Australia, and New Zealand, to practice here.

For Yukon students interested in health careers, we have increased and expanded our bursary programs.

We know the Yukon is the best place in the world to raise a family.

We are also working on the "Learn Where You Live" bridging program so licenced practical nurses can become registered nurses while continuing to live right here at home.

Budget 2026 will make significant investments in the territory's health care system.

This includes over $4 million to advance planning and design of the Whitehorse General Hospital Expansion Project.

This expansion will increase the bed capacity by 40 beds or more, increase surgical capacity and add more intensive care units.

We have also asked the federal government for support in funding this expansion.

Hospital capacity is essential to Arctic Sovereignty and increasing Canada's ability to have a stronger military presence in the North.

Once complete, these upgrades will ensure the Yukon's largest hospital has the necessary acute care capacity to meet our current and future needs.

Yukoners have also asked for improvements to frontline health care services.

We hope to continue working with Yukon First Nations on shared priorities for health system transformation.

From ensuring culturally safe care, to advancing community health and wellness plans, we are committed to taking action to transform the health system to improve health care access and outcomes for all Yukoners.

Our government will also ensure quality care for our seniors.

There is a wait list for our continuing care homes and the demand continues to grow.

To meet the needs of our aging population, we will expand Whistle Bend Place.

We will also begin planning for a new long-term care home in Watson Lake and will expand our home care program to help Elders and seniors live safely at home longer.

Taken together, these investments are the first steps to improving the long-term sustainability of the Yukon's continuing care system.

Madam Speaker, this past frigid December provided a stark wake-up call.

The deep freeze that gripped the territory put significant pressure on our electricity grid.

I would like to thank Yukoners for everything they did to help relieve strain on the system.

As we always do in a time of crisis, we came together and focused on the common good.

While we avoided rolling blackouts, those dangerously cold temperatures revealed the fragility of our electricity grid.

In short, the Yukon is in a dire and very real energy crisis.

A near-decade of neglect and shortsightedness has led to an over-reliance on rented diesel generators, threats of power outages, and rising electricity rates, which have left families and businesses vulnerable.

And that is just today.

Moving forward, electricity demand is projected to increase by a staggering 40 megawatts in just five years.

To avoid devastating winter energy shortages, the territory needs dependable and affordable winter energy solutions for now and in the long term.

Our government is investing in the development of a Winter Reliability Energy Plan which will ensure that energy is properly considered in the ongoing development of infrastructure, housing and other capital projects.

Budget 2026 also invests in the first phase of Yukon-British Columbia Grid Connect project.

This high-voltage transmission line will ultimately connect our isolated territory to the North American grid through B.C., increasing the Yukon's energy security and providing clean power to communities in Canada's Northwest corridor.

Work to prepare for this is already underway through new Whitehorse Power Centres and critical upgrades to the Mayo Hydro facility.

These investments will increase power generation to meet peak demand and ensure our facilities are safe, reliable and durable so they can eventually tie into the grid.

Upgrading the Yukon's electrical grid will require significant investments in the coming years.

Given cost-of-living challenges, it is unfair to ask ratepayers to shoulder all of these costs.

Indeed, Yukoners are already on track to have some of the highest electricity bills in the country.

To help make life more affordable, Budget 2026 will help residential customers pay their winter electricity bills.

The Affordability Rate Relief program will provide real, targeted relief, with savings when they are needed most.

Unfortunately, electricity is far from the only thing stretching families' budgets, Madam Speaker.

In just eight years, the average cost of a single-detached home in the territory has increased by over 50 per cent, far outpacing wage growth.

As a result, homeownership is now beyond the reach of many Yukoners.

This is heartbreaking, particularly for young Yukoners.

How can they expect to build a family when they cannot even afford a place to call home?

Our government is committed to addressing the excessive permitting requirements and outdated development processes that have delayed developers' ability to build new homes.

Budget 2026 will help action this commitment, beginning by providing construction financing to developers who are ineligible to borrow from traditional lenders.

As it has in the past, the Developer Build Loan Program will help builders and Yukon First Nations construct more affordable housing.

Not all Yukoners, however, aspire to homeownership.

To provide options for those Yukoners, we will provide rental supplements and invest in housing partnerships that will help more than 1,200 households.

The completion of Ryder and Korbo will add close to 80 units of social housing and 75 more through a partnership with Da Daghay through the Winter Crossing project.

Our government will also make a significant investment in the Housing Initiatives Fund, which will accelerate shovel-ready, partner-led projects to build additional quality, affordable housing.

Every Yukoner deserves access to safe, affordable, and appropriate housing.

Our government will continue to work to turn this ambition into reality.

Madam Speaker, few issues matter more to Yukon families than the education system.

In the global economy, our students need the knowledge and skills to compete against not just the best and brightest in Canada, but increasingly around the world.

Unfortunately, many families feel that the territory is missing the mark.

They know we have world-class teachers; what they want is a system that provides these educators with the right supports.

Our government will put students and educators at the centre of every decision.

No matter where they live – be it in Watson Lake, Beaver Creek, Dawson City, or in Whitehorse – every student deserves a quality education.

Budget 2026 will help deliver by building the new school in Burwash Landing.

Once complete, Kêts'ádań Kų [Kay-et-zah Dun-COO] will include primary and secondary classrooms, specialty language facilities, and a gymnasium.

This project has been years in the making, and our government looks forward to getting it done.

We know that schools matter deeply to families, neighbours and the broader community.

We will integrate rural schools into replacement rankings to ensure communities have a stronger voice and launch discussions about a new school in Teslin.

We are engaging Yukoners on the potential location of the new École Whitehorse Elementary School.

A new policy will be in place this fall to limit the use of personal devices in schools.

After all, our territory cannot truly thrive when some are left behind.

To refocus the education system on what matters most, our government will review the Department of Education to prioritize classroom supports and strengthen the curriculum.

Madam Speaker, the Yukon has experienced a troubling rise in crime in recent years.

In 2024, we had the third-highest crime rate in Canada, with more than 11,000 reported incidents.

Our violent crime rate was more than three times the national average.

Yukoners deserve better than having to look over their shoulder when they walk down the street or worry about their house being ransacked if they go away for the weekend.

They deserve safe communities where their families and businesses can prosper.

Budget 2026 takes decisive action.

Our government will significantly increase the RCMP's budget, including new funding to hire more officers across the territory.

These new hires will include additional officers for the Crime Reduction Unit focused on tackling organized crime and drug trafficking.

We will also increase funding to support Yukon First Nations with community safety planning.

Enforcement, Madam Speaker, needs to go hand in hand with prevention.

Those who have served their time need transitional supports to do better, for their sake and for their fellow Yukoners.

To that end, Budget 2026 will increase funding for the men's Supervised Housing and Reintegration Program.

SHARP, as it is otherwise known, helps men who have served a sentence at the Whitehorse Correctional Centre reintegrate safely and effectively back into Yukon communities.

Finally, Madam Speaker, Budget 2026 will begin creating the conditions necessary for a strong and vibrant private sector.

As of last year, nearly 45 per cent of Yukon workers were in the public sector.

The civil service is a noble calling, one that advances the public good by building crucial infrastructure and providing critical services.

But public administration cannot be the driving force of our economy.

The widening gap between tax-funded spending and wealth-generating activity is not sustainable, especially given current fiscal realities.

Growth of the public service needs to be limited to a level that is financially sustainable.

Madam Speaker, the Yukon is uniquely blessed.

We have the necessary human and natural resources to build a new generation of economic opportunities and enduring prosperity.

While this work will be driven by entrepreneurs and businesses, the government needs to create the conditions to empower them.

Working with Yukon First Nations and industry, we will modernize mining legislation to support resource exploration and the sustainable development and environmentally friendly operation of mines.

To ensure we can get our resources to market safely and efficiently, our government will also strengthen the territory's infrastructure network, including completing the Nisutlin Bay Bridge, upgrading the North Klondike Highway, and improving the North Alaska Highway.

Road by road, bridge by bridge, project by project, we will make the investments and changes necessary to grow a strong, resilient private sector.

Madam Speaker, I began this budget address with some hard truths about the Yukon's fiscal situation.

The coming years will require some hard choices and tough decisions.

But this is no reason to be discouraged.

Yukoners are resilient.

We have overcome significant challenges before and we will again.

Last fall, Yukoners put their trust in us to guide the Yukon's future with a common-sense plan for change.

I am confident in the hard work of all my caucus colleagues as we implement this budget in the context of the most challenging conditions in the territory's history.

I cannot think of anyone better equipped to navigate these challenging conditions than Yukoners.

We are optimists by nature and pragmatists out of necessity.

To build vibrant communities in some of the harshest conditions, you need to be.

And that is what we are in this Legislative Assembly – Yukoners.

Guided by the legacy of those who came before us and motivated by those who will come after, we will get through this.

If we stay the course, make prudent choices, and focus on priorities, we can emerge stronger and more prosperous than ever before.

It will not be easy, and it will take time.

But by working together, I know we can for the sake of Yukoners today and for future generations to come.

Budget 2026, Madam Speaker, is the first step in that journey.

Thank you.

TAB 10 B

Budget 2026

Highlights

Total budget: $2.46 billion

Operation and maintenance



Capital



The Yukon has been down a bumpy road these last few years, with mine closures affecting our economy and many Yukoners struggling to keep up with the cost of living. The Yukon also has great potential and continues to be one of the best places in Canada to live and raise a family.

Through principled governance, Budget 2026 works to address issues important to Yukoners. Budget 2026 changes spending priorities to strive for certainty and prosperity for Yukoners, directing the focus to frontline services that provide Yukoners and their communities with the tools and support they need to thrive.

Through several major initiatives, Budget 2026 will deliver on areas Yukoners care about the most.

Looking back

2025 economic indicators

Real GDP

$3.32 billion

2024: **$3.30 billion**

Sources: Statistics Canada; Department of Finance

Metal prices

Gold $3,431/ounce
Silver $39.53/ounce

(US$, annual average)

Source: Average of various public forecasters

Tourism

Border crossings: 514,070
Air arrivals: 244,300

Record numbers for the Yukon

Sources: Statistics Canada; Department of Economic Development, Tourism and Culture

Housing

Average price for a single detached home (Whitehorse): $743,800

Rental vacancy rate (Oct.): 1.9%

Source: Yukon Bureau of Statistics

Unemployment rate

4.2%

The **lowest** in Canada

Source: Statistics Canada

Average earnings

$1,496 /week

Canadian average: **$1,303/week**

Source: Statistics Canada

Inflation (Whitehorse)

3.2%

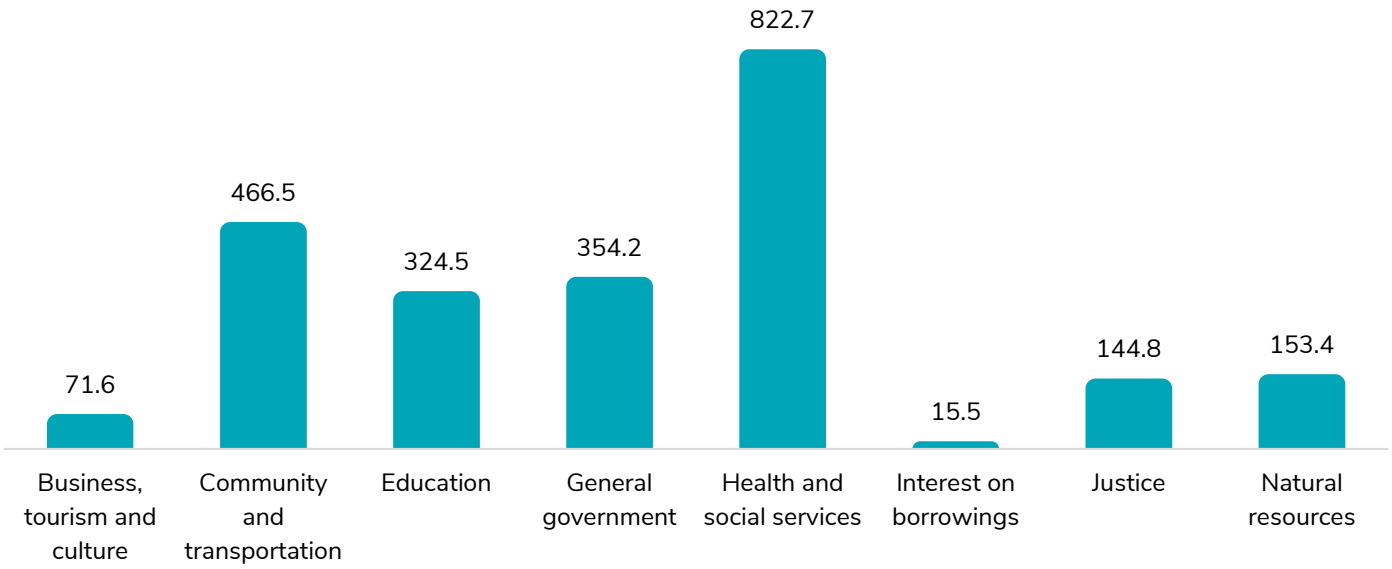
Food inflation: **4.4%**
Shelter inflation: **5.7%**

Source: Statistics Canada

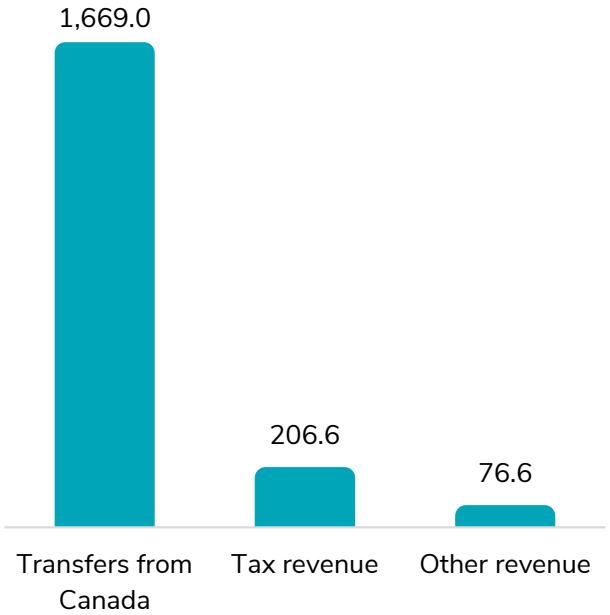
The big picture

Expenditures and revenue

Planned spending by function of government ($ millions)



Planned revenue by source ($ millions)



Expenditures include:

$100 million voted contingency fund that can address disasters, emergencies, emerging priorities and other unanticipated events.

Main Estimates page 21-3.

$24.4 million for remediation and maintenance at former mine sites.

Main Estimates page 9-11.

$9.5 million for remediation, monitoring and assessment of government-owned contaminated sites.

Main Estimates page 10-11.

$8.6 million to deliver French language services and information in priority areas.

Main Estimates page 12-3.

Key initiatives

Reliable power

After unusually cold temperatures at the end of 2025, Yukoners know the value of having reliable electricity. Budget 2026 will improve the reliability of the Yukon's grid and work towards ensuring all Yukoners have power when they need it.

Make energy more affordable

$15.6 million for rate payer relief and support on electricity bills.

Main Estimates page 18-7.

$250,000 to develop a Winter Reliable Energy Plan that will enhance the strength, reliability and resilience of the territory's electricity system.

Main Estimates page 9-12.

Develop energy infrastructure

$3.4 million to complete construction of the Sādę Initiative solar facility in Watson Lake.

Main Estimates page 18-7.

$946,000 to reduce the strain on our electrical grid through the Winter Electricity Load Reduction Program.

Main Estimates page 9-17.

Budget 2026 allows for a **$100 million** increase to the Yukon Development Corporation's short-term borrowing capacity to finance critical investments in infrastructure such as remediation work on the Wareham Dam spillway and additional power centres in Whitehorse.

Timely access to health care

Yukoners need timely access to health care services, yet many are waiting for a family doctor or other primary care provider. Budget 2026 will expand and upgrade health care infrastructure across the Yukon, while also working to improve the availability of services and reduce the number of Yukoners who lack access to primary care.

Improve access to primary care

$15.8 million more in operation and maintenance funding for the Yukon Hospital Corporation to address pressures and hire more personnel.

Main Estimates page 13-13.

$1.6 million to help internationally-educated health care professionals join the Yukon's health care workforce.

Main Estimates page 7-16.

$200,000 to support development of an internal medicine program at Whitehorse General Hospital, enhancing local capacity for complex medical care.

Main Estimates page 13-8.

Timely access to health care (continued)

A clear plan for health care infrastructure

$5.3 million for medical device reprocessing at Whitehorse General Hospital, which will protect patient safety.

Main Estimates page 13-13.

$4.6 million for high-priority capital maintenance and repairs at Yukon hospitals.

Main Estimates page 13-13.

$3.5 million to advance electronic medical records and other core digital health systems.

Main Estimates page 13-7.

$4.1 million for plans to expand Whitehorse General Hospital so that it supports safe, reliable hospital services.

Main Estimates page 13-13.

$1 million to advance planning on an expansion to the Whistle Bend Place long-term care facility in Whitehorse.

Main Estimates page 13-12.

$200,000 towards planning for a new long-term care facility in Watson Lake.

Main Estimates page 13-12.

Housing and land

Budget 2026 will increase the amount and affordability of housing and land available in the Yukon, with the goal of getting more houses built quickly and getting new affordable rental units on the market.

Coordinate the development and maintenance of new housing units

$25.4 million to build affordable housing units in Whitehorse and Dawson.

Main Estimates page 19-10.

$25 million for investments in land development in Whitehorse and rural Yukon.

Main Estimates page 6-10.

$5 million to repair, upgrade and renovate publicly-owned housing units.

Main Estimates page 19-10.

$4.4 million for the Housing Initiatives Fund, which supports shovel-ready, partner-led housing projects.

Main Estimates page 19-9.

$1 million to provide financing through the Developer Build Loan Program for affordable housing and residential land infrastructure.

Main Estimates page 19-9.

Support for a healthy rental market

$4.9 million for rent supplements to private sector and non-governmental organizations that provide affordable housing.

Main Estimates page 19-10.

$2.5 million for affordable rent subsidies to individuals accessing private rental units, expected to support over 250 households.

Main Estimates page 19-13.

Put students at the centre of education

The Yukon's education system needs to focus on the interests of students. Budget 2026 will provide the resources to equip students for the future, making sure the education system serves all Yukon communities and provides appropriate supports for students, educators and families.

Support for students, educators and their families

$10.6 million for new teachers, education assistants, learning assistance teachers and inclusive education supports.

Main Estimates page 8-8.

$3.5 million additional support for the First Nation School Board.

Main Estimates page 8-8.

$1.9 million in additional support for universal child care, keeping care affordable for families.

Main Estimates page 8-19.

$1.4 million in additional post-secondary grants for Yukon students in higher education.

Main Estimates page 8-18.

$930,000 to extend Programme Confluence, the French First Language program in Dawson.

Main Estimates page 8-8.

$435,000 for kitchen upgrades to enhance school food programs.

Main Estimates page 8-10.

$330,000 for student support at the Gadzoosdaa Student Residence in Whitehorse.

Main Estimates page 8-13.

$289,000 in bursaries for students in professions that are most critical for the health care system.

Main Estimates page 13-18.

$250,000 to review Kindergarten to Grade 12 supports for students, educators and families.

Main Estimates page 8-6.

Improving our education infrastructure

$17.3 million towards building the new Kêts'ádań Kų school in Burwash Landing.

Main Estimates page 8-8.

$7.5 million contribution to the Polaris Project at Yukon University.

Main Estimates page 8-14.

$2.8 million to increase physical accessibility of existing child care spaces and help organizations create new ones in underserved communities.

Main Estimates page 8-12.

$1.2 million continued investment in designing and building modular classrooms to address enrolment pressures.

Main Estimates page 8-8.

$500,000 for planning new schools in the Yukon.

Main Estimates page 8-8.

Community safety

Yukoners should feel safe to go about their daily lives in their communities. Budget 2026 works to improve public safety in the Yukon by ensuring the RCMP has adequate resources and giving communities the tools they need to prepare for unexpected emergencies like wildfires and flooding.

Improving safety in communities

$4.3 million more funding for the RCMP to support policing services and combat organized crime, including hiring 10 new officers.

Main Estimates page 15-12.

$3.2 million for upgrades to RCMP detachments.

Main Estimates page 15-13.

$400,000 to help First Nations develop community safety and wellbeing plans.

Main Estimates page 15-18.

$375,000 to support Queer Yukon Society's services in Whitehorse, Dawson and Watson Lake.

Main Estimates page 17-8.

Support for survivors and crime prevention programs

$1.3 million to help survivors of gender-based violence to access emergency and longer-term safe housing.

Main Estimates page 19-15.

$580,000 towards advancing the National Action Plan to End Gender-Based Violence, investing in prevention initiatives led by Yukon First Nations focusing on men and boys.

Main Estimates page 17-8.

$347,000 for Indigenous women's organizations to lead the implementation of the Missing and Murdered Indigenous Women, Girls and Two-Spirit+ People Strategy.

Main Estimates page 17-8.

$168,000 to continue support for emergency food programs for women and children.

Main Estimates page 17-8.

$110,000 increase for programming at the men's Supervised Housing and Reintegration Program (SHARP), which supports reintegrating former inmates into communities safely and effectively.

Main Estimates page 15-18.

$100,000 to support timely access to victim services in French.

Main Estimates page 12-7.

Emergency preparedness

$1.3 million for flood mitigation and conservation efforts at Ch'ëdähdëk (Forty Mile) historic site.

Main Estimates page 7-13.

$552,000 to the Fire Marshal's Office for equipping and training fire fighters.

Main Estimates page 6-7.

$510,000 for producing flood hazard maps for Yukon communities.

Main Estimates page 10-13.

Grow the Yukon's economy

A strong private sector is essential for economic growth. Budget 2026 aims to reduce barriers for Yukon businesses so that they can thrive, upgrade roads to move business across the territory, and provide modern frameworks for resource development so industry can bring the most benefit to Yukoners.

Supporting business

$7.5 million for design of a new convention centre in Whitehorse.

Main Estimates page 7-14.

$3 million for a sustainable and efficient recycling system that considers private sector impacts of Extended Producer Responsibility (EPR).

Main Estimates page 10-8.

$2 million for the Economic Development Fund, which supports Yukon businesses, First Nations and communities to strengthen economic resilience, innovation and diversification.

Main Estimates page 7-18.

$1.5 million in funding to support start-ups and foster entrepreneurship through collaboration with industry associations and businesses.

Main Estimates page 7-18.

$1.5 million in funding programs that support professional film, television and digital media projects.

Main Estimates page 7-18.

$1.4 million to continue the Community Tourism Destination Development Program, which supports tourism projects in communities.

Main Estimates page 7-20.

$1.3 million in financial support for agricultural producers through the Sustainable Canadian Agricultural Partnership.

Main Estimates page 9-16.

$727,000 to implement the recommendations of the Independent Review Board on the Eagle Gold Mine heap leach failure, providing clarity for the mining industry.

Main Estimates page 9-11.

$462,000 to attract investment in the Yukon's mining sector.

Main Estimates page 7-18.

$350,000 for a biomass mapping project to identify high-quality salvage timber, in partnership with the Government of Canada.

Main Estimates page 9-14.

$250,000 towards working with Yukon First Nations and industry to complete new minerals legislation.

Main Estimates page 9-12.

$240,000 to develop a monitoring program with First Nations for the Coffee Gold Mine before production.

Main Estimates page 5-14.

$200,000 to buy locally-sourced food for government health and social programs.

Main Estimates page 13-12.

Connecting the Yukon

$25.5 million for rehabilitating and reconstructing sections of the North Klondike Highway.

Main Estimates page 14-13.

$14 million for pavement maintenance and gravel resurfacing on at least 100 kilometres of highway.

Main Estimates page 14-13.

$8.6 million towards North Alaska Highway improvements funded through the Shakwak Agreement.

Main Estimates page 14-13.

$5 million to improve roads and highways associated with the Yukon Resource Gateway Program.

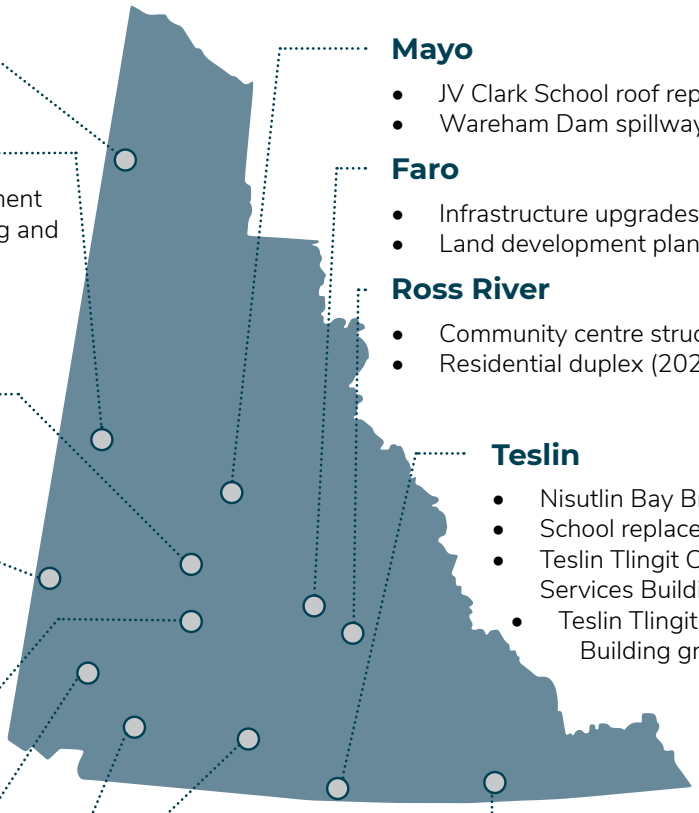
Main Estimates page 14-13.

$11.3 million to support IT maintenance and upgrades to make government services more accessible and secure.

Main Estimates page 14-10.

Community highlights

See infrastructure projects and other capital investments in communities.



Old Crow

- Airport runway improvements
- New public works facility

Dawson

- 34 unit Korbo Apartments replacement
- Dredge Pond II Subdivision planning and design
- Klondike River Bridge replacement planning
- New recreation centre

Pelly Crossing

- Land development planning
- Selkirk First Nation Early Childhood Development Centre

Beaver Creek

- Shakwak Corridor highway upgrades
- White River Bridge rehabilitation

Carmacks

- Disaster mitigation program
- Public works building (2027)

Burwash Landing

- Boat launch
- Kêts'ádań Kų school

Haines Junction

- Airport roofing replacement
- Infrastructure upgrades

Mayo

- JV Clark School roof replacement (Phase 2)
- Wareham Dam spillway remediation*

Faro

- Infrastructure upgrades (2027)
- Land development planning

Ross River

- Community centre structural improvements
- Residential duplex (2027)

Teslin

- Nisutlin Bay Bridge replacement
- School replacement planning
- Teslin Tlingit Council Community Services Building construction
- Teslin Tlingit Council Public Building green energy retrofits

Watson Lake

- Airport terminal structural upgrades
- Grader station upgrades
- Johnson Elementary School painting and floor refinishing
- Long-term care facility planning
- Sādę Initiative solar facility

Whitehorse

- 45 unit Ryder Apartments replacement
- Beringia Centre fire alarm upgrades
- Chasàn Tatäy (Range Point) Subdivision planning
- City Hall energy efficiency and accessibility upgrades
- École Whitehorse Elementary replacement planning
- Hillcrest development (Phase 1)
- Mount McIntyre Recreation Centre energy upgrades
- New firehall design
- Capital contributions to the Polaris Project at Yukon University
- Whitehorse Power Centres Project*
- Transit bus purchases
- Whistle Bend Place long-term care facility expansion planning
- Whistle Bend Subdivision (Phase 12 and 13)
- Whitehorse Correctional Centre security upgrades
- Whitehorse General Hospital device reprocessing
- Whitehorse General Hospital expansion planning
- Winter Crossing affordable housing lease
- Yukon Gathering Place Convention Centre planning and design

Yukon-wide investment

$30 million in Comprehensive Municipal Grants.

Main Estimates page 6-17.

$16 million in maintenance, repairs, replacements and upgrades to government-owned buildings.

Main Estimates page 14-14.

$3 million to support events and programs that benefit Yukon communities.

Main Estimates page 7-18.

** Yukon Energy Corporation (YEC) project. YEC capital activity is not part of Government of Yukon appropriations. YEC borrowing impacts the Yukon's debt capacity.*

TAB 10 C

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Fiscal summary

The Government of Yukon is facing significant fiscal constraints as rising health, education and critical infrastructure costs have resulted in expenditure growth outpacing revenue growth, increasing government's net debt and overall debt load, and limiting its flexibility within the Government of Canada approved borrowing limit.

In Budget 2026, the government is making prudent spending decisions to limit expenditure growth and focus on core services that ensure the health, safety and wellbeing of Yukoners.

Table 1. Fiscal summary[1]

($ millions)	2025–26 Main Estimates	2025–26 Supplementary Estimates	2026–27 Main Estimates	2027–28 Plan	2028–29 Plan
Revenue	**1,813.7**	**1,819.6**	**1,952.3**	**2,083.4**	**2,202.2**
Transfers From Canada[2]	1,538.1	1,538.1	1,669.0	1,801.6	1,912.2
Taxes and General Revenues[2]	275.6	281.5	283.3	281.8	289.9
Expense	**(1,999.6)**	**(2,141.1)**	**(2,167.6)**	**(2,175.2)**	**(2,194.6)**
O&M Expenditures[3]	1,878.0	2,028.4	1,970.6	2,010.0	2,050.2
Contingency[4]	0.0	0.0	100.0	100.0	100.0
Recoveries of O&M Expenditures[5]	(194.4)	(202.7)	(186.0)	(189.7)	(193.5)
Capital Expenditures[6]	477.3	478.3	385.4	355.2	335.0
Recoveries of Capital Expenditures[7]	(161.3)	(162.9)	(102.3)	(100.3)	(97.1)
Contingency for Anticipated Expenses[8]	**(75.0)**	**0.0**	**0.0**	**0.0**	**0.0**
Accounting Adjustments[9]	**342.9**	**334.0**	**133.6**	**85.6**	**57.9**
Surplus/(Deficit)[10]	**82.0**	**12.5**	**(81.8)**	**(6.1)**	**65.4**
Net Financial Assets/(Debt), end of year	**(695.7)**	**(677.7)**	**(804.2)**	**(860.9)**	**(827.2)**

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

Table 1 shows that total net expenditures are forecast to be $2.17 billion in Budget 2026, an increase of $168.0 million or 8.4 per cent from the 2025–26 Main Estimates, and $26.6 million, or 1.2 per cent from the Supplementary Estimates. Expenditures are offset by $1.95 billion in revenue, a $138.5 million increase from the 2025–26 Main Estimates, or 7.6 per cent.

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

2. Found on page S–8 of the 2026–27 Main Estimates.

3. Found on page S–18 of the 2026–27 Main Estimates.

4. Beginning in 2026-27, a contingency amount will be included in the appropriation act and voted on in the Legislative Assembly under a standalone vote. Found on page S-18 of the 2026–27 Main Estimates.

5. Found on page S–8 of the 2026–27 Main Estimates.

6. Found on page S–22 of the 2026–27 Main Estimates.

7. Found on page S–8 of the 2026–27 Main Estimates.

8. Prior to 2026–27, this amount was not included in the appropriation act. Found on Page S-9 of the 2026–27 Main Estimates.

9. 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 2026–27 Main Estimates.

10. Surplus/(Deficit) is the sum of Revenue, Expense, and Accounting Adjustments. In 2025–26 it includes Contingency for Anticipated Expenses.

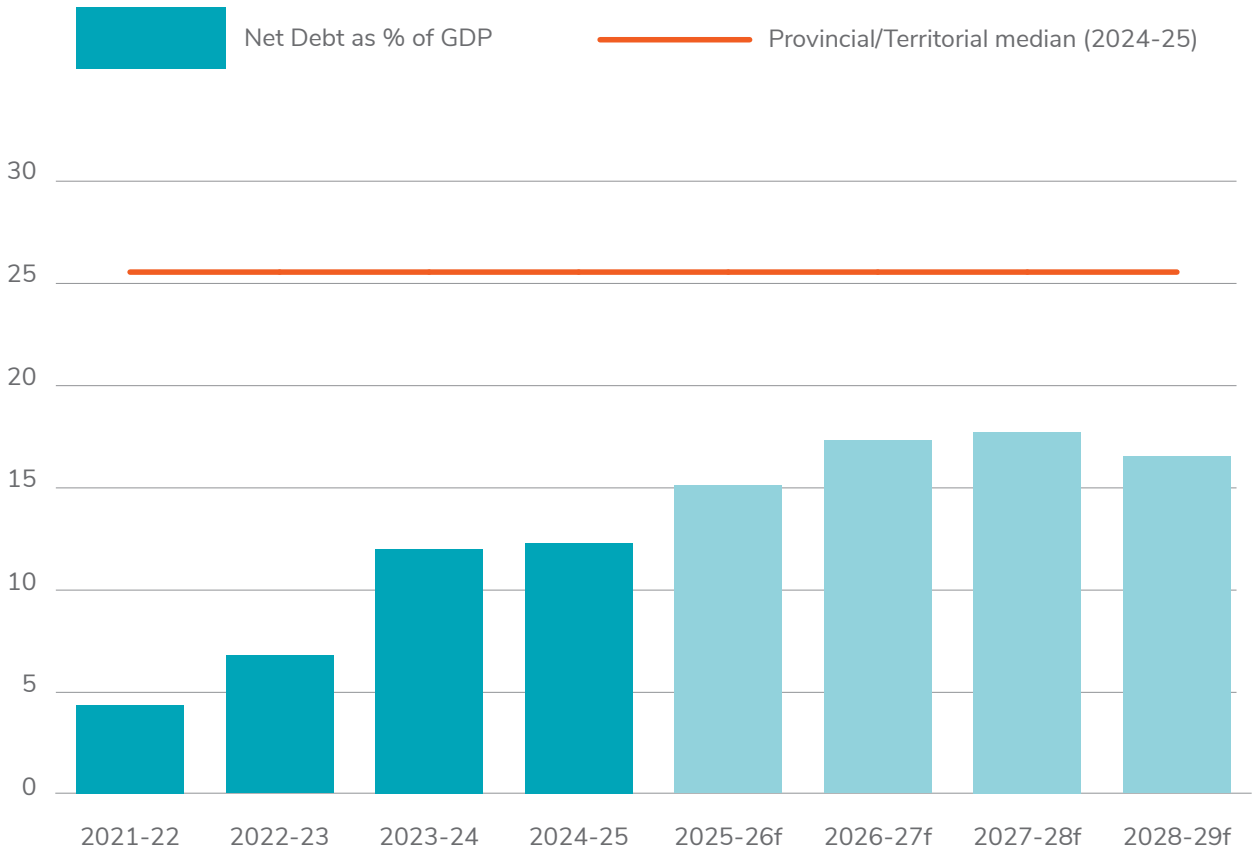
Expenditure increases include a $200.9 million increase in net operation and maintenance expenditures, or 11.9 per cent, and a $32.9 million decrease to net capital expenditures, or -10.4 per cent. Operation and maintenance increases include a voted contingency of $100 million to provide government with flexibility to manage costs for emergencies and disasters, and for expenditures in the public interest that could not reasonably be anticipated or budgeted with certainty.

Transfers from the Government of Canada remain the Yukon government's largest source of revenue and account for 94.4 per cent of revenue growth. Taxation revenue is forecast to increase, offset by a decrease in other revenue due to the timing of land sales in 2026–27.

After accounting for loans, investments in tangible capital assets and other adjustments, the government is forecasting a deficit of $81.8 million. Net financial debt is forecast to increase to $804.2 million, up $649.2 million from $155 million in 2021–22.

The territory's net financial debt to GDP ratio, a metric of financial health, is forecast to continue to increase through 2027–28, before beginning to decline in 2028–29.

Chart 1. Net-debt as a percentage of GDP[11]



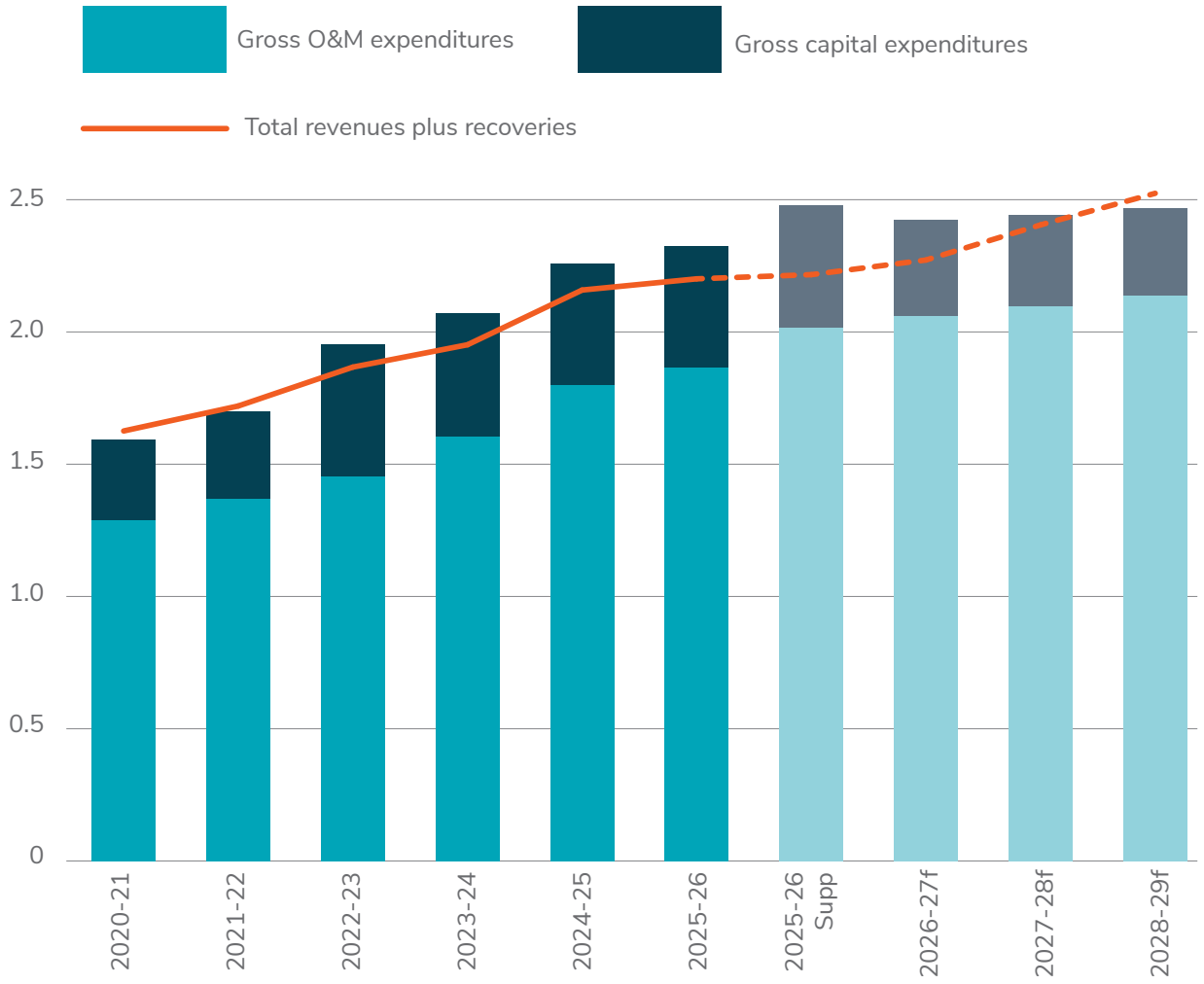
Source: Department of Finance. f=forecast

11. Yukon net debt numbers for 2021–22 to 2024–25 are from the public accounts and GDP numbers are from Statistics Canada. Forecast numbers are from the Department of Finance. Provincial median is from Statistics Canada's *2025 Fiscal Reference Tables*.

Net-debt to GDP measures the burden that debt repayment could place on the economy. A higher percentage indicates that a larger portion of future financial assets will be required to finance past expenditures. Although increasing, Yukon's ratio remains manageable and well below the median of other provinces and territories, as seen in Chart 1.

Chart 2. Fiscal indicators[12]

Expenditures and revenues ($ billions)



Source: Department of Finance. f = forecast Supp = 2025–26 Supplementary Estimates

Chart 2 shows that expenditures continue to exceed revenues. As a result, the government anticipates requiring consolidated short-term borrowings of up to $553.7 million in 2026–27 to cover expenditures and for the Yukon Development Corporation to finance critical energy infrastructure projects. The $553.7 million assumes full usage of the contingency vote and is inclusive of a $100 million buffer to manage in-year cash flows and timing of receipt of revenues

12. 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 chart.

and recoveries. As seen in Table 2, planning for the upper limit of the anticipated short-term borrowing need is pushing the Yukon government toward the limit of its federally approved territorial borrowing cap of $1.2 billion.[13]

Table 2. Borrowing summary[14]

($ millions)	2024–25 Public Accounts	2025–26 Main Estimates	2025–26 Supplementary Estimates	2026–27 Main Estimates
Short-term borrowing[15]	371.3	158.6	258.6	553.7
Long-term borrowing	216.5	613.3	612.4	608.0
Accrued interest payable	1.8	2.0	5.1	6.6
Total borrowing	589.7	773.9	876.1	1,168.3
Territorial borrowing limit	1,200.0	1,200.0	1,200.0	1,200.0
Available borrowing authority	610.3	426.1	323.9	31.8

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

To manage this pressure, the government is concentrating operation and maintenance expenditure increases in core government services like health, social services and education and is adhering to previously forecast decreases in capital expenditures to realign its spending with its revenues. Closing this gap will take more than one year. The government is setting O&M expenditure growth targets at 2 per cent annually in 2027–28 and 2028–29, while revenue growth is forecast to average 6.2 per cent annually. This is expected to result in a return to surplus by year three of the forecast, improved fiscal metrics, and a reduction in the reliance on short-term borrowing for operational requirements.

13. The Government of Canada establishes the borrowing limit through regulations pursuant to subsection 23(4) of the Yukon Act (Canada). The limit applies on a consolidated basis and includes the Yukon government and its entities.

14. Found on page S-4 of the 2026–27 Main Estimates.

15. Short-term borrowing is borrowing for a period not exceeding 365 days.

Revenue

Budget 2026 projects total government revenues, excluding recoveries, to be approximately $1.95 billion in 2026–27, as shown in Table 3. This reflects an increase of $138.5 million or 7.6 per cent over Budget 2025–26.

Table 3. Revenue by type[16, 17]

($ millions)	2025–26 Main Estimates	2025–26 Supplementary Estimates	2026–27 Main Estimates	2027–28 Plan	2028–29 Plan
Transfers from Canada	1,538.1	1,538.1	1,669.0	1,801.6	1,912.2
Tax revenue	197.3	197.2	206.6	213.3	219.6
Other revenue	78.2	84.3	76.6	68.4	70.4
Total revenue	**1,813.7**	**1,819.6**	**1,952.3**	**2,083.4**	**2,202.2**

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

Revenue growth over the three years of the forecast is expected to average 6.7 per cent annually. Growth over the forecast period is due to a strong outlook for federal transfers and taxation revenue. Expectations for revenue growth compares to average growth of 5.7 per cent between 2016–17 and 2024–25.

Transfers from Canada

Federal transfers in 2026–27 are projected to increase by $130.8 million, or 8.5 per cent, from Budget 2025–26. The largest source of this growth is the Grant from Canada, or Territorial Formula Financing (TFF), which is projected to increase by $124.7 million, or 8.6 per cent. The growth rate of the TFF will decline slightly in each year of the outlook, reaching 6.1 per cent in 2028–29.

16. All revenue figures found on Pages S-14 and S-15 of the 2026–27 Main Estimates and equivalent pages of budget documents for other periods.

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

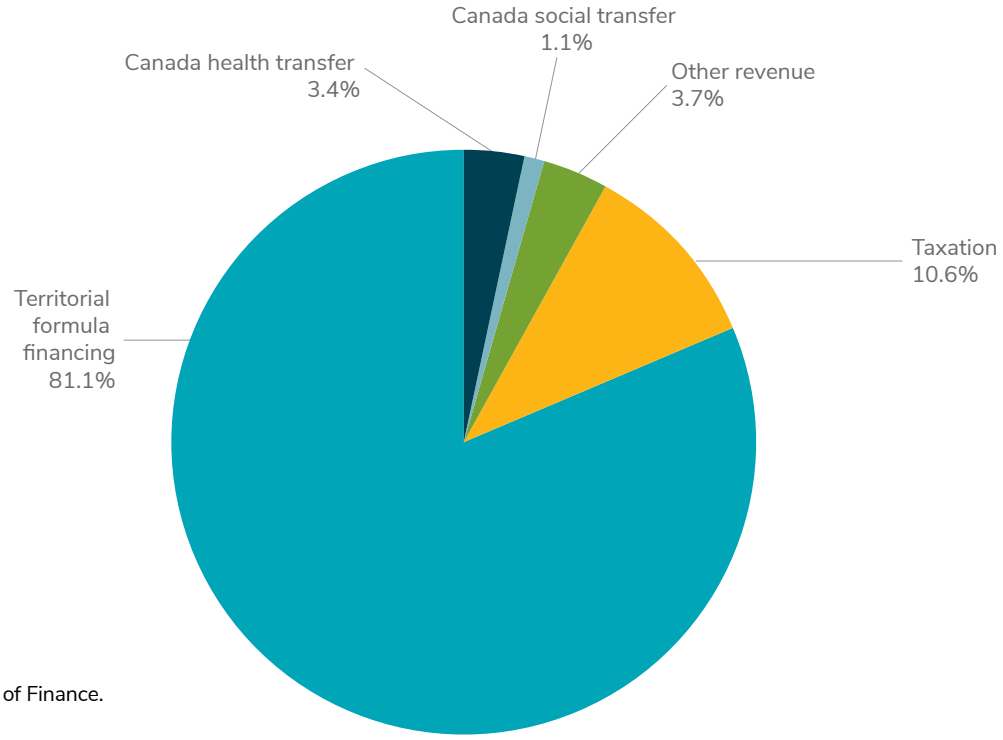
Table 4. 2026–27 revenue from transfers from Canada[18, 19]

($ millions)	2025–26 Main Estimates	2025–26 Supplementary Estimates	2026–27 Main Estimates	2027–28 Plan	2028–29 Plan
Transfers from Canada	**1,538.1**	**1,538.1**	**1,669.0**	**1,801.6**	**1,912.2**
Grant from Canada	1,454.2	1,454.2	**1,578.9**	1,706.1	1,812.2
Canada Health Transfer	61.7	61.7	**66.9**	71.3	74.8
Canada Social Transfer	19.7	19.7	**20.9**	21.8	22.7
Cannabis Transfer	1.9	1.9	**2.1**	2.2	2.3
Vaping Transfer	0.8	0.8	**0.2**	0.2	0.2

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

Growth in the TFF continues to be driven by population growth in the territory relative to the Canadian average along with higher government spending expectations in other jurisdictions across the country. As shown in Chart 3, the TFF remains the largest source of the Yukon's total revenue, at just over 80 per cent in 2026–27.

Chart 3. Total revenues in 2026–27 by type



Source: Department of Finance.

18. All revenue figures found on Pages S-14 and S-15 of the 2026–27 Main Estimates and equivalent pages of budget documents for other periods.

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

The Canada Health Transfer and Canada Social Transfer are also projected to increase in 2026–27 based on relative population growth in the territory. Across the forecast period, the trend of higher population growth relative to the rest of Canada is expected to continue, though growth trends across the country are being revised down, while a change in the projection for national Gross Domestic Product (GDP) is also expected to grow overall available Canada Health Transfer program funding. Projections for the Cannabis Transfer are up on higher-than-expected prior year revenues, with a continued expectation for a declining growth rate over the forecast period as the market for legal cannabis matures. Finally, the Vaping Transfer has been revised down as prior year payments are coming in lower-than-expected as Canada continues to work to implement its vaping taxation regime.

Tax revenue

The Yukon's own-source taxation revenue in Budget 2026 is expected to be $206.6 million, as shown in Table 5. This reflects an increase of $9.4 million, or 4.8 per cent from 2025–26.

Table 5. 2026–27 Revenue from taxation[20, 21]

($ millions)	2025–26 Main Estimates	2025–26 Supplementary Estimates	2026–27 Main Estimates	2027–28 Plan	2028–29 Plan
Tax revenue	**197.3**	**197.2**	**206.6**	**213.3**	**219.6**
Personal income tax	119.1	119.1	**126.1**	131.6	137.0
Corporate income tax	33.8	33.8	**38.4**	39.5	40.3
Property tax	7.8	7.8	**8.3**	8.4	8.4
Fuel oil tax	11.8	11.8	**10.2**	10.4	10.6
Tobacco and alcohol taxes	15.5	15.4	**13.8**	13.2	12.7
Insurance premium tax	9.4	9.4	**9.8**	10.2	10.6

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

The largest growth in taxation revenue is from income tax. Personal income tax is expected to increase by $7 million, or 5.9 per cent, as continued strong expectations for employment and earnings growth drive annual increases in taxable income. Corporate income tax has also been revised up on positive corporate performance expectations along with a downward trend in the proportion of taxable income eligible for the small business deduction, which drives growth in corporate income tax.

There have also been revisions to other taxation revenue sources. Fuel oil tax has been revised down for 2026–27 based on prior year tax receipts. Tobacco and alcohol taxes are also down primarily based on prior year tax receipts coming in under expectations, despite annual inflation-adjusted

20. All revenue figures found on Pages S-14 and S-15 of the 2026–27 Main Estimates and equivalent pages of budget documents for other periods.

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

tobacco tax rates rising in the territory. Tobacco revenue is expected to decline over the forecast period based on a higher rate of decline in legal tobacco sales, aligning with national trends. As per the *Tobacco Tax Act*, the tobacco tax rate increased in line with the Whitehorse Consumer Price Index (CPI) from 36 to 37 cents per cigarette on January 1, 2026. Insurance premium tax is revised up based on higher tax receipts in the prior year. Lastly, property tax is expected to increase in line with prior year projections.

Aside from the legislated inflationary increase to the tobacco tax, there are no proposed changes to tax rates in Budget 2026.

Other revenue

The forecast for revenue from other sources is expected to decline $1.6 million, or 2.1 per cent, from 2025–26.

Table 6. 2026–27 Other revenue sources[22, 23]

($ millions)	2025–26 Main Estimates	2025–26 Supplementary Estimates	2026–27 Main Estimates	2027–28 Plan	2028–29 Plan
Other revenue	**78.2**	**84.3**	**76.6**	**68.4**	**70.4**
Liquor profit	6.3	5.9	**5.7**	5.7	5.7
Licenses, fees, registrations and permits	21.6	20.9	**21.0**	21.1	21.1
Sale of land	31.8	31.7	**15.0**	30.4	32.1
Other revenue	18.6	25.8	**34.9**	11.3	11.5

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

This decline is primarily due to reduction in sale of land based on the timing of land being available for sale in 2026–27. Land sale revenue is expected to improve in 2027–28 and onwards as new lots become available in Whistle Bend and other development projects. Liquor profit expectations have also been revised down due to a projected decline in liquor sales volumes and rising cost of sales. The decrease is partially offset by an increase in interest revenue on the Loan to the Receiver for Victoria Gold Corp.[24] based on the current court-approved loan amount, as well as estimated revenue from the sale of 408 Wood Street. Additional changes include higher revenue for interest on agreements for land sales based on the increasing number of land lotteries and the market price for lots, higher-than-forecast cannabis profits, the addition of revenue from electric vehicle chargers following the introduction of user fees in September 2025, and an increase to investment revenue due in part to higher interest rates.

22. All revenue figures found on Pages S-14 and S-15 of the 2026–27 Main Estimates and equivalent pages of budget documents for other periods.

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

24. Interest revenue is calculated based on the Receivership Credit Agreement.

Operation and Maintenance expenditures and recoveries

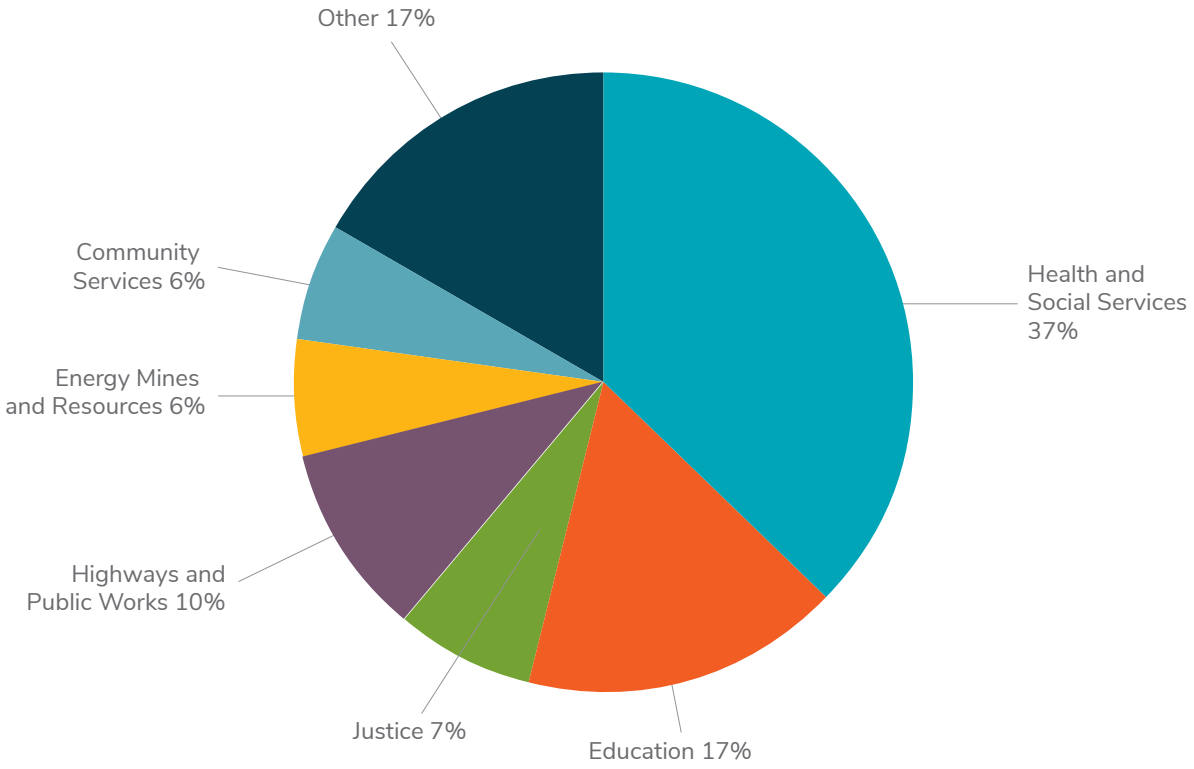
Table 7. Operation and Maintenance expenditures

($ millions)	2025–26 Main Estimates	2025–26 Supplementary Estimates	2026–27 Main Estimates	2027–28 Plan	2028–29 Plan
Net O&M Expenditures	**1,683.6**	**1,825.7**	**1,884.6**	**1,920.3**	**1,956.7**
Department Gross O&M Expenditures	1,878.0	2,028.4	1,970.6	2,010.0	2,050.2
Voted contingency	0.0	0.0	100.0	100.0	100.0
Total Gross O&M Expenditures	1,878.0	2,028.4	2,070.6	2,110.0	2,150.2
Recoveries of O&M Expenditures	(194.4)	(202.7)	(186.0)	(189.7)	(193.5)

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

Gross operation and maintenance expenditures are forecast to increase by $192.6 million, or 10.3 per cent, to $2.07 billion in Budget 2026. This is inclusive of a yet to be allocated $100 million contingency fund, meaning voted increases to departments is $92.6 million, or 4.9 per cent. Total recoveries are forecast to be $186 million, a decrease of $8.4 million, or 4.3 per cent. Although an overall decrease, recoveries are up across most departments but are offset by a $21.1 million reduction due to the pause of remediation work at the Minto Mine site to facilitate further exploration. The result is net operation and maintenance expenditure growth of $201 million, or 11.9 per cent, from the 2025–26 Main Estimates, and $59 million or 3.2 per cent over the 2025–26 Supplementary Estimates. The mains over mains increase is $101 million when excluding the contingency fund. Health and Social Services and Education account for 61.8 per cent of the $101 million increase and make up 53.9 per cent of total net operation and maintenance spending in Budget 2026, not including the contingency.

Chart 4. 2026–27 Portion of net O&M spending, by department, not including contingency



Source: Department of Finance.

Notable operation and maintenance expenditure increases in Budget 2026 include:

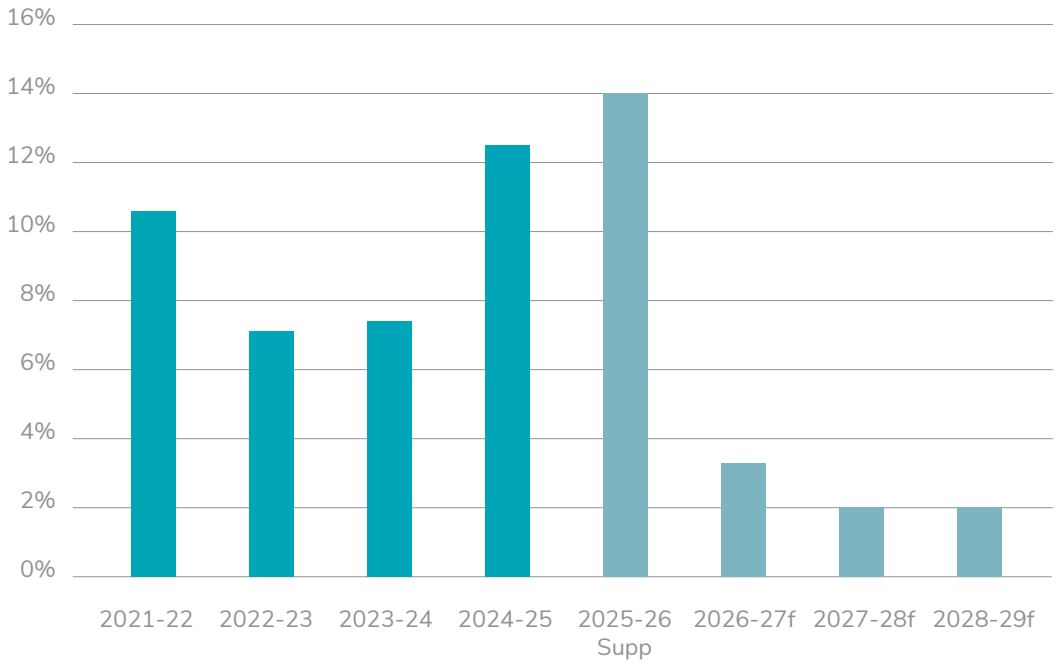
- $58.3 million in gross O&M increases for Health and Social Services, including $15.8 million for the Yukon Hospital Corporation, $17.2 million for Insured Health Services costs, and $13 million for front-line staffing in continuing care facilities, emergency medical services, nursing, group homes and addiction treatment. These costs are offset by an $8.2 million increase in recoveries, including for pharmacare, drugs for rare diseases, and the Territorial Health Investment Fund.
- $39.4 million in gross O&M increases for Justice, including $22.3 million for the settlement of claims arising from the Jack Hulland Elementary class action lawsuit. Increases for Justice also include $5.9 million for the Royal Canadian Mounted Police, $2 million for specialized outside counsel to support the Yukon government in complex claims, and $2.4 million for staff and security upgrades at the Whitehorse Correctional Centre. These are offset by a $1.8 million increase in recoveries, including for the Arrest Processing Unit, Family Information Liaison Unit, and the Yukon Utilities Board.

- $35 million in gross O&M increases for Education, including $4 million for new teachers and $3.1 million for teacher salary increases and benefits, $6.6 million for education assistants, learning assistant teachers and inclusive education supports, $5.6 million for early learning and childcare, $4.4 million for Yukon University, and $3.5 million for the First Nation School Board. These are offset by a $3 million increase in recoveries, mostly for a school food program and early learning and childcare infrastructure projects.
- $15.7 million in gross O&M increases for Environment, including $7.8 million for the remediation of the Kotaneelee Natural Gas Well, $3 million for a sustainable and efficient recycling system that considers private sector impacts of Extended Producer Responsibility, and $1.5 million to fund cost-sharing agreements with Canada and third parties. These are offset by a $1.3 million increase in recoveries, including $625,000 in security for Kotaneelee.
- $9.2 million in gross O&M increases for the Yukon Development Corporation to amalgamate existing electrical rate relief programs and an increase to the amount of rate relief available to Yukoners.

These increases are offset by a $100.7 million reduction in net O&M spending for the Department of Energy Mines and Resources due in large part to an $83 million reduction in appropriations for loans to the Receiver for Victoria Gold Corp., to $35 million in 2026–27, and an $18.4 million reduction for work at the Minto Mine site.

As shown in Chart 5, forecast year-over-year net O&M expenditure growth remains elevated in the 2025–26 Supplementary Estimates but is trending downwards in 2026–27. Average growth between 2015–16 and 2024–25 was 6.0 per cent annually. The government is planning for 2 per cent growth in 2027–28 and 2028–29.

Chart 5. Annual net O&M growth, by percentage



Source: Department of Finance. f = forecast Supp = 2025–26 Supplementary Estimates

Capital expenditures and recoveries

Table 8. Capital expenditures and recoveries

($ millions)	2025–26 Main Estimates	2025–26 Supplementary Estimates	2026–27 Main Estimates	2027–28 Plan	2028–29 Plan
Net Capital Expenditures	**316.0**	**315.4**	**283.1**	**254.8**	**237.9**
Gross Capital Expenditures	477.3	478.3	385.4	355.2	335.0
Recoveries of Capital Expenditures	(161.3)	(162.9)	(102.3)	(100.3)	(97.1)

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

Gross capital expenditures are forecast to decrease by $91.9 million, or 19.3 per cent, to $385.4 million in Budget 2026. Recoveries are forecast to decrease by $59 million, or 36.6 per cent, to $102.3 million, resulting in net capital expenditures of $283.1 million.

Gross expenditures of $385.4 million are in line with spending targets forecast in year two of Yukon's 2025–26 Five-Year Capital Plan. Reductions in expenditures from 2025–26 are concentrated mostly within Highways and Public Works and are largely attributable to runway improvement work at the Erik Nielsen Whitehorse International Airport nearing completion. Capital spending in Budget 2026 includes continued investment in rural and urban residential land development and the construction of affordable housing. It also includes continued funding for projects currently under construction like the Polaris Project at Yukon University and the new school in Burwash Landing, Kêts'ádań Kù. There is new capital funding for the Yukon Hospital Corporation, as well as funding to initiate planning for new long-term care spaces, an expansion of the Whitehorse General Hospital, and new schools.

Years two and three of the outlook see continued reduction in gross capital expenditures as those projects under construction mentioned above come to completion. More detail on capital planning is included in the Capital Plan section.

Contingency

The government is including a $100 million voted contingency in Budget 2026. This is the first time the contingency amount will be included alongside other appropriations in the budget. The voted contingency is a provisional funding authority that is transferrable to any department to address expenditure requirements for disasters, emergencies, and emerging priorities. The contingency may also be used to cover cost increases where demands on service outpace forecasts, and to cover costs related to salary or employee benefit adjustments.

Including a voted contingency in the main estimates and the appropriation act gives a more accurate picture of anticipated expenditures for the year and a more transparent comparison against forecast revenues.

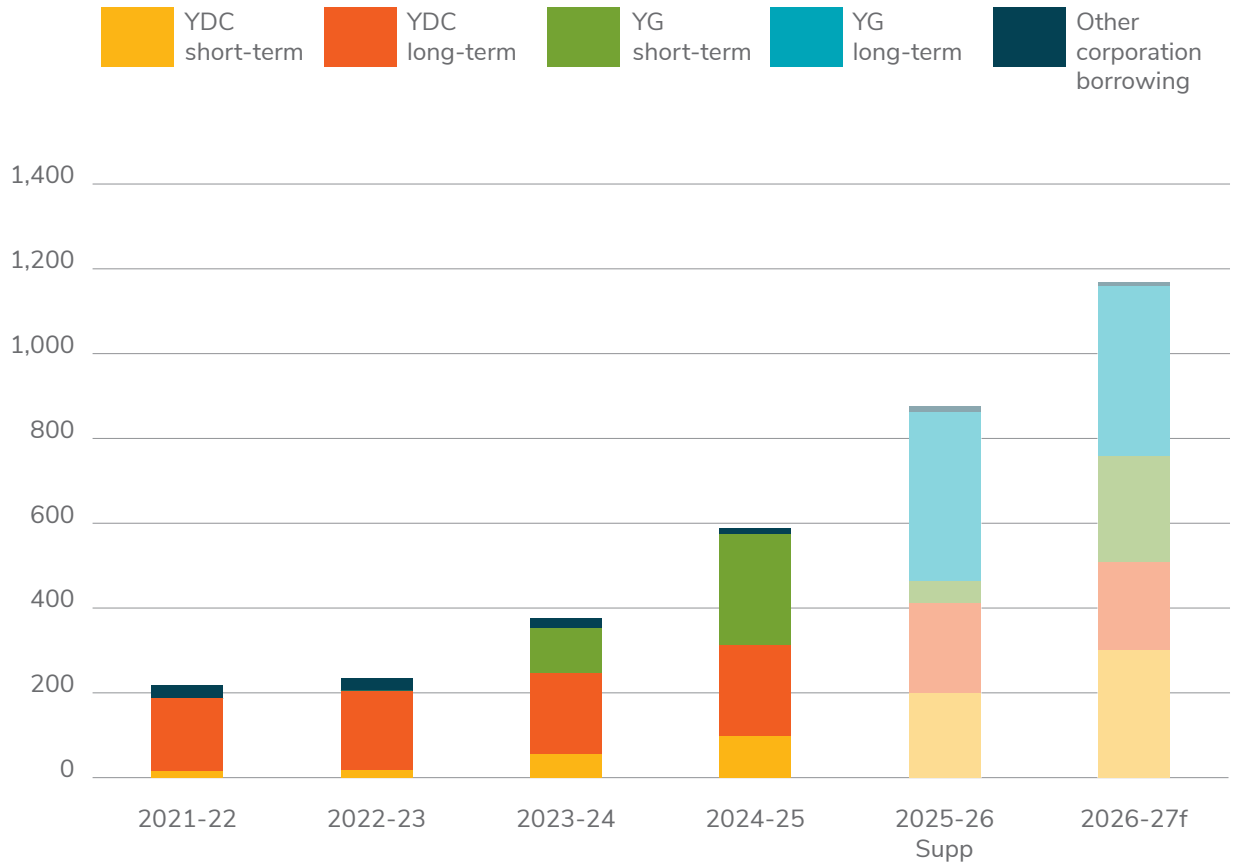
From 2022–23 to 2025–26, the government incorporated a non-voted contingency into its fiscal planning for the purposes of forecasting surplus(deficit) position, but this amount was not included in forecast expenditure calculations and could only be accessed outside of a legislative sitting through a special warrant.



Borrowing

As noted in the fiscal summary section above, should the government utilize the full $100 million contingency in 2026–27, it will be at the upper limit of its federally approved borrowing limit of $1.2 billion.

Chart 6. Consolidated borrowing breakdown ($ millions)[25]



Source: Department of Finance. f = forecast. Supp = 2025–26 Supplementary Estimates

The government's total consolidated debt is nearing the limit due to significant increases in short-term borrowing requirements for the repair and construction of necessary electrical generation infrastructure, including work on the Wareham Dam spillway at the Mayo Generating Station. Financing this work and other energy infrastructure work requires up to $300 million in short-term borrowing for the Yukon Development Corporation in 2026–27, a $283 million increase from the $17 million reported on March 31, 2023.[26]

25. YG Borrowing is borrowing other than that for Yukon Development Corporation, Yukon Hospital Corporation, Yukon Housing Corporation or Yukon University, and doesn't include accrued interest payable.

26. This number is reported as "credit facilities used" on page 69 of *Yukon Public Accounts 2022–23*.

Added to this is a large increase in short-term borrowing required to manage Yukon government departmental expenditures that have exceeded revenues for the past several years. To address this cash deficit the government executed $400 million in long-term borrowing in 2025–26. The trend in revenue shortfall continues through 2027–28, and the government is forecasting the need for up to $250 million in short-term borrowing in 2026–27 to manage expenditures. This forecast assumes full usage of the $100 million contingency vote and is inclusive of a $100 million buffer to manage in-year cash flow and the timing of receipt of revenues and recoveries.

Taken together, these three items account for $950 million of borrowing under the cap. The balance is comprised of $207.9 million in long-term borrowing for the Yukon Development Corporation and other, smaller long-term borrowing for other consolidated entities.

The Yukon government has made a request to the federal government for an increase to the borrowing limit. Until the Government of Canada approves an increase, the Yukon government is limited in its ability to make long-term commitments for investments in areas like health, energy and education infrastructure. These remain critical priority areas but may take some time to advance as the government works to balance its expenditures with revenue and secure additional borrowing space to finance these projects.

Path to balance

While increasing the debt cap provides options for the Yukon in the short run, financing much needed infrastructure for a growing territory requires balance to be restored over the medium- to long-term. Fiscal reform is needed to align revenue and expenditures, and closer attention needs to be paid to cash deficits.

Fiscal anchors

This plan is anchored in a commitment to long-term sustainability and a responsible path back to balance. It will focus on keeping the net debt-to-GDP below the average for provinces and territories, while remaining within the territorial borrowing limit. It will incorporate regular program reviews into Yukon government processes. This will support continued service improvements within existing fiscal resources with the goal of returning to a cash surplus. The plan also emphasizes maintaining financial performance in line with the provincial and territorial median, ensuring capital plans reflect both affordability and delivery capacity, and limiting growth in public service where possible to support overall fiscal discipline.

Principles

Protect the front line – Focus on minimizing impacts to direct service delivery and maintaining capacity where services are delivered to the public.

Respect for taxpayers, and fairness among Yukoners and across communities – Make decisions that consider consistent access to services and avoid disproportionate impacts on any region or population.

First look inside before asking more of Yukoners – Identify internal efficiencies and process improvements to ensure value for money in government spending. Prioritize effectiveness and performance in service delivery before increasing costs or reducing services for residents.

Levers

A government's fiscal trajectory is determined by two fundamental factors: the expenditures it makes and the revenues it collects. Expenditures reflect the cost of delivering programs, services, and infrastructure across the territory while revenue includes tools such as fees, royalties, taxes, and recoveries from Canada.

A credible path to balance means managing both levers, controlling and prioritizing spending to ensure the best value for Yukoners, while taking a measured, transparent approach to revenues.

By focusing on these two levers together, government can stabilize finances, protect core services, and create the fiscal room needed for future investments.

Expenditures

Supporting a stronger private sector role – Strengthen the role of the private sector by reducing government activity in areas that are more appropriately delivered by private enterprises. As the Yukon's private sector continues to grow, it is well-positioned to take on a greater role in key commercial activities, such as land development. In some cases, government may need to provide transitional support, including co-investment, to enable a shift toward a more robust private-sector-led economy.

Red tape and regulatory simplification – Review regulatory red tape to reduce costs for business and government. Identify internal government efficiencies, reducing administrative burden and improving consistency across departments. Review all agencies, boards and commitees to identify opportunities to combine, streamline and standardize functions, including exploring a shared-secretariat model where appropriate.

Opportunities for scale and structural changes – Where possible, combine similar activities or groups that serve the same clients to achieve scale and improve service delivery. This approach creates opportunities to streamline management and executive oversight while protecting front-line services. In Budget 2026, the government is taking first steps by joining the departments of Economic Development and Tourism and Culture into one department.

Set service standards – When the same service is delivered across multiple communities, ensure it is equitable, consistent, aligned to common timelines, and delivered by the same group.

Value-for-money and program effectiveness – Initiate a thorough review of programs and Transfer Payment Agreements (TPAs). This includes assessing whether activities and agreements remain aligned with priorities and are achieving intended outcomes, and identifying opportunities to phase out low-value or under-utilized programs. Following this initial review, to instill a culture of continuous improvement, 20 per cent of government programs, services and TPAs will be reviewed annually to ensure they are efficient, effective, and delivering value to Yukoners.

Revenue

Recoveries from Canada – Maximize federal recoveries and partnerships: proactively align programs and reporting to fully leverage federal transfers and project cost-sharing, within existing agreements.

Royalties – Review the appropriateness of the royalties framework and resource revenues: continue technical work to ensure clarity and competitiveness.

Fees/Taxes – Modernize cost-recovery where appropriate through transparent reviews of fees, charges, and related revenue tools to ensure they reflect the cost of delivering services, while maintaining fairness and supporting overall sustainability.

Moving Forward

The government is setting O&M expenditure growth targets at 2 per cent annually in 2027–28 and 2028–29, while revenue growth is forecast to average 6.2 per cent annually. This trajectory supports a credible path to surplus over the outlook and is expected to reduce net financial debt by year three of the forecast. Debt-servicing costs will be contained to create room for priority services and affordability initiatives, while a disciplined capital plan aligns investment with affordability and delivery capacity. As conditions improve, surpluses will first stabilize cash balances and then be applied to reduce outstanding debt, lowering future interest costs and freeing up fiscal room.

Operating within the territorial borrowing limit and avoiding deterioration in key financial metrics relative to the provincial and territorial median remain core safeguards. Maintaining a below average net debt-to-GDP trajectory will help preserve the Government of Yukon's strong credit standing and overall fiscal resilience, facilitating future investment in much-needed infrastructure. On the service side, shorter permit and licensing timelines, simpler forms, and clearer service standards will reduce red tape for residents and businesses, supporting a stronger private sector and improving the client experience.

Together, these measures reflect a practical approach to fiscal management that respects taxpayers: disciplined spending, reliable revenue planning, and steady improvement in program efficiency and service design.

Capital Plan update

The Government of Yukon's Capital Plan outlines priority infrastructure investments over the planning horizon. It provides Yukoners with a clear view of how capital spending supports essential public services, strengthens communities and contributes to long-term economic stability.

Through targeted investments in infrastructure, housing, transportation, health, education and community assets, the government is working to address infrastructure deficits while positioning the territory for future growth. The plan reflects a balanced approach that considers fiscal sustainability, evolving pressures and opportunities to maximize partnerships, including with Yukon First Nations governments, municipalities, the federal government and the private sector.

As priorities and economic conditions change, capital planning remains flexible and responsive to ensure investments continue to deliver value for Yukoners and support resilient communities across the territory. The Yukon government is also exploring options for how a fall capital budget could complement existing capital planning processes and better align budgeting with procurement cycles and construction timelines.

Updated alignment with the Fiscal Outlook

The 2026–27 Capital Plan reflects changes in how the Government of Yukon presents and manages its infrastructure planning. The planning horizon has been updated from five years to three years to better align with the territory's Fiscal Outlook and to present information with greater clarity and a higher degree of certainty.

Embedding the Capital Plan within the Fiscal Outlook provides a more integrated view of how infrastructure investments relate to the government's overall fiscal position. This approach improves transparency by bringing together capital intentions, operating forecasts and financial indicators in a single, coordinated framework, while enhancing clarity.

Planned infrastructure investments are an important component of the Fiscal Outlook. The timing and sequencing of major projects influence borrowing requirements, net debt projections and cash flow management. These investments are carefully managed within available fiscal resources, with capital spending across key sectors being phased to align with fiscal capacity and project readiness.

Financing the Capital Plan

A significant portion of planned capital investments over the three-year period is supported through major federal infrastructure programs and cost-shared agreements. The largest sources of funding include the Investing in Canada Infrastructure Program, the National Trade Corridors Fund, targeted housing investments through Canada Mortgage and Housing Corporation, support from the U.S. Federal Highway Administration, and funding from the Canadian Northern Economic Development Agency for the Yukon Gathering Place Convention Centre.

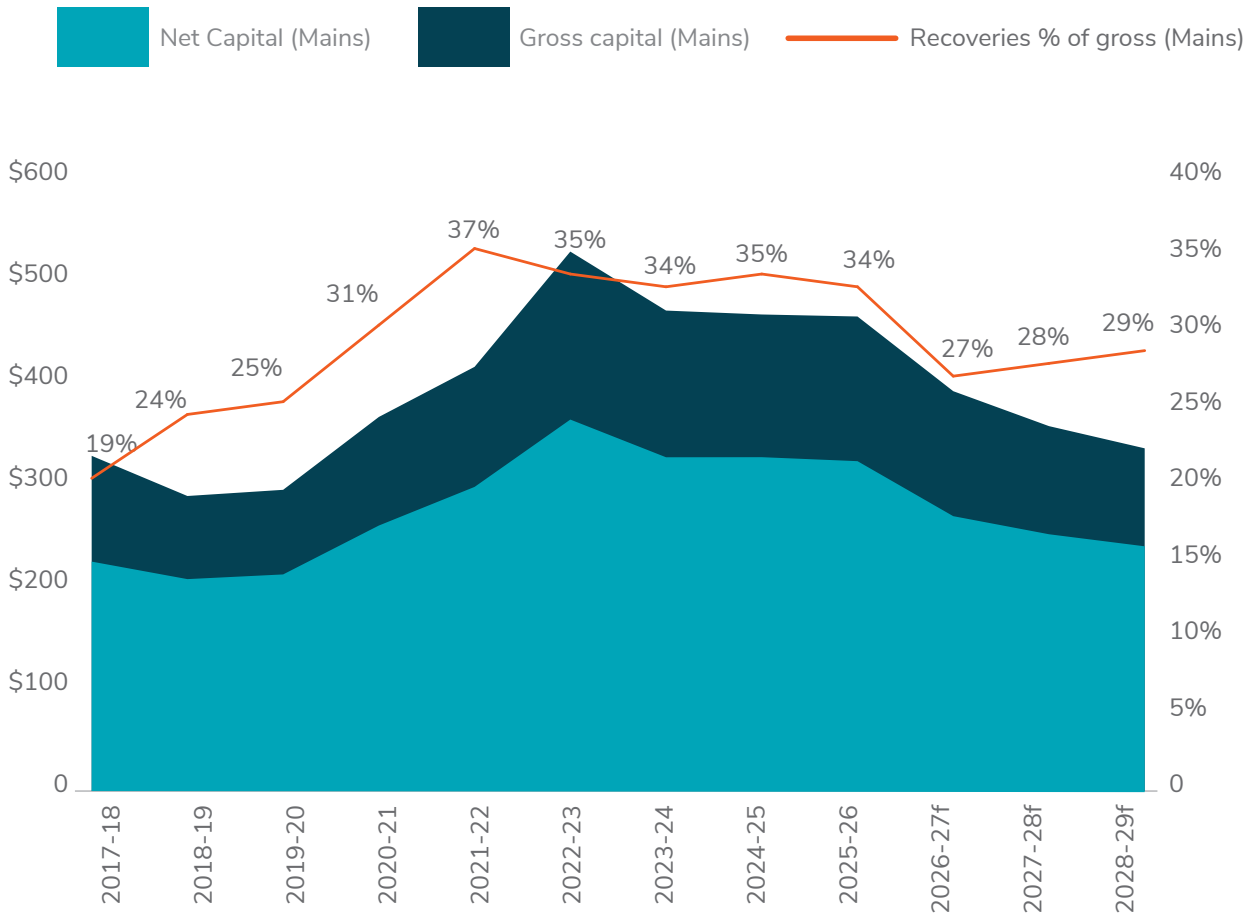
The Government of Yukon will continue to work closely with funding partners to identify and secure capital recoveries and align projects with program requirements and funding timelines. As major projects advance, careful coordination of federal contributions, implementation schedules

and territorial financing considerations will support the delivery of priority infrastructure while maintaining flexibility to respond to the dynamic needs of the territory.

The projected dip in recoveries in 2026–27 primarily reflects the completion or near completion of several major recoverable infrastructure initiatives, including the Erik Nielsen Whitehorse International Airport Runway project and the Dempster Fibre Line. As these large, federally supported projects wind down, associated recoveries decline, resulting in a temporary reduction in total recoveries. Additional recoverable projects are anticipated in the coming years; however, many remain in early planning and design stages and will be incorporated into future budgets once scope, timing and funding arrangements are confirmed.

Chart 7. Capital recoveries as a share of gross capital spending

Capital spending ($ millions) and recoveries (per cent of gross capital)



f = forecast

2026–27 Capital Plan overview

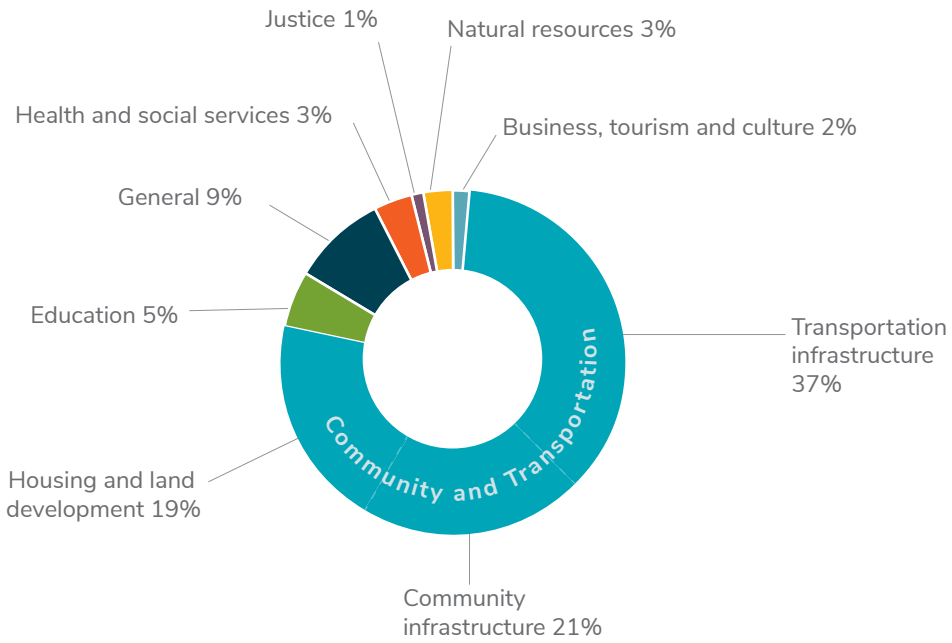
The Government of Yukon's 2026–27 Capital Plan reflects a disciplined and integrated approach to infrastructure investment as part of the territory's fiscal and economic outlook. Planned spending totals $385.4 million in 2026–27 and approximately $1.1 billion over the three-year horizon. This will support priority investments that maintain critical infrastructure, strengthen public services and respond to the needs of communities across the territory.

Beginning in 2026–27, capital investments are presented under an updated categorization framework aligned with the Main Estimates and Public Accounts schedules, improving consistency, transparency and comparability across budget documents.

Table 9. Capital plan by function of government

Category ($ millions)	2026–27	2027–28	2028–29	Three-Year Total
Community and transportation	274.3	281.6	275.2	831.1
Education	32.6	17.4	6.4	56.4
General government	30.7	32.6	31.2	94.5
Health and social services	21.9	8.5	7.2	37.6
Natural resources	11.0	8.2	8.2	27.4
Business, tourism and culture	10.4	2.9	3.0	16.3
Justice	4.5	4.0	3.8	12.3
Annual Total	385.4	355.2	335.1	1,075.6

Chart 8. Total planned capital spending by investment category



Community and transportation

Capital investments in community and transportation infrastructure support safe, reliable transportation networks, municipal systems and community assets across the Yukon. As the largest component of the Capital Plan, this category reflects the ongoing need to maintain and rehabilitate transportation and community infrastructure in a northern climate. Much of this funding is focused on renewing existing assets to ensure long-term reliability and safety, strengthening connections between communities and supporting economic activity year-round.

Category ($ millions)	2026–27	2027–28	2028–29
Transportation infrastructure	**132.5**	**137.4**	**127.8**
Major Highway Improvements			
Teslin River Bridge Rehabilitation			
Community infrastructure	**75.8**	**73.8**	**73.9**
Dawson Recreation Centre			
Teslin Tlingit Council Community Services Building			
Whitehorse City Hall Energy Upgrade			
Housing and land development	66.0	70.4	73.5
45-unit Residential Building – Whitehorse			
34-unit Residential Building – Dawson			
36 Additional Housing Units Planned – Yukon Communities			
Renovation and Rehabilitation of Affordable Rental Units			
Whitehorse and Rural Land Development			
Community and transportation	**274.3**	**281.6**	**275.2**

Projects shown are highlights and will not sum to the total annual capital spending for the category.

Transportation infrastructure

The Government of Yukon continues targeted investments in highways, bridges and airport infrastructure to maintain safe and efficient transportation networks across the territory. These investments support the movement of people and goods and improve access to services and economic opportunities. Notable capital projects include:

- Core transportation infrastructure funding supports ongoing maintenance and renewal of Yukon's highways, bridges and airports, including the final year of a major runway reconstruction at Erik Nielsen Whitehorse International Airport.

- Major highway improvements continue on the North Klondike Highway, North Alaska Highway, and through the Yukon Resource Gateway Project, improving safety and resilience along key transportation routes.

Community infrastructure

Community infrastructure investments are delivered in partnership with Yukon First Nations, municipalities and communities to reflect local priorities and regional needs. These investments support safe, resilient community assets and help address growth pressures, climate impacts and evolving service demands across the territory. Notable investments include:

- Construction of the Dawson Recreation Centre is underway, with site work started in Fall 2025. The facility features an ice rink, two curling surfaces, a multipurpose space and a community kitchen, enhancing recreation opportunities for residents and visitors.
- The Teslin Tlingit Council Community Services Building expands space for growing programs and services. The project advances the development of a modern facility that strengthens local governance and enhances community service delivery.
- Energy efficiency and accessibility upgrades to Whitehorse City Hall are underway, with renovations scheduled through September. These improvements will enhance building performance, reduce operating costs and modernize municipal service spaces to better serve residents.

Housing and land development

The Yukon Housing Corporation is advancing construction and renewal projects to increase housing supply, improve affordability and respond to demand pressures across the territory. These investments support stable housing options and strengthen community capacity. Highlights include:

- Construction of a 45-unit residential building in Whitehorse (Ryder) and a 34-unit building in Dawson (Korbo) is underway, with both expected to be completed in 2026-27. A further 36 units are planned in Mayo, Teslin, Carcross, Ross River, Pelly Crossing, Burwash Landing and Haines Junction, with availability anticipated 2029–30.
- Continued support through the Housing Initiatives Fund for shovel-ready, partner-led projects, accelerating affordable housing delivery in collaboration with municipalities, First Nations and private-sector partners.
- Increased investment in the renovation and rehabilitation of existing Yukon Housing Corporation housing stock to extend asset life and ensure units remain safe and functional.
- Land development projects will advance in both Whitehorse and Dawson, including the continuation and completion of Whistle Bend Phases 12 and 13, the Chasàn Tatäy (Range Point) subdivision in partnership with Kwanlin Dün First Nation and continued planning and design for the start of Dredge Pond II subdivision construction through 2026-27.

Education

Education capital investments focus on maintaining and modernizing school facilities and supporting infrastructure to meet the needs of students, educators and communities. Funding supports safe, functional learning environments and ensures infrastructure keeps pace with enrolment growth and evolving program requirements. These investments contribute to strong student outcomes and long-term workforce development. Highlighted projects include:

- Modular classrooms provide a flexible, cost-effective way to address enrolment pressures and changing space needs, enabling capacity to be added efficiently where required.
- Construction of the Kêts'ádań Kų School in Burwash Landing is underway. In partnership with Kluane First Nation, the new K–12 school will replace the aging Kluane Lake School in Destruction Bay, creating a modern, culturally grounded learning environment for students and the community.
- Planning for future school infrastructure will address enrolment growth and evolving community needs, including early planning for the next Whitehorse school and replacement planning for Teslin School. Community engagement and design work will progress in 2026–27, with implementation funding to be considered in future budgets.
- The Government of Yukon continues to support the Polaris Project, a new science building at Yukon University's Ayamdigut campus in Whitehorse. The facility will include laboratories, classrooms and research spaces supporting teaching and applied research grounded in both Indigenous and Western knowledge systems, aligned with territorial priorities such as climate change adaptation and community wellbeing. Completion is expected in fall 2027.

Education	2026–27	2027–28	2028–29
Modular Classrooms			
Kêts'ádań Kų School - Burwash Landing			
Future Schools Replacement[27]			
Yukon University Polaris Project			
Yukon University Infrastructure Upgrades			
Total ($ millions)	32.6	17.4	6.4

Projects shown are highlights and will not sum to the total annual capital spending for the category.

27. The Capital Plan currently includes planning and design funding only, as reflected by the dotted lines. Future implementation funding will be considered once scopes are finalized and would require either an increase to gross capital expenditures or a reprioritization within the plan.

General government

The general government category includes investments that support core government infrastructure, information systems and assets that enable the delivery of programs and services across departments. Maintaining these foundational assets supports efficient government operations, enhances service delivery and ensures public infrastructure remains reliable and responsive to evolving needs.

Highlighted projects include:

- IT System Investments support strategic information technology initiatives that modernize government systems, enhance digital service delivery and strengthen cybersecurity. Key projects include core business system upgrades, expansion of online services, and lifecycle replacement of critical IT infrastructure. Together, these investments improve accessibility and efficiency for Yukoners while ensuring secure, reliable technology platforms that underpin government operations.
- The Capital Finance System Modernization Project will replace the Government of Yukon's core financial system, which has reached the end of its useful life. The Department of Finance will migrate to a modern, cloud-based platform to ensure continued reliability, security and functionality. Replacing the system is essential to maintain core financial operations, including payments to vendors and employees, procurement of goods and services, receipt of government revenues and production of the Public Accounts. Phase one is expected to commence in 2026–27 with phase two anticipated in 2027–28.
- Capital Building Maintenance supports proactive investment in government facilities to ensure safe, functional and reliable infrastructure across the territory. Ongoing condition assessments guide funding to priority repairs and system upgrades, helping extend the useful life of assets, prevent costly failures and ensure uninterrupted delivery of programs and services for Yukoners.

General government	2026–27	2027–28	2028–29
IT System Investments			
Central Finance System Migration Project			
Building Maintenance			
Total ($ millions)	30.7	32.6	31.2

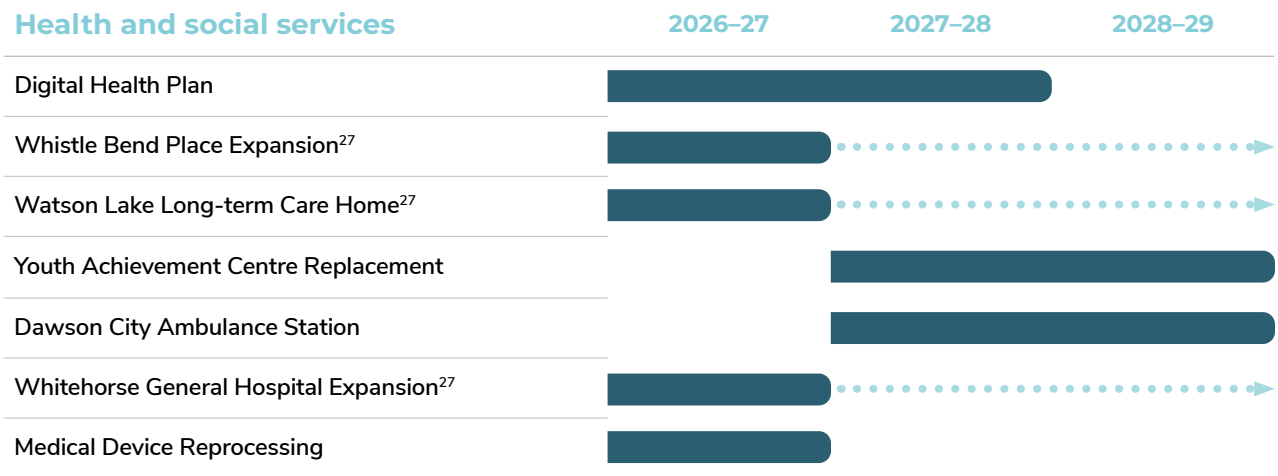
Projects shown are highlights and will not sum to the total annual capital spending for the category.

Health and social services

Capital investments in health and social services support health care infrastructure, social supports and facilities that improve access to care and respond to the needs of a growing and aging population. Funding will maintain and upgrade facilities, support service delivery and ensure infrastructure is positioned to meet future demand, contributing to improved health outcomes and community wellbeing.

Highlighted projects include:

- Investments at Whitehorse General Hospital will support planning for future expansion to address growing demand and improve access to care. Capital funding also provides for the replacement of critical medical device reprocessing equipment to ensure surgical instruments and clinical devices are properly cleaned and sterilized. In addition, 2026–27 includes a temporary increase to capital maintenance and repair funding to address priority infrastructure needs and sustain the facility's long-term reliability. Together, these investments strengthen essential infrastructure and support the delivery of safe, high-quality care.
- The Digital Health Plan advances modernization initiatives, such as the implementation of an Electronic Medical Record system. These advancements will strengthen information sharing, streamline workflows and improve the efficiency and responsiveness of health service delivery.
- Planning for expanded long-term care facilities will move forward, including an expansion to Whistle Bend Place, alongside community engagement and early project planning for a Watson Lake Long Term Care Home. These efforts will help meet the evolving needs of the territory's aging population. Implementation funding will be considered for inclusion in future iterations of the capital plan.



Projects shown are highlights and will not sum to the total annual capital spending for the category.

27. The Capital Plan currently includes planning and design funding only, as reflected by the dotted lines. Future implementation funding will be considered once scopes are finalized and would require either an increase to gross capital expenditures or a reprioritization within the plan.

Natural resources

Investments in natural resources infrastructure support environmental stewardship, resource management and sustainable development across the Yukon. Capital funding helps maintain assets that support monitoring, conservation and responsible resource use, ensuring the territory's natural environment is protected while supporting economic opportunities.

Highlighted projects include:

- The Sādę Initiative, a solar power project in Watson Lake funded under the Arctic Energy Fund, is scheduled for completion in 2026. The project will produce a photovoltaic power plant with a battery energy storage system connected to the Watson Lake grid. Ownership and operation of the project will rest with First Kaska Utilities Limited Partnership.
- Construction of solar power systems at Blanchard and Tuchitua highway maintenance camps will be funded under the Building Efficiency Program in 2026. Once operational, these systems are projected to offset approximately 98,000 litres of diesel consumption annually, resulting in an estimated reduction of 260 tonnes of greenhouse gas emissions per year.

Natural resources	2026–27	2027–28	2028–29
Parks Design and Development			
Building Efficiency Program			
Watson Lake Solar Power Project			
Total ($ millions)	11.0	8.2	8.2

Projects shown are highlights and will not sum to the total annual capital spending for the category.

Business, tourism and culture

Investments in business, tourism and culture support economic diversification, strengthen local industries and create opportunities for private-sector growth across the territory. Capital funding will focus on maintaining and enhancing assets that support tourism, cultural programing and economic development, while helping communities and businesses adapt to changing economic conditions. These investments contribute to a resilient economy and support long-term prosperity for Yukoners.

Highlighted projects include:

- Planning and design will advance the Yukon Gathering Place Convention Centre, a new convention facility envisioned as a major economic and community hub in Whitehorse. Developed in partnership with the Government of Canada and Chu Níikwän Limited Partnership, the economic development arm of Kwanlin Dün First Nation, the centre is expected to attract conferences, trade shows and events that increase visitor spending and support local businesses. Implementation funding will be considered in future budget exercises.
- Remediation of the Ch'ëdähdëk (Forty Mile) Historic Site will address significant flood damage caused by an ice jam event in May 2023 at the confluence of the Forty Mile and Yukon rivers. Co-managed with Tr'ondëk Hwëch'in and recognized as part of the Tr'ondëk-Klondike UNESCO World Heritage Site, the site is an important cultural and tourism asset.

Business, tourism, and culture	2026–27	2027–28	2028–29
Yukon Gathering Place Convention Centre[27]			
Ch'ëdähdëk Forty Mile Historic Site – Flood Restoration			
Total ($ millions)	10.4	2.9	3.0

Projects shown are highlights and will not sum to the total annual capital spending for the category.

27. The Capital Plan currently includes planning and design funding only, as reflected by the dotted lines. Future implementation funding will be considered once scopes are finalized and would require either an increase to gross capital expenditures or a reprioritization within the plan.

Justice

Justice capital investments support facilities, equipment and infrastructure that help maintain public safety and ensure the effective administration of justice across the territory. Funding supports safe and functional environments for enforcement, courts and corrections, helping communities remain safe while supporting responsive justice services.

Highlighted projects include:

- Annual capital contributions support RCMP detachment upgrades, ensuring detachments across the territory remain operational and equipped to deliver critical policing services.
- The Whitehorse Correctional Centre Security Upgrade will enhance safety and operational effectiveness within the facility. Planned improvements focus on modernizing security systems and infrastructure to strengthen staff and inmate safety, support secure operations and ensure the facility continues to meet current standards and evolving correctional requirements
- Planning and design will continue for the replacement of the existing Whitehorse Morgue and Coroner's Office. An updated facility would provide a modern, culturally appropriate space to support coroner services in the territory. The Capital Plan includes planning and design funding in 2027–28, with implementation funding to be considered in future budget exercises.

Justice	2026–27	2027–28	2028–29
RCMP Detachments			
Whitehorse Corrections Building Security Upgrades			
Morgue and Coroner's Office Replacement[27]			
Total ($ millions)	4.5	4.0	3.8

Projects shown are highlights and will not sum to the total annual capital spending for the category.

27. The Capital Plan currently includes planning and design funding only, as reflected by the dotted lines. Future implementation funding will be considered once scopes are finalized and would require either an increase to gross capital expenditures or a reprioritization within the plan.

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Outlook summary

- Strong metal prices and higher placer gold production will support modest growth over the outlook.
- Tariff uncertainty persists, though the Yukon has fared better than most jurisdictions.
- Potential sale of the Eagle Gold Mine represents upside risk to the forecast.
- Tourism outperformed expectations, with record border crossings and air arrivals.
- Shelter-related expenses continue to drive inflation.

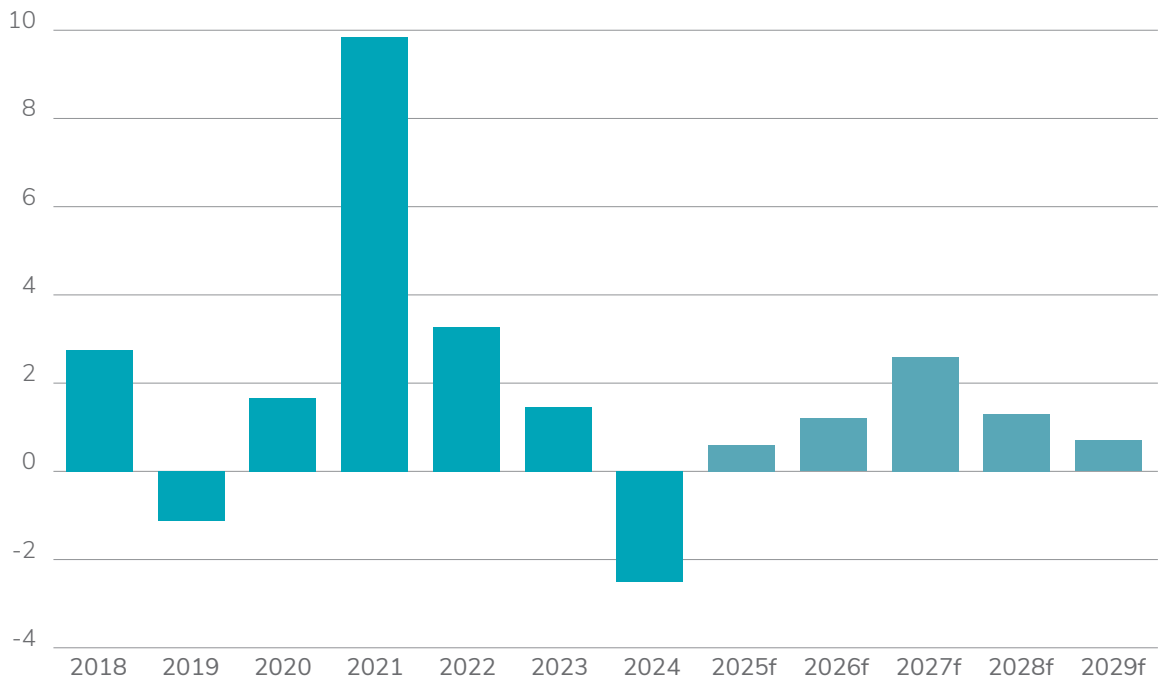
Improved mining outlook helps offset the impact of Eagle Gold Mine suspension

The Yukon's economy has remained resilient despite heightened uncertainty following the shuttering of the Eagle Gold Mine and ongoing trade upheaval with the United States. The economy has been aided by a surge in gold and silver prices that has improved the outlook for the Keno Hill Mine and placer gold production. The positive outlook is also supported by expectations of further tourism sector growth following record visitation in 2025.

Real GDP is projected to improve in 2026, followed by gains in every year of the forecast. Growth is expected to remain modest, averaging 1.3 per cent from 2025 to 2029. Several factors are limiting growth including labour market rebalancing after years of tightness and slowing population growth stemming from changes to federal immigration policy.

Chart 1. Growth is forecast to resume, but modest gains expected in most years

Real GDP (per cent change)



Source: Statistics Canada, Department of Finance (Yukon) f = forecast

Trade impacts have been limited thus far, though significant uncertainty remains

U.S. trade policy continues to fuel global economic uncertainty. This has reduced investment in Canada and weighed on exports, especially in targeted sectors such as steel and aluminum.

The U.S. Supreme Court struck down the 35 per cent across the board tariffs on Canada issued under the International Emergency Economic Powers Act (IEEPA), but these were almost immediately replaced by 10 per cent tariffs under Section 122 of the Trade Act. Either way, the future of Canadian trade will be determined by upcoming discussions surrounding the Canada–United States–Mexico Agreement (CUSMA). Most of Canada's exports remain exempt from Section 122 tariffs if they are CUSMA compliant.[1]

The U.S. review process began with public consultations in September 2025, and a report outlining proposed changes is expected to be submitted to Congress in early 2026. The formal review must begin by July 2026, six years after CUSMA came into force.

The U.S. has indicated a potential withdrawal from CUSMA, possibly in favour of separate bilateral agreements with Canada and Mexico. Such a move could have widespread implications across Canada, particularly for larger, trade-dependent provinces.

The effect of the upheavals in global trade on the Yukon is expected to remain limited, reflecting the relatively small role of international exports in the territorial economy.

Although there has been a noticeable impact of U.S. trade policy on the Yukon's exports, the impact has been dwarfed by the run up in silver prices (Table 1). The Yukon's goods exports were up almost 40 per cent in 2025 almost entirely due to higher prices. Output from the Keno Hill Mine accounts for over 90 per cent of the Yukon's exports. The trade dispute has left a mark on the Yukon's non-Keno exports to the U.S., which were down over 70 per cent to $2.4 million. Some Yukon exports appear to have made their way to alternative markets as the Yukon's exports to non-U.S. countries nearly quadrupled to a record $19.6 million in 2025.

1. The Bank of Canada's Monetary Policy Report from October 2025 noted that according to the U.S. Census Bureau, 90% of the value of Canadian goods exported to the United States entered that country tariff-free in July 2025. If steel, aluminum, motor vehicles and energy are excluded, then 94% of the value of goods entered the United States tariff-free.

Table 1. Yukon merchandise exports ($ millions)

		2024	2025	Change
World	**All exports**	149.7	205.4	55.7
	Excluding metals	13.3	12.3	-1.0
U.S.	**All exports**	144.7	185.9	41.2
	Excluding metals	8.7	2.4	-6.3
Non-U.S.	**All exports**	5.0	19.6	14.6
	Excluding metals	4.6	9.9	5.3

Source: Statistics Canada

The impact of tariffs on prices has been muted, especially since most of Canada's retaliatory tariffs were rescinded in September 2025. Though inflation in the Yukon has been elevated, this is primarily due to local factors. To the extent that uncertainty is weighing on business investment across Canada, it has not shown up in data for the Yukon. Non-residential building investment has been strong this year, as has mineral exploration.

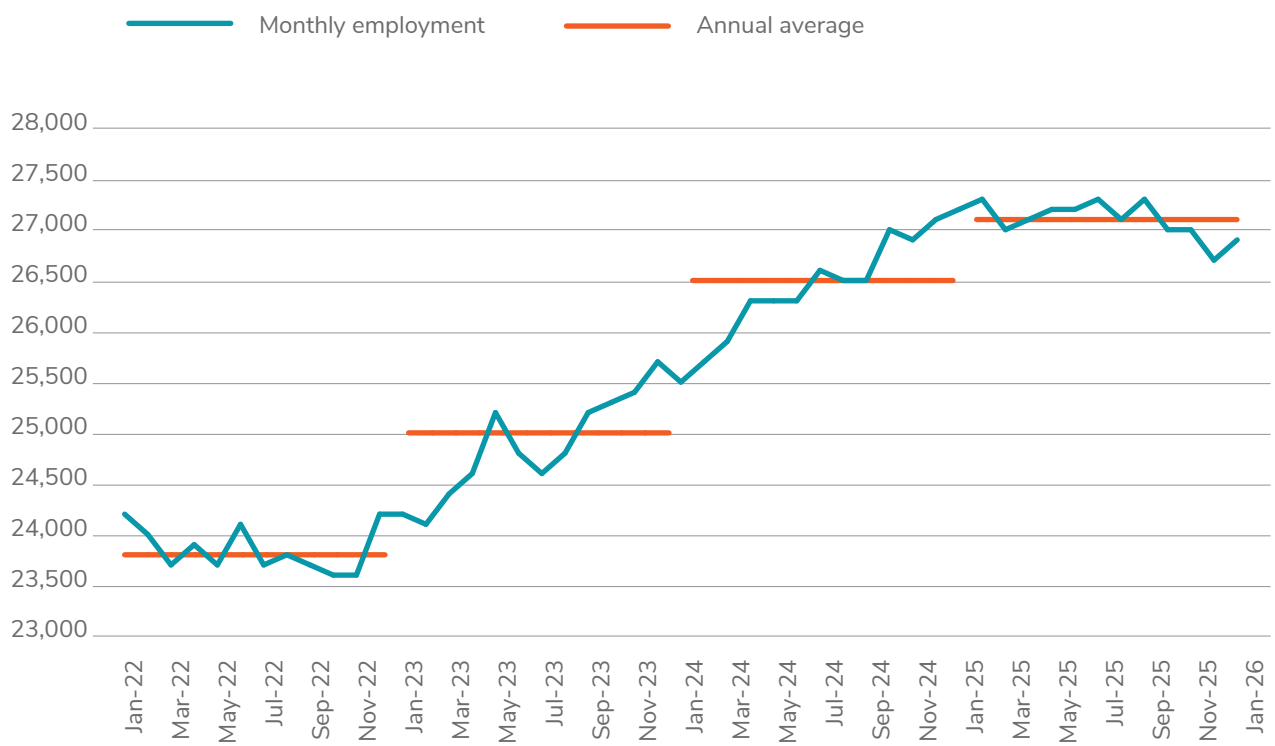
Employment growth continues, but a tight labour market is showing signs of easing

The Yukon labour market continued to expand in 2025, with both the labour force and employment reaching record levels. The unemployment rate averaged 4.2 per cent, the lowest in the country for a third consecutive year.

Though the annual numbers show employment growth in 2025, other indicators suggest a modest easing of labour market conditions following several years of tightness. On a monthly basis, employment plateaued starting in early 2025 and began 2026 slightly below January 2025 levels. Job losses in the goods-producing industries have kept overall employment flat despite gains in the service sector.

Chart 2. Annual job gains hide monthly plateau in employment

Employment (persons)

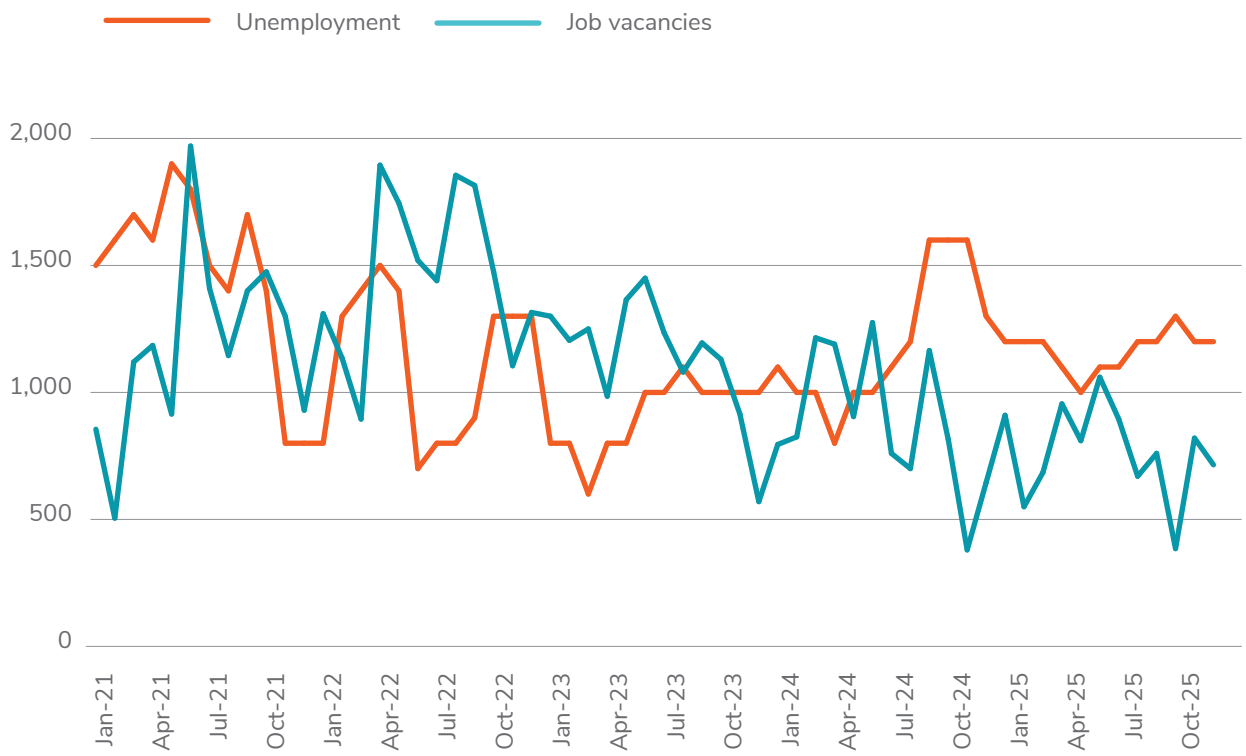


Source: Statistics Canada

Recent labour market easing has been marked by a decline in the number of job vacancies rather than an increase in unemployment. This suggests a normalization from previously unsustainable levels rather than a sharp deterioration. The job vacancy rate in 2025 was still the highest in Canada, but at 3.7 per cent it was the lowest annual reading for the Yukon since 2017.

Chart 3. Number of unemployed now exceeds job vacancies

Unemployment (persons), Job vacancies (number)



Source: Statistics Canada

This moderation in the labour market has slowed earnings growth, which is now broadly in line with the national pace. Average weekly earnings rose 3.5 per cent in 2025, a tick higher than national growth of 3.4 per cent. Average weekly earnings in 2025 were nearly $1,500 and remained the third highest in the country, behind only the other two territories.

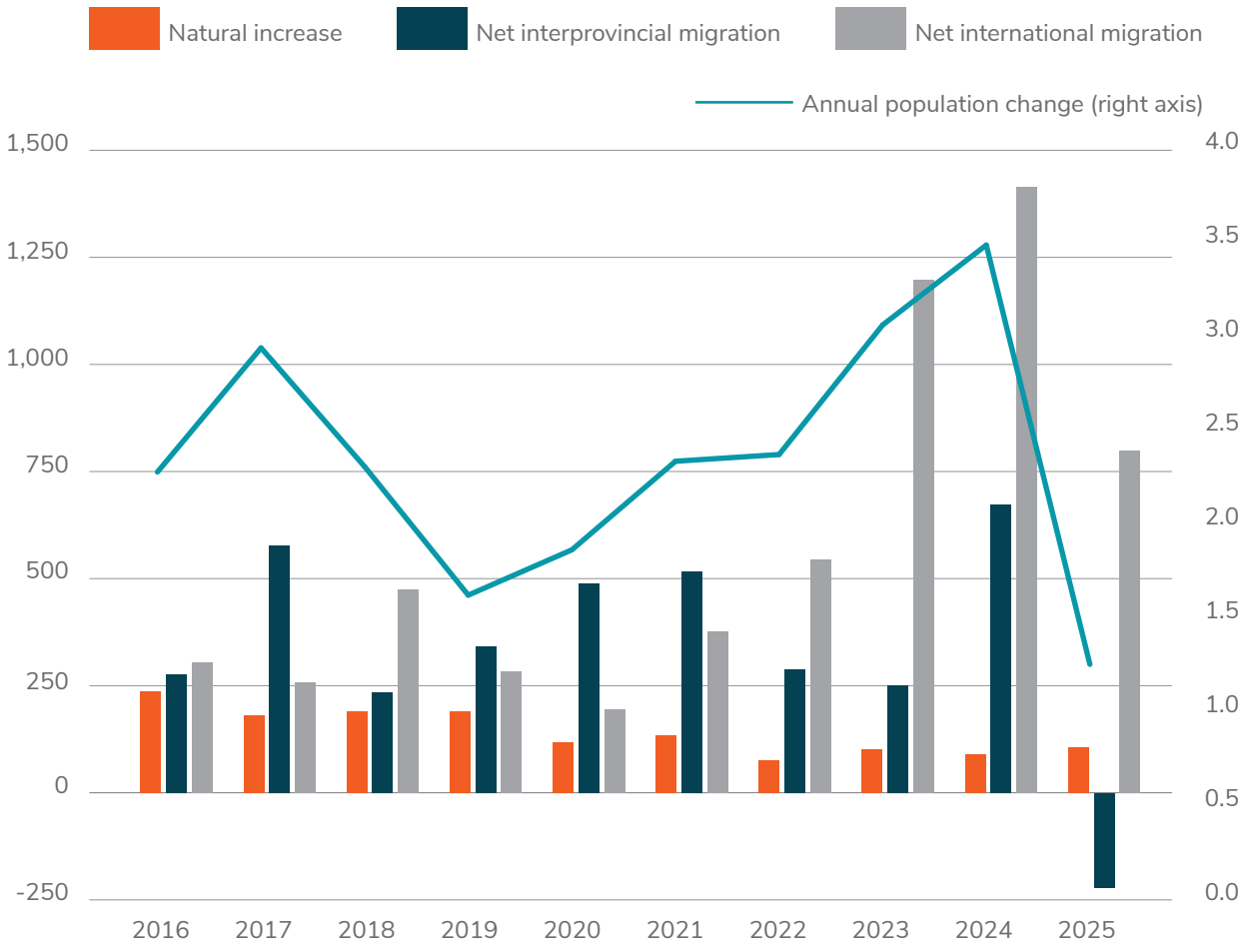
Modest employment growth is expected over the forecast, averaging 0.6 per cent per year, with the unemployment rate rising to an average of 4.8 per cent. This relatively modest growth reflects continued normalization after exceptional tightness, a moderation in government capital spending, and slowed population growth.

Federal immigration changes are expected to slow medium-term population growth

Changes to federal government immigration policy continue to dampen population growth. The policy changes aim to reduce the non-permanent resident population to below 5 per cent nationally by 2027, and include lower allocations under provincial and territorial nominee programs, including the Yukon Nominee Program.

Chart 4. Fall in international immigration reflects changes to federal targets

Annual change (persons), annual population change (per cent)



Source: Statistics Canada, Yukon Bureau of Statistics

These changes have had a pronounced dampening effect on immigration. Net international migration fell to 799 in 2025, down from 1,414 the previous year.[2] The drop was largely due to fewer non-permanent residents, while permanent immigration fell only slightly.

2. Reflects a comparison of migration levels from July 1, 2023 to July 1, 2024 to July 1, 2024 to July 1, 2025.

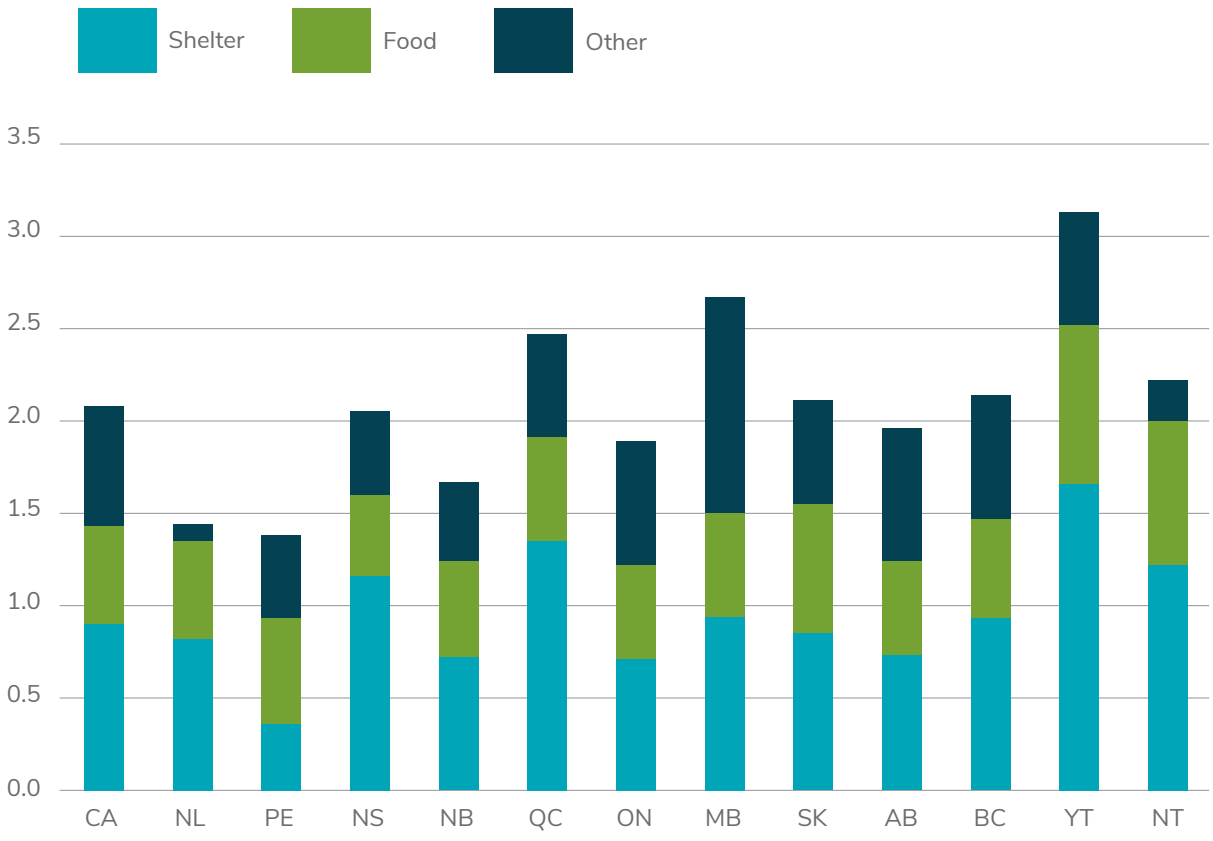
Weaker net international migration saw the Yukon's population growth fall to 1.1 per cent in 2025, down from 3.6 per cent in 2024.[3] Federal efforts to reduce the non-permanent resident share are expected to continue to constrain the Yukon's population growth. Over the current forecast, growth is projected in every year through 2029, but the average growth of 1.5 per cent is a moderation from recent stronger gains.

Rising shelter and food costs continue to drive local inflation

While still below recent peaks, inflation picked up in 2025.[4] Local inflation was largely driven by higher shelter and food costs. Shelter-related prices grew 5.7 per cent and food prices rose 4.4 per cent, both well ahead of overall price growth of 3.2 per cent. Shelter and food were key contributors to inflation across the country in 2025.[5]

Chart 5. Shelter and food fuelled inflation nationwide, with stronger effects locally

CPI 2025, year-over-year contribution to per cent change (percentage points)



Source: Statistics Canada

3. June 30 estimates represent the annual figure.

4. With no territory-wide measure available changes in the Whitehorse CPI are considered a proxy for inflation for the Yukon.

5. With no territory-wide measure changes in the Yellowknife CPI are used as a proxy for inflation for the Northwest Territories. Data for contribution to CPI growth are not available for Nunavut, or the capital city, Iqaluit.

Electricity prices were up nearly 21 per cent in 2025 and were a key driver of local shelter costs. This was the largest increase in the country, and well above national growth of only 1.5 per cent.

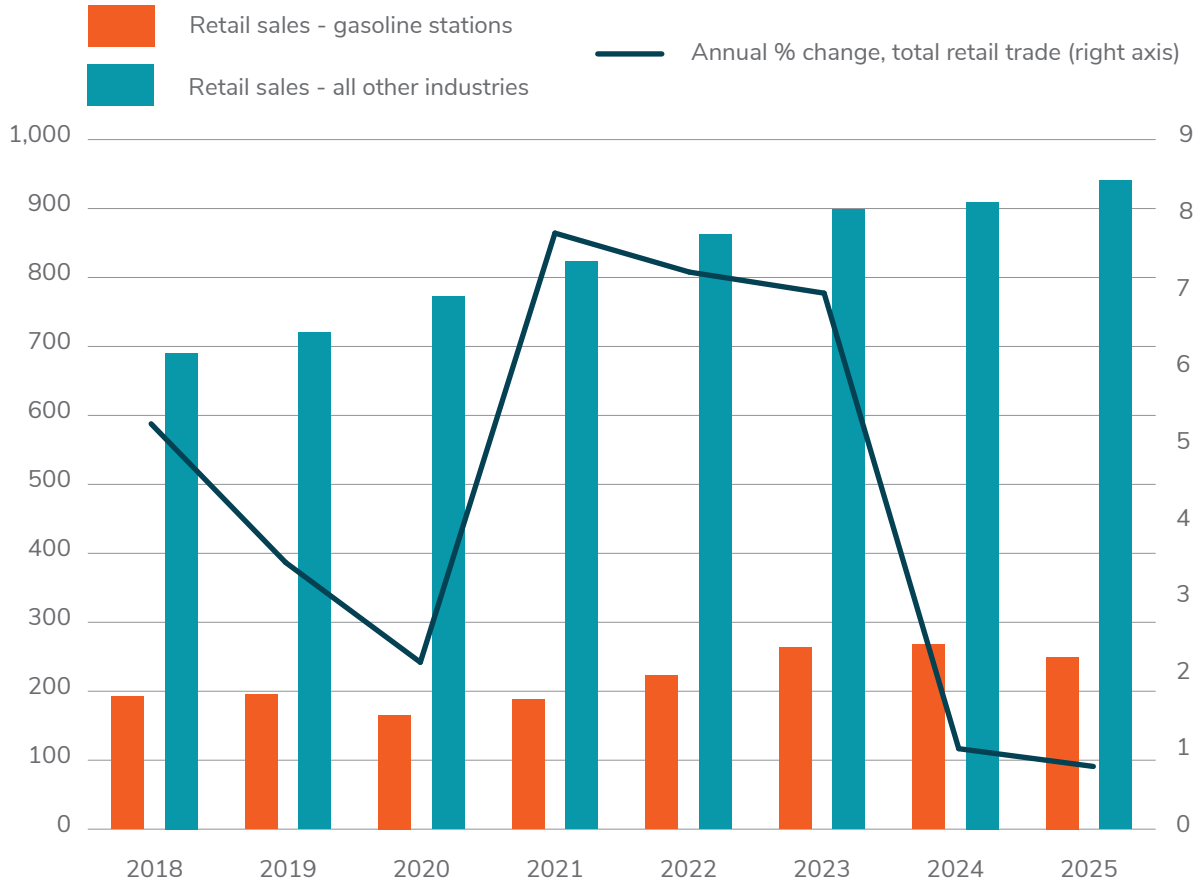
Shelter and food are expected to remain key drivers of inflation in 2026 with annual inflation expected to be generally in line with 2025 at 3 per cent. Beyond 2026, inflation is expected to be closer to historical norms and average 2 per cent, although price uncertainty remains elevated largely due to trade uncertainty and the breakout of conflict in the Middle East.

Weaker retail sales growth in 2025 driven almost entirely by lower gasoline prices

Lower gasoline prices largely explain the 2025 slowdown in retail sales. Sales at gasoline stations and fuel vendors fell 6.8 per cent in 2025, reflecting a near 10 per cent decline in gasoline prices. Total retail sales saw modest growth of 1.1 per cent last year, but if gas stations are excluded, retail sales rose 3.5 per cent.

Chart 6. Lower gas prices reflected in weaker retail sales growth

Retail sales ($ millions), year-over-year change (per cent)



Source: Statistics Canada

As most of the impacts from the end of the consumer carbon price were realized last year, gasoline prices should be less of a drag on sales in 2026. Over the forecast period, retail sales are projected to grow at an average pace of 3 per cent.

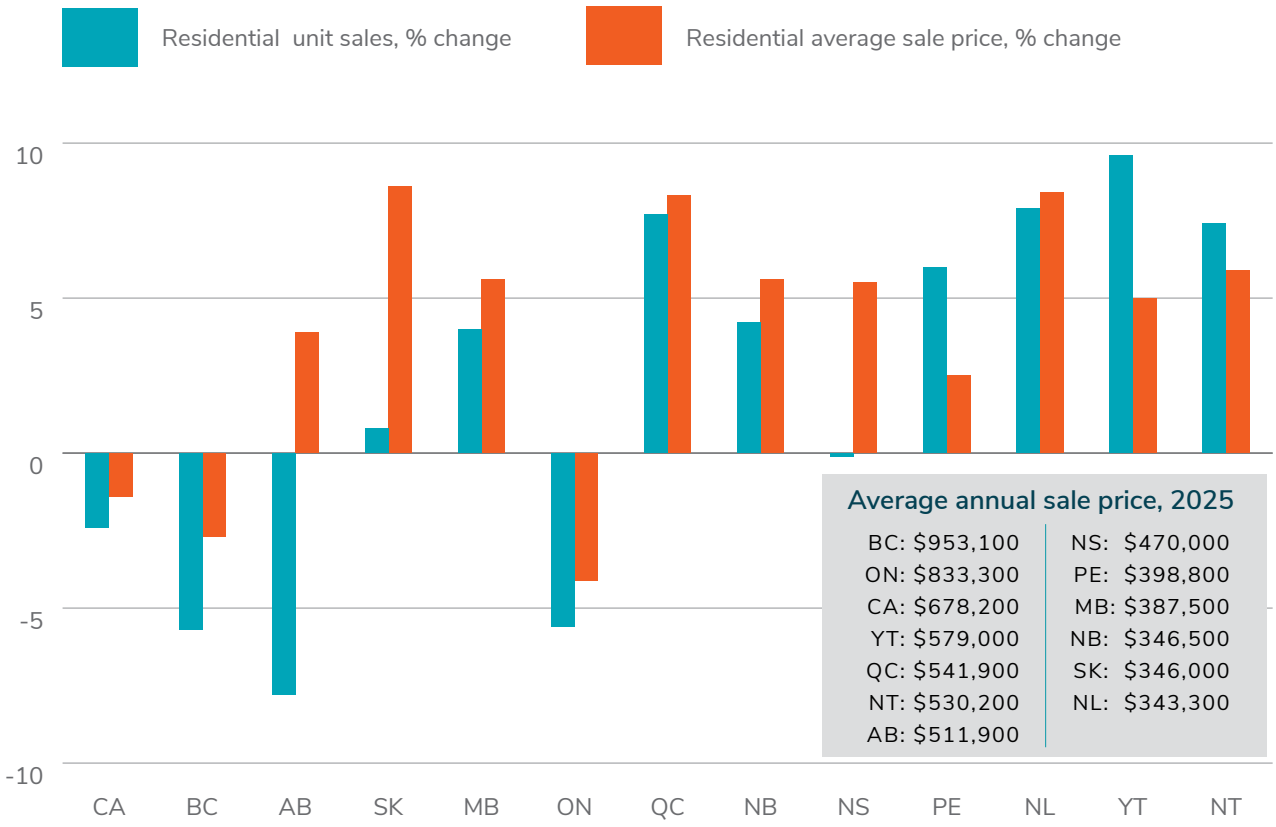
Oil prices spiked in early March following the outbreak of conflict in the Middle East. Iran has closed off a key corridor for transporting oil throughout the region and several refineries have been targeted by missile and drone attacks. The run up in oil prices contributed to a 10 per cent increase in gasoline prices in Whitehorse in early March. This will add to both inflation and retail sales, especially if the conflict is prolonged.

Housing market remains tight

Record sale prices across most housing types and rising rents amid low vacancy rates point to a housing market that remains tight. As shown in Chart 7, the Yukon reported gains in both residential sales and the average sale price, signalling strong housing demand.[6]

Chart 7. The Yukon saw growth in both sales and prices in 2025[7]

Residential sales, residential average sale price, Year-over-year change (per cent)



Source: The Canadian Real Estate Association

6. Data for Nunavut is unavailable.

7. Average sales price is rounded to the nearest $100.

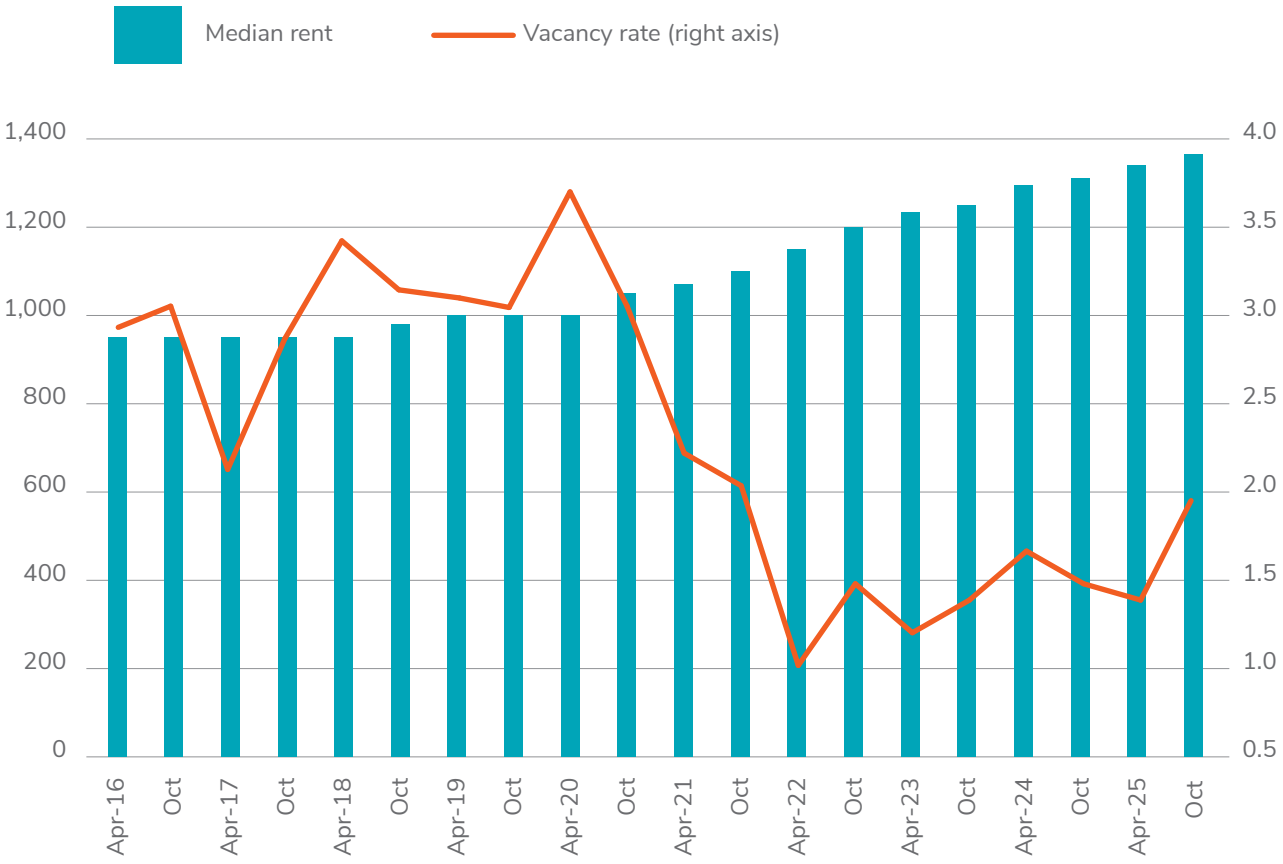
Data for Whitehorse also suggest a tight housing market. The value of residential sales rose 42 per cent to a record $482.8 million in 2025. This growth was driven largely by sales of single-detached homes, which accounted for 46 per cent of total sales value and 40 per cent of all real estate transactions.[8] The average price of a single-detached home reached a record $743,800, up nearly 11 per cent from the previous year.[9]

Lower mortgage rates and expectations of further declines drew buyers into the housing market in 2025. With the Bank of Canada signalling limited further interest rate easing in the near-term, rates are likely to remain above pre-2022 levels.

Rental market conditions remain tight. In October 2025, the vacancy rate was 1.9 per cent, well below the pre-pandemic norm of 3.0 per cent. Median rents for units in buildings with three or more units rose 1.8 per cent to a record $1,364.[10]

Chart 8. Vacancy rates remain low even as rent continues to increase

Whitehorse median rent ($), vacancy rate (per cent), units in buildings with 3+ rental units



Source: Yukon Bureau of Statistics

8. 2025 data for mobile homes is incomplete due to suppression of figures for the first quarter because of poor data quality and/or confidentiality.

9. Yukon Real Estate Report Fourth Quarter, 2025. Yukon Bureau of Statistics. (March 2026).

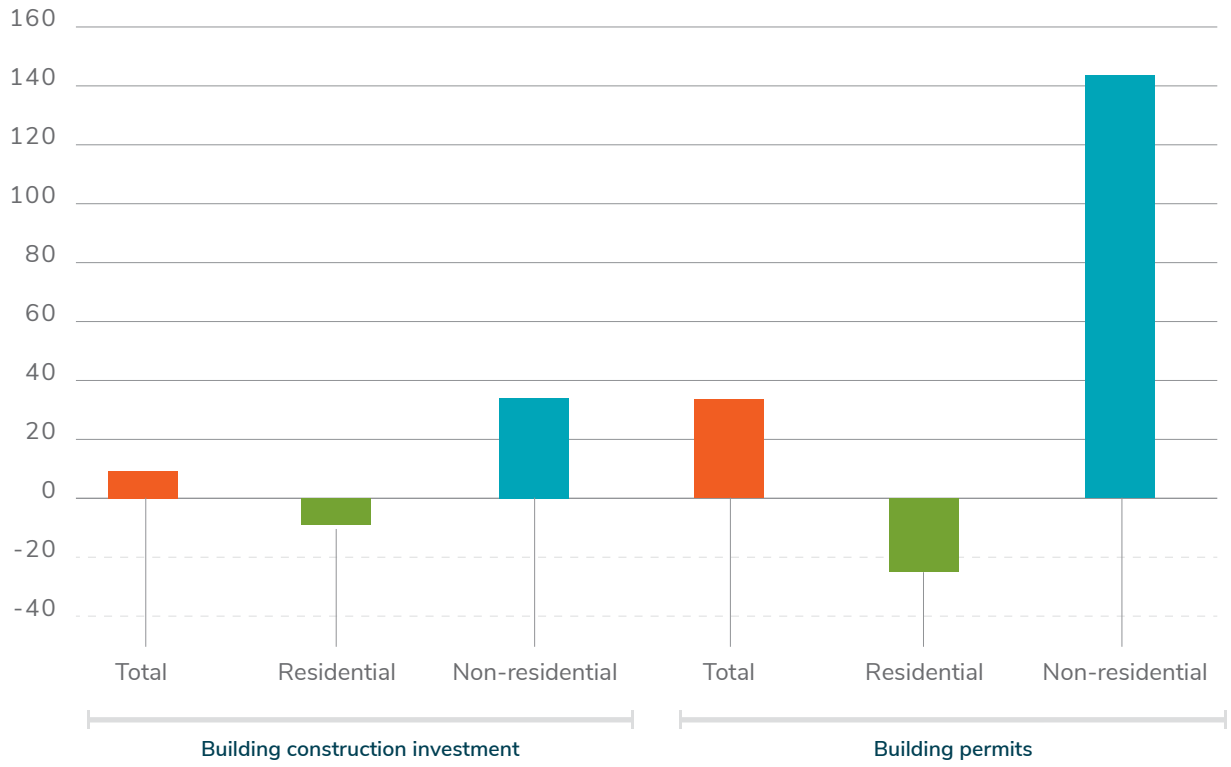
10. Yukon Rent Survey, October 2025. Yukon Bureau of Statistics. (February 2026).

Recent construction gains driven by non-residential activity

Investment in building construction expanded in 2025 as a surge in non-residential building helped to offset lower residential investment (Chart 9). According to building permit data, last year's growth was driven by five major projects worth about $120 million, including office complexes in Dawson and Teslin, groundwork for Yukon University's new Polaris Project, and the installation of prefabricated buildings at the Faro Mine site. These projects helped offset a near 25 per cent decline in residential permits, which largely reflected strong spending in 2024 on three large multi-residential projects.

Chart 9. Non-residential investment drove construction activity in 2025

Year-over-year change (per cent)



Source: Statistics Canada, Yukon Bureau of Statistics

Government investment continues to drive local construction. The Government of Yukon's latest capital plan outlines almost $1.1 billion in spending over the next three fiscal years, with prominent projects including a new school in Burwash Landing, Yukon University's Polaris Project, and investments in community infrastructure, including the new Dawson recreation centre, the Teslin Tlingit Council Community Services Building, and energy upgrades at Whitehorse City Hall.

The City of Whitehorse's 2026–2029 capital program proposes $381 million in spending, with over $41 million approved and another $340 million pending external funding. Over half of all this proposed spending is for engineering services, including $57 million for potential landslide mitigation on Robert Service Way.

Improved outlook for the Yukon's mining sector

Gold and silver prices reached record annual highs in 2025, which saw placer gold production increase to a nearly 30-year high and helped the territory's only currently operating quartz mine turn a profit for the first time.[11] Stronger metal prices also boosted exploration spending, which reached its highest level in over a decade. Gold prices hit an all-time high of US$5,600 per ounce in late January 2026, before falling back to an average of just over US$5,000 per ounce in February. This is over 70 per cent higher than in February 2025. Silver prices have seen an even stronger rally, more than doubling since the start of last year to just over $90 per ounce by the end of February, after peaking at US$122 per ounce in January.

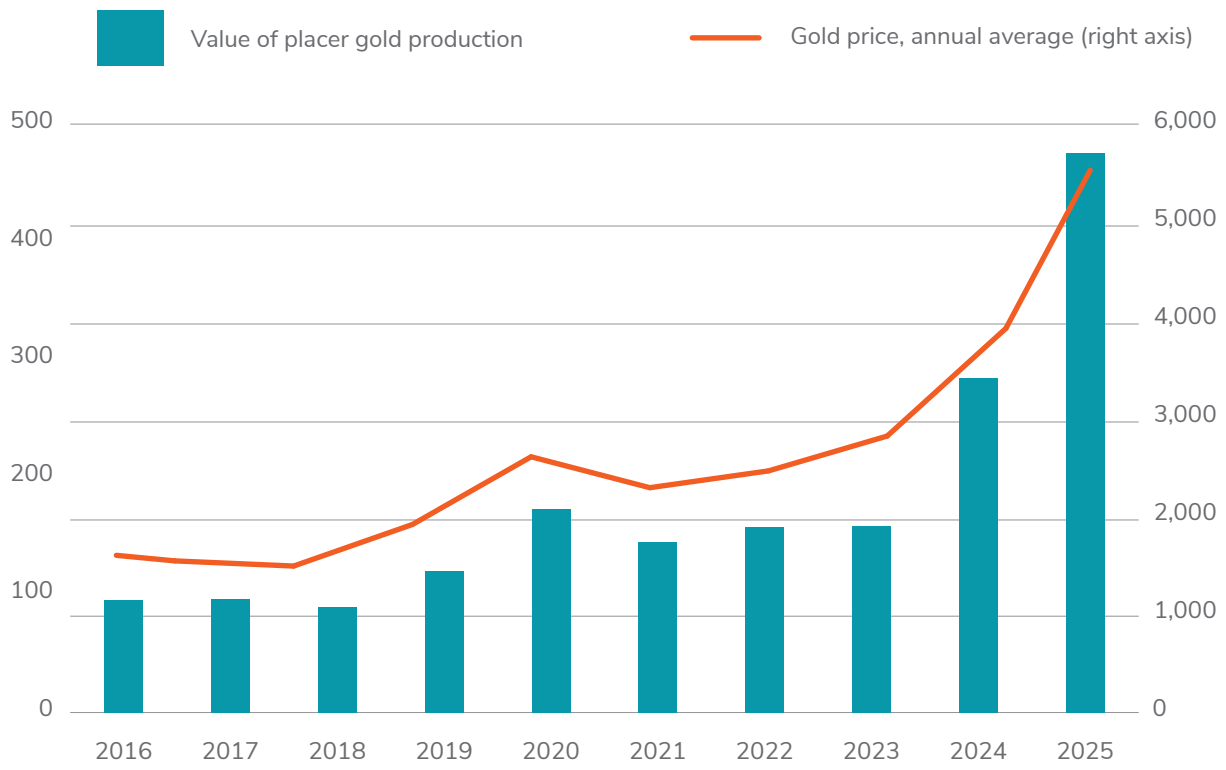
Placer gold producers took advantage of high prices with production of just over 111,500 crude ounces (89,200 fine ounces) in 2025, up 13 per cent from 2024, as operators expanded output amid record gold prices. Stronger prices drove placer gold production value up 67 per cent to a record $475 million in 2025.[12]

11. In the Yukon, quartz mining (often called hardrock mining) refers to the exploration and extraction of minerals locked within bedrock veins, as opposed to loose, surface-level placer deposits.

12. Placer gold production is generally reported on a fiscal year basis, April 1 to March 31.

Chart 10. High prices drove consecutive records for placer production value

Value of placer gold production (C$ millions), gold price, annual average (C$/oz.)



Source: Department of Energy, Mines and Resources

Strong gold prices are also helping to drive interest in the Eagle Gold Mine, shuttered since a catastrophic heap leach failure in June 2024. PricewaterhouseCoopers Inc. was appointed the Receiver for Victoria Gold Corp. in August and is overseeing site reclamation and the ongoing sale process.[13] While several parties have shown interest, the mine is excluded from the current forecast. A restart would offer significant upside, as production had been expected to continue well into the next decade.

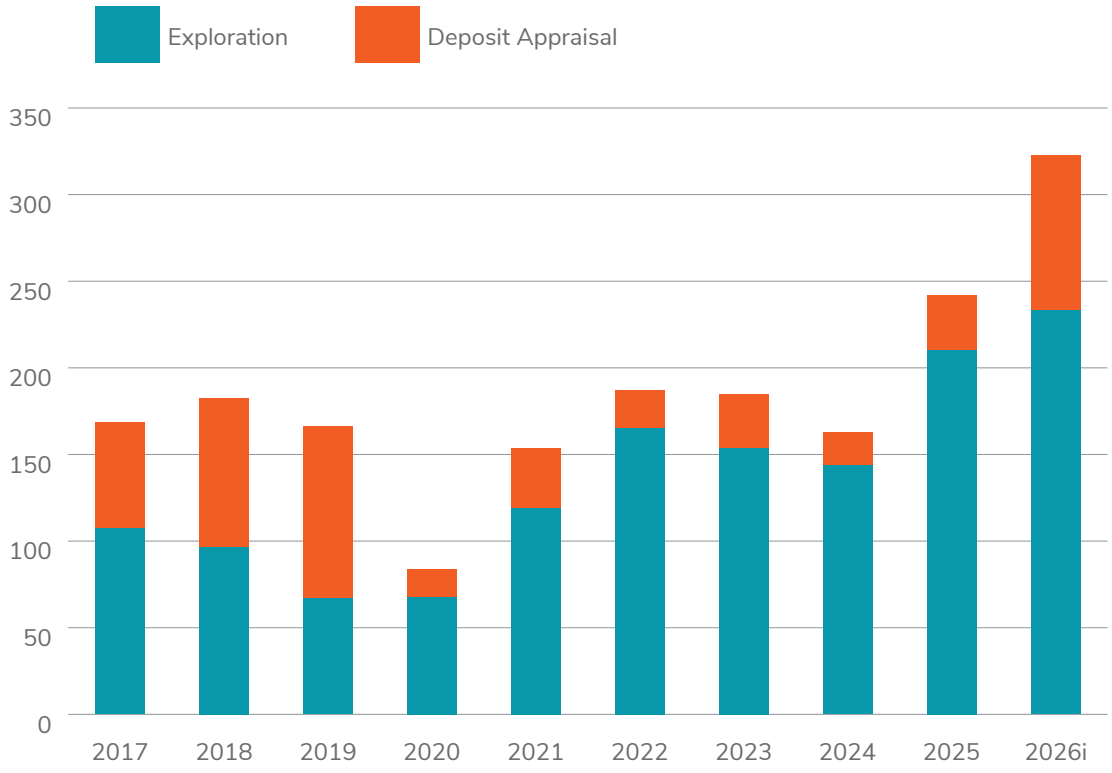
13. Following requests from qualified bidders for additional time, the original timeline for the Eagle Gold Mine sale was revised, with the closing date extended beyond December 31, 2025. Some Phase 2 milestone dates have yet to be finalized. The Seventh Report of the Receiver, released on November 20, 2025, notes that further timeline updates will be posted on the receiver's website.

Higher silver prices are good news for the Keno Hill Mine, where silver is the main product. Strong prices supported profitability and helped production rise almost 9 per cent to over 3 million ounces, and the mine operator, Hecla Mining Company, is expecting a modest increase in production in 2026.[14] The outlook for the Keno Hill mine is positive, as a desire to invest in "growth initiatives at our core silver assets," including the ramp-up of Keno Hill, was cited as a reason for Hecla Mining's recent sale of a producing mine in Quebec.[15]

Higher metal prices have also supported increased exploration activity. Mineral exploration spending is estimated to have risen to over $240 million in 2025, its highest level since 2011. Estimates of spending intentions reported by Natural Resources Canada (NRCAN) suggest that 2026 exploration activity will be even stronger, with total expenditures on exploration and deposit appraisal at over $320 million.[16]

Chart 11. Exploration spending is estimated at its highest level in over a decade

Expenditures ($ millions)



Source: Natural Resources Canada i = spending intentions

14. News release – Hecla Announces Full Year Production and 2026 Guidance. Hecla Mining Company. (January 26, 2026)

15. News release – Hecla Mining Company Announces Sale of Casa Berardi for up to $593 million. Hecla Mining Company. (January 26, 2026)

16. Latest figures are current as of February 2026 and are reported by NRCAN. These figures are from the federal-provincial/territorial Survey of Mineral Exploration, Deposit Appraisal and Mine Complex Development Expenditures.

Potential positive news for the near-term outlook for mining came with the March announcement that Fuerte Metals had awarded the contract for construction of the Northern Access Route, which will connect its Coffee Gold project to Dawson and the Yukon highway network. This project is noted as the first stage of early infrastructure development in support of making a final construction decision, which the proponent anticipates coming in early 2027 following the release of an updated feasibility study and receipt of final permits for the mine.[17]

Tourism sector looking to build on positive performance in 2025

By October, border crossings in 2025 had already surpassed the annual record of 505,027 set in 2019, and total crossings reached 514,070, up 6.8 per cent from 2024. U.S. visitation, the largest contributor, rose 11.9 per cent to nearly 391,000, though many of these visitors represent day trippers from cruise ships visiting Alaska. International visitors also grew in 2025, up by more than 11 per cent. Canadian residents returning from the U.S. were down in 2025, falling 18 per cent to the lowest level outside pandemic years since 2009.

Chart 12. Border crossings and air arrivals reached new heights in 2025

International land border crossings (thousands), air arrivals at Erik Nielsen Whitehorse International Airport (thousands)



Source: Department of Economic Development, Tourism and Culture; Statistics Canada

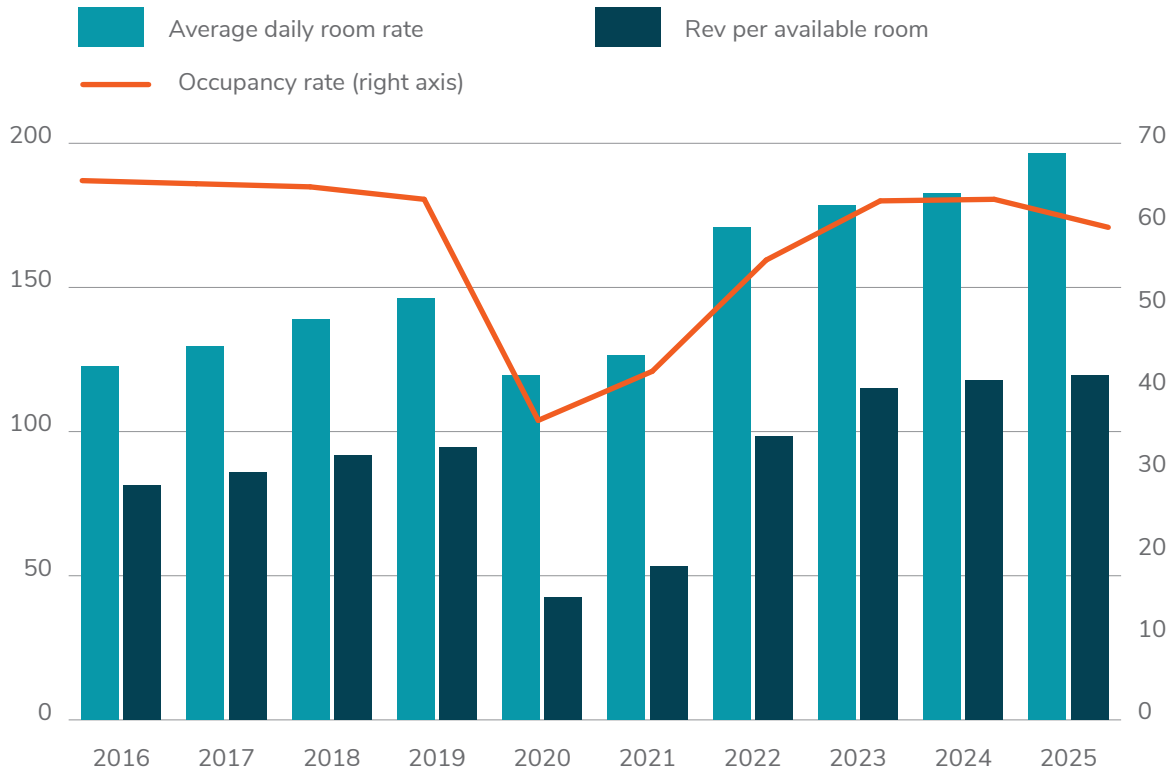
17. News release – Fuerte Metals Awards Contract for the Coffee Gold Project's Northern Access Route Construction. Fuerte Metals. (March 4, 2026).

Air arrivals at Erik Nielsen Whitehorse International Airport also reached record levels in 2025. Total arrivals of 244,300 exceeded the previous year's high, representing growth of 8.2 per cent, and was well above 2019's pre-pandemic level of just over 206,000.

Data suggests 2025 was a positive year for hotel operators. The average hotel daily room rate rose in all but one month, and on average grew 7.4 per cent to $196. Revenue per available room, which measures how effectively hotels fill rooms at a given price, also grew to almost $120.

Chart 13. Key metrics point to a healthy recovery in the hotel industry

Average daily room rate ($), revenue per available room ($), occupancy rate (per cent)



Source: Department of Tourism and Culture, CBRE Hotels

Hotel occupancy fell in 2025, in part reflecting the addition of supply with the August opening of a new hotel in downtown Whitehorse. Occupancy rates for short-term rentals were also down in 2025, driven in part by an increase in supply as the number of available listings were up 7.3 per cent.

An uncertain near-term outlook for the U.S. economy, continued concerns about the cost of living and heightened Canada–U.S. tensions are factors that could temper U.S. visitor numbers, but overall growth is still anticipated over the medium term. Growth in overseas visitation is expected to continue over the next five years as international tourists substitute the U.S. for Canada. Signal49 Research, formally the Conference Board of Canada, projects steady growth for Yukon tourism, with overnight visitation and associated spending expected to rise in every year to the end of the decade.

Appendix: Key economic indicators

	2024	2025	2026f	2027f	2028f	2029f
Real GDP (2017 $ millions)	3,300	3,321 (e)	3,361	3,449	3,492	3,515
Per cent change	-2.5	0.6	1.2	2.6	1.3	0.7
Nominal GDP ($ millions)	4,349	4,526 (e)	4,723	4,931	5,085	5,214
Per cent change	4.0	4.1	4.4	4.4	3.1	2.5
Metal production ($ millions)	640	610	710	760	790	820
Labour market						
Labour force	27,700	28,300	28,600	28,800	29,100	29,300
Employment	26,500	27,100	27,300	27,600	27,600	27,800
Unemployment rate (per cent)	4.3	4.2	4.5	4.4	5.0	5.4
Participation rate (per cent)	76.3	76.1	75.9	75.3	74.5	73.9
Household income ($ millions)	2,926	3,167	3,331	3,511	3,623	3,719
Per cent change	6.4	8.2	5.2	5.4	3.2	2.7
Consumers						
Consumer price inflation (per cent)^	2.0	3.2	3.0	2.0	2.0	2.0
Retail sales ($ millions)*	1,178	1,191	1,220	1,270	1,310	1,340
Population						
Population*	46,967	47,505	48,200	49,000	49,800	50,500
Per cent change	3.6	1.1	1.4	1.8	1.6	1.5
Key assumptions						
Gold (USD/t oz)	2,387	3,431	4,265	4,025	4,000	4,000
Silver (USD/t oz)	28.25	39.53	53.00	50.00	50.00	50.00
Copper (USD/lb.)	4.15	4.49	5.00	4.90	4.90	4.90
Zinc (USD/lb.)	1.26	1.30	1.35	1.35	1.35	1.35
Lead (USD/lb.)	0.94	0.89	0.90	0.95	0.95	0.95
CAD/USD exchange rate	0.73	0.72	0.74	0.76	0.76	0.76

e = estimate

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 (YBS)

Population projections are produced by YBS.

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 27, 2026.

TAB 11

Yukon Bureau of Statistics

Consumer Price Index 2025

Highlights:

- The *all-items* Consumer Price Index (CPI) for Whitehorse increased 3.2% on an annual average basis in 2025 following a 2.0% increase in 2024; Canada's CPI increased 2.1% in 2025 following a 2.4% increase in 2024.
- In 2025, prices in Whitehorse decreased for three major CPI components including *Gasoline*; *Travel tours*; and *Purchase and operation of recreational vehicles*. Prices in Canada decreased for *Gasoline*; *Natural gas*; and *Homeowners' replacement cost*.

Notes: 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.

Differences and percent changes are derived from rounded numbers.

Changes in the Consumer Price Index, Yukon

The *all-items* Consumer Price Index (CPI) for Whitehorse increased by 3.2% in 2025; nationally, the *all-items* CPI increased by 2.1% in 2025.

The 2025 annual CPI growth for Whitehorse (3.2%) was 1.2 percentage points higher than in 2024 (2.0%). Canada's annual CPI growth in 2025 (2.1%) was 0.3 percentage points lower than in 2024 (2.4%).

During the past ten years (2016 to 2025), the *all-items* CPI increased every year in Whitehorse, as well as in Canada.

Comparing 2025 to 2016, the *all-items* CPI in Whitehorse increased by 30.5%, equivalent to a compound annual growth rate of 3.0% per year.

From 2016 to 2019, the *all-items* CPI growth for Whitehorse fluctuated between a high of 2.4% in 2018 and a low of 1.0% in 2016.

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.

The *all-items* CPI growth in Whitehorse began to slow in 2023, reaching 4.9%. In 2024, the growth rate declined further to 2.0%, matching the growth rate observed in 2019, the year prior to the pandemic, before rising to 3.2% in 2025.

Source: Statistics Canada. Table 18-10-0005-01.

	Whitehorse, Yukon	Canada
2025	3.2%	2.1%
2024	2.0%	2.4%
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%

Annual index and change in all-items CPI, Whitehorse, 2016 to 2025



Related links

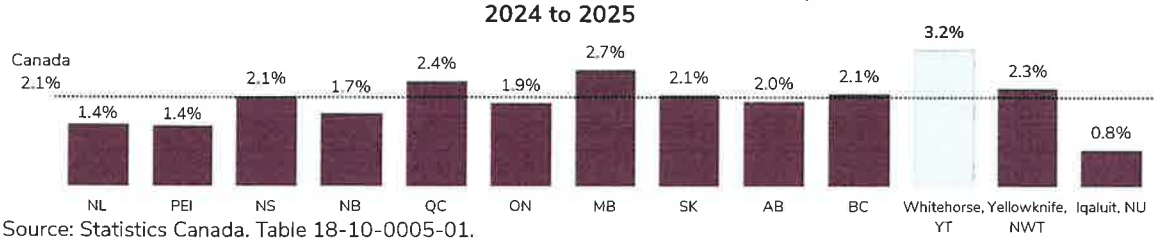
- Statistics Canada's The Canadian Consumer Price Index Reference Paper
- Yukon Monthly Statistical Review - including the Community Spatial Price Index
- Monthly Yukon Fuel Price Survey
- Statistics Canada's Consumer Price Index: Annual Review 2025

Change in the Consumer Price Index, provinces and territorial capitals, 2025

Comparing 2025 to 2024, the all-items CPI increased in all provinces and territorial capitals[1]. During this period, Whitehorse[2] had the highest growth (3.2%), followed by Manitoba (2.7%) and Quebec (2.4%).

Whitehorse's annual change in the all-items CPI in 2025 (3.2%) was 1.1 percentage point higher than that for Canada (2.1%).

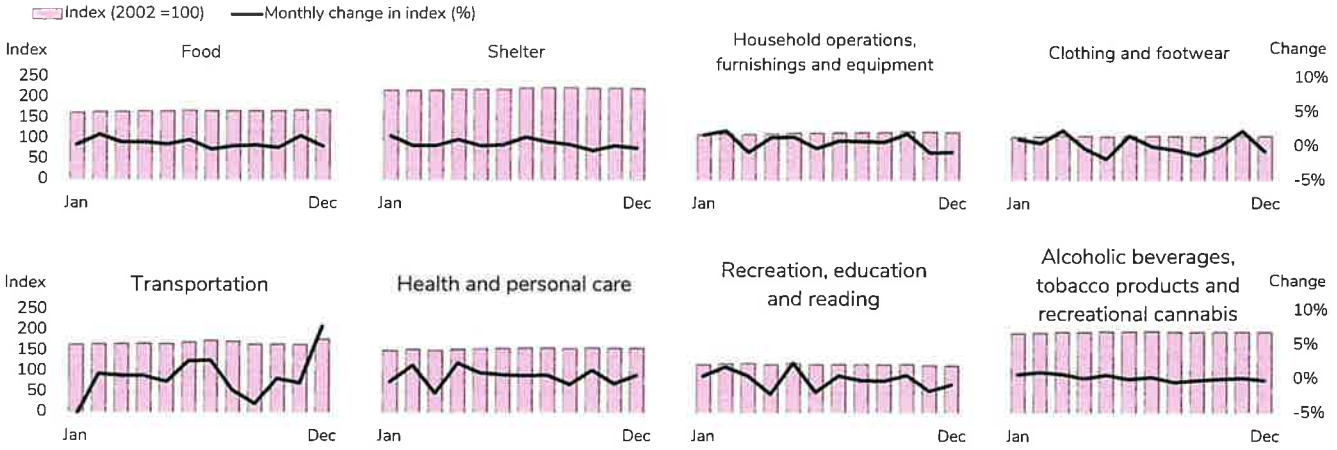
Change in CPI, Canada, provinces and territorial capitals[1], 2024 to 2025



Source: Statistics Canada. Table 18-10-0005-01.

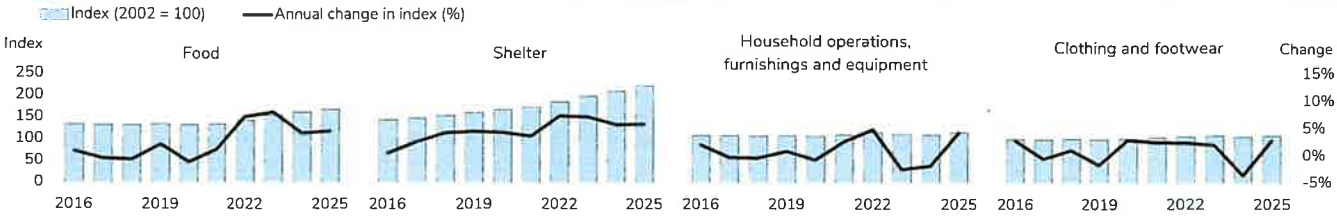
[1] Price changes outside the capital cities of Yukon, the Northwest Territories and Nunavut are excluded from the scope of the CPI.
[2] Data for Yukon are not available.

Monthly changes in major CPI components, Whitehorse, 2025



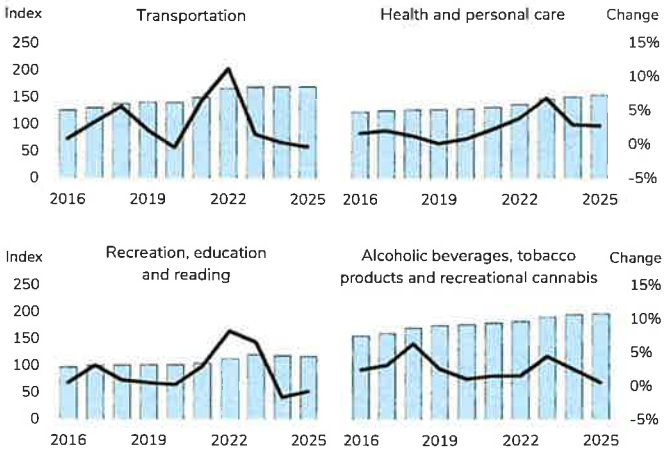
Source: Statistics Canada. Table 18-10-0004-01.

Annual changes in major CPI components, Whitehorse, 2016 to 2025



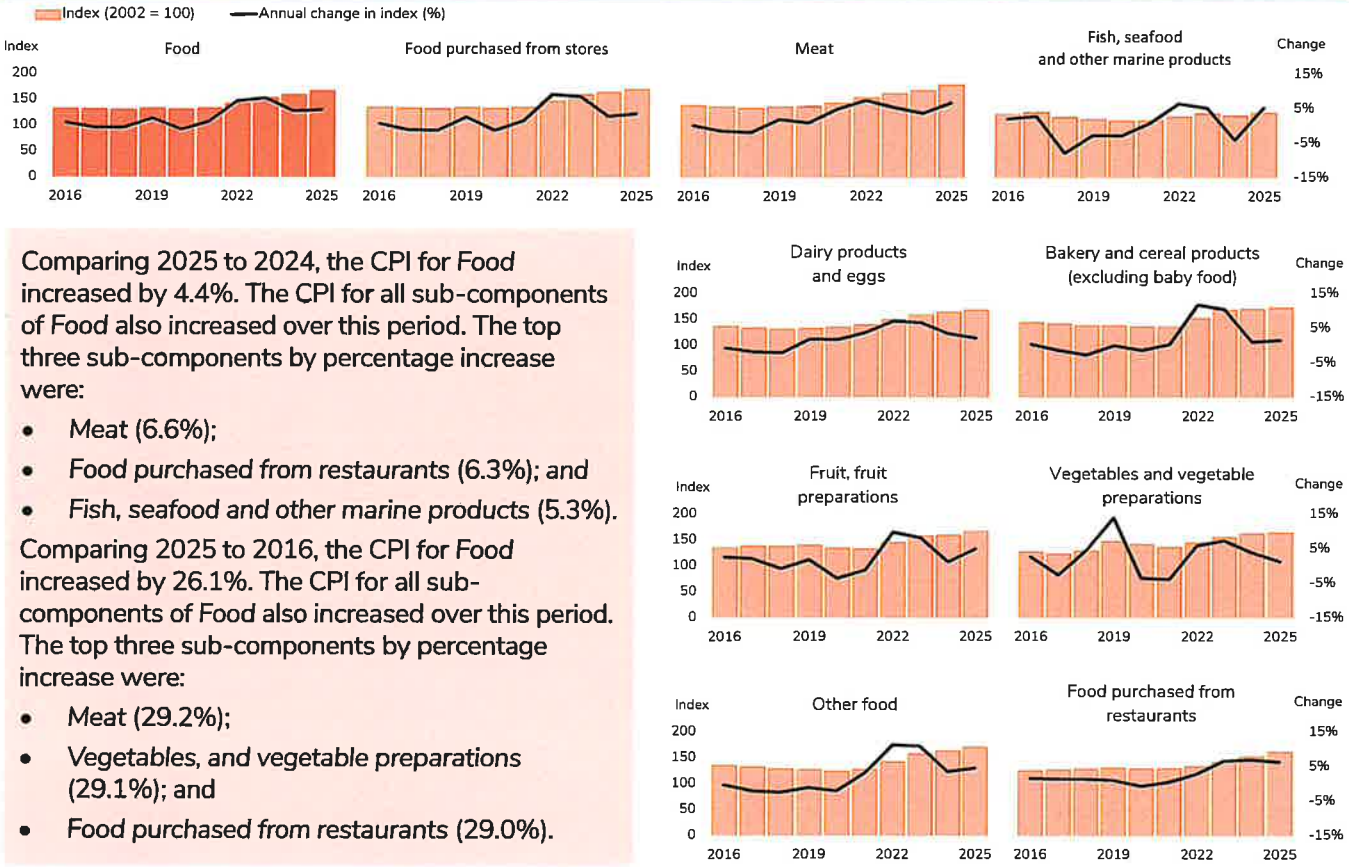
Changes in major CPI components, Whitehorse, 2016 to 2025; 2024 to 2025

	2016 to 2025	2024 to 2025
All-items	**30.5%**	**3.2%**
Food	26.1%	4.4%
Shelter	54.0%	5.7%
Household operations, furnishings and equipment	6.2%	4.2%
Clothing and footwear	7.6%	2.8%
Transportation	33.7%	-0.3%
Health and personal care	26.1%	2.8%
Recreation, education and reading	21.3%	-0.8%
Alcoholic beverages, tobacco products and recreational cannabis	26.4%	0.5%



Source: Statistics Canada. Table 18-10-0005-01.

CPI for Food and sub-components, Whitehorse, 2016 to 2025



Comparing 2025 to 2024, the CPI for *Food* increased by 4.4%. The CPI for all sub-components of Food also increased over this period. The top three sub-components by percentage increase were:

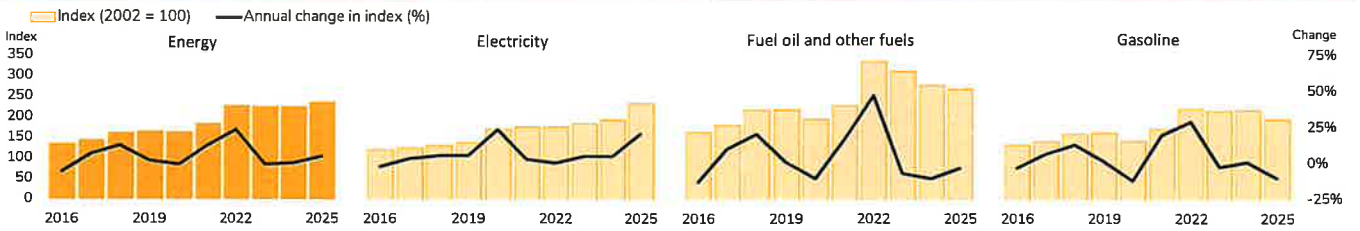
- *Meat* (6.6%);
- *Food purchased from restaurants* (6.3%); and
- *Fish, seafood and other marine products* (5.3%).

Comparing 2025 to 2016, the CPI for *Food* increased by 26.1%. The CPI for all sub-components of Food also increased over this period. The top three sub-components by percentage increase were:

- *Meat* (29.2%);
- *Vegetables, and vegetable preparations* (29.1%); and
- *Food purchased from restaurants* (29.0%).

Source: Statistics Canada. Table 18-10-0005-01.

CPI for Energy and sub-components, Whitehorse, 2016 to 2025



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).

Comparing 2025 to 2024, the CPI for *Energy* increased by 4.6%. Of the sub-components within this special aggregate:

- *Electricity* increased by 20.5%;
- *Fuel oil and other fuels* decreased by 3.4%; and
- *Gasoline* decreased by 10.2%.

Comparing 2025 to 2016, the CPI for *Energy* increased by 73.9%. Of the sub-components within this special aggregate:

- *Electricity* increased by 92.2%;
- *Fuel oil and other fuels* increased by 65.0%; and
- *Gasoline* increased by 46.1%.

Source: Statistics Canada. Table 18-10-0005-01.

CPI aggregates, by month, Whitehorse, 2016 to 2025

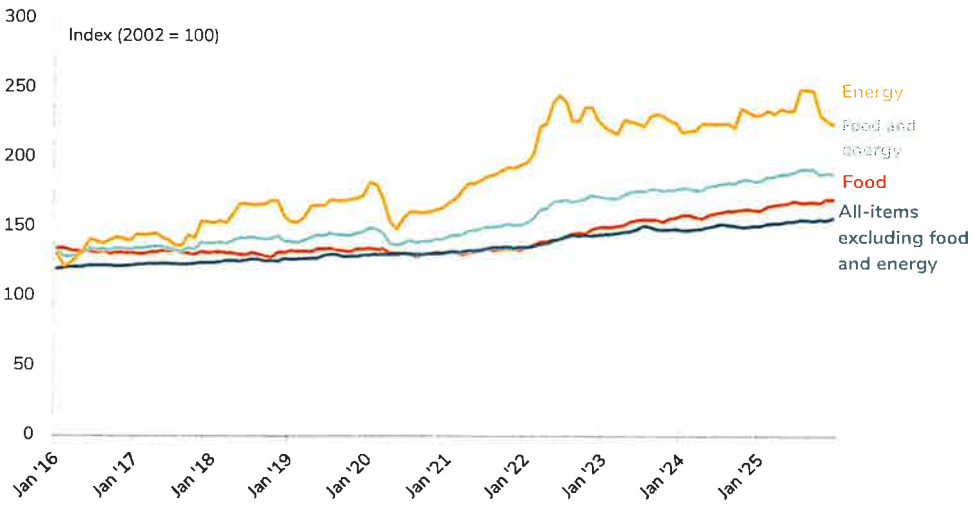
In general, *Food* prices and *Energy* prices are the two most volatile components of the CPI[1].

In the past ten years, the CPI for *Energy* was the lowest in February 2016 and the highest in August 2025. Comparing December 2025 to December 2021, *Energy* prices increased by 15.0%.

During the past ten years, the CPI for *Food* was relatively stable from 2016 until early 2021, with a slight drop in 2018. Beginning in 2021, *Food* prices began to increase at a faster rate, reaching a ten year high in November 2025.

The *All-items excluding food and energy* index was at its lowest level in the past ten years in January 2016 and reached its highest level in December 2025.

CPI aggregates for Whitehorse, January 2016 to December 2025



[1] Food and energy prices are generally considered among the most volatile components of the CPI. The special aggregate of Energy includes the sub-component of gasoline, which also contributes to the major component of Transportation within the all-items CPI.

Source: Statistics Canada. Table 18-10-0004-01.

Index weighting[1]

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 30.22 cents of every dollar of their household expenditures on *Shelter*, while spending 2.55 cents on *Clothing and footwear*.

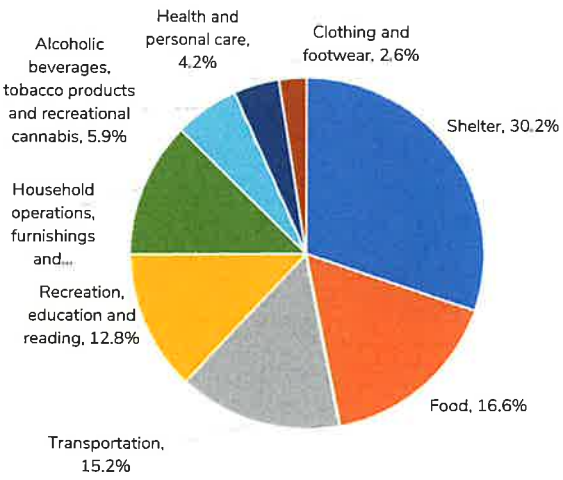
The index is reweighted periodically to reflect changes in consumer behaviour. For example, comparing the 2024 basket weights to 2021, the weight attributed to *Shelter* increased by 3.25 percentage points (from 26.97% to 30.22%) to reflect an increase in the proportion of household expenditure that Whitehorse residents allocated to *Shelter*.

Major components	Whitehorse CPI weighting (2024 basket)	Change in index weight 2021 to 2024	Change in index weight 2023 to 2024
All-items	**100.0%**	...	...
Shelter	30.2%	3.25	2.22
Food	16.6%	-1.13	-2.63
Transportation	15.2%	3.05	1.91
Recreation, education and reading	12.8%	-3.35	-0.26
Household operations, furnishings and equipment	12.5%	0.63	0.54
Alcoholic beverages, tobacco products and recreational cannabis	5.9%	-1.49	-2.13
Health and personal care	4.2%	-0.03	0.86
Clothing and footwear	2.6%	-0.92	-0.50

Source: Statistics Canada. Table 18-10-0007-01

[1] Weight at basket reference prices.

Major components, Whitehorse CPI, 2025



Changes in all available CPI components, Whitehorse, 2021 to 2025

	2021 to 2020	2022 to 2021	2023 to 2022	2024 to 2023	2025 to 2024
Food	**1.1%**	**7.1%**	**7.9%**	**4.1%**	**4.4%**
Food purchased from stores	1.3%	9.0%	8.4%	2.7%	3.5%
Meat	4.7%	7.3%	5.2%	3.6%	6.6%
Fresh or frozen meat (excluding poultry)	2.3%	5.1%	6.2%	8.4%	10.9%
Fresh or frozen beef	5.0%	8.2%	7.0%	8.1%	11.7%
Fresh or frozen pork	1.6%	2.5%	5.5%	10.3%	12.8%
Fresh or frozen poultry	7.1%	9.6%	4.7%	1.0%	6.9%
Fresh or frozen chicken	9.6%	11.9%	3.4%	2.7%	7.3%
Processed meat	5.3%	7.1%	4.8%	2.2%	3.4%
Fish, seafood and other marine products	0.8%	6.5%	5.2%	-4.1%	5.3%
Fish	-0.2%	11.8%	7.9%	-7.0%	1.6%
Dairy products and eggs	3.6%	7.0%	6.5%	3.3%	2.0%
Dairy products	3.8%	6.8%	6.5%	3.0%	2.1%
Fresh milk	1.8%	7.4%	4.7%	1.2%	2.2%
Butter	4.1%	14.4%	10.2%	-2.6%	-0.9%
Cheese	6.9%	6.7%	5.5%	3.2%	1.8%
Eggs	2.1%	8.7%	6.5%	5.8%	1.5%
Bakery and cereal products (excluding baby food)	0.3%	11.7%	10.4%	1.0%	1.5%
Bakery products	0.9%	11.3%	11.0%	-0.1%	1.8%
Cereal products (excluding baby food)	0.1%	12.4%	9.5%	3.1%	1.1%
Fruit, fruit preparations and nuts	-1.3%	9.8%	8.2%	1.1%	4.9%
Fresh fruit	-3.8%	12.2%	6.1%	-0.8%	3.1%
Preserved fruit and fruit preparations	1.3%	4.4%	10.4%	9.1%	6.6%
Vegetables and vegetable preparations	-3.8%	6.0%	7.4%	4.0%	1.3%
Fresh vegetables	-4.3%	5.4%	7.0%	4.1%	0.2%
Preserved vegetables and vegetable preparations	-1.9%	8.6%	9.1%	3.0%	5.0%
Other food products and non-alcoholic beverages	2.9%	11.2%	10.9%	3.5%	4.4%
Sugar and confectionery	-1.6%	12.4%	9.9%	2.8%	6.2%
Edible fats and oils	12.9%	21.4%	13.5%	13.6%	-3.1%
Coffee and tea	-0.6%	15.1%	8.9%	5.2%	12.5%
Non-alcoholic beverages	5.4%	6.8%	8.3%	2.1%	2.7%
Food purchased from restaurants	0.5%	2.8%	6.6%	7.0%	6.3%
Shelter	**3.5%**	**7.2%**	**7.1%**	**5.7%**	**5.7%**
Water, fuel and electricity	7.5%	17.3%	0.7%	0.2%	11.3%
Electricity	2.6%	0.2%	5.0%	5.0%	20.5%
Water	0.4%	0.0%	2.5%	4.7%	4.0%
Fuel oil and other fuels	16.7%	47.0%	-7.0%	-10.5%	-3.4%
Household operations, furnishings and equipment	**2.5%**	**4.8%**	**-2.5%**	**-1.9%**	**4.2%**
Household operations	0.3%	2.4%	-4.2%	-3.1%	4.8%
Communications	-4.3%	-3.9%	-10.5%	-8.6%	3.0%
Telephone services	-15.3%	-5.0%	-11.1%	-12.7%	0.8%
Internet access services (2002-12=100)	9.7%	-4.0%	-8.3%	-1.3%	0.1%
Child care and housekeeping services	3.9%	3.1%	-52.2%	-4.2%	8.6%
Household cleaning products	0.7%	3.5%	7.0%	0.9%	1.4%
Paper, plastic and aluminum foil supplies	2.5%	8.2%	8.7%	0.7%	3.1%
Other household goods and services	3.2%	6.8%	7.8%	1.6%	5.9%
Financial services (2002-12=100)	1.1%	7.3%	5.6%	-0.2%	5.5%
Household furnishings and equipment	7.2%	8.2%	0.1%	0.0%	2.7%
Furniture and household textiles	9.9%	12.8%	-2.6%	-1.5%	4.0%
Furniture	11.1%	13.7%	-4.0%	-2.3%	6.5%
Household textiles	1.8%	5.8%	9.5%	4.9%	-8.4%
Household equipment	5.9%	5.8%	1.4%	0.2%	1.8%
Household appliances	7.4%	10.5%	1.5%	-4.5%	3.9%
Non-electric kitchen utensils, tableware and cookware	6.7%	20.2%	-3.3%	-15.3%	-2.8%

Changes in all available CPI components, Whitehorse, 2021 to 2025 (continued)

	2021 to 2020	2022 to 2021	2023 to 2022	2024 to 2023	2025 to 2024
Clothing and footwear	**2.5%**	**2.4%**	**2.0%**	**-3.7%**	**2.8%**
Clothing	0.8%	3.4%	1.3%	-6.6%	1.8%
Women's clothing	0.9%	6.9%	1.3%	-7.8%	1.0%
Men's clothing	1.9%	-0.2%	3.2%	-6.4%	2.8%
Children's clothing	-1.1%	0.8%	-2.3%	-4.9%	0.2%
Footwear	5.1%	3.1%	0.2%	-2.6%	0.8%
Clothing accessories, watches and jewellery	9.8%	0.2%	3.6%	0.7%	7.1%
Clothing material, notions and services	1.5%	3.6%	5.1%	1.6%	1.8%
Transportation	**6.5%**	**11.3%**	**1.6%**	**0.4%**	**-0.3%**
Private transportation	7.2%	11.0%	2.1%	0.9%	2.1%
Purchase, leasing and rental of passenger vehicles	6.6%	8.3%	3.7%	0.4%	3.4%
Purchase and leasing of passenger vehicles	5.9%	8.1%	4.1%	0.0%	2.9%
Purchase of passenger vehicles	6.0%	8.1%	4.0%	0.1%	2.9%
Operation of passenger vehicles	7.7%	13.6%	0.6%	1.4%	0.1%
Gasoline	19.7%	29.0%	-2.4%	0.7%	-10.2%
Passenger vehicle parts, maintenance and repairs	2.2%	3.8%	5.0%	2.7%	5.6%
Other passenger vehicle operating expenses	0.4%	0.4%	1.6%	-0.2%	0.6%
Passenger vehicle insurance premiums	0.4%	0.4%	1.8%	-0.3%	0.1%
Passenger vehicle registration fees	0.0%	0.0%	0.0%	0.0%	0.0%
Public transportation	4.0%	13.5%	-4.4%	-2.5%	-6.2%
Local and commuter transportation	0.0%	3.7%	3.6%	1.7%	12.1%
City bus and subway transportation	0.0%	0.0%	0.0%	0.0%	13.6%
Taxi and other local and commuter transportation services	0.0%	8.0%	7.3%	2.8%	15.2%
Inter-city transportation	4.4%	14.3%	-5.3%	-2.7%	-7.0%
Health and personal care	**2.3%**	**3.9%**	**6.9%**	**3.0%**	**2.8%**
Health care	1.5%	2.3%	4.3%	3.5%	3.3%
Health care goods	0.7%	0.2%	3.9%	2.2%	1.5%
Medicinal and pharmaceutical products	1.3%	3.5%	4.3%	2.0%	1.1%
Prescribed medicines (excluding medicinal cannabis)	0.1%	1.4%	2.1%	1.1%	0.6%
Non-prescribed medicines	2.2%	6.2%	6.4%	3.1%	1.8%
Health care services	2.9%	4.3%	4.9%	4.7%	5.4%
Personal care	3.5%	5.7%	9.6%	2.7%	2.4%
Personal care supplies and equipment	-0.3%	6.6%	10.3%	4.8%	3.6%
Personal care services	7.7%	2.9%	6.2%	-2.5%	-0.6%
Recreation, education and reading	**2.9%**	**8.2%**	**6.5%**	**-1.7%**	**-0.8%**
Recreation	2.9%	9.0%	6.7%	-2.0%	-1.0%
Recreational equipment and services (excluding recreational vehicles)	-1.7%	3.3%	2.6%	0.5%	0.0%
Purchase and operation of recreational vehicles	5.7%	11.3%	3.0%	0.2%	0.5%
Home entertainment equipment, parts and services	-6.4%	5.1%	8.7%	-5.1%	7.1%
Travel services	2.2%	12.9%	13.0%	-1.3%	-6.7%
Traveller accommodation	1.9%	14.3%	14.3%	-1.6%	1.0%
Other cultural and recreational services	5.3%	3.1%	-2.8%	0.4%	5.7%
Education and reading	3.4%	1.7%	4.6%	1.3%	1.9%
Reading material (excluding textbooks)	8.6%	-0.8%	7.8%	-0.5%	1.6%
Alcoholic beverages, tobacco products and recreational cannabis	**1.6%**	**1.6%**	**4.5%**	**2.5%**	**0.5%**
Alcoholic beverages	-0.8%	3.9%	5.9%	1.4%	3.7%
Alcoholic beverages served in licensed establishments	-1.7%	6.9%	8.2%	0.7%	2.6%
Alcoholic beverages purchased from stores	-0.1%	2.8%	4.6%	2.0%	4.5%
Beer purchased from stores	0.1%	2.6%	4.2%	3.1%	6.3%
Wine purchased from stores	-1.1%	3.0%	8.7%	-0.2%	6.9%
Liquor purchased from stores	0.4%	2.8%	2.1%	2.6%	1.7%
Tobacco products and smokers' supplies	5.6%	3.0%	7.4%	8.7%	2.2%
Cigarettes	5.6%	3.0%	7.4%	8.7%	2.2%
Recreational cannabis (2018-12=100)	-0.2%	-11.5%	-9.9%	-9.4%	-19.4%

Note: The time base is the period for which the CPI equals 100. In this table, the time base is the year 2002, unless otherwise stated. For instance, Recreational cannabis (2018-12=100) has a time base of December 2018.

Source: Statistics Canada. Table 18-10-0005-01.

Community Spatial Price Index (Whitehorse = 100), 2025

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 2025, if the selected items in this table totalled $100.00 in Whitehorse, the same items would cost $120.4 in Carmacks, $121.3 in Dawson City, $109.5 in Faro, $121.3 in Haines Junction, $118.8 in Mayo, $187.9 in Old Crow, $116.6 in Ross River, $118.8 in Teslin and $116.2 in Watson Lake.

		All items	Meat	Dairy/ eggs	Fruit/ vegetables	Bread/ cereal	Other foods	Household operations	Health & personal care	Gasoline/ Diesel	Cigarettes	Home heating fuel
Carmacks	January	111.3	104.8	103.5	116.7	115.9	112.5	115.4	126.3	108.6	103.9	98.4
	July	120.4	113.9	117.1	135.0	120.2	130.3	122.0	116.4	117.6	105.2	103.9
Dawson City	January	117.6	104.7	118.8	112.5	127.0	126.7	130.6	128.8	110.1	108.1	99.7
	July	121.3	112.5	122.7	118.0	141.2	131.6	128.5	125.5	115.1	107.0	103.5
Faro	January	109.8	118.6	113.8	109.6	104.4	110.1	118.3	103.3	105.9	106.9	97.8
	July	109.5	110.3	118.6	109.8	106.8	112.1	120.1	101.0	105.8	105.2	103.3
Haines Junction	January	120.4	111.2	140.5	100.1	143.9	127.1	115.1	132.5	107.1	..	98.4
	July	121.3	119.0	137.4	96.0	142.4	128.8	129.7	137.9	105.4	..	103.9
Mayo	January	114.3	101.0	111.3	125.9	115.9	117.1	120.0	126.2	104.0	103.8	98.3
	July	118.8	107.9	114.0	126.4	124.0	124.8	123.5	143.6	105.9	102.8	100.8
Old Crow	January	180.6	154.8	172.9	190.4	175.9	209.6	255.6	150.4	..	126.2	..
	July	187.9	157.4	173.8	223.3	185.1	210.4	259.5	152.7	..	118.0	..
Ross River	January	119.1	112.1	117.5	127.5	127.9	132.2	111.6	109.0	108.6	111.1	98.8
	July	116.6	101.1	114.7	125.0	120.7	128.3	120.7	102.7	116.5	116.0	100.6
Teslin	January	119.1	113.4	117.0	116.2	124.3	127.3	140.5	124.8	104.9	107.6	98.4
	July	118.8	118.2	118.9	123.9	118.3	127.6	135.2	122.5	104.3	104.4	103.9
Watson Lake	January	112.4	104.1	111.6	113.1	115.7	120.6	117.7	112.3	101.2	108.6	98.5
	July	116.2	110.0	111.6	124.2	119.7	127.8	123.3	119.3	108.1	97.9	104.1

.. = data not available

Source: Yukon Bureau of Statistics.

Endnote:

The relatively small size of the housing market in Whitehorse, Yukon, and Yellowknife, Northwest Territories, makes it difficult to construct reliable price indexes for new houses. To compensate, the price movements of rental accommodation are used to approximate the price movements of new houses. The rent information itself is collected using different pricing frequencies and collection methods than in the rest of the country. Because of these problems, the indexes for rented accommodation, and owned accommodation are not published for these two cities. Further, the all-items indexes published for these two cities are not strictly comparable with the same indexes for the provinces or the other 16 cities.

January 2026

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TAB 12

Yukon

Français

Access the Yukon's key indicators

Regular updates from the Yukon Bureau of Statistics

Latest monthly and quarterly indicators

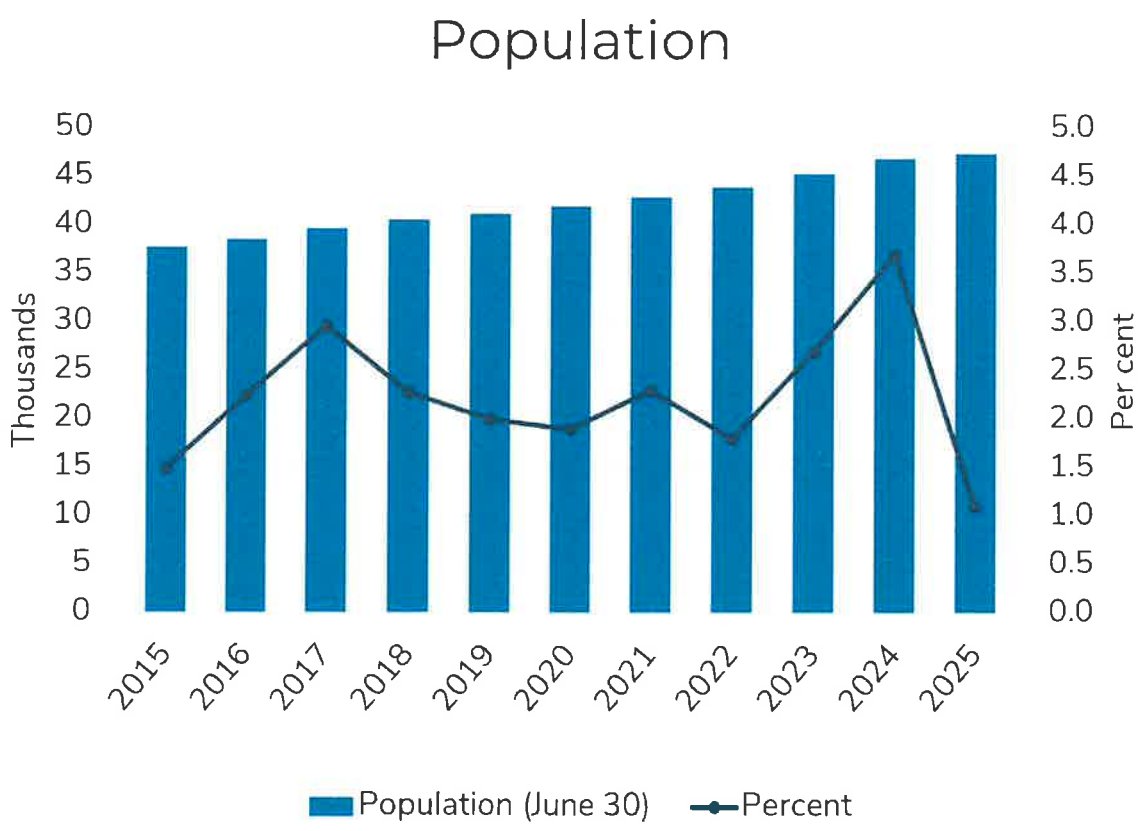
Population (December 2025)	48,135
GDP by industry growth (2024 to 2025[P])	up 0.6 per cent

Unemployment rate (April 2026)	5.3 per cent
Real estate transactions (Q1, 2026)	$73.2 million
Change in CPI (April '25 to April '26)	up 4.2 per cent
Retail sales (March 2025 to March 2026[P])	up 6.5 per cent

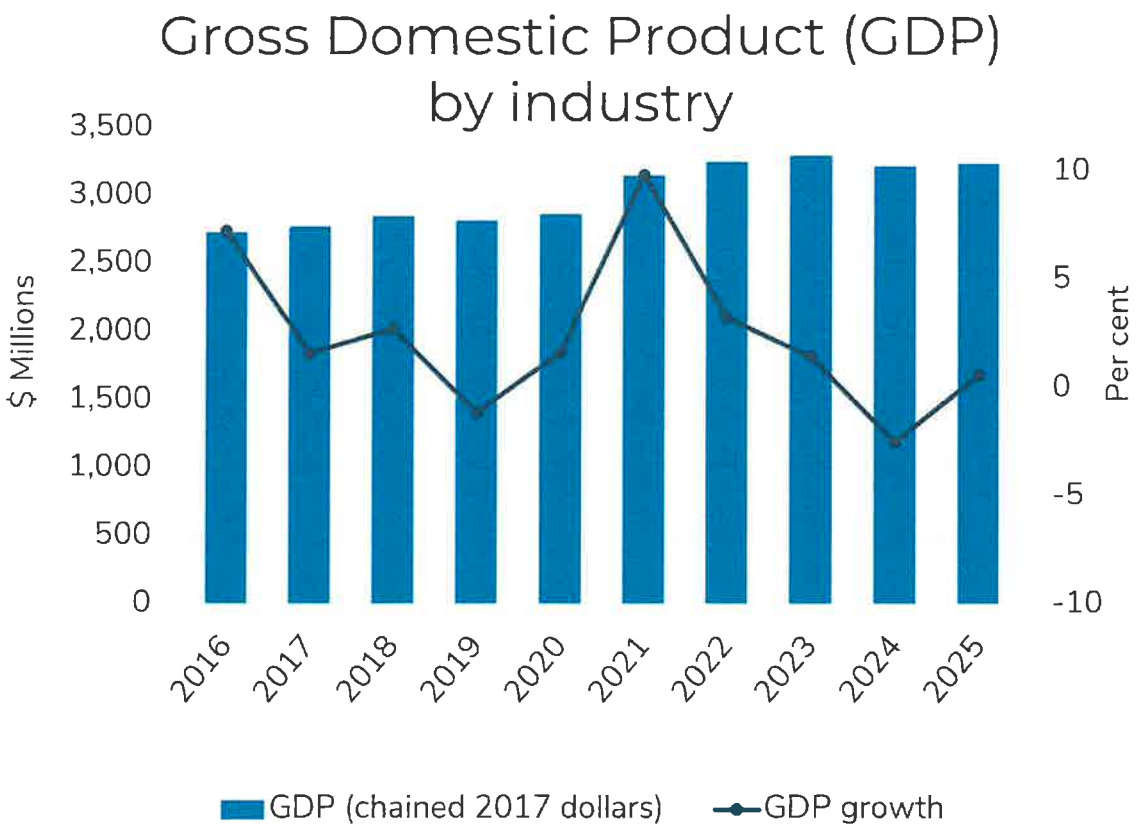
[r] = Revised

[P] = Preliminary

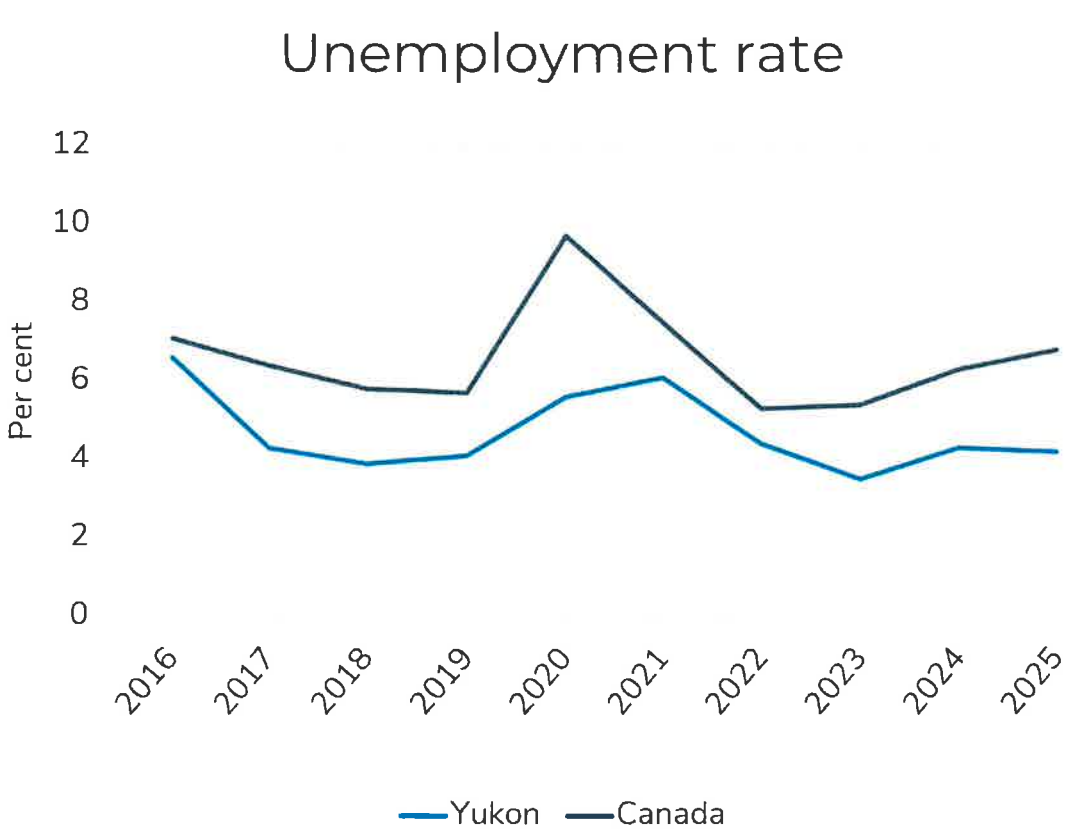
Latest annual and quarterly indicators



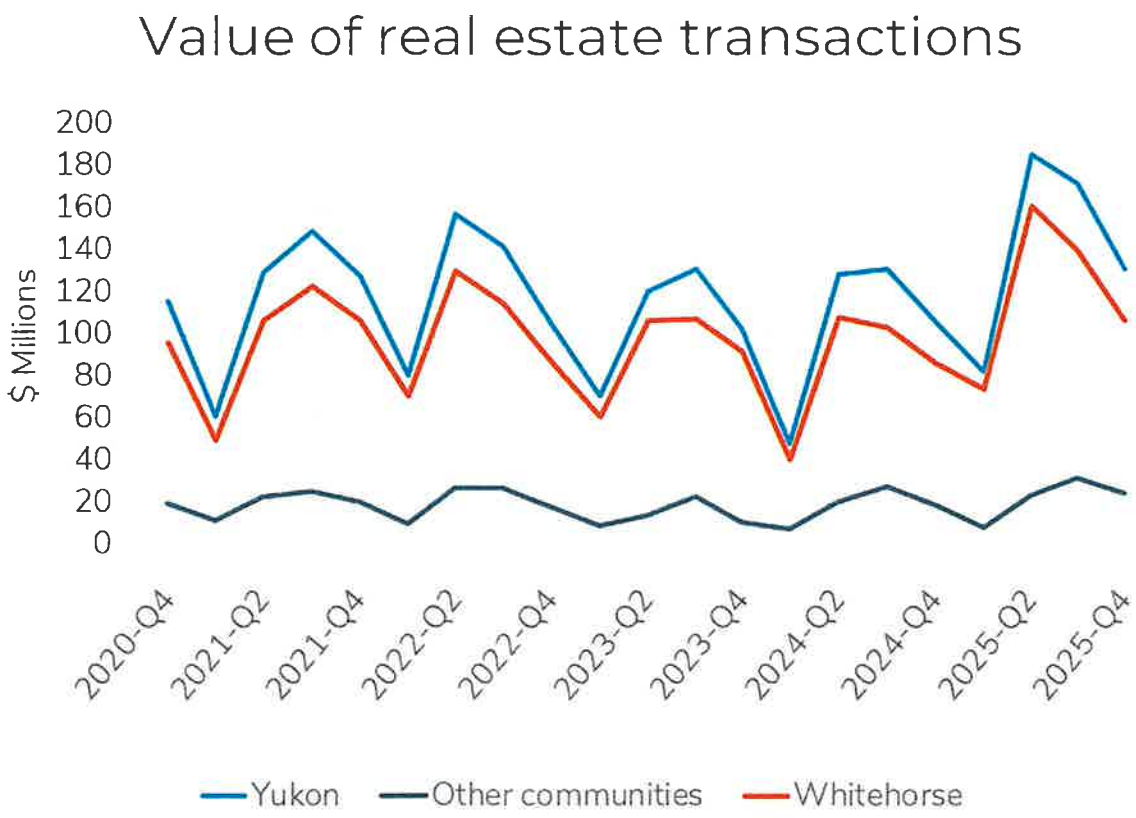
Population (June 2025) 47,505.



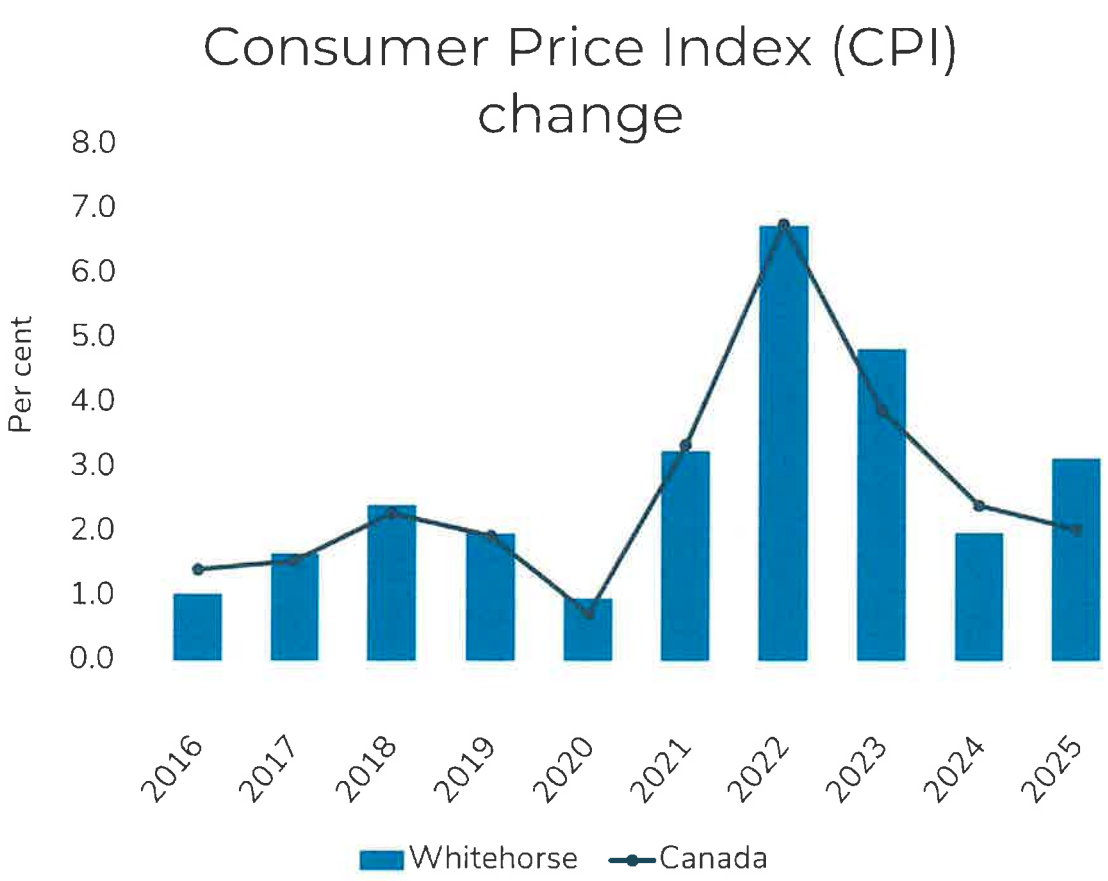
GDP by industry growth rate, 2024 to 2025 (preliminary estimate) up 0.6%.



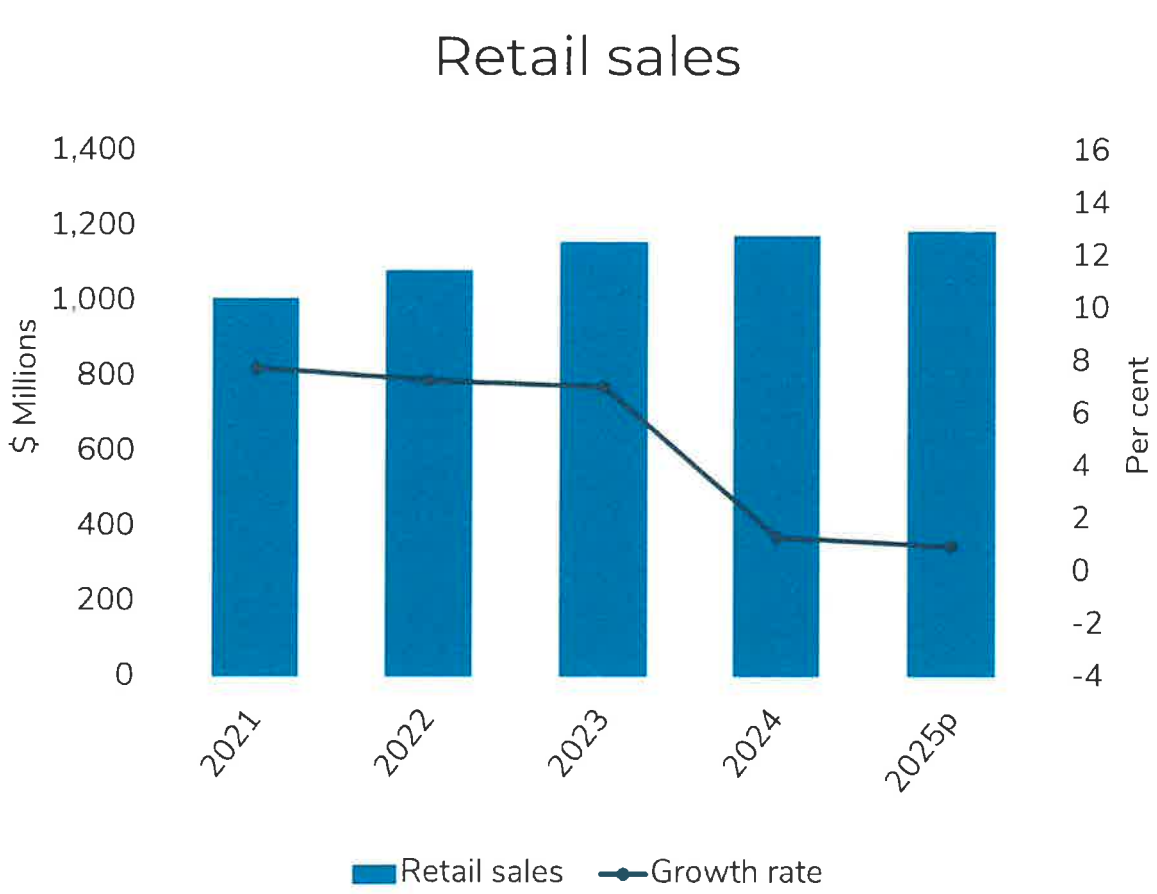
Unemployment rate (2025) 4.2 per cent.



Real estate transactions Q4 (2025) $131.8 million, of which $107.1 million were in Whitehorse and $24.6 million were in other communities.



Change in CPI in Whitehorse (2025) up 3.2 per cent.



Retail sales (2025, preliminary) up 1.1 per cent.

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 Yukon Fact Sheet (December 2025) and the latest Monthly Statistical Review.

Follow the campaign on

Give us your feedback

Was this page helpful?

The Government of Yukon acknowledges that Indigenous Peoples have traditional territories throughout the Yukon and celebrates their role as stewards of the lands and waters and their ongoing connection to this place.

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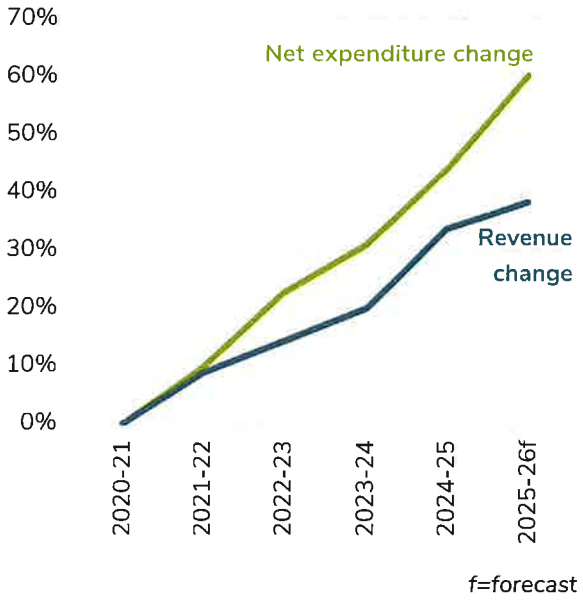
2026 Government of Yukon

TAB 13

Fiscal picture

Government of Yukon, 2020–21 to 2025–26

Net expenditures vs. revenue



f=forecast

There is a growing gap between Government of Yukon revenues and expenditures.

Between fiscal years 2020–21 and 2025–26:

Revenue was lower than net expenditures by	Net expenditures increased by	But revenue only increased by
9% (average)	**60%**	**38%**

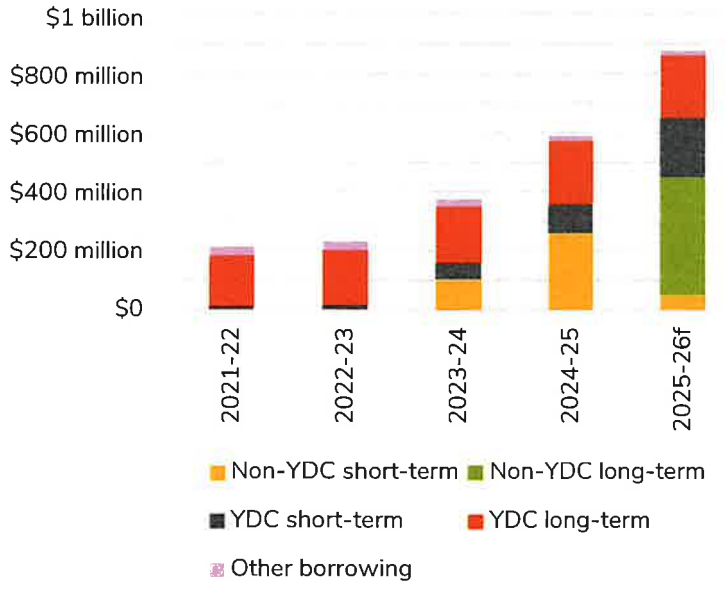
By comparison, the consumer price index (CPI) and population grew

34%

This has led to a challenging fiscal situation where the Government of Yukon has relied on borrowing more than in the past.

Government borrowing

Components of Government of Yukon consolidated debt under the borrowing limit



YDC = Yukon Development Corporation *f=forecast*

The Government of Yukon is currently approaching its $1.2 billion borrowing limit, with approximately $300 million left in additional borrowing capacity. The limit encompasses borrowing for the government and its corporations.

Therefore, the Government of Yukon needs to focus investments on critical priorities and, in time, balance spending.

Surpluses, deficits and borrowing

For the past few years, the Government of Yukon has consistently recorded surpluses in our budgets. These surpluses measure revenues and expenses when they are earned and incurred, even if they are not paid or collected within that fiscal year, as well as the value of capital assets and the cost of future liabilities.

However, consolidated debt has been rising since 2022. The government may borrow if the cost of services exceeds the amount of cash on hand and to build long-term assets that increase in net worth over time. Past borrowing also adds to the amount of debt. This is how a government can record an annual surplus and debt at the same time. The key is managing pressures within the debt limit.

TAB 14

Yukon Bureau of Statistics

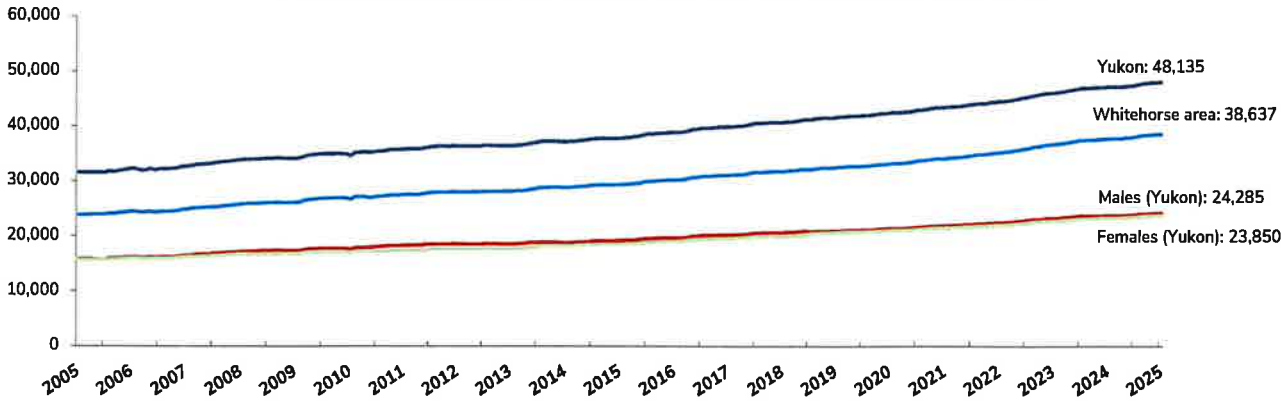
Yukon Monthly Statistical Review
April 2026

Highlights:

- The estimated population of Yukon on December 31, 2025 was 48,135; an increase of 873, or 1.8%, compared to the figure for December 31, 2024 (47,262).
- In March 2026, on a year-over-year basis, the Consumer Price Index (CPI) for Whitehorse increased 3.7% (figures for Yukon are not available); for Canada, the CPI increased 2.4%.

New publication this month: Population Report Fourth Quarter, 2025

Monthly population, December 31, 2005 to December 31, 2025



Yukon's population reached a record high of 48,135 in the fourth quarter of 2025, with growth observed in most quarters since 2015. The population of Yukon on December 31, 2025 (48,135) increased by 0.4%, compared to September 30, 2025 (47,952); and increased by 1.8%, compared to December 31, 2024 (47,262).

Population Report Fourth Quarter, 2025: yukon.ca/population-report-q4-2025

New from Yukon Bureau of Statistics:

- Yukon Employment, April 2026: yukon.ca/yukon-employment-april-2026
- Yukon Fuel Price Survey, April 2026: yukon.ca/yukon-fuel-price-survey-april-2026
- Inter-jurisdictional employees, 2022: yukon.ca/inter-jurisdictional-employees-2022
- Yukon Retail Sales, 2025: yukon.ca/yukon-retail-sales-2025

New from Statistics Canada:

- Millennials in the Canadian housing market: An intergenerational comparison: www150.statcan.gc.ca/pub/article/00001-eng.pdf
- Perceived mental health, symptoms of depression and consultations with mental health professional, Territories, 2023/2024 www150.statcan.gc.ca/pub/article/00002-eng.pdf

Interested in more data or updates?

Yukon Community Statistics
yukon.ca/community-statistics

Visit our Community Statistics website for downloadable data by Yukon community and subject.

Join our electronic distribution lists by sending an email to ybsinfo@yukon.ca.

1. Population

1.1 Population by age and sex*, Dec 31, 2025

	Total	Males	Females
0-4	2,288	1,180	1,108
5-9	2,589	1,296	1,293
10-14	2,590	1,362	1,228
15-19	2,477	1,310	1,167
20-24	2,742	1,459	1,283
25-29	3,696	1,863	1,833
30-34	4,183	2,033	2,150
35-39	4,482	2,170	2,312
40-44	3,945	1,960	1,985
45-49	3,206	1,603	1,603
50-54	2,902	1,406	1,496
55-59	2,612	1,343	1,269
60-64	2,858	1,415	1,443
65-69	2,714	1,383	1,331
70-74	2,175	1,127	1,048
75+	2,676	1,375	1,301
Total	**48,135**	**24,285**	**23,850**

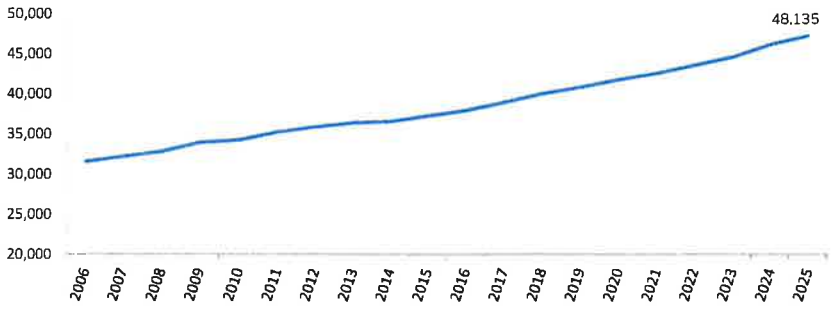
1.2 Population by community*

	Dec 31 2024	Sep 30 2025	Dec 31 2025
Beaver Creek	101	107	99
Burwash Landing	109	117	116
Carcross	490	498	506
Carmacks	598	603	607
Dawson City	2,415	2,397	2,409
Destruction Bay	62	55	50
Faro	439	437	441
Haines Junction	1,052	1,076	1,069
Johnson's Crossing	51	55	54
Mayo	462	459	475
Mendenhall	139	154	154
Old Crow	246	248	252
Pelly Crossing	395	387	388
Ross River	398	390	393
Tagish	414	409	417
Teslin	510	514	509
Watson Lake	1,482	1,477	1,480
Whitehorse Area[1]	37,825	38,490	38,637
Other*	74	79	79
Yukon	**47,262**	**47,952**	**48,135**

1.3 Vital statistics*

		Births	Deaths	Marriages
Year-to-date changes		4 3.9%	-7 -9.1%	-3 -10.0%
2026				
March	(p)	34	31	13
February	(r)	29	20	5
January		43	19	9
2025 total		**431**	**288**	**200**
December		27	30	13
November		27	23	2
October		39	23	10
September		41	26	15
August		37	21	47
July		37	21	40
June		43	11	26
May		44	23	8
April		34	33	9
March		34	23	9
February		30	23	13
January		38	31	8

Yukon monthly population, December 31, 2005 to December 31, 2025

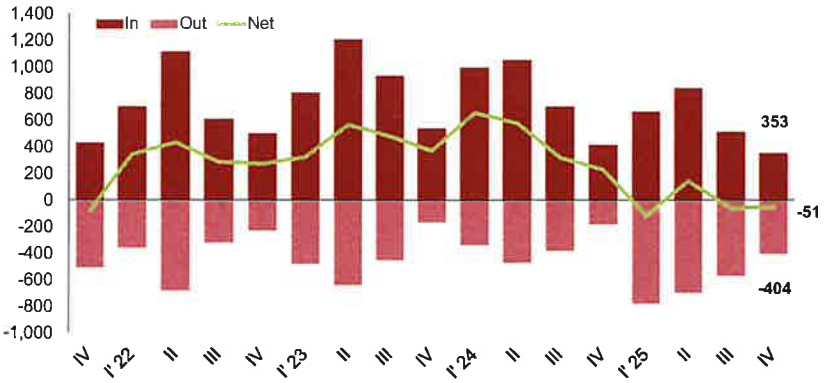


[1] Marsh Lake is included in Whitehorse Area.
Source: Yukon Bureau of Statistics.

Did you know?
On December 31, 2025, Yukoners aged 65 and older (7,565) increased by 371, or 5.2%, compared to December 31, 2024 (7,194).

Population Report, Fourth Quarter, 2025: yukon.ca/population-report-q4-2025

1.4 Migration estimates*



Source: Statistics Canada. Tables 17-10-0020-01 and 17-10-0040-01.

*Please see table endnotes on page 12.

Preliminary estimates of Statistics Canada show that in the fourth quarter of 2025, Yukon lost 51 people through net migration — 23 were lost through interprovincial migration and 28 were lost through international migration.

Of the interprovincial migrants, **net losses** were to:

- British Columbia (-77);
- Newfoundland and Labrador (-32);
- New Brunswick (-21);
- Alberta (-16);
- Nova Scotia (-10); and
- Nunavut (-1); and

Conversely, **net gains** were from:

- Ontario (+48);
- Manitoba (+38);
- Quebec (+25);
- Northwest Territories (+13);
- Saskatchewan (+10).

Source: Statistics Canada. Table 17-10-0045-01.

2. Employment

2.1 Labour force statistics* (seasonally adjusted)

	Labour force	Employed	Unemployed	Unemployment rate	Participation rate	Employment rate
2026						
April	28,500	27,000	1,500	5.3%	75.2%	71.2%
March	28,300	27,200	1,100	3.9%	75.1%	72.1%
February	28,000	26,900	1,100	3.9%	74.5%	71.5%
January	27,900	26,900	1,000	3.6%	74.4%	71.7%
2025	**28,300**	**27,100**	**1,200**	**4.2%**	**76.1%**	**72.8%**
December	27,900	26,700	1,200	4.3%	74.4%	71.2%
November	28,200	27,000	1,200	4.3%	75.4%	72.2%
October	28,400	27,000	1,300	4.6%	75.9%	72.2%
September	28,400	27,300	1,200	4.2%	76.1%	73.2%
August	28,300	27,100	1,200	4.2%	76.1%	72.8%
July	28,400	27,300	1,100	3.9%	76.3%	73.4%
June	28,400	27,200	1,100	3.9%	76.5%	73.3%
May	28,200	27,200	1,000	3.5%	76.0%	73.3%
April	28,200	27,100	1,100	3.9%	76.2%	73.2%

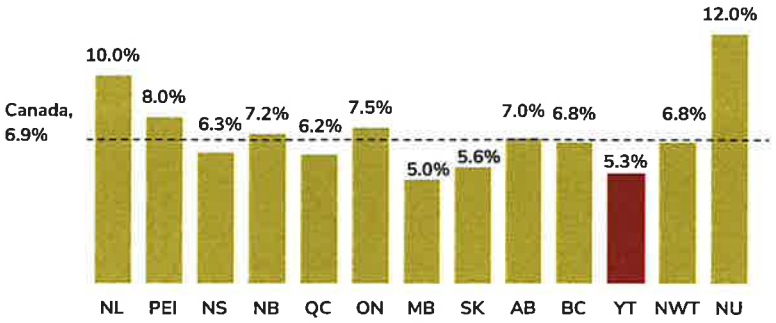
Yukon Employment, April 2026: yukon.ca/yukon-employment-april-2026

Yukon Employment Annual Review, 2025: yukon.ca/yukon-employment-annual-review-2025

Yukon Employment Historical Data, 2016 to 2025: yukon.ca/yukon-employment-historical-data-2016-2025

Source: Statistics Canada. Tables 14-10-0292-01 (monthly) and 14-10-0464-01 (annual).

2.2 Unemployment rates*, April 2026 (seasonally adjusted)



Source: Statistics Canada. Tables 14-10-0287-01 and 14-10-0292-01.

Did you know?
The April 2026 employment rate of 71.2% decreased by 0.9 percentage points compared to March 2026 (75.1%) and decreased by 2.0 percentage points compared to April 2025 (73.2%).

2.3 Employment, by class of worker* and sector (not seasonally adjusted)

	Total employed	Public sector employees	Private sector employees	Self-employed	Goods-producing	Services-producing
2026						
April	26,300	12,300	11,200	2,800	3,000	23,300
March	26,400	12,700	10,700	3,000	3,200	23,300
February	26,500	12,900	10,400	3,100	3,200	23,300
January	26,600	12,500	10,900	3,100	3,500	23,100
2025 annual	**27,100**	**12,200**	**11,700**	**3,100**	**3,500**	**23,600**
December	26,500	12,300	11,200	3,000	3,500	23,000
November	27,000	12,500	11,700	2,800	3,400	23,500
October	27,300	12,300	12,100	3,000	3,500	23,800
September	28,100	12,400	12,400	3,200	3,700	24,400
August	27,900	12,300	12,100	3,400	4,100	23,800
July	27,900	12,500	12,100	3,300	3,800	24,000
June	27,400	12,400	11,900	3,000	3,500	23,800
May	27,100	12,200	11,900	3,000	3,400	23,800
April	26,700	12,100	11,600	3,000	3,300	23,400

Source: Statistics Canada. Custom data table.

Comparing April 2026 to March 2026, employment in the services-producing sector (23,300) remained the same. Employment in the goods-producing sector (3,000) decreased by 200, or 6.3%.

In April 2026, of the 26,300[1] employed in Yukon, 12,300, or 46.8%, were working in the public sector. Of the 14,000 workers in the private sector, 2,800, or 20.0%, were self-employed.

[1] Not seasonally adjusted.

Note: Public sector employees are those who work for: a government at the federal, provincial, territorial, municipal level; a First Nations or other Indigenous government; a government service or agency; a Crown corporation; or for a government funded establishment such as schools (including colleges/universities), hospitals and public libraries.

*Please see table endnotes on page 12.

2. Employment (cont'd)

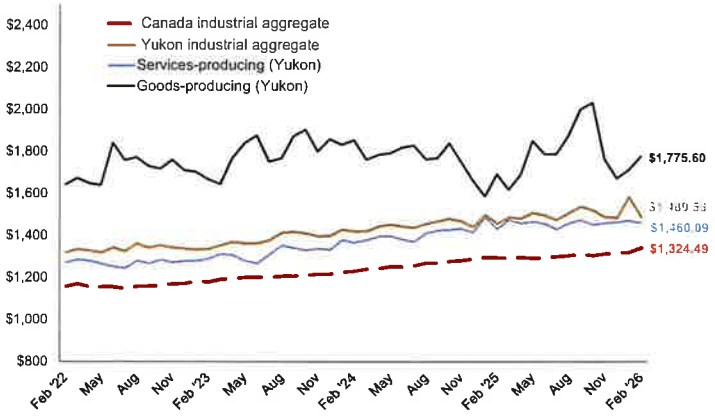
2.4 Average weekly earnings including overtime*

	Yukon average[1]	Construction	Trade	Transp. & ware-housing	Finance & insurance	Admin. support, waste mgmt, & remediation	Health care & social assist.	Accomm. & food services	Other services (except public admin.)	Public admin.
Year-to-date changes	$13.20 0.9%	$102.53 6.6%	-$114.19 -11.9%	-$139.36 -9.6%	F ..	$120.77 14.3%	$80.07 6.0%	$9.50 1.5%	F ..	$28.57 1.6%
					($)					
2026										
February (p)	**1,489.58**	1,696.36	838.94	1,237.65	1,866.49	985.54	1,419.89	678.01	1,244.04	1,815.00
January (r)	**1,491.66**	1,616.49	859.51	1,392.12	1,717.38	947.08	1,409.18	601.46	1,135.47	1,847.53
2025 annual	**1,496.14**	**1,640.05**	**934.71**	**1,454.77**	**F**	**902.42**	**1,375.85**	**710.95**	**F**	**1,818.95**
December	**1,484.89**	1,542.26	906.68	1,255.97	1,780.70	922.16	1,330.86	677.28	1,311.94	1,838.15
November	**1,489.78**	1,648.74	887.97	1,459.78	1,513.71	807.49	1,390.04	662.96	1,300.29	1,812.70
October	**1,520.55**	1,881.55	879.95	1,365.80	1,704.64	875.73	1,408.55	794.66	1,294.51	1,805.94
September	**1,538.64**	1,755.34	903.63	1,492.34	1,757.60	953.75	1,416.34	772.76	1,155.97	1,857.87
August	**1,508.05**	1,680.97	901.46	1,552.84	1,712.86	951.98	1,402.18	775.14	1,247.67	1,853.37
July	**1,474.78**	1,605.21	919.09	1,424.43	1,657.46	948.82	1,408.90	715.46	1,266.92	1,867.83
June	**1,496.72**	1,595.48	955.93	1,533.70	F	916.12	1,375.28	669.30	1,179.43	1,804.46
May	**1,508.73**	1,675.06	991.82	1,535.93	F	874.65	1,426.67	805.83	1,353.39	1,737.92
April	**1,481.90**	1,506.54	972.44	1,491.96	F	956.18	1,392.60	674.67	1,165.17	1,809.52
March	**1,487.87**	1,599.54	978.82	1,405.58	F	883.47	1,284.95	657.23	1,427.25	1,833.32
February	**1,457.45**	1,605.46	976.43	1,401.33	F	774.07	1,353.10	639.17	1,280.04	1,769.35

[1]Excludes self-employed. Source: Statistics Canada. Table 14-10-0203-01 (monthly) and 14-10-0204-01 (annual).

2.5 Average weekly earnings including overtime*, Yukon and Canada

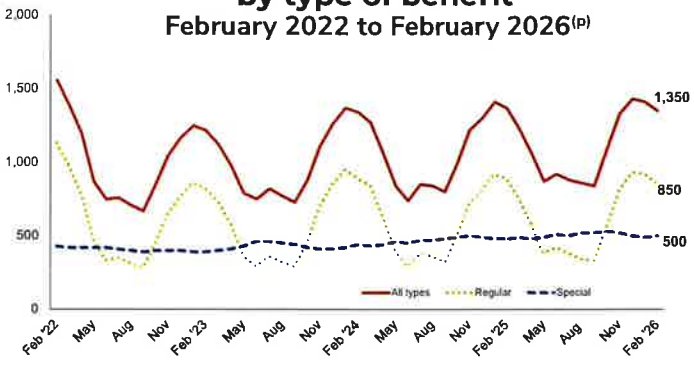
February 2022 to February 2026(p)



Source: Statistics Canada. Table 14-10-0203-01.

2.6 Employment Insurance beneficiaries by type of benefit*

February 2022 to February 2026(p)



Source: Statistics Canada. Table 14-10-0009-01.

*Please see table endnotes on page 12.

Survey of Employment, Payroll & Hours, 2023: yukon.ca/survey-employment-payrolls-and-hours-2023

Did you know?

Yukon's preliminary average weekly earnings figure for the Construction industry in February 2026 ($1,696.36) increased by $90.90, or 5.7%, compared to February 2025 ($1,605.46).

2.7 Employment Insurance* beneficiaries, by community[1]

	Feb 2025	Jan(p) 2026	Feb(p) 2026
Beaver Creek	10	10	10
Burwash Landing	0	0	0
Carmacks	30	30	30
Dawson City	180	210	190
Faro	10	20	10
Haines Junction	60	60	60
Marsh Lake	10	10	10
Mayo	10	10	10
Mt. Lorne	0	0	0
Old Crow	10	10	10
Pelly Crossing	10	20	20
Ross River	20	30	20
Tagish	10	10	10
Watson Lake	60	50	40
Whitehorse	920	890	900
Yukon Total	**1,380**	**1,410**	**1,350**

[1]Community is defined by census subdivision.
Source: Statistics Canada, Custom data table.

3. Consumer Prices

3.1 Consumer Price Index, Whitehorse (2002 = 100)*

In March 2026, on a **year-over-year** basis, the Consumer Price Index (CPI) for Whitehorse[1] increased 3.7%; for Canada, the CPI increased 2.4%[2].

Main contributors to the **increase** in Whitehorse CPI were the prices of:

- Rent;
- Homeowners' replacement cost; and
- Travel tours.

Some of these increases were offset by **decreases** in the prices of:

- Household appliances;
- Home entertainment equipment, parts and services; and
- Recreational equipment and services (excluding recreational vehicles).

On a **month-to-month** basis, comparing March 2026 to February 2026, the CPI for Whitehorse[1] increased by 0.8%.

Contributors to the increase were the prices of:

- Gasoline;
- Traveller accommodation; and
- Inter-city transportation.

[1] Figures for Yukon are not available.
[2] The slowdown in the year-over-year growth in CPI for Canada resulted from a base-year effect, largely driven the end of the GST/HST break in February 2025.

	Index			% Change	
	Mar 2025	Feb 2026	Mar 2026	Feb '26 to Mar '26	Mar '25 to Mar '26
All-items	**162.0**	**166.6**	**168.0**	**0.8**	**3.7**
Food	166.7	172.3	173.2	0.5	3.9
Shelter	218.9	227.9	228.3	0.2	4.3
Household operations, furnishings & equipment	112.3	117.3	116.6	-0.6	3.8
Clothing & footwear	109.3	110.0	110.7	0.6	1.3
Transportation	167.3	169.5	175.1	3.3	4.7
Health & personal care	150.9	157.5	156.5	-0.6	3.7
Recreation, education & reading	120.2	120.6	123.5	2.4	2.7
Alcoholic beverages, tobacco products and recreational cannabis	196.8	197.0	197.3	0.2	0.3
Special aggregates					
Energy	232.7	224.9	242.5	7.8	4.2
All-items excluding energy	156.4	161.4	162.1	0.4	3.6

Source: Statistics Canada. Table 18-10-0004-01.

Annual average change in CPI

	Whitehorse	Canada
2025	3.2%	2.1%
2024	2.0%	2.4%
2023	4.9%	3.9%
2022	6.8%	6.8%
2021	3.3%	3.4%

Consumer Price Index, 2025: yukon.ca/consumer-price-index-2025

3.2 Monthly average retail prices for selected food products, Whitehorse, British Columbia and Alberta, March 2026

Selected food product	Whitehorse, YT	British Columbia	Alberta	Selected food product	Whitehorse, YT	British Columbia	Alberta
Sirloin steak, 1 kg	$ 41.52	$ 43.69	$ 40.19	Eggs, 1 dozen	$ 4.60	$ 5.49	$ 5.07
Stewing beef, 1 kg	$ 25.11	$ 24.19	$ 23.78	Apples, 1 kg	$ 6.99	$ 5.85	$ 5.89
Ground beef, 1 kg	$ 17.93	$ 16.98	$ 16.75	Bananas, 1 kg	$ 2.26	$ 1.83	$ 2.01
Pork chops, 1 kg	$ 18.42	$ 9.85	$ 10.05	Oranges, 1 kg	$ 6.32	$ 4.50	$ 4.58
Chicken, 1 kg	$ 11.82	$ 9.33	$ 7.33	Carrots, 1 kg	$ 4.21	$ 3.40	$ 3.25
Bacon, 500 grams	$ 9.66	$ 7.72	$ 7.45	Onions, 1 kg	$ 2.82	$ 5.40	$ 5.50
Milk, 4 l	$ 6.32	$ 6.21	$ 6.59	Potatoes, 4.54 kgs	$ 15.82	$ 7.59	$ 7.86
Butter, 454 grams	$ 6.71	$ 5.62	$ 5.64				

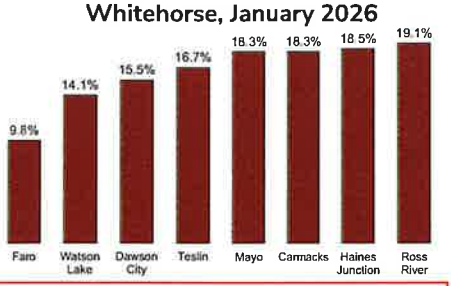
In March 2026, the prices of the selected food products (in the table above) in Whitehorse were on average 18.8% higher than Alberta and 14.5% higher than British Columbia.

Source: Statistics Canada custom run and table 18-10-0245-01

3.3 Community Spatial Price Index, January 2026 (Whitehorse = 100)

	Carmacks	Dawson City	Faro	Haines Junction	Mayo	Old Crow	Ross River	Teslin	Watson Lake
Total Survey Items	**118.3**	**115.5**	**109.8**	**118.5**	**118.3**	..	**119.1**	**116.7**	**114.1**
Meat/fish/seafood	119.8	104.7	106.5	117.1	119.5	..	110.8	117.9	108.8
Dairy/eggs	113.9	112.3	115.9	130.0	106.9	..	111.1	114.1	113.7
Fruit/veg.	119.7	115.9	114.6	97.1	111.9	..	129.7	116.7	115.9
Bread/cereal	122.0	119.7	105.9	145.8	118.9	..	134.6	117.8	126.3
Other foods	131.8	121.9	107.3	129.6	121.4	..	125.8	131.6	125.6
Household operations	120.9	126.6	119.0	126.0	125.9	..	140.3	120.6	117.5
Health & personal care	123.8	116.0	108.5	119.5	149.4	..	110.7	119.1	114.7
Cigarettes	104.2	112.1	106.5	..	107.1	..	109.6	105.5	101.0
Gasoline/diesel	107.8	115.4	107.8	107.6	114.1	..	106.4	106.0	104.0
Home heating fuel	103.0	104.4	103.4	101.4	102.8	..	102.4	103.0	103.4

Weighted overall average difference in prices between the communities and Whitehorse, January 2026



Note: The Community Spatial Price Index is produced quarterly by the Yukon Bureau of Statistics and compares prices of regularly purchased items in Whitehorse to prices in other Yukon communities at a given point in time.

Source: Yukon Bureau of Statistics.

*Please see table endnotes on page 12.

4. Trade

4.1 Retail and wholesale[1] sales



Source: Statistics Canada. Tables 20-10-0056-01 and 20-10-0074-01.

Yukon's preliminary retail sales in February 2026 increased by $1.0 million, or 1.3%, compared to February 2025; Canada's retail sales increased 4.0% over the same period. On a year-to-date basis, Yukon's retail sales increased by $3.5 million, or 2.2%, compared to February 2025; Canada's retail sales increased 2.9% over the same period.

Yukon Retail Sales, 2025:
yukon.ca/yukon-retail-sales-2025

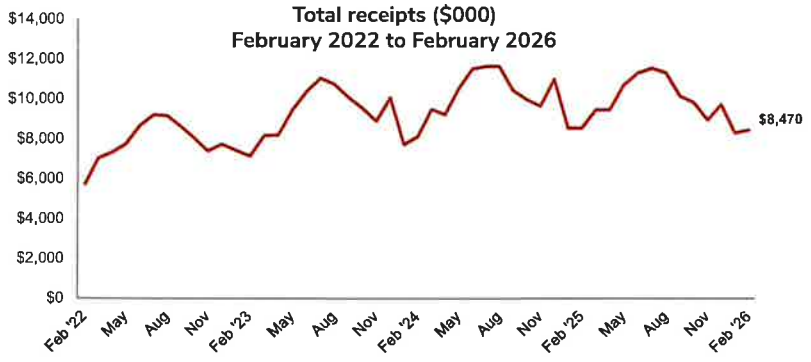
[1] Wholesale sales data for Yukon was unavailable from July 2022 to January 2025 due to residual suppression. From January 2025, wholesale sales reported here exclude *Petroleum, petroleum products, and other hydrocarbons* ; and exclude *Oilseed and grain* .

4.2 Retail sales by industry classification*

		Total*	Motor vehicle and parts dealers	Building material and garden equipment and supplies dealers	Food & beverage retailers	Furniture, home furnishings, electronics and appliances retailers	General merchandise retailers	Health and personal care retailers	Gasoline stations and fuel vendors	Clothing, clothing accessories, shoes, jewelry, luggage and leather goods retailers	Sporting goods, hobby, musical instrument, book, and miscellaneous retailers
Year-to-date changes		$3,508 2.2%	$2,282 9.1%	x ...	$2,048 4.6%	-$447 -7.4%	$2,411 19.8%	$2,214 30.6%	-$5,835 -14.5%	x ...	$113 0.9%
						($000)					
2026											
February	(p)	79,266	14,287	x	22,165	2,446	6,876	4,520	16,108	x	6,149
January	(r)	83,849	12,946	x	24,120	3,158	7,725	4,930	18,189	x	6,169
2025 total		**1,200,729**	**197,898**	**x**	**310,484**	**40,872**	**117,013**	**52,526**	**258,951**	**x**	**92,823**
December		97,424	14,222	x	26,488	3,272	11,688	5,424	21,182	x	8,358
November		91,463	15,288	x	24,033	3,256	10,502	4,423	16,795	x	7,388
October		100,697	15,358	x	25,738	3,944	10,331	4,817	18,533	x	8,896
September		104,509	15,338	x	26,124	3,603	10,269	4,696	23,440	x	8,764
August		114,551	15,791	x	29,067	3,559	10,926	4,090	26,063	x	8,736
July		117,375	18,227	x	29,220	3,292	11,083	4,245	27,067	x	8,818
June		110,214	19,094	x	27,922	3,020	11,599	4,283	22,947	x	8,033
May		110,169	21,942	x	28,457	3,897	11,257	4,495	20,599	x	7,264
April		98,992	21,823	x	24,702	3,405	9,202	3,996	19,265	x	6,818
March		95,728	15,862	x	24,496	3,573	7,966	4,821	22,928	x	7,543
February		78,269	11,986	x	21,658	2,630	5,913	4,055	20,034	x	5,893

Source: Statistics Canada. Table 20-10-0056-01.

4.3 Food services and drinking places



Source: Statistics Canada. Table 21-10-0019-01.

Did you know?

Yukon's preliminary retail sales in February 2026 totalled $79.3 million, 28.0% of which was from food and beverage stores' retail sales ($22.2 million).

Comparing February 2026 to February 2025, the total receipts for food services and drinking places in Yukon decreased by $109,000, or 1.3%; Canada's receipts increased by 7.0% over the same period.

*Please see table endnotes on page 12.

5. Residential rent

The data on this page are from the Yukon Rent Survey which is conducted biannually in April and October since 2014. Prior to 2014, the survey was conducted on a quarterly basis and only included buildings with 3 or more rental units (4 or more rental units prior to 2012). Although the methodology of the 2014 survey includes all types of buildings with rental units (displayed in table 5.1), the Yukon Bureau of Statistics continues to generate data for buildings with 3 or more rental units for historical comparisons (displayed in 5.2 and 5.3).

5.1 Median rent, total units and vacancy rates* for units in all types of buildings with rental units, Yukon, October 2025

	All types	Single detached house	Townhouse/ Row house	Duplex[1]	Triplex and fourplex	Condominium	Apartment building[2]	Store-top (Commercial)[3]	Mobile home	Cabin	Garden suite
Median rent											
All sizes	**$1,500**	**$2,100**	**$1,930**	**$1,700**	**$1,600**	**$2,240**	**$1,319**	**$1,390**	**$1,600**	..	**$1,685**
Bachelor	$1,295	...	...	$1,345	$1,307	$1,698	$1,295	$1,158	...		$1,600†
1 Bedroom	$1,320	$1,478	$1,483	$1,540	$1,355	$1,683	$1,301	$1,385	x		$1,550†
2 Bedrooms	$1,653	$2,070	$1,700	$1,760	$1,740	$2,460	$1,493	$1,938	$1,575		x
3-4 Bedrooms	$2,250	$2,185	$2,095	$2,100	$2,250	$2,405	$1,606	$2,175†	x		x
5+ Bedrooms	$3,490	$3,489†	...	x	...	...	...	...	...		...
Total units											
All sizes[4]	**2,479**	**202**	**94**	**611**	**209**	**295**	**919**	**90**	**47**	..	**13**
Bachelor	206	...	...	25	9	26	115	27	...		4†
1 Bedroom	776	19	9	187	80	69	376	29	x		3†
2 Bedrooms	961	66	31	212	76	87	420	31	37		2†
3-4 Bedrooms	516	99	54	185	43	112	8	4†	8†		3†
5+ Bedrooms	21	19†	...	x	...	...	...	...	...		...
Vacancy rate											
All sizes	**2.8%**	**0.0%**	**1.1%**	**6.1%**	**4.3%**	**0.0%**	**1.7%**	**3.3%**	**0.0%**	..	**15.4%**
Bachelor	0.5%	...	...	0.0%	0.0%	0.0%	0.9%	0.0%	...		0.0%†
1 Bedroom	2.8%	0.0%	0.0%	5.9%	3.8%	0.0%	1.6%	6.9%	x		0.0%
2 Bedrooms	3.5%	0.0%	3.2%	8.5%	7.9%	0.0%	2.1%	0.0%	0.0%		0.0%†
3-4 Bedrooms	2.3%	0.0%	0.0%	4.3%	0.0%	0.0%	0.0%	25.0%†	0.0%†		66.7%†
5+ Bedrooms	0.0%	0.0%†	...	x	...	...	...	...	...		...

x = suppressed
.. = no information available
... = not applicable

Source: Yukon Bureau of Statistics.

† Use caution when analyzing data due to high variance or a small number of rental units within the category.
[1] Duplex includes single detached houses with a legal rental suite.
[2] Buildings with five or more rental units.
[3] Store-top units are residential units in buildings which primarily contain commercial space.
[4] Numbers may not add up to the total due to rounding and vacancy rates may have been affected by small number of units.

5.2 Median rent and vacancy rates* for units in buildings with 3 or more rental units, Yukon communities

	Whitehorse		Watson Lake		Dawson City	
	Median rent	Vacancy rate	Median rent	Vacancy rate	Median rent	Vacancy rate
2025 average	**$1,352**	**1.6%**	**$1,109**	**12.5%**	**$1,393**	**8.7%**
October	$1,364	1.9%	$1,129	16.7%	$1,400	8.7%
April	$1,340	1.2%	$1,088	8.3%	$1,385	8.7%
2024 average	**$1,302**	**1.4%**	**$1,001**	**7.7%**	**$1,321**	**4.4%**
October	$1,310	1.3%	$1,024	7.7%	$1,342	0.0%

Source: Yukon Bureau of Statistics.

5.3 Median rent and vacancy rates for units in buildings with 3 or more rental units, Whitehorse

October 2021 to October 2025



Source: Yukon Bureau of Statistics.

Yukon Rent Survey, October 2025: yukon.ca/yukon-rent-survey-october-2025

*Please see table endnotes on page 12.

6. Real Estate

6.1 Number and value of real estate transactions*, Whitehorse

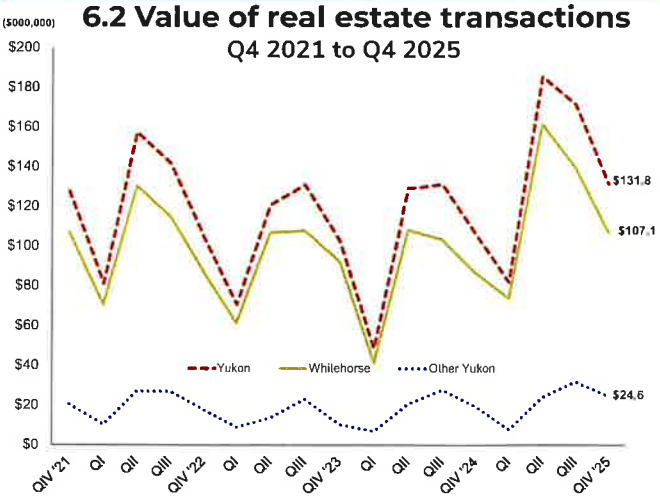
	Total[1]		Single-detached houses		Semi-detached houses		Row houses		Condominium apartments		Mobile homes	
Year-to-date changes	102	142,909	46	52,628	25	15,385	30	18,574	-2	-1,294	x	x
	15.7%	42.0%	18.0%	30.7%	75.8%	84.2%	22.1%	28.4%	-2.4%	-3.2%	...	...
	(no.)	($000)	(no.)	($000)	(no.)	($000)	(no.)	($000)	(no.)	($000)	(no.)	($000)
2025 total	**753**	**482,780.5**	**301**	**223,878.7**	**58**	**33,654.9**	**166**	**83,992.9**	**82**	**39,012.0**	**x**	**x**
Q4	172	107,140.6	74	58,404.1	12	7,304.9	30	15,987.1	22	10,434.4	17	6,166.7
Q3	236	139,977.5	95	72,440.5	20	11,970.7	53	27,144.7	23	11,312.5	6	2,459.0
Q2	229	161,649.5	90	63,099.5	21	11,644.3	50	25,167.6	19	9,528.9	4	1,802.0[E]
Q1	116	74,012.9	42	29,934.6	5	2,735.0	33	15,693.5	18	7,736.2	x	x
2024 total	**651**	**339,871.1**	**255**	**171,251.2**	**33**	**18,269.8**	**136**	**65,418.9**	**84**	**40,305.6**	**x**	**x**
Q4	146	86,618.1	59	38,814.9	8	4,064.0	45	21,780.6	15	9,178.4	8	2,942.0

Source: Yukon Bureau of Statistics. E = use with caution r = revised figures

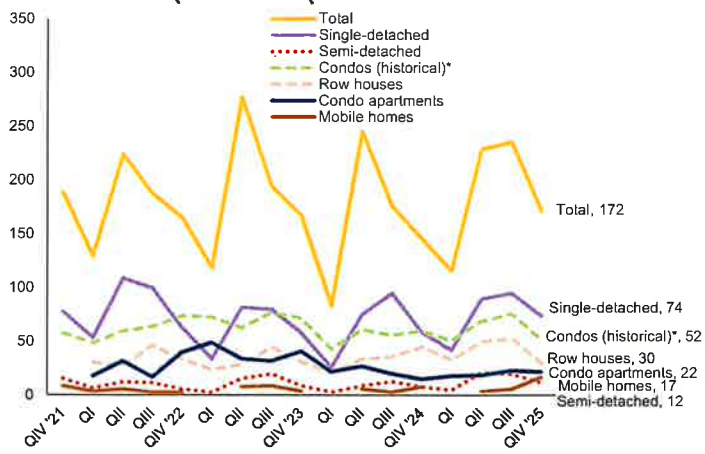
[1] Total includes residential lots, multiple-residential, commercial, and industrial sales.

Yukon Real Estate Report, Fourth Quarter, 2025: yukon.ca/yukon-real-estate-report-q4-2025

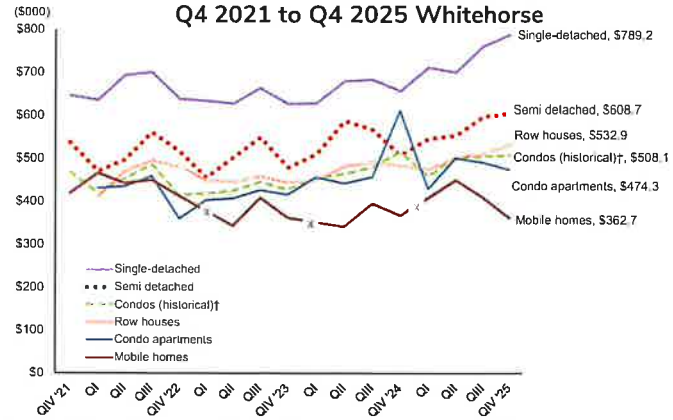
6.2 Value of real estate transactions
Q4 2021 to Q4 2025



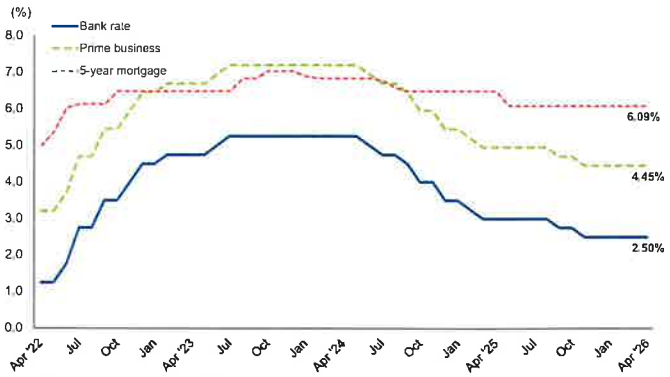
6.3 Number of residential transactions
Q4 2021 to Q4 2025 Whitehorse



6.4 Average residential sale prices
Q4 2021 to Q4 2025 Whitehorse



6.5 Selected interest rates*
April 2022 to April 2026



Source: Yukon Bureau of Statistics. x = suppressed

† Condos (historical) includes condo apartments and row houses.

Source: Statistics Canada. Table 10-10-0145-01.

Did you know?

In the fourth quarter of 2025, the total transaction value of single detached houses in Yukon was $58.4 million, an increase of $19.6 million, or 50.5%, compared to the fourth quarter of 2024 ($38.8 million).

In the fourth quarter of 2025, Yukon's total value of real estate transactions was $131.8 million: $107.1 million in Whitehorse and $24.6 million for the rest of Yukon.

Comparing the fourth quarter of 2025 ($131.8 million) to that of 2024 ($106.1 million), the total value of Yukon's real estate transactions increased by $25.7 million, or 24.2%.

*Please see table endnotes on page 12.

7. Construction

7.1 Yukon building permits, number and construction value*

		Total		Residential		Industrial, Commercial, and Government/ Institutional[1]	
Year-to-date changes		-74	38,375	-93	4,519	19	33,855
		-33.2%	68.5%	-48.4%	32.3%	0.0%	80.6%
		(no.)	($000)	(no.)	($000)	(no.)	($000)
2026							
April	(p)	51	56,502.5	40	4,447.6	11	52,055
March	(p)	36	9,453.4	24	4,480.0	12	4,973
February	(p)	39	19,876.4	23	7,798.1	16	12,078.3
January	(p)	23	8,538.7	12	1,779.3	11	6,759.4
2025 total		**717**	**318,568.9**	**581**	**117,243.8**	**136**	**201,273.1**
December		28	20,660.1	23	15,700.1	5	4,960.0
November		24	7,254.5	21	7,064.5	3	190.0
October		69	30,638.8	52	17,804.7	17	12,834.1
September		71	28,555.1	58	13,593.3	13	14,961.8
August		70	41,676.4	54	8,201.5	16	33,474.8
July		104	27,013.9	90	16,762.5	14	10,251.4
June		67	70,592.5	49	17,216.5	18	53,375.9
May		61	36,181.4	42	6,914.8	19	29,266.6
April		51	16,486.6	43	2,552.2	8	13,934.4

Sources: Yukon Community Services and City of Whitehorse.

Data on this page are preliminary and reflect building permits issued by the Department of Community Services, Government of Yukon and the City of Whitehorse. Due to recent changes in the building permit database of the City of Whitehorse and consequent changes in data analysis by Statistics Canada and Yukon Bureau of Statistics, data for 2025 are preliminary and should be used with caution.

In addition to new dwelling units, residential permits issued include renovations, garages, and additions.

The total does not include permits issued for plumbing or stoves.

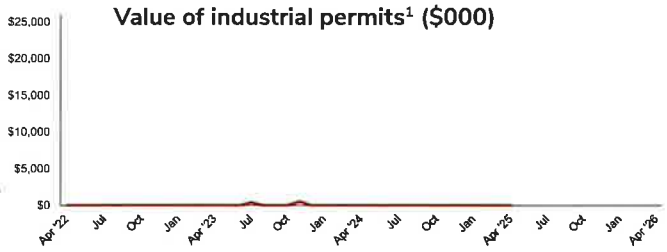
[1] Due to changes in the reporting of building permits issued by the City of Whitehorse from May 2025, data on *Industrial, Commercial, and Government/Institutional* building permits have been combined.

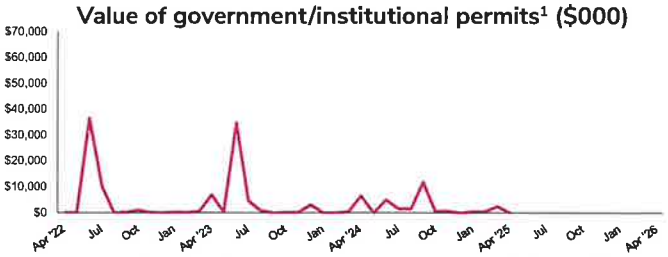
In January through April 2026, a total of 149 building permits were issued in Yukon, at a construction value of $94.4 million. The construction value of permits increased by $38.4 million, or 68.5%, compared to the total value of permits issued in January through April 2025. Of the total construction value of building permits issued in January through April 2026:

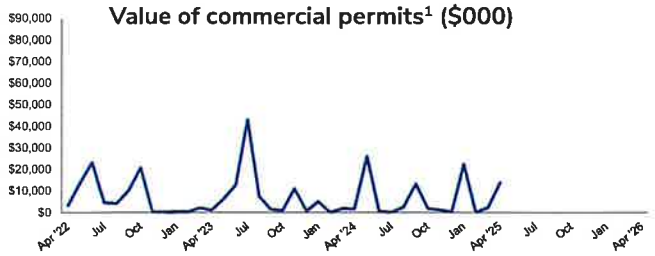
- 19.6% was attributable to residential permits; and
- 80.4% was attributable to non-residential permits (commercial, industrial, and government/institutional).

7.2 Construction value of building permits*, Yukon, April 2022 to April 2026



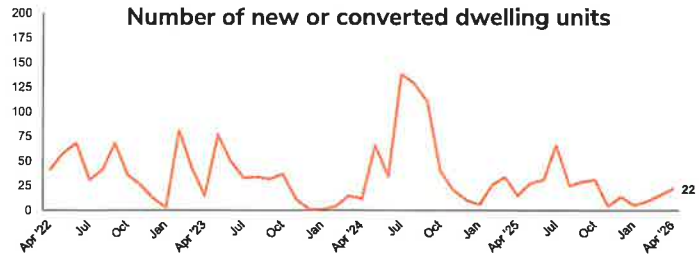






Sources: Yukon Community Services and City of Whitehorse.

7.3 Number of new or converted dwelling units (zoned residential)*, Yukon, April 2022 to April 2026



Did you know?

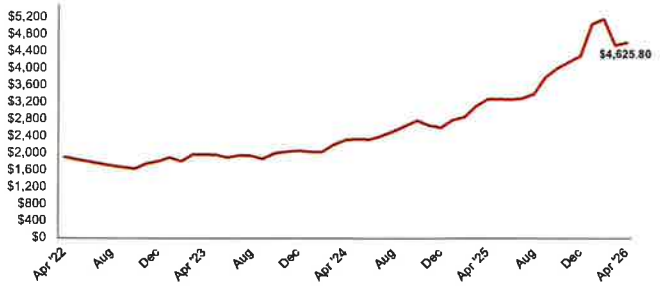
From January through April 2026, residential permits included a total of 51 new or converted dwelling units, a decrease of 30 units, or 37.0%, compared to the total for the same time period in 2025 (81).

*Please see table endnotes on page 12.

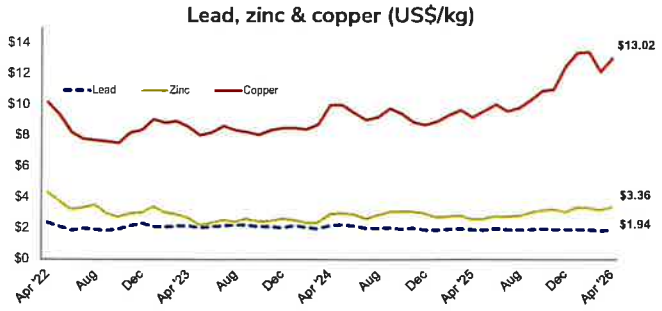
8. Resources

8.1 London metal commodity prices*, April 2022 to April 2026

Gold (US$/troy oz.)

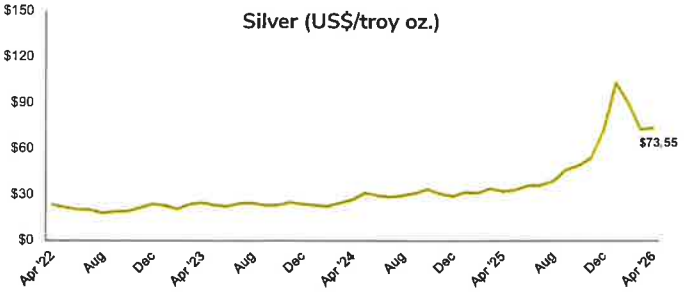


Lead, zinc & copper (US$/kg)



	Apr '25	Apr '26	Apr '25 to Apr '26 change
		US Dollars	
		($/troy oz)	
Gold	$3,284.30	$4,625.80	$1,341.50
Silver	$32.23	$73.55	$41.32
		($/kg)	
Lead	$1.95	$1.94	-$0.01
Zinc	$2.59	$3.36	$0.77
Copper	$9.20	$13.02	$3.82
		Canadian Dollars	
		($/troy oz)	
Gold	$4,535.57	$6,296.22	$1,760.65
Silver	$44.50	$100.11	$55.61
		($/kg)	
Lead	$2.69	$2.64	-$0.05
Zinc	$3.58	$4.58	$1.00
Copper	$12.71	$17.72	$5.01

Silver (US$/troy oz.)



Sources:

- Exchange rates: Canadian Foreign Exchange Services.
- Metal Prices: London Bullion Market Association and London Metal Exchange.

Did you know?

The price of gold on April 30, 2026 was $4,625.80 USD per troy oz., an increase of $1,341.50 USD, or 40.8%, compared to April 30, 2025 ($3,284.30).

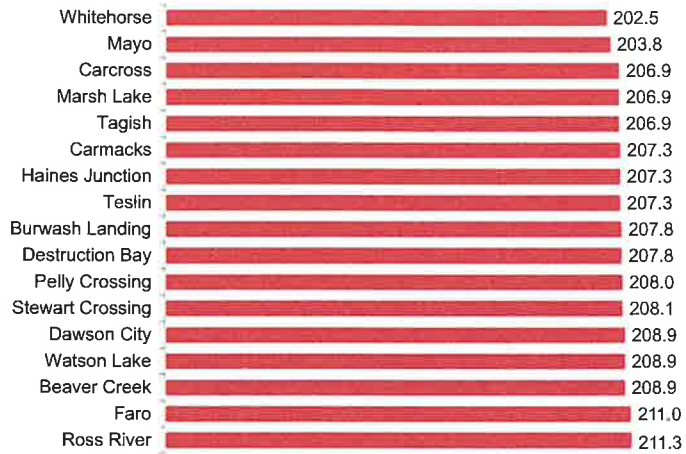
8.2 Regular self-serve gasoline

Average April 2026 Prices (cents per litre)



8.3 Residential furnace oil

Average April 2026 Prices (cents per litre)



Yukon Fuel Price Survey, April 2026: yukon.ca/fin-yukon-fuel-price-survey-april-2026.pdf

*Please see table endnotes on page 12.

9. Transportation

9.1 Aircraft movements*, Yukon Communities

	Total	Beaver Creek	Burwash Landing	Dawson City	Faro	Mayo	Old Crow	Teslin	Watson Lake	Whitehorse
Year-to-date	-25	1	-20	226	24	-12	...	-10	3	-102
changes	-0.3%	11.1%	-76.9%	64.8%	18.3%	-5.7%	...	-23.3%	1.6%	-1.7%
					(no. of movements)					
2026										
March	3,446	6	0	315	89	70	...	5	74	2,887
February	2,058	4	4	147	31	62	...	23	63	1,724
January	1,643	0	2	113	35	65	...	5	48	1,375
2025 total	**57,462**	**586**	**1,313**	**7,269**	**1,366**	**5,268**	..	**363**	**2,840**	**38,322**
December	1,292	0	2	100	9	74	...	3	53	1,051
November	2,877	3	15	141	122	80	...	4	79	2,433
October	3,855	25	48	308	64	250	...	38	293	2,829
September	6,907	28	291	877	379	844	...	93	559	3,836
August	7,428	76	404	1,029	176	905	...	52	479	4,307
July	9,554	274	313	2,140	116	1,598	...	46	401	4,666
June	7,653	122	104	1,523	162	942	...	25	433	4,342
May	6,231	32	68	487	172	280	...	31	271	4,890
April	4,493	17	42	315	35	86	...	28	90	3,880
March	3,025	4	15	141	56	81	28	14	108	2,578

Source: Transportation Aviation Branch, Highways and Public Works, Government of Yukon

9.2 Travellers entering or returning through Yukon via Canada Border Services Agency (CBSA) ports of entry*

	Total	Canadians	US residents	Other foreign travellers
Year-to-date	-937	-493	-422	-22
changes	-18.4%	-38.6%	-11.3%	-28.6%
2026				
February	2,297	429	1,844	24
January	1,867	354	1,482	31
2025 total	**514,070**	**66,914**	**390,624**	**56,532**
December	1,672	296	1,338	38
November	3,294	618	2,630	46
October	10,080	2,193	7,379	508
September	74,781	8,976	55,753	10,052
August	113,290	14,939	85,483	12,868
July	124,653	14,165	97,514	12,974
June	106,564	12,961	82,510	11,093
May	63,122	8,644	46,019	8,459
April	6,837	1,641	4,846	350
March	4,676	1,205	3,404	67
February	2,778	723	2,013	42

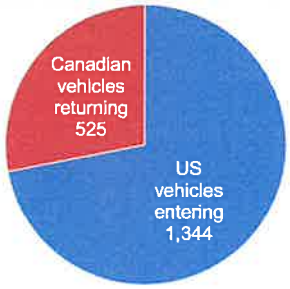
Source: Statistics Canada. Table 24-10-0053-01.

Of the 2,297 travellers who entered Yukon through Canada Border Services Agency (CBSA) ports of entry in February 2026:

- 47.1% entered through Beaver Creek;
- 28.5% entered through Fraser (Skagway, AK to Carcross);
- 24.0% entered through Pleasant Camp (Haines, AK to Haines Junction); and
- 0.4% entered through Whitehorse.

*Please see table endnotes on page 12.

9.3 Number of vehicles entering or returning through Yukon via CBSA ports of entry*, February 2026

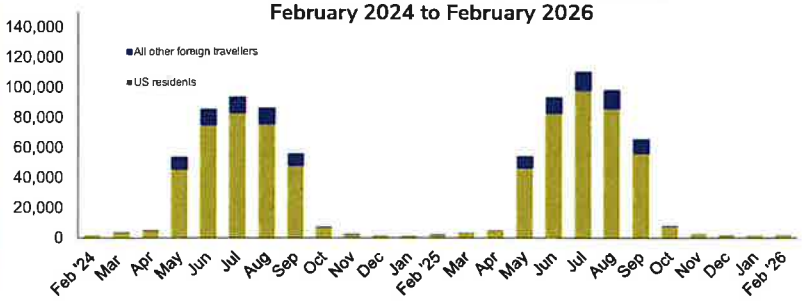


Source: Statistics Canada. Table 24-10-0052-01.

Did you know?

In February 2026 the number of aircraft movements in Yukon was 3,446. Of which; 2,887, or 83.8%, were at the Erik Nielsen Whitehorse International Airport.

Travellers entering or returning through Yukon[1], February 2024 to February 2026



Source: Statistics Canada. Table 24-10-0053-01 (Manipulated).
[1] Via Canada Border Services Agency (CBSA) ports of entry

Endnotes

1. **Population**
   1.1 & 1.2 Population counts are as of the last day of given month. Due to rounding, the sum of columns may not equal total given.
   1.2 *Other* includes communities such as Champagne, Elsa, Johnson's Crossing, Keno City, Stewart Crossing and Swift River. Whitehorse Area includes City of Whitehorse and surrounding area as well as the community of Marsh Lake.
   1.3 Birth and death data represent events occurring within Yukon to Yukon residents only. Marriages include all marriages occurring within Yukon, regardless of a person's place of residence.
   1.4 Migration estimates are based on both international and interprovincial movement into and out of Yukon, as well as returning emigrants, temporary emigrants and non-permanent residents.

2. **Employment**
   2.1 Yukon figures are rounded to the nearest hundred; because of this, figures may not sum to totals. Monthly figures from Statistics Canada's Labour Force Survey are three-month moving averages based on 92% coverage and are seasonally adjusted, which refers to the technique of adjusting raw figures to remove seasonal movements; however, annual figures are unadjusted.
   2.2 Yukon, Northwest Territories and Nunavut are not included in the Canadian unemployment rate.
   2.3 *Public Employees* are those who work for: a government at the federal, provincial, territorial, municipal, First Nations or other Indigenous government level; a government service or agency; a Crown corporation; or a funded establishment such as schools (including colleges/universities), hospitals and public libraries. Yukon figures are rounded to the nearest hundred; because of this, figures may not sum to totals. All monthly Yukon figures from the Labour Force Survey are three-month moving averages based on 92% coverage.
   2.4 & 2.5 Unclassified businesses' employees are excluded, as well as those enterprises primarily involved in agriculture, fishing and trapping, private household services, religious organizations and military personnel of defence services.
   2.6 *All types* includes people receiving regular, work-sharing, fishing and special benefits. *Regular* benefits include people receiving regular income support benefits, whether or not they are participating in one of three employment benefit programs, namely Skills Development Program, Job Creation Partnerships Program, and Self-employment Program. *Special* benefits includes people receiving sickness, maternity, parental, and compassionate care benefits.
   2.7 A value of "0" represents one of the following: 1) value is actually zero; 2) value may be rounded to zero; or 3) value is more than zero but is suppressed for confidentiality reasons. Communities are displayed by census subdivisions. For some communities, census subdivision boundaries may not align with municipal boundaries.

3. **Consumer Prices**
   3.1 & 3.2 The Consumer Price Index (CPI) measures price changes over time but should not be used to compare costs between provinces and cities.

4. **Trade**
   4.2 *Total* includes additional North American Industry Classifications (NAICS) data including: Furniture and Home Furnishings Stores; Electronics and Appliance Stores; Building Material and Garden Equipment and Supplies Dealers; Food and Beverage Stores; Clothing and Clothing Accessory Stores; Sporting Goods, Hobby, Book; and Music Stores and General Merchandise Stores.

5. **Rental Units**
   5.1, 5.2 & 5.3 These figures are derived from the Yukon Rent Survey which, as of 2014, is now conducted on a semi-annual basis in April and December. Prior to 2014, the survey was conducted on a quarterly basis and only included buildings with 3 or more rental units (4 or more rental units prior to 2012). Although the methodology of the 2014 survey includes buildings with 1 or more rental units (displayed in 5.1), Yukon Bureau of Statistics continues to generate data for buildings with 3 or more rental units for historical comparisons (displayed in 5.2 and 5.3).

6. **Real Estate**
   6.1 *Total* includes residential lots and multiple-residential sales, which are generally too low to release due to confidentiality requirements and non-residential sales (commercial and industrial properties). For further explanation, contact Yukon Bureau of Statistics.
   6.1, 6.3 & 6.4 Until Q1 2023, 'Condo' or 'Condominium' sales combined 'Condominium apartments' and 'Row houses'. In 2023, this information was disaggregated to report on each type of dwelling separately: Row houses (whether they are part of a condominium corporation or not) and Condominium apartments.
   6.3 *Total* includes residential lots and multiple-residential sales, but excludes non-residential sales (commercial and industrial properties).
   6.5 All figures are from the last Wednesday of the month. The 5-year conventional mortgage is the most typical of those offered by major chartered banks.

7. **Construction**
   7.1 Rounded data may not sum to totals.
   7.1, 7.2 & 7.3 Yukon totals, beginning with January 2013, are calculated by Yukon Bureau of Statistics, based on building permit data received from Yukon Community Services and City of Whitehorse. Yukon data prior to January 2013 is exclusively from Yukon Community Services.
   7.3 Does not include new or converted dwelling units in commercial or industrial properties.

8. **Resources**
   8.1 Prices of gold and silver are a.m. fix prices at month-end. Prices of lead, zinc and copper are London Metal Exchange "cash seller" prices at month-end.

9. **Transportation**
   9.1 As of July 2018, all aircraft movement figures are sourced from Statistics Canada.
   9.2 This table includes persons entering Yukon by land, air, train and water at Canada Border Services Agency (CBSA) ports of entry. It does not include: immigrants and former residents; non-resident crews; and Canadian crews. Although there is no permanent CBSA land port of entry in Dawson City, special annual international events between Yukon and Alaska, namely Yukon Quest and Trek Over the Top, require participants to cross the border by land. For border crossing purposes, participants in Yukon Quest are counted as pedestrians while participants in Trek Over the Top are counted as crossings by automobile.

Symbols & Abbreviations

..	not available	Q1	January 1 to March 31
...	not applicable	Q2	April 1 to June 30
x	suppressed for confidentiality	Q3	July 1 to September 30
F	too unreliable to be published	Q4	October 1 to December 31
(p)	preliminary	(USD)	US dollars
(r)	revised		

Next release: June 12, 2026

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TAB 15

Puisne Judges' Salaries in Canada

June 2026

Jurisdiction	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	2027/28	2028/29
Federal [1]	295,500	300,800	308,600	314,100	315,300	321,600	329,900	339,000	361,100	372,200	383,700	*396,700*	*414,900*	*429,000*	*IAI*	*IAI*
British Columbia [2]	242,464	244,889	248,562	252,290	262,000	266,000	270,000	276,000	282,250	288,500	343,000	360,000	369,360	377,117	*386,545*	*396,209*
Alberta [3]	273,000	279,825	286,821	293,991	296,382	302,304	309,500	318,500	*321,685*	*328,119*	*341,244*	*372,500*	2025 JCC	2025 JCC	2025 JCC	2025 JCC
Sask. [4]	254,458	260,819	272,295	282,184	290,848	295,792	304,074	312,286	315,971	343,045	353,590	*364,513*	*376,865*	*394,155*	*407,550*	2027 JCC
Manitoba [5]	230,155	239,000	249,277	254,263	259,000	265,475	272,908	280,500	292,001	301,344	327,000	341,715	354,017	2026 JCC	2026 JCC	2026 JCC
Ontario[6]	274,574	279,791	287,345	290,793	292,829	300,600	310,337	321,000	344,000	354,595	365,551	*377,936*	*396,077*	*408,708*	*2026 JRC*	*2026 JRC*
Québec [7] (from July 1 to June 30)	236,722	238,379	241,955	250,000	251,500	254,518	263,000	277,000	293,500	310,000	325,500	336,100	349,000	360,000	2026 JCC	2026 JCC
Prince Edward Island [8]	239,472	243,538	250,050	258,734	263,685	271,832	276,677	279,699	285,134	$302,010	$324,245	337,829	354,651	national average		
Nova Scotia [9]	222,993	231,500	234,509	236,151	249,021	251,875	257,471	269,198	270,889	283,075	306,960	*317,360*	*331,920*	*343,200*	*2027 JCC*	*2027 JCC*
New Brunswick [10]	204,700	204,700	246,880	251280	252240	257,280	263,920	271,200	288,880	297,760	306,960	*317,360*	*333,920*	*343,200*	*2027 JCC*	*2027 JCC*
Newfoundland & Labrador [11]	222,204	228,870	238,025	247,546	246,546	246,546	251,506	260,560	*273,315*	*277,377*	*305,292*	*320,716*	*333,889*	*347,106*	*maritime average*	*maritime average*
Northwest Territories [12]	252,414	256,055	260,302	272,000	278,828	289,733	299,869	304,698	304,918	311,723	333,456	350,129	365,885	374,122	CPI	2028 JCC
Yukon [13]	257,606	262,758	268,013	273,373	280,208	287,213	298,071	304,675	307,722	334,980	345,330	*357,030*	*373,410*	*386100*	*90% of feds*	*90% of feds*

Shaded jurisdictions are linked with s.96 judges' salaries

See endnotes on page 2

All Salaries run from April 1 to March 31 in each fiscal year, except as noted for Quebec.

Puisne Judges Salaries Across Canada

[1] The 2024 federal commission recommended that the salary be increased by $28,000, which increase was to be applied after the April 1, 2024 IAI increase, followed by annual IAI-based adjustments effective on April 1st in each of 2025, 2026 and 2027. Canada rejected this recommendation, and implemented only the IAI-based increases reflected above. The s.96 judges have applied for judicial review of Canada's response, and a hearing date has yet to be scheduled. Accordingly, it is unknown at this point whether there will be any further adjustment to judicial salaries, beyond what has been implemented by Canada.

[2] The 2022 British Columbia JCC Recommendations were accepted. The next quadrennial JCC is scheduled for July 2026. The numbers resulting from the joint submission for the 2027 and 2028 fiscal years are included in this chart. In the two subsequent years (2029/30 and 2030/31), the joint submission is for 3% adjustments.

[3] The 2021 Alberta JCC salary recommendations (for April 1, 2021: $328,500; April 1, 2022: $348,000; April 1, 2023: $362,000; and April 1, 2024: $372,500) were rejected. On judicial review, in 2026 ABKB 145, the Government's response was set aside and the matter referred back to Government. The Government appealed, and applied for a stay of decision pending appeal. The Government then abandoned the appeal and gave a second set of reasons. The salaries reflected in the chart are those set by Government unilaterally, through OIC 197/2026, on June 18, 2026.

[4] The Saskatchewan judges' salary (April 1 of each year) is linked at 95% of the prior year's salary (March 31 of each year) of Section 96 judges. To the extent the s.96 judges are successful on judicial review, the salary of Saskatchewan judges would increase in 2024 and following. JCCs will now be held every four years; the next will be held in late 2027 and will make recommendations for the period commencing April 1, 2028.

[5] Manitoba's JCC is scheduled to conduct its hearing in July 2026, and will make recommendations for the three-year period commencing April 1, 2026.

[6] Ontario's salary is 95.27% of a s.96 judge's salary. To the extent the s.96 judges are successful on judicial review, the salary of Ontario judges would increase in 2024 and following.

[7] The Quebec salaries are effective on July 1st of each year, not April 1st as in the other jurisdictions.

[8] 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.

[9] The last two Tribunals in Nova Scotia have recommended an 80% linkage with s.96 judges. To the extent the s.96 judges are successful on judicial review, the salary of Nova Scotia judges would increase for 2024 and following.

[10] Since 2016, judges in New Brunswick been paid a salary equal to 80% of the salary paid to s.96 judges. To the extent the s.96 judges are successful on judicial review, the salary of New Brunswick judges would increase for 2024 and following.

[11] In NL, the Government imposed legislation setting salaries at the Maritime Average. The 2021 May Tribunal made its recommendations in 2024, which were rejected by Government, in favour of implementing its own legislation. On judicial review, the government's decision was set aside, and the matter referred back to to Government. The Government made the same decision to reject the salary recommendations,and a second judicial review was initiated. The decision was delivered orally on June 24, 2026 and all recommendations in the Tribunal report were declared and deemed to be implemented with immediate effect.
The resulting salaries have yet to be calculated.

[12] The last NWT JRC report covers April 1, 2024, to March 31, 2028 and is binding. The salaries increase by 5.0% for 2024/25; by 4.5% for 2025/26; and by an amount equal to the average percentage increase in CPI for Yellowknife over the preceding calendar year, for each of 2026/27 and 2027/28.

[13] The 2022 JCC recommended a 90% linkage with the s.96 judges, for the period commencing April 1, 2022, and that the legislation should be amended to create a presumption of 90% moving forward. The 2025 JCC is scheduled to conduct hearings in July 2026, and there is a joint submission that the 90% linkage should continue.The salaries for the years 2024 on will increase if the s.96 judges are successful on judicial review and their salaries increase.

TAB 16

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.

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[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. Quebec (Attorney General)*; *Minc v. Quebec (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 Bench[3] 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 Minster'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 note 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

TAB 17

O.C. 197/2026

JUN 18 2026

Province of Alberta
Order in Council

ORDER IN COUNCIL

Approved and ordered:

S Lakhani

Lieutenant Governor
or
Administrator

The Lieutenant Governor in Council makes the Provincial Judges and Applications Judges Compensation Order in the attached Appendix.

CHAIR

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

   (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:	$341,244

   (c) to accept 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, 2024 – March 31, 2025:	$372,500

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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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]

2. 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 for the period of April 1, 2021, to March 31, 2025.[2] The 2021 Commission's mandate was 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]

3. 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]

---

[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.

4. 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]

5. 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] *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).

6. While a government may reject recommendations made by a judicial compensation commission, the Supreme Court of Canada has established the following 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]

7. 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.[10] Those reasons and facts must justify a different weighing of the evidence from that adopted by the commission.[11]

8. 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.[12] 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.[13] 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.

---

[9] *Bodner v Alberta*, 2005 SCC 44 [*Bodner*] at para 31.

[10] *Bodner* at para 31.

[11] *Alberta Provincial Judges' Association v Alberta*, 2022 ABQB 415 [*APJA v Alberta 2022*] at para 142.

[12] *Bodner* at para 30.

[13] *APJA v Alberta 2022* at para 35.

9. This Schedule sets out the reasons for the Government's reconsideration of the 2021 Commission's salary recommendations and the factual foundation for those reasons.

Recommendations of the 2021 Commission

10. 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.[14] 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%.

11. The 2021 Commission presented its report of recommendations ["2021 Commission Report"] to the Minister and the APJA on July 5, 2023.[15] The 2021 Commission recommended the following salary increases:

Table 1: 2021 Commission recommendations

	2021-22	2022-23	2023-24	2024-25	Cumulative
Recommended salary	328,500	348,000	362,000	372,500	
Recommended increase	3.1%	5.9%	4.0%	2.9%	17.0%

12. In its analysis, the 2021 Commission concluded the following:[16]

    (a) The following three criteria did not support an increase:

    - the constitutional law of Canada and the need to maintain judicial independence (criterion (a))

[14] The Minister's written submissions also proposed changes to travel expense reimbursement. By agreement of the parties, this issue was reserved and was subsequently the subject of the 2021 Commission's Supplemental Report Concerning Travel and Expense Reimbursement issued on November 30, 2023. The Government response was Order in Council 025/2024 dated February 16, 2024.

[15] The 2021 Commission presented its initial report on June 15, 2023, and an amended report on July 5, 2023.

[16] *2021 Commission Report* at 65-67.

- the current and expected financial position of the Government (criterion (d))
- the level of increases or decreases for others funded by Government (criterion (e))

(b) The main drivers of the recommended increases were the following:

- the current and expected economic conditions in Alberta (criterion (b)) and cost of living (criterion (c)):

  [T]he 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.[17]

- the 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.[18]

(c) The "principal concern" in relation to the two remaining criteria was the gap between federal and provincial judicial salaries:

- the roles, duties and jurisdiction (criterion (f)); and
- the need to attract highly qualified applicants (criterion (h)).[19]

Government's Initial Response

13. The Government's initial response to the 2021 Commission's salary recommendations, set out in Order in Council [OC] 182/2023 dated October 26, 2023, rejected the recommendations and set judicial salaries as follows:

Table 2: Government's Initial Response

	2021-22	2022-23	2023-24	2024-25	Cumulative
Initial Implemented salary	321,685	328,119	337,963	348,102	
Initial Implemented increase	1.0%	2.0%	3.0%	3.0%	9.3%

[17] *2021 Commission Report* at 67.

[18] *2021 Commission Report* at 61 & 65.

[19] *2021 Commission Report* at 65.

14. On March 4, 2024, the APJA applied for judicial review of the Government's initial response. The APJA's application was heard on May 22-23 and July 2, 2025. On February 27, 2026, the Court of King's Bench of Alberta issued a judicial review decision, which set aside OC 182/2023 and referred the recommendations back to the Government for reconsideration.[20]

Government's Reconsideration Response

15. The Government has carefully reconsidered the 2021 Commission's salary recommendations in light of the judicial review decision and concluded that the following judicial salary levels are fair and appropriate, reflecting the objective criteria and dictated by the public interest.

Table 3: Government's Reconsideration Response

	2021-22	2022-23	2023-24	2024-25	Cumulative
Reconsideration salary	321,685	328,119	341,244	372,500	
Reconsideration increase	1.0%	2.0%	4.0%	9.2%[21]	17.0%

The reconsideration salary increases are based on the Government's review of the 2021 Commission's findings on all of the regulated criteria. It accepts the 2021 Commission's recommended salary for 2024-25, and consequently also accepts the cumulative increase of 17.0% over the mandate period. It departs from the recommendations by reallocating a significant portion of the salary increases recommended for the pandemic recovery years of 2021-22 and 2022-23; those increases are instead shifted to 2024-25.

[20] *Alberta Provincial Justices' Association v His Majesty the King in Right of Alberta and the Lieutenant Governor in Council*, 2026 ABKB 145 [*APJA v Alberta 2026*] at para 262.

[21] The 9.2% increase reflects a 3% annual increase plus a 6.2% market adjustment.

Pandemic and recovery years

16. A departure from the recommendations of a compensation commission requires a rational reason supported by a factual foundation. The reason for the Government's departure is the following:

> The timing of the recommended increases does 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.

17. *Bodner* directs that the starting point for any commission is the date of the previous commission's report. As acknowledged in the judicial review decision,[22] between the time that the Report and Recommendations of the 2017 Alberta Judicial Compensation Commission [2017 Commission] was issued and the start of the 2021 Commission's mandate, Alberta experienced significant economic hardships caused by the pandemic.

18. Those significant unforeseen circumstances were not considered by the 2017 Commission or by the Government when OC 161/2019 was issued on September 13, 2019, in response to the recommendations of the 2017 Commission. The Government's subsequent reconsideration response to the 2017 Commission's recommendations, OC 358/2022 dated October 5, 2022, which accepted the recommendations of the 2017 Commission, specifically stated the following:

> Since the LGIC's initial response on September 13, 2019, there have been extraordinary unforeseeable global developments that are relevant to a number of regulated criteria. As a result, the projections relied on by the 2017 Commission ended up bearing little resemblance to what actually occurred. It would not be appropriate to take these changes into account at this late stage of the 2017 Commission process. It will fall to the 2021 Judicial Compensation Commission to fully consider the economic, fiscal, and other changes occurring since the date of the 2017 Commission Report.[23]

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[22] *APJA v Alberta 2026* at para 139.

[23] Order in Council 358/2022 dated October 5, 2022.

19. While the 2021 Commission acknowledged the past decline and some degree of ongoing weakness in the Alberta economy, 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 pit, simply gaining back what had been lost. Although 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.

20. In its judicial review decision, the Court agreed that, although the 2021 Commission did consider the pandemic's economic effects, the 2021 Commission chose to instead emphasize Alberta's economic strength:

> Though the levels of certain economic metrics increased in the absolute sense in the early years of the 2021 JCC's mandate, it is not entirely accurate to characterize this as economic strength. In fact, ... the increases experienced in 2021 and 2022 simply returned the metrics to pre-pandemic levels. This indicates economic recovery rather than independent growth.[24]

21. Even if the 2021 Commission's conclusion that overall economic strength justifies higher increases in judicial compensation is accepted, 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.

22. The accurate characterization of growth in 2021 and 2022 as recovery rather than true economic strength is factually supported by the economic indicators referred to in the definition of "generally accepted current and expected economic conditions" as defined in the regulation:[25]

    (a) Both real gross domestic product (GDP) and real GDP per capita dropped sharply in 2020. Evidence before the 2021 Commission was that the change

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[24] *APJA v Alberta 2026* at para 141.
[25] *2021 JCC Regulation*, s 5.3(1).

in real GDP in 2020 was -7.9%, with a projected recovery lasting into 2022, with a similar drop and period of recovery for real GDP per capita.[26]

(b) Due to widespread layoffs, the unemployment rate spiked while the employment rate and labour force participation rates correspondingly plunged.[27] While the labour force participation rate returned quickly to "modestly below pre-recession levels",[28] the unemployment rate and the inversely correlated employment rate took longer to recover. The 2021 Commission noted that the unemployment rate had dropped from its pandemic peak of 15% to 5% by summer of 2022.[29] The 2021 Commission's emphasis was on assessing the recovery as complete by the time it was writing the 2021 Commission Report. However, it is important to recognize that Albertans continued to experience ongoing economic challenges during the period the recovery was underway.

(c) Consumer price inflation dropped sharply due to reduced consumer demand.[30] Because the pandemic caused rapid shocks to both demand and supply, this measure is perhaps the least useful of the listed economic indicators in gauging the immediate impact of the pandemic.

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[26] 2021 Commission Submissions: Trevor Tombe, *An Analysis of Alberta's Economic and Fiscal Situation* (December 9, 2022) [Tombe Report] at 4 & 5.

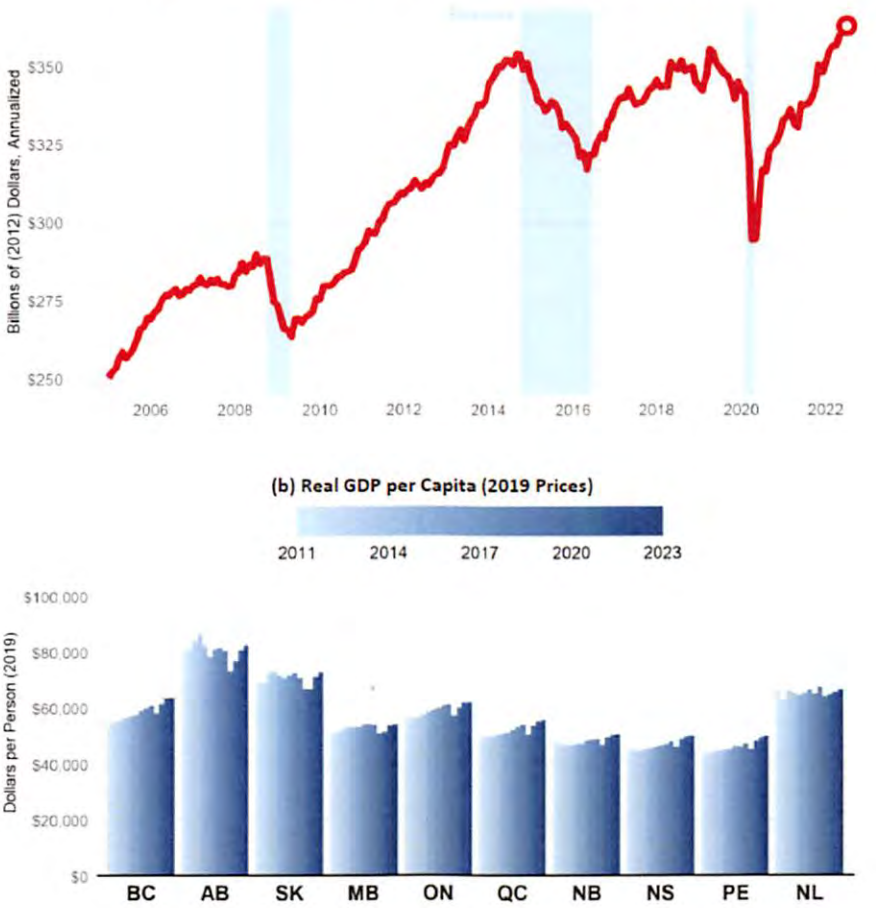
[27] These three measures are closely interrelated, tied together by the formula $u = 1 - e/p$, where u is the unemployment rate, e is the employment rate, and p is the labour force participation rate. See Tombe Report at 13.

[28] *2021 Commission Report* at 25.

[29] *2021 Commission Report* at 25 & 31.

[30] 2021 Commission Submissions: Conference Board of Canada, *Alberta's Economic Outlook* (December 9, 2022) [CBoC Report], at 14.

Figure 1: Estimates of Alberta's Monthly Real GDP, 2005 to July 2022



Source: Tombe Report. Alberta's real GDP and real GDP per capita experienced sharp drops in 2020, with the recovery lasting into 2022.

Figure 6: Unemployment Rates in Alberta and Canada, 2010 to October 2022

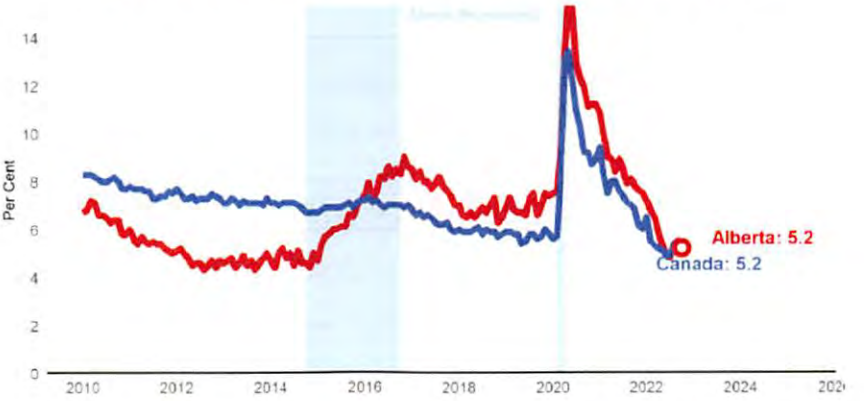


Figure 7: Alberta Employment Rates, 2010 to October 2022

(a) Actual and Adjusted for Demographic Change

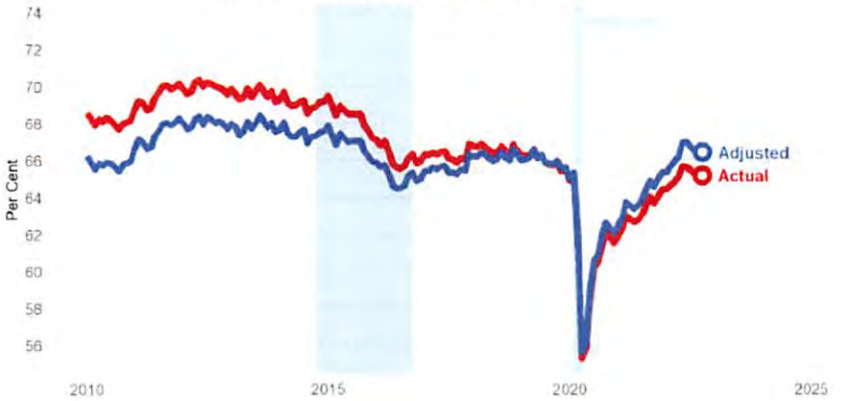
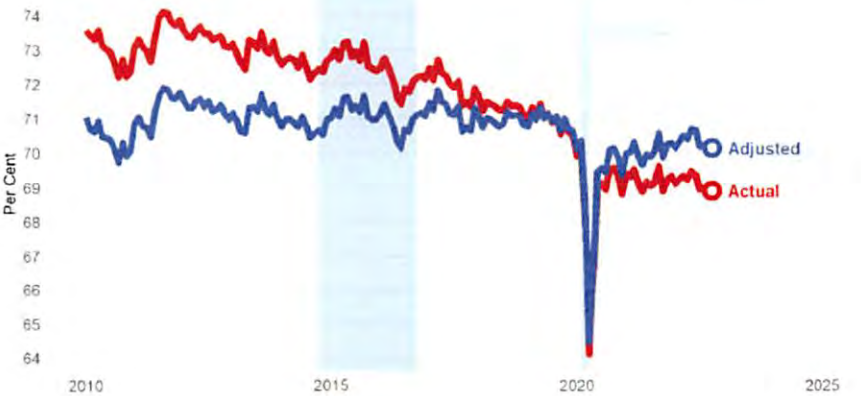


Figure 9: Labour Force Participation Rates in Alberta, 2010 to October 2022



Source: Tombe Report. Alberta's unemployment rate, employment rate, and labour force participation rate all experienced dramatic shocks as a result of the pandemic. While the labour force participation rate rebounded relatively quickly, the unemployment rate and employment rate had a more prolonged recovery, extending well into 2022.

Conclusion

23. By matching the final salary and cumulative salary increase recommended by the 2021 Commission, the Government's reconsideration response engages with the commission's analysis and gives weight to their conclusions, other than as necessarily modified by the deferral of some of the increases for the pandemic recovery years. As a deferral rather than a rejection of the recommended increases, the effect of this departure on overall judicial compensation is inherently limited. This response demonstrates appropriate regard for the distinct nature of the judicial office by maintaining ongoing compensation at a level consistent with the 2021 Commission's overall assessment of all criteria, including what is required to support judicial independence, attract highly qualified candidates, and reflect the role and responsibilities of Alberta judges.

TAB 18

Judicial Compensation and Benefits Commission

Commission d'examen de la rémunération des juges

REPORT AND RECOMMENDATIONS

SUBMITTED TO

the Minister of Justice of Canada

July 11, 2025



Judicial Compensation and Benefits Commission

Commission d'examen de la rémunération des juges

Chairperson / Présidente
Anne Giardini, O.C., O.B.C., K.C.

Members / Membres
Graham Flack
Douglas Hodson

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July 11, 2025

The Honourable Sean Fraser, PC, MP
Minister of Justice and Attorney General of Canada
284 Wellington Street
Ottawa, Ontario
K1A 0H8

Dear Minister Fraser:

Pursuant to subsection 26(2) of the *Judges Act,* I am pleased to submit the report of the seventh Judicial Compensation and Benefits Commission.

Respectfully,



Anne Giardini, O.C., O.B.C., K.C.
Chair

Encl.

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CHAPTER 1 - INTRODUCTION

1. This is the Report of the Seventh Quadrennial Judicial Compensation and Benefits Commission ("**Quadrennial Commission**" or "**Commission**") established under section 26 of the *Judges Act*[1] to inquire into the adequacy of the salaries and other amounts payable to federally appointed judges and to Associate Judges of the Federal and Tax Courts, and into the adequacy of the judges' benefits generally. An inquiry pursuant to s. 26 of the *Judges Act* is held every four years. The first Quadrennial Commission was established in September 1999, with subsequent Commissions in 2003, 2007, 2011, 2016 and 2020. The Commission began its inquiry on October 11, 2024, the date the members of this Commission were appointed.

2. Quadrennial Commissions consist of three members appointed by Governor in Council.[2] One member is nominated by the Judiciary (**"Judiciary"**). In the case of this Commission, that member is Douglas Hodson, K.C. The second member is nominated by the Minister of Justice and Attorney General of Canada (**"Government"**). For this Commission, that member is Graham Flack. These two members together nominated Anne Giardini, O.C., O.B.C., K.C., to serve as Chair of the Commission.

3. Before turning to the positions of the Judiciary[3], the Associate Judges and the Government, we wish to acknowledge the many people and organizations who provided us with helpful information and perspectives, including, in addition to counsel for the Judiciary, the Government and the Associate Judges of the Federal Court, the Canadian Bar Association ("**CBA**"), the Barreau du Québec, prominent members of the Judiciary, and experts in compensation, accounting and taxation. We thank all of them for the high quality of their contributions and for their assistance to us in carrying out our work. The evidence and submissions shared without exception a demonstrated commitment to ensuring that our judicial system continues a long tradition of excellence, respect and independence.

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[1] *Judges Act*, R.S.C., 1985, c. J-1 (***Judges Act***), Joint Book of Documents ("**JBD"**), volume 1 at tab 3.
[2] Appointments to the Judicial Compensation and Benefits Commission, Department of Justice (**"DOJ"**), https://www.canada.ca/en/department-justice/news/2024/09/appointments-to-the-judicial-compensation-and-benefits-commission.html.
[3] Judiciary refers to Canada's federally appointed judges, represented before the Commission by the Canadian Superior Courts Judges Association and the Canadian Judicial Council.

4. In this Report, we have not made reference to all of the submissions made by the parties, or to all of the documentary evidence that was received and read. Rather, we refer in this Report to information that we consider necessary to mention in connection with our findings and the conclusions that flow from all that we have heard and read. In places in this Report where we make mention of submissions or evidence that we do not agree with, we have endeavoured to state the reasons for our conclusions. To the extent that information or views are not mentioned in this Report, we can assure all those who assisted us that the omission is not the result of not having attended to them. We have read all of the materials, listened to all of the submissions made in person, and reviewed the transcripts thoroughly. We have also elected in this, the Seventh Commission, not to review in-depth arguments and conclusions reflected in earlier Commission reports; rather, we state here where we are in agreement or have come to different conclusions.

5. We would like to thank the Commission's staff, Louise Meagher and Natalie Duranleau, for their support. Both provided exceptional organizational, administrative and editorial assistance as well as insights into the process and scope of our work. In addition, we would like to express our appreciation to counsel and to the members of the Judiciary who provided submissions and information including Me Pierre Bienvenu, Me Jean-Michel Boudreau, Me Étienne Morin Lévesque, Ms. Elizabeth Richards, Mr. Dylan Smith, Ms. Sarah-Dawn Norris, Mr. Christopher Rupar, Mr. Andrew Lokan, Ms. Sonia Patel, Ms. Roselle Wu, Ms. Julie Terrien, Chief Justice Paul Crampton of the Federal Court, and Chief Justice Geoffrey Morawetz of the Superior Court of Justice of Ontario.

A. Role of Superior Courts in Canada

6. Canada's system of government has three branches: the legislative branch, the executive branch and the judicial branch. Each branch has its own powers and responsibilities. The legislative branch passes laws. The executive branch implements the laws. The judicial branch interprets laws and administers justice, ensuring that disputes are settled and offences prosecuted fairly and in accordance with Canada's legal and constitutional provisions. Courts are not the only mechanism for settling differences. Disputes can be resolved in other ways, for example through mediation or arbitration or before administrative boards and tribunals, but Canada's courts are an essential component of our constitutional democracy.

7. While the provinces and territories are responsible for providing much of what the superior courts need in their day-to-day work, such as support staff, offices and courtrooms, the federal government appoints and pays these judges, as well as judges at the federal level, and is responsible for the administration of the Supreme Court of Canada and federally created courts.[4]

8. An important aspect of the rule of law in Canada is judicial independence. Judges should personally have nothing to lose or gain by properly exercising their authority. For this reason, judges are assured of security of tenure, financial security and administrative independence.

9. These assurances have been described as follows:[5]

(a) Security of tenure: Once appointed, a superior court judge is eligible to serve on the bench until retirement age 75. Judges can be removed by a joint address of Parliament only after an independent and impartial investigation shows that there is good reason.

(b) Financial security: Judges must be guaranteed sufficient compensation (including salary and pension) so they are not subject to pressure for financial considerations. In Canada, governments cannot change judges' salaries or benefits without first receiving the recommendations of an independent compensation commission.

(c) Institutional and administrative independence: No one can interfere with how courts manage the legal process and exercise their judicial functions. For example, only the chief justice can choose how cases are assigned to the judges of their court.

10. The manner in which superior court judges are appointed is governed by Part VII of the *Constitution Act, 1867* under the heading Judicature, and by the *Judges Act*. Institutions that support judicial independence include the Canadian Judicial Council, the Office of the Commissioner for Federal Judicial Affairs (**"FJA"**), the National Judicial Institute, and the Courts Administration Service. They help ensure that the government and the judiciary maintain separation in areas such as discipline, pay and benefits, and continuing education for judges.

[4]How Does Canada's Court System Work? (**"DOJ"**) https://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/01.html.
[5]Canada's Court System, the Judiciary (**"DOJ"**) https://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/05.html.

11. Section 100 of the *Constitution Act*, *1867* authorizes Parliament to set compensation for the federally appointed judiciary. The Quadrennial Commission process was initiated by amendments to the *Judges Act* in 1998 after the decision of the Supreme Court of Canada *Re Remuneration of Judges of the Provincial Court of Prince Edward Island* ("***PEI Reference"***).[6] That case and subsequent jurisprudence emphasize that the constitutional guarantee of judicial independence is a cornerstone of our system of constitutional government. These cases affirm the importance of security of tenure, administrative independence and financial security, and also establish the requirement for a process to address the compensation of the judiciary that preserves the independence of courts and judges.

12. In each province, one or more independent Judicial Advisory Committees assess the qualifications of applicants for federal judicial appointments. Judicial Advisory Committees are broadly made up of members representing the bench, the bar and the general public. The Commissioner for FJA has overall responsibility for the administration of the judicial appointments process on behalf of the Government.[7]

13. When assessing a candidate's suitability, the Judicial Advisory Committee considers a broad range of critical characteristics. These include, with respect to each candidate, their professional competence and experience, such as their proficiency in the law, their intellectual abilities, and their analytical skills; their personal characteristics such as any demonstrated commitment to public service, their sensitivity to and understanding of gender, racial and Indigenous issues, and their appreciation of social issues; and any potential impediments to appointment, such as any debilitating physical or mental medical condition that may impair their ability to perform the duties of a judge, any past or current disciplinary actions or matters, any current or past civil or criminal actions, and any financial difficulties.

14. Extensive consultation in both the legal and wider communities is undertaken by the Judicial Advisory Committee with respect to each applicant. A decision is then made whether each

[6]*Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island* ("**PEI Reference**"), [1997] 3 SCR 3, https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1541/index.do.
[7]Appointments to Superior Courts, Guide for Candidates, https://www.fja.gc.ca/appointments-nominations/guideCandidates-eng.html.

is "Highly Recommended", "Recommended" or "Unable to Recommend" for appointment to the bench.

15. The recommendations are delivered by way of a confidential report to the Minister of Justice.

16. The Minister of Justice considers the information in the confidential reports when recommending appointments to superior courts, the Federal Court of Appeal, the Federal Court and the Tax Court.

17. Judicial candidates for Supreme Court of Canada vacancies are assessed by the Independent Advisory Board for Supreme Court of Canada Judicial Appointments, an independent and non-partisan body whose mandate is to provide non-binding merit-based recommendations to the Prime Minister on Supreme Court of Canada appointments.[8]

B. Mandate of the Quadrennial Judicial Compensation and Benefits Commission

18. Pursuant to s. 26 (1.1) of the *Judges Act*, in conducting its inquiry in to the adequacy of judicial salary and benefits, the Commission is to consider:

(a) the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government;

(b) the role of financial security of the judiciary in ensuring judicial independence;

(c) the need to attract outstanding candidates to the judiciary; and

(d) any other objective criteria that the Commission considers relevant.

19. Pursuant to s. 26(2) of the *Judges Act*, the Commission shall submit a report containing its recommendations to the Minister of Justice of Canada within nine months after the date of commencement of its inquiry who, pursuant to s. 26 (7), is to respond to the report within four months of receiving it, and thereafter, where applicable and within a reasonable period, initiate any legislation to implement the response.

[8]The Independent Advisory Board for Supreme Court of Canada Judicial Appointments, FJA, https://www.fja-cmf.gc.ca/scc-csc/2023/establishment-creation-eng.html.

20. The Quadrennial Commission process has resulted in six previous Reports:[9]

(a) The Drouin Commission Report (2000) ("**Drouin Report**");

(b) The McLennan Commission Report (2004) ("**McLennan Report**");

(c) The Block Commission Report (2008) ("**Block Report**");

(d) The Levitt Commission Report (2012) ("**Levitt Report**");

(e) The Rémillard Commission Report (2016) ("**Rémillard Report**"); and

(f) The Turcotte Commission Report (2021) ("**Turcotte Report**").

21. Quadrennial Commission determinations apply to all federally appointed judges. These are the judges of the Supreme Court of Canada, the Federal Court of Appeal, the Federal Court of Canada, the Court Martial Appeal Court of Canada, the Tax Court of Canada, and the courts of appeal and the superior courts of each province and territory.

22. The compensation of associate judges (previously called prothonotaries) was added to the Quadrennial Commission's scope of review in 2014 by amendments to the *Judges Act* that extended the definition of "Judiciary" to include them. Associate judges are judicial officers of the Federal Court of Canada whose office attracts a constitutional guarantee of judicial independence. The Rémillard Commission was the first Commission to address the compensation of prothonotaries following the 2014 amendments to the *Judges Act*.

23. In 2022, the office of associate judge of the Tax Court of Canada was created.[10] The Commission's mandate includes issuing recommendations regarding the compensation and benefits of associate judges of the Tax Court.[11]

[9]All the Reports are available in JBD, volume 1, tabs 9 to 14 or at the Quadrennial Commission's site under the Archives tab.
[10]*Judges Act,* s. 2.1(1), *Budget Implementation Act*, *2022, No.1* (SC 2022, c 10), ss. 333, 340, 368, 371.
[11]*Judges Act,* s. 11.1.

C. Commission's Proceedings

24. The process leading to this Report was delayed due to our late appointment. Pursuant to s. 26(2) of the *Judges Act*, the inquiry should have commenced on June 1, 2024. However, we were appointed on October 11, 2024, and, with the consent of the main parties, we commenced our inquiry on that date. Following consultation with the parties, we issued a Notice on November 19, 2024, setting out the schedule for the filing of submissions and the dates for public hearings. The Notice, along with all correspondence, submissions, supporting documentation and the transcript of the hearings held in Ottawa on February 20th and 21st are available on the Quadrennial Commission website. The Commission submitted its Report and Recommendations to the Minister of Justice on July 11, 2025, within nine months of the commencement of its inquiry as required by the *Judges Act.* It is not ideal for our recommendations to be delivered during the summer months when Parliament is not sitting and when they could affect judicial salaries that have already been in place for months. It is therefore our recommendation that diligent efforts be made so that future commissions are appointed by June 1 as provided for in the *Judges Act*.

RECOMMENDATION 1

Diligent efforts should be made so that future commissions are appointed by June 1 of the relevant year, as provided for in the *Judges Act*.

D. Report's Structure

25. This Report will address the issues before the Commission in the following order:

Chapter 2 – Judges' Salaries

Chapter 3 – Associate Judges' Salaries

Chapter 4 – Other Issues

Chapter 5 – Conclusion

Chapter 6 – List of Recommendations

CHAPTER 2 - JUDGES' SALARIES

A. Judges' Salaries

26. The salaries for federally appointed judges as of April 1, 2024 are set out below[12]:

Supreme Court of Canada:	
Chief Justice	$510,100
Puisne Judges	$472,400
Federal Courts and Tax Court:	
Chief Justices and Associate Chief Justices	$435,000
Puisne Judges	$396,700
Appeal, Superior, Supreme, King's Bench:	
Chief Justices and Associate Chief Justices	$435,000
Puisne Judges	$396,700

27. The salary for Associate Judges of the Federal Court is currently 80% of the salary of Federal Court judges.[13] The salary for Associate Judges of the Tax Court of Canada is currently 80% of the salary of Tax Court judges.[14]

28. Section 25 of the *Judges Act* provides for annual increases in judicial salaries based on the average increase in weekly wages and salaries in Canada (the "**Industrial Aggregate Index**" or "**IAI**"). The judicial salaries noted above were increased on April 1, 2025 by 4.6% to reflect the change in the Industrial Aggregate Index. Apart from annual adjustments to reflect changes to the Industrial Aggregate Index, there have been no adjustments to judicial compensation since the McLennan Commission in 2004.[15]

29. The Government's position is that the current salary and related benefits of federally appointed judges and Associate Judges are sufficient to "ensure that Canada's judiciary remains independent and enjoys financial security, and that outstanding candidates from all backgrounds

[12]Government Book of Documents (**"GBD"**), at tab 5 (Inclusive of the Aggregate Index Adjustment on April 1, 2024).
[13]*Judges Act*, s. 10.1.
[14]*Judges Act*, s. 11.1.
[15]From the Turcotte Report, para 210 "We are mindful … that there has been no salary adjustment, other than the IAI indexation, since 2004."

continue to be attracted to judicial office".[16] In addition, the Government requests the Industrial Aggregate Index be capped at a maximum four-year cumulative increase of 14% over the current quadrennial cycle.[17]

30. The Judiciary requests that the base salary of puisne judges be increased by $60,000, exclusive of the Industrial Aggregate Index adjustment, effective April 1, 2024 and that other judicial salaries payable to the Judiciary under the *Judges Act* be adjusted proportionately.[18] The Judiciary submits the current judicial salary is inadequate and the requested increase is needed in order to ensure that Canada is able to continue to attract outstanding candidates to the judiciary, including from the private sector.[19]

31. The Judiciary opposes the Government's request to cap the cumulative Industrial Aggregate Index adjustment at 14%.[20]

32. The Judiciary also raises concerns with the appropriateness of the Office of the Commissioner of Federal Judicial Affairs collecting pre-appointment income data from newly appointed judges,[21] as recommended by the Turcotte Commission. The Judiciary seeks a recommendation from the Commission to cease collecting this data.[22]

33. The Associate Judges request that the salary paid to Associate Judges be increased from 80% to 95% of the salary of a Federal Court judge, effective April 1, 2024.[23]

34. The Government's position is that the current Associate Judges' salary is adequate and that no increase is warranted.[24]

[16]Government Submission, para 2.
[17]Government Submission, para 4.
[18]Judiciary Submission, para 247.
[19]Judiciary Submission, para 240.
[20]Judiciary Reply Submission, para 43.
[21]Judiciary Submission at para 247.
[22]Judiciary Submission, para 269.
[23]Associate Judges Submission, para 98.
[24]Government Reply Submission, para 29.

35. At the hearing, counsel for the parties advised the Commission that Associate Judges of the Tax Court of Canada were not represented before the Commission. At the time of the hearing, only one Associate Judge had been appointed to the Tax Court. Since then, a second Associate Judge was appointed on March 3, 2025. The Commission asked the parties to make further representations regarding the salaries and benefits of the Associate Judges of the Tax Court of Canada.

36. On March 31, 2025, counsel for the Judiciary provided a letter to the Commission advising that, given the nearly identical statutory language governing Associate Judges of the Federal Court and Tax Court, the Judiciary and Government suggested the Commission's recommendations regarding the salary of the Associate Judges of the Federal Court apply equally to the Associate Judges of the Tax Court of Canada.[25]

37. The Commission agrees with this approach and its recommendation with respect to Associate Judges of the Federal Court will apply equally to the Associate Judges of the Tax Court of Canada.

38. The CBA and the Barreau du Québec took no position on the amounts of judicial compensation.

B. Analysis under section 26(1) of the *Judges Act*

39. In conducting its inquiry, this Commission has had the benefit of reading the reports of previous commissions. We have also carefully considered the submissions of the parties, including reports of their experts. We convened two days of hearings and benefited from further analysis provided by the parties in response to questions raised by the Commission.

40. The Commission arrived at its recommendations having considered the submissions and evidence in light of the criteria set out in s. 26(1.1) of the *Judges Act*. Our analysis is set out below.

[25]Judiciary letter dated March 31, 2025, with content of letter approved by the Government.

i. The prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government—s. 26(1.1)(a)

41. The first statutory criterion requires the Commission to assess "the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government".

42. We concur with the view of the McLennan Commission in that we "interpret this direction as obliging us to consider whether the state of economic affairs in Canada would or should inhibit or restrain us from making the recommendations we otherwise would consider appropriate… The consideration to be applied is whether economic conditions dictate restraint from expenditures out of the public purse".[26]

43. When the parties filed their initial written submissions late in 2024, economic forecasts for Canada were generally positive. The assessment provided to the parties by the Department of Finance noted an International Monetary Fund forecast for Canada that indicated growth of 2.6% in 2025 along with inflation declining to 2.1% by 2025 and a declining budget deficit over the planning horizon. According to the expert for the Judiciary, at that time it was "evident that economic conditions have largely coalesced around traditional longer-term trends".[27]

44. By the time of the oral hearings in February 2025, the increasing threat of US trade measures and other global events had altered the economic environment. Given the importance of the US as a trading partner and the size of Canada's trade-exposed economy, economic measures such as US tariffs may be expected to have negative effects on Canada's economic growth, inflation, unemployment and fiscal position in the short, medium and longer term.

45. Bank of Canada modelling of a permanent 25% US tariff on all Canadian goods with mirrored retaliatory tariffs by Canada in February showed GDP growth 2.5% lower than the baseline in the first year and 1.5% lower in the second year with a permanently lower level of GDP reflecting a decline in the long-run level of Canadian productivity due to the distortionary effects

[26]McLennan Report, page 9.
[27]Judiciary Submission, para 44.

of tariffs. In April, the International Monetary Fund downgraded its January economy forecast for Canada to 1.4% in 2025 and 1.6% in 2026.[28] More recently, in May 2025, the Bank of Canada issued this advisory:[29]

> In the medium to long term, a prolonged global trade war would have severe economic consequences. It would reduce economic growth and increase unemployment. Some households and businesses would be unable to continue making debt payments. If household and business credit defaults were to occur on a large scale, banks could see greater losses than they have provisioned for. This could lead them to pull back on lending, potentially exacerbating economic and financial stress.

46. A challenge facing the Commission is the uncertainty affecting economic conditions in Canada, depending on, among other factors, the level and permanence of trade measures threatened and ultimately adopted by the United States. Commission Chair Anne Giardini asked the parties how we should treat this uncertainty "cognizant of the fact that we will be writing this report during a period of potential broad-sweeping economic change affecting Canada as a whole and other parts of the world".[30]

47. Had it been clear that a negative economic scenario was becoming more likely in the immediate term, it may have been appropriate to give the parties the opportunity to make additional submissions on this criterion as they offered to do in response to this question. As at the date of this Report, predictions, forecasts and plans for the four years ahead remain challenging given that there has to date been no resolution to general levels of uncertainty.

48. The Commission must make its recommendations based on the evidence in front of us, not on an adverse scenario that could but has not yet crystallized. Taking into account the economic situation and forecasts as of the writing of this Report, the Commission concludes that there is not enough evidence to restrain us from making recommendations we think appropriate on salaries.

[28] https://www.imf.org/en/Publications/WEO/Issues/2025/04/22/world-economic-outlook-april-2025.
[29] https://www.bankofcanada.ca/2025/05/financial-stability-report-2025/.
[30] Transcript of February 21, 2025 hearings, page 263.

49. We recognize that it is possible that the situation could change materially between the time the Government receives this Report and the time it provides its reply. Should economic conditions change materially and if, for example, the Government were contemplating wage restraint for the broad public sector, then we believe it would be appropriate for the Government to refer the matter back to the Commission to allow the parties to make additional representations based on a materially changed situation. Such an approach was specifically contemplated by the Supreme Court of Canada in the *PEI Reference*.

Section 25 – Indexation of Judicial Salaries

50. Section 25 of the *Judges Act* provides for annual increases in judicial salaries based on the IAI. Given the economic uncertainty Canada is facing, the Government has proposed a cap on IAI adjustments to judicial salaries to a total maximum of 14% of the judicial salary over the four-year quadrennial cycle. The Government takes note of the fact that the Turcotte Commission rejected the Government's then proposal of a 10% cap but points out that the Turcotte Commission did so without providing reasons for rejecting the position and that it did not address the benefits of an upper limit to the IAI increase.

51. The Government pointed out that the IAI has risen faster than inflation over the last two decades. While this is true, the rise in the IAI appears to us to reflect a deliberate decision of Parliament to have judicial salary increases track wage settlements in the broader workforce rather than simply provide for cost-of-living adjustments, which would have been the case had it chosen to link annual increases to the consumer price index.

52. Section 25(2)(b) of the *Judges Act* has already explicitly set an upper limit to the effect of the Industrial Aggregate Index on judicial salaries by capping increases in any year at 7%. Were we to accept the Government's proposal of a maximum 14% increase over the four-year period, this would represent less than half of the 31.08% maximum compounded increase expressly provided for in the legislation.

53. In explicitly providing for a cap on the IAI adjustment in the legislation, we believe that Parliament has set out a complete code for how to deal with exceptional increases in the IAI. Parliament saw benefits in setting an upper limit to the IAI and turned its mind to what that upper

limit should be. It is not for the Commission to alter the clear intent of Parliament on this question by substituting a different cap on the impact of the IAI on judicial salaries.

54. This is not to say that there are no situations when the Commission may recommend an increase lower than the IAI. The *PEI Reference* dealt with a case in which governments chose to reduce salaries of judges as well as other public servants. Chief Justice Lamer found as follows:[31]

> First, as a general constitutional principle, the salaries of provincial court judges can be reduced, increased, or frozen, either as part of an overall economic measure which affects the salaries of all or some persons who are remunerated from public funds, or as part of a measure which is directed at provincial court judges as a class. However, any changes to or freezes in judicial remuneration require prior recourse to a special process, which is independent, effective, and objective, for determining judicial remuneration, to avoid the possibility of, or the appearance of, political interference through economic manipulation…

55. However no similar economic measures are currently proposed by the Government. The Commission does not believe that economic uncertainty alone is enough to disturb Parliament's clear intent on the operation of the IAI, so we respectfully reject the Government's proposal that we recommend a 14% cumulative cap.

ii. The role of financial security of the judiciary in ensuring judicial independence—s. 26(1.1)(b)

56. The second statutory criterion requires the Commission to consider "the role of financial security of the judiciary in ensuring judicial independence".

57. In the *PEI Reference,* the Supreme Court of Canada identified three components of financial security underlying judicial independence:

(a) The requirement of an independent, objective and effective commission to recommend levels of judicial remuneration;

(b) No negotiations over remuneration are permitted between the judiciary and the government; and

[31] *PEI Reference*, para 133.

(c) Judicial salaries cannot fall below a basic minimum level of remuneration which is required for the office of a judge.

58. The establishment of the Commission under the *Judges Act* satisfies the first two requirements.

59. As reflected in the positions of the Judiciary, the Associate Judges and the Government, none of the parties before the Commission submitted that judicial independence was at risk.

60. The Commission agrees. The Commission is of the view that its salary recommendations set out in this Report do not put at risk the financial security of judges, or their independence.

iii. The need to attract outstanding candidates to the judiciary—s. 26(1.1)(c)

61. The third statutory criterion requires the Commission to consider "the need to attract outstanding candidates to the judiciary".

62. This provision has been interpreted by previous commissions as requiring judicial salaries to be set at a level that will not deter or discourage the most outstanding candidates from seeking a judicial appointment.[32]

63. Previous commissions have confirmed it is important that the judiciary comprise judges with diverse professional experience and expertise; and that a significant number of candidates be lawyers from private practice.

64. The "most outstanding candidates" from private practice can often be found among senior members of the bar and among lawyers practicing in those specialized areas of law that are an important proportion of the court's caseload.

65. The McLennan Commission stated that the rationale for a private sector comparator is that it is in the public interest that senior members of the bar, among others, be attracted to the bench, and noted that, as a general rule, these lawyers are often among the highest earners in private

[32]Turcotte Report, para 174; Levitt Report, para 59; Rémillard Report, para 80.

practice. As the McLennan Commission observed, although not all "outstanding candidates" will be senior lawyers in higher earning brackets, "many will, and they should not be discouraged from applying to the bench because of inadequate compensation".[33]

a. Private sector comparator

66. The private sector comparator enables the Commission to compare the judicial salary and annuity with the salaries of those lawyers in the private sector who are outstanding candidates for judicial appointment.

67. Previous commissions determined the private sector comparator relying on data that was limited to the reported income of unincorporated self-employed lawyers. Historically, the Canada Revenue Agency ("**CRA**") has not provided or has not been able to provide comparable income data for self-employed lawyers who receive professional income through a professional legal corporation ("**PLC**").

68. Previous commissions expressed concern with the lack of this relevant data, given the growing number of self-employed lawyers who receive income through a PLC.

69. The Drouin Commission and McLennan Commission both noted that the data provided for self-employed lawyers excluded income from lawyers practising through professional corporations and commented that these lawyers are probably those with higher incomes.[34]

70. The Rémillard Commission observed that the failure of the CRA data to include self-employed lawyers practising through PLCs posed "certain problems".[35]

71. The Turcotte Commission expressed significant concerns with the absence of PLC data:

(a) The data showed there had been a decrease in the reported number of self-employed lawyers from 18,740 in 2015 to 15,510 by 2019.

[33]McLennan Report, page 32.
[34]Drouin Report, page 42; McLennan Report, page 42.
[35]Rémillard Report, para 58.

(b) There was a corresponding increase in the use of PLCs by practicing lawyers. In 2019, there were 17,871 such corporations, representing a three-fold increase in the use of professional corporations since 2010.

(c) In 2018, 27% of practising and insured law society members were receiving income through a personal corporation.

72. Efforts were made by the Turcotte Commission to obtain this information from the CRA but the Turcotte Commission was advised it would be a labour-intensive task and the CRA could not confirm it would be possible for it to provide the information. The Government and Judiciary concluded it was not possible to obtain more information on PLCs in time for that Commission to meet its statutory deadline.[36]

73. In its final report, the Turcotte Commission concluded:[37]

> [40] As a result, this Commission is left with a lack of complete data as to the professional income level of lawyers in private practice.
>
> [41] The implication, however, of the CRA data under-reporting the income of higher-earning private sector lawyers is inescapable.
>
> [42] As the Government observed, "if this trend continues, the CRA data may become less and less reflective of practicing lawyers' incomes."

74. To address this concern, the Turcotte Commission included a recommendation in its report requesting preparatory work be undertaken to provide this Commission with "adequate and appropriate additional data from which to work":[38]

> Recommendation 8
>
> 1. Data from the CRA as to levels of professional income reported through professional corporations on a gross and net professional income basis. Recognizing that this may require manual compilation, a statistically significant sample size within the current 17,871 such corporations should be undertaken in sufficient time to be of use to the Seventh Quadrennial Commission.

[36]Turcotte Report, paras 38-39.
[37]Turcotte Report, paras 40-42.
[38]Turcotte Report, chapter 5.

75. In response to this recommendation, the Government and the Judiciary jointly requested the CRA and Statistics Canada to assemble for this Commission the required data to provide information necessary to determine incomes reported by self-employed lawyers providing legal services through a PLC.

76. In a letter to Statistics Canada, the parties specified that "where the lawyer is a partner in a law partnership, the relevant measure of income is the partnership income going *into* the PLC, not what comes *out* as salary and dividends".[39]

77. The CRA and Statistics Canada provided the following data for the years 2019-2022:

(a) CRA provided data derived from the T2 corporate tax returns filed by PLCs across Canada, which included the net income reported by PLC's and dividends paid.

(b) Statistics Canada analyzed income tax data focusing on PLCs. It manually compiled and merged data from individual tax returns (T1), corporate tax returns (T2) and T5013 tax forms which report income from partnerships and provided the following:

(i) data derived from the T2 corporate tax returns filed by PLCs which included net income reported by PLCs.

(ii) partnership data detailing the partnership earnings received by lawyers practising in a partnership, including income received by partners practicing through a PLC.

78. The Judiciary and Government each retained experts to review the PLC data. The Judiciary engaged Ernst & Young and the Government engaged Eckler Ltd. ("Eckler"). Expert reports were included with the parties' submissions in December 2024, and response and reply expert reports were filed in January 2025. There was little consensus among the parties and their experts on the use that should be made by the Commission of the PLC data.

79. The Judiciary argued the Statistics Canada net partnership income data should be used by the Commission for the private sector comparator, saying:

[39]Judiciary Submission, para 182.

(a) It "is the only dataset that provides information on the income going *into* PLCs that are proper proxies for individual lawyers".[40]

(b) The data derived from T2 PLC tax returns "reflects only the net income of the PLC, not the gross income flowing into the corporation. This figure is thus of little relevance, as lawyers typically pay themselves a portion of the PLC's gross income as salary, thereby reducing the net income declared by the PLC on its T2".[41]

(c) "It is the gross income flowing into the PLC that reflects the value of the lawyer's work for that income, not the net amount flowing out of the PLC."[42]

80. The Judiciary relied on the expert report of Ernst & Young in support of its position. In its report, Ernst & Young set out its analysis of the data provided by both CRA and Statistics Canada and provided its opinion that the assessment of incorporated lawyers' net income should rely primarily on the Statistics Canada partnership data: [43]

> The StatsCan data provides robust information on partnership data. Partnership data is a true representation of the partnership income earned by the law professionals as the amount on the T5013 slip indicates their share of income directly from practicing legal activities. The T5013 slip is to a partner of a partnership what a T4 slip is to an employee of a corporation. Due to this, the net partnership income share is considered the best representation of the actual income of partners/lawyers.

81. The Government argued "a more realistic comparator" is the average income including dividends for "PLC owners", which can be derived from the T2 PLC tax returns. The Eckler Report provided an "approximate average income including dividends for PLC owners".[44]

82. In its January 24, 2025, reply report, Ernst & Young provided a response to the Eckler Report stating:[45]

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[40]Judiciary Submission, para 170.
[41]Judiciary Reply Submission, para 57(b).
[42]Judiciary Reply Submission, para 57(b).
[43]*Ernst & Young Report on Private Sector Compensation* (**"EY Compensation Report"**), page 12, Judiciary Book of Exhibits and Documents (**"JBED"**) at tab D.
[44]*Eckler Report*, page 41, GBD at tab 4.
[45]*Ernst & Young Review of the Eckler Report* (**"EY Reply Report")**, pages 4-5 and footnote 4; Judiciary Supplemental Book of Exhibits and Documents at tab C.

> The Eckler Report refers extensively to the "PLC Owners" data file (at pages 34, 35, 40,41 and 48) and draws conclusions based on the assumption that this financial information pertains to the *shareholders* of the PLCs, as opposed to the PLC itself. This is incorrect and therefore produces inaccurate analysis and conclusions.
>
> …
>
> …Thus, the data provided is the net income of the corporation, not the net income of the owner (shareholder)…
>
> …
>
> Eckler's focus on a PLC's net income to assess lawyer compensation is also conceptually flawed and underestimates the lawyer's income because the net income, by definition, is net of salaries, other expenses and taxes. It is the gross amount of all these items that more accurately represents earnings from the practice of law. It is for this very reason that the parties had specified, in their letter to StatsCan, that the relevant figure was the income flowing into the corporation (gross income).

83. In its response report, Eckler noted the Judiciary's submission focussing on the partner income share as declared by the partnership and stated:[46]

> With regards to the incorporated data (PLC data), it was mentioned in paragraph 180 of the Judiciary's Submission that the focus was on the partner income share, as declared by the partnership. However, in our report we also calculated average income including dividends for PLC owners from 2018 to 2021. This is a key element of the incorporated lawyer compensation package that we believe was important to note in our total compensation analysis as the take home pay would be understated without explaining this compensation component.

84. The Commission agrees with the position of the Judiciary and its expert Ernst & Young. The partnership income flowing into a PLC is the best representation of the income earned by a self-employed lawyer practising through a PLC. The Statistics Canada net partnership income, as detailed in the Ernst &Young Report, is the appropriate data to be used to calculate the professional income earned by self-employed lawyers practicing through PLCs.

[46] *Eckler Response Report*, page 6, Government Supplemental Book of Authorities at tab 1.

85. The PLC income data is not a new comparator, as suggested by the Government.[47] Rather it is to be considered *together* with the data for unincorporated self-employed lawyers to arrive at the private sector comparator.

86. As in past years, the Government and the Judiciary asked the CRA to prepare a dataset of the 2019 to 2023 tax returns of individuals identified by the CRA as self-employed lawyers.

87. Both parties relied on this dataset in making submissions to the Commission on this component of the private sector comparator.

88. The Commission asked the parties to provide filtered data for 2019-2023 for "[a]ll lawyers practicing in the private sector (i.e., not just partners but also associates, in-house counsel, etc)…"[48]

89. In response, the parties advised that the requested data is not available to the parties and had not been provided to previous commissions.[49]

90. The Judiciary submitted that, even if such data were available, it would not be relevant for use in the private sector comparator, as a majority of employed lawyers in private practice are associates at law firms who typically do not meet the statutory requirement for judges of ten years at the Bar.[50]

91. We are of the view that this wider data is relevant. The private sector is not confined to those in private practice nor to those who choose to pursue the partner route. It includes, for example, in-house counsel in corporations whose work may be very similar to those in private practice and who also have the potential to be outstanding judges. We encourage the parties to work together to ensure that future commissions have access to the wider data set of lawyers working in the private sector in order to allow for a more complete private sector comparator.

[47]Government Submission, para 103.
[48]Commission letter dated February 26, 2025.
[49]Judiciary and Government letters dated March 31, 2025—The Government noted there were some data with respect to specific in-house counsel lawyers in the private sector.
[50]Judiciary letter dated March 31, 2025.

Filters

92. In order to determine the appropriate private sector comparator, previous commissions have applied filters to the private sector income data to ensure the private sector comparator is limited to the pool of appropriate candidates for judicial appointment. The data provided by CRA and Statistics Canada includes income reported by all self-employed lawyers in the subject years.

93. The filters are meant to ensure the judicial candidate pool is limited to only those lawyers who meet the legal requirements to be appointed (e.g. minimum ten years of practice) and are likely to be outstanding candidates for judicial appointment.

94. The Turcotte Commission applied the following filters to the self-employed lawyer income data:[51]

(a) Relying on previous commissions, it continued to use the 75th percentile filter.

(b) The low-income cut-off of $60,000 was adjusted for inflation since 2004 (using CPI) and increased to $80,000.

(c) It used an age-weighted approach rather than focusing on the 44-56 age group;

(d) It declined to move from the use of national income to top ten Census Metropolitan Areas ("**CMAs**") only.

95. The Judiciary argues that the filters to be used should be income greater than $90,000, 44-56 age group and 75th percentile. Although not proposing it be used as a filter, the Judiciary argued the higher income levels of self-employed lawyers in the top ten CMAs should be factored into the Commission's analysis and inform its recommendations.[52]

96. The Government's position is that it is inappropriate to apply any filters to the income data. However, if filters are to be used, the Government agreed the 75th percentile is appropriate[53] and

[51]Turcotte Report, para 182.
[52]Judiciary Submission, paras 119 and 185.
[53]Transcript of February 20, 2025 hearing, page 146.

age-weighting is preferable over wholly excluding age bands.[54] The Government argued there is no objective basis to apply any salary exclusion[55] and there should not be a CMA-related filter.[56]

97. The use of appropriate filters in determining a private sector comparator is a well-settled practice of prior commissions, and we elect to continue their use. We conclude as follows:

98. *Appropriate percentile*: The 75th percentile of private lawyer income has been consistently applied by previous commissions, and we will continue its use.

99. *Low-income exclusion*: The purpose of the low-income exclusion is to exclude lawyers who are unlikely to be in the pool of qualified candidates. Lawyers must, for example, have a minimum of ten years of practice at the bar to be qualified for a judicial appointment.

100. When the McLennan Commission set the low-income exclusion at $60,000 in 2004, it considered the salaries of articling students and first year lawyers in major centres, it being unlikely that lawyers who are required to have a minimum of 10 years at the Bar would have an income lower than this range.

101. In support of its submission to adjust the low-income exclusion for inflation, the Judiciary referenced published salary guides which reported salaries of first year associates in excess of $100,000 and higher in larger centres.[57]

102. The low-income exclusion of $80,000 adjusted for inflation measured by the change in CPI since 2019 is $90,711 for 2023.[58]

103. The Commission agrees the low-income exclusion should be increased to $90,000 per annum in line with changes in the CPI.

[54]Government Submission, para 85.
[55]Government Submission, para 89.
[56]Transcript of February 20, 2025 hearing, page 152.
[57]Judiciary Submission, para 123 and Judiciary letter dated March 31, 2025, page 7.
[58]EY Compensation Report, page 14.

104. *Age group*: The Turcotte Commission departed from earlier commissions and used an age weighted approach, rather than focusing on the 44-56 age group considered by previous commissions. The Judiciary argues the Turcotte Commission erred as a matter of process in reaching this conclusion, as there were not "valid reasons" to depart from the conclusions of previous commissions. The Judiciary argued there was not a "change in current circumstances or additional new evidence" to support the change. On this basis, the Judiciary submit the 44-56 age range filter used by previous commissions should be retained as the relevant filter.[59]

105. The Judiciary also argued the age-weighted approach adopted by the Turcotte Commission was flawed because the age-weighting was based on age groups, rather than on data for each individual age, and therefore gave too much weight to lower salaries at the outer ends of the distribution. Individual age data was not available in the data provided to the Turcotte Commission, nor is it available to this Commission.

106. Ernst & Young confirmed in its report that in general the age-weighted average approach is a statistically valid method and is often preferred over a straight average.[60]

107. The Government argued that age-weighting is preferable over wholly excluding age bands because private sector lawyers' incomes decline after the median age of judicial appointment. The data shows that self-employed lawyers' incomes decrease significantly after age 56. The Government argued that focusing on the age group 44-56 does not provide an accurate portrayal of the incomes that lawyers would be giving up in future years in accepting a judicial appointment. Judicial salaries, on the other hand, are constitutionally guaranteed and will not stagnate over time. Further, security of tenure guarantees judges remain in office until age 75 unless they choose to leave earlier.

108. The following table provides the demographics for judicial appointments between April 1, 2020, and March 31, 2024, based on age at the date of appointment:[61]

[59]Judiciary Submission, paras 131-133.
[60]EY Compensation Report, page 17.
[61]Judiciary Submission, Table 3.

Age Range	Appointees	Percentage
35-43	19	7.0%
44-56	185	68.5%
57-69	66	24.6%
Total	**270**	**100%**

109. There were 85 judicial appointments of lawyers outside the 44-56 age group.

110. The Commission agrees with the Turcotte Commission and the Government's submission that the age-weighted approach is preferable to limiting income data to the 44-56 age range. Although the age-weighting relies on age groups, rather than individual ages, this approach is preferable to an approach that excludes income levels of a significant number of lawyers in the qualified pool of judicial candidates.

111. The Commission concludes that the self-employed lawyer data should be filtered based on the relative number of judges appointed at each age.

112. *Top 10 CMAs*: The Commission agrees it is not appropriate to filter the income data on the basis of top 10 CMAs. Nor does the Commission think it appropriate to consider the top ten CMA data in its analysis. The Commission agrees with the Turcotte Commission that an "urban-only focus" would not be consistent with a national judiciary, appointed and sitting across the country.

113. The Commission concludes that applying a low-income cut-off of $90,000 per annum to age-weighted national figures at the 75th percentile is appropriate in determining the private sector comparator.

114. By way of post-hearing correspondence dated February 26, 2025, from the Commission to the parties, we asked the Government and the Judiciary for income data for 2019-2023 using a low-income cut-off of $90,000 per annum, age-weighted to the distribution of ages at appointment and at the 75th percentile. We asked that the income data be provided for unincorporated self-employed lawyers, incorporated lawyers, and combined unincorporated and incorporated lawyers.[62]

[62]Commission dated February 26, 2025.

115. The Judiciary provided the following requested data for each of the three groups in a letter dated March 31, 2025:

(a) For unincorporated self-employed lawyers, the Judiciary's age weighted comparators are based on income levels for each of the seven age groups used by CRA to provide income data and weighted based on the relative number of judges appointed in each age group between 2020 and 2024. The income data was provided for 2019-2023 and set out in Table 1 of the letter.[63]

(b) For incorporated lawyers, the Judiciary noted the income data for incorporated lawyers provided by CRA and Statistics Canada is not broken down by age group. The Judiciary derived age weighted data based on the relative increase between the income levels of unincorporated lawyers without an age filter and the income levels when applying the age-weighted approach. The income data was provided for 2019-2022 in Table 3 of the letter. The Judiciary confirmed that both the methodology to derive age-weighted figures for incorporated lawyers and the results provided in Table 3 were validated by Ernst & Young.[64]

(c) The Judiciary provided combined unincorporated and incorporated lawyer income data weighted based on the count of lawyers in each category. The Judiciary confirmed that both the methodology to arrive at a combined age-weighted comparator and the results in Table 4 of the letter were validated by Ernst & Young.[65]

116. The Government provided data for unincorporated self-employed lawyers using the same age-weighted approach as the Judiciary.[66] The Government noted the participants appear to agree on these numbers. The Government's comparator numbers were slightly higher than the income levels provided by the Judiciary. [67]

[63]Judiciary letter date March 31, 2025, Table 1.
[64]Judiciary letter dated March 31, 2025, footnote 3.
[65]Judiciary letter dated March 31, 2025, footnote 4.
[66]Government letter dated March 31, 2025, page 3.
[67]In its March 31, 2025 letter, the Judiciary noted the Eckler Report relied upon by the Government used numbers for the proportion of judges in each group that differed from those prepared jointly by the parties.

117. The Government responded that "[t]he challenges with the data available do not allow a detailed breakdown, in particular with respect to incorporated lawyers." The Government referenced the significant challenges previously addressed in its earlier submissions. [68]

118. The Commission has decided to use the income data provided by the Judiciary in its letter dated March 31, 2025, in determining the private sector comparator. The following table provides the salary levels for self-employed lawyers: [69]

	Unincorporated lawyers		**Incorporated lawyers**		**Combined**
Year	Income	Lawyer count	Income	Lawyer count	Income
2019	$486,983	9,370	$837,240	6,000	$623,713
2020	$546,904	8,950	$946,168	6,240	$710,920
2021	$576,664	9,180	$1,034,463	6,590	$767,970
2022	$544,969	8,530	$974,542	7,050	**$739,352**
2023	$566,688		N/A	N/A	N/A
Average	$544,441	9,008	$948,103	6,470	$710,489

Note: Based on the income data reported in this table, roughly 45% of self-employed lawyers earned professional income through a PLC in 2022, which is up from 39% in 2019.

Value of the Judicial Annuity

119. An important consideration of total compensation is the value of the judicial annuity, which can be considered from (at least) two perspectives, as a retirement benefit, but also as a permanent disability benefit because a judge who becomes permanently disabled may be eligible for the full annuity for life, with no minimum service requirement. We were not told how often a permanent disability annuity is provided, or what the cost of providing it is, or what the cost would be to replace this coverage with another form of disability coverage.

120. Both parties accepted that the judicial annuity should be taken into account in our consideration of the adequacy of the salaries and other amounts payable under the *Judges Act* and

[68] Government letter dated March 31, 2025.
[69] Judiciary letter dated March 31, 2025, Tables 1, 3 and 4.

into the adequacy of judges' benefits generally. During the Turcotte Commission, the parties agreed to value the judicial annuity at 34.1% of the judicial salary. At that time, the Government's expert valued the judicial annuity at 37.84% including a value ascribed to the disability benefit. The expert retained by the Judiciary valued the judicial annuity without the disability benefit, at 34.1% of the judicial salary, the value that was ultimately agreed to and used.

121. The parties did not come to an agreement on the appropriate value for the disability benefit. In addition, we did not hear sufficient arguments or expert opinions with respect to the proper valuation of the disability component of the annuity as a benefit of service to provide that aspect of the annuity with a value in this report. As did the Turcotte Commission, we therefore turn to a consideration of the value of the judicial annuity as a component of total compensation without consideration of the disability component.

122. The annuity is equal to two-thirds of the final year's earnings if the judge has met one of the three thresholds:

(a) Served at least fifteen years and have a sum of age and years of service of at least eighty.

(b) Served at least ten years and reached the mandatory age of retirement of seventy-five years old.

(c) Served on the Supreme Court of Canada for at least ten years.

123. A reduced lifetime annuity is available at retirement for judges who do not meet these thresholds.

124. The annuity is equal to two-thirds of the final year's earnings if a judge is permanently disabled while serving as a federally appointed judge.

125. The annuity is protected against inflation based on changes in the CPI in each year that it is payable.

126. In its report, Eckler presented the results of its review of the total compensation paid to those they considered to be in comparable jobs and the current compensation of federally

appointed judges and provided observations and recommendations to help guide our work, although Eckler was of the view that the total compensation package of federally appointed judges was difficult to compare to other jobs because of the judicial annuity. "Self-employed lawyers continue to be a key comparator, however they do not receive any additional pension benefits, since any pensions will be self-funded out of their own income."[70]

127. Eckler estimated the net total annuity (including disability and Canada Pension Plan ("**CPP**")) as valued at 44.1% of the judicial salary as an age-weighted average, with the net retirement benefit being 38.5% and the net disability benefit 5.6%. From the Submissions of the Government of Canada:

> 50. The net total annuity (including disability and Canada Pension Plan ("CPP")) is valued at 44.1% of the judicial salary as an age-weighted average, with the net retirement benefit being 38.5% and the net disability benefit 5.6%…

128. In its report, Ernst & Young estimated the average value of the judicial annuity. It applied the same methodology retained by the Turcotte Commission, which had valued the judicial annuity at 34.1% for the period of its report. It updated two assumptions. First, it adjusted the demographic assumptions based on the most recent 2022 report from the Office of the Chief Actuary of Canada on the pension plan for federally appointed judges. Second, it adjusted the discount rate from 5% (used by the Turcotte Commission) to 6%, reflecting what it believed was a reasonable expected rate of return for a balanced portfolio given the prevailing economic conditions during the reference period. Ernst and Young concluded that the annual average value of the judicial annuity during the relevant period was 28% of salary. It noted that "[a]s the Pension Plan is unfunded (i.e., pay-as-you-go plan), there are no legislative requirements to guide the development of the discount rate assumption."[71]

129. We prefer the approach of Eckler to the appropriate discount rate to that of Ernst & Young. The judges' plan differs significantly from most public sector pension plans as it is financed through Canada's Consolidated Revenue Fund on a pay-as-you-go basis. The Government's cost

[70]Eckler Report, page 3.
[71]Ernst and Young, Report on the Value of Judicial annuity (**"EY Annuity Report")**, December 20, 2024, p.13, JBED at tab C.

in any given year corresponds to the difference between the annuity benefits payable and the judges' contributions. Since benefits paid from the plan are paid from the Consolidated Revenue Fund and there are no invested assets, the actuarial liabilities and current service costs are valued using the Government's long-term cost of borrowing. A lower discount rate is appropriate because there are fewer risks associated with the payment of judicial annuities. As stated by Eckler:[72]

> Ms. Wong's discount rate assumption of 6% per annum presumes that significant investment risk would have to be assumed by the individual in order for them to obtain an annualized return of 6%. Once again, we consider this assumption unreasonable, as one of the primary advantages of being entitled to receive the judicial annuity is the fact that it's essentially risk free since the government is responsible for bearing all investment and longevity risk associated with its payment.

130. Eckler included the CPP in its estimate of the value of net total annuity, but did not provide us with a calculation of to the extent to which the CPP raised Eckler's determined value of the retirement benefit to 38.5%. (We note that the Judiciary included in their materials a list of materials that had been relied upon by Ernest & Young, including a report by JDM Actuarial dated March 25, 2021. In its 2021 report JDM Actuarial valued the CPP at "$3,166 as a benefit available to judges as part of total compensation.")[73] Having regard to the submissions as a whole, and the most recent agreed valuation of 34.1%, we have decided to value the judicial annuity at 34.1% of the judicial salary.

Comparison of private sector income and judicial compensation

131. The following table provides a comparison of the private sector comparator and judicial compensation for the years noted:

[72] *Eckler Response Report*, p.10, Government Supplemental Book of Authorities at tab 1.

[73] "Compensation Review of Federally Appointed Judges – Department of Justice regarding the 2020 Judicial Compensation and Benefits Commission" by JDM Actuarial, March 26, 2021 EY Annuity Report, Appendix C and JBED at tab 46.

Year	Private Sector Comparator	Puisne Judges' Salary	Judges' salary and annuity[74]	Difference between private sector comparator and judges' salary and annuity	% Difference
2019	$623,713	$329,900	$442,396	$181,317	41.0%
2020	$710,920	$338,800	$454,331	$256,589	56.5%
2021	$767,970	$361,100	$484,235	$283,735	58.6%
2022	**$739,352**	$372,200	**$499,120**	**$240,232**	**48.1%**

Note: The Judges' salary in each year is effective April 1 to March 31 of the following year. The private sector income is based on the calendar year.

132. The judicial compensation including annuity for April 1, 2022, to March 31, 2023, is $499,120. The private sector comparator for the 2022 calendar year is $739,352, which is $240,232 (48%) higher than judicial compensation.

b. Difficulty recruiting outstanding candidates from private practice to the judiciary

133. The issue for the Commission is to determine whether the current level of judicial salary and benefits is adequate and will continue to ensure outstanding candidates are attracted to the Judiciary. The Commission heard extensive submissions from the Government and the Judiciary on this issue.

134. The Government maintained the statistics collected by FJA show there is no shortage of "interested and highly qualified candidates" for judicial positions. From April 1, 2020, to March 31, 2024, there were 271 appointments. Of these, 169 individuals applied and were appointed during this time. Of these 169 appointments, 121 (71.6 %) were highly recommended and 47 (27.8%) were recommended.[75]

135. The Government also argued that most appointments continue to be drawn from private practice and "there is no evidence that there is any difficulty in attracting high quality candidates

[74]Judicial annuity valued at 34.1%.
[75]Government Submission, para 59.

from the private sector".[76] Between 2020 and 2024, of the 271 appointments, 50% were from private practice.[77]

136. The Government was of the view that an "increase in appointees from other sectors compared to the previous quadrennial cycle is not indicative of an inability to attract outstanding candidates from the private practice; rather, it reflects the growing diversity and expansion of the legal profession, and the type of roles and responsibilities members of the profession take on in their professional capacity".[78]

137. The Judiciary submitted that in the last number of years there has been a crisis of judicial vacancies caused, in part, by a shortage of qualified candidates. The Judiciary notes that, as of May 1, 2023, the number of vacancies among federally appointed courts had reached 9% (88 out of 995 full-time positions).[79]

138. The Judiciary also pointed to data from FJA, which the Judiciary says confirms the challenges of attracting outstanding candidates to the judiciary, particularly those from private practice.

139. The Judiciary submitted that lawyers from private practice are under-represented in the pool of applicants to the bench, with some provinces showing particularly low rates. From 2020 to 2024, 48% of applicants were from the private sector, with some provinces showing lower percentages.[80]

140. Referencing data published by FJA, the Judiciary noted the proportion of highly recommended and recommended candidates declined from 50% in 2020 to 37.2% in 2024.[81]

141. The Judiciary also cited historical statistics showing the proportion of appointees from private practice. In the 2004-2007 period, 78% of appointees were from private practice, dropping

[76]Government Submission, para 60.
[77]Government Submission, para 63.
[78]Government Submission, para 64.
[79]Judiciary Submission, para 84.
[80]Judiciary Submission, para 104, Saskatchewan 35% from private sector and Nova Scotia 33%.
[81]Judiciary Submission, para 106 and graph 1.

to 63% in the 2020-2024 period.[82]

142. The Judiciary argued that the "persistent, dramatic gap" between judicial compensation and private sector salaries "is a serious obstacle in ensuring that outstanding members of the Bar remain interested in considering a judicial appointment.[83]

143. A functioning independent judiciary must be sufficiently staffed to ensure that judges can carry out their work to the required standard. This means, among other things, that judges must be able to administer law in a fair, timely, reasoned and deliberative manner.

144. If judicial appointments do not keep up with retirements and the attrition of judges due to illness, death, other career choices and other reasons, court cases are less likely to be allocated speedily and fairly, judgments are less likely to be delivered in a timely way and to be underpinned by sufficient reasons, and judicial decisions are less likely to evidence the due deliberation that validates to the parties and the public that the courts are functioning as they should be.

145. Because of the substantial body of attributes, skills and experience they must bring to bear, federally appointed judges are drawn from a small section of the bar with the result that the pool of willing, skilled, able and suited potential judges is limited. Potential judges must themselves apply to be considered, often on their own initiative, and sometimes with encouragement from others.

146. The submissions of the Judiciary highlighted a number of causes and risks of judicial vacancies. The causes cited included a shortage of qualified and willing applicants, even with encouragement, and a shortage of skills in certain areas such as commercial litigation and family law.

147. In support of its position, the Judiciary referenced a letter dated May 3, 2023, from the Right Honourable Richard Wagner, Chief Justice of Canada and Chairperson of the Canadian Judicial Council to then Prime Minister Trudeau expressing concerns about judicial vacancies (the

[82]Judiciary Submission, para 110 and Table 1.
[83]Judiciary Submission, para 194.

"**Letter of Concern**"). The letter asked the Prime Minister to take action to fill a large number of vacant Superior Courts and Federal Courts judicial positions across Canada.[84]

148. The Judiciary argued that the high number of judicial vacancies is having severe consequences on the Canadian justice system, referencing the February 24, 2024, Federal Court decision in *Hameed v Canada (Prime Minister)*,[85] which reproduced the Letter of Concern at para 1, wherein the Chief Justice described the current level of judicial vacancies as "untenable" as well as the negative effects judicial vacancies were having on the entire justice system. He expressed significant concerns with the judicial vacancies at the time and the effects on the "administration of justice, the operations of our courts and the health of our judges."

149. A letter from the Chief Justice to the Prime Minister on the topic of judicial vacancies reflects the seriousness of the situation facing the courts. The Letter of Concern highlighted the many adverse impacts of judicial vacancies on the justice system and its effect on judges including chronic work overload, increased stress and increasing applications for medical leaves.

150. The Judiciary relied also on comments made publicly by two Ministers of Justice who recognized that the crisis of judicial vacancies was caused, at least in part, by a shortage of qualified candidates.[86] The Judiciary also referred us to the statement of Chief Justice Geoffrey Morawetz of the Superior Court of Justice of Ontario prepared for the Commission. Chief Justice Morawetz described in detail the challenging task of recruiting candidates for the judiciary from private practice.[87]

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[84]Judiciary Submission, para 85.

[85]2024 FC 242, JBED at tab 10.
The decision on appeal was released on June 18, 2025, 2025 FCA 118. The Federal Court of Appeal ruled that the lower court had not had jurisdiction "to review the advice-giving role of the Prime Minister and Minister of Justice with respect to judicial appointments to the Federal Courts and provincial superior courts.". On the issue of mootness because of the recent filling of judicial vacancies, the Federal Court of Appeal noted at paragraph 12 of its decision "Although it is true that the number of judicial vacancies has been materially reduced in the period between the application before the Federal Court and this appeal, it remains that the notice of application also sought either *mandamus* or declaratory relief, alleging a duty on the part of the Prime Minister and the Minister of Justice to appoint judges. The nature and existence of that duty remains a live controversy, meaning this appeal is not moot. Further, I am of the view that there is still an adversarial context with respect to the jurisdiction and constitutional issues raised by the Appellants. As these latter issues are, in and of themselves, elusive and seldom come before the Court, they are sufficiently important to warrant the expenditure of judicial resources, even if this case were found to be moot (*Borowski* at 358-362; *Société Radio-Canada v. Canada (Attorney General)*, 2023 FCA 131 at para. 40).

[86]Judiciary Submission, paras 87, 89, 90.

[87]Judiciary Submission, para 9 and S*tatement of Chief Justice Morawetz December 20, 2024*, JBED at tab A.

151. In his statement, Chief Justice Morawetz observed the significant rise in the complexity of cases that come before Canada's superior courts. Chief Justice Morawetz attested to the benefits of a bench composed of judges with diverse professional experiences, including judges with the specialized knowledge and practical experience gained in private practice.

152. In particular, he noted that judges appointed from private practice often bring "extensive experience in specialized areas of law that represent an important proportion of superior courts' caseload, such as commercial litigation and family law." Given the nature of cases before the Court, Chief Justice Morawetz testified it is "key for the superior court bench to include a strong contingent of private sector practitioners with expertise and experience to handle these cases efficiently."

153. Chief Justice Morawetz also noted the demand on judicial resources resulting from the 30-month trial deadline for criminal proceedings imposed by the Supreme Court in *R v Jordan.* He testified as to the "benefits provided by a superior court bench that can count on an important proportion of judges with the specialized expertise and experience found among lawyers from private practice."

154. Chief Justice Morawetz also addressed the difficulty in recruiting candidates from private practice:[88]

> 14. An increasing number of qualified private practitioners no longer view a judicial appointment, considering its attendant responsibilities and benefits, as attractive in light of the resulting significant reduction in income.
>
> …
>
> 18. What I can attest to is that, despite best efforts, I have often found myself unable to persuade qualified potential candidates to apply for judicial appointments. A routinely cited reason for this lack of interest is the combination of the heavy workload of superior court judges and the perceived lack of commensurate pay for that work.
>
> …
>
> 20. From exchanges within the Canadian Judicial Council, I know that this challenge exists in other areas of the country, particularly in urban centres.

[88] *ibid.*

> 21. In particular, many potential qualified candidates are aware of, and cite, the significant workload, travel demands, loss of autonomy, lack of administrative support, and increased public scrutiny imposed on federally appointed judges as reasons not to consider applying for judicial appointment. When these factors are considered alongside the significant resulting reduction in income, many candidates have expressed a lack of interest in seeking appointment.
>
> …
>
> 23. While it has always been the case that lawyers from private practice accept a reduction in income when appointed to the bench, this reduction has become more significant, as is clear from my discussions and similar discussions my colleagues at the Canadian Judicial Council have had with potential candidates.

155. The Judiciary also referenced the testimony of Chief Justice Martel Popescul of the Court of King's Bench for Saskatchewan provided to the Turcotte Commission on May 10, 2021:[89]

> I've observed, as have most of my colleagues on the CJC, a reduction in the pool of applicants from private practice, the traditional source of candidates for the Bench. Outstanding private practitioners, many of whom distinguish themselves as leaders of the profession, have previously seen a judicial appointment to one of Canada's Superior Courts as the crowning achievement of an outstanding career.
>
> However, many are increasingly uninterested in seeking appointment to the Bench. A large and growing number of leading practitioners no longer see a judicial appointment, with all its responsibilities and benefits, as being worthy of the increasing significant reduction in income.
>
> This is a concerning trend and one I respectfully submit which should be of concern to this Commission. To be clear, neither I nor my CJC colleagues are questioning the quality of recent appointments to the Bench, nor do we call into question the fact that outstanding candidates come from all types of legal careers and areas of practice. What I'm concerned about is the future and whether the current trend of a shrinking pool of outstanding candidates will translate into a chronic inability to attract outstanding candidates from private practice, including those practicing in metropolitan areas or in larger firms.

156. As of April 1, 2025, the high number of judicial vacancies referenced in the Letter of Concern had been reduced, with 987 federally appointed judges in office, plus 237 supernumerary

[89]Turcotte Commission, Transcript of May 10, 2021 hearings, pages 44 to 47. See transcript of May 10, 2021 at pages 44 to 47 at https://quadcom.gc.ca/wp-content/uploads/2024/05/Oral-Hearing-Transcript-of-May-10-2021.pdf.

judges, for a total of 1,224 judges, and 15 vacancies. This vacancy level compared very favourably with the situation as of May 1, 2023, when, we were told, the number of vacancies on superior courts had reached nine percent (88 of 995 full-time positions), with some vacancies having been open for as much as 18 months. The Government and the Judicial Advisory Committees are to be commended for having made such substantial progress in judicial appointments. It is critical that this low level of vacancy be maintained lest it deter qualified candidates from applying due to concern that they will face an unreasonable workload due to a shortage of judges.

157. We were not, however, provided with evidence that the crisis has been solved. Rather, we have concluded on all of the evidence that, while a shortage has been averted for now, the pressures of rising private sector incomes are such that the ability to maintain an adequate level of private sector appointments to fill judicial vacancies is of ongoing concern. We are persuaded that the effects of past shortages are continuing to rebound within the justice system,[90] that too few highly qualified private sector applicants are applying to serve, that there is a risk that the applicants as a whole will not adequately reflect the bar and society, and that there is a risk that the necessary scope of needed attributes and skills will not be available on the bench.

158. The Commission found the evidence of Chief Justice Morawetz on the importance of maintaining a bench with diverse experience to be very persuasive. Chief Justice Morawetz testified to the benefits of diverse experience, including having judges with the specialized knowledge and practical experience gained in private practice, particularly in specialized areas of law that represent an important proportion of the courts' caseload.

[90] As just one recent example of the effects of past shortages of appointments, in *R. v Martin and Doyle*, 2025 ONSC 2783, Justice Ellies stayed charges against two accused in part due to judicial vacancies that had occurred while the accused were waiting for a trial date.

> [105] To make matters worse, our region has experienced a disproportionate increase in criminal cases since the pandemic was declared in 2020. Between 2019 and 2020, there was a drop in the number of new criminal cases in the SCJ in the Northeast Region. However, between 2020 and 2023, the number of new criminal cases commenced in the SCJ in the Northeast region increased by approximately 46 percent: see our court's five-year report entitled *Ontario Superior Court of Justice: Modernizing The Justice System* (2019-2023 Report), online (pdf): https://www.ontariocourts.ca/scj/files/annualreport/2019-2023-EN.pdf, at p. 90.
>
> [106] The steady increase in crime in our region is not a discrete exceptional circumstance. To qualify as such, the circumstance must be *both* reasonably unforeseeable or unavoidable *and* not reasonably remediated: Jordan, at para. 69. As I stated earlier, the Crown is responsible for systemic delay. Therefore, the Crown bares (*sic*) responsibility for the failure to fill a much-needed judicial vacancy in a region suffering from a gradual, but alarming, increase in crime.

159. The Commission also found the evidence of Chief Justice Morawetz and Chief Justice Popescul regarding the ongoing difficulties in attracting outstanding candidates from private practice to the judiciary to be very persuasive. Both judges referenced the inadequacy of judicial salaries as the reason a large and growing number of leading lawyers from private practice are no longer seeking a judicial appointment.

160. An important factor in ensuring that sufficient qualified candidates apply for judicial appointment and make their way successfully through the discernment and appointment process is the adequacy of the salaries and other amounts payable and the adequacy of judges' benefits generally having regard to the need to attract outstanding candidates to the Judiciary.

161. We agree that factors to be considered in appointments should include those relating to diversity with respect to gender, language, and minority status, representation, and sexual orientation, areas of practice, areas of expertise and life experience, and that the Judiciary should include people who self-identify as Indigenous, racialized, a member of a specific ethnic or cultural group, a person with disability, or a member the 2SLGBTQI+ community. The data show that the number of diverse judges has increased since 2016, and that the bench is more reflective of Canadian society, while, at the same time, the percentage of judges drawn from private practice has diminished.

162. The critical measure to assess whether the government is attracting sufficient outstanding candidates is whether the pool of individuals applying who are rated as recommended or highly recommended is more than adequate to fill all the vacancies. The pool needs to be sufficiently large that geographic requirements are met and that the government is able to select a bench that broadly represents the diversity of Canadians, and maintains a bench composed of judges with diverse experience. Ideally, there would be a significant number of highly recommended candidates in the pool.

163. Based on the data provided by FJA for the period 2020-2024, there were 253 recommended and highly recommended individuals for the 169 appointments made of individuals who applied during that period. Seventy-two percent of the appointments made were individuals who were highly recommended. While this pool was enough to largely close the vacancy gap across the

country by the end of the period and make appointments that reflect Canadian's diversity, it is an uncomfortably small margin when all factors are taken into consideration.

164. Exceptional candidates can come from all sectors and it is important that applicants from all parts of the legal profession are attracted to apply. This includes candidates from the private sector who have historically made up the majority of judicial appointees. While it is true that the percentage of *applicants* from the private sector has declined since 2004-2007, in the most recent period of FJA data, 62.6% of the judges *appointed* for the period came from the private sector.[91] This would appear to indicate there remains a strong appeal for exceptional individuals from all sectors to apply to be judges.

165. That said, the testimony provided by Chief Justice Morawetz to the Commission highlights the risk that it is becoming harder to attract a sufficient pool of outstanding candidates to apply. In his testimony, Chief Justice Popescul expressed concern about the current trend of a shrinking pool of outstanding candidates translating into a chronic inability to attract outstanding candidates from private practice. Chief Justice Wagner highlighted how it is becoming particularly difficult to fill positions in jurisdictions like British Columbia. So while the pool of individuals in the last 4-year period was more than adequate to fill all the positions, we see clear warning signs that salaries are going to be a factor leading to highly qualified private sector lawyers electing not to apply to the judiciary.

166. In summary, and for the reasons stated, the Commission concludes the current judicial salary and benefits are inadequate, and this inadequacy is having an ongoing adverse effect on attracting outstanding candidates to the Judiciary. An increase to the judicial salary is required to ensure outstanding candidates continue to be attracted to the judiciary.

iv. Any other objective criteria that the Commission considers relevant – s. 26(1.1)(d)

167. The fourth factor the legislation directs the Commission to consider is "any other objective criteria that the Commission considers relevant".[92]

[91] 50.4% from private practice, 11.1% from sole practice and 1.1% from the "private sector", JBD at tab 22(d).
[92] *Judges Act*, R.S.C., 1985, s. 26(1.1)(d).

a. Public Service Benchmark

168. This factor includes a comparison with a public service benchmark, the salary of senior deputy ministers, specifically those at the DM-3 level.

169. The link between the salaries of judges and DM-3 federal employees predates the Commission process and was reflected in 1975 amendments to the *Judges Act*. The Guthrie Commission noted:[93]

> As a result of 1975 amendments to the *Judges Act*, the salary level of superior court puisne judges was made roughly equivalent to the mid-point of the salary range of the most senior level (DM-3) of federal deputy minister. This was not intended to suggest equivalence of factors to be considered in the salary determination process, for no other group shares with the Judiciary the necessities of maintaining independence and of attracting recruits from among the best qualified individuals in a generally well-paid profession. In 1975, judicial salary equivalence to senior deputy ministers was generally regarded, however, as satisfying all of the criteria to be considered in determining judicial salaries. At that salary level, a sufficient degree of financial security was assured and there were few financial impediments to recruiting well-qualified lawyers for appointment to the bench.

170. Every commission except the Scott Commission (which did not look at either public or private sector comparators) has used the DM comparator. The Crawford Commission effectively articulated the logic for using this benchmark:[94]

> We believe that an appropriate benchmark by which to gauge judicial salaries is rough equivalence with the mid-point of the salary range of the most senior level of federal public servant, the Deputy Minister 3, commonly referred to as DM-3. As the two immediately previous Triennial Commissions have also indicated, the DM-3 range and mid-point reflect what the marketplace expects to pay individuals of outstanding character and ability, which are attributes shared by deputy ministers and judges.
>
> There are presently only 20 DM-3s in the entire federal public service, and they hold positions which generally carry very onerous operational, policy, management and budgetary responsibilities. They are a group whose services are immensely valuable to the country as a whole, and to the extent that the value of their services might be quantified with accuracy on any objective scale, it would

[93] https://publications.gc.ca/collections/collection_2022/jus/J2-69-1987-eng.pdf at page 8 and JBED at tab 52.
[94] https://publications.gc.ca/site/archivee-archived.html?url=https://publications.gc.ca/collections/collection_2022/jus/J42-4-1993-eng.pdf, at page 11 and JBED at tab 54.

> appear that the same scale could quite fairly apply to superior court judges as well. We say this without any intention of comparing or equating judges to public servants for any purpose whatsoever except the stated purpose of determining an appropriate salary benchmark for judges that would reflect the role and esteem which judicial office deserves and, most important, ensure financial security and thereby contribute to judicial independence. Rough parity of this nature between judges and top-level public servants finds support in the comparative salary figures from a number of other common law industrial democracies.

171. The link between the salaries of senior public servants and judges was also made by the Supreme Court of Canada in the *PEI Reference* case that established the Commission process. The case considered salary cuts made to public servants and judges by a number of provincial governments. Far from differentiating the two groups, the Chief Justice concluded that cuts to judges' salaries made as an exercise impacting all public servants was both *prima facie* rational and helps to sustain the perception of judicial independence because judges were not treated differently:[95]

> 156. To explain how I arrive at this conclusion, I return to one of the goals of financial security—to ensure that the courts be free and appear to be free from political interference through economic manipulation. To be sure, a salary cut for superior court judges which is part of a measure affecting the salaries of all persons paid from the public purse helps to sustain the perception of judicial independence precisely because judges are not being singled out for differential treatment.
>
> …
>
> 158. …In my opinion, the risk of political interference through economic manipulation is clearly greater when judges are treated differently from other persons paid from the public purse…
>
> …
>
> 184. …Across-the-board measures which affect substantially every person who is paid from the public purse, in my opinion, are *prima facie* rational…

172. The linking of judicial salaries to the DM-3 level is not just a matter of historical precedent. It is rooted in the fact that judges, like senior public servants, are paid from the public purse. Public service is an honour and brings many rewards including the ability to work for the public good and

[95] *PEI Reference*, https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1541/index.do.

to serve one's fellow citizens. But it does not, at the most senior levels, provide financial rewards comparable to similar positions in the private sector. Notwithstanding this, Canada's public service and Judiciary have consistently attracted outstanding individuals to serve.

173. All commissions except the McLennan Commission[96] have used the same comparator—that there should be "rough equivalence" between judicial salaries the midpoint of the DM-3 salary range. The Block Commission specified that this should include the midpoint of potential performance pay.[97]

174. The Judiciary argues that we should deviate from this consistent position of past commissions with two arguments they made to previous commissions: that the DM-4 roles should be the comparator group and that average actual compensation should be used instead of the Block DM-3 comparator.

175. The DM-4 category has been in place for over 25 years and continues to represent a very small fraction of the DM community (with only 4 individuals in the most recent data provided by the judicial representatives). This number has not materially grown over time and none of the Commissions have chosen to use it as a comparator.[98] It is our view that it would be inappropriate to use a group this small as a comparator, nor is it representative of the larger group of individuals of outstanding character and ability occupying senior positions in the public service. For example, the Deputy Minister of Justice—who is responsible in effect for the largest law firm in the country—is a DM-2 or DM-3.

176. Nor do we agree that we should deviate from the consistent finding of past commissions that we should use the midpoint of the salary range plus the midpoint of potential performance pay. As the Block Commission noted, using the midpoint provides an objective and consistent

[96]The McLennan Commission considered a wider range of DM comparators including a simple average of all DMs (from DM-1 to DM-4), a weighted average of all DMs, a simple average of the DM-2 to DM-4 levels, a weighted average of the DM-2 to DM-4 levels, and Governor in Council appointments with quasi-judicial duties. All of these comparators resulted in salary levels at or below the DM-3 comparator.
[97]Block Report, para 111.
[98]The McLennan Commission included it in a broader average of DMs resulting in a lower average compensation than the DM-3 comparator.

basis on which to compare on an annual basis. It avoids comparisons with data that could be skewed by turnover in a relatively small positions or a few outliers on performance pay awards.[99]

177. In light of the clear continuity in the positions of past commissions on these points we consider the Block DM-3 comparator to be a settled point in the Commission process. We urge parties to avoid re-litigating this settled issue absent a demonstrated change in circumstances such as, for example, the DM system being restructured so that the DM-4 group became larger than the DM-3 group.

178. Past commissions have argued in favour of a "rough equivalence" between the salaries of judges and the Block DM-3 Comparator. A comparison of salaries in the period leading up to this Commission shows these salaries meet the rough equivalence test. As of April 1, 2025, judges were earning about 2.3% more than the DM-3 comparator—well within the 7.3% gap that the Levitt Commission said "tests the limits of rough equivalence".[100]

DM-3 (Block)	Judicial Salaries	DM-3 (Block)	Differential ($)	Differential (%)
April 1, 2021	$361,100	$357,772	$3,328	0.92
April 1, 2022	$372,200	$375,014	-$2,814	-0.76
April 1, 2023	$383,700	$388,295	-$4,595	-1.20
April 1, 2024	$396,700	$397,149	-$449	-0.11
April 1, 2025	$414,900	$405,129	$9,771	2.36

b. Other factors

179. There are factors, other than judicial compensation, that may attract or deter outstanding applicants from applying for judicial appointment. The benefits and hardships which come with a judicial appointment must be weighed and considered by individuals considering an application for appointment.

180. In addition to the annual salary and the judicial annuity, federally appointed judges are entitled to an array of insurance benefits and to continuing legal education programs. [101]

[99]Block Report, para 106.
[100]Levitt Report, para 52.
[101]FJA, *Guide for Candidates, Appointments to Superior Courts* at https://www.fja-cmf.gc.ca/appointments-nominations/guideCandidates-eng.html?pedisable=true.

181. Federally appointed judges other than Supreme Court Judges are eligible to select a period of supernumerary status if they have served at least fifteen years as a federally appointed judge and have a sum of age and years of service of at least eighty or are at least seventy years old with at least ten years of service as a federally appointed judge. Supernumerary status gives judges a reduced workload of approximately 50% while they continue to receive full compensation. Supernumerary status has a maximum of ten years or until the age of seventy-five, whichever comes first.

182. We have also considered the uniqueness of the judicial function, which imposes rigorous demands on members of the judiciary who must devote themselves exclusively to their judicial duties and who are constrained in their behaviours publicly and privately both during their term as judges and beyond.

183. FJA's Guide for Candidates for Appointments to Superior Courts, B.5 Ethical, Change of Lifestyle and Other Considerations, sets out the expectations in some detail.[102]

> Anyone considering a judicial appointment should have as much information as possible on what becoming a judge entails, and should enter upon the responsibilities of judicial office only if he or she is fully prepared to accept the substantial changes which it will bring, not just to the judge's own life, but to the lives of the members of his or her family. Among the factors to consider are moving from one city to another, buying and selling a house, career disruption of a spouse, children changing schools, and other inconveniences. The decision to seek and to accept a judicial appointment should be taken only after full consultation with all those who will be intimately affected by the changes it will bring. As well, while training programs are provided to new judges, and continuing education is available, judges are by and large on their own.
>
> A reasonably long-term commitment is also required from each judge: generally, judges cannot retire with a full pension, except on medical grounds, until they have served 15 years in office and the total of their age and years in office equals at least 80, or have completed at least 10 years in office and reached the age of retirement (75). Judges must remain on the Bench until the statutory requirements for retirement with a full pension are met, or leave with only a pro-rated pension or a return of contributions.

[102] https://www.fja-cmf.gc.ca/appointments-nominations/guideCandidates-eng.html.

> Anyone considering a judicial appointment should review the Assessment Criteria for candidates for federal judicial appointment, with particular attention to those topics listed under "Personal Characteristics" and "Potential Impediments to Appointment".

184. In addition to these considerations, there are many others. The independence of the Judiciary isolates judges from former associations to avoid the possibility of a real or perceived conflict of interests. It requires that judges devote themselves exclusively to the duties of the judicial office and not engage in any outside business. Judges are expected to comport themselves scrupulously. They may not engage in public and should avoid expressing personal opinions on social issues. In both their work and personal life, they may be subject to scrutiny by the Canadian Judicial Council. The Council has a statutory mandate to investigate all complaints and allegations of misconduct on the part of federally appointed judges and to recommend to the Minister of Justice whether there are grounds for removing a judge from office.

185. The Canadian Judicial Council 2021 publication *Ethical Principles for Judges* provides additional ethical guidance for federally appointed judges and associate judges.[103]

186. Even former judges are subject to rigorous rules, including restrictions on how and where they can practise. A former judge can act as an arbitrator, mediator or commissioner; however, former judges should not appear as counsel before a court or tribunal in Canada for an extended period of years. (This constraint may be subject to exceptions where a judge has left the judiciary after a very short period.)

187. We have also borne in mind that the role of judge brings with it respect and prestige in addition to obligations and constraints both during and after the term of service. As the Government put it, the allure of judicial appointments goes beyond the salary, citing in addition other factors that may make judicial office appealing, such as the desire to serve the public, security of tenure, and the quality of life associated with judicial office, as important incentives to seek a judicial appointment.

[103] https://cjc-ccm.ca/sites/default/files/documents/2021/CJC_20-301_Ethical-Principles_Bilingual%20FINAL.pdf.

188. We have considered these factors in our inquiry and analysis under s. 26(1.1) of the *Judges Act*.

C. Conclusion and Salary Recommendation

189. The Commission has concluded the current salary and benefits paid to judges are inadequate. This inadequacy is having an ongoing adverse effect on the attraction of outstanding candidates to the Judiciary. An appropriate increase to the current judges' salary is required to ensure that more outstanding candidates are not discouraged from seeking judicial appointment.

190. What is the appropriate increase to the judicial salary?

191. The Judiciary asks that the base salary "be correctively reset through an increase of $60,000, exclusive of IAI, to reduce the wide gap between judicial salaries and the income levels of self-employed lawyers". The Judiciary argues the requested increase "will hopefully go some distance" in mitigating the shortage of applicants and contribute to ensuring the attraction of outstanding candidates from all areas of practice.[104]

192. In asking for the $60,000 adjustment, the Judiciary has compared judicial salaries to two public service comparators, which it argues should be used by the Commission instead of the DM-3 Block comparator.[105] The "gap" between the judicial salary and these comparators are stated to be $57,854 and $62,305. The Judiciary also referenced the significant gap between the judicial salary and private sector salaries, in support of its request.

193. The Judiciary submits the requested increase would "begin to address the historical inadequacy of the data which informed the recommendations of past commissions" due to the unavailability of income data for self-employed lawyers receiving income through PLCs.[106] The Commission asked the Judiciary to advise what increase it believed would be necessary to fully address "the historical inadequacy of data".[107]

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[104]Judiciary Submission, paras 7 and 8.
[105]Judiciary Submission, para 243—the DM-3 comparator calculated using the total average compensation rather than the mid-point, and the DM-4 Block comparator.
[106]Judiciary Submission, para 242.
[107]Commission letter dated February 26, 2025.

194. In its response, the Judiciary stated the $60,000 increase "plainly does not bridge the gap, and it would be premature at this juncture to say what salary increase(s) would be necessary" to "fully address" the gap revealed by the new data. The Judiciary's position is that the Commission should not strive to make a salary recommendation that would fully address the gap by "a single corrective increase". Rather "corrections of this nature" should be gradual and determined by future commission based on the evidentiary record before them.[108]

195. The Government argues that no salary increase is necessary as the current judicial salary is more than sufficient to uphold judicial independence and "there is no evidence that there is difficulty in attracting high quality candidates from the private sector".[109] It also requests that the Industrial Aggregate Index be capped at a maximum four-year cumulative increase of 14% over the current quadrennial cycle.[110]

196. The Government characterized the $60,000 increase requested by the Judiciary as a "bonus" and argued it was "unprecedented and unjustified".[111]

197. In its submissions to the Commission, the CBA stated judicial compensation must be set at a level to attract and retain outstanding candidates, which tend to be senior practitioners or practitioners in mid-career who would otherwise be inclined to remain in their current situation, whether in private practice, in-house or government.

198. The CBA submitted that judicial compensation levels "should ensure that judges and their dependents do not experience significant economic disparity between pre and post appointment levels so that outstanding candidates are not deterred from applying".[112] The CBA did not take any position on the appropriate amount of any required increase to judge's salaries.

199. The Commission does not agree with the Government's characterization of the Judiciary's requested salary increase as a "bonus". In conducting its inquiry into the adequacy of judges'

[108]Judiciary letter dated March 31, 2025.
[109]Government Submission, para 59.
[110]Government Submission, para 4.
[111]Government Reply, paras 1-5.
[112]Transcript of February 20, 2025, page 167.

salaries, the Commission is mandated by s. 26(1.1)(c) of the *Judges Act* to consider "the need to attract outstanding candidates to the judiciary". The Commission has determined the current judicial salary is inadequate to attract a sufficiently large and diverse pool of outstanding candidates from the private sector. We have concluded that the salary increase recommended by the Commission is required as a measure to help ensure outstanding candidates in the private bar continue to be attracted to the judiciary.

200. The Commission agrees with the Judiciary that the significant gap between judicial salaries and the private sector comparator warrants an increase to the current judicial salary; however, we do not agree with the amount of the increase proposed by the Judiciary.

201. The Commission has determined the Block DM-3 Comparator continues to be the proper public sector comparator and therefore the Judiciary's comparisons to the DM-3 average and DM-4 comparators do not assist the Commission at arriving at an appropriate salary increase.

202. The Commission's statutory mandate is to recommend a salary level which is adequate to ensure outstanding candidates continue to be attracted to the judiciary for this quadrennial cycle. Our salary recommendation is intended to fully address the inadequacy of judges' salaries as determined by this Commission on the evidentiary record before us. It will be for future commissions to determine whether further increases are appropriate or required based on the evidentiary record before them.

203. In determining the appropriate increase, the Commission has followed the approach of previous commissions and considered the private sector comparator and the Block DM-3 comparator. Each comparator serves a different purpose.

204. The private sector comparator provides the Commission with the salary level of those lawyers in the private sector who are considered to be outstanding candidates for judicial appointment. The need to consider the relationship between private sector incomes and judicial salaries arises from the mandatory statutory requirement that we consider, as a criterion relevant

to the assessment of the adequacy of judicial salaries, "the need to attract outstanding candidates to the judiciary".[113]

205. To continue to attract outstanding candidates, judges' salaries must be set at a level that will not deter them from applying to the judiciary. The private sector comparator is a tool to assist the Commission in assessing this factor. The objective is not to seek to match judicial salaries to the highest earners[114], nor to seek an exact point in the comparators at which judges' salaries should be set. We agree with the following analysis of the Rémillard Commission:[115]

> 81. Comparators help us to assess this factor, but this is not a mathematical exercise. Financial factors are not and should not be the only factor –or even the major factor – attracting outstanding judicial candidates. The desire to serve the public is an important incentive for accepting an appointment to the judiciary.
>
> 82. We agree with past Commissions that have decided not to seek an exact point in the comparators at which judges' salaries should be set. We have sought to ensure that overall compensation levels do not deter outstanding candidates from applying.
>
> 83. In addition to compensation, including the value of the judicial annuity, other factors, such as the desire to serve the public, security of tenure, and the availability of supernumerary status attract candidates to the bench.

206. The DM-3 Comparator does not reference a pool of potential candidates for appointment to the judiciary. Rather, the DM-3 comparator is a public service benchmark which has been used as a reference point against which to test whether judges' salaries have been advancing appropriately in relation to other public sector salaries.[116]

207. The DM-3 comparator provides an objective benchmark to recognize that judges, like senior civil servants are paid from the public purse. The comparator seeks to maintain a relationship between judges' salaries and the remuneration of senior federal public servants whose attributes most closely parallel those of federally appointed judges.

[113]Drouin Report, page 35.
[114]Block Report, para 116.
[115]Rémillard Report, paras 81-83.
[116]Turcotte Report, para 131; Rémillard Report, para 47.

208. Previous commissions have suggested there should be "rough equivalence" between the DM-3 comparator and the judicial salary.

209. The Drouin Commission considered both the DM-3 comparator and private sector comparator should be included in its considerations of the adequacy of judicial salaries. However, the Drouin Commission cautioned that "a strictly formulaic approach to the determination of adequate salary level for judges was not desirable or appropriate" and concluded:[117]

> …While we agree that the DM-3 comparator should not be determinative of our recommendations concerning judicial salaries, in our view, its an appropriate and useful comparator at this time. More particularly, we have concluded that the important aspect of the DM-3 comparator, for the purposes of our inquiry, is the maintenance of a relationship between judges' salaries and the remuneration of those federal public servants whose skills, experience and levels of responsibilities most closely parallel those of the Judiciary…
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> …
>
> …it is clear that the salaries of judges are not to be set automatically based on the remuneration of public servants. To do so would be to treat judges, indirectly, as part of the executive branch of government. That does not mean, however, that the salaries of judges must be set without any regard to remuneration levels within the senior ranks of the Government, or that they should be permitted to lag materially behind the remuneration available to senior individuals within the Government…

210. At the time of the Block Commission, judges were paid 91% of the DM-3 comparator. The Block Commission recommended a salary increase to bring the salary of puisne judges to "rough equivalence" with the DM-3 comparator. The Government did not implement this recommendation.

211. The Levitt Commission followed the Drouin Commission and Block Commission, and concluded that a "rough equivalence" with the DM-3 salary range midpoint plus one-half eligible performance pay was a "useful tool in arriving at a judgment as to the adequacy of judicial remuneration, because this concept reflects the judgmental (rather than mathematical) and multi-faceted nature of the enquiry."[118]

[117]Drouin Report, pages 30, 32.
[118]Levitt Report, para 48.

212. At the time, the judicial salary was 7.3% lower than the DM-3 comparator and the Levitt Commission considered whether the two could be considered "roughly equivalent" or whether the judicial salary was "lagging materially" behind the DM-3 comparator. The Levitt Commission found the 7.3% gap "tests the limit of rough equivalence", but concluded no adjustment was required to maintain the adequacy of judicial compensation.

213. The Rémillard Commission dealt with the comparators as follows:[119]

> 47. We agree that the position of a highly ranked deputy minister is very different in a number of ways than the position of a judge, and the DM-3 comparator should not be used in a "formulaic benchmarking fashion". We do not read previous Commission reports as having done that, Rather the DM-3 comparator has been used as a reference point against which to test whether judges' salaries have been advancing appropriately in relation to public sector salaries. [emphasis added]
>
> …
>
> 52. In summary, we agree that a highly-ranked deputy minister's job is not similar to a judge's job and the DM-3 group is not a significant source of recruitment for judges. However, we believe the DM-3 comparator remains worthwhile for its long-term use, consistency and objectivity. It is not to be used – and has not been used in the past-formulaically, but as a useful reference point… [emphasis added]

214. The Turcotte Commission applied the rough equivalence standard to both comparators, but acknowledged previous commissions had only applied it to the DM-3 comparator.[120] The judicial salary was within 3.2% of the private sector comparator considered by the Turcotte Commission.

215. In our view, rough equivalence between judicial compensation and the private sector comparator is not required. As noted, the purpose of the private sector comparator is not to match judges' salaries to private sector salaries or to seek an exact point in the comparator to set judges' salaries.

216. With the inclusion of income of private sector lawyers practicing through PLCs, the private sector comparator is significantly higher than the private sector comparator considered by the

[119]Rémillard Report, paras 47 and 52.
[120]Turcotte Report, para 213.

Turcotte Commission and prior commissions. It is not possible to achieve rough equivalence with both comparators, nor in our view is it necessary.

217. The Commission agrees with previous commissions that there should be "rough equivalence" between judges' salaries and the DM-3 comparator. This reflects the fact that both are paid from the public purse and both involve rewards of service to Canadians that go beyond financial remuneration.

218. However, the application of this standard should not be done in a formulaic manner. Rather the "rough equivalence" comparator is to be used as a reference point in arriving at a judgmental rather than mathematical determination. The salaries of judges are not set automatically based on the DM-3 comparator.

219. The limits of "rough equivalence" are to be determined by each commission in the context of the evidentiary record and the issues before the Commission. Although reference to previous Commission findings are informative "[e]ach commission must make its own assessment in its own context".[121]

220. In arriving at its recommended salary increase, the Commission considered other factors in addition to the comparators.

221. We are the first commission to have the benefit of more complete data on the salary of private sector lawyers which now includes salary earned by lawyers practising through PLCs. In 2022, approximately 45% of self-employed lawyers earned professional income through PLCs. We are the first commission to consider a private sector comparator which is significantly higher than current judicial compensation. The private sector comparator based on the most recent data provided to the Commission is $739,352,[122] which is 39% higher than the April 1, 2024 judicial salary and annuity of $531,975.[123]

[121]Rémillard Report, para 23.
[122]The most recent data provided to the Commission is for 2022.
[123]April 1, 2024 salary of $396,700 plus judicial annuity valued at 34.1% ($135,275).

222. Previous commissions expressed concern about the lack of complete data available to them to make appropriate assessments of judicial salary. The new data on private sector lawyer income shows that since at least 2019, there has been a significant gap between judicial salaries and private sector incomes.

223. We have also considered that there has not been an increase to judicial salaries, other than the statutory mandated IAI adjustment, since 2004.

224. Our salary recommendation must be meaningful to the Judiciary and it must effectively address the concerns expressed with respect to judicial vacancies, judicial workload and the challenges in attracting outstanding candidates from all sectors. As noted by the SCC in the *PEI Reference* case, "the mandatory involvement of an independent commission serves as a substitute for negotiations, because it provides a forum in which members of the judiciary can raise concerns about the level of their remunerations that might otherwise have been advanced at the bargaining table".[124]

225. We agree with the following submission by the Associate Judges:[125]

> 52. It is not merely the level of compensation which attaches to the judicial office at the time of appointment that will attract qualified candidates; it is the legitimate expectation that compensation will be regularly, meaningfully, and effectively reviewed, and adjusted by government acting in good faith. Without this assurance, qualified applicants will not be attracted or, at best, a significantly reduced number of them will be attracted.

226. In making our salary recommendation, we have considered this statement by the McLennan Commission:[126]

> Our recommendations are for a level of compensation that will not deter the best and the brightest from seeking judicial office and that should ensure that the level of compensation provided to puisne judges is not so great that the office will be sought after for its monetary rewards alone. Rather, it should appeal to those highly qualified persons of maturity and judgment who seek to provide a valuable public service to their country. <u>In other words, we are of the view that "too much" would not be in the public interest just as "too little" is obviously not in the public interest.</u> [emphasis added]

[124] *PEI Reference*, para 189.
[125] Associate Judges Submission, para 52.
[126] McLennan Report, page 13.

227. Our recommendation is intended to be fair to the judiciary and to the taxpayer, to strike the right balance between the two, and to be in the public interest.

228. The Commission has concluded the judicial salary should be adjusted to take some account of the large differential that the new PLC data has disclosed between judicial salaries and the earnings of potential applicants from the private sector, while still retaining the "rough equivalence" of the Block DM-3 comparator as found by past commissions. Balancing all of the factors provided for in the *Judges Act*, the Commission recommends the salary of puisne judges be increased in the amount of $28,000 effective April 1, 2024. This market adjustment is in addition to the IAI adjustments as provided for in the *Judges Act*. The judicial salaries payable to remaining judges under the *Judges Act* should be adjusted proportionately.

RECOMMENDATION 2

Balancing all of the factors provided for in the *Judges Act*, the Commission recommends that the salary of puisne judges be increased in the amount of $28,000, to be applied after the April 1, 2024 IAI increase. This market adjustment would be proportionately applied to the base salary of the Chief Justice and puisne judges of the Supreme Court of Canada and of all other Chief Justices, Associate Chief Justices and Senior Associate Chief Justices. Accordingly, effective April 1, 2024, judges' salaries would be the following:

Supreme Court of Canada:

Chief Justice	**$546.100**
Puisne Judges	**$505,700**

Federal Court of Appeal, Federal Court, Tax Court and Court Martial Appeal Court:

Chief Justices	**$465,700**
Associate Chief Justices	**$465,700**
Puisne Judges	**$424,700**

Provincial and Territorial Courts of Appeal and Superior Courts:

Chief Justices	**$465,700**
Senior Associate Chief Justices	**$465,700**
Associate Chief Justices	**$465,700**
Puisne Judges	**$424,700**

CHAPTER 3 - ASSOCIATE JUDGES' SALARY—*JUDGES ACT* S.10.1

229. Associate Judges of the Federal Court (formerly known as Prothonotaries) are paid 80% of the yearly salaries of puisne judges of the Federal Court.[127] This salary percentage has been in effect since 2016 when the Rémillard Commission recommended an increase from 76% to 80% of a Federal Court judges' salary.

230. The Associate Judges seek a recommendation from the Commission to be paid a salary of 95% of the salary of a Federal Court judge, retroactive to April 1, 2024.

231. In support of its request, the Associate Judges set out a number of factors for consideration by the Commission, including the following submissions respecting their role, qualifications and powers:

(a) The role of Associate Judges has evolved as the case load of the Federal Court increases in size and complexity.[128]

(b) The qualifications for an appointment as an Associate Judge are essentially the same basic qualifications required of a superior court judge, with the added requirement that candidates have a thorough knowledge of the *Federal Court Rules*, SOR/98-106.[129]

(c) Associate Judges exercise many of the same powers and functions as a judge of the Federal Court.[130]

232. The Associate Judges made the following submissions with respect to the challenges in attracting outstanding candidates to apply for appointment as an Associate Judge:

(a) The salary for Associate Judges should be set at a level that encourages outstanding candidates, once appointed, to remain in the role so they can be as effective as

[127] *Judges Act*, section 10.1.
[128] Associate Judges Submission, paras 9, 62-66.
[129] Associate Judges Submission, para 16.
[130] Associate Judges Submission, paras 27-28.

possible. In recent years, the salary differential (20%) has resulted in several Associate Judges successfully seeking appointment as Federal Court judges. [131]

(b) In seeking to attract outstanding qualified applicants, the Federal Court must compete with other superior and provincial courts. Associate Judges have fallen behind their counterparts in British Columbia, Alberta and Manitoba, which are provinces that maintain roles similar to that of an Associate Judge.

(c) The substantial disparity between the salaries of Associate Judges and Federal Judges leads to a perception of second-class status for the office of Associate Judges, which contributes to the increasing difficulty in attracting the best candidates and ensuring Associate Judges remain in that role.

233. The Government responded that the statutory criteria do not support an increase to the Associate Judges' salary beyond the Industrial Aggregate Index adjustment capped at 14%. The Government argues "[t]he same reasons that underlie the Government's position on judicial salaries apply to associate judges' salary."[132] The Government made the following additional submissions:

> 141. "…[T]here is no evidence of difficulty attracting outstanding candidates to the position of associate judge that would justify increasing their salaries beyond 80% of judges' salaries."[133]
>
> …
>
> 143. "…[T]he role or responsibilities of associate judges remain largely the same as they were before the Rémillard Commission [and a]bsent evidence of a change of circumstances, there is no reason to increase the percentage…"[134]

[131]Associate Judges Submission, para 56.
[132]Government Submission, para 132.
[133]Government Submission, para 141.
[134]Government Submission, para143.

234. The Chief Justice of the Federal Court provided a written submission to the Commission supporting the position of the Associate Judges. Chief Justice Crampton also made an oral presentation to the Commission at the February 20-21, 2025 hearings.[135]

235. In his written statement, Chief Justice Crampton commented on the increasing role of Associate Judges:

> In brief, I write to provide my full support for the submissions of the Associate Judges of the Federal Court, in which they advance their proposal for an increase in their compensation. As the submissions of the Associate Judges explain, and as further described below, the workload of the Federal Court is far greater now than it has ever been, both in caseload volume and complexity. A disproportionately large part of this increased workload has been shouldered by the Associate Judges of the Court.
>
> …
>
> Beyond the substantial increase in the number of proceedings instituted at the Court, the average level of complexity of proceedings filed has also increased. In addition, the Court has placed a high priority on measures to increase access to justice, including greater use of case management and mediation, which are functions primarily performed by the Court's Associate Judges.

236. Chief Justice Crampton also provided testimony on the impact of the current salary level in attracting outstanding candidates to apply for appointment as an Associate Judge. He referenced the very small number of candidates that applied for appointment as an Associate Judge over the last decade, concluding that this unsatisfactory level of interest "is likely attributable, at least in part, to the current gap in compensation between judges and Associate Judges."

237. Chief Justice Crampton noted that in recent years four former Associate Judges had opted to leave the office to seek appointment as a judge of the Federal Court. He believed this was partially attributable to the "perceived increase rank of a judge relative to that of an Associate Judge as well as the broader jurisdiction of a judge…" He also expressed his view that the gap in compensation between Associate Judges and judges also played an important role.

[135] *Submission of the Chief Justice of the Federal Court Regarding Compensation for the Associate Judges of the Federal Court*, January 10, 2025 and transcript of the public hearing of February 20, 2025, p.88 to 97.

238. Chief Justice Crampton provided the following conclusions in his statement to the Commission:

> In my view, the Court's ongoing ability to attract excellent qualified applicants will continue to be compromised if the level of remuneration does not keep pace with the remuneration available at other superior and provincial courts across the country. The qualifications for appointment to similar positions in these courts mirror those of the office of Associate Judge of the Federal Court. As the gap in compensation widens between Associate Judges of the Federal Court and analogous judicial officers in other jurisdictions, such as Alberta, British Columbia and Manitoba, the prospects for attracting excellent candidates diminish.
>
> Associate Judges perform an indispensable role in the proper functioning of the Federal Court. The Federal Court has a strong interest in attracting the very best candidates to become and remain Associate Judges. This interest has only increased as the role played by the Associate Judges has become more important and, indeed, critical to the Court's ability to facilitate access to justice by reducing the time and costs associated with court proceedings through, among other things, case management and mediation.

Conclusion

239. The Commission agrees with the submissions of the Associate Judges that there has been a significant increase in their roles and responsibilities. This includes changes to monetary limits for trial jurisdiction, increased case management and a shift to front line dealing with self-represented litigants.

240. The Commission also agrees the disparity in the Associate Judges' salary with comparators from other superior and provincial courts and with the salaries of Federal Court judges is a deterrent in attracting outstanding candidates to apply to be Associate Judges.

241. The Commission found the evidence of Chief Justice Crampton on these issues to be very persuasive.

242. The Commission agrees that the salary of Associate Judges should be increased to 95% of the salary of a Federal Court Judge, retroactive to April 1, 2024.

RECOMMENDATION 3

a) The salary of Associate Judges of the Federal Court should be increased to 95% of the salary of a Federal Court judge, retroactive to April 1, 2024. Accordingly, effective April 1, 2024, the salary of an Associate Judge of the Federal Court would be $403,400.

b) The salary of Associate Judges of the Tax Court of Canada should be increased to 95% of the salary of a Tax Court judge, retroactive to April 1, 2024. Accordingly, effective April 1, 2024, the salary of an Associate Judge of the Tax Court of Canada would be $403,400.

CHAPTER 4 - OTHER ISSUES

A. Data on Compensation levels of judicial appointees immediately before appointment (PAI)

243. The parties before us disagreed on whether and in what way we should give effect to recommendation 8(5)(c) of the Turcotte Commission[136] by collecting data on compensation levels of judicial appointees immediately prior to appointment.

244. The Government argued that pre-appointment income data is crucial and that the Commission must compel the representatives of the Judiciary to cooperate fully in ensuring this information can be made available to future commissions.[137]

245. The Judiciary argued against the collection of this data, claiming it is not relevant since it would not provide information about individuals who did not apply for appointment, would generate incomplete data and is potentially self-serving. The Judiciary also argued that due process had been jeopardized because the recommendation was issued by the Turcotte Commission without soliciting the parties' views on it.[138]

246. This Commission is the first to have access to data provided by CRA and Statistics Canada that allows us to consider income for incorporated lawyers in our analysis. This information fills a gap consistently highlighted by previous commissions as having prevented them from having a better view of the income of private sector practitioners.

247. In the absence of reliable evidence of income from incorporated lawyers, pre-appointment data was sought as a second-best mechanism for analyzing gaps in the private sector data. Pre-appointment data could be useful in assessing what level of salary differential highly qualified private sector lawyers are willing to accept in accepting a judicial position. However, it does not allow for the assessment of the income levels of individuals who decided not to apply for financial reasons, considering the gap in pay between their current income and the remuneration paid to judges too large for them to give up practice for the Judiciary.

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[136]Turcotte Report, chapter 5.
[137]Government Reply Submission, paras 16-17.
[138]Judiciary Submission, paras 263-264.

248. On balance, the Commission finds that the more complete data that was available to us obviates the need to require the collection of pre-appointment data at this time. That said, pre-appointment income could be useful in assessing what level of income differential a sufficient quantum of highly qualified private sector lawyers are willing to accept to serve on the judiciary. We would certainly not stand in the way of the collection of this data for future commissions and would encourage the parties to consider how this effectively might be done.

CHAPTER 5 - CONCLUSION

249. It has been an honour to serve as members of this Commission. As noted above, our work was substantially assisted by the submissions and information provided to us. We wish also to acknowledge our debt to the prior commissions, who have individually and collectively established a body of work that has served to inform and underpin our conclusions.

250. At a time when trust in public institutions cannot be taken for granted, even in a well-established democracy, our work has reminded us that judicial independence is one of the most fundamental guarantees. Canada's constitutional arrangements, including an independent judiciary, serve Canadians well and are a model to the world. We all benefit from the professionalism and robustness of our judicial system which serves to adjudicate and resolve issues of all kinds.

CHAPTER 6 - LIST OF RECOMMENDATIONS

RECOMMENDATION 1

Diligent efforts should be made so that future commissions are appointed by June 1 of the relevant year, as provided for in the *Judges Act*.

RECOMMENDATION 2

Balancing all of the factors provided for in the *Judges Act*, the Commission recommends that the salary of puisne judges be increased in the amount of $28,000, to be applied after the April 1, 2024 IAI increase. This market adjustment would be proportionately applied to the base salary of the Chief Justice and puisne judges of the Supreme Court of Canada and of all other Chief Justices, Associate Chief Justices and Senior Associate Chief Justices. Accordingly, effective April 1, 2024, judges' salaries would be the following:

Supreme Court of Canada:

Chief Justice	$546.100
Puisne Judges	$505,700

Federal Court of Appeal, Federal Court, Tax Court and Court Martial Appeal Court:

Chief Justices	$465,700
Associate Chief Justices	$465,700
Puisne Judges	$424,700

Provincial and Territorial Courts of Appeal and Superior Courts:

Chief Justices	$465,700
Senior Associate Chief Justices	$465,700
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RECOMMENDATION 3

a) The salary of Associate Judges of the Federal Court should be increased to 95% of the salary of a Federal Court judge, retroactive to April 1, 2024. Accordingly, effective April 1, 2024, the salary of an Associate Judge of the Federal Court would be $403,400.

b) The salary of Associate Judges of the Tax Court of Canada should be increased to 95% of the salary of a Tax Court judge, retroactive to April 1, 2024. Accordingly, effective April 1, 2024, the salary of an Associate Judge of the Tax Court of Canada would be $403,400.

TAB 19

Government of Canada Gouvernement du Canada

Phone Scam Warning

Fraudsters are pretending to be from the Department of Justice

https://www.justice.gc.ca/eng/rp-pr/cp-pm/cr-rc/quad2024/index.html

Response of the Government of Canada to the Report of the 2024 Judicial Compensation and Benefits Commission

This is the Response of the Government of Canada to the Report of the 7th Judicial Compensation and Benefits Commission dated July 11, 2025. The Government Response is issued pursuant to subsection 26(7) of the *Judges Act*.

The current Commission convened on October 11, 2024, and delivered its Report to the Minister of Justice on July 11, 2025. The Commission's Report contained three recommendations, which can be summarized as follows:

- that for future inquiries, the Commissioners be appointed with due diligence prior to the statutory start date of the Commission's inquiry
- that judicial salaries be increased by $28,000 exclusive of statutory indexing
- that the associate judge salary be raised from 80% to 95% of a puisne judge salary

While the first recommendation is unrelated to compensation and benefits and thus falls outside the Commission's statutory mandate, the Government nevertheless accepts the observation and reaffirms its respect for the Commission process. The Government will continue to exercise all due diligence to comply with the statutory requirements applicable to successive commission inquiries.

The Government accepts the Commission's finding, implicit in its salary recommendations, that statutory indexing of judicial salaries based on the Industrial Aggregate Index (IAI) should continue as provided for in the

Judges Act for the next four years. However, the Government respectfully disagrees with the Commission's salary recommendations to provide salary increases that exceed annual statutory indexation.

Before outlining its reasons, the Government expresses its gratitude to the Chair of the Commission, Ms. Anne Giardini, O.C., O.B.C., K.C., and to the Commission's members, Mr. Graham Flack and Mr. Douglas Hodson, K.C., for their work and their commitment to this important constitutional process. The Commissioners held open hearings accessible to the public, received lengthy and detailed submissions raising a complex series of qualitative and quantitative considerations, and produced a detailed and thoughtful report, engaging with the evidence put before them.

While the Government ultimately disagrees with the Commission's recommendation to provide salary increases that exceed annual statutory indexation, this disagreement is not intended as criticism of the Commissioners and their process; rather, it reflects a significant deterioration in the Canadian financial outlook, and a carefully considered difference of perspective on the evidence presented to the Commission and how it should be weighed. As the Supreme Court of Canada has noted, a government's response to a judicial compensation commission report can rely on new facts or changes in circumstances that occur in the time between when a commission received evidence and issues its report, and when a government responds publicly. The Supreme Court also stated that it is open to governments to assign different weight to the evidence presented to a commission so long as it provides detailed reasons for doing so. [1]

Background: Constitutional Principles and Legislative Framework

Every Government Response to a Commission report has included an overview of the context in which judicial compensation is established. The Government does so again here in recognition of the unique nature of the judicial compensation process, the important constitutional provisions and principles that underpin it, and the need for clarity in the public interest for a process that is, at heart, designed to ensure public confidence in the independence and impartiality of the judiciary.

At the federal level, section 100 of the *Constitution Act, 1867* requires that Parliament, rather than the Executive alone, fix the compensation and benefits of superior court judges. Compensation and benefits for these judges are established in the *Judges Act*; since 2014, the *Judges Act* also provides for the compensation and benefits of associate judges of the Federal Court and Tax Court of Canada, to whom the protections of judicial independence also apply.

In *Reference re Remuneration of the Judges of the Provincial Court of Prince Edward Island et al.*, [1997] 3 S.C.R. 3 (known as the *PEI Judges Reference*), the Supreme Court of Canada held that judicial independence requires:

- a prohibition on negotiations between the judiciary and the other branches of government over judicial compensation and benefits
- that judicial salaries not be allowed to fall below a certain constitutional minimum (as yet undefined in the case law)
- that the adequacy of judicial compensation and benefits must be regularly reviewed by an "independent, objective and effective" commission, and that the commission must consider any proposed changes to judicial compensation or benefits before they are implemented

Subsection 26(1) of the federal *Judges Act* provides for the establishment of the Judicial Compensation and Benefits Commission every four years. The Commission's mandate is to inquire into and make recommendations regarding the "adequacy" of judicial compensation and benefits of all federally appointed judges and associate judges based on the following criteria (set out in subsection 26(1.1) of the Act):

a. the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government
b. the role of financial security of the judiciary in ensuring judicial independence
c. the need to attract outstanding candidates to the judiciary
d. any other objective criteria that the Commission considers relevant

The Commission must report to the Minister of Justice within nine months of the start date of its inquiry (subsection 26(2)), and the Government must respond publicly to the Commission's report and recommendations within

four months of the date on which the Minister of Justice receives the Report (subsection 26(7)).

In addition to the guidance in *PEI Judges Reference*, the Supreme Court of Canada also found in *Bodner v. Alberta et al.*, 2005 SCC 44, that a commission's recommendations are not binding, and that a government can reject or modify a recommendation so long as it provides cogent reasons for doing so. This requirement is made explicit in the test for what is now known as "*Bodner* review", that is, a review of a government response by a court because of a legal challenge to the response. At paragraph 31 of its decision in *Bodner*, the Supreme Court of Canada articulated the three steps of the test in the following terms:

1. Has the government articulated a legitimate reason for departing from the commission's recommendations?
2. Do the government's reasons rely upon a reasonable factual foundation? and
3. 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?

The Court added at paragraph 39:

[A government] response can reweigh factors the commission has already considered as long as legitimate reasons are given for doing so. The focus is on whether the government has responded to the commission's recommendations with legitimate reasons that have a reasonable factual foundation.

Reasons for declining to implement the Commission's salary recommendations

The Government respectfully disagrees with some of the Commission's findings and declines to implement the Commission's salary recommendations. Its reasons are outlined below and focus on four main issues: (1) recent developments regarding the criterion of the prevailing economic conditions in Canada; (2) some of the Commission's conclusions regarding statutory indexing; (3) the treatment of the evidence before the

Commission concerning the criterion of the need to attract outstanding candidates to the judiciary; and (4) the treatment of the evidence before the Commission regarding the compensation of associate judges.

1. Recent developments concerning the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government

Regarding this first criterion, set out in paragraph 26(1.1)(a) of the *Judges Act*, the Commission noted that changes in the trade policies of the United States, Canada's largest trading partner, were creating uncertainty in economic forecasts. The Commission noted at paragraph 46:

> A challenge facing the Commission is the uncertainty affecting economic conditions in Canada, depending on, among other factors, the level and permanence of trade measures threatened and ultimately adopted by the United States.

The Commission concluded at paragraphs 48-49:

> The Commission must make its recommendations based on the evidence in front of us, not on an adverse scenario that could but has not yet crystallized. Taking into account the economic situation and forecasts as of the writing of this Report, the Commission concludes that there is not enough evidence to restrain us from making recommendations we think appropriate on salaries.
>
> We recognize that it is possible that the situation could change materially between the time the Government receives this Report and the time it provides its reply. Should economic conditions change materially and if, for example, the Government were contemplating wage restraint for the broad public sector, then we believe it would be appropriate for the Government to refer the matter back to the Commission to allow the parties to make additional representations based on a materially changed situation. Such an approach was specifically contemplated by the Supreme Court of Canada in the *PEI Judges Reference*.

The Commission's findings raise two questions that this Response must address: (1) given the uncertainties identified by the Commission, how should this criterion be weighed in the context of this inquiry; and (2) should the Government have returned to the Commission before issuing this Response.

1.1 Given the uncertainties identified by the Commission, how should this criterion be weighed in the context of this inquiry?

Some degree of uncertainty inevitably arises when forecasting economic trends several years into the future and their impact on Canada's finances. As the Commission noted, much of this uncertainty stems from changes in the trade policies of Canada's largest trading partner, the United States. However, the imposition of new U.S. tariffs, along with ongoing uncertainty over future U.S. trade actions, has already weighed on the Canadian economy, particularly in tariff-exposed industries, leading to a material slowing in growth over the first half of this year as well as notable downward revisions to economic outlooks. Growth in the first half of 2025 nearly stalled, rising just 0.2 per cent annualized, down from 2.2 per cent in the second half of 2024. Trade uncertainty and new tariffs have also disrupted an already soft labour market. The economy has lost about 40,000 jobs and the unemployment rate has risen by 0.5 percentage points since January, sitting at 7.1 per cent as of August. Prior to the escalation of trade tensions, the unemployment rate was expected to decline gradually. Moreover, while growth is expected to recover gradually over time, economists expect the negative impact of trade actions and uncertainty to have a permanent negative impact on Canada's economic potential.

In addition, it has become clear over the last few months that significant pressure on Canada's finances also arises from changes in the defence policy of the United States, which have prompted the North Atlantic Treaty Organization (NATO), of which Canada is a member, to significantly increase the percentage of GDP (Gross Domestic Product) that NATO (North Atlantic Treaty Organization) members must commit to national defence. On June 9, 2025, Prime Minister Carney announced Canada's commitment to achieving NATO (North Atlantic Treaty Organization)'s 2% target in this fiscal year, resulting in $9B additional investments. Further, on June 25, 2025, the Prime Minister announced that Canada has joined the Defence Investment Pledge, committing NATO (North Atlantic Treaty Organization) members to spend

5% of GDP (Gross Domestic Product) by 2035. Part of these additional expenditures include once-in-a-generation increases to the rates of pay for members of the Canadian Armed Forces, with the most significant increases to the starting pay for privates in the Regular Force. The service of the members of the Canadian Armed Forces uphold Canada's sovereignty, protect our security, and bolster our international alliances. In the words of the Prime Minister, their pay should reflect the weight of their responsibilities.

While updated projections of the government's total expenses for 2025-26 are not yet available, this represents additional expenditures for Canada in the tens of billions, which materially affects the fiscal position of the federal government. These expenditures are required for Canada to comply with its international obligations and commitments, and are necessary to protect Canadian security and sovereignty in an increasingly dangerous and divided world, characterized by more frequent and volatile global conflict. Practically speaking, given the current international environment, these expenditures cannot be characterized as entirely discretionary.

Accordingly, in the Government's view, recent developments affecting this criterion militate strongly in favour of Canada only incurring new fiscal obligations necessary to uphold and safeguard Canadian sovereignty. While this includes safeguarding the critical public institutions that underpin Canadian democracy, for the reasons outlined in detail below, the Government is of the view that, based on the evidence before this Commission, judicial salaries are adequate and, in any event, cannot be the source of new fiscal expenditure at a time of comprehensive expenditure review, including possible public sector job losses. Judicial salaries have experienced steady long-term growth, exceeding increases to the cost of living thanks to annual indexing based on the IAI (Industrial Aggregate Index), and they are likely to continue this trend over the next four years.

1.2 Should the Government have returned to the Commission before issuing this Response to give it a chance to address the developments set out above?

In the Government's view, this question should be answered in the negative. With respect, the Commission's suggestion that the parties return to address changing economic circumstances between the date of the

Commission's hearings and the date of the Government Response does not accord with the jurisprudence and the Commission's statutory framework.

While the jurisprudence contemplates the possibility of a judicial compensation commission being asked to consider proposed changes to judicial salaries or benefits between its regular inquiries, the Supreme Court in *Bodner* also expressly stated that "[i]f a new fact or circumstance arises after the release of the commission's report, the government may rely on that fact or circumstance in its reasons for varying the Commission's recommendations." [2]

In addition, the *Judges Act* provides that the Commission can hold special *ad hoc* inquiries on proposed changes to judicial compensation and benefits between its regular inquiries, but these must be formally requested by the Minister of Justice. Moreover, once an *ad hoc* process is launched, all of the foregoing timelines apply. [3]

The implications of both the jurisprudence and the federal Judicial Compensation and Benefits Commission's enabling provisions are clear: a Commission is not a form of standing public inquiry with ongoing jurisdiction to receive and consider submissions at any time. Submissions can only be made to, and received by, the Commission in the context of an inquiry. Commission inquiries can either be general (statutorily required once every four years) or *ad hoc* (triggered at the request of the Minister of Justice), but either way, they are formal processes composed of specific steps and that begin and end on set dates.

2. The Commission's conclusions on statutory indexation of judicial salaries

The Government accepts the Commission's finding that IAI (Industrial Aggregate Index) increases should not be subject to the possibility of a cap over the next four years, implicit in the Commission's recommendation for salary increases. However, the Government respectfully disagrees with the Commission's conclusions regarding IAI (Industrial Aggregate Index), which appear to have been a factor relied upon by the Commission to justify a judicial salary increase.

Section 25 of the *Judges Act* provides for statutory indexation of judicial salaries, increasing salaries every April 1st based on the IAI (Industrial Aggregate Index) of the previous year, up to a maximum of 7% in any given year. IAI (Industrial Aggregate Index) indexing is also applicable to the salaries of the Associate Judges.

In its submissions to this Commission, the Government had proposed capping increases based on IAI (Industrial Aggregate Index) to a maximum of 14% over the next four years. The Commission found that IAI (Industrial Aggregate Index) increases should not be subject to the possibility of a cap over the next four years that would be lower than the one already provided for by the *Judges Act*. This finding is implicit in the Commission's recommendation for salary increases exclusive of statutory indexing, and the Government accepts this finding. However, the Government disagrees with one aspect of the Commission's reasoning. The Commission stated at paragraph 53 of its Report:

> In explicitly providing for a cap on the IAI (Industrial Aggregate Index) adjustment in the legislation, we believe that Parliament has set out a complete code for how to deal with exceptional increases in the IAI (Industrial Aggregate Index). Parliament saw benefits in setting an upper limit to the IAI (Industrial Aggregate Index) and turned its mind to what that upper limit should be. It is not for the Commission to alter the clear intent of Parliament on this question by substituting a different cap on the impact of the IAI (Industrial Aggregate Index) on judicial salaries.

The Government must respectfully disagree. The Commission's conclusion is not consistent with the Commission's statutory and constitutional mandate. Section 100 of the *Constitution Act, 1867* requires that Parliament fix judicial salaries, and the Supreme Court of Canada has found that the constitutional principle of judicial independence requires regular reviews of the adequacy of judicial salaries by a judicial compensation commission. Parliament having legislated on a given aspect of judicial compensation cannot take that aspect outside of the Commission's mandate and preclude it from being the subject of a Commission recommendation.

In the Government's view, the Commission's treatment of IAI (Industrial Aggregate Index) indexing as an unalterable measure solely intended to protect judicial salaries against erosion led it to disregard a critical feature of IAI (Industrial Aggregate Index) indexing. Whatever its original intent, it has in practice done more than just protect judicial salaries against erosion; it has in fact provided for increases to judicial salaries that in most years exceed increases to the cost of living.

While the Commission acknowledged this, it went on to effectively disregard it, as evidenced by its consideration of the fact that there had not been an increase to judicial salaries beyond statutory indexation since 2004 (paragraph 223), and that their salary recommendation must be "meaningful" to the judiciary (paragraph 224). Both findings were cited in support of the Commission's recommendation for a salary increase, and, in the Government's view, both stem from the Commission's mischaracterization of IAI (Industrial Aggregate Index) indexing. Moreover, these considerations are not relevant. They are out of step with the requirements of commission objectivity and independence, as well as with the underlying purposes of a judicial compensation commission process. As the Supreme Court of Canada explained in *Conférence des juges de paix magistrats du Québec v. Québec (A.G.)*, 2016 SCC 39, at paragraph 85:

> [W]e emphasize that judicial independence exists for the benefit of the public, and does not serve as a means of labour arbitration to ensure better remuneration for judges. As this Court stated in *Ell*, at para. 29, judicial independence is "for the benefit of the judged, not the judges", as "[j]udicial 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" (see also *Bodner*, at paras. 4 and 6). Consequently, "[t]he benefit that the members of those courts derive is purely secondary" (*PEI Judges Reference*, at para. 9).

3. The Commission's treatment of the evidence regarding the need to attract outstanding candidates to the judiciary

This criterion is set out in paragraph 26(1.1)(c) of the *Judges Act* and is meant to encourage judicial salaries to be set at a level that will attract outstanding candidates to the judiciary. Successive commissions have identified two

primary salary comparators for the federally appointed judiciary: (1) a private sector comparator focused on the incomes of private sector lawyers whose earnings lie at the higher end of the range; and (2) a public sector comparator focused on the salaries paid to federal Deputy Ministers – Level 3 (DM-3).

The Commission reaffirmed the importance of the private sector comparator as playing an important role in allowing a commission to compare judicial compensation with the incomes of senior members of the private bar, who are an important source of candidates for the bench (paragraphs 62-66). With the benefit of more detailed data on the incomes of private sector lawyers than was available to previous commissions, this Commission found a growing gap between the incomes of private sector lawyers and the judicial salary (paragraphs 131-132).

In relation to the public sector comparator, the Commission reaffirmed its importance, and that the approach past commissions have taken to this comparator should prevail (paragraphs 169-178, 206-207). The Commission reaffirmed that the appropriate public sector comparator is the DM-3, rather than the DM-4 as the judiciary had submitted. The Commission also reaffirmed the approach of past commissions for calculating the DM-3 as the mid-point of the DM-3 salary range plus one half of eligible performance pay. Finally, the Commission reaffirmed the approach of past commissions for comparing DM-3 compensation with judicial compensation, finding that the focus should be on rough equivalence. The Commission stated at paragraph 217:

> The Commission agrees with previous commissions that there should be “rough equivalence” between judges’ salaries and the DM-3 comparator. This reflects the fact that both are paid from the public purse and both involve rewards of service to Canadians that go beyond financial remuneration.

The Commission concluded that “[a]s of April 1, 2025, judges were earning about 2.3% more than the DM-3 comparator — well within the 7.3% gap that the [2011-12] Levitt Commission said ‘tests the limits of rough equivalence’” (paragraph 178). For context, in 2011-12, judicial salaries were 7.3% behind the DM-3 comparator.

The Commission's recommended $28,000 increase to judicial salaries (exclusive of statutory indexing) was intended to help close the gap with the private sector comparator – even though such an increase would bring judicial salaries closer to rough equivalence with DM-4s (which the Commission expressly rejected as an appropriate comparator) than with DM-3s.

To find on the one hand that there should be rough equivalence between the judicial salary and the DM-3 comparator, and on the other that the judicial salary should increase to a point well outside the range identified by previous commissions as testing the limits of rough equivalence is difficult to reconcile.

Moreover, the trend in judicial salary increases over the last 20 years suggests that caution is warranted. Although judicial salaries have not been increased exclusive of statutory indexing since 2006, they have nevertheless increased substantially since then. Due to annual indexing based on the IAI (Industrial Aggregate Index), which has provided salary increases that have exceeded increases to the cost of living in most years, judicial salaries have gone from being 7.3% behind the DM-3 at the time of the 2011 Levitt Commission to being 2.3% ahead today. As the data before this Commission suggest, there is every reason to assume that this trend will continue. If, as this Commission and its predecessors have found, rough equivalence should be maintained between judicial salaries and the DM-3, a salary increase exclusive of statutory indexing would seem unadvisable at this time.

3.1 Commission findings on judicial vacancies and other evidence said to demonstrate challenges in attracting private sector lawyers to the bench

The Commission's recommended salary increase was not solely premised on the gap that it identified between judicial salaries and the private sector comparator. It was also based on submissions and evidence that the Commission found demonstrated serious challenges in attracting private sector lawyers to the bench. The Government fundamentally disagrees with these findings.

3.1.1 Judicial vacancies

The Commission was presented with evidence, all drawn from public sources, that there had been a temporary increase in the number of judicial vacancies for a period of time that overlapped with part of the quadrennial

period under review. From approximately late-2021 to early 2024, the number of vacancies had been higher than historical averages. However, by the start of 2025, the number of vacancies was well below historic averages. The Commission nevertheless found that it demonstrated serious challenges in attracting qualified private sector candidates to apply for the bench. In doing so, the Commission failed to consider other explanations for increased numbers of vacancies – such as, for example, the election period in 2021, during and following which appointments could not be made; and the fact that the Government had funded the creation of over 100 new superior court judicial positions, most of which immediately appeared as vacancies in the statistical reports of the Office of the Commissioner for Federal Judicial Affairs.

In addition to not accounting for other explanations for the temporary trend, the Commission's finding was simply not consistent with the evidence before it. In the Government's view, this evidence, which included statistical data provided by the Office of the Commissioner for Federal Judicial Affairs, showed no shortage of applicants rated as recommended or highly recommended, something effectively acknowledged by the Commission at paragraph 163. It also showed that the proportion of applicants appointed from the private sector had recently risen, something acknowledged by the Commission at paragraph 164. Appointment announcements over the quadrennial period demonstrate that partners in private firms from large metropolitan centers, who are presumed to be the highest earners in private practice, continue to be appointed.

It was also inconsistent with the subsequent rapid fall in the vacancy rate. Since the qualifications of candidates for the bench take some time to assess, this trend strongly suggests that the higher vacancy rates at issue were unrelated to the availability of qualified candidates for the bench. The Commission acknowledged the rapid decline in vacancies, which was already well underway at the time it received submissions. However, it determined that what it characterized as a crisis in attracting qualified candidates remained unresolved (paragraphs 157, 163), even though the number of candidates evaluated as recommended or highly recommended was evidently more than sufficient to fill vacancies. In the Government's view, the Commission's Report does not satisfactorily address these contradictions.

Finally, the Government is also troubled by the Commission's reference to increased rates of appointment from members of equity-seeking groups, which it juxtaposed against a decrease in the percentage of appointments drawn from private practice (paragraph 161). The intent of this reference is not entirely clear. However, the Government takes the opportunity to emphasize unequivocally that it is deeply committed to continuing the strides made in achieving a more diverse superior court bench. This is a positive development that only enhances confidence in the judiciary.

3.1.2 The Commission's approach to perspectives offered by two Chief Justices

To strengthen its conclusion that the temporary spike in vacancies from 2021-2024 was due to the judicial salary being too low, the Commission relied heavily on the views of two federally appointed Chief Justices, one who provided a written statement before this Commission and one who had spoken before its predecessor. Both provided a similar perspective, affirming that unnamed private sector lawyers, whom they considered highly qualified for the bench, had told them they were deterred from applying by the low level of the judicial salary. The Commission found these perspectives compelling and placed significant weight on them, finding that they constituted key evidence of challenges in attracting qualified private sector candidates to the bench (paragraphs 153-156, 158). Further, the Commission appears to have relied primarily on these personal accounts to refute objective statistical evidence from the Office of the Commissioner for Federal Judicial Affairs suggesting that there were more than enough candidates to fill vacancies (paragraph 165).

With greatest respect for both the Commission and the Chief Justices concerned, the Government fundamentally disagrees with the Commission's approach to these types of statements or testimonials. There was no objective evidence before the Commission linking these anecdotal accounts and the now fully remedied 2021-2024 spike in judicial vacancies, which have been filled by outstanding candidates drawn from a broad spectrum of practice areas, with the majority still being drawn from private practice.

In addition, in the Government's view, these types of accounts are potentially problematic in the context of a process whose hallmarks must, according to the Supreme Court of Canada, include independence and objectivity. Courts have generally found these elements to require certain

statutory and procedural safeguards that are met by this Commission's process and enabling statute. Nevertheless, in the Government's view, the Commission's approach runs the risk of undermining perceptions of whether these criteria are met. The Commission relied on subjective accounts from directly affected individuals, with no details such as the sources of information or statistical analyses. Both elements were evident in the information provided by the Commissioner for Federal Judicial Affairs. This can only risk undermining perceptions of the process' objectivity and independence in the mind of the reasonable and reasonably informed observer. It also disregards the independent Judicial Advisory Committees (JACs), which are integral to the judicial appointments process; it is the JAC (Judicial Advisory Committee)s' role, rather than that of members of the judiciary, to receive applications and assess judicial candidates' qualifications.

To be clear, the credibility of those who provided these accounts is not at issue. If factors like objectivity and independence are to be assessed from the perspective of the reasonable and reasonably informed member of the public, as the courts have suggested, no amount of personal credibility on the part of the individuals providing such accounts can overcome the shortcomings inherent in the Commission's approach.

4. The Commission's treatment of the evidence regarding the compensation of associate judges

Associate judges are judicial officers appointed to the Federal Court and Tax Court of Canada whose role is primarily focused on case management – on helping the parties to a matter resolve preliminary issues, including by issuing orders and decisions, with a view to getting a matter ready for a hearing on the merits by a full judge. They are currently paid 80% of the salary of a federally appointed puisne judge.

The Commission recommended that associate judges be paid 95% of a judicial salary based on:

- accounts from the Chief Justice of the Federal Court to the effect that attracting qualified candidates to apply to become associate judges is challenging, and that recent appointments of associate judges as full judges of the Court are likely due to the lower salary for associate judges (paragraphs 234-238)

- increases in the responsibilities of associate judges (paragraph 239)
- the rate of pay for associate judges in the provincial superior courts and the disparity with the federal judicial salary (paragraph 240)

The Government respectfully disagrees with the Commission's approach to the evidence before it, as well as with the perspective on the office of associate judge that appears to underpin its approach. Associate judges (comparable to judicial officers that also have titles such as case management judges and case masters) exist in most jurisdictions, including in the provincial superior courts, where their appointment and compensation are the responsibility of the province. As the objective evidence before the Commission indicated, in no jurisdiction is that percentage equal to 95% of a superior court judge's salary; they ranged from 62.5% in Quebec to 90.7% in British Columbia. Of particular note is Ontario, which has seen fit to set the salary of its associate judges at the same rate as that of their federally appointed counterparts.

The Government must also respectfully disagree that the appointment of several associate judges of the Federal Court as judges indicates that the salary is too low. The office of associate judge is a junior judicial office. In the Government's view, the fact that several associate judges have been appointed judges of the Court does not support the proposition that the associate judge salary is too low. On the contrary, it indicates that candidates of the highest caliber are attracted to the office. Furthermore, if associate judges were paid as judges, or so close to it as to make little difference, this would raise the question: should the office of associate judge continue, or should the associate judges simply be appointed judges of the Court and the office discontinued?

Finally, with the greatest respect to the Chief Justice of the Federal Court, his testimony – that he believes the associate judge salary to be too low based on his attempts to persuade qualified candidates to apply to become associate judges – raises similar concerns as that of the Chief Justices referenced in 3.1.2 above. Such assertions cannot be effectively contextualized by reference to any type of objective data.

Conclusion

For the reasons outlined in this Response, the Government respectfully declines to implement the salary recommendations of the Commission, apart from the recommendation, implicit in the Commission's findings, that statutory indexing based on the Industrial Average continue for the quadrennial period without the 14% cumulative limit the Government proposed.

Annual statutory indexing using IAI (Industrial Aggregate Index) provides for increases to judicial salaries that in most years exceed increases to the cost of living; given their link to judicial salaries, the salaries of associate judges also benefit from IAI (Industrial Aggregate Index) adjustments. In other words, in most years, IAI (Industrial Aggregate Index) indexing provides for what can fairly be characterized as a raise. Once increases to the cost of living are factored in, this raise tends to be small in any given year. However, as the evidence before the Commission plainly demonstrated, these raises add up over time. Some 15 years ago, judicial salaries were over 7% behind the DM-3; today, they are just over 2% ahead. As the Commission found, judicial salaries remain within the range of rough equivalence with the DM-3, but this nevertheless represents a substantial increase over time. Based on the evidence before this Commission, there is no reason to believe that these increases will not continue.

Footnotes

1 *Bodner v. Alberta et al.*, 2005 SCC 44 at para. 39.

2 *Bodner* at para. 26.

3 The federal Commission has only held one *ad hoc* process on proposed amendments affecting pension accrual for judges who become the subject of recommendations for removal from office by the Canadian Judicial Council. The process was requested by the Minister of Justice by letter to the Commission dated May 31, 2019. The Commission reported on October 28, 2019, and the Government responded to the Commission's report on February 27, 2020.

Date modified:

2025-11-03

TAB 20



Report and Recommendations of the 2020 Provincial Court Commission of Saskatchewan

Presented to the Minister of Justice and Attorney General and the Saskatchewan Provincial Court Judges Association

December, 2020

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APPENDIX B –ORDER

SASKATCHEWAN PROVINCIAL COURT COMMISSION REPORT
DECEMBER 2020

I. INTRODUCTION

A. Provincial Legislation

1. The current Provincial Court Commission was appointed effective July 18, 2020 pursuant to section 36 of The Provincial Court Act, 1998, S.S. 1998, c. P-30.11 (the "Act"). This is the tenth Commission appointed under this legislation.

2. . The mandate of the Commission is set out in subsections 38(1), (2), (3) and (4) of the Act as well as clause 65(d). These provisions read as follows:

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)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.

38(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).

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.

38(4) No commission regulation respecting pension benefits or additional retirement benefits shall reduce a person's benefits that accrued before the coming into force of the regulation.

65(d) of the Act provides for the making of regulations regarding the benefits to which judges are entitled including:

- leave of absence;
- sick leave;
- deferred salary leave;
- leave for reasons of pressing necessity;
- special leave;
- travelling, sustenance and moving expenses;
- life insurance; and
- disability, dental and health benefits.

3. The Act authorizes the Commission to make two types of recommendations, compulsory and advisory. The compulsory recommendations are listed in subsection 38(1). They relate to various matters comprising the remuneration package for Provincial Court Judges. The type of recommendations which are advisory only are listed in subsection 38(2) of the Act allowing the Commission discretion about whether to make any such recommendation.

4. The mandate of this Commission does not end with this Report. Section 51 of the Act leaves open to this Commission the consideration of other issues and reads as follows:

51(1) At the request of the minister or the association made at any time during the term of the members of a commission, the commission may inquire into and make recommendations with respect to any matter of significance to the court.

(2) Within six months after the day on which a matter is referred to a commission pursuant to subsection (1), the commission shall submit a report to the minister and the association containing any recommendations of the commission with respect to the matter.

The term of this Commission expires on June 30, 2023.

5. Membership of the Commission

The Commission is composed of three members. As required by section 36(2) of the Act:

- one is appointed by the Minister of Justice
- one is appointed by the Saskatchewan Provincial Court Judges' Association
- these two members appoint a chairperson

The Commission members are:

- Paul S. Jaspar, SVM FCPA FCA, Chairperson
- Art Postle, appointee of the Minister of Justice
- Deryk Kendall, BA LLB, appointee of the Saskatchewan Provincial Court Judges' Association

6. Process

Advertisements calling for submissions to the Commission were placed in the Regina *Leader Post* and the Saskatoon *Star Phoenix* on September 5, 2020. The advertisements indicated that the Commission would be receiving submissions from interested parties and that hearings were to be held in Regina and Saskatoon at the locations and dates indicated.

In addition, the Commission had a website which went active on September 5, 2020: https://www.saskatchewan.ca/government/government-structure/boards-commissions-and-agencies/saskatchewan-provincial-court-commission.

7. The Commission was assisted by written submissions received from:

- Saskatchewan Provincial Court Judges' Association ("Association")
- Deputy Minister of Justice, on behalf of the Government of Saskatchewan ("Government")
- Saskatoon Criminal Defence Lawyers Association ("SCDLA")

and replies from:

- Association
- Government

These documents and other material can be found at: www.saskatchewan.ca/government/government-structure/boards-commission-and-agencies/saskatchewan-provincial-court-commission.

8. The Commission received oral submissions in Saskatoon on November 10, 2020 from:
   - Association
   - Government
   - SCDLA

9. The Commission, with agreement from the Association and the Government, decided not to hold hearings in Regina.

II. BACKGROUND

10. The report and recommendations from the previous nine Provincial Court Commissions can be found at www.saskatchewan.ca/government/government-structure/boards-commission-and-agencies/saskatchewan-provincial-court-commission.

11. The work of this and all previous commissions is founded on the principle of judicial independence.

12. 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).

III. THE ISSUES

13. The current salary and benefits for members of the Provincial Court are as follows:

Salary – April 1, 2020 – March 31, 2021 - $312,286

In addition to the above salary the Chief Judge (1) receives an additional 7.5%, Associate Chief Judge (1) 5%, Administrative Judges (5) 2.5% and Northern Judges (5) 5%.

Temporary Judges receive 1/220 of the salary paid to a full time Judge.

14. In addition to salary, the Judges are entitled to the following pension and retirement benefits:

(a) Pension and Additional Retirement Benefit – A benefit rate of 3% per year of service (to a maximum of 23 1/3 years -70%), multiplied by average salary over best 3 years.

(b) Survivor Pension – Surviving spouse is entitled to defined benefits pension for life.

(c) 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; can be extended up to 5 more years if the child is attending educational institutions.

(d) Early Retirement Pensions – Full pensions of 70% times average salary over best 3 years, when a judge's age and years of service equal 80 and, is aged 58 or older with a minimum of 18 years' service. The pension is based on a reduced formula if a Judge retires between 55 and age 65, having served at least two years on the Court.

(e) 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%.

(f) Judges Contributions – Judges contribute 5% of salary.

(g) 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.

15. In addition, Judges are also eligible for the following additional benefits:

(a) Disability Benefits – 100% of salary for temporary disability (up to 1 year); 70% for permanent disability. On recommendation of Judicial Council. No premiums.

(b) Annual Vacation – 30 days

(c) Annual Professional Allowance - $4,000

(d) 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.

(e) Dental Plan – Same dental plan as public service employees; premiums are paid by the Government.

(f) Extended Health Plan – The extended health plan provides comparable benefits to the plan provided to public service management. Premiums are paid by the Government.

16. Neither the Association nor the Government has requested any revision to the aforesaid benefits outlined in paragraphs above.

17. Based on the submissions received from the Association and the Government, the outstanding issues which require a recommendation from this Commission are:

- Judicial salaries
- Parental leave

18. The Supreme Court of Canada confirmed, among other principles that:

> "Financial security embodies three requirements: judicial salaries can be maintained or changed only by recourse to an independent commission; no negotiations are permitted between the judiciary and the government; and, salaries may not fall below a minimum level (including *de facto* reductions through the erosion of judicial salaries by inflation)."

IV. SUBMISSIONS TO THE COMMISSION

19. Saskatoon Criminal Defence Lawyers Association (SCDLA)

Lisa J. Watson and Brian R. Pfefferle prepared a written submission on behalf of the SCDLA. Mark Brayford Q.C. presented an oral submission to the Commission.

The SCDLA was established in 1979 as a non-profit corporation and is made up primarily of criminal defence practitioners in the Saskatoon area, including legal aid lawyers and private defence counsel.

The focus of their submission related to the disparity between the salary of Provincial Court Judges and the salary of federally appointed Queen's Bench judges.

The Association submitted that the qualifications and workloads do not justify a different treatment and identified the risk of a "two tier" justice system with different judges being paid different amounts based on the level of court. The Association urged the Commission to establish a salary schedule for the next three years that will further reduce or eliminate the disparity.

20. The Saskatchewan Provincial Court Judges Association and The Government of Saskatchewan

COMMON GROUND

A review of the submissions from the Association and the Government indicates there is some common ground.

Both submissions did not request the Commission review the following:

(a) top up percentages of the salaries for Chief Judge, Associate Chief Judge, Administrative Judges, Northern Saskatchewan Judges;
(b) calculation factor for amount paid to Temporary Judges;
(c) professional allowances;
(d) vacation leave;
(e) pension benefits and additional retirement benefits;
(f) leave of absence;
(g) sick leave;
(h) deferred salary leave;
(i) travelling, sustenance and moving expenses;
(j) life insurance;
(k) disability, dental and health benefits.

The Commission reviewed the above items and will not be recommending any changes.

SALARIES

With respect to salary the following is a summary of the position of the Judges' Association and the Government.

	Judges' Submission	Government Submission
April 1, 2021 – March 31, 2022	$2,798 (.9%) (93% of QB salary at March 31, 2021)	$4,685 (1.5% increase)
April 1, 2022 – March 31, 2023	94% of QB salary at March 31, 2022	95% of QB salary at March 31, 2022
April 1, 2023 – March 31, 2024	95% of QB salary at March 31, 2023	95% of QB salary at March 31, 2023

The Judges' submission for April 1, 2021 to March 31, 2022 and April 1, 2022 to March 31, 2023 was subsequently revised to be identical to that of the Government.

21. Possible Proposed Legislation

Both the Association and the Government asked the Commission to consider a recommendation that the Government introduce legislation to amend *The Provincial Court Act* to provide a statutory basis for the presumption of the 95% rate (of Queen's Bench Judges salary) for subsequent years and that the legislation include that in extraordinary circumstances the Commission can review the 95% rate.

The salaries for Queen's Bench Judges is set by the Judicial Compensation and Benefits Commission which was established in 1999 to inquire every four years into the adequacy of the salaries and other amounts payable to federally appointed judges under *The Judges Act* and into the adequacy of judges' benefits generally. In 2014, the *Act* was amended to provide that for the purposes of the inquiry the prothonotaries of the Federal Court be considered as judges. Under the provisions of the *Act*, the Commission must submit a report containing its recommendations to the Federal Minister of Justice, who shall respond to the report within four months after receiving it.

In examining judicial compensation, section 26(1.1) of *The Judges Act* requires Quadrennial Commissions to consider the following factors:

(a) the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government;
(b) the role of financial security of the judiciary in ensuring judicial independence;
(c) the need to attract outstanding candidates to the judiciary; and
(d) any other objective criteria that the Commission considers relevant.

The 2020 Quadrennial Commission's proceedings, which were originally scheduled to commence on June 1, 2020, have been deferred due to COVID-19.

22. Family Leave

Both the Association and the Government asked the Commission to issue an order, authorizing the two parties to discuss a proposal for family leave. Upon completion of the discussions, the parties would apply to the Commission under s.51 for review of the proposal, including written materials in support of the proposal, and explaining points of disagreement, if any. The Commission would review the proposed policy and the submissions, and then issue its report and recommendations under s.51, relating to the issue of a family leave policy.

23. Pensions

Queen's Bench Judges (QBJ) enjoy a tax advantage when they retire which is not available to Provincial Court Judges (PCJ). Under the *Income Tax Act*, the pension income earned by federally appointed judges may be split with their spouse or common-law partner, with the result that a retired QBJ pays lower taxes than they would otherwise be required to pay if it could not engage in income-splitting. Unlike federally appointed judges, there is no forum for PCJ's to achieve the same treatment relating to income tax on their pension earnings, as the provincial commissions do not have the jurisdiction to make recommendations on matters within the exclusive jurisdiction of Parliament which the federal Judicial Commission and Benefits Commission does.

The Canadian Association of Provincial Court Judges has requested that the *Income Tax Act* be amended so that PCJs enjoy the same income-splitting benefits as QBJs. On July 4,

2017, the Minister of Justice and Attorney General of Canada advised that the Federal Government was not prepared to accommodate such a request.

V. RECOMMENDATIONS

24. The Commission having reviewed the submissions, listened to oral presentations and noting the common ground presented independently by the Association and the Government is prepared to make the following recommendations:

1. Salary and Benefits
   (a) for the period April 1, 2021 to March 31, 2022 the base salary be adjusted to $316,971;
   (b) for the period April 1, 2022 to March 31, 2023 the base salary be adjusted to .95 of the salary paid to the Justices of the Court of Queen's Bench at March 31, 2022;
   (c) for the period April 1, 2023 to March 31, 2024 the base salary be adjusted to .95 of the salary paid to the Justices of the Court of Queen's Bench at March 31, 2023. The administrative allowance for the Chief Judge, the Associate Chief Judge and Judges with administrative duties and Northern Judges allowance remain the same as is currently set out in the Provincial Court Compensation Regulations, namely:
      - Chief Judge, base salary plus 7.5%
      - Associate Chief Judge, base salary plus 5.0%
      - Administrative Judge, base salary plus 2.5%
      - Northern Judges Allowance, base salary plus 5.0%
   (d) the remuneration for Temporary Judges remain at a daily rate of 1/220 of the base salary of a Judge;
   (e) there be no change to the Professional Allowance or other benefits;
   (f) there be no changes to the pension benefits and additional retirement benefits; and
   (g) there be no increase to the number of Judges' vacation days.

2. That representatives of the Association, and officials from the Courts and Tribunals Division of the Ministry of Justice hold discussions on the issue of family leave, and to

draft a proposed Family Leave Policy. Upon completion of the discussions, either party, or both parties jointly, may apply to the Commission under s.51 of the Act to have the Commission review the proposed Family Leave Policy.

3. That representatives of the Association, and officials from the Courts and Tribunals Division of the Ministry of Justice hold discussions on the issue of providing guidance of extraordinary circumstances referred to above. Upon completion of the discussions, either party, or both parties jointly, may apply to the Commission under s.51 of the Act to have the Commission review the proposed guidance of extraordinary circumstances.

4. That the Government introduce amendments to *The Provincial Court Act*, in consultation with the Association, to implement the presumption of a salary based on 95% of the Queen's Bench salary for the future. The proposed amendment should provide that it would be open to either the Association or the Government to ask future commissions to review the 95% rate, but only if there are extraordinary circumstances.

VI. CLOSING REMARKS

This Commission wishes to express its sincere appreciation and gratitude to all parties who have 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 Hearings.

This report contains the unanimous recommendations of this Commission.

DATED at Saskatoon, Saskatchewan effective this 31st day of December, 2020.

Paul S. Jaspar, SVM FCPA FCA, Chairperson

Art Postle

Deryk Kendall, BA LLB

APPENDIX A

Province of Saskatchewan

Commission Order

The Provincial Court Commission, pursuant to Part IV of *The Provincial Court Act, 1998*, makes *The Provincial Court Compensation Amendment Regulations, 2020* in accordance with the attached Schedule.

Dated at the City of Saskatoon, Saskatchewan the 21 day of December, 2020.

Paul S. Jaspar, Chairperson
Provincial Court Commission

SCHEDULE

Title

1 These regulations may be cited as *The Provincial Court Compensation Amendment Regulations, 2021*.

RRS c P-30.11 Reg 2 amended

2 *The Provincial Court Compensation Regulations* are amended in the manner set forth in these regulations.

New section 3

3 Section 3 is repealed and the following substituted:

"Salaries

3(1) A judge is entitled to be paid an annual salary in the amount of:

(a) for the annual period commencing on April 1, 2021, $316,971;

(b) subject to subsection (2), for each annual period commencing on or after April 1, 2022, the product of the following rounded up to the nearest dollar:

(i) the salary paid to the justices of the Court of Queen's Bench as at March 31 of the previous annual period;

(ii) 0.95.

(2) If the calculation set out in clause (1)(b) results in a reduction in the salary of a judge, the judge is entitled to be paid the annual salary that was paid in the previous annual period.

(3) A temporary judge is entitled to be paid:

(a) for each day in which the temporary judge is engaged in the temporary judge's duties as a judge, an amount equal to 1/220th of the annual salary of a judge determined by subsections (1) and (2) and rounded up to the nearest dollar; and

(b) for each half day in which the temporary judge is engaged in the temporary judge's duties as a judge, an amount that is one-half of the amount determined by clause (a) and rounded up to the nearest dollar".

APPROVED
LEGISLATIVE DRAFTING SECTION

December 15, 2020 - 1:23 p.m.

Section 4 amended

4(1) Subsection 4(1) is amended by striking out "subsection 3(3)" **wherever it appears and in each case substituting** "subsection 3(1)".

(2) Subsection 4(2) is amended by striking out "subsection 3(3)" **wherever it appears and in each case substituting** "subsection 3(1)".

(3) Subsection 4(3) is amended by striking out "subsection 3(3)" **wherever it appears and in each case substituting** "subsection 3(1)".

Section 5 amended

5 Subsection 5(2) is amended by striking out "subsection 3(3)" **wherever it appears and in each case substituting** "subsection 3(1)".

Coming into force

6 These regulations come into force on the day that is determined in accordance with Part IV of *The Provincial Court Act, 1998.*

APPENDIX B

PROVINCIAL COURT COMMISSION OF SASKATCHEWAN

ORDER

Whereas the Provincial Court Commission ("the Commission") has been duly established under s.36 of *The Provincial Court Act, 1998* ("the Act");

Whereas the Commission's mandate extends to June 30, 2023;

Whereas the Saskatchewan Provincial Court Judges' Association ("the Association") has indicated that its members wish to have a Family Leave Policy established;

Whereas the Government of Saskatchewan ("the Government") recognises that a Family Leave Policy is a standard component of workplace conditions and wishes to establish a Family Leave Policy for the Judges of the Provincial Court;

Whereas both the Association and the Government are conscious of the constitutional restrictions on direct negotiations for the remuneration of the Provincial Court Judges;

Whereas s.51 of the Act authorises either party to request that the Commission "inquire into and make recommendations with respect to any matter of significance to the court";

Whereas the Association and the Government have jointly requested authorization from the Commission to hold discussions about a Family Leave Policy, under the supervision of the Commission;

Whereas the Commission finds it beneficial to have a discussion regarding guidance of extraordinary circumstances referred to in the Commission's recommendations;

Whereas the Commission finds that this proposed approach is consistent with its constitutional and statutory mandates.

Therefore, the Commission **ORDERS** as follows:

Authorization for discussions

1. Representatives of the Association, and officials from the Courts and Tribunals Division of the Ministry of Justice ("the Division"), are authorized to:
   (a) hold discussions on the issue of family leave;
   (b) hold discussions on the issue of guidance of extraordinary circumstances, with a view to informing any legislative initiative the Government may undertake.

Application to the Commission

2. Upon completion of the discussions, either party, or both parties jointly, may apply to the Commission under s.51 of the Act to have the Commission review the proposed Family Leave Policy and guidance regarding extraordinary circumstances.

Written Submissions

3. In support of the applications, the parties shall file written submissions to the Commission, which shall include:
   (a) a copy of the proposed Family Leave Policy;
   (b) an outline of their positions on the proposed Policy;
   (c) points of disagreement, if any, concerning the proposed Policy;
   (d) each party's position on any points of disagreement; and
   (e) guidance regarding extraordinary circumstances.

Commission Report

4. The Commission shall review the above proposal and the written submissions of the parties, and shall issue a Report under s.51 of the Act, setting out the Commission's recommendations.

Publication of Proceedings

5. The Division shall forthwith post this Order on the Commission website.

6. Upon the filing of the written submissions mentioned in paragraph 3 of this Order, the Division shall forthwith post the submissions on the Commission website.

7. Thirty days after the date of the Commission Report mentioned in paragraph 4 of this Order, the Division shall post the Report on the Commission website.

Commission to Set Dates

8. The Commission reserves the power to set or modify the dates for the completion of any of the steps outlined above.

Issued at Saskatoon, Saskatchewan this 31 day of December, 2020.

Paul S. Jaspar, Chairperson
Provincial Court Commission

TAB 21



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.

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[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.

TAB 22

O.C. 044/2025

MAR 0 5 2025

Province of Alberta
Order in Council

ORDER IN COUNCIL

Approved and ordered:

Lakhani

Lieutenant Governor
or
Administrator

The Lieutenant Governor in Council makes the Justice of the Peace Amendment Regulation set out in the attached Appendix.

FILED UNDER
THE REGULATIONS ACT
as ALBERTA REGULATION 26/2025
ON March 05 2025
REGISTRAR OF REGULATIONS

CHAIR

For Information only

Recommended by: Minister of Justice

Authority: Justice of the Peace Act
(section 15(2))

APPENDIX

Justice of the Peace Act

JUSTICE OF THE PEACE AMENDMENT REGULATION

1 The *Justice of the Peace Regulation* (AR 6/99) is amended by this Regulation.

2 Section 6(1) is repealed and the following is substituted:

Remuneration — full-time justices of the peace

6(1) The annual salary for a full-time justice of the peace is,

(a) for the period beginning on April 1, 2021 and ending on March 31, 2022, $153 331,

(b) for the period beginning on April 1, 2022 and ending on March 31, 2023, $156 398,

(c) for the period beginning on April 1, 2023 and ending on March 31, 2024, $170 474, and

(d) for the period beginning on April 1, 2024 and ending on March 31, 2025, $175 588.

3 Section 8(1) is repealed and the following is substituted:

Remuneration — part-time and ad hoc justices of the peace

8(1) The remuneration for a part-time or an ad hoc justice of the peace working an 8-hour shift is,

(a) for the period beginning on April 1, 2021 and ending on March 31, 2022, $971,

(b) for the period beginning on April 1, 2022 and ending on March 31, 2023, $990,

(c) for the period beginning on April 1, 2023 and ending on March 31, 2024, $1077, and

(d) for the period beginning on April 1, 2024 and ending on March 31, 2025, $1109.

4 Section 8.1(2) is repealed and the following is substituted:

(2) Over and above the remuneration payable under section 6 or 8, as the case may be, a justice of the peace working an 8-hour shift is entitled to the following payment for work during the following times:

(a) for the period beginning on April 1, 2021 and ending on March 31, 2022,

(i) for a weekday evening shift, $55.34,

(ii) for a weekday night shift, $137.38,

(iii) for a weekend day shift, $55.32,

(iv) for a weekend evening shift, $84.10,

(v) for a weekend night shift, $192.72,

(vi) for a holiday day shift, $84.10,

(vii) for a holiday evening shift, $110.66, and

(viii) for a holiday night shift, $248.05;

(b) for the period beginning on April 1, 2022 and ending on March 31, 2023,

(i) for a weekday evening shift, $56.44,

(ii) for a weekday night shift, $140.13,

(iii) for a weekend day shift, $56.43,

(iv) for a weekend evening shift, $85.78,

(v) for a weekend night shift, $196.57,

(vi) for a holiday day shift, $85.78,

(vii) for a holiday evening shift, $112.87, and

(viii) for a holiday night shift, $253.01;

(c) for the period beginning on April 1, 2023 and ending on March 31, 2024,

(i) for a weekday evening shift, $58.13,

(ii) for a weekday night shift, $144.33,

(iii) for a weekend day shift, $58.12,

(iv) for a weekend evening shift, $88.35,

(v) for a weekend night shift, $202.47,

(vi) for a holiday day shift, $88.35,

(vii) for a holiday evening shift, $116.26, and

(viii) for a holiday night shift, $260.61;

(d) for the period beginning on April 1, 2024 and ending on March 31, 2025,

(i) for a weekday evening shift, $59.88,

(ii) for a weekday night shift, $148.67,

(iii) for a weekend day shift, $59.87,

(iv) for a weekend evening shift, $91.01,

(v) for a weekend night shift, $208.54,

(vi) for a holiday day shift, $91.01,

(vii) for a holiday evening shift, $119.75, and

(viii) for a holiday night shift, $268.42.

5 This Regulation has effect on April 1, 2021.

TAB 23

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 us[1] 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]

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[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. Quebec (Attorney General); Minc v. Quebec (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.

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[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]

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[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.

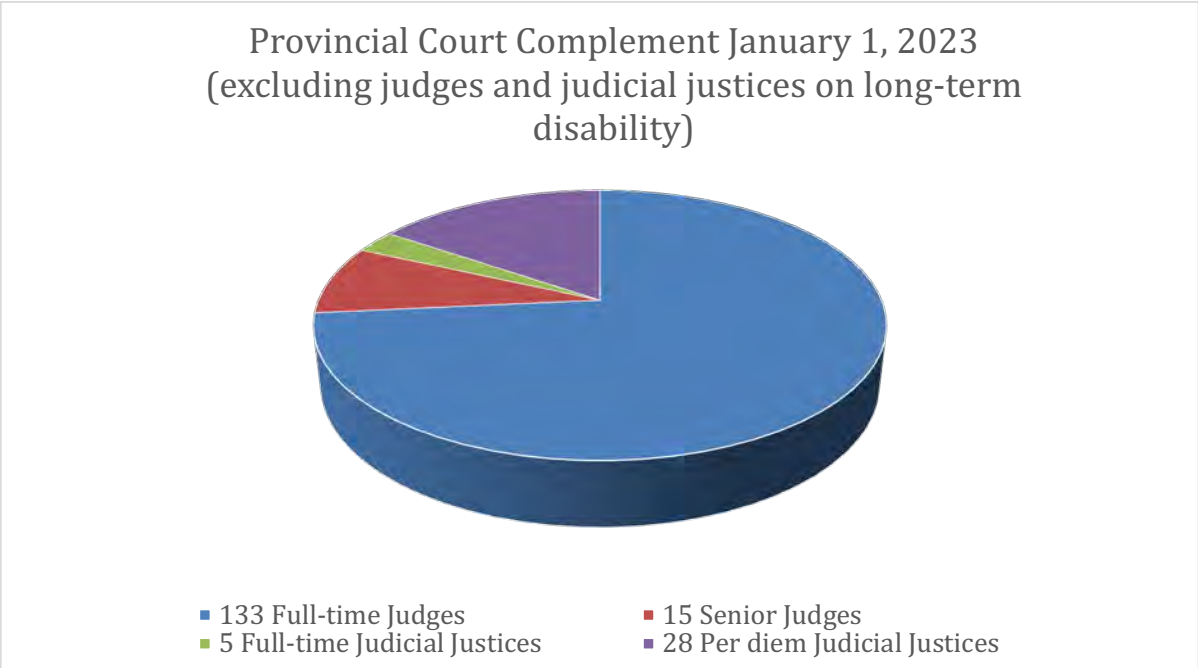
[26] *Provincial Court Act*, s. 2.1.

[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

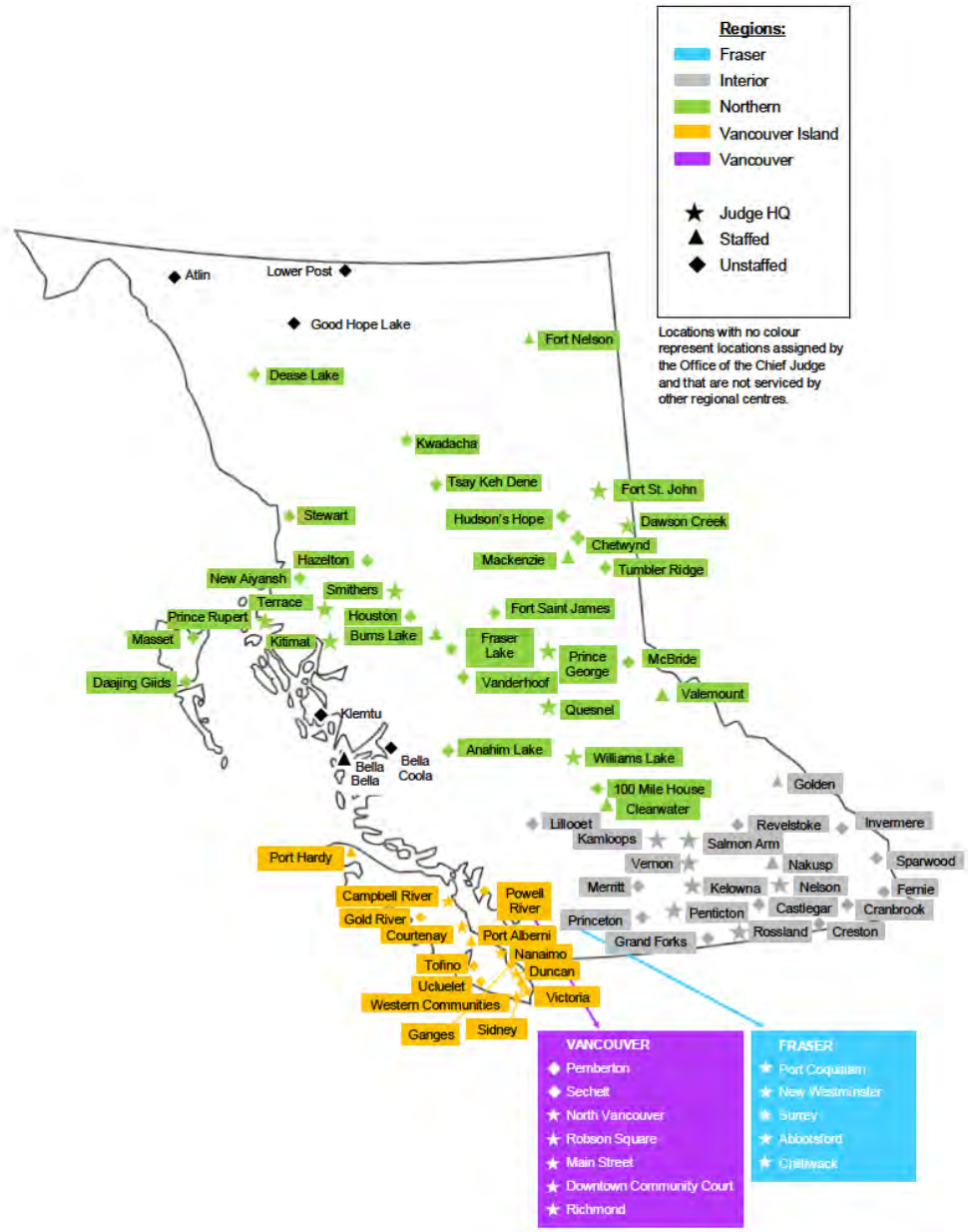
[28] Submission of Chief Judge, para. 137; Main Submission of JJA, paras. 40, 48, 58, 70, 74, and 78; Main Submission of Government, para. 60; Judicial Justices Assignment of Duties Pursuant to s. 11 of the *Provincial Court Act*, January 14, 2023, Supplemental Book of Documents of the JJA, Tab 7.

[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 dires*. 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 divisions[41]—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-4[62] 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 Act[76] 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]

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[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 renumeration 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.

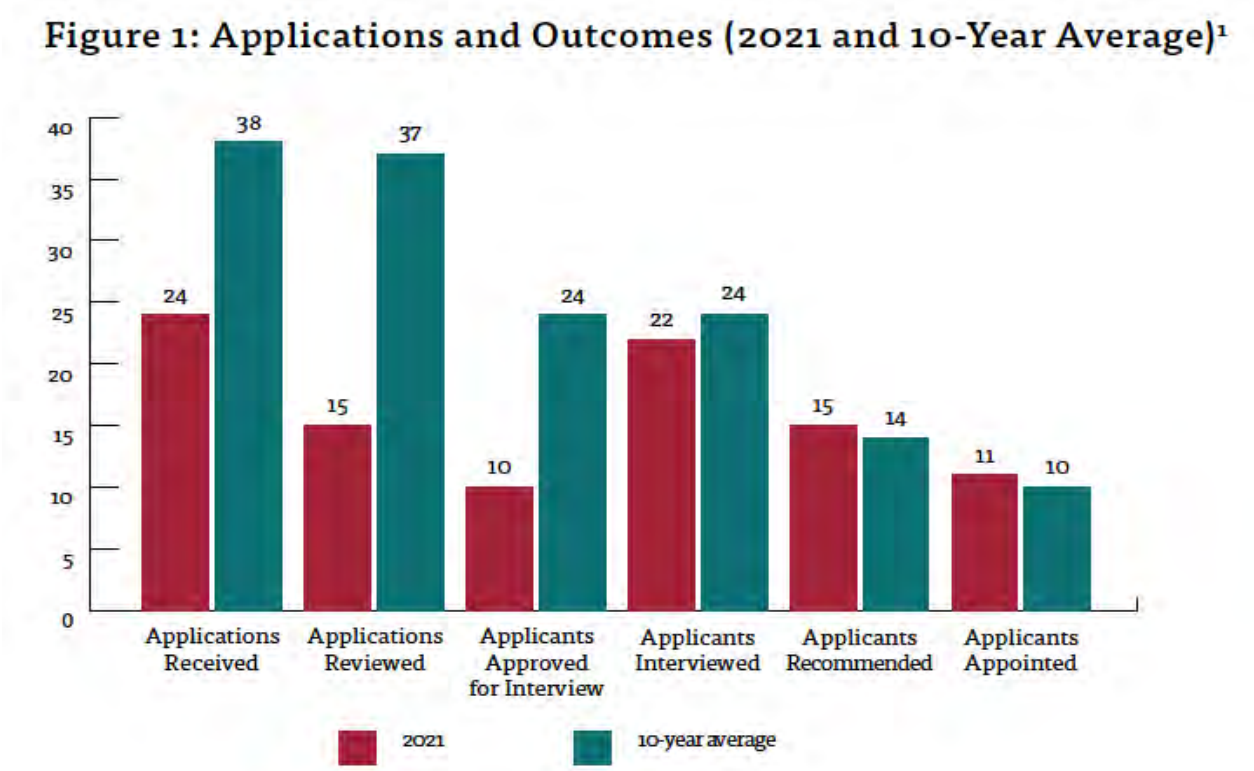
[100] See description of the application and appointment process in Judicial Council Submission, paras. 4-9.

[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]



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.

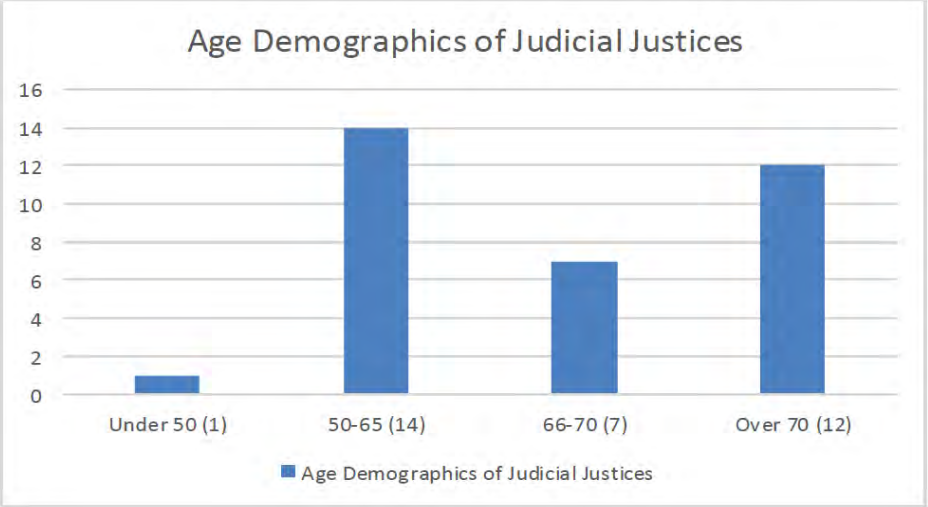
[125] TR February 15, 2023, Chief Judge Gillespie, p. 169, ll. 20-25.

[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.

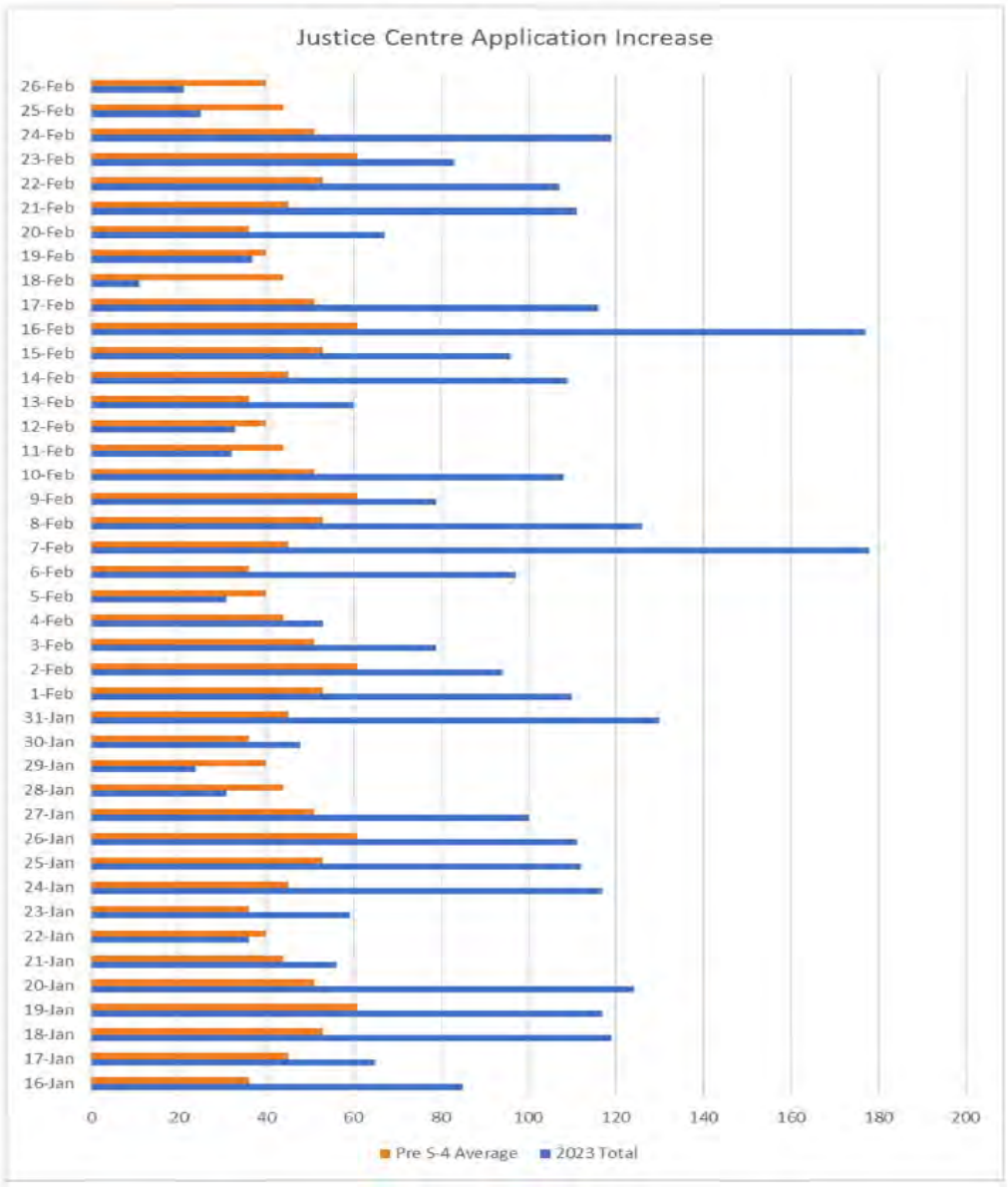
[136] Main Submission of PCJA, para. 184; Main Submission of Government, paras. 116-118.

[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]

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[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.

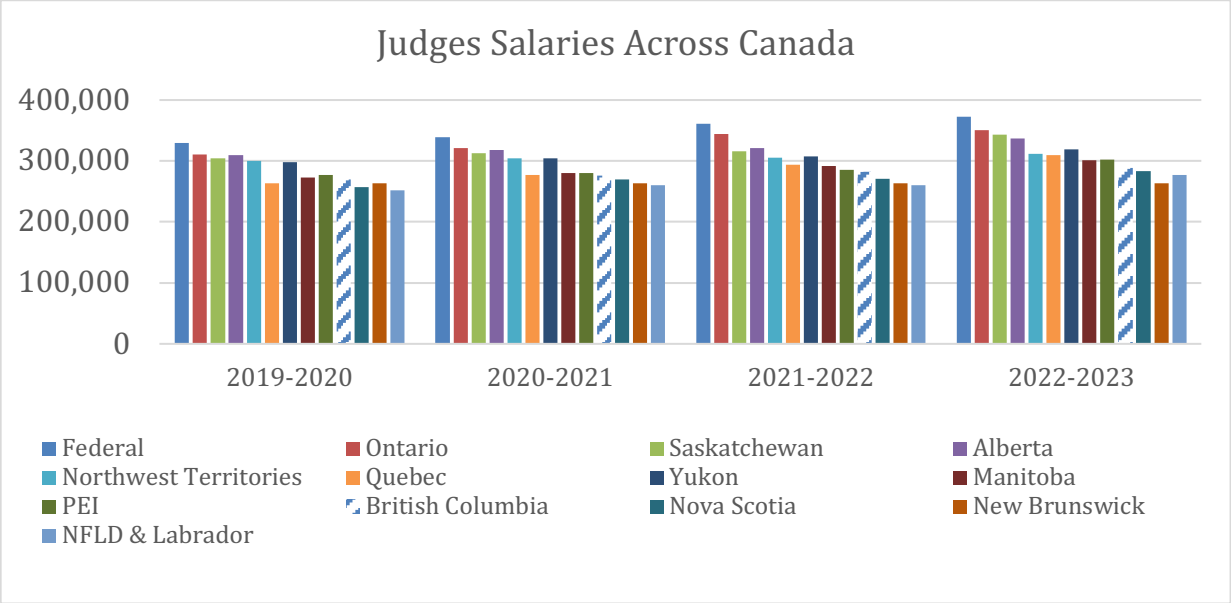
[160] Main Submission of Government, paras. 148-149.

[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.

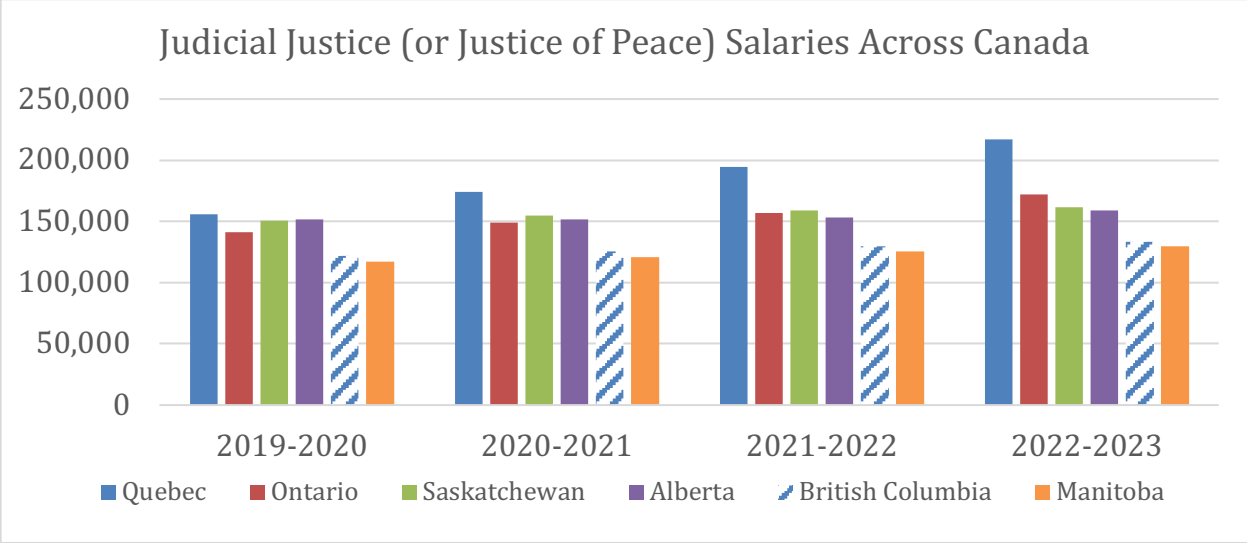
[171] TR February 16, 2023, Ms. Wolfe for Government, p. 13, ll. 1-20; Main Submission of Government, paras. 152 and154.

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

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[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]

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[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]

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[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]

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[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]

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[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.

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[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]

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[249] TR February 15, 2023, Mr. Bernstein for JJA, p. 36, ll. 8-16.

[250][250] 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 renumeration 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.

Provincial Court Judges	**Current Salary**	**2023 - 2024**	**2024 - 2025**	**2025 - 2026**	**2026 -2027**
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

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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.

Judicial Justices	Current Salary	2023 – 2024	2024 – 2025	2025 - 2026	2026-2027
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 that 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]

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[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) x 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

RECOMMENDATON: 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]

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[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

RECOMMENDATON: 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-judgement 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. 194[298] 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 000in 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.

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[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

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[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.

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[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 JCC[326] 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	• 2011/12: 0% • 2012/13: 0% • 2013/14: cumulative CPI over prior 3 years	• Rejected salary (and pension) • Substituted 0% salary increase (consistent with net-zero public sector mandate)	• 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	• 2014/15: $241,500 • 2015/16: $245,122 • 2016/17: $250,024 As 2010 litigation still outstanding, JCC used	• Rejected salary (and pension) • Substituted: 2014/15: $236,950 2015/15: $240,504 2016/17: $244,112	• 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)		• 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	• 2017/18: $273,000 • 2018/19: $277,095 • 2019/20: $281,251 • 100% of reasonable costs	• Rejected salary (and costs) • Substituted: 2017/18: $262,000 2018/19: $266,000 2019/20: $270,000	• 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	• 2020/21: $287,000 • 2021/22: $297,000 • 2021/23: $307,000 • Regulation be enacted to permit 100% of reasonable costs	• Rejected salary (and costs) • Substituted: 2020/21: $276,000 2021/22: $282,250 2022/23: $288,500	• Response challenged • Litigation ongoing – petition argued September 2022 and decision reserved

Year	JCC recommendations (Judicial Justices)	Government (Govt) Initial Response	Further Developments
2010	• 2011/12: 0% • 2012/13: 0% • 2013/14: 8% ($107,487)	• Rejected salary and per diem • Substituted 0% salary increase (consistent with	• Response to 2010 and 2013 challenged • Govt later agreed to place motion

Year	JCC recommendations (Judicial Justices)	Government (Govt) Initial Response	Further Developments
	• 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 • Legislature adopted motion in July 2016, resulting in 2013/14 salary of $104,402 • Court case discontinued
2013	• 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)	• Rejected salary; accepted per diem change • Substituted: 2014/15: $101,018 2015/16: $103,038 2016/17: $105,099	• Resulting motion of legislature in July 2016; salaries set at: 2014/15: $105,968 2015/16: $108,087 2015/17: $110,249
2016	• 2017/18: $125,000 • 2018/19: $126,875 • 2019/20: $128,778 • 100% of reasonable costs	• Rejected salary (and costs) • Substituted: 2017/18: $118,000 2018/19: $120,000 2019/20: $122,000	• Salaries implemented per Govt response • Costs paid per statutory formula
2019	• 2020/21: $138,000 • 2021/22: $142,000 • 2022/23: $146,000 • Regulation be enacted to permit 100% of reasonable costs	• Rejected salary (and costs) • Substituted: 2020/21: $125,750 2021/22: $129,500 2022/23: $133,500	• 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.

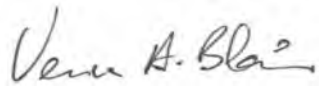
The Commission particularly thanks Commission Counsel, Kathy Grant, for her invaluable assistance, advice, and support. As not only Commission Counsel, but also as the Commission's only administrative support, Ms. Grant played many roles, all effectively and with aplomb.



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, 2022[338]
    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

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 dues to experience or data changes), we would recommend that the current contributions are maintained until the 2023 valuation is completed.

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 plan[1]. 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 judges[2].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 death[3]. 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

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[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 65[4]. 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.

<u>Existing JCA terms</u>

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% x 10 years x $64,900 = $ 8,762 plus
  - 2.0% x 10 years x $225,100 = $45,020
- Judicial service:
  - 3.0% x 10 years x $290,000 = $87,000
- **Total Annual Pension = $140,782**

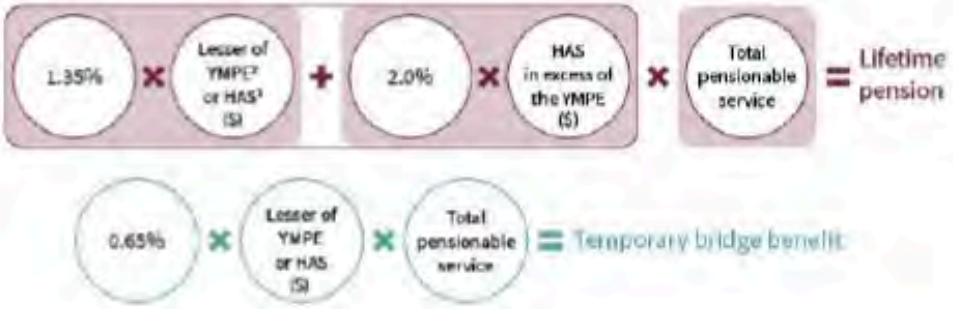
Plan Design Changes for Regular Members

- 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)

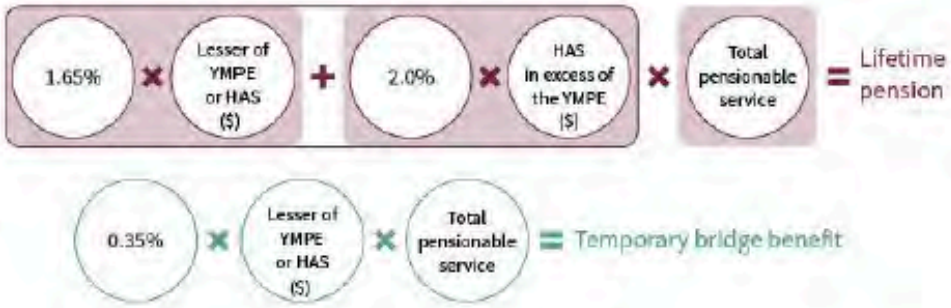
- Flat 1.85% accrual rate, effective April 1, 2018

- Flat 1.95% accrual rate, effective April 1, 2022

For pensionable service earned before April 1, 2006:



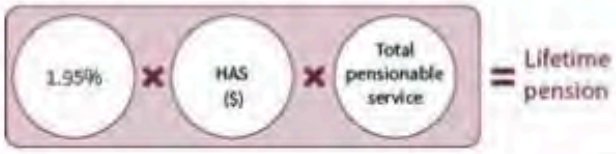
For pensionable service earned between April 1, 2006 and March 31, 2018, inclusive:



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, **members will see marginal reduction in lifetime pension** [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.

TAB 24



Report and Recommendations of the 2024 Saskatchewan Justice of the Peace Compensation Commission

Presented to the Minister of Justice and Attorney General and the Saskatchewan Justice of the Peace Association December 31, 2024

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I. PRELIMINARY MATTERS

A. INTRODUCTION

1. In 2013, the Saskatchewan Legislature enacted changes to *The Justice of the Peace Act, 1988, SS 1988-89, c.J-5.1* (the "*Act*") to provide for an independent commission to review the compensation provided to Justices of the Peace (sometimes referred to in this report as "JPs" or "JP" in the singular). The *Act* has been amended several times since then. (The legislative history is set out in the Government's submissions at paras. 92 – 104.) This current Justices of the Peace Compensation Commission (the "Commission") was established pursuant to sections 10.1 to 10.81 of the *Act,* as amended.

2. The Commission is required to consider and make recommendations related to the compensation package to be provided to JPs. It may also consider and make recommendations on a number of other matters, on an advisory basis. The recommendations made by the Commission, if implemented, will be in effect from April 1, 2025, until March 31, 2029.

3. There have been three previous JP Compensation Commissions established under the Act: the first, established pursuant to the 2013 amendments, is referred to as the "Hood Commission", which reported in 2014. The second was the "Prosser Commission", which reported in 2018, and the third was the "Jaspar Commission", which reported in 2023.

4. Both the Hood and Prosser Commissions reported on the full range of required matters, while the Jaspar Commission sat on a transitional basis and made a limited number of specific required recommendations.

5. Although this is only the fourth JP Compensation Commission, the commission process in general is well-established in Saskatchewan. In addition to this commission process related to JPs, a similar process has taken place for many years in relation to the compensation to be paid to the Judges of the Provincial Court of Saskatchewan ("PC Judges"). Those commissions provide background context.

B. THE COMMISSION AND ITS MANDATE

6. The *Act* provides that the Commission is to review and make recommendations regarding the compensation to be provided to Saskatchewan's JPs, in accordance with the constitutional principle of judicial independence.

7. The Commission is defined under section 10.1 of the *Act* as follows:

> **"commission"** means the chairperson of a commission established pursuant to section 36 of *The Provincial Court Act, 1998*.

8. Accordingly, this Commission consists of the current Chairperson of the Provincial Court Commission, Michelle J. Ouellette K.C.

9. Sections 10.1 to 10.3 of the *Act* Set out the mandate of the Commission and provide as follows:

10.1 In sections 10.2 to 10.81:

"**association**" means the Saskatchewan Justice of the Peace Association;
(«association»)

"**commission**" means the chairperson of a commission established pursuant to section 36 of The Provincial Court Act, 1998;
(«commission»)

"**justice of the peace**" does not include a justice of the peace who is a court official; («juge de paix»).

10.2(1) Subject to subsections (4) and (5), the annual salary of a justice of the peace is the percentage of the annual salary of a judge of the Provincial Court of Saskatchewan that is prescribed in the regulations made by the commission.

(2) The annual salary of a justice of the peace is to be adjusted on April 1 of each year.

(3) The annual salary of a judge of the Provincial Court of Saskatchewan that is to be used to calculate and adjust the annual salary of a justice of the peace mentioned in subsection (1) is the annual salary of a judge of the Provincial Court as of April 1 of the year that precedes the year in which the calculation is being made.

(4) A Senior justice of the peace is to be paid a pro rata portion of the annual salary of a justice of the peace mentioned in subsection (1) for each day or half-day in which the Senior justice of the peace is engaged in his or her duties as a justice of the peace.

(5) The following persons are to be paid a pro rata portion of the annual salary of a justice of the peace mentioned in subsection (1) for each hour in which the person is engaged in duties as a justice of the peace:

(a) a justice of the peace who is not a senior justice of the peace;

(b) a relief justice of the peace.

(5.1) In addition to the annual salary for a justice of the peace mentioned in subsection (1), the supervising justice of the peace , the assistant supervising justice of the peace and any administrative justice of the peace are to be paid annually an additional amount calculated in accordance with the regulations made by the commission.

(6) Subject to subsection 10.8(4), the Public Employees Pension Plan established pursuant to *The Public Employees Pension Plan Act* applies to a justice of the peace.

10.3(1) A commission **shall** inquire into and make recommendations with respect to:

(a) the annual salary of a justice of the peace mentioned in subsection 10.2(1);

(b) the method of calculating the *pro rata* portions of the annual salary mentioned in subsections 10.2(4) and (5);

(c) the method of calculating the additional amounts mentioned in subsection 10.2(5.1) for:

(i) the supervising justice of the peace;

(ii) the assistant supervising justice of the peace; and

(iii) an administrative justice of the peace; and

(d) the contributions to be made to the pension plan mentioned in subsection 10.2(6).

(2) A commission's recommendation with respect to the percentage mentioned in subsection 10.2(1) cannot result in an annual salary amount for justices of the peace that is less than the annual salary being received by justices of the peace on the day on which the report containing the recommendation is submitted to the minister.

(3) A commission **may** inquire into and make recommendations with respect to benefits to be provided to justices of the peace pursuant to regulations made pursuant to clause 15(d).

[Emphasis added]

10. Accordingly, under section 10.3(l), this Commission is required to consider and make recommendations regarding the annual salary of a JP, the method of calculating the *pro rata* portions of such annual salary, the method of calculating

additional amounts to be paid to the Supervising JP, the Assistant Supervising JP and any Administrative JPs, as well as the amounts of the contributions to be made to the Public Employees Pension Plan for the benefit of JPs.

11. As provided for in section 10.3(3), this Commission may also make recommendations with respect to benefits to be provided to JPs, although this is not a compulsory aspect of the Commission's mandate.

C. COMMISSION PROCESS AND PROCEEDINGS

12. This Commission's process was consistent with the previous JP Commissions. Advertisements calling for submissions to the Commission were placed in the Regina Leader Post and the Saskatoon Star Phoenix on August 8, 2024. The advertisements indicated that the Commission would be receiving written submissions from interested parties in order to conduct an independent review of salaries and pension for JPs. Submissions were to be received no later than November 1, 2024.

13. The Commission received written submissions from:
    i. The Acting Deputy Minister of Justice and Deputy Attorney General, on behalf of the Government of Saskatchewan (the "Government"); and
    ii. The Saskatchewan Justice of the Peace Association (the "Association").

14. The Government and the Association each filed a Reply submission.

15. The Commission received one inquiry from a member of the public regarding the possibility of making submissions; however, as the date for receiving submissions had long passed, the Commission declined to receive additional submissions. Accordingly, no submissions were received from members of the public or other organizations.

16. The Commission was permitted to submit written questions to the Government and the Association after reviewing the Parties' submissions, as provided for in section 10.5(b) of the *Act*. The Commission submitted several questions to the parties and received responses from both the Government and the Association, as will be referred to later in this report.

17. The parties' submissions, replies and other documents are all posted on the website for the Justices of the Peace Compensation Commission and can be reviewed at:

https://www.saskatchewan.ca/government/government-structure/boards-commissions-and-agencies/justices-of-the-peace-compensation-commission

18. Although s. 10.5(c) of the Act provides for the possibility of a Hearing, the Commission did not feel the need to receive oral submissions.

19. The Commission is required to provide a report to the parties on or before December 31, 2024, containing its recommendations for the 4-year period commencing on April 1, 2025, along with proposed regulations to implement those recommendations.

20. The Commission's recommendations are generally implemented, if accepted, by means of the *Justices of the Peace (Commission) Regulations* (the "*JP (Commission) Regulations*").

D. PREVIOUS COMMISSIONS

21. As noted, there have been three previous JP Commissions in Saskatchewan.

(1) The Hood Commission

22. The Hood Commission reported on January 13, 2014, establishing the first set of JP Commission recommendations for the salaries and benefits to be provided to JPs in Saskatchewan. A complete summary of the recommendations of the Hood Commission was set out in paras. 386 - 388 of its report, as follows:

> 386. The Commission's required recommendations can be summarized as follows:
>
> - A JP annual salary for 2013/2014 in Saskatchewan should be set at 49% of the previous year's PCJ salary, or $121,524.90;
> - *Pro rata* portions of this annual salary should be calculated using divisors equal to 220 working days, 440 half-days, and 1760 hours; and
> - Pension contributions for individual Senior JPs enrolled in the PEPP should be set at 5% of their annual salary. The Government should contribute:
>   - 7.25% for the period commencing on the day the new Regulations come into force, and ending on March 31, 2014;
>   - 7.5% for the period commencing April 1, 2014, and ending on March 31, 2015; and
>   - 7.6% for the period commencing April 1, 2015.
>
> 387. It is further recommended that the Lieutenant Governor in Council

amend *The Justices of the Peace Regulations, 1989*, supra, to provide the following benefits:

- Senior and Junior JPs who are classified as full-time and who earn an annual salary set by the Regulations should receive:
    - Leave of absence with pay for 30 vacation days per fiscal year (or 2 ½ working days for each full month of service in a period that is less than a full fiscal year);
    - Leave of absence with pay for 10 public holidays and 2 Saskatchewan public service employee holidays;
    - Sick leave calculated at a rate of 1 ¼ days for each month of service (or 15 days per fiscal year), in the same manner as the Supervising JP;
    - Enrolment in the following insured benefit programs, in the same manner as the Supervising JP:
        - Government of Saskatchewan Group Life Insurance Plan;
        - Public Employees Dental Plan;
        - Government of Saskatchewan Disability Income Plan; and
        - Extended Health Care Plan.
- Senior and Junior JPs who receive remuneration according to the pro rata calculation should receive an additional amount of compensation, expressed as a percentage of the annual salary:
    - in lieu of sick leave; and
    - in lieu of insured benefit programs.
- Senior and Junior JPs, whether full-time or part-time, should all receive the following benefits:
    - Expenses away from home (actual and reasonable travel and meals), according to the existing Regulations;
    - Legal resources for disciplinary proceedings, subject to the approval of the Chair of the Justices of the Peace Council; and
    - Counseling services through the PCJ or similar program;

388. Although not technically benefits, the following adjustments to the calculation of "work time" are recommended:

- Professional development and training should be compensated for at a JP's regular salary;
- Compensation for stand-by status should be paid at the rate of 1 hour per 24 hours; and
- Travel time should be compensated for at a JP's regular salary.

(2) **The Prosser Commission**

23. The second JP Commission under the amended *Act* took place in 2018, when the Prosser Commission conducted the second full review of the matters set out in the

Act. A summary of the Prosser Commission's recommendations can be found at paras. 329 and 330 of its report, as follows:

> 329. The following is a summary of the required recommendations made by this Commission:
>
> a. The annual salary for Justices of the Peace commencing on April 1, 2019 should be set at 51% of the previous year's Provincial Court Judges' salary.
> b. *Pro rata* portions of this annual salary should be calculated using devisers equal to 220 working days, 440 half days and 1760 hours;
> c. The additional amounts to be paid to the Supervising Justice of the Peace and the Assistant Supervising Justice of the Peace shall be 7.5% and 5%, respectively, of the annual salary of a Justice of the Peace effective April 1, 2019; and
> d. There be no change to the PEPP contribution rates for the Senior Justices of the Peace, with individual Senior Justices of the Peace continuing to contribute 5% of their annual salary and the Government continuing to contribute 7.6% of Justices of the Peace salary on an annual basis.
>
> 330. This Commission further recommends that the Lieutenant Governor in Council amend *The Justice of the Peace Regulations, 1989,* supra, to provide the following benefits:
>
> a. Non-senior Justices of the Peace be enrolled in PEPP, with the same contribution rates as the Senior Justices of the Peace;
> b. Non-senior Justices of the Peace who are classified as full-time and who earn an annual salary set by the Regulations should receive:
>
> i. Leave of absence with pay for 30 vacation days per fiscal year (or 2 ½ working days for each full month of service in a period that is less than a full fiscal year);
> ii. Leave of absence with pay for 10 public holidays and 2 Saskatchewan public service employee holidays;
> iii. Sick leave calculated at a rate of 1 ¼ days for each month of service (or 15 days per fiscal year);
> in the same manner as full time Senior Justices of the Peace and the Supervising Justice of the Peace;
> iv. Enrolment in the following insured benefits programs, in the same manner as the Senior Justices of the Peace and the Supervising Justice of the Peace:
>
> - Government of Saskatchewan Group Life Insurance Plan;
> - Public Employees Dental Plan;
> - Government of Saskatchewan Disability Income Plan; and
> - Extended Health Care Plan.

c. Senior Justices of the Peace who do not meet the threshold of 16 hours of work per week should receive an additional amount of compensation based on a calculated per diem or *pro rata* rate in lieu of the extended health (married) coverage currently available to only full-time Senior Justices of the Peace.

d. Non-senior Justices of the Peace who receive remuneration according to the pro rata calculation should receive an additional amount of compensation based on a calculated per diem or *pro rata* rate in lieu of Insured Benefits and sick leave.

e. Non-senior Justices of the Peace who receive renumeration according to the *pro rata* calculation should receive an additional amount of compensation, expressed as a percentage of the annual salary;
    i. In lieu of sick leave; and
    ii. In lieu of Insured Benefits programs.

f. Senior and Non-senior Justices of the Peace whether full-time or part-time should all receive the following benefits:

    i. Compensation at regular salary rates and reimbursement for travel and meal expenses while attending two mandatory professional training days per year;

    ii. Legal resources for disciplinary hearings, subject to the approval of the Chair of the Justices of the Peace Council, or through a mutually agreeable protocol developed between the Government and the Association; and

    iii. Counseling services through the Justice of the Peace or similar program.

24. After each of the Hood and Prosser Commissions, the *Act* was amended to make legislative changes necessary to give effect to the recommendations of the two Commissions.

(3) **The Jaspar Commission**

25. In 2022, the *Act* was amended again, to create additional positions (Administrative JPs and Relief JPs) and to provide for payment to the JPs holding those positions. As these amendments included matters of compensation, a compensation commission process was required in order to safeguard the principle of judicial independence. As a result, the 2023 interim Jaspar Commission was convened to consider the issue of compensation for Relief JPs and Administrative JPs.

26. A summary of the Jaspar Commission's recommendations can be found at para. 21 of its report, which provides:

Recommendations:

(a) the hourly rate for relief Justices of the Peace be the same as the hourly rate for non-senior Justices of the Peace, namely 1/1760 of the annual salary of a senior Justice of the Peace;
(b) the additional amount for Administrative Justice of the Peace be 2.0% of their salary; and
(c) the pension contribution rates for relief Justice of the Peace be the same as for senior and non-senior Justices of the Peace, up to age 71.

27. The Commission recognizes that while it is not bound to follow the recommendations of previous Commissions, the starting point for current deliberations is the previous Commission report. In this case, the Commission will look to both the Prosser and the Jaspar reports, given that the additional considerations of the Jaspar report were not before the Prosser Commission.

II. PRINCIPLES OF JUDICIAL INDEPENDENCE, RELEVANT JURISPRUDENCE AND APPLICATION TO JUSTICES OF THE PEACE

A. GENERAL

27. The historical origins and significance of the role of JPs in the administration of justice in Saskatchewan have been explored previously, before both the Hood Commission and the Prosser Commission, and are summarized in the Government's submissions to this Commission. They will not be set out in this report. In summary, the evolution of the office of JP in Saskatchewan has culminated in the Act as it now stands. Along with the *Justices of the Peace Regulations, 1989,* (the "*JP Regulations*") the Act provides for the appointment, duties, categories, compensation and tenure of the Saskatchewan JPs.

28. Likewise, the Hood and Prosser Commissions reviewed in some detail the principles of judicial independence, their application to the judges of the Provincial Court of Saskatchewan, and their eventual extension to the office of Justice of the Peace, as set out by the Supreme Court of Canada in several foundational decisions. (See in particular paras. 19 through 23 of the Prosser Commission Report.)

29. Those principles are well-established by virtue of the jurisprudence cited and need not be reiterated here. The Commission agrees with the Government that the most pertinent decisions are:

- *Reference re Remuneration of Judges of the Provincial Court (PEI)*, [1997] 3 SCR 3 [PEI Reference];
- *Ell v. Alberta*, 2003 SCC 35, [2003] 1 SCR 857 [Ell];
- *Provincial Court Judges Association (New Brunswick) v. New*

Brunswick (Minister of Justice), 2005 SCC 44, [2005] 2 SCR 286 [New Brunswick Reference];

- *Conférence des juges de paix magistrats du Québec v. Québec (Attorney General)*, 2016SCC 39, [2016] 2SCR 116 [Québec Conférence].

30. In summarizing the key concepts arising from these decisions, it is clear that JPs are recognized as judicial officers with decision-making authority and that JPs perform numerous judicial functions that can significantly affect the rights and liberties of Canadians. As such, the principles of judicial independence: security of tenure, administrative independence and financial security, apply to JPs. The amendments to the *Act* and the resulting Compensation Commission process are intended to address the element of financial security by creating what is often referred to as an "institutional sieve", ensuring that members of the judiciary – in this case JPs – and the government do not engage in negotiations to determine compensation, thereby subjecting the judicial officers to overt or subtle political pressure.

31. In their submissions, both the Government and the Association set out their perspectives on the principles by which this Commission must be guided, as distilled from the relevant jurisprudence. The two perspectives are compatible, and both are helpful in considering how the jurisprudence guides this process.

B. THE GOVERNMENT'S PERSPECTIVE ON PRINCIPLES

32. The Government's description of the four "operating guidelines" gleaned from the jurisprudence can be found at paras. 65 – 68 of its submission as follows:

> 65. Turning to the issue of how compensation commissions should function, the Court set out four important operating guidelines. First, the Court emphasized the unique function of these commissions, namely they are "neither adjudicative interest arbitration nor judicial decision making". The Court did not intend these commissions to be adversarial or to mediate disputes between the executive and judicial branches of government respecting specific matters of judicial compensation. Rather, their function is consultative: their mandate is to identify "the appropriate level of remuneration for the judicial office in question" and make non-binding recommendations relating to the salary.
>
> 66. Second, when fulfilling their constitutional mandate, compensation commissions are encouraged to adopt a flexible

process which will facilitate consideration of all issues relevant to judicial compensation. The task of a compensation commission is prospective in nature, namely, to recommend appropriate levels of judicial remuneration for the next three to five years, depending on the mandate of the particular commission. While its task is "not simply to 'update' the previous commission's report", absent reasons to the contrary "the starting point should be the date of the previous commission's report."

67. Third, a new compensation commission should take into account the report and recommendations of its predecessors. While the commission must assess judicial remuneration "in its own context", it should build upon the foundation set by previous commissions. Only in exceptional circumstances will it be necessary for a compensation commission to re-till ground already cultivated by its predecessors:

> The reports of previous commissions and their outcomes form part of the background and context that a new compensation committee should consider. A new commission may very well decide that, in the circumstances, its predecessors conducted a thorough review of judicial compensation and that, in the absence of demonstrated change, only minor adjustments are necessary. If on the other hand, it considers that previous reports failed to set compensation and benefits at the appropriate level due to particular circumstances, the new commission may legitimately go beyond the findings of the previous commission, and after a careful review, make its own recommendations on that issue.

68. Fourth, salary increases are not automatic. In New Brunswick Provincial Court Judges Association, the New Brunswick government had argued before the New Brunswick provincial court commission that the existing salary arrangements were adequate to protect judicial independence. The New Brunswick commission rejected this argument, stating that approach would amount to a salary freeze. In the Supreme Court, New Brunswick argued that in taking this approach, the New Brunswick commission committed an error in law. The Supreme Court appears to have accepted this position. Overall, it held that the New Brunswick government's decision had a rational basis and upheld the government's decision.

[Footnotes omitted]

C. THE ASSOCIATION'S PERSPECTIVE ON PRINCIPLES

33. The Association's perspective, at para. 24 of its submission, is as follows:

> 24.The commission process is guided by a set of principles that have evolved from court decisions in the area over time. In their 2023 commission submission, the Saskatchewan Provincial Court Judges' Association (SPCJA) provided a summary of the main principles. That summary is as follows:
>
> 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, therefore, "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 should 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).

34. This Commission accepts and has relied on these statements of principles, as set out by the parties, in preparing this report.

III. JUSTICES OF THE PEACE IN SASKATCHEWAN

A. THE APPOINTMENT OF JUSTICES OF THE PEACE

35. Appointments of Justices of the Peace are made under provincial law. In Saskatchewan, the *Act* provides the general appointment power and section 4 of the *Act* authorizes the Lieutenant Governor in Council to appoint residents of Saskatchewan as Justices of the Peace, who shall have jurisdiction in that capacity throughout Saskatchewan.

36. The *JP Regulations* enacted pursuant to the *Act*, supplement the Act and establish three categories of Justice of the Peace. Section 10(1) of the *JP Regulations* provides:

10(1) The following categories of justices of the peace are established:

a. senior justice of the peace;
b. justice of the peace who is not a court official;
c. justice of the peace who is a court official.

37. The Commission's mandate does not apply to JPs who are court officials and those JPs will not be considered in this report.

38. Section 3(1) of the *Act* states that the Lieutenant Governor in Council may appoint a Justice of the Peace as the supervising justice of the peace. In addition, section 3(3) of the *Act* authorizes the Lieutenant Governor in Council to appoint a Justice of the Peace as the Assistant Supervising Justice of the Peace, subject to having received the consent of the Supervising Justice of the Peace, and section 3(8) authorizes the appointment of an Administrative Justice of the Peace.

39. The basic assignment of duties for Justices of the Peace is found in the *JP Regulations*. Section 11(1) provides:

> **Duties of a justice of the peace**
>
> 11(1) Subject to subsection (2), a justice of the peace who is not a court official may perform the duties and exercise the powers that have been conferred on a justice of the peace by:
>
> (a) common law;
> (b) an Act or regulations;
> (c) an Act of the Parliament of Canada or any regulations made pursuant to an Act of the Parliament of Canada; or
> (d) a municipal bylaw.

40. As the Government notes in its submission at para. 27, this general assignment of duties is expanded upon by the remainder of s.11. In summary:

- Non-senior Justices of the Peace are not to conduct trials or preliminary inquiries under the Criminal Code, nor exercise any jurisdiction where the competency of the accused is in issue;
- Justices of the Peace can nonetheless grant adjournments in the matters mentioned in s. 11(2), or take guilty pleas and sentence the accused on summary conviction matters;
- Senior Justices of the Peace are authorized to preside at trials or other proceedings under federal and provincial Acts and regulations, other than *Criminal Code* matters.

B. CURRENT ORGANIZATION and OPERATIONS OF JUSTICES OF THE PEACE

(1) Terminology, Demographics and Descriptions

41. In describing the manner in which the JP program operates *"*on the ground*"* in Saskatchewan, there are a number of different terms used to describe various JP functions in the submissions of the Parties (as well as in the legislation). The Commission found the description provided by the Government at para. 6 of its submission helpful and sets it out here:

a. "Justice of the Peace" is the general term for this judicial office. All Justices of the Peace who exercise judicial powers are authorized to issue process, such as arrest warrants and search warrants, and to remand an accused for a bail hearing before a Provincial Court Judge.

b. "Senior Justices of the Peace" have the power to conduct trials in small claims and municipal, provincial, and federal summary offences, other than *Criminal Code* offences, as well as having the same powers as other Justices of the Peace.

c. "Non-senior Justices of the Peace" are Justices of the Peace who are not Senior Justices of the Peace. The main distinction is that Non-senior Justices of the Peace do not conduct trials in small claims or summary offence matters.

d. "Relief Justices of the Peace" are retired Justices of the Peace who are on the relief list. The Supervising Justice of the Peace can call on them to act as a Justice of the Peace as needed. When acting, they have all the powers of other Justices of the Peace. The position was created by the *JP Amendment Act, 2022*.

e. The "Supervising Justice of the Peace" is charged with the overall administration of the JP program and is normally designated as a Senior Justice of the Peace.

f. The "Assistant Supervising Justice of the Peace" assists the Supervising Justice of the Peace and is normally designated as a Senior Justice of the Peace. The position was created by the *JP Amendment Act, 2016*.

g. "Administrative Justice of the Peace" is a Justice of the Peace

who is carrying out administrative duties in addition to judicial duties. The position was created by the *JP Amendment Act, 2022*.

h. "Stipend Justice of the Peace" is the administrative term used for Justices of the Peace who perform duties on a regular basis in a major Centre and are typically non-senior Justices of the Peace.

i. "Community Justice of the Peace" is the administrative term used for non-senior Justices of the Peace who perform duties in smaller communities on an as needed basis.

j. "Justices of the Peace who are court officials" exercise powers of an administrative nature. They are provincial public servants and do not exercise any judicial functions. Their compensation is therefore not subject to review by the JP Commission.

42. It should be noted that prior to the 2013 changes in the *Act*, there was a wide variation in the compensation provided to JPs depending on the community in which they worked, and the tasks they carried out. Some were paid on a fee for service basis, others on a fixed stipend. In 2013, the Government devised a centralized service delivery model with a "Justice of the Peace Hub" operating in Regina. The Hub provides JP services "around the clock, every day of the year", either in person or by telecommunication systems. By moving to this centralized service system and amending the *Act*, the Government has implemented a much-needed "sea-change" that has resulted in the current Commission and the safeguarding of judicial independence for JPs.

43. There are currently 78 Justices of the Peace with judicial decision-making authority in Saskatchewan. These, as noted, are the JPs to whom the Commission's recommendations relate. They are described in the Association's submission at paras. 82 - 85, and the Government's submission at paras. 47 - 53. Of the 78, 37 of these are male and 41 are female. There are 15 JPs with Metis or First Nations status and two are bilingual in French and English. There are 19 Justices of the Peace with legal training, including all 17 Senior JPs, one Stipend JP and one Community JP. The Association indicates that there are 12 full-time JPs, while the remainder work on a part-time basis.

44. The positions of the 78 JPs are as follows:

- One Supervising Justice of the Peace (Senior JP)
- One Assistant Supervising Justice of the Peace (Senior JP)
- Fifteen additional Senior JPs
- Eighteen Stipend JPs
- Thirty-nine Community JPs (including seven with a Primary Hub

Assignment)
- Four Relief JPs

45. There is a JP Management Team consisting of the Supervising JP, the Assistant Supervising JP and three Administrative JPs. Both the Supervising JP and the Assistant Supervising JP are full-time positions.

46. In its submission, the Government points out that since the changes in the JP program in 2013, there has been a steady drop in the number of Community JPs. The Government states in para. 49 that while there were 104 Community JPs in 2013, that number is now 39. This is a significant drop and the trend is likely to continue in the normal course, given that the *Act* sets out a statutory retirement age for Justices of the Peace at age 70 (s. 8(2)). The service provided by the JP Hub has meant that Community JPs are no longer providing essential JP services in many communities.

47. Another point of note is that there is no statutory requirement that any JP have legal training. As an administrative or policy matter, however, a candidate applying for a position as a Senior JP must have legal training, given the nature of their work.

48. The Government and the Association have both provided excellent, thorough descriptions of the work performed by JPs in various positions. The Government's description is found at paras 20 through 57 of its submission.

49. The Association's detailed description of the work performed by the various JP positions is found in its submission at paras. 86 - 106. For ease of reference, and to illustrate the scope of the work performed by JPs, that description is set out here:

Supervising, Assistant Supervising, and Administrative Justices of the Peace

86. The Supervising Justice of the Peace is the head of the management team for JP operations. The work carried out by this position is handled by Provincial Court Judges in other jurisdictions in Canada. The Supervising Justice of the Peace leads the JP training program, developing training materials for the JPs and conducting training events with assistance from the management team.

87. The Supervising Justice of the Peace and the Assistant Supervising Justice of the Peace manage the JP Centre in Regina and the Saskatoon JP Office. The Supervising Justice of the Peace is also responsible for human resources/staffing and budget matters, expense and payment approvals, and short and long-term planning and policy development for JP operations. The Supervising and Assistant Supervising JPs serve as the JP operations representatives to the Ministry of Justice and a variety of agencies connected to the Justice system, provide legal, operational and research support to the Saskatchewan JPs, and respond to numerous public inquiries.

88. The three Administrative JPs are assigned to different locations - one for the southern region of the province, one for the northern region of the province and one for JP Hub operations in Regina and Saskatoon. These JPs handle all scheduling of JP work, assist in the development and administration of the training program for JPs, manage the main JP Hub in Regina and the municipal Hub in Saskatoon, provide daily operational and practice guidance to Saskatchewan JPs including the preparation of resource materials, and handle regular and emergent matters arising for JP operations in these locations on a daily basis including security issues and other crises.

Senior JPs

89. There are three categories for Senior JPs: (1) Trial JPs (2) Case Management JPs, and (3) the Registrar in Bankruptcy.

Trial JPs

90. Trial JPs are Senior JPs who preside over provincial offence and bylaw court sittings in Regina, Saskatoon, Prince Albert, Moose Jaw, Estevan, Meadow Lake, Kindersley and North Battleford. Their court duties include docket and trial proceedings, reconsideration hearings, fine payment extension hearings and warrant of committal hearings.

91. Trial JPs handle a high volume of provincial regulatory offences including violations under *The Traffic Safety Act* and related moving violations under municipal bylaws as well as offences under other provincial statutes such as *The Alcohol and Gaming Regulation Act, 1997, The Tobacco Control Act, The Tobacco Tax Act,1988, The Cannabis Control (Saskatchewan) Act, The Wildlife Act, 1998, The Parks Act, The Stray Animals Act, The Environmental Management and Protection Act, 2010, The Emergency 911 System Act, The Trespass to Property Act, The Dangerous Goods Transportation Act, The Public Health Act, 1994,* and *The Fisheries Act, 1994*, to name just a few.

92. Trial JPs also handle a substantial volume of non-moving violations under municipal bylaws in areas that include zoning compliance, taxi licensing, noise control, and animal control. They deal with cases that range from minor parking infractions to serious fire safety and building standards offences.

93. Unlike JPs in some other jurisdictions, Saskatchewan Trial JPs can hear cases involving serious injuries and fatalities and have the authority to impose terms of imprisonment. The limits on the maximum sentence that can be imposed by Saskatchewan Justices of the Peace are those set out in the provincial statutes and bylaws dealt with by these JPs. Terms of imprisonment for provincial offences and/or bylaws are rare but can be substantial with some types of offences carrying a potential term of

imprisonment for up to three years. The lengthiest term of imprisonment imposed by a Trial JP to date is eighteen months for a serious set of driving offences.

94. As is the case with terms of imprisonment, there are no policy limitations on the maximum fine amount that can be imposed by a Trial JP other than the limits set out in the statutes and bylaws involved. Substantial fines can be imposed. The highest fine imposed by a Justice of the Peace to date is $300,000 for a serious occupational health and safety offence involving significant safety violations and the death of a worker.

95. While not sitting in provincial offence and bylaw proceedings, Trial JPs also conduct judicial interim release hearings, "back" out of province arrest warrants and conduct related identity hearings, process Reports to Justice, handle a variety of applications including property detention, detention extension, forfeiture, management and return applications, receive Informations, confirm or cancel police-issued process, consider applications for a variety of search warrants and production orders, approve and release sureties and handle a number of additional matters including peace bond Informations, private prosecution commencement, and requests for arrest warrants, summonses, and subpoenas.

Case Management JPs

96. Case Management JPs conduct pre-trial settlement discussions and case management processes for Small Claims proceedings in Regina, Saskatoon, Estevan, and Prince Albert. They also preside over first appearances in Small Claims Court in Prince Albert and Saskatoon.

97. These Justices are designated as Judges for the purposes of Small Claims matters. This designation provides these JPs with the authority to make pre-trial judicial orders for the effective management of trial processes such as the production and exchange of documents and expert reports and the authority to issue default and consent judgments. These JPs are dispute resolution professionals with a legal background.

Registrar in Bankruptcy

98. The Registrar in Bankruptcy is a Senior JP exercising judicial functions in the Court of King's Bench pursuant to the powers and jurisdiction conferred under the *Bankruptcy and Insolvency Act* [BIA]. Specific powers and jurisdiction include holding examinations of bankrupts, conducting discharge hearings, granting orders of discharge, approving proposals (unopposed), making emergency interim orders including interim receivership orders, hearing and determining any unopposed or *ex parte* application or any other matter on a consent basis under the BIA, hearing unopposed bankruptcy applications

(petitions), and making bankruptcy orders. The work carried out by this position is handled by Associate Judges of superior courts in other jurisdictions in Canada.

Stipend JPs

99. Stipend JPs are located in each of the five (5) major communities in the province (Regina, Saskatoon, Prince Albert, Moose Jaw, and North Battleford). They carry cell phones and are required to be on call 24/7 for one week at a time on a rotational basis, resulting in 24/7 JP coverage 365 days of the year in these centres.

100. These JPs follow regular schedules of attendances to police facilities in all Stipend locations with the exception of Saskatoon. They also attend to correctional institutions, the penitentiary, and hospitals as needed to conduct hearings and facilitate release processes. They conduct judicial interim release hearings, receive Informations, confirm

or cancel process, consider applications for and issue subpoenas, summons and warrants for arrest, search warrants and production orders. In Saskatoon, Stipend JPs conduct evening and weekend court by video and audio link to Saskatoon Police Service detention as part of a Municipal JP Hub pilot project. Saskatoon Stipend JPs also attend City Hall to process court documents for Bylaw matters. There is currently a short-term pilot project underway for Regina Stipend JPs relating to the Regina Police Service.

Regina Stipend JPs are currently conducting evening and weekend court by audio link to the Regina Police Service.

VIVA JPs

101. Several of the Stipend JPs are specifically designated as *Victims of Interpersonal Violence Act* (VIVA) JPs for the purposes of conducting hearings and issuing Emergency Intervention and Protection Orders pursuant to *The Victims of Interpersonal Violence Act* and *The Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act*. These Justices carry cell phones and are on-call one week at a time, and are available province-wide to victims, the police and designated agencies who work in the areas of child protection and prevention of violence (i.e. Social Services, Mobile Crisis, Victims Services).

102. VIVA JPs are required to conduct *ex parte* hearings to assess the level of immediate danger for alleged victims. They have significant authority in this area including the ability to impose non-contact orders, direct supervised removal of individuals and their property from residences, provide exclusive possession of a residence to a party for a period of time regardless of ownership of the residence, and any other provision they consider necessary

for the immediate protection of a victim.

Community JPs

103. Community JPs are located in smaller communities throughout the Province and work on a "call in" basis. Similar to Stipend JPs, Community JPs process a variety of court documents including Informations, confirm or cancel process, issue warrants for arrest, consider search warrant and production order applications and conduct judicial interim release hearings.

Hub JPs

104. Hub JPs perform the work of Community JPs through a centralized service hub located in Regina. These JPs consider search warrant applications, conduct judicial interim release hearings and process a variety of court documents by telecommunication, providing both primary and back up JP services for communities and agencies across Saskatchewan. Hub JPs currently provide JP services to 145 RCMP Detachments, as well as the Regina Police Service, Estevan City Police, Moose Jaw City Police, Moose Jaw Military Police, File Hills First Nation Police, Saskatoon City Police, Weyburn City Police, Dalmeny Police Service, Dundurn Military Police and several specialized units such as Combined Traffic Services, Crime Reduction Teams, Highway Patrol, Ministry of Environment and Parks Canada.

105. Hub JPs work in eight-hour day and evening shifts with the night shift handled remotely on an "on-call" basis. The Hub operates 24/7, 365 days a year and will eventually replace Community JPs in most low-volume work locations.

Relief JPs

106. Relief JPs are retired JPs who are called in to provide coverage as needed for emergent matters such as vacation leave and sick leave for JPs on the regular duty list.

50. The Commission very much appreciates this comprehensive description and notes that there is generally no issue taken by the Government in terms of its description of the work carried out by JPs.

51. It is evident that Saskatchewan Justices of the Peace exercise a mixture of statutory and common-law powers, many of which have potentially profound impact on citizens of this province, including impact on their constitutional rights and liberties. JPs *are* a crucial part of the judicial system in this province and their work is wide-ranging and challenging.

(2) Current Compensation Package for JPs

52. The current compensation and benefits available to JPs in Saskatchewan is set out in the Government's submission at paras. 9 – 16:

> **(1) Salary**
>
> 9. The salary is determined by a combination of the *JP Act* and the *JP (Commission) Regulations*:
>
> a. The *JP Act* provides that the annual salary of a Justice of the Peace is to be a percentage of the annual salary of a Provincial Court Judge of the previous fiscal year, adjusted each year on April 1.
>
> b. The *JP (Commission) Regulations* provide that the salary is currently 51% of the Provincial Court Judge salary, of the previous fiscal year, as recommended by the JP Commission in 2018.
>
> c. Senior Justices of the Peace who work less than full-time receive a pro rata amount of the annual salary, on a daily or half-daily basis.
>
> d. The *JP (Commission) Regulations* provide that the daily pro rata is 1/220 of the annual salary, while the half-daily pro rata is 1/440 of the annual salary.[11] These are the same *pro rata* ratios used for temporary Provincial Court Judges working daily or half-daily.
>
> e. The denominator of 220 is based on an estimate of the number of court days in the year, adopted by the Provincial Court Commission ("PC Commission") in its 2008 Report, and used ever since.
>
> f. Non-senior and Relief Justices of the Peace are paid at an hourly rate, based on a *pro rata* of the annual salary.
>
> g. The hourly rate is 1/1760 of the annual salary. The 2013 JP Commission set this rate for Non-senior Justices of the Peace by dividing the daily rate of 1/220 by eight hours, producing the denominator of 1/1760. The 2023 Interim JP Commission adopted the same formula for the new position of Relief Justice of the Peace.
>
> h. Each year, the salaries are adjusted on April 1. The annual salary of a Provincial Court Judge for fiscal 2023-24 was $353,590. Applying the rates from the *JP (Commission) Regulations* produces

the following compensation for fiscal **2024-25**:

i. the **JP annual salary** is **$180,331** (51% of $353,590), which is earned by Senior Justices of the Peace working full-time;

ii. the **daily rate** for Senior Justices of the Peace is **$819.68** (1/220 of $180,331);

iii. the **half-daily rate** for Senior Justices of the Peace is **$409.84** (1/440 of $180,331);

iv. the **hourly rate** for Non-senior and Relief Justices of the Peace is **$102.46** (1/1760 of $180,331).

(2) Administrative Amounts

10. Justices of the Peace who perform administrative duties receive additional amounts, based on a percentage of their salaries:

    a. The Supervising Justice of the Peace receives 7.5% of their salary;

    b. The Assistant Supervising Justice of the Peace receives 5% of their salary;

    c. Administrative Justices of the Peace receive 2% of their salary.

(3) Pensions

11. All Justices of the Peace are members of the Public Employees Pension Plan ("PEPP"). Each Justice of the Peace currently contributes 5% of their salary to PEPP, and the Government contributes 7.6%. The pension contribution rates for the Senior Justices of the Peace and Relief Justices of the Peace are set out in the *JP (Commission) Regulations*, while the same rates for Non-senior Justices of the Peace are set out in the *JP Regulations*.

12. The reason for the different regulations is that prior to the 2018 JP Commission, there was no statutory authority for Non-senior Justices of the Peace to be enrolled in PEPP. Based on recommendations from the 2018 Commission, in 2019 the Legislature passed a statutory amendment to include all Justices of the Peace in PEPP. The Cabinet then set the contribution rates for Non-senior Justices of the Peace in the *JP Regulations*, as an interim measure.

(4) Benefits

13. All Justices of the Peace are entitled to thirty days of annual vacation time, at the rate of 2.5 working days for each month of service. All full-time Justices of the Peace are also entitled to statutory holidays.

14. In addition to the thirty days of annual vacation time and statutory holidays, the Supervising Justice of the Peace receives twelve Scheduled Days Off ("SDOs") annually.

15. All Justices of the Peace are entitled to sick leave, calculated at a rate of 1.25 days for each full month of service. They may also apply for related leaves of absence.
16. All Justices of the Peace are entitled to other benefits such as life insurance, disability and dental plan, and extended health care plan, subject to minimum required hours of work to qualify under these plans.

IV. THE ISSUES TO BE DETERMINED

53. As set out earlier, the *Act* **requires** the Commission to consider and make recommendations with respect to four elements of the JP compensation package:
    - The annual salary to be paid to a JP;
    - The *pro rata* rates to be paid to JPs working part-time;
    - The additional amounts to be paid to JPs performing administrative tasks; and
    - The contributions to be paid into the Public Employers Pension Plan by JPs and by the Government on behalf of JPs.

54. The Act also provides that the Commission **may** make recommendations in an advisory capacity with respect to benefits to be provided to JPs.

55. The Parties have opposing positions on many aspects of these issues, although there are a few areas of agreement.

56. In addition, there is a joint submission before the Commission, requesting retroactive amendments to the *JP (Commission) Regulations*, by which the Commission's recommendations are implemented, and additional requests from the Government relating to corrections to be made to regulations.

57. In discussing the respective positions of the parties, the Commission took note of the fact that the Government's initial submission did not address a number of the issues raised in the Association's primary submission. Those additional matters were addressed in the Government's Reply.

58. The Association's initial submission, on the other hand, raised all of the issues they wished to address, to at least some extent. Its Reply did not add new issues but

expanded upon the initial submission.

59. As a result, it is most convenient to first discuss the Association's position on the points in issue as those were elaborated upon, but not changed, in its Reply.

V. THE POSITIONS OF THE PARTIES ON THE ISSUES TO BE DETERMINED

60. This report will now outline, in summary form, those provisions of the submissions of the parties that focus on the required and advisory recommendations to be considered by this Commission.

A. THE ASSOCIATION'S SUBMISSIONS

(1) Position in Brief

61. The Association's position on each of the matters that must, or may, be considered by the Commission is fully set out in its primary written submission and elaborated upon in its Reply submission.

62. It should be noted initially that there are a number of items related to existing JP compensation and benefits that the Association accepts and says should continue. They are listed at para. 53 of the Association's submission:

53. The Association accepts the following JP salary and benefits items and is satisfied they should continue to apply throughout the April 1, 2025, to March 31, 2029, timeline:

- A JP's salary should be determined based on a percentage of the salary of a Provincial Court Judge, calculated as of April 1 of the year previous;
- Pro Rata portions of the annual JP salary should be calculated using divisors equal to 220 working days, 440 half-days, and 1760 hours;
- Pension contributions for JPs presently enrolled in the Provincial Employees Pension Plan (PEPP) should continue to be made at 5% of their annual salary;
- The Government should continue to contribute a percentage of a JPs salary to PEPP for Senior, non-Senior, and Relief JPs up to age 71;
- JPs who are classified as full-time and who earn an annual salary set by the Regulations should receive:

  Leaves of absence with pay for 30 vacation days per fiscal year (or 2 ½ working days for each full month of service in a period

that is less than a full fiscal year);
Leaves of absence with pay for 10 public holidays and 2 Saskatchewan public service employee holidays;
Sick leave calculated at a rate of 1 ¼ days for each month of service (or 15 days per fiscal year), in the same manner as the Supervising JP;
Enrolment in the following insured benefit programs, in the same manner as the Supervising JP:

- Government of Saskatchewan Group Life Insurance Plan;
- Public Employees Dental Plan;
- Government of Saskatchewan Disability Income Plan; and
- Extended Health Care Plan.

- All JPs should continue to receive the following benefits:
  Expenses away from home (actual and reasonable travel and meals);
  Legal resources for disciplinary proceedings, subject to the approval of the Chair of the Justices of the Peace Council;

  Counselling services
- An additional amount should be paid to the Supervising, Assistant Supervising, and Administrative Justices of the Peace, in addition to the base salary;
- Professional development and training for all JPs should be compensated at a JPs regular salary;
- Compensation for stand-by status should continue to be paid at a rate of 1 hour per 24-hour period;
- Travel time should be compensated at a JP's regular salary level.

63. There are also, however, a number of compensation and benefits issues that the Association submits should be addressed by the Commission by way of recommendations in this report. In brief, the Association's position is that this Commission should recommend:

a. An increase in the base salary paid to JPs from 51% to 59% of the salary paid to Judges of the Provincial Court of Saskatchewan as of March 31 of the previous annual period, for the period commencing April 1, 2025 until March 31, 2029;
b. An increase to the supplemental salary paid to the Supervising Justice of the Peace from base salary plus 7.5% to base salary plus 10%;
c. An increase to the supplemental salary paid to the three Administrative Justices of the Peace from base salary plus 2%

to base salary plus 2.5%;

d. An increase in the Government of Saskatchewan's contributions to the Justice
of the Peace pension plan from 7.6 to 10% of annual salary;
e. The creation of a professional allowance of $3,540 *per annum* (maximum) for Justices of the Peace similar to the professional allowance granted to Saskatchewan Provincial Court Judges;
f. The addition of a short-term disability insurance benefit for all full-time Justices of the Peace and those part-time Justices of the Peace who have sufficient working hours to qualify for benefits;
g. The inclusion of Relief JPs, who meet the minimum thresholds, in the JP benefits plans;
h. An annual discussion with Government about the physical and mental health needs of the Justices of the Peace arising as a result of the nature of their duties and executive Government benefits in this area; and
i. The allocation of additional secure parking or the ability to seek reimbursement of secure parking expenses to meet the parking needs of Justices of the Peace in major centres in the province.

(2) Rationale For Position on Required Recommendations

a. Base Salary

64. The Association's position that the base salary to be provided to JPs should be increased from the current 51% to 59% stems from its analysis of a number of factors. They include, in addition to the fundamental need to maintain judicial independence, the increased workload of the JPs, the increased complexity of that work, the economic climate in Saskatchewan, the delay built into the current compensation process caused by the formula to be used, and the need to attract and retain qualified candidates.

65. In analyzing these various factors, the Association submits that the best comparator to be considered in determining the appropriate salary for JPs is the salary structure of Senior Crown Counsel.

Increased Workload

66. The Association describes an increase in the Case Management caseload for JPs because of the increase in the monetary limit for small claims proceedings, to $50,000.

67. The Association indicates an increased workload as a result of the addition of 6 new court sittings for JPs since the Prosser Commission. Furthermore, the regulatory court volume in general has increased since the pandemic, leading to increasing trial delays with resulting *Charter* delay applications.

68. The volume of work through the JP Hub has "increased exponentially" since the amendments to the telewarrant process from Bill S-4. The retirement of Community JPs and the transition of their work to the Hub JPs has also increased the Hub workload and has been challenging given that the Hub JPs do not have the assistance of support staff.

69. The Office of the Supervising JP has also seen a significant increase in "walk-in" traffic related to numerous tasks to be dealt with by JPs.

70. In its Reply submission, the Association also notes what it refers to as the "increased value" of the work performed in terms of the contribution made by JPs in supporting the work of the Provincial Court. The Association summarizes this increased support as follows:

> i) The Registrar in Bankruptcy handles most of the bankruptcy and insolvency matters for the Court of King's Bench, ensuring King's Bench Justices are able to focus on large corporate restructuring receiverships and the most serious, heavily contested *Bankruptcy Act* matters;
>
> ii) Case Management JPs perform resolution and pretrial preparation work in Small Claims matters in most high-volume Small Claims locations across the province, allowing Provincial Court Judges in these locations to focus on civil trial proceedings;
>
> iii) Trial JPs in the larger centres deal with most provincial offence and bylaw matters, allowing Provincial Court Judges in these locations to focus on criminal proceedings; and
>
> iv) Community, Stipend, Hub and Senior JPs consider a large volume of warrant and production order applications at all hours across the province, reducing the load on Provincial Court Judges and allowing them to focus on more serious applications and general warrants that can only be issued by PCJs.

Increased complexity

71. In describing the increased complexity of the work carried out by the JP program, the Association notes that the Registrar in Bankruptcy at the Court of King's Bench is now a position staffed by a JP.

72. The Association describes an increase in the complexity of Case Management work since the increase in the Small Claims monetary limit, especially given the potential for greater impact for litigants who are often self-represented.

73. Trial JPs are dealing with more complexity in the regulatory and Bylaw courts, according to the Association, including the increased need for interpreters, and

other issues that extend trial time and increase trial issues.

74. The Association says that since Bill S-4, Hub JPs are seeing increasingly complex and lengthy telewarrant applications that require more time to review, and that the review takes place in circumstances in which administrative activity is also taking place.

75. In its Reply submission, the Association points out that the skill level of JPs has increased since the Prosser Commission. Similarly, the areas of the law in which JPs are regularly engaging is continuing to evolve, requiring JPs to monitor and keep abreast of the changes.

Economic Conditions in Saskatchewan

76. The Association is of the view that the Commission should conduct an assessment of the economic conditions likely to prevail for the interval of time until the next commission process. It submits that the Saskatchewan economy is strong and likely to remain so for the foreseeable future, as touted by the Government.

77. Saskatchewan can bear the proposed increase, says the Association.

Delay in Salary Response

78. The Association describes a "trickle-down" process in the JP compensation process by which it takes three years before the salary of a JP reacts to an increase in prices. This is because of the nature of the link between the salaries of JPs, the salaries of PC Judges and the salaries of King's Bench justices. (For clarity, it should be noted that the salaries of PC Judges are linked to the salaries of King's Bench justices from the previous year.)

79. This results in a situation, says the Association, in which adjustments to JP salaries to counter the effect of inflation are deferred and, combined with the four-year interval until the next JP Compensation Commission will sit, JPs are thereby disadvantaged.

The Need to Attract and Retain Qualified Candidates

80. The Association refers to the observations made in the context of earlier Provincial Court Commissions regarding the importance of attracting the best, highly qualified candidates to the judiciary and notes that all levels of court in Saskatchewan typically draw from the same candidate pool of Saskatchewan lawyers. This includes candidates to the position of Senior Justices of the Peace performing as Trial JPs, Case Management JPs and the Registrar in Bankruptcy.

81. The Association notes that recruitment and retention of JPs has been an on-going issue. The majority of successful candidates to the JP program are either retiring or transitioning from a previous career and are over the age of 50. Given the requirement to retire at age 70 (other than Relief JPs), this results in a significant turnover rate.

82. The salary paid to JPs should be one that will attract and retain not only candidates who have retired from previous careers, but also younger, mid-career JPs.

83. Overall, the Association submits that the gap between the salaries of JPs and the salaries of PC Court Judges should be reduced so as to provide JPs with a salary that fairly recognizes the contribution that JPs make to the work of the Provincial Court.

Comparators

84. The Association submits that comparisons with the JP programs in other jurisdictions are of limited use for a number of reasons, including differences in compensation systems, work performed, and hours worked. The closest comparator jurisdictions are Ontario, Alberta and British Columbia and there are challenges with respect to each of these as comparators.

a. Ontario has a commission process that has been delayed, leaving the salary of Ontario JPs frozen since April 1 of 2022, and thus significantly out of date (at $172,000). The next Ontario commission will be examining salaries from 2023 through March 2027 and may include retroactive adjustments. The Ontario JP program also provides a defined benefit pension plan and this is a financial advantage to Ontario JPs not shared by Saskatchewan JPs, who are provided a defined contribution pension plan. Finally, Saskatchewan JPs work more hours annually and per week than Ontario JPs.

b. British Columbia has a commission process that has historically been "contentious" with successive governments rejecting some or all of the commission's recommendations, although the most recent recommendations were accepted. Although B.C.'s JPs are paid significantly less in salary dollars, they receive other significant monetary benefits and work significantly fewer hours than Saskatchewan JPs.

c. Alberta also has a commission process; it is currently considering salaries for 2021 – 2025, with the last commission recommendations adopted in 2020. Full-time JPs in Alberta work fewer hours than full-time JPs in Saskatchewan.

85. The Association submits that given the differences noted in other JP programs, a better comparison can be made by looking to the salaries of Saskatchewan Senior Crown Counsel.

86. The Association notes that Crown Counsel play an independent role in their legal practices and that Crown prosecutors act as quasi-judicial officers in many respects. Crown Counsel are also exposed to many of the same workplace stressors as JPs. Crown Counsel and JPs both require considerable knowledge of the law and legal

procedures; the basic skill set needed for both positions is similar.

87. The Association submits that Crown Counsel form an obvious candidate pool for potential JP candidates and that the salary must therefore not reflect a significant decrease in salary. Given the increases in salaries for Senior Crown Counsel (Crown 4) over the last 10 years (to $236,000 in 2023), it will be a deterrent to senior crowns to consider a move to the JP program.

88. In its Reply submission, the Association elaborates on its view of the comparison between JPs and Senior Crown Counsel, noting many parallels between those in the Crown 4 position and JPs, both in terms of personal and professional attributes required and the work done by each group.

89. The Association suggests that in order to recruit Senior Crown Counsel to JP positions, the salary amount offered must be at or above the salaries those candidates are earning in their current employment. In particular, the Association submits that the top of the Senior Crown Counsel salary range is an appropriate comparator.

90. In its Reply, the Association also notes the Government's dismissal of Quebec JPs as a comparator, primarily because of the qualifications required for Presiding JPs in Quebec, which is said to justify the difference in salaries.

91. Presiding JPs in Quebec must have at least 10 years as a lawyer or a notary. The Association notes that while there is no legal requirement for Saskatchewan JPs to be lawyers, by policy, all Senior JPs have a legal background with an average of 31 years of practice. Several other JPs also have a legal background and the training and experience of those who do not, is the equivalent of a law degree, in the Association's submission.

92. The work performed by Quebec's Presiding JPs, their powers and authority are all substantially similar to those of Saskatchewan JPs in the Association's view, making them a potential comparator as well.

93. In summary, the Association submits that the base salary provided to JPs should be increased from 51% of the salary of PC Judges to 59%.

b. Additional Compensation for Supervising JP

94. The Association is requesting an increase in the amount of salary supplement paid to the Supervising JP.

95. The supplements for administrative JP positions arise from the Prosser and Jaspar Commissions; currently, the supplement is 7.5% for the Supervising JP.

96. The Association notes that the supplement percentages for the Supervising JP and the Assistant Supervising JP (5%) were set by the Prosser Commission, largely to be consistent with the salary supplements provided to the Chief Judge of the Provincial Court and the Associate Chief Judges.

97. The Association agrees that the 5% supplement paid to the Assistant Supervising JP is appropriate.

98. The Association notes that the work done by the Supervising JP in Saskatchewan is primarily carried out by PC Judges in other jurisdictions.

99. The Association submits that the Supervising JP should receive a salary supplement of 10%, higher than the supplement provided to the Chief Judge of the Provincial Court of 7.5%. The Association notes that the supplement paid to the Chief Judge results in approximately twice as much as the supplement provided to the Supervising JP in terms of the actual dollar value, given the base salary of the PC Judges.

100. The Association also submits that Provincial Crown Counsel that are assigned management duties also receive a salary supplement, dependent on the number of employees supervised. The positions managing the largest number of employees (more than 12) receive a salary supplement of approximately 8%.

101. The Association submits that the Supervising JP should have a higher supplement than this Crown Counsel position given the additional scope of duties of the Supervising JP. Moreover, the Supervising JP is supervising independent judicial decision-makers rather than employees, justifying a higher percentage.

102. In its Reply submission, the Association sets out the additional factors that it says warrant a higher salary supplement to the Supervising JP:

a. The Supervising JP performs different duties than the Chief Judge, including the fact that there are more JPs to supervise than PC Judges, and that they are geographically diverse;

b. The Supervising JP serves as the primary mentor for the entire JP group including a substantial legal training component for new JPs. This involves being available and on-call to JPs across the province on a 24/7 basis;

c. The Supervising JP is in charge of all training for new and existing JPs. This is "in-house" training developed and delivered by the Supervising JP;

d. The supervising JP has limited administrative support and is thus directly involved in administrative activities including payroll, financial auditing and reporting, budgeting and forecasting, administration of benefits and human resources issues, and records management and archiving;

e. These duties are in addition to the ordinary operational duties set out in the Association's primary submissions (summarized at para. 47 of this report), and on top of regular Senior JP work;

f. The responsibilities of the Supervising JP require that a cell phone

be carried and lead to considerable on-call time, that the Supervising JP is not compensated for, given the statutory cap on JP salaries. Compensation for on-call time would be a significant amount annually;

g. The additional duties carried out by the Supervising JP are roughly double those of the Assistant Supervising JP, justifying a supplement of twice the percentage of the Assistant Supervising JP's.

103. For all of these reasons, the Association submits that the Supervising JP should receive a salary supplement of 10% over the base salary of a JP.

c. Additional Compensation for Administrative JPs

104. The Association explains in its submission that the salary supplement provided to the Supervising JP and the Assistant Supervising JP were set by the Prosser Commission on the basis that they should align with the supplements paid to the Chief Judge and Associate Chief Judges of the Provincial Court.

105. When the interim Jaspar Commission sat in 2023, after the establishment of the position of Administrative JP, the Association submitted that the salary supplement for the new position should be the same as the supplement paid to Administrative Judges at the Provincial Court, in keeping with that alignment.

106. The Jaspar Commission, however, set the salary supplement for Administrative JPs at 2%, rather than the 2.5% received by Administrative Judges of the Provincial Court.

107. The Association says that the administrative work carried out by Administrative JPs is essentially the same as that done by Administrative Judges of the Provincial Court, and that the supplement provided to Administrative JPs should be the same as that provided to Administrative Judges of the Provincial Court, at 2.5%.

108. In its Reply, the Association points out that the salary supplement paid to Administrative JPs is for the functions they perform for JP operations in addition to, and not instead of, the regular responsibilities of other JPs.

109. The Association disagrees with the Government's position that the work of the Administrative JPs is not comparable to that of Administrative PC Judges, because the work of the PC Judges is of a more serious nature, involving more complex issues than the work of JPs generally.

110. The Association submits that the Administrative JPs perform the same administrative functions for JP operations as the Administrative Judges of the Provincial Court, perform for that court. Both, says the Association, play a role as "trouble-shooters" in their respective organizations and for performing the same administrative functions, they should receive the same salary supplement of 2.5%.

d. Government's Pension Contribution

111. The Association draws attention to the fact that previous commissions have used the Senior Crown Counsel pension plan as a comparator in consideration of pension issues. Following the Hood Commission, the Government began making pension contributions on behalf of JPs at the same percentage of pay rate as those made for Crown Counsel. When pension contributions increased to 7.6 % for the Crown in 2016, the Government made a similar change for JPs.

112. When Crown Counsel pension contributions increased to 8.6% in 2020, however, JPs did not receive a similar increase. Likewise, when contributions for Crown Counsel increased to 9% in earlier in 2024, contributions for JPs remained at 7.6%.

113. Accordingly, the Association says that JPs have experienced a shortfall in the Government's pension contributions on their behalf, and the Government has had the benefit of paying lower contributions on behalf of JPs.

114. Although the Association recognizes the Government's intention to increase its pension contributions on behalf of JPs to 9% to match contributions of all out-of-scope employees, it says the shortfall will not be remedied in this way. Rather, the Government contribution for JPs should be increased to 10% for the interval until the next JP Commission.

115. In its Reply, the Association also points out that in 2018, the Government represented to the Prosser Commission that it did not anticipate any changes to the contribution rates for out-of-scope employees, stating that "there were no known plans" to change the rates. Notwithstanding that statement to the Prosser Commission, there have been two increases in pension contributions since then.

116. Making the recommendation that the Government contribution to the JP pension plan be increased to 10% will also take into account the likelihood that Government contributions will increase again in the interim period until the next JP Commission.

117. When the next JP Commission convenes, it can decide whether to make adjustments to the Government's pension contributions at that time.

(3) Rationale for Position on Advisory Matters

a. Short-term Disability Benefits

118. The Association points out that Justices of the Peace have no short-term disability plan. When JPs become ill, they must rely on paid sick days and there are limits to this benefit. Full-time JPs have 15 sick days per year, and unused sick days can be carried over to the next year. When JPs are hired from government service, they may carry over any accumulated sick leave, but most are not hired in that fashion and have only the sick leave benefits accumulated since their appointment as a JP.

119. The Association states that there is often a gap between exhausting sick leave

benefits and the availability of long-term disability benefits. This is especially true for JPs who do not come from a career in the public service. For other judicial officers, such as PC Judges, that gap is commonly bridged with a short-term disability plan, but JPs have no such plan. Significantly, JPs also do not qualify for Employment Insurance.

120. The Association submits that a short-term disability plan similar to the one available to PC Judges via s. 20 of *The Provincial Court Act, 1988* would be appropriate and requests that recommendation from the Commission for full-time and qualifying part-time JPs.

121. In its Reply, the Association points out that short-term disability benefits would provide immediate coverage, financial protection and peace of mind to JPs who experience a gap in income.

122. In response to a question from the Commission, the Association provided a lengthy additional submission advising that there is uncertainty as to whether JPs are entitled to Worker's Compensation Benefits and giving examples of current situations in which JP may not be entitled to such benefits.

123. In addition, the average age of JPs is 60, a time when health issues may begin to arise.

124. The Association provided its perspective on the difficulties posed by the lack of a short-term disability benefit, providing examples of how the scenario might play out depending on a JP's particular situation.

125. The Association also noted that in some situations, the current arrangement to cover the gap between sick leave and long-term benefits would require the Minister to exercise discretion and noted that such discretion could be politicized. This is contrary to the basis for the commission process.

b. Benefits for Relief JP

126. The Association refers to the importance of treating all JPs equally, and says this principle was acknowledged by the Government in its 2023 submissions to the Jasper Commission in 2023.

127. The Association submits that all categories of JPs, including Relief JPs who meet the minimum threshold for benefits of 16 hours per week, should be enrolled in all available JP benefit plans.

128. In its Reply, the Association points out that the Government indicated to the Jaspar Commission that this issue could be addressed at the "next regular sitting of the Commission", but that the Government did not address this issue in its submission.

129. The Association refers to its "constant theme" of equality among all categories of JPs and says that the principle applies to Relief JPs as well.

c. Professional Development and Training

130. The Association refers to the need for JPs to keep informed about the latest developments and changes in the law, and other matters affecting the work they perform. JPs must constantly research reported decisions, legal texts and academic discussions, as well as keep up with changes in the legislation relevant to their work.

131. JPs should be given access to the resources they need in order to remain current in their knowledge, and a professional allowance, such as the one that PC Judges receive, would provide for that.

132. The Association notes that JPs in other jurisdictions receive Professional Allowances: $1250 in Ontario; $3250 in British Columbia; and $3500 in Alberta.

133. The Association requests that the Commission recommend a Professional Allowance in an amount that is the same percentage of the Professional Allowance provided to PC Judges, as the percentage of the salary to be recommended for JPs. (The Association is recommending 59% of $6,000 or $3540 per year.)

134. In its Reply, the Association points out that the Government acknowledged, at para. 46 of its submission, that the increased training available since the Hub service model was initiated has resulted in "greater professionalism and consistency in decisions by individual justices of the peace."

135. The Association agrees with this statement and submits that a Professional Allowance will give JPs access to resources that will assist them in maintaining the current level of knowledge required for their work as judicial decision-makers.

136. The Protocol in use by PC Judges for accessing their Professional Allowance would be appropriate.

d. Mental and Physical Health Support

137. The Association points out that JPs can experience a variety of stressors in their work environment. Justices of the Peaces, whether dealing with trials, dealing with victims of interpersonal violence or child exploitation, or issuing warrants or production orders, may be presented with difficult evidence, such as photographs, videos, testimony or descriptions depicting injuries or deaths or offences against children, or other graphic matters.

138. People appearing before JPs may exhibit challenging behaviours that need to be managed, often without legal counsel to assist.

139. The result of all of the exposure to challenging matters has an impact on the mental health and well-being of JPs.

140. After recommendations by both the Hood and Prosser Commissions, JPs have now been enrolled in the Judicial Counselling Program, as the PC Judges have been for some time.

141. The Association says that continued access to this program is essential.

142. In its Reply, the Association asks that the Commission recommend annual meetings between the Government and the Association to discuss the on-going needs of JPs in this area.

e. Parking

143. The Association acknowledges that secure parking in or near court facilities in Regina and Saskatoon is provided to five full-time Senior JPs. Hub JPs in Regina share one after-hours secure parking space. Stipend and Community JPs have no parking at all.

144. The Association points out the safety concern that results from a lack of secure parking, advising that there have been a number of confrontations by members of the public. Hub JPS working evenings and weekends are particularly vulnerable. This is a particular concern in Saskatoon and Regina as JPs in those locations have daily interactions with the public.

145. In addition, the disparate parking situations mean that some JPs pay for secure parking, while others do not.

146. The Association asks that the Commission recommend that the Government provide secure parking spots in or near court facilities for all full-time JPs in Regina and Saskatoon, as well as several more secure spaces that can be shared by part-time JPs working in Saskatoon and Regina.

(4) Position on Costs

147. The Association expects that the matter of costs of participating in the Commission process will be resolved between the parties but asks that the Commission provide an opportunity to make written submissions if need be.

(5) Position on Joint Recommendation

148. In addition to the points referenced in the foregoing paragraphs, the Association describes two “Housekeeping” matters about which the Government advised.

149. The matters are described as errors relating to *pro rata* salaries of JPs and the adoption of the recommendations of the Prosser Commission in 2018. Both errors require amendments to the *JP (Commission) Regulations* to remedy them. The Association joins with the Government in asking that the Commission make recommendations with respect to the necessary amendments.

B. THE GOVERNMENT'S SUBMISSIONS

(1) Position in Brief

150. The Government's position on each of the issues that must or may be considered is set out extensively in its submission and further in its Reply to the Association's submission since the Association's submission raised a number of matters, on which the Government had not commented in its primary submission.

151. In its primary submission on the matters required to be reviewed, the Government submits that:

a. There should be no change to the 51% rate, relative to the salary of PC Judges, for determination of the annual base salary of JPs;
b. There should be no change to the *pro rata* calculations for the daily rate, the half-daily rate and the hourly rate to be applied;
c. There should be no change to the additional amounts to be paid to the Supervising JP, the Assistant Supervising JP, or the Administrative JPs;
d. There should be no change to the contribution to the PEPP paid by JPs. The contribution paid by the Government to the PEPP on behalf of JPs should increase to 9.0% effective April 1,2025. Contributions on behalf of Relief JPs should continue to cease at the end of the year in which they turn 71.
e. The Government also requests that a "housekeeping" matter be dealt with by way of an advisory recommendation, such that all of the pension contribution rates be placed into one section of the *JP (Compensation) Regulations*, effective April 1, 2025. This would require a recommendation that Cabinet repeal section14.91 of the *JP Regulations.*

152. In its Reply submission, the Government addressed more fully those required matters raised by the Association in its primary submission that had not been specifically addressed in the Government's primary submission.

153. On the advisory matters, the Government submits in its primary submission that:

a. Increases to the annual salary paid to JPs should continue to be based on the salary of PC Judges in the previous year;
b. Eligibility for benefits should continue to be based on minimum number of hours worked.
c. The Commission should recommend two retroactive changes to the *JP (Commission) Regulations* by way of amendments, with the agreement of the Association.

154. In its Reply, the Government responds to the Association's submissions on advisory matters not previously addressed by the Government, and submits that:

a. There should be no Professional Allowance provided to JPs;
b. There is no need for a short-term disability plan for JPs;

c. There is no need for a benefit plan for Relief JPs;
d. The Government is already providing JPs with Mental Health Services, and in any event, there can be no direct negotiation between the JPs and the Government by way of an annual discussion about the mental health needs of JPs.
e. The issue of secure parking is an operational matter not within the scope of the Commission's mandate. The Government proposes the establishment of a committee to discuss improvements to parking security.
f. The Government also notes two areas where benefits being provided to JPs are not clearly authorized by the *JP Regulations* and requests an advisory recommendation to address the issue.

(2) Rationale For Position on Required Recommendations

a. Base Salary

155. The Government submits that the base salary for Saskatchewan JPs should remain at 51% of the salary of the salary of PC Judges. Salaries paid to JPs are directly linked to the second-highest Provincial Court salary in the country (as of October of 2023) and the JPs have thereby had regular annual increases in salary, averaging $6,303 or 4% since the Prosser Commission recommendations came into effect.

156. The direct link to the Provincial Court means that salary for Saskatchewan JPs is the second highest in the country, with only the salary of Quebec's Presiding Justices of the Peace being higher.

157. The Government acknowledges that Quebec's Presiding JPs were set to begin receiving $248,000 in the Summer of 2024, with increases to $290,900 by July 2026. However, the Government says this is not an appropriate comparator because Quebec's JPs must be lawyers with 10 years of experience, which is the qualification required for a Provincial Court Judge in Saskatchewan. By contrast, there is no legal requirement for Saskatchewan JPs to have any legal training. Although by practice, Senior JPs must now be lawyers, there is no such requirement for Non-senior and Relief JPs.

158. The Government points out that leaving Quebec aside, Saskatchewan JPs are the highest paid in the country.

159. In looking at other JP salaries across Canada, other provinces are of limited assistance because of the variation in compensation systems.

160. The Government points out that the 51% recommended by the Prosser Commission was determined in part as a means of placing Saskatchewan JPs at the approximate mid-point of the national average of JP salaries across the country. This was considered to be an appropriate position in which to place them.

161. In its Reply submissions, the Government points out that not only are

Saskatchewan JPs who are lawyers the second-highest paid in the country, but non-lawyer JPs are the highest paid in the country.

162. The Government says that linking the JP salary to that of PC Judges takes into account factors such as inflation and complexity of the work.

163. The Government notes that the Association's request for a rate of 59% would result in a salary increase of $34,733 or 19.3% in one year and says this is not warranted. Rather the anticipated salary increase of $5,378 or 3.1% for 2025-2026 is sufficient to safeguard the judicial independence of JPs.

164. The Government notes that this Commission is not a salary arbitration; nor is it meant to give the best possible salary to JPs. Rather the dual linkage to the Provincial Court and from it to the King's Bench, which is the highest trial judge salary in the country, is sufficient to meet the Commission's mandate.

165. The Government sets out projected salaries for JPs under both the current 51% and the requested 59% and points out that the Association's proposal would give JPs the highest salary increase for a judicial position in the history of Saskatchewan, exceeding even that given to the PC Judges after the first full hearing of the Provincial Court Commission in 2001.

166. In responding to the points made by the Association in its submission, the Government addresses the same points.

Inflation and Economic Conditions

167. The Government points out that the Bank of Canada puts the inflation rate currently at 2% and that it is projected to stay there for the next two years. A salary increase of 19.3% is simply not justified in that scenario.

168. Moreover, Canada's inflation rate over the last 40 years has never exceeded 12.12% (in 1981), and the Bank of Canada's target is 1% - 3%. The current salary rate of 51% has led to increases averaging above that.

169. The Government points out that the high inflation rate of 6.32% in 2022 and the low inflation rate of .73% in 2020 were outliers and that the overall ten-year average of 1.57% - 2.49% is more reliable.

170. The Government also suggest that the initial proposal to link the PC Judges salary to that of Justices of the King's Bench drastically reduced the need for the JP Commissions to look into economic conditions.

171. The Government refers to the Prosser Commission's determination that a detailed economic assessment was not necessary given the manner in which JP salaries are now determined and says the Commission need not conduct a detailed economic analysis.

172. One of the reasons for the original proposal to link the salary of the PC Judges to the King's Bench was that the new process would rely on the economic analysis conducted by the federal Quadrennial Commission, which makes recommendations

for federally appointed judges. The Government's intention with that proposal was to ensure judicial independence while streamlining the Commission process.

173. The Government refers to its 2020 submission to the Provincial Court Commission in which it stated:

> The Government submits that it is appropriate to streamline the commission process. The extremely detailed salary review may have been needed in the first few iterations of the Commission, but the process has now reached a procedural maturity. If there is a way to simplify the process and reduce the cost, while fully complying with the constitutional mandate for a review process, that should be implemented. (Refer to the Government's Reply at para. 23.)

174. The Government points out that the 2020 Provincial Court Commission accepted that the Quadrennial Commission is required by statute to take into account "the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government".

175. The Quadrennial Commission's process, says the Government, takes into account the necessary economic considerations that underlie, in part, the salaries of the Court of King's Bench. The linkage between the salaries provided to judges at the King's Bench, and through it, the salaries of PC Judges, also ensures that those factors in turn underlie the salaries provided to JPs. Thus, it is no longer necessary to conduct a detailed economic review.

Delay in Salary Response

176. The Government says that the percentages of increases to JP salaries over the past 10 years have generally exceeded the rate of inflation each year and disagrees that the salary "lag" as described by the Association is disadvantaging JPs.

177. Rather, the salary for JPs is out-pacing the average annual inflation rate. The Government says this indicates that the analysis of economic factors performed by the Quadrennial Commission gives a reliable basis for the salary increases of JPs. Factors such as inflation are already built into the Quadrennial analysis.

178. In addition, the Government points out that discussing percentage increases masks the fact that when the amount of the base salary increases, so too does the value of a percentage point increase, such that a 1% increase to the base salary in 2023-24 was a larger dollar value than that percentage increase in years past.

179. The salary for Saskatchewan JPs is linked to the highest trial judge salary in Canada. The link ensures, says the Government, that salaries for JPs have increased considerably and will continue to do so.

Comparators

180. The Government disagrees with the use of Senior Crown Counsel salaries as a

comparator.

181. The Government points out that the majority of JPs , 57 of 74 (not counting Relief JPs), are not lawyers. A salary range for lawyers with considerable experience at the Bar is not an appropriate comparator for a group composed largely of non-lawyers.

182. Further, there is no statutory requirement for Senior JPs to be lawyers. The Supervising JP requires Senior JPs to be lawyers by administrative practice only.

183. The statutory framework is that "a JP is a JP" (referring to the 2013 Hood Report at para. 255) and since there is no requirement for any JP to be a lawyer, tying their salary to the Crown 4 salary is not appropriate.

b. *Pro Rata* Calculations

184. The Government submits that there should be no change to the *pro rata* rates by which JPs who work less than full-time are paid.

185. The current rates are:

- Daily Rate: 1/220 of the annual salary;
- Half-daily Rate: 1/440 of the annual salary;
- Hourly Rate: 1/1760 of the annual salary.

186. The Government notes that the basic denominator of 220 is based on the estimated number of sitting days for the Provincial Court and that this is the same estimate used for sitting days for JPs. The rates have been used since they were recommended by the Hood Commission.

c. Additional Compensation for Supervising JP

187. The Government submits that the current additional compensation paid to the Supervising JP (and the Assistant Supervising JP) was set by the Prosser Commission in 2018, based on the determination that it was appropriate to use the same rates as for the Chief Judge of the Provincial Court and the Associate Chief Judge, those being 7.5% and 5% respectively.

188. The Government points out that for 2024 - 2025, those rates amount to an additional $13,524.83 paid to the Supervising JP and an additional $9,016.55 to the Assistant Supervising JP and submits the rate should not change.

189. In its Reply, the Government refers to the Association's position that the rate for the Supervising JP should rise because of the increased administrative workload performed by the Supervising JP. It points out that not all administrative tasks need to be performed by the Supervising JP and suggests that the remedy is to hire more Administrative Assistants, who can take instruction on various tasks from the Supervising JP, carry out those tasks and reduce the administrative workload of the Supervising JP.

d. Additional Compensation for Administrative JPs

190. The Government points out that the amount to be paid to Administrative JPs was only determined after that position was created in 2022, and the rate was set at 2% by the Jaspar Commission in 2023. It notes that the rate was described as a "compromise" by the Jaspar Commission, since the Association was seeking 2.5% and the Government proposed 1.5%.

191. For 2024-2025, the 2% rate amounts to $3,606.62 in additional compensation for Administrative JPs.

192. In its Reply, the Government submits that there is no basis to depart from that rate as the 2% rate was only set by the Jaspar Commission in 2023 and has only been in effect since July of that year.

193. Accordingly, there has not been sufficient history to determine if the amount provided at 2% is insufficient.

e. Government's Pension Contribution

194. The Government's submission sets out the history of the current contributions made to the JPs' pension plan. It notes that before the Prosser Commission in 2018, the Association and the Government agreed that contribution rates should remain at 5% for contributions by JPs and 7.6% for the Government's contribution. The main pension issue in 2018 was the expansion of PEPP to all JPs, was agreed upon and ultimately set by regulation.

195. In 2023, the issue before the Jaspar Commission dealt with the pension contributions for Relief JPs. The Jaspar Commission concluded that the contribution rates should be 5% and 7.6% for all JPs, up to the end of the calendar year in which a Relief JP turns 71.

196. Regarding the proposed increase in the Government's contribution rate, the Government notes that it recently concluded a new collective agreement with the SGEU, bringing in-scope employees' Government contribution rate to 9%. The Government indicates it will also raise its contribution to out-of-scope employees to 9% effective April 1, 2025, at the start of the new fiscal year.

197. The Government submits, as it did in 2013 and 2018, that the contribution rates by JPs should remain at 5%, and the Government rate should increase to 9% as of April 1, 2025, as it will for out-of-scope employees.

198. In its Reply submission, the Government maintains its proposal to increase its contribution to 9% as of April 1, 2025, which is the same date on which all out-of-scope employees will move to a 9% contribution.

199. The Government points out that previous JP Commissions held that JPs should receive the same Government contributions as out-of-scope public employees and that the recommendation of this Commission should be consistent.

200. The Government submits that the Association's proposal of a 10% contribution would not have a compensatory effect, as an increase from April 1, 2025, would primarily benefit JPs appointed after that date, who did not experience the lack of an increase from 2020 to 2025.

201. The Government expresses regret that the issue of pension contribution rates for JPs was not reviewed after the 2020 increase in the collective agreement and suggests it was likely an oversight on the part of both the Government and the Association. It suggests there is some onus on beneficiaries of a pension plan to raise concerns at an early date, and the Association did not do so.

202. Further, there is no way to increase the rate retroactively, as that is not allowed under the federal legislation by which the PEPP is governed.

203. The Government proposes a way to address a similar concern should one arise in the future.

f. Consolidation of Regulatory Provisions

204. The Government proposes a "housekeeping" matter relating to the *JP (Commission) Regulations* and the membership of JPs in the PEPP. Due to the staggered implementation of PEPP membership for different categories of JPs in 2013 (Senior JPs), 2019 (Relief JPs) and 2022 (Non-senior JPs), there are two separate provisions in the *JP (Commission) Regulations* and one in the *JP Regulations* setting out the contribution rates.

205. The Government proposes that the three rates should be combined into one provision in the *JP (Commission) Regulations* for reasons of legislative organization and, to be consistent with the constitutional principles governing the compensation of JPs. In particular, the provision relating to Non-senior JPs should be removed from the *JP Regulations,* which are passed by Cabinet.

206. The Government proposes that the Commission renumber s. 8 as s. 8(1), adding terminal dates for those rates as of March 31, 2025. Then, a new subsection (2) would be added to s. 8, setting out the new rates for all three types of Justices of the Peace in one provision, effective April 1, 2025.

207. If the Commission agrees with the Government's proposal, the Minister will take steps to repeal s. 14.91 of the *JP Regulations*, effective April 1, 2025. T he Government requests an advisory recommendation, accordingly.

(3) Rationale For Position on Advisory Matters

a. Timing of Salary Increases

208. The Government anticipated that the Association might raise an issue concerning the timing of salary increases. The Government noted that the timing was set by the

Act and need not be changed. It indicated that it would address the issue further if raised by the Association. As the Association indicated agreement on this issue, the Government did not pursue the issue.

b. Eligibility for Benefits

209. The Government also anticipated that the Association might raise an issue concerning the minimum hours of work necessary to qualify for some of the benefit plans. The Government submitted that minimum hours of work are a normal requirement of benefit plans, across government, and should not be changed. It indicated that it would address the issue further if raised by the Association. The Association did not make submissions on this matter and the Government did not pursue the issue.

c. Professional Allowance

210. In its Reply submission, the Government does not agree that JPs should receive a Professional Allowance, noting that the Professional Allowance of PC Judges includes items such as robes and security systems that do not relate to JPs.

211. The Government submits that if an education allowance is recommended, it should be based on 51% of the PC Judges educational allowance, in alignment with the salary percentage.

212. That would amount to $1020 per year, which is 51% of the education component of the Professional Allowance of PC Judges.

d. Short-Term Disability Benefits

213. The Government disagrees with the Association's request for short-term disability benefits for JPs. It says that sick leave is the basis for short-term disability coverage.

214. The Government explains that, unlike many employers, the Government does not cap sick leave and allows individuals to accumulate sick leave, such that it can amount to a significant period of time. At the end of the period of sick leave, an employee or a JP can transition to long-term disability.

215. If there is a gap between the end of sick leave and the start of long-term disability, the Government's policy is to provide advances in salary to cover the gap. The Government can rollover sick leave to act as a short-term disability and advance normal salary until the Worker's Compensation Board approves a claim.

216. The Government approach applies to JPs as it does with all in-scope and out-of-scope employees.

217. In response to the Commission's question, the Government advised that it had confirmed with WCB that JPs were entitled to benefits, but that individual claims would still be evaluated with WCB's criteria. The Government also noted that JPs

may request an advance of up to two years of sick leave entitlements and that they also have access to vacation leave and can request a leave of absence without pay.

218. Subsequently, the Government also advised that even new JPs can accumulate a significant number of days that can be used to cover the gap between sick days and long-term coverage. The Government also clarifies the difference between the accumulation and use of calendar days versus work days.

e. Benefits for Relief JPs

219. The Government says that there is no need for Relief JPs to receive additional benefits because they already have access to retirement benefits by virtue of the fact that Relief JPs must be retired JPs. When JPs retire, they have the option to apply as Relief JPs, and to continue the extended health care benefits they received as JPs.

220. In addition, the Government points out that Relief JP is not a full-time position; rather, Relief JPs are appointed to fill in during an absence or because there is urgent need. As such, there is no certainty that any of the four current Relief JPs will be called upon regularly or at all. Accordingly, a benefit plan, beyond the available extended health package available at retirement, for Relief JPs is not warranted.

f. Mental Health Resources

221. The Government describes a new allowance for mental health benefits for provincial employees, effective January 1, 2024. The allowance provides $2,000 annually for services delivered by a psychologist. This program was changed and added to in June of 2024.

222. JPs are eligible for this mental health allowance. The Government indicates that, by policy, when benefit plans for out-of-scope employees are changed, and benefits are extended, those benefits will automatically be extended to JPs as well.

223. The Government points to the restriction on negotiations between the Government and JPs regarding benefits, and says it cannot meet annually with JPs to discuss potential changes to benefits plans.

g. Parking

224. The Government acknowledges the importance of this issue and the need to protect the safety of all JPS, but says the matter is best dealt with by a joint committee. Moreover, the Government submits that the Commission does not have jurisdiction to deal with the issue as it fits neither into the required matters under s. 10.3(1) of the *Act*, nor into the advisory matters under s. 10.3(3) to be provided by Cabinet regulation under s. 15(d).

225. The Government submits that parking is an aspect of workplace conditions and safety, and not a matter of compensation.

226. The Government also points out that parking is heavily location dependent and tied to the particular buildings involved and their surroundings. There may be no space available or municipal regulations may prohibit expansion of parking.

227. The Government submits that given the range of circumstances, a matter of infrastructure such as this cannot be dealt with by the Commission.

228. Instead, the Government suggests that this issue would be best dealt with by establishing a joint committee and submits that since this is not an issue of compensation, such a committee would not offend the constitutional ban on direct negotiations in relation to matters of compensation.

(4) Request for Advisory Recommendation

229. The Government also notes in its Reply submissions that it has become apparent to the Government that the JPs are currently receiving benefits that are not clearly authorized by the *JP Regulations*, those being the retirement extended health plan and the mental health benefit.

230. To maintain the benefits, the Government requests an advisory recommendation that the Government amend the *JP Regulations* to provide these benefits to JPs on a basis comparable to how they are provided to out-of-scope employees.

(5) Joint Request For Technical Retroactive Amendments

231. The Government describes two technical errors in the *JP (Commission) Regulations* relating to the calculation of the salary for JPs. The Government's submission proposes a remedy by which the parties will make a joint request to the Commission to correct the errors pursuant to s. 10.7 of the *Act*, which incorporates s. 49 of the *Provincial Court Act.*

232. The Government says that correcting these errors by way of retroactive amendments to the *Act* will not change the compensation paid to JPs in the past, but will confirm that the salaries for JPs were properly calculated in accordance with recommendations of earlier JP Commissions.

233. The proposed amendments relate to s.3(1) and s.4 of the *JP (Commission) Regulations.*

234. The Government's submission goes on to explain the nature of the errors, which arose partially as a result of the relationship between the regulations relating to the Provincial Court Commission process and the regulations relating to the JP Compensation Commission process, and partially as a result of the need for the appropriate regulations to be amended when the JP Compensation Commission process makes recommendations that affect those regulations.

235. In the case of s.3(1), the amendment would need to be retroactive to January 31, 2015, when the *Provincial Court Compensation Regulations* were amended pursuant to recommendations of the Provincial Court Compensation Commission

of 2014, resulting in the error.

236. In the case of s.4, the amendment would need to be retroactive to March 31, 2019, when the salary of JPs was raised to 51% of the salary of PC Judges, including the *pro rata* salary rates for JPs working less than full-time. The increase to the *pro rata* salary rate was not properly incorporated into the *JP (Commission) Regulations.*

237. The Government points out that any expenditure of public money needs to be authorized by a statutory appropriation and the errors need to be corrected to ensure that is the case with respect to salary payments recommended by the JP Compensation Commission process in the past and going forward.

238. The Association has been advised of the errors and the Government understands that the Association agrees with the Government's proposal. (As referenced earlier in this report, at paras. 145 and 146, the Association has indicated its agreement with the proposal to recommend the necessary amendments.)

C. QUESTIONS FROM THE COMMISSION

239. In accordance with s.10.5(b) of the Act, the Commission posed several questions to the parties. The questions related to:

a. the salary of the Registrar of Bankruptcy;
b. the Government's proposal to consolidate the contribution rates to the pension plan into a single provision in the *JP (Commission) Regulations*; and
c. the nature of the short-term disability benefits currently available to JPs.

240. Each of these questions was answered by both parties, for which the Commission is grateful. The responses are discussed in the portions of this report setting out the submissions of the Parties and the Commission's consideration of the Parties' submissions on the issues to be determined.

VI. COMMISSION'S CONSIDERATION OF THE ISSUES TO BE DETERMINED

A. GENERAL OBSERVATIONS

241. The Commission's mandate has been articulated earlier in this report at paras. 9 – 11. In considering its mandate, and how it applies to the various submissions of the Parties, the Commission had the benefit of those submissions, but also of the analysis carried out by the Prosser Commission and, indeed, the analysis of earlier commissions addressing the compensation to be provided to the judges of the Provincial Court of Saskatchewan.

242. In coming to its recommendations, the Commission has been particularly mindful of the guidance emanating from those earlier commissions and from the jurisprudence on the foundational principle of judicial independence, and of the importance of the commission process in safeguarding that principle.

243. Moreover, the Commission accepts the instruction of the Supreme Court of Canada as set out the report of the Prosser Commission at para. 251:

> As a general principle reflected in the statements of the Supreme Court of Canada in the New Brunswick Reference and endorsed by the 2017 Provincial Court Commission:
>
> > All relevant issues may be addressed. The process is to be 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.** (para. 14, New Brunswick Reference) [emphasis in Prosser]

244. The Prosser Commission's restatement of the important principles to be considered in the JP compensation process is set out in paras. 255 – 257 of its report:

> 255. Fundamentally, the process to be followed by this Commission is one which is be flexible, not in the nature of an interest-based arbitration, nor for that matter, judicial decision making. In para. 257 of the Hood Commission Report, these important principles were stated:
>
> > 257 Again, the mandate of this Commission is to make appropriate recommendations, not to compose a report that advocates on behalf of the Association, or that justifies the budget constraints of the Government. Nor is it the responsibility of this Commission to convince the Government to affirm and implement these recommendations. Compliance with constitutional standards is a responsibility that falls on this Commission and the Government. In particular, this Commission must be objective and non-biased to produce a fair analysis, based on review and consideration of relevant factors. However, this Commission cannot ensure that the process is effective in terms of implementing these recommendations. It is the Government's duty to ensure that the Commission's recommendations produce meaningful results. This does not mean that the Government must implement all recommendations of this Commission, but the Government must not set them aside lightly and may be required to justify departures from

them.

256. It is important, in order that judicial independence is maintained, the judiciary must enjoy security of tenure, financial security and administrative independence. These important factors are ultimately and, most importantly, to be achieved for the benefit of the public to ensure and maintain the confidence of the in safeguarding the administration of justice.

257. Another fundamental consideration for this Commission is an assessment of whether the constitutional minimum acceptable level of compensation for Justices of the Peace in Saskatchewan has been met.

245. The Commission agrees with the Prosser Commission's summary of the key principles. The Prosser Commission went on to note that the "minimal acceptable level of compensation" for JPs had been met, given the establishment of the base salary for JPs in relation to the salary for PC Judges. This observation was made in consideration of the "fundamental" amendments to the *Act* in 2013 and the resulting report of the Hood Commission.

246. This Commission agrees with that conclusion by the Prosser Commission, particularly in light of the subsequent changes to the Provincial Court compensation process, as established by the 2020 Provincial Court Commission, by which the salaries of the PC Judges are now set at 95% of the salaries of the Justices of the Court of King's Bench, for the previous fiscal year.

247. The Commission is gratified to note that there is significant agreement between the parties on important considerations for this Commission. These include the importance of the work performed by the Justices of the Peace of this province, the fact that much of the work carried out by JPs has been carried out with "greater professionalism and consistency" as a result of the training efforts of the Supervising JP, and the fact that the change to the centralized "Hub" system has brought important improvements to the JP program. In addition, as noted earlier in this report, there is agreement on a number of components of the Commission's mandate, both the matters required to be considered and the advisory matters.

248. The Commission was particularly impressed by the general agreement between the parties on the wide-ranging scope of the work performed by JPs throughout Saskatchewan, whether by JPs located in various communities or centrally, by those JPs working in the Hub context.

249. The Commission notes the Prosser Commission's description of Saskatchewan Justices of the Peace as "truly the 'front line' when it comes to the administration of justice in this Province", often working with minimal facilities and services available to them. This Commission accepts that in most respects, that description remains appropriate.

B. REQUIRED RECOMMENDATIONS

(1) Base Salary

General

250. The annual base salary of Saskatchewan JPs is currently set at 51% of the salary of Provincial Court Judges for the previous fiscal year. The Association seeks to add 8% to that percentage, raising the base salary to 59% of that of the PC Judges, which it says is warranted when key factors are considered. Its rationale is set out extensively in its primary submission and Reply and is summarized earlier in this report, at paras. 64 – 93.

251. The Government's position is that the current 51% rate provides an appropriate level of compensation for Saskatchewan's JPs given the need to safeguard judicial independence. Its rationale is set out in its primary submission and Reply and is summarized in this report, at paras. 155 – 183.

The Commission has considered the submissions of the parties in the context of the relevant jurisprudence and affirms that its primary objective is to determine the salary for JPs that is sufficient to protect the requirement of judicial independence.

No Need for Economic Analysis

252. In considering the issues related to compensation generally, the Commission notes the extensive submissions in which the Association discusses the economic situation in Saskatchewan. In the Commission's view, there is no longer a need for it to conduct a detailed economic analysis. The Commission is confident that the connection between the salaries of JPs, those of PC Judges, and the detailed economic analysis conducted by the Quadrennial Commission to determine the salaries of federally appointed judges, is sufficient to take into account the evolution of various economic factors.

253. This rationale was in effect accepted by the Prosser Commission in noting that the manner in which salaries for JPs were determined (being set as a percentage of the PC Judges' salary) obviated the need for a review of economic conditions since that analysis had already been carried out by the PC Judges compensation commission process.

254. Since the Prosser Commission's report, the process has been simplified to an even greater extent with the salaries of PC Judges now set at 95% of the King's Bench salary, barring extraordinary circumstances. That additional step in the process means that there is no need for an extensive economic analysis.

255. The Commission agrees with the Government that since the Quadrennial Commission's detailed economic analysis underlies the salary of the King's Bench judges, it indirectly underlies the salary of JPs. That methodology provides a better means of ensuring adequate judicial salaries over a four-year period than an attempt to re-do the analysis based on more immediate or short-term considerations.

Delay in Salary Adjustments

256. Although there is some built-in delay in how the analysis of the Quadrennial Commission flows through to the Saskatchewan JPs, the Commission is confident that the system naturally accounts for short-term fluctuations and overall, will successfully ensure adequate salaries for JPs. This is illustrated, in part, by the Government's Table 5, showing that JP salaries have outpaced inflation on average. In the two recent years when that has not occurred, the Commission agrees that the impact of the COVID pandemic is likely to blame.

257. The Government's submission contained several other tables showing helpful data in assessing the process to date and in determining the means to meet the objective of identifying a salary that will safeguard judicial independence going forward, taking into account this inherent delay.

258. The Government's Table 2, in particular, shows a steady increase in the base salaries of JPs since the institution of the Prosser Commission's recommendation of 51%:

Table 2: Salary Increases for Justices of the Peace under the 51% Rate

Year	Salary	Dollar Increase	Daily Rate	Hourly Rate	% Increase
2019-20	150,854	8,338	685.70	85.71	5.9%
2020-21	155,078	4,224	704.90	88.11	2.8%
2021-22	159,266	4,188	723.94	90.49	2.7%
2022-23	161,655	2,389	734.80	91.85	1.5%
2023-24	174,953	13,298	795.24	99.41	8.2%
2024-25	180,331	5,378	819.68	102.46	3.1%
2025-26 (projected) [a]	*185,903*	*5,572*	*845.01*	*105.63*	*3.1%*
2026-27 (projected) [a]	*192,202*	*6,299*	*873.65*	*109.21*	*3.4%*
Average Annual Increase (Actual)	—	**6,303** [b]	—	—	**4.0%** [b]
Average Annual Increase (Projected)	—	***6,211*** [c]	—	—	***3.4%*** [c]

Sources:

- Courts and Community Justice Division, Saskatchewan Justice and Attorney General
- Office of the Commissioner for Federal Judicial Affairs Canada

Explanatory Notes:

[a] Projected increases for 2025-26 and 2026-27 are in *italics* and are based on the 51% rate and the known salaries for Provincial Court Judges and King's Bench Judges in 2024-25.

[b] This Average does not include the projected increases for 2025-26 and 2026-27.

[c] This Average does include the projected increases for 2025-26 and 2026-27.

259. This data shows an average annual increase of 4% overall in JP salaries, not including a projected 3.1% increase for the 2025/2026 fiscal year that will take the base JP salary to $185,903.

Relative Position of Saskatchewan JPs

260. Based on additional data set out in the Government's Table 4 (para. 10 of its Reply) the Association's proposed 59% rate would result in a projected salary increase of 19.3%, a single year increase of $34,733, taking the base salary to $215,064. As the Government notes, this would be the highest increase for a judicial position in Saskatchewan's history.

261. The Association says that this increase is warranted and the proposal to maintain the 51% rate is not adequate given the factors that the Commission should incorporate into its analysis, and particularly given the increased volume, complexity and value of the work performed by JPs since the Prosser Commission.

262. In considering the various factors discussed by the parties, the Commission feels that one of the most significant is the relative position of JPs in Saskatchewan with respect to JPs in other jurisdictions. Currently, as described by the Government, non-legally trained JPs have the highest level of compensation in the country, and legally trained JPs are second only to Presiding JPs in Quebec.

263. The Government's Table 3 is illustrative:

Table 3: Justices of the Peace Compensation Across Canada

Province/Territory	Salary and Hourly Rates	Comments
Alberta	Full time JPs earn $151,813 plus 13.1% in lieu of pension. Part-time and ad hoc JPs earn $962 per 8-hour shift	JPs are also paid shift differentials for evening/night, weekend and holiday shifts, ranging from a weekday evening shift: $54.25 to a holiday night shift, $243.19
British Columbia	5 step scale, ranging from $64,123.59 to $72,674.35	
Manitoba	$146,937.45	The salary of Judicial Justices of the Peace is 43% of the Provincial Court Judge salary
New Brunswick [a]	New Brunswick does not currently have the position of Justice of the Peace	New Brunswick has re-established the position of Justice of the Peace, but legislation is not yet in force
Newfoundland and Labrador	Administrative Justices of Peace do not have judicial duties	Only Provincial Court Judges preside over any type of matter. Court employees automatically become JPs when hired and do administrative work. There is no extra pay for the responsibility.

Province/Territory	Salary and Hourly Rates	Comments
Northwest Territories	Administrative JPs receive $62 each hour to a maximum of $377 each day; Presiding JPs receive $73 each hour to a maximum of $443 each day.	There are no salaried JPs. JPs are part-time and paid honoraria pursuant to s. 2 of the *Remuneration and Allowances Regulations,* NWT Reg 056-98, as authorised by the Chief Judge
Nova Scotia	The wage for a JP is $99.84 per hour (effective April 1, 2024)	The rate is 55% of the daily per diem for a Provincial Court Judge. The rate is adjusted each year by an amount equivalent to the Consumer Price Index for the previous 12 months.
Nunavut [b]	Salary range from $131,767 to $175,689	JPs are lay appointees, but the 10-step salary range for Crown counsel is used
Ontario [c]	Full-time presiding JPs are paid $172,010 annually, plus pension and benefits, with 22 vacation days. Non-presiding JPs are paid $125,137	JPs are lay appointees; no legal experience required
Prince Edward Island	Salary range: $152,950 to $157,350 Part-time daily rate: $695 to $715	
Quebec [d]	Presiding Justices of the Peace paid $248,00 effective July 1, 2024, with increases to $290,900 by July 1, 2026	Presiding Justices of the Peace are all legally trained; must have 10 years at the bar or as a notaire
Yukon	The hourly rate for a presiding JP is $74,29. There are no current salaried JPs.	There are three tiers of JPs that are paid at three different rates: i) $47.67 per hour ii) $53.06 per hour iii) $74.29 per hour The rates will increase retroactively through a Judicial Compensation Commission recommendation that is pending (and overdue).

Sources:

Unless otherwise stated, data was collected by Saskatchewan Court Operations

and Services

[a] Information from the New Brunswick Attorney General office

[b] Information from Nunavut Department of Justice

[c] Ontario Court of Justice: The Justice of the Peace Position

[d] "Juges: Québec accepte de hausser leur salaire à 360 000$" (*Journal de Quebec*, September 17, 2024)

264. The Commission agrees with the parties that the significant differences across jurisdictions in the qualifications required of JPs, the nature of the work performed, and the manner of determining compensation, limit the usefulness of direct comparisons.

265. The relative position of Saskatchewan JPs is nevertheless striking, particularly considering that the Association's submission to the Prosser Commission in 2018 was essentially that 51% was the appropriate rate as it represented a rough national average of JP salaries in somewhat comparable jurisdictions. (See the Prosser Commission report at paras. 274 –276)

266. Positioning the Saskatchewan JPs at the approximate mid-point of the rough national average was ultimately a significant factor for the Prosser Commission. That goal is now surpassed by a notable margin.

267. The Commission also notes the Government's submission that as of October of 2023, the Saskatchewan PC Judges were the second highest paid Provincial Court judges in the country. Since the salary of the PC Judges is linked to the salary of federally appointed judges, that ranking is likely to continue, says the Government, and there will be a "flow-through" effect to the salaries of JPs.

268. The Commission agrees with that analysis.

269. Moreover, although the Commission recognizes that there are several jurisdictions in which JP salaries may increase in the interval until the next commission process, it seems unlikely that those changes will significantly reduce the relative position of Saskatchewan JPs, considering the tie to the PC judges.

Comparison to Senior Crown Counsel

270. The Association's position is based in part on a comparison to the most Senior Crown Counsel (Crown 4) salaries.

271. The Commission does not accept the Association's position that Crown 4 salaries provide an appropriate comparator. The Commission is mindful of the fact that most Saskatchewan JPs are not lawyers and agrees in general with the submissions of the Government on this point. This is not to diminish in any way the impressive education and backgrounds of many non-lawyer JPs; they simply do not justify using a Crown 4 salary as a basis for all JPs.

272. In considering the Association's submissions regarding recent media accounts of salary increases for other groups, such as teachers and SGEU members, the Commission would note the reality that collective bargaining and formal negotiations involve a "give-and-take" process in which something may be gained in one area, such as salaries, but inevitably, something else may be given up. That is a very different process than the compensation commission process.

Increased Volume and Complexity

273. The Commission takes note of the data provided by the Association with respect to the increased volume of work being performed by JPs and appreciates the challenges that this represents. In particular, the Commission is troubled by the delays and backlogs that the Association describes in various aspects of the administration of justice related to the work of JPs.

274. However, in the Commission's view, an increased volume of work is not a basis to increase salary. Nor is an increase in salary likely to deal with delay caused by an increased workload. The Commission does not see a salary increase as likely to result in an increase in productivity or timeliness on the part of Justices of the Peace. The Commission is confident that JPs are already doing their best to address their assigned work and the delays caused by the increase in volume; an increase in salary is unlikely to change that scenario.

275. The answer to this issue is, in the Commission's view, related to increasing support for JPs, both in terms of staffing and in terms of resources. As the Government suggests, opening a discussion with Court Services, or other appropriate dialogue, about appointing more JPs would be an appropriate step, as would taking steps to hire more administrative support, if needed.

276. The Commission is also mindful of the increased complexity of the matters falling within the jurisdiction of JPs in Saskatchewan and the Association's submission that this factor justifies a salary increase.

277. Respectfully, the Commission does not agree.

278. The Commission does note that the Association's description of the work performed by the various "categories" of JPs in 2024 is not significantly different from the description provided to the Prosser Commission in 2018. This was not determinative in the Commission's analysis, however.

279. Although the administration of justice in Saskatchewan has inarguably become more complex, and will likely continue to do so, that is undoubtedly true across the spectrum of judicial offices, not only in Saskatchewan, but nation-wide. It is doubtless being experienced by the judges at all levels of Canadian Courts. Likewise, it may well be a factor that has an impact on compensation at all levels of judicial compensation, from the Court of King's Bench, through the Provincial Court, to the Saskatchewan JPs, all by virtue of the salary linkage, as previously discussed.

280. The same issues leading to increased complexity were discussed and acknowledged by the parties in the proceedings of the 2023 Provincial Court Commission (See the Report of the 2023 Provincial Court Commission at paras. 26 – 33), yet neither the PC Judges nor the Government suggested that those issues of increased complexity constituted "extraordinary circumstances" so as to justify going beyond the 95% presumption.

281. Rather, the Commission feels that increasingly complex legal issues do form a rationale for recruiting more legally trained JPs and for ensuring that all JPs have access to training and educational resources that will assist them in their work.

Recruitment

282. This naturally raises the issue of recruitment of additional JPs and the Association's submission that the salary must be raised in order to attract qualified candidates.

283. Respectfully, the Commission disagrees with this contention. There is no dispute that the goal is not to attract just any candidate, but to attract highly qualified candidates. The Commission accepts that salary is certainly one aspect of what will draw a candidate, especially a lawyer, to apply for a position as a JP. However, in considering an appropriate level of compensation, so as to contribute meaningfully to recruitment, the Commission considered not only the salary, which will increase to approximately $185,000, but also the membership in the Public Employees' Pension Plan, and the comprehensive suite of benefits available to JPs.

284. There are numerous other factors that may influence a given individual to consider applying for any position, including the position of JP. These might include such things as the flexibility to work on a part-time basis, the fact that it is a judicial position with a considerable degree of authority and prestige, and the opportunity to work relatively independently, as opposed to as a member of a large law firm or other legal organization. Such factors may be even more significant for non-lawyers and there is, of course, no legal requirement for JPs to be lawyers.

Registrar in Bankruptcy

285. The Association placed considerable weight on the fact that the position of Registrar in Bankruptcy is now held by a JP, a recent development. The Commission accepts that this position involves complex judicial functions warranting the financial security provided through judicial independence.

286. The Commission notes, however, that while the *JP Regulations* have recently been amended to allow a JP to fulfill the role of Registrar in Bankruptcy, there is no suggestion by the Association that other JPs will be required to perform this function in the place of the current Registrar, such as by way of a rotation. In fact, the *JP Regulations* provide that the appointment of a JP as Registrar in Bankruptcy will only take place at the request of the Chief Justice of the King's Bench; the power to make that appointment is vested in the Court of King's Bench pursuant to s. 184 of the *Bankruptcy and Insolvency Act*. In other words, this is a unique

position.

287. Moreover, the Commission questioned the parties regarding the salary of the Registrar in Bankruptcy prior to the position being moved into the JP contingent. In response, the Government advised that, prior to the appointment of the current Registrar, the position of Registrar in Bankruptcy had been assigned a salary at the "Crown 2" range, which in fiscal year 2023-24 was a range of $122,608 to $156,484.

288. The Government also advised that the previous holder of the position, "prior to the appointment of the current Registrar as a Justice of the Peace", was paid $129,796 in 2022-23.

289. The Commission understands that the current Registrar in Bankruptcy was appointed in April of this year and works on a full-time basis. The Government confirmed that the Registrar is not responsible for other duties regularly assigned to Senior JPs, such as Traffic Court.

290. The base salary for JPs at the time of the current Registrar's appointment had just increased to $180,331. By virtue of the appointment of the Registrar in Bankruptcy as a JP, the salary provided to the holder of that position would seem to have increased substantially from what it would have been prior to that dual appointment, potentially by as much as $50,000.

291. The Commission does not see the appointment of the Registrar in Bankruptcy as a JP as the basis to increase the base salary of JPs from the 51% rate.

292. Lastly, the Commission notes that a factor in the Prosser Commission's analysis when recommending an increase to 51% was the lengthy period between JP Commissions, which at that time was six years. Since that time, the interval has been reduced to four years, to follow the Provincial Court commission process.

293. Taking all of these various factors into account and considering all of the submissions of both the Government and the Association, the Commission is satisfied that the current base salary rate of 51%, tied as it is to the Provincial Court and from there to the King's Bench, is sufficient to meet the constitutional requirement for the financial security of JPs in Saskatchewan and safeguard judicial independence. Nor does it amount to a "wage freeze" as shown in Table 2.

294. The Commission recommends that the base salary for Justices of the Peace continue at the level of 51% of the salaries of the Judges of the Provincial Court.

(2) *Pro Rata* Calculations

295. The Parties were in agreement that the *pro rata* calculations for compensation to JPs working less than full-time should continue unchanged.

296. The Commission agrees with the Parties that there should be no change to the *pro*

rata calculations and makes no recommendation in that regard.

(3) Additional Amount for the Supervising JP

297. The Supervising JP currently receives a salary "supplement" of 7.5% above the JP base salary. This is modelled after and aligned with the 7.5% supplement received by the Chief Judge of the Provincial Court. It was set by the Prosser Commission in 2018 after considering the Association's submissions that the Supervising JP should receive a salary supplement of 10%.

298. Before this Commission, the Association repeated its submission that the Supervising JP should receive a 10% salary supplement. The Association acknowledged that this is a higher supplement than that received by the Chief Judge of the Provincial Court, but says it is warranted based on the broad scope and challenging nature of the work done by the Supervising JP.

299. The Association also pointed out that before the Prosser Commission in 2018, the Government's position was that the Supervising JP should receive the same salary supplement as the Chief Judge of the Provincial Court because the duties carried out by each are similar. This position was highlighted in the Prosser Commission's Report (See para. 288 of the Prosser Report).

300. The Association described what it described as significant differences in the scope of the work being performed by the Supervising JP as compared to the Chief Judge of the Provincial Court, referencing various factors including the limited administrative support the Supervising JP receives.

301. The Commission is not persuaded that there is a basis to depart from the current supplement paid to the Supervising JP of 7.5% above base salary.

302. The Commission agrees with the Government's submission that the supplement of 7.5% paid to the Supervising JP should continue on the basis of the similarity between the roles of the Chief Judge of the Provincial Court and the Supervising JP.

303. Although the Commission accepts that there are differences between the role of the Supervising JP and that of the Chief Judge, in the Commission's view, those differences are likely related to the nature of their respective judicial "programs" and their roles within them. The Provincial Court and the Justice of the Peace program have many similarities, but also many differences and a direct comparison is not altogether possible.

304. If the Supervising JP's workload has significantly increased, the Commission agrees that not all tasks need to be, or should be, performed by the Supervising JP. Rather, at least part of the solution is to hire more administrative assistants who can doubtless assume many tasks under the direction of the Supervising JP and, in general, provide administrative assistance.

305. It is also noteworthy that while the Supervising JP may carry out different functions

in that role from those functions carried out by the Chief Judge of the Provincial Court, ultimate legislative responsibility for the operation of the Justices of the Peace program falls to the Chief Judge of the Provincial Court pursuant to s. 13(1) of the *Act*. That section provides that the Chief Judge has "general direction and supervision over the duties and sittings of the Justices of the Peace."

306. Accordingly, the Commission recommends that there be no change to the additional amount paid to the Supervising JP.

(4) **Additional Amount for the Assistant Supervising JP**

307. The Parties are in agreement that it is appropriate for the Assistant Supervising JP to receive a salary supplement of 5% in recognition of the administrative work carried out by the JP who holds that position.

308. The Commission agrees and recommends that there be no change to the additional amount paid to the Assistant Supervising JP.

(5) **Additional Amount for Administrative JPs**

309. The current salary supplement paid to Administrative JPs is 2%. The Association submits it should be increased to 2.5% in accordance with the notion that there should be consistency between the Provincial Court and the Justices of the Peace in terms of compensation for additional responsibilities.

310. The Government's position is that since the 2% supplement for Administrative JPs has only been paid since July of 2023, following the report of the Interim Jaspar Commission, there has not been enough time to determine that the amount is insufficient.

311. The Commission disagrees with the Government. The Commission sees no basis to depart from the principle that the salary supplements for the members of the Justices of the Peace "management team" should be consistent with those of the Provincial Court's Chief Judge, Associate Chief Judges and Administrative Judges.

312. While it is true that the nature of matters dealt with by the Provincial Court is generally of a more serious nature than the matters dealt with by the Justice of the Peace program, the general administrative work carried out by both Administrative Judges and Administrative JPs is nevertheless likely to be very similar.

313. Looking at the report of the Jaspar Commission, this Commission notes the observation of Commissioner Jaspar regarding the two roles, at para. 17:

> The *Justices of the Peace Amendment Act* creates the new "Administrative Justice of the Peace" position. An Administrative Justice of the Peace will be a person who is already a Justice of the Peace and is assigned administrative duties to support the Supervising Justice of the Peace. **This is similar to an**

administrative judge in Provincial Court, who assists the Chief Judge to manage court operations in the province. (Emphasis added)

314. Commissioner Jaspar then went on to describe its 2% recommendation as a compromise. Respectfully, this Commission sees no reason at this time for such a compromise on this issue. It conflicts with the overall approach to recognize consistency on this issue as between the Justice of the Peace program and the Provincial Court. The Commission recommends that the Administrative JPs receive a salary supplement of 2.5%.

(6) **Pension Contributions**

315. The Parties are in agreement that the contribution made by JPs to the PEPP should remain at 5% and the Commission recommends no change in that regard.

316. As for the Government's contribution, it currently contributes 7.6% to the PEPP on behalf of JPs. It proposes to increase that rate to 9%, the same as out-of-scope public employees, effective April 1, 2025.

317. According to the Government's submissions, the contribution rates were originally set in 2013, with scheduled increases, despite the Association's submission at that time that the contribution should be 10%. The rate of 7.6% was agreed upon in the 2018 commission process when the main pension issue was the inclusion of all JPs in PEPP. The Jaspar Commission heard no submissions on this point and made no change to the rate of contribution, which has stayed at 7.6% since 2016.

318. The Association's concern stems from the fact that the Government increased its pension contribution for Crown Counsel to 8.6% in 2020, and then to 9% in 2024, but the contribution made to JPs did not change.

319. For this reason, the Association's position is that its members have suffered a shortfall that should be addressed by increasing the Government's contribution to PEPP on behalf of JPs to 10%. This, says the Association, would compensate for the shortfall and address the potential for future changes to PEPP contributions.

320. The Commission notes, however, that while the situation could be described as a "shortfall" in comparison to the increase provided to Crown Counsel in 2020, the Prosser Commission noted in its Report that the Parties were in agreement "that there should be no change to the PEPP contribution rates" in 2018, and as a result, specifically recommended that there be "no change" to the Government's contribution rate of 7.6%. Thereafter, the Jaspar Commission did not address the Government contribution rate, as it was not raised by either of the Parties. Thus, it is likely not correct to refer to a "shortfall", as there had not been any agreement or recommendation relating to pension contribution rates for 2020 or the following years.

321. The Government has expressed regret that the issue of contribution rates was not reviewed with the JPs when collective bargaining in 2020 led to an increase to

8.6% for public employees. The failure to do so appears to have been an oversight.

322. The Government also explained why the Association's submission that a contribution rate of 10% would compensate for the failure to increase the rate in 2020 is incorrect. (See para. 60 of the Government's Reply)

323. The Commission understands that this oversight would be a source of concern and frustration to the Association. However, the Commission accepts the Government's explanation and expression of regret. The Commission also agrees that it would be prudent for the Association to monitor such important issues going forward and to raise concerns as early as possible.

324. The Commission agrees with the Government that increasing the Government contribution to PEPP on behalf of JPs to 10% would not likely have the compensatory effect proposed. The Commission agrees with the reasons set out at para. 60 of the Government's Reply.

325. Accordingly, the Commission recommends that the contribution of the Government to PEPP on behalf of JPs should increase to 9% effective April 1, 2025.

(7) **Consolidation of Regulatory Provisions on Contribution Rates**

326. The Government proposes that the Commission address a "housekeeping matter", that being the consolidation of all of the pension contribution rates for all JPs into a single provision in the *JP (Commission) Regulations*.

327. This issue arises as a result of the staggered implementation of PEPP membership over a number of years, leading to separate provisions in the *JP (Commission) Regulations* (Senior JPs in 2013), the *JP Regulations* (Non-senior JPs in 2019), and the interim *JP (Commission) Regulations* (Relief JPs in 2023).

328. The Government submits that consolidation of these provisions is a matter of legislative organization, but also a matter of respecting the relevant constitutional principles.

329. This reorganization will require a repeal of s. 14.91 of the *JP Regulations*, effective April 1, 2025, along with the consolidation.

330. The Commission agrees with the Government and does recommend the consolidation and repeal requested. As such, the *JP (Commission) Regulations* should be amended as proposed by the Government at para. 154 of its primary submission. The Commission also recommends, on an advisory basis, that the Minister take steps to repeal s. 14.91 of the *JP Regulations*, effective April 1, 2025.

331. In response to a question from the Commission, the parties confirmed that while the request does not require the consent of the Association, it is in agreement with the Government on this issue.

C. ADVISORY RECOMMENDATIONS

(1) Timing of Salary Increases

332. The Government raised this issue in anticipation of a submission by the Association. No such submission was made and the Commission recommends no change to the timing of increases to the salaries of JPs.

(2) Eligibility for Benefits

333. The Government also raised this issue in anticipation of a submission by the Association; however, the Association did not raise the matter. The Commission recommends no change to the minimum hours of work necessary to qualify for benefits.

(3) Short-term Disability Benefits

334. On this issue, the Commission notes initially that in asking a poorly articulated question on the matter, the Commission inadvertently opened a door that led to fairly extensive additional submissions from both the Association and the Government, going beyond the primary and Reply submissions, and beyond the question asked by the Commission. The additional submissions were also provided to the Commission very late in the day, well after the filing deadlines agreed upon. This was unfortunate and unnecessary. The Commission's recommendation on this issue is largely based on the original submissions of the Parties. Neither the additional submissions of the Association, nor those of the Government changed the Commission's proposed recommendation.

335. In considering all of the various points raised by the parties, the Commission is persuaded that there is no real basis to distinguish between PC Judges and JPs in terms of the short-term disability benefits available to them. Indeed, the Government's own Reply seems to make that point, in submitting that "in the area of pensions and benefits, there is a strong preference for consistency in approach with government provided benefit agencies, including benefits to Justices of the Peace", in order to avoid different benefits being offered for different positions. Likewise, the Government notes that "wherever possible, the Government has a strong preference for using the same principles and conditions for all benefit plans." (See paras. 3 and 4 of the Government's Reply.)

336. Although the Government may have been making this submission for a different purpose, the Commission finds that the comment is appropriate in considering this issue.

337. The Commission recognizes that there are many different scenarios that may arise and lead to a JP's inability to work and need for support. Those scenarios may encompass many different variables and depend on factors such as age, personal circumstances, career or employment history, length of time since appointment as a

JP and others.

338. The Commission's view on this issue is that JPs should not be in a different situation than PC Judges. JPs should not have to use up vacation leave to ensure they have an income during a period of temporary disability that extends beyond their available sick days. Nor should they have to take lengthy advances on sick days, which might end up prejudicing their ability to deal with future illness or injury, or take an unpaid leave. It is also concerning that a JP may need to go to the Minister and essentially ask for a discretionary "favour" in order to secure additional paid time off. It is not appropriate, in the Commission's view, for this particular aspect of the Compensation and Benefits package for JPs to be dependent on a potentially political decision.

339. Accordingly, the Commission recommends that a Short-term Disability plan be established for full-time Justices of the Peace, modelled after the plan available to Provincial Court Judges.

(4) Professional Allowance

340. The Commission notes the reference in the submissions of both the Government and the Association to a "Professional Allowance." The Government, however, makes a distinction between a Professional Allowance as requested by the Association and an "Educational Allowance" such as was recently recommended by the 2023 Provincial Court Commission.

341. The Commission agrees with that distinction and notes that the Association is essentially referring to an Educational Allowance although not by that name.

342. The Commission agrees with the Government that JPs do not require a Professional Allowance similar to that provided to PC Judges, as there are specific items that are contemplated by that allowance that are not required by JPs.

343. The Commission agrees with the Association, however, that JPs would benefit from having access to resources that will enhance their "currency of knowledge", so as to enable them to keep abreast of the many changes that they may encounter in the performance of their duties. The Commission is cognizant of the fact that the Supervising JP arranges for and provides in-house training for JPs. Like other judicial decision-makers, however, JPs would benefit from having available a fund that could be used to pay for registration at an external course or training program related to their work, or for the purchase of books or other resource material that will assist them in the performance of their duties.

344. While the Association suggests that an allowance for JPs should be modelled after the Professional Allowance available to PC Judges, the Commission recommends that a specific Educational Allowance, comparable to the allowance contemplated in s. 6(4) of *The Provincial Court Compensation Regulations*, would be most appropriate.

345. This Educational Allowance should be based on 51% of the Educational Allowance recommended for PC Judges, consistent with the salary relationship between JPs and PC Judges. Accordingly, the Commission recommends an accountable Educational Allowance on that basis for full-time JPs, or an appropriate *pro rata* amount, be available for JPs.

(5) Benefits for Relief Justices of the Peace

346. The Association submits that Relief JPs should be provided with the benefits available to other JPs, in keeping with the proposition that all JPs should be entitled to the same benefits. The Government's position is that Relief JPs, who must be retired JPs, already have access to retirement benefits and no change is needed.

347. Relief JPs, as retired JPs, have the ability to extend their health benefit based on their service as a JP and any prior public service. Currently, there are only four Relief JPs and they are only called upon in specific circumstances. They may have few or even no qualifying hours of service.

348. The Commission agrees with the Government that the access to extended health care benefits is sufficient in this current scenario.

(6) Mental Health Supports

349. There is no dispute that JPs may be subjected to a number of factors in the context of their workplaces or operations that may present challenges to their mental health. The Parties agree that JPs are now receiving access to the mental health supports available through the Judicial Counselling Program, as recommended by both the Hood Commission and the Prosser Commission. The Association is not requesting additional benefits at this time, but requests a recommendation that the Government meet annually with the Association to discuss on-going needs in this area.

350. The Commission sees no need for such discussion since the current benefit appears to be satisfactory to both the Government and the Association. The Commission is also concerned that such a discussion risks running afoul of the prohibition against Government "negotiating" with JPs. Any changes to this program or to the needs of JPs in this area should be dealt with through the commission process, not by way of negotiation or discussion between the Parties.

(7) Parking

351. It is noteworthy that the Government "acknowledges the importance of this issue" and agrees with "the need to protect the safety of all Justices of the Peace."

352. The Commission also acknowledges the concerns that the Association describes regarding the security challenges facing many JPs. These challenges arise from the nature of their work, the locations that many of them must work in, and the

vulnerability that results from this context. The Commission agrees that there should be some form of assistance for JPs who do not have secure parking.

353. The Commission also agrees, however, that this issue is not a matter of "compensation" or a "benefit" falling into either the required aspect of the Commission's mandate, or the advisory aspect. Rather, the Commission agrees with the Government that this issue is really an aspect of the workplace conditions or environment that JPs must deal with, and the right of JPs to safety in their workplaces, regardless of location.

354. As such, the Commission agrees with the Government's suggestion that a joint committee, with representatives from the Association and from Court Services, would be an appropriate means of addressing this concern. The Commission hopes that the Parties will be able to address the problem.

D. JOINT REQUEST FOR TECHNICAL RETROACTIVE AMENDMENTS

355. As referred to earlier in this Report, the Parties are in agreement that there are two technical errors in the *JP (Commission) Regulations* relating to the calculation of salaries for JPs and that the Commission should make retroactive amendments to those regulations in order to correct the errors. The two errors are found in s. 3(1) and s. 4 of the *JP (Commission) Regulations.*

356. As the Government explains in its submission, the amendments will not change the compensation paid to JPs in the past but will confirm that salaries paid in the past were properly calculated.

357. The Government sets out in detail the explanation of the errors (at paras. 158 – 186 of its primary submission), which will not be repeated here. It suffices to say that in the case of s. 3(1), the technical error dates back to 2014 and that the corrective amendment would need to be retroactive to January 31, 2015. In the case of s. 4, the error dates back to 2019 and the corrective amendments would need to be retroactive to March 31, 2019.

358. Such retroactive amendments to the *JP (Commission) Regulations* are authorized by s. 10.7 of the Act, which incorporates by reference s.49 of the *Provincial Court Act*; that provision states:

> 49(1) At any time during the term of the members of a commission:
>
> (a) the minister and the association may make a joint request to the commission to amend a commission regulation; and
>
> (b) the commission may amend the commission regulation in accordance with that joint request or in any other manner that it considers appropriate.
>
> (2) An amending regulation made pursuant to subsection (1) may be made

retroactive to a day not earlier than the day on which the regulation being amended came into force or was deemed to have come into force.

359. Although this provision does not appear to have been utilized to make retroactive changes in the past, the Government submits that both requirements of this section of the Provincial Court Act are met and the Association, as noted, is in agreement with the proposal. The Government has helpfully provided proposed text for the amendments in its submission, as follows:

a. Section 3(1) of the *JP (Commission) Regulations* be amended by striking out "subsection 3(2) of *The Provincial Court Compensation Regulations"* and replacing it with "section 3 of *The Provincial Court Compensation Regulations"*;

b. Sections 4(1) and 4(2) of the *JP (Commission) Regulations* be amended by adding terminal dates of March 31, 2019, and by enacting two new provisions, s. 4(1.1) and 4(2.1), basing the pro rata formula on the 51% rate from April 1, 2019, onwards.

360. Accordingly, the Commission agrees with the Parties that it is appropriate for the Commission to address these errors in the manner proposed and is pleased to do so.

E. REQUEST FOR ADVISORY RECOMMENDATION

361. In its Reply, the Government describes another error that has recently come to light. The Government describes two areas where JPs are currently receiving benefits that are not clearly authorized by the *JP Regulations:* a. the retirement extended health plan, and b. the mental health benefit, both of which appear to have been extended to JPs automatically.

362. To correct this error and maintain these benefits, the Government asks the Commission to give an advisory recommendation that the *JP Regulations* should be amended to provide these benefits, in a comparable fashion to how they are provided to out-of-scope employees.

363. The Commission agrees that the *JP Regulations* should be amended in this fashion and recommends that the Government take immediate steps to do so.

F. COSTS

364. The Government made no submission on the issue of Costs, but the Association requested the opportunity to make additional submissions if the matter could not be resolved between the Parties.

365. The Commission will be pleased to assist in any resolution process that the Parties

find appropriate, if need be.

VII. SUMMARY OF THE COMMISSION'S RECOMMENDATIONS

A. RECOMMENDATIONS ON MATTERS REQUIRED TO BE CONSIDERED

366. In summary, the Commission is pleased to make the following recommendations on the matters that it is required to consider:

(1) There should be no change to the determination of the annual salary for Justices of the Peace, based on 51% of the salary of Provincial Court Judges;

(2) There should be no change to the *pro rata* calculations made for Justices of the Peace who do not work on a full-time basis;

(3) There should be no change to the additional amount paid to the Supervising Justice of the Peace;

(4) There should be no change to the additional amount paid to the Assistant Supervising Justice of the Peace;

(5) The additional amount paid to the Administrative Justices of the Peace should increase to 2.5% of the annual salary, effective April 1, 2025;

(6) There should be no change to the amount contributed to the Public Employees Pension Plan by Justices of the Peace;

(7) The amount contributed to the Public Employees Pension Plan by the Government, on behalf of Justices of the Peace, should increase to 9%, effective April 1, 2025;

(8) The Commission recommends that the contribution rates for contributions to the Public Employees Pension Plan on behalf of all Justices of the Peace should be consolidated into a single provision of the *Justices of the Peace (Commission) Regulations.* To comply with the Commission's recommendation, s. 8 of the *Justices of the Peace (Commission) Regulations* should be amended as recommended by the Government at paragraph 154 of its primary submission.

(9) In conjunction with the recommendation set out as (8) above, the Commission recommends that the Minister responsible take steps to repeal s. 14.91 of the *Justices of the Peace Regulations*, effective April 1, 2025.

B. ADVISORY RECOMMENDATIONS

367. The following are the Commission's recommendations in summary form with respect to the matters that it may, but is not required, to consider:

(1) The Commission recommends that all full-time Justices of the Peace have access to a Short-term Disability Allowance, on a similar basis as that available to the Judges of the Provincial Court;

(2) The Commission recommends that Justices of the Peace have access to an accountable Educational Allowance that represents 51% of the Educational Allowance to which the Judges of the Provincial Court are entitled by virtue of ss. 6(4) of *The Provincial Court Compensation Regulations*, for full-time Justices of the Peace, or a portion of that allowance, pro-rated to the salary of any Justices of the Peace who are not engaged in their duties on a full-time basis;

(3) The Commission recommends no change to the benefits to which Relief Justices of the Peace are entitled;

(4) The Commission recommends no change to the mental health resources currently being made available to Justices of the Peace.

C. JOINT REQUEST BY THE GOVERNMENT AND THE ASSOCIATION

368. In response to the joint request made by the Parties, the Commission recommends that the *Justice of the Peace (Commission) Regulations* be retroactively amended as follows:

a. Section 3(1) of the *Justices of the Peace (Commission) Regulations* be amended by striking out "subsection 3(2) of *The Provincial Court Compensation Regulations*" and replacing it with "section 3 of *The Provincial Court Compensation Regulations*";
b. Sections 4(1) and 4(2) of the *Justice of the Peace (Commission) Regulations* be amended by adding terminal dates of March 31, 2019, and by enacting two new provisions, s. 4(1.1) and 4(2.1),

basing the *pro rata* formula on the 51% rate from April 1, 2019 onwards.

D. ADDITIONAL ADVISORY RECOMMENDATION

369. In response to the Government's request, the Commission recommends that the *Justices of the Peace Regulations* be amended to confirm the entitlement of Justices of the Peace to a retirement extended health plan and to a mental health benefit.

V. CLOSING REMARKS

370. The commission process is an important tool in maintaining the confidence of the public in the administration of justice. The Commission was privileged to participate in the process and wishes to thank the Association and the Government for their participation in the process and for their comprehensive submissions.

DATED at Saskatoon, Saskatchewan effective this 31st day of December, 2024.



Michelle J.
Ouellette K.C.
Chair

TAB 25

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
R-020-2026

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 1er octobre 2013
R-015-2016
R-095-2019
R-070-2022
R-020-2026

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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 $611 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; R-020-2026,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, $70 each hour;

(b) where the Chief Judge has authorized the justice of the peace to act at a presiding level, $83 each hour.

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 611 $ 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; R-020-2026, 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) 70 $ de l'heure, lorsque le juge en chef a autorisé le juge de paix à agir dans une fonction administrative;

b) 83 $ de l'heure, lorsque le juge en chef a autorisé le juge de paix à agir à titre de président.

(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; R-020-2026,s.3.

2.1. In addition to any fees payable under section 2, a fee of $83 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; R-020-2026,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, $70 each hour;

(b) where the Chief Judge has authorized the justice of the peace to act at a presiding level, $83 each hour.

(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 $83 each hour.

(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; R-020-2026,s.5.

4. Repealed, R-013-2006,s.2.

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(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; R-020-2026, art. 3.

2.1. En plus des droits payables en vertu de l'article 2, un droit de 83 $ 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; R-020-2026, 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) 70 $ de l'heure, lorsque le juge en chef a autorisé le juge de paix à agir dans une fonction administrative;

b) 83 $ de l'heure, lorsque le juge en chef a autorisé le juge de paix à agir à titre de président.

(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 83 $ de l'heure.

(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; R-020-2026, art. 5.

4. Abrogé, R-013-2006, art. 2.

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TAB 26

Citation: Judges of the Provincial Court (Man.) v. Manitoba et al., 2013 MBCA 74

Date: 20130821
Docket: AI 12-30-07822

2013 MBCA 74 (CanLII)

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Michel A. Monnin
Madam Justice Freda M. Steel
Madam Justice Holly C. Beard

B E T W E E N :

THE JUDGES OF THE PROVINCIAL	)	
COURT OF MANITOBA, as represented	)	
by the PROVINCIAL JUDGES'	)	
ASSOCIATION OF MANITOBA, as	)	
represented by JUDGE CHRISTINE	)	
HARAPIAK, JUDGE LEE ANN MARTIN,	)	
JUDGE JOHN COMBS, JUDGE MARY	)	
KATE HARVIE, JUDGE SHAUNA	)	***K. D. Labossiere*** *and*
HEWITT-MICHTA, JUDGE JOHN GUY,	)	***L. K. Troup***
JUDGE LAWRENCE ALLEN, JUDGE	)	*for the Appellants*
LINDA GIESBRECHT, JUDGE	)	

Appeal from 2012 MBQB 79, 276 Man.R. (2d) 265
See 2012 MBQB 153, 279 Man.R. (2d) 143

KRYSTYNA TARWID, CHIEF JUDGE	)	
KEN CHAMPAGNE and ASSOCIATE	)	***S. Dawes*** *and*
CHIEF JUDGE MURRAY THOMPSON	)	***D. G. Bartel***
	)	*for the Respondents*
	)	
(Applicants) Respondents	)	
	)	*Appeal heard:*
- and -	)	***December 13, 2012***
	)	
	)	
HER MAJESTY THE QUEEN IN RIGHT	)	*Judgment delivered:*
OF THE PROVINCE OF MANITOBA and	)	***August 21, 2013***
THE HONOURABLE ANDREW SWAN,	)	
MINISTER OF JUSTICE	)	
	)	
	)	
(Respondents) Appellants	)	

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STEEL J.A.

PART I Introduction

[1] This appeal concerns the Government of Manitoba's (the Government) response to the recommendations of the Judicial Compensation Committee (JCC) appointed in 2008, the 7th Judicial Compensation Committee to be held in Manitoba. That Committee made recommendations respecting the salaries and benefits to be paid to judges of the Provincial Court for the fiscal years 2008, 2009 and 2010. The Government rejected several of the Committee's recommendations, the most important of those being the recommendation in respect of salary increases.

[2] Provincial Court judges are appointed by the Provincial Government. Their salaries are paid by the Provincial Government. However, the Provincial Government is often a litigant in Provincial Courts in many and diverse matters. It is, therefore, imperative that the judicial independence of the Provincial Court judges be closely guarded and that the public perception of their judicial independence be spotless. See *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. Quebec (Attorney General); Minc v. Quebec (Attorney General)*, 2005 SCC 44, [2005] 2 S.C.R. 286 (*Bodner*) (at para. 6):

> …. 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 …

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[3] Judicial independence is composed of several factors, one of them being financial security, both for the individual judge and the court as a whole. It would be wholly inappropriate for the judges to bargain and negotiate with the Government directly about their salaries or working conditions. Judges cannot threaten to strike and the Government cannot threaten to lock them out.

[4] While some jurisdictions (including Manitoba) had some form of judicial compensation committee process in place prior to 1997, the process as it now exists came into being as a direct result of the 1997 Supreme Court of Canada decision in *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island; Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3 (the *P.E.I. Reference*).

[5] In that decision, the Supreme Court considered cases which originated from Manitoba, Alberta and Prince Edward Island, all of which concerned the independence of the judiciary. The court held that an independent judicial compensation committee should be established to determine the issue of salary and benefits of judges. A panel of three people would hear representations from both the judges and the government and make recommendations to the government.

[6] These committees were intended to remove the issue of judges' compensation from the political sphere and to avoid confrontation between governments and the judiciary. "The constitutional function of this body is to depoliticize the process of determining changes or freezes to judicial

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remuneration" (*Reference* at para. 166).

[7] Every federal, provincial and territorial jurisdiction across Canada now has some form of judicial compensation committee responsible for making recommendations to government concerning appropriate compensation for judges for the period of that committee's mandate. To this end, *The Provincial Court Act*, C.C.S.M., c. C275 (the *Act*), requires the Government to set up a judicial compensation committee every three years. The recommendations of the JCC are not binding on the Government, with one exception, to be mentioned later. However, if the Government rejects or varies the recommendations, it has to provide a rational reason for doing so and the process must be properly followed.

[8] The Government rejected most of the recommendations of the 2008 JCC, giving several reasons for doing so. The Provincial Judges' Association of Manitoba (the judges) argued, and the application judge agreed, that the Government did not have a sufficient reason for rejecting the recommendations and ordered that the recommendations of the 2008 JCC be implemented.

[9] I agree with the application judge. The reasons of the Government rejecting the recommendations of the 2008 JCC do not pass the test of simple rationality set out by the Supreme Court of Canada in the *Bodner* case. I would dismiss the appeal for the reasons that follow.

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PART II Overview

[10] In May 2008, pursuant to s. 11.1(2) of the *Act*, the Lieutenant Governor in Council appointed a JCC to investigate, report and make recommendations respecting the salaries and benefits to be paid to the judges for the fiscal years 2008, 2009 and 2010. Written submissions were made by both parties and the hearing in front of the JCC took place in August 2008. Because of certain developments in the global and national economy that occurred after the hearing, the parties were invited to make further submissions, which they did, although neither party changed its position despite these economic developments. The JCC issued its report in June 2009.

[11] The JCC made recommendations with respect to judicial salaries, salary differentials for administrative judges, interest payable on the retroactive salary recommendation, extended health benefits, life insurance, maternity and parental leave, parking and costs.

[12] The JCC report was tabled in the Legislature in September 2009. Manitoba, Legislative Assembly, *The Standing Committee on Legislative Affairs*, 39th Leg., 3rd Sess., vol. LXI, No. 9 (26 October 2009) (the Standing Committee) considered the JCC report and then met on October 26, 2009, where counsel for the judges made a presentation and answered questions. Immediately following the presentation, the Standing Committee passed a motion which had been prepared and printed earlier and included three schedules. The first schedule listed the recommendations of the JCC that were accepted. The second schedule listed the recommendations of the

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JCC that were rejected and the reasons offered to justify the rejection of those recommendations. The third schedule listed the recommendations made by the Standing Committee in substitution for recommendations made by the JCC. The Standing Committee rejected the most significant recommendations of the JCC, specifically those relating to salary, salary differentials for administrative judges and interest.

[13] The report of the Standing Committee was presented in the Legislature in December 2009, and the Legislature voted to concur with the report of the Standing Committee.

2.1 Report of the 2008 Judicial Compensation Committee

[14] The JCC heard testimony from four expert witnesses: two economists and two actuaries. Both the judges and the Government told the JCC that it should consider salary information that became available after the conclusion of the hearing, but before the JCC issued its report.

[15] In discharging its mandate, the JCC was required by s. 11.1(16) of the *Act* to consider the following six factors:

1. the nature of the Provincial Court judge's role and the independence of the judiciary;

2. the need to attract and retain excellent applicants to the judiciary and the statistics with respect to the recruitment, retention, resignation and retirement of Provincial Court judges;

3. the need to provide fair and reasonable compensation for Provincial Court judges in light of prevailing economic conditions in Manitoba and the

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overall economic and financial state of the Manitoba economy;

4. the principle that public resources must be managed efficiently and effectively in the context of the Government's current financial position;

5. the cost of living and the growth or decline in real per capita income in Manitoba;

6. the manner in which the compensation package paid to Provincial Court judges in Manitoba compares to judicial compensation packages in other jurisdictions in Canada, having regard to the differences between the jurisdictions.

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[16] It is useful to review the 2008 JCC Report ("Report and Recommendations of the Judicial Compensation Committee" by Colin R. MacArthur, Q.C., Victor H. Schroeder, Q.C. & David M. Shrom, June 9, 2009) in some detail, since some of the Government's reasons for rejecting the 2008 JCC Report, allege that the JCC did not consider certain factors which it should have, or did consider certain others which it should not have.

[17] In its 2008 JCC Report, the JCC referred to those six factors specifically and stated that "[t]he Committee understands its obligation is to balance all of the Factors in an objective, impartial manner to arrive at a rational conclusion, which is justified by reasons" (see the 2008 JCC Report at p. 70). It also pointed out that, while it is required to consider all six factors, it may also consider other factors, as long as it identifies the basis for its recommendation.

[18] Additionally, the *Act* requires that the JCC Report must include information as of April 1 of the year of the committee's appointment, regarding the salaries paid to the Chief Judge, Associate Chief Judge and full-time judges of the Provincial Courts in the provinces of New Brunswick, Nova Scotia and Saskatchewan (the three provinces), and the designated averages of the salaries paid to the Chief Judges, Associate Chief Judge and full-time judges for the three provinces (s. 11.1(17) of the *Act*). The JCC was able to obtain current information from both Nova Scotia (2008-2011) and Saskatchewan (2009-2012) to use in its report. In coming to its decision, the JCC took into account that it did not have current information for New Brunswick.

[19] Aside from the consideration of the mandatory statutory factors, the JCC reviewed the past reports from the other JCCs and noted certain principles that have been consistently followed. For example, it found that the most appropriate comparator in assessing its recommendation for salaries and benefits was salaries and benefits paid to Provincial Court judges in other jurisdictions. It specifically rejected the position advanced by the Government that salaries and benefits paid to senior public servants was an appropriate comparator. The JCC reasoned that, since the *Act* specifically requires the JCC to consider the salaries and benefits paid to Provincial Court judges in other jurisdictions in Canada, but makes no mention of the compensation levels of senior civil servants, that was a compelling statement of provincial public policy.

[20] In addition, again consistent with the recommendations of other JCCs (for example, JCC 4 appointed February 2001 and JCC 5 appointed

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March 2005), it held, that based on the Government's economic performance, Manitoba Provincial Court judges should be paid at, or near, the mid-range of salaries paid to Provincial Court judges across Canada. (See JCC 5 at p. 39 of its report and JCC 6 at p. 36 of its report, indicating that Manitoba's economy operates in the middle range of the provinces in Canada.)

[21] On the other hand, the JCC accepted the submission of the Government that the reference in the sixth factor to other jurisdictions in Canada referred to the nine other provinces of Canada and did not include, as submitted by the judges, the federal judiciary.

[22] Of particular importance in coming to its decision was the need to consider the economic situation of the province balanced against the need to provide fair and reasonable compensation to Provincial Court judges. The JCC reviewed the economic evidence presented by the parties in some detail, both initially and after further evidence was submitted as a result of the downturn in the global economy. It did fine-tune its recommendations as a result of the caution urged upon it by the Government.

[23] In this regard, it concluded that:

> …. The Committee is convinced that Manitoba's economy is performing at least in the middle pack of Canadian provinces. If anything, the economic outlook prior to August 2008 was stronger than it was in March 2003 when JCC5 described the Manitoba economy as ranking in the middle range of the provinces in Canada.

[24] There also is little disagreement between the judges and the

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Government that, compared to other provinces in Canada, Manitoba continued to perform well. The Government has specifically acknowledged that fact in its subsequent submissions. However, despite the fact that Manitoba continues to perform well in comparison to most other provinces, according to forecasts received by the JCC, Manitoba is in decline.

[25] The JCC did endorse the position of the Government that it must proceed prudently in assessing the economic situation, notwithstanding the relatively good performance of Manitoba, because of the severe economic downturn and uncertainty for the economic future of the province. Taking this into account, the JCC adjusted its proposed recommendation downwards.

[26] In addition, the salary recommendation in each of the subsequent years was made taking into account the fact that the Manitoba JCC did not have the New Brunswick comparable for 2008 and, since it must be assumed that when it comes in it will be higher than the 2007, that means that Manitoba Provincial Court judges will be paid less than the binding average provided for in the *Act*.

[27] In the result, the JCC recommended judges' salaries be increased by five per cent in 2009 and 2010. The recommendation for 2008 was less than the "designated average." By virtue of s. 11.1(23)(c) of the *Act*, when the salary recommendation of the JCC is the same or less than the average salaries of the judges from New Brunswick, Nova Scotia and Saskatchewan, it is binding on both the Government and the judges.

[28] With respect to salary differentials for the Chief Judge and

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Associate Chief Judges, the recommendation was eight per cent and five per cent, respectively, above the other judges' salary. The JCC also recommended that interest be paid on retroactive salary adjustments from April 1, 2008, until the date of payment.

[29] Recommendations were also made with respect to maternity and parental leave policy, parking rates and premiums for life insurance coverage for judges.

2.2 Government's Response to the Recommendations

[30] The 2008 JCC Report was tabled in the Legislature on September 28, 2009. At the outset of the meeting of the Standing Committee, for about one hour, counsel for the judges made a presentation and answered questions asked by various members of the Standing Committee. Counsel also provided the members with current salary information in respect of the New Brunswick judges.

[31] The report of the Standing Committee was presented in the Legislature on December 1, 2009. The Legislature voted to concur with the report on December 14, 2009.

[32] The Government rejected the recommendations of the JCC with respect to salaries and salary differentials. Instead, for 2009, it substituted a 2.9 per cent increase and, for 2010, a one per cent increase, but with the increase to be effective only on the last day of that fiscal year, being March 31, 2011. The Government also rejected the recommendation with respect to interest.

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[33] In rejecting the recommendations of the JCC regarding the salary increase, the Government provided the following reasons:

1. The salary increase recommendation failed to properly take into account the six factors the JCC must consider;

2. the salary increase recommendation went beyond what is appropriate or necessary for maintaining judicial independence;

3. the salary increase recommendation did not adequately take into account the value of the existing salary level, pension and other benefits in attracting and retaining a pool of highly qualified candidates;

4. the salary increase recommendation failed to take into account the value of the maternity and parental benefits which were accepted by the Standing Committee or the fact that the 2008 salary increase resulted in a significant increased cost to Manitobans;

5. The salary increase recommendation did not fairly and reasonably consider the total compensation paid to judges in Manitoba. In particular, it failed to acknowledge the pension payable to judges, which is currently among the most generous in Manitoba;

6. the salary increase recommendation was inconsistent with other public service salary increases and the current policy of negotiated wage restraint in the public service, absent special circumstances;

7. the substituted salary increase proposed provided fair and reasonable

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compensation, having regard to prevailing economic conditions in Manitoba, while still preserving judicial independence and the ability to attract and retain candidates for the judiciary;

8. the salary increase recommendation was based on a national average rather than the average arrived at by comparing judicial compensation in Saskatchewan, Nova Scotia and New Brunswick; and

9. the salary increase recommendation was inconsistent with the JCC's own findings about the economic conditions of the province that it was a time for prudence and that the Provincial Court judges were part of the Manitoba community.

PART III Relevant Legislation

[34] All of s. 11.1 of the *Act* is attached to these reasons as an appendix. The following provisions are the most relevant:

> **Factors to be considered**
> **11.1(16)** In making its report and recommendations, the compensation committee must consider the following factors:
>
> (a) the nature of the judges' role and the independence of the judiciary;
>
> (b) the need to attract and retain excellent applicants to the judiciary and the statistics with respect to the recruitment, retention, resignation and retirement of judges;
> (c) the need to provide fair and reasonable compensation for judges in light of prevailing economic conditions in Manitoba and the overall economic and financial state of the Manitoba economy;

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(d) the principle that public resources must be managed efficiently and effectively in the context of the government's current financial position;

(e) the cost of living and the growth or decline in real per capita income in Manitoba;

(f) the manner in which the compensation package paid to judges in Manitoba compares to judicial compensation packages in other jurisdictions in Canada, having regard to the differences between jurisdictions.

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Report given to minister and judges

11.1(20) Within 180 days after the compensation committee is appointed, it must give its report, including recommendations, to the minister, the Chief Judge, the Associate Chief Judges and the judges of the court. Until the report is tabled in the Legislative Assembly, it is confidential and must not be made public or disclosed to a person outside the government or the provincial judiciary.

Request to clarify report

11.1(21) Within seven days after the report of the compensation committee is submitted, the chief judge, an associate chief judge, a judge of the court or the minister, may request the compensation committee to clarify the report or a part of it. The compensation committee must consider the request and provide any clarification to the persons who received the report under subsection (20) within 15 days after the request is made. The report is not considered to be submitted until the clarification is provided.

Minister to table report

11.1(22) The minister shall table the report of the compensation committee in the Assembly within 15 days after it

is submitted if the Assembly is sitting, or if it is not, within 15 days after the beginning of the next sitting.

When recommendations re salaries are binding

11.1(23) For each year for which the compensation committee makes recommendations, the following recommendations are binding on both the government and the judges:

(a) the salary recommended for the Chief Judge for the year, if the chairperson of the compensation committee certifies with respect to that year that the recommended salary is equal to or less than the chief judge's designated average;

(b) the salary recommended for an Associate Chief Judge for the year, if the chairperson of the compensation committee certifies with respect to that year that the recommended salary is equal to or less than the associate chief judge's designated average;

(c) the salary recommended for a judge of the court other than the Chief Judge and an Associate Chief Judge, for the year, if the chairperson of the compensation committee certifies with respect to that year that the recommended salary is equal to or less than the judge's designated average.

Referral to standing committee

11.1(24) Within 20 days after the report of the compensation committee is tabled, the recommendations of the compensation committee, except those that are binding on the government under subsection (23), must be referred to a standing committee.

Completing report

11.1(25) The standing committee must complete its report to the Assembly within 120 days after the date of referral.

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Reporting to Assembly
11.1(26) The chairperson of the standing committee must present the report to the Assembly within five days after the report is completed if the Assembly is sitting, or if it is not, within five days after the beginning of the next sitting.

Report of standing committee re recommendations
11.1(27) With respect only to those recommendations of the compensation committee that have been referred to it, the standing committee may in its report

(a) accept one or more of the recommendations;

(b) reject one or more of the recommendations; or

(c) reject one or more of the recommendations and set the salaries or benefits that are to be substituted for the salaries or benefits proposed by the rejected recommendations;

and if the standing committee rejects a recommendation, it must provide reasons for each recommendation rejected.

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PART IV Decision of the Application Judge

[35] The application judge reviewed the two leading Supreme Court of Canada cases in this area, the *P.E.I. Reference* case and the *Bodner* case, and identified his role in conducting the judicial review as being deferential and limited in scope. His role was to determine whether the Government's reasons for refusing to follow the recommendations of the JCC were rational and supported by a factual foundation. If they were, then there were no

grounds for judicial intervention.

[36] He examined the recommendations of the JCC and the Government's response in light of the jurisprudence. He noted that, with respect to the reasons given by the Government in rejecting the salary increases recommended by the JCC, the Government led no evidence as to what agreements had been reached with various sectors of the public service for the years 2009 and 2010 at the JCC hearing. He also noted that, by December of 2008, there was evidence before the JCC that the economic crisis had subsided, which evidence was not contradicted by the Government.

[37] He concluded that, instead of attempting to assist the JCC in arriving at an appropriate level of compensation for the judges, the Government had taken a position that would protect its interests in terms of not raising the expectations of employees in the public sector with whom the Government had yet to bargain.

[38] He compared the position taken by the Government of Manitoba to that taken by the Government of Quebec before a compensation commission established in that province and concluded in his reasons (at para. 79):

> In my view, the position taken by the government here is as tainted as was the position taken by the government in Québec because the government was doing its best, in responding to the JCC's recommendations, to protect its bargaining position with public-sector groups rather than focusing, as it was required to do, on what the appropriate level of compensation for judges should be.

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[39] The Government alleges that the application judge erred on five grounds, as follows:

1. By failing to properly apply the applicable legal test, including the obligation to conduct a limited review with deference to the Government's decision;

2. by failing to apply the appropriate remedy, which was to remit the matter back to the Government;

3. by adjudicating on irrelevant matters;

4. by improperly finding the Government acted in bad faith; and

5. by awarding solicitor-client costs.

[40] The Government is not appealing all aspects of the application judge's ruling. There is no appeal with respect to the extended health benefits, life insurance, maternity and parental leave or parking. There is an appeal with respect to salaries, salary differentials for administrative judges, interest payable on the retroactive salary recommendation and costs.

[41] Although there is no appeal with respect to the ruling on life insurance or the effective date of the maternity and parental leave policy and parking, the history of the parties' dealings on these issues and the Government's treatment of those recommendations are relevant to the finding by the application judge of bad faith on the part of the Government and the consequent award of solicitor-client costs. Therefore, those issues will be addressed later in these reasons in the discussion on costs.

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PART V Analysis and Decision

5.1 Standard of Review

[42] In the *Bodner* case, the Supreme Court of Canada was quite explicit on the nature of the standard to be applied by a court reviewing a government's response to the recommendations of a judicial compensation committee. The standard of judicial review is one of simple rationality. The role of the reviewing court is to conduct a deferential, limited form of judicial review. This deferential review acknowledges the government's unique position and accumulated expertise and its constitutional responsibility for management of the province's financial affairs (see *Bodner* at para. 30).

[43] That is the standard that should have been applied by the application judge to the decision of the Government not to follow the JCC recommendations.

[44] What, then, is the standard of review in this court? The Government argues that the applicable standard of review with respect to this appeal is correctness. The judges argue that the appeal deals with questions of mixed fact and law and submit that the standard of review is one of palpable and overriding error.

[45] This is an appeal of a review of a decision of the Government under the *Act*, so the determination of the applicable standard of review is governed by the principles of administrative law and, in particular, *Dr. Q v. College of Physicians and Surgeons of British Columbia*, 2003 SCC 19,

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[2003] 1 S.C.R. 226, and more recently in *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-47. Our task on appeal with respect to the major ground of appeal is to determine whether the application judge correctly applied the legal test set out in *Bodner*. Accordingly, if the application judge chose the wrong standard of review or incorrectly applied the correct standard of review, this court would be justified in intervening. Moreover, if the application judge committed palpable or overriding error with respect to the facts and the evidence referred to in his analysis, this would also justify intervention. (See *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235.) His decision on costs was a discretionary one and should not be varied unless he proceeded on a wrong principle, a misapprehension of the evidence or the decision was clearly unjust.

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5.2 Did the Application Judge Err in his Application of the Appropriate Legal Test?

What is the legal test?

[46] Both parties agree that the legal test applicable to the matters at issue was set out by the Supreme Court of Canada in the *Bodner* case. The difference between the parties arises from the application judge's application of the *Bodner* test. Before commenting on the application judge's application of the law to the facts, I believe it would be helpful to set out the law in this area.

[47] In the *Bodner* case, Provincial Court judges in New Brunswick, Ontario and Quebec, justices of the peace in Alberta and municipal court

judges in Quebec sought judicial review of their governments' decision to reject certain compensation committee recommendations relating to their salaries and benefits.

[48] The Supreme Court of Canada took the opportunity to set out the principles that apply in these situations and to clarify the operation of the committees that they recommended be set up in the *P.E.I. Reference* case in 1997.

[49] They held that the JCC recommendations are not binding upon a legislature, unless the legislature provides otherwise. The government may choose not to follow the recommendations, but it must justify its decision with rational reasons and those rational reasons must have a reasonable factual foundation (*Bodner* at para. 39).

[50] As indicated earlier in these reasons, the role of the application judge upon review is to conduct a deferential, limited form of judicial review. The standard of judicial review is one of simple rationality. The test developed in *Bodner* is composed of three parts:

1. Has the government articulated a legitimate reason for departing from the commission's recommendations?

2. Do the government's reasons rely upon a reasonable factual foundation?

3. Viewed globally, has the commission process been respected and have the purposes of the commission, preserving judicial independence and depoliticizing the setting of judicial

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remuneration, been achieved?

[51] In *Bodner*, the court explained what would be "legitimate reasons" (at paras. 23-24):

> The commission's recommendations must be given weight. They have to be considered by the judiciary and the government. The government's response must be complete, must respond to the recommendations themselves and must not simply reiterate earlier submissions that were made to and substantively addressed by the commission. The emphasis at this stage is on what the commission has recommended.
>
> The response must be tailored to the commission's recommendations and must be "legitimate" ... which is what the law, fair dealing and respect for the process require. ….

[52] Reasons that are complete and that deal with the committee's recommendations in a meaningful way will meet the standard of rationality. Legitimate reasons must be compatible with the common law and the constitution. The government must deal with the issues at stake in good faith, and bald expressions of rejection or disapproval are inadequate. Instead, the reasons must show that the committee's recommendations have been taken into account and must be based on facts and sound reasoning. They must state in what respect and to what extent they depart from the recommendations, articulating the grounds for rejection or variation. The reasons should reveal a consideration of the judicial office and an intention to deal with it appropriately. They must preclude any suggestion of attempting to manipulate the judiciary (*Bodner* at para. 25).

[53] With respect to the second part of the test, the reviewing court

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"must determine whether the government has explained the factual foundation of its reasons in its response" (*Bodner* at para. 36). The court must also consider whether it is rational for the government to rely on the stated facts or circumstances to justify its response. While the government may expand upon the factual foundation in affidavit evidence before a reviewing court, "[a]bsent new facts or circumstances, as a general rule, it is too late to remedy that foundation in the government's response before the reviewing court" (*ibid.*).

[54] In applying the third part of the test, the reviewing court is to consider the overall process from a global perspective. The focus shifts to the totality of the process and of the response. Although a court may find fault with certain aspects of the process followed, the court must weigh and assess the government's participation in the process and its response in totality, and determine whether the government has respected the purposes of the committee: preserving judicial independence and the depoliticization of the remuneration process. In other words, has the government engaged in a meaningful way with the process of the commission? As *Bodner* stated (at para. 43):

> A court should not intervene every time a particular reason is questionable, especially when others are rational and correct. To do so would invite litigation, conflict and delay. This is antithetical to the object of the commission process. If, viewed globally, it appears that the commission process has been effective and that the setting of judicial remuneration has been "depoliticized," then the government's choice should stand.

[55] Also, at the third stage, looking at the matter from a global

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perspective, if the government has participated actively in the process, it must be shown greater deference than if it had ignored the process (see *Bodner* at para. 83).

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[56] So, in summary, the reviewing court is to conduct a limited, deferential review and determine whether the government's reasons for not following the recommendations of the committee were rational. The reasons will be rational where there existed evidence of a reasonable factual foundation for the government's decision to depart. The evidence must be reviewed globally and not piece by piece.

[57] The Government argues that while the application judge stated the law correctly, he did not apply those principles correctly to the facts and he did not accord the Government the appropriate level of deference. In addition, the Government submits that the application judge failed to explain why the evidence relied on by the Government was not accepted and also failed to consider the evidence as a whole, as he was required to do.

What Constitutes the Government's Reasons?

[58] One point that should be clarified is exactly what constitutes the Government's reasons for rejecting the JCC recommendations.

[59] In Schedule B of the Motion of the Standing Committee, one finds the seven recommendations that are rejected, followed by a section headed:

> The Reasons: In reviewing the report of the Judicial Compensation Committee, the standing committee has examined each of the recommendations individually and collectively. The reasons for rejecting these recommendations are as follows ….

….

[60] The reasons of the Government are set out in the following 11 paragraphs. In its factum, the Government relies on these paragraphs as constituting its reasons for rejecting the recommendations related to salary increases, salary differentials for administrative judges and interest.

[61] At the hearing, counsel argued that, as part of the factual foundation for the Government's position, the court should also take into account as reasons the questions and answers reported during the discussion at the Standing Committee. For example, reliance is placed on a comment by the Honourable Rosann Wowchuk that "[t]hese numbers were derived on, based on government's dealing with all parts of the public sector and where we are given the economic times."

[62] I reject the argument that the reasons of the Government should include all the discussion, questions and answers reported in Hansard. As *Bodner* indicates, if called upon to justify its decision in a court of law, the government may not advance reasons other than those mentioned in its response, although it may provide more detailed information with regard to the factual foundation upon which it has relied (see paras. 8, 21, 26-27).

[63] In this case, I take the reasons for the rejection of the JCC's recommendations to be the reasons stated in Schedule B of the report of the Standing Committee. They are clearly identified as "reasons." It is not for this court or any court for that matter, to scour all the legislative proceedings and put together reasons for the Government's rejection from the questions and answers of the members of the Standing Committee.

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Appropriate Level of Deference

[64] The Government submits the application judge erred by concluding that the degree of deference to be shown by the court to the actions of the government "depends upon, and is proportional to, the degree to which the Government has participated in the process" (at para. 44). Instead, it submits that deference is always to be given, with greater deference being shown when the Government participates in the process than if it had ignored the process. Here, it is argued, the Government participated fully in the process and should be afforded the greatest deference.

[65] It is correct that deference is always to be shown to the Government and the application judge clearly stated that deference is appropriate. He repeats several times that the standard is one of deference to the Government (for example, see para. 50).

[66] However, it is also correct that the application judge stated that the degree of deference to be shown by the court depends upon, and is proportional to, the degree to which the Government has participated in the process. In so doing, he was simply following the Supreme Court's admonition in *Bodner* when it stated, in referring to the third part of the test and the need for a holistic analysis, "[t]hus, the Government has participated actively in the process and it must be shown greater deference than if it had ignored the process" (at para. 83).

[67] I see no error here. The application judge is reflecting the fact that the court is analyzing the process as a whole and trying to determine whether

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the Government participated wholeheartedly and effectively in the process or whether its actions simply showed it "was going through the motions." The whole point of the committee process is to "depoliticize" the setting of judicial remuneration. Is the Government truly committed to the process or is it simply going through the process because the Supreme Court has stated that it must?

[68] The application judge refers to several incidents which, taken as a whole, he found reflected the fact that the Government was not meaningfully considering the recommendations of the JCC. He is entitled to do that, especially in the third stage.

[69] So, for example, the application judge concluded that the process became politicized when the Standing Committee passed a motion, which counsel for the Government acknowledged was prepared before the hearing, immediately after hearing from counsel for the judges, thereby showing that they did not consider anything she had to say. Not only was this an example of a disregard for the process, but it was also, according to the application judge, an example of bad faith.

[70] On appeal, the Government argues that this reflected the application judge's misunderstanding of the process. The Standing Committee had a number of months to review the JCC's recommendations. At the meeting held on October 26, 2009, the Standing Committee was not obligated to hear from counsel for the judges. The fact that the Standing Committee was not persuaded to change its position with respect to the JCC recommendations was not a wanton disregard of process or evidence of bad

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faith.

[71] It may or may not be evidence of bad faith. However, the *Act* made the salaries of the judges in the three comparison provinces of crucial importance in determining the salary of the Manitoba judges. When the JCC made its recommendation, it stated specifically that it did not have up-to-date information about the salary of New Brunswick judges. Counsel for the judges was now providing that information to the Standing Committee. Surely, the fact that it did not even cause the Standing Committee a moment's reflection is indicative of the Government's lack of consideration of the JCC process and something that the application judge was entitled to consider.

[72] There were other such examples, not so much of malice or bad faith, but rather, of a lack of attention and respect for the process. For example, the JCC recommended that the maternity and parental leave policy be effective as of April 1, 2008. Without explanation, the Standing Committee made it effective on the date it was approved by the Legislative Assembly. The fact that this was unintentional and an oversight is confirmed by the fact that counsel for the Government wrote to counsel for the judges on November 23, 2010, confirming that the Government did not take issue with the fact that the implementation date was to be the date recommended by the JCC.

[73] Again, in its substituted salary adjustment for 2010, the effective day of the salary adjustment was the very last day of the 2010 fiscal year. This strange departure from the previous consistent practice of effective

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adjustment on the first day of the fiscal year (April 1) was never suggested or mentioned in front of the JCC and never explained by the Standing Committee in its reasons. Since the Supreme Court mandated the JCC process in 1997, the practice had been for increases to be implemented on the first day of the fiscal year in question.

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Application of the Law to the Facts

[74] I agree with the application judge that the Government's reasons for rejecting the JCC salary recommendations do not meet the level of simple rationality. They are conclusory, are not supported by a factual foundation and do not come to grips meaningfully with the JCC recommendations. In many ways they are simply a repetition of its arguments in front of the JCC. As was stated in *Bodner*, to constitute legitimate reasons, the Government must not simply reiterate earlier submissions that were made to, and substantively addressed by, the JCC. Bald expressions of disapproval are inadequate, as are simple statements that the salary increases are unfair or unreasonable in the current economic climate. One must explain why (see *Bodner* at para. 30).

[75] For example, the Government's first reason for rejecting the salary increases in 2009 and 2010 is that the JCC failed to properly take into account or balance the six factors set forth in the legislation. It does not explain how the JCC failed to properly balance those factors. In fact, the report of the JCC goes through each of the six factors in great detail, explains its understanding of the position taken by each of the parties on

each of the factors and further explains why it balances the factors in the way that it does. I agree with the application judge that the Government failed to "justify what different weights ought to have been given by the JCC to those factors" (at para. 83). (Also see *Bodner* at para. 26.)

[76] Another example of the conclusory nature of the Government's objections is its second reason that the recommended salary increase goes beyond what is considered appropriate and necessary for maintaining judicial independence. The JCC spent many pages reviewing the evidence and explaining how it reached its decision. To simply say the salary increase is inappropriate, without more, is not a reason; it is an opinion without any evidentiary support or justification. No factual foundation is asserted by the Government in articulating the position it took in departing from the JCC's recommendation.

[77] The third reason asserted by the Government is that the JCC did not adequately address the Government's position that existing salary levels, together with the value of pension and other benefits, were more than adequate to attract and retain an acknowledged pool of highly qualified candidates. But, the JCC agreed with the Government on this point, and it makes no sense for the Government to rely on this point as a reason to reject the recommendations of the JCC (see the 2008 JCC Report at p. 53).

[78] The fourth and fifth reasons are similar, in that both argue that the JCC failed to adequately take into account either the binding salary increase payable as of April 2008 or the other benefits being paid to the judges, such as maternity leave and pension benefits which, together, result in a generous

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compensation package and an increased cost to Manitobans. Neither of these arguments is accompanied with any factual foundation. The assertion stands by itself. The Government provided no context or detail of the actual increase in cost and failed to bolster its assertion with any evidence.

[79] In fact, the JCC went to great lengths to explain the rationale for recommending a five per cent increase in the years subsequent to 2008. It is obvious from a reading of the JCC report that it was aware of the fact that the salaries paid to the judges were but part of a total compensation package. In the 2008 JCC Report, the first statement made by the JCC under the heading "The Committee's Recommendation Regarding Salary" is as follows:

> The Committee has the responsibility to recommend a salary to be paid to [Provincial Court Judges], which forms part of a total compensation package, and the Committee must be mindful that the expense of the compensation package is borne by the taxpayers of Manitoba.

[80] Further, in its concluding remarks on the issue of salary increases, the JCC made the following statement:

> The Committee has made this recommendation that such an increase will be greater than that received by many Manitobans over the next three years. Nonetheless, the Committee is satisfied, given the continuing relative strength of the Province's economy, such an increase is necessary to providing a fair and reasonable salary as part of a compensation package.

[81] The same problem is present with the Government's sixth reason. Instead of meaningfully responding, the government "simply reiterate[s]

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earlier submissions that were made to and substantively addressed by the commission" (*Bodner* at para. 23). In that sixth reason, the Government states that the increases in salary recommended would be unfair and unreasonable to the Government in relation to other public service salary increases in order to maintain what the Government regards as the greater good of the public service. The Government also took the position that the recommendations were inconsistent with the current policy of negotiated wage restraint in the public service absent special circumstances.

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[82] Yet the Government led no evidence as to what agreement had been reached with various sectors of the public service for the years 2009 and 2010. The uncontradicted evidence was that, by December of 2008, the economic crisis had subsided. Moreover, no evidence was tendered by the Government during the course of the hearing conducted by the JCC as to the level of salary increases that had already been negotiated with different segments of the public sector for the years 2009 and 2010.

[83] As pointed out by the application judge (at para. 103):

> If the government wanted to argue that the JCC's recommendation for salary increases for judges should be consistent with the government's policy of "negotiated wage restraint in the public service", the government ought to have tendered evidence at the hearing conducted by the JCC as to the results of that policy in terms of salary increases to be paid to various sectors of the public service. The government provided no such evidence.

[84] As stated earlier, this position of the Government is similar to the position taken by the Government of Quebec before a compensation

committee established in that province. In referring to the Quebec Government's positions, the Supreme Court of Canada had this to say (*Bodner* at para. 160):

> .... Its position is tainted by a refusal to consider the issues relating to judicial compensation on their merits and a desire to keep them within the general parameters of its public sector labour relations policy. The Government did not seek to consider what should be the appropriate level of compensation for judges, as its primary concerns were to avoid raising expectations in other parts of the public sector and to safeguard the traditional structure of it pay scales.

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[85] The Government did not change its position when the JCC reconvened for further evidence as a result of the change in economic conditions. The Government simply "urged the JCC to pay attention to the factors set forth in the **Act**" (at para. 100). Nor does the Government allege that there were new and changed considerations that needed to be addressed by the Standing Committee.

[86] This is in contrast to the situation in the case of *Aalto v. Canada (Attorney General)*, 2010 FCA 195, [2012] 1 F.C.R. 290. In the *Aalto* case, the economic conditions deteriorated from the time the committee issued its report and pay restraint had already been imposed on the federal public service. The court agreed that it would not be appropriate to exempt the prothonotaries from these across-the-board measures (see *Aalto* at para. 19).

[87] In its seventh reason for rejection of the JCC recommendations, the Government stated that the substituted salaries "would be more consistent with the government's approach for public servants in the majority of the

service" (at para. 75). The application judge rejected this rationale, stating that "special circumstances exist that permit the government to except the judges from its general policy of 'negotiated wage restraint in the public service'" (at para. 106).

[88] The Government submits that the application judge erred when he made the above statement. It points to the *Bodner* case, where the Supreme Court makes clear that the case law does not require that the Legislature or the executive establish the existence of exceptional circumstances in order to justify a departure from the recommendations (at para. 34).

[89] The law does not require that judges be treated differently in circumstances of economic restraint. As a matter of fact, it would be inappropriate if it were otherwise. As Lamer C.J. pointed out in the *P.E.I. Reference* decision (at para. 133):

> First, as a general constitutional principle, the salaries of provincial court judges can be reduced, increased, or frozen, either as part of an overall economic measure which affects the salaries of all or some persons who are remunerated from public funds, or as part of a measure which is directed at provincial court judges as a class. ….

[90] And further, Lamer C.J. went on to say that (at para. 184):

> …. Across-the-board measures which affect substantially every person who is paid from the public purse, in my opinion, are *prima facie* rational. ….

[91] However, in this case, the Government had not imposed across-the-board measures, either before the JCC recommendations or after.

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Minister Wowchuk told the Standing Committee in October 2009, that the substituted salaries reflected "where we feel settlements can go" "given the economic times." In other words, they did not want to raise expectations when they entered into bargaining with public servants.

[92] Second, the Government had departed from its bargaining position in some public sector settlements based on "special circumstances" such as recruitment and retention.

[93] Third, judges are different from public sector employees in that they must rely upon the JCC process and the good faith of the legislative branch. They cannot negotiate. While judges' salaries can and should be reduced or otherwise changed as part of an "across-the-board measure," the government must first put its proposed measure to the JCC, unless the circumstances have changed after the report is issued. (*P.E.I. Reference* at para. 147).

[94] Counsel for the Government indicated that they were not arguing that the economic condition had worsened when the recommendations came before the Legislature. Rather, when the recommendations came before the Government, it was then in the process of developing a policy on wage restraints. The Government now had a policy of fiscal restraint and the compensation for judges needed to be part of that plan. I fail to understand that argument.

[95] In December 2008, the parties effectively agreed that the Government was comparatively well-positioned to deal with the uncertain economic conditions. When the Standing Committee met in October 2009,

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the evidence was that the Government's economic position had further stabilized.

[96] If the Government had adopted an across-the-board policy of wage restraints, then it is clear that the judges could have been subject to that policy. This could have been the case, even if the across-the-board measure had been adopted after the report of the JCC had been filed. This was the situation in the *P.E.I. Reference* case (see paras. 147, 184).

[97] But here no such measure was instituted. There was no evidence of such a measure being instituted with other groups. As in Quebec, this was a negotiating position on the part of the Government. I would also point out, as did the JCC and the application judge, that, while the *Act* specifically mandates the JCC to consider the salaries of judges in other jurisdictions (s. 11.1(16)), it does not refer to other groups which are paid out of the public purse, as do the statutes in some of the other provinces.

[98] Moreover, the Government did not provide this information to the JCC, nor is it referred to in the reasons of the Standing Committee. As stated in *Bodner* (at paras. 11, 22-27), if information is available and the Government chooses not to present it to the JCC, then it cannot do so at a later time. The emphasis is on the JCC recommendations, and the Government's response is to engage meaningfully with those recommendations. The Government simply urged the JCC to act with caution, and the JCC agreed that fiscal restraint or caution was indeed appropriate.

[99] The eighth reason advanced by the Government for rejecting the

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JCC's salary recommendation is that its recommendations for 2009 and 2010 were based on the wrong assumption that previous JCCs had accepted, namely that salary increases should follow a national average. The Government contended that the three-province average, which was utilized to determine the salary to be paid to the judges effective April 1, 2008, and which was binding upon it, was the appropriate comparator.

[100] In looking at salaries from provinces across the country, the JCC was following one of the statutorily mandated factors in the *Act*. In any case, the evidence presented to the Standing Committee demonstrated that the JCC's recommendation for the 2008 salary of $192,166 was less than the three-province average of $195,851. Similarly for the year 2009, the JCC's recommendation for a salary of $201,774 was less than the three-province average of $203,276. The JCC's recommended salary of $211,862 for 2010 was greater than the three-province average of $206,221, but that was based on outdated figures. When the figures were brought up to date, the three-province average became $214,010 for 2010 which was higher than the $211,862 recommended by the JCC. This information was available to the Standing Committee just before they gave their reasons for rejecting the recommendations.

[101] So, contrary to reason eight of the Standing Committee, the recommendations of the JCC were much closer to the three-province average that the Government relies on, rather than the "national average."

[102] The Government's last reason for rejecting the salary recommended by the JCC is that the increases were inconsistent with the

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JCC's own findings about economic conditions in the province.

[103] The Government submits that the reasons provided by it were supported by its five-year economic plan. The reasons were consistent with the economic conditions at the time, the policy of wage restraint being exercised by the Government and the minimal salary increases to most of the public sector. The economic conditions at the time meant that many Manitobans were receiving nominal salary increases, if any at all. Consequently, increases of 2.9 per cent and one per cent, respectively, were more in line with the increases given to others from the public purse, as opposed to the five per cent for each year proposed by the JCC.

[104] It should be noted that, although the Government did submit economic evidence to the JCC supporting its submissions, the JCC had other evidence which disagreed with some of the conclusions of the Government's expert. For example, Fletcher Baragar, Professor in the Department of Economics at the University of Manitoba, presented a more positive outlook for the Government's economic situation and concluded that the Government's economy was performing very well relative to both its provincial counterparts and the national average (see Fletcher Baragar, *Update on the Manitoba Economy and the Province's Fiscal Capacity* (December 12, 2008)).

[105] Moreover, I believe the response to this last point is similar to the others. The Government failed to specify what facts were not taken into account or which findings were inconsistent. The JCC accepted the Government's recommendation to be prudent and was entitled to weigh all

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the economic evidence adduced in coming to its conclusions.

[106] The reasons of the Standing Committee do not explain why the prudent approach adopted by the JCC was not sufficient. While the Government may not have to produce costing information, it has and obligation to explain, in a meaningful way, why it disagrees with the JCC recommendations.

[107] Finally, looking at all of its reasons as a whole, the Government argues that the application judge erred in not properly applying the third stage of the *Bodner* test which, as stated earlier, is where the judge must examine the Government's reasons as a whole. Even if one or two reasons are flawed, if one can say that, as a whole, the Government's reasons are rational, then the judge must defer to the Government. The test is whether looking at the response as a whole, the Government responded in a meaningful way.

[108] First, the application judge did step back and look at the reasons as a whole. He stated (at para. 125):

> …. Viewed globally, I found the government's reasoning to be lacking in respect for the process and to negate rather than enhance the purposes of the JCC ….

[109] Second, the whole cannot be greater than the parts. If none of the reasons have a factual foundation, or a rationale, or if all of the reasons given are perfunctory, then looking at them as a whole cannot lead one to a different conclusion.

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[110] Third, even if one tried to look at the objections holistically and came to the conclusion that, generally, the objections to the JCC recommendations were based on the economic situation of the province, there was no factual foundation that would lead one to understand how, based on the economic evidence adduced at the hearing, the JCC erred in the conclusions they reached.

Salary Differentials for Administrative Judges

[111] The JCC recommended differentials in 2009 and 2010 of an additional five per cent and eight per cent increase for the Associate Chief Judge, Senior Master and the Chief Judge respectively.

[112] The Standing Committee relied on reasons similar to those regarding the recommendations for general salary increases to reject the salary differential recommendations. The Government substituted the recommendation with a 2.9 per cent and one per cent increase for 2009 and 2010 respectively.

[113] The arguments with respect to the salary differentials are the same as the arguments with respect to the general salary increase. Therefore, these reasons relating to the salary increase apply equally to this recommendation.

5.3 Interest

[114] In its report, the JCC made an award that included interest. It recommended that interest be paid on the retroactive salary adjustments and that it be set at a rate equal to the pre-judgment rate fixed by *The Court of*

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Queen's Bench Act, C.C.S.M., c. C280 (the *QB Act*), from April 1, 2008 to the date of payment.

[115] The JCC held that the judges were delayed in receiving the salary and benefits to which they are entitled, while the Government had had the use of the money for some years. This was no one's fault, but there was an inherent unfairness in the system which could be remedied by payment of interest on the retroactive salary.

[116] While acknowledging that no previous JCC had recommended a payment of interest and that the authority to award interest was not explicitly spelled out in the *Act*, the JCC held that (the 2008 JCC Report at p. 84):

> …. However, Section 11.1(3)(b) does provide the jurisdiction of the Committee to make recommendations with respect to the benefits to be paid to [Provincial Court judges]. The Committee is of the opinion it has jurisdiction to make an award of interest.

[117] Section 11.1(3)(b) of the *Act* refers to:

> ….
>
> (b) the benefits to be paid, including pensions, vacations, sick leave, disability benefits, travel expenses and allowances, to the Chief Judge, an Associate Chief Judge and a judge of the court.

[118] In affirming the award of interest, the application judge did not substantively comment on the reasoning of the JCC. However, I do not accept the argument of the Government that the application judge did not make a decision. He could not have been clearer when he stated in his

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reasons that "the jurisdictional challenge advanced by the government in rejecting the interest recommendation is neither legitimate nor constitutionally adequate" (at para. 132).

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[119] Rather, the application judge appeared to rely on the fact that the Government did not raise the jurisdiction of the JCC to award interest during the course of the hearing before them (at para. 131):

> …. The challenge to the jurisdiction of the JCC came in the form of the motion passed by the Standing Committee, which deprived the JCC from addressing that issue directly. I find this conduct on the part of the government to be inappropriate. It shows a total disregard and lack of respect for the process the government itself created for determining judicial salaries and benefits.

[120] The Government has appealed and argues that the JCC cannot make recommendations that are beyond its jurisdiction and beyond the scope of its statutory mandate. It submits that, since there is no inherent right to interest and since interest is not part of the definition of salary or benefit in the *Act*, the JCC acted beyond its jurisdiction.

[121] Much time was spent on the argument that the Government did not raise the jurisdictional issue before the JCC and it was therefore precluded from raising it in court.

[122] The judges say that, at no time during the hearing before the JCC or in its written submissions, did the Government in any way dispute or challenge the jurisdiction of the JCC to make a recommendation that interest be paid on retroactive salary adjustments. Instead, the matter was argued on its merits, as to whether or not, in the circumstances, the JCC should

exercise its discretion to recommend interest. On appeal, the Government maintains that it did, indeed, raise the issue of lack of jurisdiction in front of the JCC. Since the hearing was not recorded, reference was made to the notes made by various parties during the hearing to corroborate both sides of the argument.

[123] The JCC either has the jurisdiction to award interest or it does not. It cannot be conferred by consent. Administrative tribunals or agencies are statutory creations and they cannot exceed the powers that are granted to them by their enabling statute. In my view, the Government cannot be precluded from raising the issue of jurisdiction at this point in time whether or not it failed to do so at the hearing.

[124] In the oft-cited decision of *Bank of America Canada v. Mutual Trust Co.*, 2002 SCC 43, [2002] 2 S.C.R. 601, Major J. described interest as the time-value of money, explaining that (at para. 21):

> The value of money decreases with the passage of time. A dollar today is worth more than the same dollar tomorrow. Three factors account for the depreciation of the value of money: (i) opportunity cost (ii) risk, and (iii) inflation.

[125] I agree with the Government's submission, relying on the *Bank of America* case that historically a court's ability to award either pre- or post-judgment interest was extremely limited. Circumstances where it was awarded at either common law or in equity were limited to select factual situations. See the discussion found in Mary Anne Waldron, *The Law of Interest in Canada* (Toronto: Carswell, 1992) at 142, and the extensive historical review found in *Alberta v. Nilsson*, 2002 ABCA 283, 320 A.R. 88.

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[126] However, there is obviously a distinction to be drawn between a court's power to award interest on a judgment and the type of recommendation made by the JCC in the case at bar.

[127] The JCC is a statutory body and, while the Government is correct that it cannot make recommendations that are beyond the scope of its mandate, tribunals can also obtain jurisdiction by necessary implication. See *ATCO Gas and Pipeline Ltd v. Alberta (Energy and Utilities Board)*, 2006 SCC 4 at para. 51, [2006] 1 S.C.R. 140. Rothstein J. observed recently in *R. v. Cunningham*, 2010 SCC 10, [2010] 1 S.C.R. 331, that "[t]his Court has affirmed that courts can apply a 'doctrine of jurisdiction by necessary implication' when determining the powers of a statutory tribunal" (at para. 19).

[128] It is true that the JCC has the power to make recommendations only and does not have the adjudicative power that is most often associated with a statutory administrative body. Rather, its mandate is to "investigate, report and make recommendations" with respect to salary and benefits (see s. 11.1(3) of the *Act*).

[129] While the law of necessary implication is most often associated with adjudicative decisions, it has been referred to and relied upon even in cases involving recommendations. This is especially so in this case where the "recommendations" of the JCC are not simple recommendations. The Government's response must meet the test of simple rationality if the recommendations are not to be followed. See, for example, *Nishnawbe Aski Nation et al. v. Eden*, 2011 ONCA 187 at para. 34, 104 O.R. (3d) 321.

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[130] In identifying what powers are impliedly, as well as expressly, conferred on an administrative body, the court must apply a contextual approach and consider, inter alia, the purpose and function of the statutory body. See *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, [1989] 1 S.C.R 1722, followed in *R. v. 974649 Ontario Inc.*, 2001 SCC 81 at para. 70, [2001] 3 S.C.R. 575 (at p. 1756):

> .... The powers of any administrative tribunal must of course be stated in its enabling statute but they may also exist by necessary implication from the wording of the act, its structure and its purpose. Although courts must refrain from unduly broadening the powers of such regulatory authorities through judicial law-making, they must also avoid sterilizing these powers through overly technical interpretations of enabling statutes. ....

See also *Sciberras v. Workers' Compensation Board (Man.)*, 2011 MBCA 30 at para. 70, 262 Man.R. (2d) 277.

[131] The function and/or purpose of the JCC is to investigate, report and make recommendations with respect to "salaries" and "benefits." Neither word is defined in the *Act*. If one turns to *Black's Law Dictionary*, the ??d., *sub verbo* "salary" is most often described as a form of "compensation" and s. 11.1(3) of the *Act* does speak to a "compensation" committee. As well, benefit is defined in *Black's Law Dictionary* as an advantage, privilege, profit or gain.

[132] The question therefore becomes whether, as a matter of statutory interpretation, the power to recommend interest is necessary for the JCC to carry out its purpose and function and can be found by necessary implication

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in the *Act*.

[133] There have been a number of decisions where interest was awarded despite the absence of a specific reference to interest in the statute. Courts have held that the power to issue a compensatory order implies a power to award interest. See *Public Service Commission (N.S.) v. Nova Scotia Government and General Employees Union*, 2004 NSCA 55 at para. 38, 223 N.S.R. (2d) 57. This would be of special consideration where there is no provision in the statute under review to provide a remedy when there is substantial delay from the time the benefits should be paid to when they are actually paid. See *Tilley v. Workers' Compensation Commission (Nfld.)* (1990), 85 Nfld. & P.E.I.R. 358 at para. 3 (S.C. (T.D.)).

[134] Another example, this time dealing with wages, arises in the case of *Canada (Attorney General) v. Morgan and Canadian Human Rights Commission* (1991), 135 N.R. 27 (F.C.A.). Morgan was an infantryman in the Canadian Armed Forces and complained of discrimination under the *Canadian Human Rights Act*. The applicable provision in the *Canadian Human Rights Act* allowed the tribunal to compensate an individual for lost wages. On appeal to the Federal Court of Appeal, the court held that, although there was no specific provision expressly granting the tribunal power the give interest, "the tribunals were right in considering that their power to assure the victim adequate compensation entitled them to award interest" (at para. 18).

[135] So, it has certainly been the case that tribunals have awarded interest in situations where their enabling statute has not specifically

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mentioned the payment of interest. Moreover, the JCC is entitled to deference in its interpretation of its home statute (see *Manitoba v. Russell Inns Ltd. et al.*, 2013 MBCA 46, 291 Man.R. (2d) 244, and authorities mentioned therein).

[136] However, having stated that it was within the jurisdiction of the JCC to award interest does not mean that it must be awarded or that it must be awarded in every case or that, if awarded, the Government must accept the recommendation. The Government argues that, even if the JCC had the jurisdiction to award interest, the rejection of that recommendation and the reasons provided by the Government for that rejection were reasonable and should have been afforded deference by the application judge.

[137] In this case, the JCC did exercise its discretion to award interest. As mentioned earlier, it explained why it did so and its decision was reasonable.

[138] The Government was entitled to reject that recommendation if it gave a rationale for so doing. The Government's rationale was stated in Schedule B as follows (Hansard at p. 265):

> The Standing Committee does not accept the view that awarding interest on retroactive salary increases is within the scope of benefits on which the Judicial Compensation Committee may make recommendations. Further, no such payments of interest have been recommended by any previous Judicial Compensation Committee.
>
> The Standing Committee does not accept the characterization by the chair that interest falls within the scope of the "benefits" as contemplated by The Provincial Court Act. If interest was intended, given the clear time lines within the legislation, interest

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would be clearly been spelled out.

[139] As explained above, the jurisdiction of the JCC includes implied powers. Whether the power to award interest should be implied is a matter of statutory interpretation of the governing statute which the JCC was entitled to interpret, so long as their interpretation is reasonable.

[140] Moreover, although there are time lines in the *Act*, those time lines are not always followed, often through no fault of the parties. For example, s. 11.1(2) of the *Act* mandates that a JCC shall be appointed on or before April 1 in every third year. In the case of this JCC, the Order-in-Council was not made until May 7, 2008. Next, the 2008 JCC was to report by November 7, 2008. For reasons explained earlier, the JCC did not submit its report until June 9, 2009. The Legislature adjourned on June 14, 2009, and resumed on September 28, 2009. The Legislature voted on the report of the Standing Committee on December 14, 2009. As we see, the matter is still not settled well into 2013.

[141] As well, the fact that something was not done previously is not a reason for not doing it. While it may be that no other Manitoba compensation committee has awarded interest previously, interest has been awarded on judges' salaries by the courts of Quebec, albeit based on a *Canadian Charter of Rights and Freedoms* rationale.

[142] In *Conférence des Juges du Québec v. Québec (Procureure Générale)* (2000), 196 D.L.R (4th) 533 (Qc. C.A.), the judgment of the court awarded interest (at para. 67):

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> .... In the circumstance, it appears to us just and appropriate, in the words of s. 24(1) of the *Canadian Charter of Rights and Freedoms*, that all moneys owing to the judges and to the retired judges as of the date of the present decision bear interest at the legal rate from the time that they became due. ….

[143] See also, *Procureur général du Québec c. Conférence des juges du Québec*, [2004] Q.J. No. 6622 (QL) (C.A.), where the court once again ordered that interest be paid on the retroactive salary adjustment, but only from the date the recommendations would have been passed by the Legislature and "the government would have been able to pay the amounts required" (at para. 142).

[144] I wish to emphasize, however, that if the application judge had found that, viewed holistically, the other reasons of the Government were rational and had a factual foundation, it may be that the rejection of interest altogether, or a change in the dates at which interest was payable, would have been acceptable as part of that rationale. As *Bodner* indicated, "[a] court should not intervene every time a particular reason is questionable, especially when others are rational and correct" (at para. 43). However, such was not the situation in the case at bar, for the reasons expressed earlier.

[145] In summary, therefore, with respect to the jurisdiction of the JCC to award interest, as we have seen, even where a statute does not expressly authorize the payment of interest, that power may be implied from the wording of the statute and the structure and purpose of the statutory body.

[146] Taking into account the nature of interest as described in the cases,

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as well as the cases dealing with other tribunals that make compensatory orders, and the nature and purpose of the JCC, the JCC interpreted its jurisdiction in a reasonable manner and exercised its discretion both to recommend interest and to recommend it be payable as of certain dates.

[147] The reasons of the Government in rejecting the award of interest do not satisfy the standard of simple rationality for the reasons given.

[148] The payment of interest should be seen as making a remedy whole rather than as a punitive order. The Government has had the use of the judges' money in the intervening period.

5.4 Remedy

[149] The Government argues that the application judges' failure to remit the matter back to the Legislature is an error of law. The judges submit that the application judge did not make a palpable and overriding error in exercising his discretion and that, in the particular circumstances, ordering implementation of the recommendations made by the 2008 JCC be implemented was the appropriate remedy.

[150] The Supreme Court in *Bodner* made clear that, where a reviewing court finds that the government's reasons for rejecting the recommendations of a judicial compensation committee were flawed, the typical remedy would be to refer the matter back to the Legislature. The court should not encroach upon the provincial legislature's jurisdiction to allocate funds from the public purse and set judicial salaries.

[151] The court in *Bodner* stated (at para. 44):

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> In light of these principles, if the commission process has not been effective, and the setting of judicial remuneration has not been "depoliticized", then the appropriate remedy will generally be to return the matter to the government for reconsideration. If problems can be traced to the commission, the matter can be referred back to it. Should the commission no longer be active, the government would be obliged to appoint a new one to resolve the problems. Courts should avoid issuing specific orders to make the recommendations binding unless the governing statutory scheme gives them that option. ….

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[152] In exceptional circumstances, however, the typical remedy may not be appropriate. Lack of good faith may be one situation where an exceptional remedy is required. For example, in *Bodner*, the court observed that "[t]he government must deal with the issues at stake in good faith" (at para. 25). Again, the court states (at para. 39):

> …. It is impossible to draft a complete code for governments, and reliance has to be placed on their good faith. ….

[153] See, for example, *Québec (Procureur général) c. Conférence des juges du Québec*, 2007 QCCA 1250 (QL). In that case, the bad faith of the government and the multiplicity of actions helped to ground the court's conclusion that this was an exceptional case and that returning the matter to the Legislature was not an effective remedy.

[154] In this case, the application judge was strongly of the view that the Government acted in bad faith. As mentioned, he found, for example, that the Standing Committee adopted a motion put forth by a member of the Standing Committee, who just happened to be the Minister of Finance, and

that the motion had been prepared in writing before the hearing of the Standing Committee even occurred. Later, in respect to life insurance and other matters, he found that "the government had shown nothing but disregard and disrespect for the process it had enacted" (at para. 160).

[155] However, I believe that, even if there is no finding of bad faith on the part of the Government, there are other exceptional circumstances which lead to the conclusion that referral back to the Legislature would not be an effective remedy.

[156] In the case of *New Brunswick Provincial Court Judges' Association et al. v. New Brunswick (Minister of Justice and Consumer Affairs)*, 2009 NBCA 56, 347 N.B.R. (2d) 296, the government adopted, in its response to a compensation report, the base salary recommendations of its dissenting nominee on the 2004 Judicial Review Commission. Its reason for adopting the dissenting report was that the base salary would place New Brunswick judges in 7th place in Canada. As it turns out, the government was relying on inaccurate salary information and the minority report would place the judges' salary in last place in Canada. While the Court of Appeal found that the government had acted in good faith in formulating an approach to achieve a 7th place ranking, they found the government's rejection of the base salary recommendations in the majority report failed the test of rationality.

[157] After acknowledging that the generally appropriate remedy was to return the matter to the government for reconsideration, the New Brunswick Court of Appeal found this to be a truly exceptional case which called for a

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different remedy; namely that the court order the government to implement the recommendations of the Judicial Review Commission (at para. 46):

> The pertinent period (2004-2008) is expired. All interested parties know the recommendations in the Minority Report placed the Judges in last place on the national comparison scale for the four years of the 2004 JRC's mandate and that the recommendations in the Majority Report situate the Judges precisely where the Government intended they be. A new JRC is set to begin its work for the post-2008 period. As these reasons take form, the term of that JRC's mandate is slowly wasting away. Just as significantly, and as might be expected, the Government approached the formulation of its Response as a choice between two options: the base salary recommendations in the Majority Report or those in the Minority Report. Sending the matter back for reconsideration makes sense where there is more than one way to rectify the situation. But here, there is only one possible solution if one wishes, as deference obligates, to achieve the Response's objective of placing the Judges in 7th place nationally: it is to implement with due diligence the recommendations in the Majority Report.

[158] There are several factors here that lead to a similar finding of exceptional circumstances. One of the factors involved in the consideration of an appropriate remedy is timeliness. If this court were to refer the matter back to the Government for further response, there would be significant delay in completing the constitutional process. This is a valid consideration given that over five years have now passed since April 1, 2008.

[159] Next, similar to the *New Brunswick* case, the response of the Government indicated that, in their opinion, the appropriate salary level was the average of the three comparator provinces. That was the effect of the salary recommendation for the 2008 year which then became binding upon

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the Government. Moreover, for the years 2009 and 2010, that is, the effect that the new, updated judicial salary information had on the recommendations, which information was provided to the Standing Committee by the judge's counsel before the vote. In effect, the recommendations accord with the Government's position.

[160] Moreover, time has marched on since the events upon which this litigation was based. In July 2012, the 2011 JCC reported for the period April 1, 2011 to March 31, 2014. In April 2013, the Standing Committee accepted the recommendations as to base salary levels made by the Manitoba, Legislative Assembly, "Report and Recommendations of the Judicial Compensation Committee" by Michael D. Weirier, Victor H. Schroeder, Q.C. & David M. Shrom in *Sessional Papers*, No. 16 (2012) (2011 JCC Report) and rejected certain other recommendations.

[161] Significantly, the compensation levels recommended by the 2011 JCC Report and accepted by the Legislature proceeded on salaries as found by the 2008 JCC, and declared in effect by the application judge. The 2011 JCC Report reads (at p. 76):

> We have determined that the base salary for 2011-2012 shall be $218,000.00. This salary represents a 2.9% increase over the amount decided by the prior 2008 JCC, rejected by the Standing Committee of the Manitoba Legislature and reinstated by the Court of Queen's Bench.

[162] It was that recommendation and that salary level that was accepted by the Legislature. So, impliedly, by accepting the 2011 JCC base salary recommendations, the Legislature has already accepted the 2008 JCC base

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salary levels. Nothing would be gained by sending the matter back to the Legislature and delaying matters even further.

5.5 Costs – Did the Application Judge Err in Awarding Solicitor-Client Costs?

[163] The application judge awarded solicitor-client costs in favour of the judges on the basis that the Government conducted itself in a manner that can be described as reprehensible during the time preceding the commencement of the litigation.

[164] Costs are in the discretion of the application judge pursuant to s. 96(1) of the *QB Act*. While they are discretionary, that discretion is to be exercised within the parameters of the factors set out in Queen's Bench Rule 57.01(1) and the general principles of the law. As was stated earlier, appellate intervention will only be warranted where the exercise of discretion is based on a wrong principle, a misapprehension of the evidence or the decision was clearly wrong (see *Fernandez v. Tan*, 2009 MBCA 113 at para. 6).

[165] The application judge understood that solicitor-client costs should be awarded only in exceptional circumstances and normally as a result of conduct that can be described as reprehensible, scandalous or outrageous on the part of one of the parties to the litigation. See *Young v. Young*, [1993] 4 S.C.R. 3, and *Agritrans Logistics Ltd. (Bankrupt), Re*, 2005 MBCA 68, 195 Man.R. (2d) 47. The standard expressed in *Young* has been confirmed recently by the Supreme Court in the case of *Quebec (Attorney General) v. Lacombe*, 2010 SCC 38 at para. 67, [2010] 2 S.C.R. 453.

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[166] In fact, in the *Bodner* case itself, the Supreme Court of Canada overturned an award of solicitor-client costs, with the court commenting that (at para. 132):

> …. Neither party has displayed reprehensible, scandalous or outrageous conduct. While the protection of judicial independence is a noble objective, it is not by itself sufficient to warrant an award of solicitor-client costs ....

[167] The application judge relied on "reprehensible" conduct by the Government before the commencement of, but not during, the litigation to conclude that this was an appropriate case for solicitor-client costs. He found that the hearing before the Standing Committee was "mere window dressing" (at para. 114) and "this, in my opinion, demonstrates on the government's part a lack of fairness, bad faith dealings and a blatant, wanton disregard for the process the government itself had created for determining salaries and benefits for judges" (at para. 115).

[168] With respect to the recommendations of the JCC in relation to the cost of insurance premiums, the application judge concluded that (at para. 160):

> …. On the basis of the evidence before me, I found that more than mere oversight was involved in the government's failure to refer those recommendations as is required by law. I concluded that there was demonstrable bad faith on the part of the government and that the government had shown nothing but disregard and disrespect for the process it had enacted. ….

[169] The Government argues that the application judge made an overriding and palpable error in law by awarding solicitor-client costs in this

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matter. It submits that there is no evidence to support a finding that it conducted itself at a level which is deserving of rebuke and reproof. The failure to put the recommendations of the JCC regarding parking, the effective date of the maternity and parental leave and the retirement coverage before the Standing Committee was an oversight. It is argued that a mere oversight should not lead to a finding of bad faith.

[170] The question of the cost of the insurance premiums is a little more complicated. The Government submits that no recommendation was put before the Standing Committee because there was a disagreement as to whether there was or was not an inequity in the cost of the coverage. The Government was confused and unsure as to whether there was indeed an inequity. The failure to deal with the cost of the premiums is not a demonstrated example of bad faith because it would have no financial impact on the Government. The judges bear the cost of the premiums.

[171] There are two issues that must be addressed here, one a question of law and one a question of fact. First, the application judge relied only on conduct before the commencement of litigation to ground his award of solicitor-client costs. There is no allegation that the Government acted in a reprehensible manner during the conduct of the litigation.

[172] Second, did the application judge misapprehend the evidence when he found reprehensible conduct here on the part of the Government? It is that finding that anchors the solicitor-client costs award by the application judge. Unless the application judge misapprehended the evidence, committed an error in principle or reached a clearly unjust result, I would

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not disturb his discretionary decision to award solicitor-client costs in this matter.

Is reprehensible conduct which occurs only before the commencement of litigation grounds for solicitor-client costs?

[173] Generally, solicitor-client costs are awarded for conduct during the course of litigation which is so outrageous that the court wishes to express its disapproval of that conduct by way of an award of costs. It is not usually awarded for pre-litigation conduct.

[174] The application judge referred to *N.B. v. Director of Child and Family Services (Man.) et al.* (1999), 134 Man.R. (2d) 261 (C.A.), as a case where this court allowed an order of solicitor-client costs to stand where the misconduct alleged occurred prior to the commencement of the litigation. I do not believe that this case is an authoritative precedent for that proposition. In that case, a Queen's Bench judge overturned the defendant agency's decision to place the respondent's name on the Child Abuse Registry and, in so doing, awarded the respondent his actual legal costs beginning from the moment he was told that his name was going to be placed on the Registry. This court adjusted those costs downward and fixed them at a specific amount, finding that a court could not award costs unrelated to the proceedings in the Court of Queen's Bench. However, the reasons of this court do not actually state that solicitor-client costs were awarded and, more importantly, it is clear that the issue of whether the circumstances supported an award of solicitor-client costs was not addressed by the court.

[175] As a matter of fact, reviewing the cases from across the country,

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there appears to be a divergence in the case law as to whether solicitor-client costs can be awarded to mark the court's disapproval of the conduct of a party which gave rise to the litigation, or whether it should be confined to conduct within the litigation itself. While the law is fairly clear in Newfoundland (which would award solicitor-client costs for either pre-litigation reprehensible conduct or reprehensible conduct during the litigation), and in Alberta (which takes the opposite position and awards solicitor-client costs only for reprehensible conduct during litigation), the remaining Canadian jurisdictions that discuss this issue take less of a bright line approach. See *Pelley v. Pelley et al.*, 2003 NLCA 6, 221 Nfld. & P.E.I.R. 1, leave to appeal to S.C.C. dismissed, [2003] S.C.C.A. No. 338 (QL), and *Walsh v. Mobil Oil Canada et al.*, 2008 ABCA 268 at para. 112, 440 A.R. 199; *Polar Ice Express Inc. v. Arctic Glacier Inc.*, 2009 ABCA 20 at paras. 21-22, 446 A.R. 295, followed in *Larter v. Solid Rock Free Lutheran Church of Camrose*, 2012 ABCA 292 at para. 8 (QL).

[176] So, for example, in Ontario and British Columbia there have been cases where solicitor-client costs have been awarded where the misconduct not only occurred during, but also before the litigation. This has occurred, most particularly, but not exclusively, in cases of breach of trust, shareholder oppression and breach of fiduciary duty, where the reprehensible conduct is solely related to pre-litigation behaviour. The important point is that the conduct should not be at the very heart of the proceedings and, as such, compensable in damages, including punitive damages. Otherwise, double compensation would result. See *Oz Optics Ltd. v. Timbercon, Inc.*, 2012 ONCA 735 at para. 16 (QL). Also see, for example, *Sidhu v. Kooner*,

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[1999] O.J. No. 5551 (QL) (C.A.); *Barry v. Garden River Band of Ojibways* (1997), 33 O.R. (3d) 782 (C.A.); and *Olson v. Gullo* (1994), 17 O.R. (3d) 790 (C.A.). See *Gerula v. Flores* (1995), 83 O.A.C. 128 at para. 74; and *Hunt v. TD Securities Inc.* (2003), 66 O.R. (3d) 481 (C.A.). See *Dockside Brewing Co. et al. v. Strata Plan LMS 3837, Owners et al.*, 2007 BCCA 183, 239 B.CA.C. 33, leave to appeal to S.C.C. dismissed, *Tan v. Dockside Brewing Co.*, [2007] S.C.C.A No. 262 (QL), recently followed in *Evergreen Building Ltd. v. IBI Leaseholds Ltd. et al.*, 2009 BCCA 275, 271 B.C.A.C. 298.

[177] Thus, in summary, it can be said that first, solicitor-client costs should not be the rule and should only be awarded in rare and exceptional cases. Those rare and exceptional cases arise where the conduct of the party against whom they are sought is described as scandalous, outrageous or reprehensible.

[178] Next, while a rigid rule is not necessary, solicitor-client costs are not generally awarded as a reaction to the conduct giving rise to the litigation, but are intended to censure behaviour related to the litigation alone. So, for example, depending upon the nature of the cause of action, it may be possible to compensate the plaintiff by an award of damages or to punish the defendant by a punitive award. It is acknowledged, however, that there may be cases where that is not possible or appropriate. See *Siemens et al. v. Bawolin et al.*, 2002 SKCA 84 at para. 118, 219 Sask.R. 282.

[179] Some examples of the limited circumstances where solicitor-client costs may be awarded for pre-litigation conduct include issues of public

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interest (see *Lacombe* at para. 67), situations where the fruits of the litigation do not provide any appropriate compensation in relation to the reprehensible conduct (see *Sun Life Assurance Co. of Canada v. Ritchie et al.*, 2000 BCCA 231 at para. 54, 136 B.C.A.C. 215) and situations where the "principle of indemnification for the wrongdoing (and not merely disapproval, however strong, of the wrongdoing) justifies such an order" (see *Hashemian v. Wilde et al.*, 2006 SKCA 126 at para. 32, 289 Sask.R. 105). Indeed, in cases similar to the one at bar, solicitor-client costs were awarded based on conduct surrounding the government's responses to the compensation committee's reports. See the *Newfoundland Association of Provincial Court Judges et al. v. Newfoundland*, 2000 NFCA 46 at paras. 301-13, 192 Nfld. & P.E.I.R. 183. Nonetheless, courts should be careful to avoid double compensation and not to punish, by way of costs, pre-litigation conduct which could be the subject of other relief.

Did the application judge exercise his discretion appropriately on the facts of this case?

[180] What is meant by the phrase "reprehensible conduct"? To found an order of solicitor-client costs, a finding of bad faith is not necessary. As we have seen, it is sufficient to find reprehensible conduct. Quoting and relying on the case of *Newfoundland Association of Provincial Court Judges et al. v. Newfoundland*, the application judge adopted the definition of "reprehensible" as one that has a wide meaning. I agree with the application judge on that point.

[181] To be more exact, courts have held that the phrase "reprehensible,

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scandalous or outrageous conduct" (at p. 134) as used by McLachlin J. in *Young* refers to three separate standards of objectionable conduct given the use of the word "or" as opposed to "and" (see *Garcia v. Crestbrook Forest Industries Ltd. (No. 2)* (1994), 45 B.C.A.C. 222 at para. 13. Specifically, with reference to the word "reprehensible," courts have adopted the definition of the phrase used by Esson C.J.S.C. in *Leung v. Leung* (1993), 77 B.C.L.R. (2d) 314, where he stated (at para. 5):

> …. But "reprehensible" is a word of wide meaning. It can include conduct which is scandalous, outrageous or constitutes misbehaviour; but it also includes milder forms of misconduct. It means simply "deserving of reproof or rebuke".

(See also *Cabaniss v. Cabaniss*, 2010 BCCA 348 at para. 74, 290 B.C.A.C. 135, and *Lienaux et al. v. Toronto-Dominion Bank* (1997), 159 N.S.R. (2d) 305 (C.A.).)

[182] The *Bodner* case is replete with references to the need for the government to take the process seriously, to engage meaningfully and to respond to the judicial compensation committee recommendations in a true spirit of responsive dialogue.

[183] The application judge relies on several actions to conclude that the Government did not take the JCC seriously, did not fully participate in the process, and was therefore deserving of reproof and rebuke. These actions have already been referred to earlier in these reasons.

[184] To begin with, he states that the process became politicized when the Standing Committee passed a motion that was prepared before the

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hearing. At the conclusion of counsel's presentation, and without adjourning, copies of a motion, in writing, were distributed to members of the Standing Committee. The motion was passed unanimously. It was obvious therefore that they did not consider the arguments made before it by counsel for the judges (see paras. 115-16).

[185] The Government argues that with respect to the actions of the Standing Committee, that Committee had a number of months to review and consider the JCC's recommendations. At the meeting held on October 26th, the Standing Committee was not obligated to hear from counsel for the judges. It was a courtesy only. That is true. However, counsel for the judges provided the Standing Committee with information regarding the judges' salaries in New Brunswick that directly affected the arguments of the Government. That information was not referenced or dealt with in the reasons of the Government.

[186] Also, there were certain recommendations made by the JCC that the Government failed to send to the Standing Committee. These were neither accepted, rejected nor modified. They were simply forgotten. As a result, the Standing Committee did not consider the recommendations; nor did the Legislature. These recommendations related to parking rates, life insurance and the cost of premiums for the insurance. The application judge found that the failure to send these recommendations to the Standing Committee was evidence of bad faith on the part of the Government.

[187] The Government argues that the failure to send the recommendations to the Standing Committee was not done in bad faith and

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was nothing more than a mere oversight. For example, the recommendation on parking rates would have benefited the Government financially. An act of bad faith, it argues, would have been to simply reject those reasons without reason or a factual basis.

[188] While the Government is not appealing the decision that these recommendations be implemented, the fact that they were forgotten was properly used by the application judge as evidence of the lack of attention to the process by the Government. It is irrelevant that the financial impact of some of these changes would have fallen on the judges themselves or would have been neutral for the Government. It is also irrelevant that the failure to send these recommendations to the Government was not intentional, but rather, "nothing more than an oversight." It is indicative of the lack of attention paid to the whole process by the Government.

[189] For my part, it is unnecessary to decide whether these actions constitute bad faith or simply conduct indicative of neglect and a lack of attention and engagement that is "deserving of reproof or rebuke" (*Leung* at para. 5).

[190] However, for the sake of completeness, let me just elaborate on one issue. Besides the issues already mentioned, it is perhaps the issue of the cost of the insurance premiums that speaks most loudly of the Government's lack of attention and care towards this whole process.

[191] For some time, the judges have argued that the cost of insurance premiums was higher for them than for civil servants and the difference was without cause. The Civil Service Superannuation Board (CSSB) is the entity

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that keeps track of the group life and retirement insurance coverage for both public servants and judges. The insurance policy was negotiated in 1992 for both judges and public servants. There were changes made in 1999 and 2004 for public servants, but because of the introduction of the judicial committees for the judges, no changes were made by the CSSB for judges. It was felt that no changes could be made unless there was a recommendation by a judicial compensation committee and subsequent legislation.

[192] The 2005 JCC had recommended that, if there was any inequity between the costs of premiums paid by judges for insurance compared to the cost of premiums paid by other plan members, adjustments should be made. The Government agreed to consult an actuary. By the time the 2008 JCC was convened, nothing had been done because the various members of the Government responsible could not decide whether or not any inequity existed. The 2008 JCC repeated the same recommendation – determine if judges pay more for insurance coverage and, if they do, fix it. Once again, the Government did not ask for clarification. It simply did not refer the recommendation to the Standing Committee, nor was it considered by the Legislative Assembly. It seemed to ignore the issue.

[193] So, for example, Douglas Cieszynski, the Director of Labour Relations of the Treasury Board Secretariat of the Province of Manitoba filed an affidavit indicating that following the 2005 JCC report, he was advised by Rob Derksen, the Director of Communications of the CSSB that a thorough review of the judges' group life and retirement insurance plan was undertaken and, "[a]s a result, Mr. Derksen has confirmed that there is

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no inequity with respect to the cost of insurance premiums paid by Judges and other plan members."

[194] However, apparently no such review was undertaken. Mr. Derksen, when cross-examined on his affidavit, denied telling Mr. Cieszynski that he had undertaken a thorough review of the judges' insurance plan following the issuance of the 2005 JCC report. Mr. Cieszysnki, upon cross-examination, indicated that what he had meant was that it was not clear what the JCC meant by an inequity and it was not clear whether one existed. He also clarified that it was his "interpretation," given that he was new on the job, that a review had been done.

[195] The Government argues that the evidence before the court was that it was unclear to the Government as to whether there was indeed an inequity. The premiums paid by the judges were different, as were the benefits received by them; hence, it was not clear that there was an inequity that needed to be addressed. As a result, the recommendation was not submitted to the Standing Committee. The Government argues that it was confused, not grossly negligent or acting in bad faith.

[196] That argument is beside the point. Both the 2005 and the 2008 JCC recommended that if there was an inequity, it should be remedied. The Government could have addressed the issue in front of the 2008 JCC. It could have made the argument that there was no inequity. It did not do so. It could have asked the JCC for clarification. It did not do so. Instead, it ignored the issue by not referring the recommendation to the Standing Committee.

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[197] I acknowledge that the question of whether there was an inequity was not an easy one to resolve, and that the recommendations of both the 2005 and the 2008 JCC were vague. As one of the actuaries cross-examined on this issue commented, the question of "equity" is a legal issue, rather than an actuarial issue. Again, Mr. Derksen comments:

> The JCCs do not generally do a good job of giving an administrator anything that makes sense to an administrator. That's primarily where the mess is. Unless the JCC provides wording that is appropriate for administration[s], this will always be a mess.

[198] Clearly, it would have been helpful if any of this had been addressed substantively in front of the JCC. In addition, the point was also made by Donald Smith, a Principal Actuary with Western Compensation & Benefits Consultants, that, while the differences in the group life insurance plan provision for judges relative to Manitoba civil servants are numerous and detailed, they were not fundamental.

[199] In summary, the application judge made findings of fact with respect to the actions of the Government in relation to this entire process. In particular, he stated (at para. 147):

> I am satisfied on the basis of the evidence before me and the submissions of counsel that more than mere oversight was involved in the failure by government to refer the insurance recommendations of the JCC to the Standing Committee. ….

[200] Based on those findings of fact, he made a discretionary decision to award solicitor-client costs. I do not see any palpable and overriding

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error, an error in principle or a clear injustice that would justify intervention with those findings or that discretionary decision.

PART VI Conclusion

[201] In order for this process to work, both parties had to participate meaningfully and diligently in the process. If the Government did not take the process seriously, the judges had no real recourse. Their choices were to wait until the next JCC or to take the Government to court.

[202] While the Government was free to reject the JCC recommendations, the Supreme Court of Canada pointed out in *Bodner* that bald expressions of rejection or disapproval for rejecting recommendations are inadequate and that the reasons for rejection must deal with the recommendations in a meaningful fashion and must be supported by a factual foundation that is both reasonable and sufficient (see *Bodner* at para. 25).

[203] After examining the reasons given by the Government, I agree with the application judge that the reasons the Government gave for rejecting the recommendations do not pass that test.

[204] I would dismiss the appeal.

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_____ J.A.

I agree: _____ J.A.

I agree: _____ J.A.

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APPENDIX

The Provincial Court Act, C.C.S.M., c. C275

Definitions
11.1(1) In this section,

"associate chief judge's designated average" means, for a year in which a compensation committee is appointed, the average of three annual salary rates, one for each of New Brunswick, Nova Scotia and Saskatchewan, being paid on April 1 of that year to the associate chief judges of the provincial courts of those provinces; (« traitement désigné du juge en chef adjoint »)

"chief judge's designated average" means, for a year in which a compensation committee is appointed, the average of three annual salary rates, one for each of New Brunswick, Nova Scotia and Saskatchewan, being paid on April 1 of that year to the chief judges of the provincial courts of those provinces; (« traitement désigné du juge en chef »)

"compensation committee" means a Judicial Compensation Committee appointed under subsection (2); (« comité chargé de la rémunération »)

"judge's designated average" means, for a year in which a compensation committee is appointed, the average of three annual salary rates, one for each of New Brunswick, Nova Scotia and Saskatchewan, being paid on April 1 of that year to the full-time judges of the provincial courts of those provinces, other than the chief judge or the associate chief judges. (« traitement désigné du juge »)

Compensation committee appointed
11.1(2) On or before April 1, 2002 and on or before April 1 in every third year after 2002, a compensation committee, to be known as the Judicial Compensation Committee, must be appointed by the Lieutenant Governor in Council in accordance with subsections (5) to (10).

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Review by compensation committee
11.1(3) A compensation committee shall investigate, report and make recommendations with respect to the following:

(a) the salaries to be paid to

(i) the Chief Judge,

(ii) an Associate Chief Judge, and

(iii) a judge of the court, other than the Chief Judge or an Associate Chief Judge; and

(b) the benefits to be paid, including pensions, vacations, sick leave, disability benefits, travel expenses and allowances, to the Chief Judge, an Associate Chief Judge and a judge of the court.

Effective period of recommendations
11.1(4) The recommendations of a compensation committee must be made for the fiscal year of the government that begins on April 1 of the year in which the compensation committee is appointed, and for each of the next two fiscal years.

Composition of compensation committee
11.1(5) A compensation committee consists of the following three members appointed by the Lieutenant Governor in Council:

(a) one person designated by the minister;

(b) one person designated by the judges of the court;

(c) one person, who shall act as chairperson, designated by the members who are designated under clauses (a) and (b).

Prohibition re members

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11.1(6) No judge or retired judge of the court, or of any other court, and no person employed in the civil service of the government or by a crown corporation, or retired from such employment, shall be appointed as a member of a compensation committee.

Minister designates a member

11.1(7) On or before January 15 of a year in which a compensation committee must be appointed, the minister must notify the judges of the court that a compensation committee will be appointed and designate a member under clause (5)(a).

Judges designate a member

11.1(8) On or before January 31 of a year in which a compensation committee must be appointed, the judges of the court must designate a member under clause (5)(b).

Designation of a chairperson

11.1(9) On or before March 1 of a year in which a compensation committee must be appointed, the persons referred to in clauses (5)(a) and (b) must designate a chairperson under clause (5)(c).

If no agreement re chairperson

11.1(10) If the persons referred to in clauses (5)(a) and (b) are unable to agree on a chairperson, the Dean of the Faculty of Law of the University of Manitoba, after consultation with the minister and the judges, shall designate the chairperson on or before March 31.

Term of committee member

11.1(11) The term of a member of a compensation committee ends when the compensation committee's report is submitted.

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Member absent or incapable

11.1(12) In the event of the absence or incapacity of a member, the Lieutenant Governor in Council may, in accordance with subsections (5) and (6), appoint a substitute member for the unexpired portion of the term.

Conduct of review by compensation committee

11.1(13) To the greatest extent possible, a compensation committee must conduct its review in an inquisitorial manner, assessing evidence it determines is relevant and necessary to enable it to make the recommendations referred to in subsection (3).

Powers of compensation committee

11.1(14) A compensation committee

(a) may interview persons, examine records and documents and make inquiries as the compensation committee considers necessary;

(b) may establish its own rules of practice and procedure for the inquiries, interviews and examinations referred to in clause (a) and for the conduct of hearings; and

(c) has the powers, protection and privileges of commissioners under Part V of *The Manitoba Evidence Act.*

Remuneration and expenses

11.1(15) A member of the compensation committee is entitled to receive remuneration and reimbursement for expenses, as determined by the Lieutenant Governor in Council.

Factors to be considered

11.1(16) In making its report and recommendations, the compensation committee must consider the following factors:

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(a) the nature of the judges' role and the independence of the judiciary;

(b) the need to attract and retain excellent applicants to the judiciary and the statistics with respect to the recruitment, retention, resignation and retirement of judges;

(c) the need to provide fair and reasonable compensation for judges in light of prevailing economic conditions in Manitoba and the overall economic and financial state of the Manitoba economy;

(d) the principle that public resources must be managed efficiently and effectively in the context of the government's current financial position;

(e) the cost of living and the growth or decline in real per capita income in Manitoba;

(f) the manner in which the compensation package paid to judges in Manitoba compares to judicial compensation packages in other jurisdictions in Canada, having regard to the differences between jurisdictions.

Salary information required in the report

11.1(17) The compensation committee's report must set out the following information as to salaries paid to judges on April 1 of the year in which the compensation committee is appointed:

(a) with respect to the provincial courts of New Brunswick, Nova Scotia and Saskatchewan, the salary of the chief judge, the salary of an associate chief judge, and the salary of a full-time judge, for each of those courts;

(b) the chief judge's designated average;

(c) the associate chief judge's designated average;

(d) the judge's designated average.

Chairperson to certify salary comparisons for three year period

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11.1(18) In the report of the compensation committee, the chairperson must certify, for the fiscal year in which the compensation committee is appointed and for each of the next two fiscal years,

(a) the salary recommended for the Chief Judge for each year, and whether that salary is equal to or less than the chief judge's designated average, or whether it is more than the chief judge's designated average;

(b) the salary recommended for an Associate Chief Judge for each year, and whether that salary is equal to or less than the associate chief judge's designated average, or whether it is more than the associate chief judge's designated average;

(c) the salary recommended for a judge of the court, other than the Chief Judge or an Associate Chief Judge, for each year, and whether that salary is equal to or less than the judge's designated average, or whether it is more than the judge's designated average.

Reasons for recommendations required

11.1(19) The compensation committee must give reasons for each of its recommendations.

Report given to minister and judges

11.1(20) Within 180 days after the compensation committee is appointed, it must give its report, including recommendations, to the minister, the Chief Judge, the Associate Chief Judges and the judges of the court. Until the report is tabled in the Legislative Assembly, it is confidential and must not be made public or disclosed to a person outside the government or the provincial judiciary.

Request to clarify report

11.1(21) Within seven days after the report of the compensation committee is submitted, the chief judge, an associate chief judge, a judge of the court or the minister, may request the compensation

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committee to clarify the report or a part of it. The compensation committee must consider the request and provide any clarification to the persons who received the report under subsection (20) within 15 days after the request is made. The report is not considered to be submitted until the clarification is provided.

Minister to table report

11.1(22) The minister shall table the report of the compensation committee in the Assembly within 15 days after it is submitted if the Assembly is sitting, or if it is not, within 15 days after the beginning of the next sitting.

When recommendations re salaries are binding

11.1(23) For each year for which the compensation committee makes recommendations, the following recommendations are binding on both the government and the judges:

(a) the salary recommended for the Chief Judge for the year, if the chairperson of the compensation committee certifies with respect to that year that the recommended salary is equal to or less than the chief judge's designated average;

(b) the salary recommended for an Associate Chief Judge for the year, if the chairperson of the compensation committee certifies with respect to that year that the recommended salary is equal to or less than the associate chief judge's designated average;

(c) the salary recommended for a judge of the court other than the Chief Judge and an Associate Chief Judge, for the year, if the chairperson of the compensation committee certifies with respect to that year that the recommended salary is equal to or less than the judge's designated average.

Referral to standing committee

11.1(24) Within 20 days after the report of the compensation committee is tabled, the recommendations of the compensation

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committee, except those that are binding on the government under subsection (23), must be referred to a standing committee.

Completing report

11.1(25) The standing committee must complete its report to the Assembly within 120 days after the date of referral.

Reporting to Assembly

11.1(26) The chairperson of the standing committee must present the report to the Assembly within five days after the report is completed if the Assembly is sitting, or if it is not, within five days after the beginning of the next sitting.

Report of standing committee re recommendations

11.1(27) With respect only to those recommendations of the compensation committee that have been referred to it, the standing committee may in its report

(a) accept one or more of the recommendations;

(b) reject one or more of the recommendations; or

(c) reject one or more of the recommendations and set the salaries or benefits that are to be substituted for the salaries or benefits proposed by the rejected recommendations;

and if the standing committee rejects a recommendation, it must provide reasons for each recommendation rejected.

Implementing recommendations if vote in Assembly

11.1(28) If a vote of concurrence takes place in the Assembly within 21 days after the standing committee's report is presented, the recommendations respecting salaries and benefits that are contained in the report of the standing committee and concurred in by the Assembly must be implemented in accordance with the vote.

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Implementing recommendations if no vote in Assembly

11.1(29) If no motion of concurrence is voted on in the Assembly within 21 days after the standing committee's report is presented, the recommendations of the compensation committee respecting salaries and benefits must be implemented.

Adjusting time periods

11.1(30) Any time period within which the standing committee or the Assembly must act under this section

(a) shall, if the Assembly is dissolved, be suspended until 15 days after the beginning of the first session of the next Assembly; and

(b) may be extended, by resolution of the Assembly, for a period of time that is reasonably necessary to respond to dire and exceptional circumstances confronting the Assembly or the government.

Implementation by government

11.1(31) The government must, with due diligence and reasonable dispatch, take whatever steps are necessary to implement the recommendations referred to in subsections (23), (28) and (29).

Costs of compensation committee process

11.1(32) The judges of the court are entitled to costs prescribed in the regulations with respect to their participation in the compensation committee process. The Lieutenant Governor in Council may make regulations prescribing costs under this subsection and may set a total limit on the costs.

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TAB 27

July 11, 2012

REPORT AND RECOMMENDATIONS OF THE

JUDICIAL COMPENSATION COMMITTEE ("JCC")

Submitted to: The Minister of Justice and Attorney General
for the Province of Manitoba

COMMITTEE:

Michael D. Werier, Chair
Victor H. Schroeder, Q.C., Nominee of the Province of Manitoba
David M. Shrom, Nominee of the Provincial Judges' Association of Manitoba

COUNSEL:

Keith D. LaBossiere, for the Province of Manitoba
Susan Dawes, for the Provincial Judges' Association of Manitoba

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Addendum/Additional Concurring Comments of Victor H. Schroeder, Q.C., Nominee of the Province of Manitoba

Addendum/Additional Concurring Comments of David M. Shrom, Nominee of the Provincial Judges' Association of Manitoba

As the percentage change in the average weekly earnings for each of calendar years 2012 and 2013 is not known to the Committee, and because the recommended increase for the base salary is based on the annual percentage change for the average weekly earnings for Manitoba, the Chairperson cannot certify whether the recommended salaries for these two years will be less, equal, or more than the designated average.

11. INTEREST ON RETROACTIVE SALARY

11.1 Association's Position on Interest on Retroactive Salary

The Association's proposal for interest on retroactive salary is as follows:

- That simple interest be paid, from April 1, 2011 to the date of retroactive payment of any salary increase(s), including the differentials for the administrative judges, in accordance with the relevant prejudgment and post-judgment interest rates as set out in *The Court of Queen's Bench Act*.

- That prejudgment interest should be payable from April 1, 2011 to the date the salary recommendations are implemented (whether by vote of the Legislature or by virtue of s. 11.1(29) of the Act), and post-judgment interest should be payable from that date to the date that judges are paid the retroactive salary adjustment.

The Association submitted that when payment of money owing is delayed, there is a decline in value and compensation is warranted.

The Association argued that there is jurisdiction in the Act to make a recommendation on interest. The Act is broadly worded. The JCC is mandated to make recommendations on salaries and benefits and this can properly include

interest.

April 1, 2011 is the date for determining the pre-judgment interest rate.

The majority of the 2008 JCC recommended that interest be fixed at the rate equal to the prejudgment interest rate fixed by *The Court of Queen's Bench Act* and be paid from April 1, 2008 until the date of payment.

The Province rejected the recommendation on two grounds. The first was that jurisdiction to award interest was not clearly set out in the Act and, secondly, because no other JCC had made such a recommendation.

Mr. Justice Oliphant ordered that interest be paid as recommended by the 2008 JCC on the basis that the Province's reasons for rejecting the interest recommendations were not legitimate or constitutionally adequate.

11.2 Province's Position on Interest on Retroactive Salary

At the hearing before 2011 JCC, and in its written submission, the Province argued that the Act does not contemplate the awarding of interest and, further, no other JCC (other than 2008) had recommended interest.

Furthermore, the Province should not be held responsible for any delays.

11.3 Recommendation on Interest on Retroactive Salary

Past JCCs, other than 2008 JCC, have declined to recommend the payment of interest on retroactive salary adjustments. No request was made until 2008.

JCC 2008 did make such an award, which to date, has been upheld by the Court.

While we are not bound to follow recommendations of past JCCs, we accept that it is open to interpret the Act in such a way as to allow the awarding of interest on retroactive salary adjustment.

Further, there is no denying that the judges have suffered from the loss of the use of the money and the Province has had the use of that money.

In light of the above, and to maintain consistency, we are prepared to recommend the payment of interest in the manner requested by the Association.

We therefore recommend:

- That simple interest be paid to all judges, including those who retire or otherwise leave the Bench prior to implementation, from April 1, 2011 to the date of retroactive payment of any salary increase(s), including the differentials for the administrative judges, in accordance with the relevant prejudgment and post-judgment interest rates as set out in *The Court of Queen's Bench Act*.

- That prejudgment interest should be payable from April 1, 2011 to the date the salary recommendations are implemented (whether by vote of the Legislature or by virtue of s. 11.1(29) of the Act), and post-judgment interest should be payable from that date to the date that judges are paid the retroactive salary adjustment.

12. IMPROVED BENEFITS FOR JUDGES RETIRING ON OR AFTER APRIL 1, 2011

12.1 Association's Position on Improved Benefits for Judges Retiring on or after April 1, 2011

The Association requested the following:

pooling or a carryover. The judges' needs will be met by the increased allowance per judge.

These increases shall apply to all judges who were judges as at April 1, 2011, including those who retire or otherwise leave the Bench prior to implementation and they are to be effective April 1, 2011. For greater certainty and while there is to be no carryover into later fiscal years, as of the date of implementation of this recommendation, total expenses incurred in the fiscal year 2011/12 may be claimed against the total allowance recommended to be effective in that year, to the extent the expenses have not already been reimbursed.

17. NORTHERN LIVING ALLOWANCE

17.1 Association's Position on Northern Living Allowance

The Association requested the following:

- That effective April 1, 2011, in addition to their judicial salary, judges residing in The Pas and Thompson shall receive a northern allowance equal to 5% of the salary of a *puisne* judge;

- That judges residing in The Pas and Thompson shall be entitled to receive reimbursement of expenses for travel to Winnipeg and return three times yearly, to include mileage at the standard government rate, and actual and reasonable meal and accommodation expenses for no more than two days, upon prior approval of the Chief Judge;

- This recommendation shall apply to all judges residing in Thompson and The Pas as of April 1, 2011, including those who move elsewhere, retire or otherwise leave the Bench prior to implementation.

The Association argued that Northern judges experience a higher cost of living. The Allowance helps with recruitment and retention of judges in the north as there are smaller numbers of applicants for northern positions.

The reimbursement for travel related expenses is requested because northern judges must travel to Winnipeg for personal reasons, including medical appointments.

The current allowance paid to the judges living in Thompson and The Pas mirrors that paid under the Manitoba Government and General Employees' Union ("MGEU") Master Agreement with the Province of Manitoba.

The Association stated that there are three major reasons for their position. Firstly, if a percentage is set, the issue would not have to be dealt with at future JCC hearings in order to catch up with the MGEU rate. As well, bargaining by MGEU does not always coincide with the JCC timing.

Secondly, it is more appropriate to use an internal reference point for determining the northern allowance.

Furthermore, the remoteness allowance paid to MGEU members flows from collective bargaining, and the amount bargained is a product of the give and take process at the bargaining table. Judges, or course, cannot engage in collective bargaining and therefore it is inappropriate to tie the northern allowance to the rate negotiated by MGEU.

Thirdly, a percentage is comparable to other professionals who live and work in northern Manitoba such as doctors and nurses.

Overall, the Association stressed that the cost of living in the north, and the generally difficult working conditions involved in travel and doing circuit work, and

the overall physical conditions of the Courts, justifies an allowance over and above the regular salary.

17.2 Province's Position on Northern Living Allowance

The Province argued that there is no reason to depart from the past practice to match the remoteness allowance paid to MGEU members. There are no factors unique to judges to warrant a departure.
Doctors and nurses are in a different position. They receive a percentage based on a recognized recruitment and retention issue. There are no such difficulties replacing judges in the north.

The Province has agreed to increase the current rate based on the new MGEU contract.

17.3 Recommendation on Northern Living Allowance

We recognize, as have prior JCCs, that a northern allowance is warranted based on working conditions in the north and the relatively higher cost of living.

We agree with the Association that northern judges have additional stress because of the nature of the circuit work.

The real issue is whether a percentage system is appropriate and at what level.

We agree with the submission of the Association that it is time to move to a percentage system such as they have in Saskatchewan.

We agree that tying the allowance to a negotiated amount by MGEU at the bargaining table does not result in a level of compensation appropriate to the judiciary and does not take into account factors unique to judges which may not

TAB 28

NEWFOUNDLAND AND LABRADOR PROVINCIAL COURT JUDGES' SALARY AND BENEFITS TRIBUNAL REPORT

November 30, 2022

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In addition, judicial salaries in the other Atlantic Provinces continue to increase at a rate that exceeds inflation. This also makes those provinces appropriate comparators to reflect the importance of Provincial Court Judges receiving a salary that acknowledges the significance of their role in society and increases in the cost of living; thereby making an appointment to the Provincial Court an attractive alternative for lawyers in private practice. For these reasons, the Tribunal recommends that the Maritime Average be used to maintain the adequacy of judicial salaries for the period that is subject to its mandate (i.e., 1 April 2021 to 31 March 2027).

PART 7

The 2021 MARITIME AVERAGE and the 2022 MARITIME AVERAGE

Puisne Judges' Salaries

95. While seemingly straightforward, the calculation of the Maritime Average has been beset by issues arising from the delays in setting judicial compensation in the other Atlantic Provinces.

96. While Subsection 27.1(4) of the Act provides for retroactive annual adjustments in judicial salaries based on changes in salaries in either of the Maritime provinces, the statutory direction that those adjustments will be made on 1 July in the year following results in a delay in determining what the Provincial Court Judges in this Province will be paid. This results in the Judges losing the purchasing power of their salary in the year in which it is supposed to be paid since the calculation for the retroactive adjustments is made in subsequent years. The effect infringes one of the principles noted in the *PEI Reference*; namely that "reductions to judicial remuneration, including *de facto* reductions through the

erosion of judicial salaries by inflation, cannot take those salaries below a basic minimum level of remuneration which is required for the office of a Judge." That concern becomes even more prominent when there is, as currently exists, a period of high inflation.

97. Despite the delay in determining the Maritime Average for a particular year, the Government proposes that the actual known salaries for judges in the other Atlantic Provinces be used to calculate the Maritime Average and Section 27.1 be used to adjust salaries once changes made in other provinces become known.

98. The Association proposes that, for the 2021/22 and 2022/23 periods that are subject to the Tribunal's mandate, the Maritime Average be based on salaries that are set for those years in some provinces and estimates of salaries based on what is the potential or likely outcome from the constitutional process employed in the other provinces.

99. Based on their respective positions, the Government's proposal and the Association's proposal for the period of 1 April 2021 to 31 March 2022 are:

Jurisdiction	Government's Position	Association's Proposal
New Brunswick	$263,920	$288,880 (estimated based on 80% of federal salary of $361,000)
Prince Edward Island	$271,503	$285,134
Nova Scotia	$270,890	$270,890
Maritime Average	$268,771	$281,635

100. A key discrepancy between the two positions for the 1 April 2021 to 31 March 2022 period is the actual salary payable to judges in Prince Edward Island. In its reply, the Association noted that its figure has been confirmed by a judge of the Prince Edward Island Provincial Court, the Honourable Nancy Orr. Government did not challenge this updated figure. The Tribunal therefore accepts $285,134.00 as the salary set for judges in Prince Edward Island for the period of 1 April 2021 to 31 March 2022. This results in the following revised calculation:

Jurisdiction	Government's **Position**	**Association's Position**
New Brunswick	$263,920	$288,880 (estimated based on 80% of federal salary of $361,000)
Prince Edward Island	$285,134	$285,134
Nova Scotia	$270,890	$270,890
Maritime Average	**$273,315**	**$281,635**

101. Based on their respective positions, the Government's proposal and the Association's proposal for the period of 1 April 2022 to 31 March 2023 are:

Jurisdiction	Government's Position	Association's Position
New Brunswick	$263,920	$297,760 (estimated based on 80% of federal salary of $372,200)
Prince Edward Island	$285,134	$303,510 (estimated)
Nova Scotia	$283,076	$283,076
Maritime Average	**$277,377**	**$294,782**

102. While the Association's proposal to use "reasonable estimates" would theoretically address the concern that the Provincial Court Judges would lose the purchasing power of their salary while waiting for retroactive adjustments, it creates other concerns.

103. Pursuant to the process outlined in the *PEI Reference*, the outcome from recommendations made by similar commissions or tribunals are not known and therefore the estimates could be subject to change. As noted by the Supreme Court of Canada in the *PEI Reference*, the recommendations of those commissions are not binding on the executive or the legislature of a province. While the Tribunal notes the recommendations are not to be set aside lightly, the prospect remains that until they are adopted, there may be a justifiable reason not to follow the recommendations that may result in a different outcome. The result in this Province, based on this Tribunal's recommendation to use the Maritime Average as the comparator to set Provincial Court Judges' salaries, could be to set a salary arising from an overestimation as to what salaries will be in the other Atlantic Provinces. Would this result in a claw-back or negative adjustment to salaries? The possibility for administrative errors and difficulties is apparent. Moreover, the concern with lost purchasing

power can be addressed in another way. For these reasons, the Tribunal rejects the Association's proposal.

104. The Tribunal therefore recommends that for the periods of 1 April 2021 to 31 March 2022 and the period of 1 April 2022 to 31 March 2023, judicial salaries be set according to the actual amounts that are being paid to judges in the other Maritime Provinces at the time of this report, as opposed to utilizing estimates. Should salaries for judges in the other Atlantic Provinces subsequently be adjusted upwards so as to change the Maritime Average for either of these time periods, then the Tribunal recommends that salaries for the Provincial Court Judges be adjusted retroactively to the 1 April date in each time period, consistent with Subsection 27.1(4) of the Act.

105. The Tribunal recognizes that, due to inflation, the delay or 'lag' in adjusting salaries based on the Maritime Average for each of 2021/22 and 2022/23 pursuant to the Act results in the recommended increase to have a diminished actual value at the time of its receipt. In order to address this effect, the Tribunal recommends that any retroactive increase that is paid to the Judges be accompanied by a payment of interest. Interest would be calculated and paid to reflect the rate of inflation from the end date of each pay period to which the retroactive increase is applied to the date of its actual payment. The Tribunal further recommends that, once the final value of the Maritime Average is set for each of 2021/22 and 2022/23, interest be calculated and paid to reflect the rate of inflation from the end date of each pay period to which any increase is applied to the date of its actual payment.

106. In making its recommendation to pay interest on retroactive adjustments to the salary to be paid to Provincial Court Judges in 2021/22 and 2022/23, the Tribunal relies

on the following excerpt from the Manitoba Court of Appeal decision in *Provincial Judges' Assn. of Manitoba v. Manitoba,* 2013 CarswellMan 440, regarding the jurisdiction of Manitoba's Judicial Compensation Committee, Manitoba's equivalent of the Tribunal, to recommend interest as part of its jurisdiction to investigate, report, and make recommendations regarding judicial salary and benefits (paras. 127-137):

> [The JCC is a statutory body and, while the Government is correct that it cannot make recommendations that are beyond the scope of its mandate, tribunals can also obtain jurisdiction by necessary implication.... Rothstein J. observed recently in *R. v. Cunningham*, 2010 SCC 10, [2010] 1 S.C.R. 331, that "[t]his Court has affirmed that courts can apply a 'doctrine of jurisdiction by necessary implication' when determining the powers of a statutory tribunal" (at para. 19).
>
> It is true that the JCC has the power to make recommendations only and does not have the adjudicative power that is most often associated with a statutory administrative body. Rather, its mandate is to "investigate, report and make recommendations" with respect to salary and benefits....
>
> While the law of necessary implication is most often associated with adjudicative decisions, it has been referred to and relied upon even in cases involving recommendations. This is especially so in this case where the "recommendations" of the JCC are not simple recommendations. The Government's response must meet the test of simple rationality if the recommendations are not to be followed....
>
> In identifying what powers are impliedly, as well as expressly, conferred on an administrative body, the court must apply a contextual approach and consider, inter alia, the purpose and function of the statutory body. See *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, 1989 CanLII 67 (SCC), [1989] 1 S.C.R 1722, followed in *R. v. 974649 Ontario Inc.*, 2001 SCC 81 at para. 70, [2001] 3 S.C.R. 575 (at p. 1756):
>
> > .... The powers of any administrative tribunal must of course be stated in its enabling statute but they may also exist by necessary implication from the wording of the act, its structure and its purpose. Although courts must refrain from unduly broadening the powers of such regulatory authorities through judicial law-making, they must also avoid sterilizing these powers through overly technical interpretations of enabling statutes. ....
>
> The function and/or purpose of the JCC is to investigate, report and make recommendations with respect to "salaries" and "benefits." Neither word is defined in the *Act*. If one turns to *Black's Law Dictionary, sub verbo* "salary" is most often described as a form of "compensation" and s. 11.1(3) of the *Act* does speak to a "compensation" committee. As well, benefit is defined in *Black's Law Dictionary* as an advantage, privilege, profit or gain.

> The question therefore becomes whether, as a matter of statutory interpretation, the power to recommend interest is necessary for the JCC to carry out its purpose and function and can be found by necessary implication in the *Act*.
>
> There have been a number of decisions where interest was awarded despite the absence of a specific reference to interest in the statute. Courts have held that the power to issue a compensatory order implies a power to award interest. See *Public Service Commission (N.S.) v. Nova Scotia Government and General Employees Union*, 2004 NSCA 55 at para. 38, 223 N.S.R. (2d) 57. This would be of special consideration where there is no provision in the statute under review to provide a remedy when there is substantial delay from the time the benefits should be paid to when they are actually paid. See *Tilley v. Workers' Compensation Commission (Nfld.)* (1990), 1990 CanLII 7179 (NL SC), 85 Nfld. & P.E.I.R. 358 at para. 3 (S.C. (T.D.)).
>
> Another example, this time dealing with wages, arises in the case of *Canada (Attorney General) v. Morgan and Canadian Human Rights Commission* (1991), 1991 CanLII 13184 (FCA), 135 N.R. 27 (F.C.A.). Morgan was an infantryman in the Canadian Armed Forces and complained of discrimination under the *Canadian Human Rights Act*. The applicable provision in the *Canadian Human Rights Act* allowed the tribunal to compensate an individual for lost wages. On appeal to the Federal Court of Appeal, the court held that, although there was no specific provision expressly granting the tribunal power the give interest, "the tribunals were right in considering that their power to assure the victim adequate compensation entitled them to award interest" (at para. 18).
>
> So, it has certainly been the case that tribunals have awarded interest in situations where their enabling statute has not specifically mentioned the payment of interest. Moreover, the JCC is entitled to deference in its interpretation of its home statute (see *Manitoba v. Russell Inns Ltd. et al.*, 2013 MBCA 46, 291 Man.R. (2d) 244, and authorities mentioned therein).
>
> However, having stated that it was within the jurisdiction of the JCC to award interest does not mean that it must be awarded or that it must be awarded in every case or that, if awarded, the Government must accept the recommendation. The Government argues that, even if the JCC had the jurisdiction to award interest, the rejection of that recommendation and the reasons provided by the Government for that rejection were reasonable and should have been afforded deference by the application judge.
>
> In this case, the JCC did exercise its discretion to award interest. As mentioned earlier, it explained why it did so and its decision was reasonable.

107. The Tribunal's jurisdiction under Subsection 28(1) is to report on the adequacy of salaries payable under the Act. Pursuant to the principles identified in *PEI Reference* and *Bodner*, this Tribunal is required to make recommendations on the Provincial Court Judges'

remuneration by reference to objective criteria. Having recommended that the Maritime Average provides for financial security of the Provincial Court Judges, it is important that they receive its full value, once finally determined, for the periods of 2021/22 and 2022/23. The Tribunal therefore sees it as necessary to exercise its discretion to recommend the payment of interest on retroactive payments in the manner recommended above to ensure that the intent of its recommendation is achieved.

108. The Tribunal's recommendations for the period of 2021/22 and 2022/23 therefore are:

(a) for 1 April 2021 to 31 March 2022, its recommended that:

(i) Provincial Court Judges' salaries be adjusted retroactively to 1 April 2021 to $273,315.00;

(ii) interest be calculated and paid on the retroactive adjustment in paragraph 108(a)(i) to reflect the rate of inflation from the end date of each pay period to which the retroactive increase is applied to the date of its actual payment;

(iii) once the final value of the Maritime Average is set for 1 April 2021, the salary shall be adjusted retroactively to 1 April 2021 in accordance with the Act to reflect the final value of the Maritime Average applicable as of that date; and,

(iv) interest be calculated and paid on the retroactive adjustment in paragraph 108(a)(iii) to reflect the rate of inflation from the end date of each pay period to which any increase is applied to the date of its actual payment.

(b) for 1 April 2022 to 31 March 2023, its recommended that:

(i) Provincial Court Judges' salaries be adjusted retroactively to 1 April 2022 to $277,377.00;

(ii) interest be calculated and paid on the retroactive adjustment in paragraph 108(b)(i) to reflect the rate of inflation from the end date of each pay period to which the retroactive increase is applied to the date of its actual payment;

(iii) once the final value of the Maritime Average is set for 1 April 2022, the salary be adjusted retroactively to 1 April 2022 in accordance with the Act to reflect the final value of the Maritime Average applicable as of that date; and,

(iv) interest be calculated and paid on the retroactive adjustment in paragraph 108(b)(iii) to reflect the rate of inflation from the end date of each pay period to which any increase is applied to the date of its actual payment.

109. For the period commencing 1 April 2023 and continuing forward to 31 March 2027, it is recommended that:

(i) Provincial Court Judges' salaries be adjusted as of 1 April in each year to an amount no less than the CPI as of 1 April that year;

(ii) once the final value of the Maritime Average for each period commencing on 1 April in each of 2023, 2024, 2025 and 2026 is determined, should the Maritime Average in any given year be higher than the CPI-adjusted salary, the salary established pursuant to paragraph 109(i) above be adjusted retroactively to the 1 April date; and

(iii) interest be calculated and paid on the retroactive adjustment in paragraph 109(ii) to reflect the rate of inflation from the end date of each pay period to which any increase is applied to the date of its actual payment.

110. For the purposes of paragraphs 108 and 109 above and 118 and 127 below, the Tribunal recommends that the rate of inflation be determined based on the rate in the

Province for the applicable time period, according to the CPI Index as published by Statistics Canada.

111. The Tribunal's recommendation for salaries in the period from 1 April 2023 to 31 March 2027 reflects its concern that *de facto* reductions do not occur through erosion by inflation. The effect may be to reduce the competitiveness of a Provincial Court Judges' salary when compared to the federal (s.96) courts or a lawyer's earnings in private practice.

112. The Tribunal notes, however, that Canada is experiencing a high period of inflation. While the economic evidence was that the Bank of Canada seeks to return Canada to an annual rate of 2% inflation within the period within this Tribunal's mandate, the Tribunal is concerned that a prolonged period of high inflation, even if reflected in future calculations of the Maritime Average, may result in judicial salaries increasing at a faster rate when compared to increases in average weekly earnings of other workers in the Province. The Tribunal notes that this may result in criticisms that the judiciary is not shouldering its fair share of the burden of efforts undertaken to reduce the detrimental effects of volatile inflation in the Province.

113. If Government is of the opinion, based on measures such as Statistics Canada's "average weekly earnings" data for the Province, that the salary based on the CPI adjustment as recommended in paragraph 109(i) herein is resulting in Judges receiving increases that materially exceed salary/wage growth as compared to other workers in the Province, then the Tribunal recommends that Government consider a referral of that recommendation back to this Tribunal for review pursuant to Subsection 28.1(1) of the Act:

> 28.1(1) The minister may, at any time, refer a matter respecting salaries or benefits of judges to the tribunal for its review and recommendations.

Administrative Judges' Salaries

Chief Judge

114. In accordance with Section 27.1(2) of the Act, the Government submits that the Chief Judge of the Provincial Court be paid $287,431.26 for the period of 1 April 2021 to 31 March 2022 and $293,629.98 for the period of 1 April 2022 to 31 March 2023 based on the currently known amounts paid to the Chief Judges in the other Atlantic Provinces. Retroactive adjustments would be made once salaries were set in those provinces.

115. The Association notes that the adoption of this calculation would result in a diminishment of the 8% differential that the Andrews Tribunal recommended the Chief Judge should receive above the salary recommended for *puisne* judges of the Provincial Court. That recommendation has not been changed by subsequent tribunals. The Association notes that adopting the Government's position would mean that the Chief Judge would receive a differential of less than 8% because the Chief Judge in Prince Edward Island, since 1 April 2021, receives a 6% differential. The Tribunal notes that Subsection 27.1(2) could result in the Chief Judge receiving more than an 8% differential if the Chief Judges in the other Atlantic Provinces start receiving larger increases in their differentials.

116. The Andrews Tribunal's recommendation for an 8% differential to be paid to the Chief Judge was based on increased workload in assigning duties to Judges, coordinating the work of Judges, and overseeing the transfer of Judges throughout the Province. It noted the Chief Judge also has representational functions, such as meetings with Government, meetings of

TAB 29

ACTUAL PRESIDING JUSTICE OF THE PEACE HOURS BILLED

FOR THE MONTH OF MAY 2026

DATE	DAY	DESCRIPTION	NUMBER OF HOURS
May 1, 2026	Friday	Bail court and desk duty	3.50
May 4, 2026	Monday	Bail court and desk duty	3.00
May 5, 2026	Tuesday	By-law, Bail and Traffic court	3.50
May 6, 2026	Wednesday	Adult criminal docket and bail court	7.50
May 7, 2026	Thursday	Bail court and Youth docket	3.00
May 8, 2026	Friday	Bail court and desk duty	3.00
May 11, 2026	Monday	Bail court, DVTO, IRJ docket and desk duty	5.50
May 12, 2026	Tuesday	By-law, Bail and Traffic court	3.50
May 13, 2026	Wednesday	Adult criminal docket and bail court	6.00
May 14, 2026	Thursday	Bail court and Youth docket	2.00
May 15, 2026	Friday	Bail court and desk duty	4.00
May 19, 2026	Tuesday	By-law, Bail and Traffic court	3.25
May 20, 2026	Wednesday	Adult criminal docket and bail court	7.50
May 21, 2026	Thursday	Bail court and Youth docket	2.00
May 22, 2026	Friday	Bail court and desk duty	4.00
May 25, 2026	Monday	Bail court and desk duty	5.00
May 26, 2026	Tuesday	By-law, Bail and Traffic court	3.75
May 27, 2026	Wednesday	Adult criminal docket and bail court	5.00
May 28, 2026	Thursday	Bail court and Youth docket	4.00
May 29, 2026	Friday	Bail court and desk duty	5.50

NOTE:

During the month of May a Justice of the Peace was not required to preside in Child Protection matters nor Community Wellness Court.

TAB 30

PRESIDING JUSTICE OF THE PEACE SCHEDULE (Monday to Friday)

Monday	12:00 noon	Desk duty
	1:00 pm	Bail Court
	3:00 pm	IRJ (Integrated Restorative Justice) Court every second Monday
	When a judge is not available a JP will preside in:	
	10:00 am (sentencings) 2:00 pm (appearances)	DVTO (Domestic Violence Treatment Option) Court and CWC (Community Wellness Court) on alternating Mondays.
Tuesday	9:30 am	By-law docket
	11:00 am	Peace bond applications
	1:00 pm	Bail Court
	2:00 pm	Traffic Court
Wednesday	9:30 am	Adult criminal docket (appearances)
	1:00 pm	Bail Court
	2:00 pm	Adult criminal docket (sentencings)
Thursday	1:00 pm	Bail Court
	2:00 pm	Youth docket
	When a judge is not available a JP will preside in:	
	9:30 am	Child Protection docket
Fridays	12:00 noon 1:00 pm	Desk duty Bail Court

Note: On Mondays and Fridays, the Justice of the Peace is assigned to cover "desk duty "in addition to being assigned to preside in a courtroom.

- Desk duty encompasses many different types of matters and the volume of work is difficult to predict. If the volume of work cannot be concluded within the 1-hour period a JP will complete the work after the courtroom has adjourned for the day on Mondays and Fridays.
- Some examples of the types of matters dealt with are as follows:
    - Members of the RCMP and other enforcement agencies attend in person requesting the swearing of Informations, confirmation/issuing of process.
    - Victim Services attending with clients with respect to applications for a peace bond.
    - Requests for issuance of subpoenas
    - Auto conviction/dismissal of unpaid summary conviction tickets
    - Reviewing/signing of Release Orders with both the accused and sureties
    - Applications for s. 490 CCC Detention Orders
    - Time to pay applications and other various types of duties and enquiries

On Tuesdays, Wednesdays and Thursdays another Justice of the Peace (not assigned to a courtroom) covers desk duty.

TAB 31

REPORT OF THE NORTHWEST TERRITORIES JUDICIAL REMUNERATION COMMISSION

2024

MEMBERS:

DAVID GILDAY – Chairperson

GILLIAN LEE

PETER VICIAN

Counsel for the Minister of Justice of the Government of the Northwest Territories
Trisha Paradis
Darren Proctor

Counsel for the Judges of the Territorial Court of the Northwest Territories
Susan Dawes
Kristen Worbanski

Counsel for the Judicial Remuneration Commission
Sheldon Toner

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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 representatives, 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 complete an inquiry and deliver its report within 120 days of January 1 in every fourth year after January 1, 2008.[3] The current Commission will establish territorial judges' salaries for the fiscal years 2024/25, 2025/26, 2026/27 and 2027/28. 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] The scope of issues to be addressed by the Commission is set out in subsection 12.5. Legislation requires the Commission to inquire into and deliver a report with recommendations regarding the salaries paid to territorial judges, and the pension, vacation leave and other benefits to be provided to territorial judges. Section 12.9 of the *Territorial Court Act* sets out the factors the Commission must consider in making its recommendations.[4]

[4] The Minister and the territorial judges addressed the current Commission on two specific issues, namely the salaries of territorial judges and the differential to be paid to the Chief Judge of the Territorial Court. The parties did not identify pension, vacation leave, and other benefits, as matters requiring determination in the current inquiry.

[5] This report therefore focuses on evaluating the parties' presentations regarding salary and the Chief Judges' differential. The Commission is satisfied, with respect to all other issues, that recommendations from its most recent previous inquiries should continue to bind the Minister prospectively until the next inquiry in 2028. This specifically includes recommendations regarding extended health benefits for full-time judges and retired judges.

[6] The last inquiry to consider salary concluded its proceeding at the onset of the Covid-19 pandemic in 2020. There was considerable uncertainty at that time regarding the future impact of the pandemic on economic conditions and factors affecting relative incomes and cost of living. In the context of the current inquiry, new uncertainties with respect to inflation and other issues present themselves.

---

[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 12.8
[4] *Territorial Court Act*, R.S.N.W.T. 1988, c. T-2, section 12.9

[7] In the current inquiry, the Commission is aided by the considerable evidence and argument provided by the Minister and territorial judges, including expert opinion evidence from Dr. Trevor Tombe. The Commission wishes to thank counsel for their capable presentations regarding the application of the factors in section 12.9 to determine the salary of territorial judges and the Chief Judge differential.

Issues

[8] The following is a summary of the issues the Commission has been asked to consider in making recommendations for territorial judges for the fiscal years 2024/25, 2025/26, 2026/27 and 2027/28:

1. What should the Commission recommend territorial judges receive for salary over the next four years?

2. What should the Commission recommend the Chief Judge receive as a differential in addition to the salary of territorial judges?

Background

[9] The Commission conducted its inquiry through written submissions followed by a public hearing held in Yellowknife, Northwest Territories, on January 17, 2024.

[10] Notices of the hearing were posted on the Northwest Territories Courts' website and in multiple editions of News/North and The Yellowknifer, newspapers serving the Northwest Territories.

[11] The Commission received information directly from counsel, in the form of asserted or uncontested evidence combined with argument. The Commission presented interrogatories and received written responses from the parties before the hearing.

[12] Dr. Tombe was the sole witness to testify at the public hearing and be subject to questioning by the Minister and the Commission. The Commission accepted him as an expert qualified to give opinion evidence in economics.

Salary of Territorial Judges

[13] The parties have both advanced positions and rationales in support of increasing territorial judges' salaries over the next four years.

[14] The territorial judges' position is that they should receive an increase of salary to $360,000 per annum effective April 1, 2024, followed by annual increases on April 1,

2025, 2026 and 2027, based on the percentage increase in the Consumer Price Index (CPI) for Yellowknife, Northwest Territories, over the preceding calendar year.

[15] The Minister's position is that territorial judges should receive an increase of 1.0% effective April 1, 2024; followed by additional annual increases of 1.0% on April 1, 2025; 1.5% on April 1, 2026; and an increase of 1.5% on April 1, 2027.

Evidence and Submissions

Nature and Extent of Legal Jurisdiction – Subsection 12.9(a)

[16] The following is a summary of the evidence presented to the Commission on the nature and extent of the legal jurisdiction of territorial judges:

[17] Territorial judges deal with all aspects of the Territorial Court's jurisdiction, which includes criminal, civil and family law, as well as child protection, regulatory and traffic prosecution, and specialized courts. Some provincial and territorial court judges outside the Northwest Territories have jurisdiction over child protection but not family law. In other jurisdictions, judges may be able to specialize in criminal or family law.

[18] Criminal cases form the mainstay of Territorial Court's workload. This includes trials of summary conviction offences, hybrid offences, and indictable offences. Territorial judges also conduct preliminary inquiries, sentencing hearings, motions, and case management conferences.

[19] The nature of the court's criminal work has changed since the 2020 Commission. The federal government passed amendments to the *Criminal Code* in June 2019, further to Bill C-75. The amendments made pursuant to Bill C-75 reclassified numerous offences, resulting in a reduction in the number of offences eligible for preliminary inquires under the Criminal Code. The Territorial Court has adapted to these changes since the last inquiry.

[20] In addition to hearing matters under the Criminal Code, territorial judges hear cases prosecuted under the *Controlled Drugs and Substances Act*, plus a variety of federal and territorial legislation establishing offenses in areas which include environmental protection, fisheries and wildlife, workplace health and safety, and municipal bylaws.

[21] Territorial judges hear most Youth Justice Court cases, and 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.

[22] The Territorial Court has jurisdiction over small claims civil matters of amounts up to and including $35,000. Some but not all provincial and territorial courts elsewhere in Canada have small claims jurisdiction, and the monetary threshold varies. The Territorial

Court frequently deals with unrepresented litigants in these proceedings. Civil claims are subject to mandatory mediation and acting as mediator requires a unique set of skills of territorial judges.

[23] The volume of small claims matters heard in the Northwest Territories constitutes less than 1% of the total matters heard by the Territorial Court, according to information provided by the Minister. Data from the Territorial Court registry shows that between 2013 and 2023, up to the date of the Minister's reply submission, 33 civil claims were filed in the Territorial Court, which is less than 1% of the total matters before the Territorial Court.[5]

[24] 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 receive jurisdiction from an array of legislation which includes the *Family Law Act*, the *Childrens' Law Act*, the *Interjurisdictional Support Orders Act*, the *Protection Against Family Law Act*.

[25] The Territorial Court also has jurisdiction in the areas of child protection, under the *Child and Family Services Act*. Territorial judges also deal with temporary and permanent child apprehensions in the Northwest Territories.

[26] Territorial judges also consider *ex parte* applications for general warrants, DNA 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.

[27] The Territorial Court hears applications for psychiatric assessments, and applications to determine whether an accused person is unfit to stand trial. The jurisdiction to address these applications arises under the *Criminal Code*, the *Youth Criminal Justice Act*, and the *Mental Health Act*. Territorial judges are involved in various ways with specialized courts, namely the Intimate Partner Violence Treatment Options Court (IPVTO), Wellness Court and Drug Treatment Court.

[28] Matters involving minor offences may be diverted from the court system to Community Justice Committees, and territorial judges may meet with local committees while on circuit. In addition, they participate directly on other territorial and national committees related to various aspects of the administration of justice.

[29] The Minister has provided the Commission with tables illustrating the relative volumes of case heard by the Territorial Court in the various areas of law falling under the court's jurisdiction. The data shows that in 2023, up to the date of the Minister's reply submission, there had been 10 new child protection matters, 43 maintenance enforcement matters, and no new family matters filed with the Territorial Court.[6]

[5] Minister's Book of Documents, Tab 1: FACTS Court Information System: Summary of all court cases filed 2013-2023 (as of November, 2023)
[6] Minister's Book of Documents, Tab 1: FACTS Court Information System: Summary of all court cases filed 2013-2023 (as of November, 2023)

[30] The information provided to the Commission from the Minister shows that the territorial judges' overall caseload consists mostly of adult criminal, youth criminal and Summary Offence Ticket Information (SOTI) matters, which have comprised 97.35% to 97.8% of the Territorial Court's caseload from 2020 to 2023.[7]

Judges' Submissions:

[31] The following is a summary of the territorial judges' submissions on the nature and extent of territorial judges' legal jurisdiction:

- The Territorial Court exercises significantly broader jurisdiction than other provincial and territorial courts, compounded by the increasing complexity of criminal matters coming before the court.
- The Northwest Territories is one of a limited group of jurisdictions in Canada where provincial or territorial judges exercise criminal, civil and family jurisdiction.
- Territorial judges must deal with all areas of the court's jurisdiction, and do not exercise solely criminal or civil jurisdiction as some judges may do, for example, in Alberta.
- Territorial judges have the third highest civil claims limit, exceeded only by Alberta and Quebec. Civil claims are subject to a mandatory mediation session with a judge, unless otherwise directed, which requires a unique set of skills.
- The passage of Bill C-75 has resulted in the Territorial Court hearing less preliminary hearings and more trials, resulting in a notable increase in longer and more complex trials in the Territorial Court. Where the matter arises outside Yellowknife, this gives rise to the need for special circuits.
- Reinvigoration of the IPVTO and Wellness Courts has increased the number of accused availing themselves of these alternatives to regular criminal court.
- The broad and varied jurisdiction of territorial judges supports compensation that is among the highest paid to judges in provincial and territorial jurisdictions.

Minister's Submissions:

[32] The following is a summary of the Minister's submissions on the nature and extent of territorial judges' legal jurisdiction:

- The jurisdiction exercised by the territorial judges is similar to the jurisdiction exercised by other territorial and provincial court judges across Canada and has changed very little over the last 25 years.
- While individual judges are not able to specialize, this is likely true of most territorial and provincial judges in Canada.

[7] Minister's Book of Documents, Tab 2: FACTS Court Information System: Charges Filed between 2013-01-01 and 2023-12-31

- Territorial judges also hear small claims matters of a limited dollar amount. The Territorial Court's civil claims limit of $35,000 is typical and within the range for provincial and territorial courts across Canada, which is between $25,000 to $100,000.
- Territorial judges hear mostly criminal and regulatory matters in the Northwest Territories, as well as family law matters, being mainly child protection matters and applications for child support.
- The Territorial Court does not have jurisdiction in areas including divorce, adoption, guardianship and Public Trustee matters, foreclosures, defamation, issues regarding title to land, estates, appeals from administrative tribunals, and civil matters where damages claimed exceed $35,000.
- Territorial Judges have an important and significant role to play in the administration of justice in the Northwest Territories, as reflected in their current salary and benefits.

Adequacy of Salaries having regard to Cost of Living – Subsection 12.9(b)

[33] The Commission received evidence regarding cost of living changes in the Northwest Territories as well as economic reports to assist in forecasting increases over the next four years including recent reports from the Conference Board of Canada[8] and the Northwest Territories Economic Review for 2023-2024.[9]

[34] Dr. Tombe also delivered a written report and testimony to the Commission in which he addressed economic and cost of living conditions in the Northwest Territories.[10] The key conclusions of his report pertaining to the cost of living, in the context of recent inflationary developments, follow.

[35] The 2020 Commission recommended cost of living increases to territorial judges' salaries based on CPI statistics published by Statistics Canda. The CPI tracks changes in the cost of a fixed basket of consumer goods, calculated for areas across Canada, including the cost of a fixed basket of goods in Yellowknife, Northwest Territories, where the territorial judges reside.

[36] In late 2021, inflation surged in many jurisdictions worldwide. The period 2019 to 2022 marked the highest acceleration of consumer prices in over half a century. The

[8] Minister's Book of Documents, Tab 12: Conference Board of Canada, "Charting New Paths – The Northwest Territories' Outlook to 2045" and Tab 13: Conference Board of Canada, "A Rocky Road Ahead – The Northwest Territories' Outlook to 2045"
[9] Minister's Book of Documents, Tab 14: Economic Review 2023-2024
[10] Judges' Book of Documents, Tab 3: Dr. Trevor Tombe, "An Analysis of Current and Medium-Term Economic and Cost-of-Living Conditions in NWT"

average CPI increase for the years 2019 to 2022, for Yellowknife, Northwest Territories, was 1.6% for 2019, 0.1% for 2020, 2.2% for 2021 and 7% for 2022.[11]

[37] Between February 2020 and September 2023, CPI in Yellowknife rose by 11.9% compared to 15.3% across Canada. Inflation then declined quickly with consumer price growth returning to 1.8% in September 2023, close to the bank of Canada's target rate of 2%. The only significant inflationary pressure left in Yellowknife is from food, which contributes 1.5% more to the current inflation rate compared to February 2020.

[38] The future pace of consumer prices in the Northwest Territories may stabilize around the Bank of Canada's target range of 2% to 3% with the likely end of the most severe inflationary period. Consumer prices are nonetheless an estimated 4.6% higher than they would have been with normal inflation, representing a potentially permanent and material reduction in individuals' purchasing power.

[39] In order to compensate for this erosion, average wage growth in recent quarters has risen to 3.5% per year, as opposed to the average annual adjustment of 3% per year seen in new contracts prior to the pandemic.

[40] Dr. Tombe includes in his report CPI forecasts for the years 2023 through 2027. In 2023, the Conference Board of Canada forecasts a CPI increase of 3.1% whereas Dr. Tombe forecasts 3.4%. In 2024, the Conference Board of Canada forecasts a CPI increase of 2.3% whereas Dr. Tombe forecasts 2.1%. In 2025, the Conference Board of Canada forecasts a CPI increase of 2.1% whereas Dr. Tombe forecasts 2.0%. In 2025 and 2026, forecasts converge. Both the Conference Board of Canada and Dr. Tombe predict CPI increases of 2.0% for each of the last two years of this Commission's mandate for recommendations.

[41] Weekly earnings and median incomes are higher in the Northwest Territories than in other parts of Canada. In terms of relative purchasing power, $1.40 in the Northwest Territories has the same purchasing power as $1.00 in the broader Canadian context. In other words, $1.00 earned in the Northwest Territories equates to $0.71 in the rest of Canada in terms of purchasing power.

Judges' Submissions:

[42] The following is a summary of the territorial judges' submissions on the adequacy of judicial salaries having regard to the cost of living in the Northwest Territories:

- The territorial judges' proposal to increase salaries to $360,000 for 2024/25 would be an 8% increase.

[11] Judges' Book of Documents, Tab 3: Dr. Trevor Tombe, "An Analysis of Current and Medium-Term Economic and Cost-of-Living Conditions in NWT" at page 3

- CPI is expected to have increased upwards of 3.4% over 2023, which amounts to a real increase of 4.6% beyond what is required to protect the 2023 salary from erosion due to increased cost of living.
- The territorial judges further submit there is a significant difference between "adequate" compensation, which ensures salaries do not fall below a minimum level, and "appropriate" compensation which reflects a consideration of all the relevant factors.
- A salary increase in 2024/25 based solely on CPI would result in territorial judges' salaries falling significantly behind judicial salaries at the top tier nationally.
- In subsequent years, territorial judges' salaries would be increased based on the change in the percentage CPI for Yellowknife over the preceding calendar year.
- The Minister's argument that current salaries are adequate does not take into account cost of living changes anticipated over the next years.

Minister's Submissions:

[43] The following is a summary of the Minister's submissions on the adequacy of territorial judges' salaries having regard to the cost of living in the Northwest Territories:

- The territorial judges' 2023/24 salary of $333,456 plus benefits is clearly adequate to ensure judicial independence and protect judges from financial pressure.
- Territorial judges' salaries have coincided with or outpaced recent increases in the cost of living, most recently through a 6.9% salary increase from 2022/23 to 2023/24.
- Territorial judges are already compensated at a level that maintains judicial independence and preserves them from any perception of vulnerability to pressure or manipulation.
- The Minister's proposed salary increases would ensure territorial judges' salaries are not eroded by inflation over the next four years.

Salaries of Judges in Other Jurisdictions – Subsection 12.9(c)

[44] The parties introduced a Joint Book of Exhibits including a table setting out the salaries of provincial and territorial judges from jurisdictions across Canada. [12] The table is very useful for comparative purposes and is therefore attached to this report as Appendix A.

[45] In addition to salary, territorial judges currently receive a northern allowance of $3,700 per annum. There is no proposal to increase this amount, but the Commission requested information regarding comparable remote or northern supplements paid to

[12] Joint Book of Documents, Tab 13: Puisne Judges' Salaries Across Canada, as at November 2023

judges in other territories and provinces. The following is a summary of the information provided by the parties:

[46] In the Yukon, judges receive a northern allowance of $2,042 per year. Some judges in Manitoba receive an amount equal to 5% of salary as a northern allowance, which would be $15,067 per year based on the 2022/23 Manitoba salary. In Newfoundland and Labrador, judges can be eligible for a northern allowance of $2,150 per individual or $4,300 per family.

Judges' Submissions:

[47] The following is a summary of the territorial judges' submissions on the salaries of provincial and territorial judges elsewhere in Canada:

- A comparison of salaries of judges in other jurisdictions is helpful because the judiciary is unique in constitutional status and job function, making comparison with other jobs difficult.
- The work of a judge is uniquely stressful, involving matters where the stakes are high for participants in the court process, and territorial judges are exposed to tense and emotional circumstances as well as disturbing and traumatic subject matter.
- The 2012 Commission recommended salaries be amongst the highest for provincial and territorial judges in Canada; the 2016 Commission recommended salaries in the fourth position nationally; and the 2020 Commission recommended salaries in the upper end and within the top quartile for provincial and territorial judges nationally.
- Previous Commissions' comparisons of judicial salaries have taken into account the more onerous working conditions of territorial judges in the Northwest Territories.
- The Commission is urged to consider what other judges will be making in the next four years, not just the 2023/24 salaries highlighted in the Minister's submissions.
- Judges in other provinces and territories receive northern allowances comparable to the $3,700 allowance received by territorial judges in the Northwest Territories.

Minister's Submissions:

[48] The following is a summary of the Minister's submissions on the salaries of provincial and territorial judges elsewhere in Canada:

- The Commission should consider this factor equal amongst other factors and not as establishing a "ranking system" in which territorial judges must maintain their previous rank.

- It is difficult to ascertain the salaries and benefits of provincial and territorial judges across Canada for several reasons:
    - In Alberta, judicial compensation commissions have issued recommendations that have not been accepted by the respective governments, and judicial review (litigation) is likely.
    - In Manitoba and Quebec, hearings are pending, and in the Yukon, a hearing has been held but the commission has not yet issued its report and recommendations.
    - In Saskatchewan, New Brunswick and Nova Scotia, provincial court judges' salaries have been fixed as a percentage of federally-appointed judges' salaries; and the federal judicial compensation committee report is not due until 2025.
    - Prince Edward Island bases judicial salaries off a national average and Newfoundland & Labrador bases them off a maritime average leaving it unclear how information from other provinces is used to calculate salaries.

Working Conditions of Territorial Judges – Subsection 12.9(d)

[49] The following is a summary of the working conditions of territorial judges, while working in Yellowknife and elsewhere while on circuit, as outlined in material submitted by the territorial judges and the Minister.

[50] The Northwest Territories covers a large area and territorial judges must travel frequently to communities outside Yellowknife for circuit courts. The twenty circuit destinations in the Northwest Territories require territorial judges to be away from their homes for periods that can exceed five days a week.

[51] Travel is subject to weather which can sometimes result in delays. In winter, travel takes place in cold and dark conditions. Most circuit travel is by small plane, in unpressurized cabins not equipped with washrooms.

[52] On some circuits, suitable accommodation is not available in the community and territorial judges must commute to and from a larger centre. Circuit courts are held in arenas, community centres, gymnasiums, community halls, council chambers, and hotels, lacking the amenities of a courthouse. There is often no private area for judges to use between court sittings, increasing the possibility of an accused person or member of the public approaching a judge.

[53] Communities where circuit courts are held can also lack restaurants or may have restaurants with limited hours. Territorial judges generally sit over five hours a day while on circuit, and often longer to accommodate witnesses and accused who may have travelled long distances to appear.

[54] There are no scheduled chambers days for territorial judges while on circuit. In addition, the Territorial Court deals with clients with difficult backgrounds and addiction

issues or cognitive challenges, without the level of support available to the court in Yellowknife. The Territorial Court also deals regularly with witnesses and accused persons through an interpreter.

[55] In terms of the volume of crime, Statistics Canada reports that a total of 24,256 *Criminal Code* violations (excluding traffic offences) were reported to police in the Northwest Territories by a population of 44,678. Statistics Canada also calculates a crime severity index (CSI) which assigns a weight to each violation relative to the average sentence, and the index for Northwest Territories for 2022 was 436.8 on a standard of 100. From 2012 to 2022, the total number of Criminal Code violations in the Northwest Territories increased by 12% and the CSI increased by 29% over the decade.[13]

[56] Territorial judges supervise and train justices of the peace in addition to their regular court duties, which includes four regular sessions per year plus meetings and refresher courses in the communities. Due to retirements in recent years, there is currently a more junior roster of justices of the peace who require training before they can perform more than administrative duties.

Judges' Submissions:

[57] The following is a summary of the territorial judges' submissions on working conditions:

- The 2016 Commission concluded that "the circuit work done by territorial judges is more challenging than anywhere else in the country" and "the working conditions of the Judges are in fact more onerous than those of judges in the rest of the country."
- The working conditions of territorial judges continue to be particularly onerous, primarily due to the rigorous conditions of the North including the challenges associated with circuit courts.
- The challenges of circuit work have increased due to additional special sittings being required outside Yellowknife since the passage of Bill C-75.
- High rates of crime and the limited jurisdiction of justices of the peace contributes to a complex workload for the judiciary.
- Territorial judges disagree with the Minister's submission that videoconferencing has materially alleviated working conditions or reduced the volume of circuit work.

Minister's Submissions:

[58] The following is a summary of the Minister's submissions on working conditions:

[13] Judges' Book of Documents, Tab 11: Police-reported Crime Statistics in Canada, 2022

- The 2012 Commission found that "the working conditions of territorial judges are certainly no worse than in the past and in fact have probably improved somewhat in recent years."
- Circuit work is not unique, and provincial and territorial judges across Canada are required to travel and hold court in numerous circuit points outside major centres.
- Travelling on circuit by air, as territorial judges do in the Northwest Territories, may be preferrable to travelling by car as some judges do in other provinces and territories.
- Territorial judges live in Yellowknife, which has a range of amenities, and none are required to permanently live in remote locations.
- Bill C-75 has not impacted the jurisdiction of the court, but rather the formation of how certain matters are heard, and the reduction in preliminary inquiries is a procedural issue.
- Past Commissions have distinguished workload from working conditions. Higher crime rates or workloads do not necessarily mean harsher working conditions.
- Increased use of videoconferencing during the Covid-19 pandemic improved access to justice and has had a positive impact on territorial judges' working conditions.
- Working conditions are challenging, but they have not gotten worse over the past four years and remain similar to those considered by the 2020 Commission.

Economic Fairness – Subsection 12.9(e)

[59] The Commission received evidence from the report and testimony of Dr. Tombe regarding professional incomes in the Northwest Territories, as well as from the Minister regarding the salaries of senior officials in the territorial government. The following is a summary of relevant evidence on this factor:

[60] Public sector employment in the Northwest Territories occupies a large share of the total population and labour force, and accounts for a substantially larger share of total labour compensation. In the Northwest Territories, approximately 29% of the population was employed in the public sector, and this represented 50% of total labour compensation in 2022.[14]

[61] Dr. Tombe further reports that average hourly compensation was higher for public servants in the Northwest Territories than for public servants nationally. Pay rates for public sector employees have generally increased over time at a rate that often surpasses the overall inflation rate of the Northwest Territories. Before the Covid-19 pandemic, for example, between 2001 and 2019, the average hourly wage for government sector

[14] Judges' Book of Documents, Tab 3: Dr. Trevor Tombe, "An Analysis of Current and Medium-Term Economic and Cost-of-Living Conditions in NWT" at page 27

employees rose on average 3.5% per year, which was 1.5% higher than the average rate of consumer prices increases in the Northwest Territories.

[62] The incomes of professionals in the Northwest Territories are also higher than the national average, ranking slightly below the Yukon, but ahead of Alberta and Saskatchewan. Since 2019, the average growth of public sector employees' hourly pay has been 1.2% while professional, scientific, and technical services employees have had an average growth rate of 6.1% per year.[15]

[63] Median incomes and disposable incomes are higher in the Northwest Territories than in other parts of the country. Real household disposable incomes in the Northwest Territories, for example, have increased since 2019, from $90,000 to over $113,000 in 2022. For Canada overall, the comparable level of household disposable income was $80,000.[16]

[64] The Government of the Northwest Territories latest economic review of 2023 predicted a 2.8% increase in average weekly earnings.[17] The Conference Board of Canada forecasts continued increases in disposable household incomes, at 2.6% in 2024, 3.5% in 2025, 3.8% in 2026 and 2.6% in 2027.[18] The labour market in the Northwest Territories is competitive, and Dr. Tombe opines that any increase in labour demand is likely to result in higher wages.

[65] The Minister argues the Commission should use Deputy Minister's salaries as means of achieving economic fairness. Deputy Ministers' salaries in the Government of the Northwest Territories, effective April 1, 2022, range between $193,038 and $294,921. The Minister also notes that the Premier of the Northwest Territories, the most senior member of the executive branch of government, receives indemnities totalling approximately $207,721 per year.

Judges' Submissions:

[66] The following is a summary of the territorial judges' submissions on economic fairness:

- The high incomes of Northwest Territories residents, relative to residents of other jurisdictions, support territorial judges being paid a salary among the highest in Canada.

[15] Judges' Book of Documents, Tab 3: Dr. Trevor Tombe, "An Analysis of Current and Medium-Term Economic and Cost-of-Living Conditions in NWT" at page 30
[16] Judges' Book of Documents, Tab 3: Dr. Trevor Tombe, "An Analysis of Current and Medium-Term Economic and Cost-of-Living Conditions in NWT" at page 26
[17] Minister's Book of Documents, Tab 14: Economic Review 2023-2024 at page A6
[18] Judges' Book of Documents, Tab 3: Dr. Trevor Tombe, "An Analysis of Current and Medium-Term Economic and Cost-of-Living Conditions in NWT" at page 11

- The earnings of public sector and professional groups in the Northwest Territories compare favourably with their counterparts in other jurisdictions.
- Employees in the Northwest Territories consistently rank amongst the highest in various measures of compensation, even adjusting for higher prices in Yellowknife, and increases for other groups have exceeded the rate of inflation.
- The territorial judges contest the Minister's emphasis on Deputy Ministers' salaries for comparative purposes in evaluating economic fairness. There are more highly paid public servants as comparators, for example, physicians.
- The CPI increase of 6.9% which territorial judges received in 2023/24 simply maintained the real relative purchasing power, even while judicial salaries fell behind salaries in Ontario, Alberta, Saskatchewan, and British Columbia.
- Various measures of compensation all support the territorial judges' request for compensation that is among the highest compensation paid to judges across the country.

Minister's Submissions:

[67] The following is a summary of the Minister's submissions on economic fairness:

- Deputy Ministers' salaries are one of the longest-standing comparators for territorial judges' salaries.
- When benefits were considered, it was common ground that territorial judges' benefits were to be equivalent to those of Deputy Ministers in the territorial government.
- Territorial judges are amongst the highest paid public officials from the public purse in the Northwest Territories.
- Territorial judges bring a wealth of education and experience to their role, as do Deputy Ministers and other senior managers in the territorial government.
- Given that territorial judges receive benefits like those of Deputy Ministers, while enjoying superior job security, it is reasonable that judicial salaries should not deviate too far from Deputy Ministers' salaries.
- Territorial judges' salaries have grown at a higher rate than average Deputy Minister salary over the same period, such that the disparity has increased from $45,000 in 2012 to $70,000 in 2022, representing a disparity increase of 59%.
- The Minister contends it is arguably fair, economically, that salaries paid to the different branches of government be considered in setting territorial judges' compensation.

Economic Conditions of the Northwest Territories – Subsection 12.9(f)

[68] The economic conditions of the Northwest Territories are addressed in reports from the Conference Board of Canada[19] and the Northwest Territories Economic Review for 2023-2024.[20] They were also addressed at the hearing through Dr. Tombe's written report and testimony. The following is a summary of the relevant economic observations and forecasts presented to the Commission:

[69] The Conference Board of Canada reports that the economic outlook for the Northwest Territories is "modest" and that "Falling diamond production will undermine GDP growth in the years ahead."[21]

[70] The Northwest Territories Economic Review indicates the economy had been contracting before the Covid-19 pandemic and has not fully rebounded.[22] Diamond mines are scheduled to close in 2025, 2029 and 2030. All currently producing diamond mines are expected to cease production by 2030.[23] Economic risks to the Northwest Territories continue, including a lack of diversification.[24]

[71] Dr. Tombe concludes that "conditions in the Northwest Territories are generally strong relative to other jurisdictions and are projected to remain so in the coming years."[25] In his opinion, prospects for the Northwest Territories appear favourable for the coming years based on the considerations outlined below.

[72] Inflation is expected to stabilize and wage growth is set to rise at a rate exceeding consumer price growth from 2024 onwards. On a per capita basis, the Northwest Territories' gross domestic product (GDP) is higher than any region except Nunavut. Dr. Tombe's view is that real and nominal GDP growth is also expected to be strong in the future, with the potential for large-scale projects to have a considerable effect on long-term growth.[26]

[73] Dr. Tombe expected that employment and real income would decline in 2023 primarily due to rising consumer prices. This temporary economic weakness is not

[19] Minister's Book of Documents, Tab 12: Conference Board of Canada, "Charting New Paths – The Northwest Territories' Outlook to 2045" and Tab 13: Conference Board of Canada, "A Rocky Road Ahead – The Northwest Territories' Outlook to 2045"
[20] Minister's Book of Documents, Tab 14: Economic Review 2023-2024
[21] Minister's Book of Documents, Tab 13: Conference Board of Canada, "A Rocky Road Ahead – The Northwest Territories' Outlook to 2045" at Key Findings
[22] Minister's Book of Documents, Tab 14: Economic Review 2023-2024 at page A4
[23] Minister's Book of Documents, Tab 14: Economic Review 2023-2024 at page A12
[24] Minister's Book of Documents, Tab 14: Economic Review 2023-2024 at page A14
[25] Judges' Book of Documents, Tab 3: Dr. Trevor Tombe, "An Analysis of Current and Medium-Term Economic and Cost-of-Living Conditions in NWT" at pages 2-3
[26] Judges' Book of Documents, Tab 3: Dr. Trevor Tombe, "An Analysis of Current and Medium-Term Economic and Cost-of-Living Conditions in NWT" at pages 12-14

attributed to fundamental challenges but to the withdrawal of government support programs following the pandemic, lower capital expenditures, and lower exports.[27]

[74] During the four-year mandate of the Commission, one of the three producing diamond mines in the Northwest Territories is expected to close, which is expected to lower diamond production in that year. Mining activities that could begin in 2026 may ensure that this effect is short lived.[28]

[75] Dr. Tombe acknowledges that the Northwest Territories economy is marginally less diversified than Alberta and Saskatchewan and more diverse than Newfoundland and Labrador, with mining activities accounting for 22% of the economy, public administration accounting for 19% and health and educational services accounting for 16%. This economy is susceptible to unpredictable shifts in commodity prices, given that mining dominates economic activity, in common with many Canadian regions.[29]

[76] The mining sector in the Northwest Territories, however, features a high share of employees who reside outside the territories. In Dr. Tombe's opinion, this feature of the economy somewhat buffers the Northwest Territories from downturns since job losses in the sector are felt more in employees' home jurisdictions than in the Northwest Territories.[30]

[77] In terms of capital investment, the Northwest Territories is among the most capital-intensive regions in Canada on a per capita basis. In addition, Dr. Tombe expects employment growth to continue to be robust in the coming years. Since 2018, economic growth has been strong in sectors including construction, healthcare, and public administration.[31]

[78] The overall labour market in the Northwest Territories is also strong relative to other jurisdictions, with the unemployment rate below 6% as of September 2023, the employment rate just under 70%, and the labour force participation rate at approximately 73%. Statistics Canada predicts the Northwest Territories' population will expand from 2022 to 2028, with a young and growing population being an important source of future growth.[32]

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[27] Judges' Book of Documents, Tab 3: Dr. Trevor Tombe, "An Analysis of Current and Medium-Term Economic and Cost-of-Living Conditions in NWT" at page 11-12
[28] Judges' Book of Documents, Tab 3: Dr. Trevor Tombe, "An Analysis of Current and Medium-Term Economic and Cost-of-Living Conditions in NWT" at page 17
[29] Judges' Book of Documents, Tab 3: Dr. Trevor Tombe, "An Analysis of Current and Medium-Term Economic and Cost-of-Living Conditions in NWT" at page 14
[30] Judges' Book of Documents, Tab 3: Dr. Trevor Tombe, "An Analysis of Current and Medium-Term Economic and Cost-of-Living Conditions in NWT" at page 17
[31] Judges' Book of Documents, Tab 3: Dr. Trevor Tombe, "An Analysis of Current and Medium-Term Economic and Cost-of-Living Conditions in NWT" at pages 14-15
[32] Judges' Book of Documents, Tab 3: Dr. Trevor Tombe, "An Analysis of Current and Medium-Term Economic and Cost-of-Living Conditions in NWT" at page 21

Judges' Submissions:

[79] The following is a summary of the territorial judges' submissions on economic conditions in the Northwest Territories:

- The Commission should follow the approach of past Commissions in not considering the government's financial position or ability to pay in its consideration of economic conditions.
- The territorial judges submit the Commission should prefer the expert opinions of Dr. Tombe where those opinions conflict with unqualified assertions made by the Minister regarding the economic conditions of the Northwest Territories.
- The territorial judges submit that Dr. Tombe's opinions do not support conclusions that mining is in a steady decline, that the economy is more dependant on the territorial government than ever before, that there is limited room to increase government expenditures because the government is approaching its debt ceiling, or that unknown costs for responding to flood and fire emergencies will greatly impact the government's financial position.

Minister's Submissions:

[80] The following is a summary of the Minister's submissions on economic conditions in the Northwest Territories:

- The past four years have been difficult for the Northwest Territories, with the Covid-19 pandemic, flooding in Hay River and wildfires across the Northwest Territories in 2023. The economic impact of these events is still unfolding and will be hard to fully calculate.
- The economic conditions of the Northwest Territories, and the economic state of the Government of the Northwest Territories, are closely intertwined.
- The government is approaching its debt ceiling, with expenses related to the pandemic and natural disasters, and there is no indication a turnaround is imminent.
- Dr. Tombe's predictions are overly optimistic, and do not adequately consider certain factors, for example, falling diamond production and set-backs to a tourism industry still struggling to recover from the pandemic.
- The declining mining industry and the lack of economic diversification affects other areas of the economy and will result in increasing reliance on public sector investments for employment and capital spending.

Any other Factor the Commission considers Relevant – Subsection 12.9(g)

[81] The Minister submits that the Commission should consider the financial situation of the territorial government in determining territorial judges' salaries. This has already

been noted above in the summary of submissions under economic conditions, subsection 12.9(f).

[82] The arguments concerning how that financial situation should affect judicial salaries can be addressed more fully in under subsection 12.9(g). The Commission prefers this approach since the correlation between the government's financial situation and economic conditions posited by the Minister has not been firmly established. The approach may be different in future inquiries, depending on the evidence and argument presented.

[83] The Commission heard from the Minister that the territorial government receives approximately 70% of its total annual revenue through "Territorial Formula Financing" (TFF). TFF grows at the rate of government spending multiplied by territorial population growth relative to national population, and the federal rate of population growth has exceeded the Northwest Territories rate for 18 of the past 20 years.

[84] The Government of the Northwest Territories (GNWT) has a total borrowing limit of $1.8 billion, set by a federal Order in Council, which the government uses to borrow capital while half the government's capital budget must be funded from cash from an operating surplus. The GNWT maintains a $120 million cushion below the borrowing limit to ensure a severe expenditure shock does not take the GNWT over the borrowing limit.

[85] The Finance Minister's Fiscal Update, dated September 28, 2023, indicates that spending on natural disasters would reduce the territorial government's projected operating surplus in 2023-2024 from $178 million to approximately $5 million.[33] The Minister also advises that Moody's Investor Services, a credit rating agency, has cut the territorial government's rating to Aa2 in March 2022, citing risks from debt financing, and borrowing costs.

[86] In response to the Minister's submissions on this factor, Dr. Tombe gave evidence that territorial government operations are generally balanced, and government's finances are often in surplus. There is an anticipated operational surplus of over $179 million, for example, projected over the period 2023/24 to 2026/27.

[87] Regarding the unknown final cost of natural disasters, Dr. Tombe's evidence was that most disaster expenses can be shifted to the federal government through the Disaster Financial Arrangements program, which is intended to shift up to 90% of disaster-related expenses.

[88] Dr. Tombe also described how the GNWT Fiscal Responsibility Policy requires the territorial government to incorporate financial prudence into its planning, for example, by observing a requirement to maintain debt service payments within a policy limit of 5% of GNWT revenues.

[33] Minster's Book of Documents, Tab 15: The Honourable Caroline Wawzonek, Minister of Finance, Northwest Territories Fiscal Update

[89] With respect to the TFF, Dr. Tombe also notes that the territorial government's gross expenditure base, which is incorporated in the federal TFF accounting for roughly two-thirds of government revenues, has grown on pace with per capita growth for all provincial and local governments.

[90] Dr. Tombe commented on how the TFF arrangement effectively insulates the territorial government from financial adversity, since the gross expenditure base of the territorial government would not change in the event of a negative shock to fiscal capacity. It would continue to grow at rates tied to the Parliamentary Budget Office's expectations of provincial and local expenditure growth and eventually compensate for the shock.

Judges' Submissions:

[91] The following is a summary of the territorial judges' submissions on other factors the Commission may consider relevant:

- Legislators in the Northwest Territories chose not to make the financial condition of the government a factor to be considered in determining territorial judges' salary and benefits.
- The Commission should prefer the expert evidence provided to the inquiry by Dr. Tombe where they differ from the unqualified submissions of counsel concerning the government's financial position.

Minister's Submissions:

[92] The following is a summary of the Minister's submissions on other factors the Commission may consider relevant:

- The Commission should consider, as a matter of context, that judicial compensation legislation requires commissions elsewhere in Canada to consider the financial position of their provincial or territorial governments.
- The territorial government faces increasing expenses, with increasing demands on the government to serve as the main investment driver in the context of sinking private investment with no new resource projects being built.
- The territorial government faces declining revenues from the TFF, noting that the Canadian population growth rate has exceeded the Northwest Territories' rate for 18 of the past 20 years.
- The territorial government also faces borrowing costs that present a further challenge to the GNWT's financial position, due to the downgrading of the government's credit rating.
- A fairly paid judiciary ranks high in terms of government priorities but recent challenges to the government's financial position, and the state of the economy, do not support the level of increase being sought by territorial judges.

Reasons for Decision – Salary

[93] 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.[34]

Nature and Extent of Legal Jurisdiction

[94] Territorial judges exercise a scope of jurisdiction that 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. Territorial judges also participate in specialized courts, and work with justices of the peace.

[95] This Commission echoes the acknowledgement of previous Commissions of the broad, varied, and extensive jurisdiction of the Territorial Court. Consideration of this factor has consistently supported recommendations to pay territorial judges in the upper range compared with other jurisdictions. In this year's inquiry, the Commission heard argument from the territorial judges that the scope of jurisdiction has expanded whereas the Minister contends it has not greatly changed in 25 years.

[96] The territorial judges have provided a summary of some of the differences between the jurisdiction of the territorial court and other provincial and territorial courts. The Territorial Court requires judges in the Northwest Territories to be versed in multiple areas of the law. This is not uncommon amongst provincial and territorial courts elsewhere, and the territorial judges' submissions do not highlight any particular or unique changes to the scope of territorial judges' jurisdiction in relation to other jurisdictions.

[97] The territorial judges contend that Bill C-75 has had a major impact on their jurisdiction, resulting in less preliminary hearings and more trials, requiring more special circuits in communities outside Yellowknife. This change to the *Criminal Code* is one that will have impacted all provincial and territorial courts across Canada. The change is essentially an internal change within the criminal jurisdiction traditionally exercised by those courts. The shift from preliminary hearings to trials may result in higher stakes in terms of the outcomes; but territorial judges will be using similar skills in exercising their jurisdiction in either type of proceeding. The more material concern for territorial judges would appear to be the purported effect of this change on working conditions, which has arguably impacted them more than counterparts in the provinces. This is addressed under working conditions.

[34] *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

[98] The Minister's submission identifies numerous areas in which territorial judges do not have jurisdiction. The areas identified are divorce, adoption, guardianship and Public Trustee matters, foreclosures, defamation, issues regarding title to land, estates, appeals from administrative tribunals, and civil matters where damages exceed $35,000. These areas are within the jurisdiction of federally-appointed judges, and the submission does not highlight any change or diminution of territorial judges' jurisdiction.

[99] Basically, the Territorial Court has similar but not identical jurisdiction to other provincial and territorial courts in Canada. It is a court created under territorial legislation comprised of territorially-appointed judges and, as such, it is not a federally-appointed court and does not have the powers of a superior court.

[100] The nature and jurisdiction of the Territorial Court aligns in all important respects with the jurisdiction of other provincial and territorial courts. These are the courts which deal primarily with adult and youth criminal matters, drug offences and regulatory offences excepting matters which fall to superior courts.

[101] These types of matters are the predominant caseload of the Territorial Court, as illustrated by evidence from the Minister showing that approximately 97% percent of cases heard in the Territorial Court fall into these categories.

[102] Jurisdictional similarities between the Territorial Court and other provincial and territorial courts provides a rationale for comparing judicial salaries from other jurisdictions, in addition to the fact that subsection 12.9(c) of the legislation already requires such comparison. Evidence from other provinces and territories also provides examples of how to award salaries reflective of statutory courts' jurisdiction as compared with superior courts' jurisdiction.

[103] There are differences in salary between provinces and territories, which will result from the considerations of all factors by judicial compensation commissions, including but not limited to the nature and extent of jurisdiction. The theme that traverses the country and makes other provinces and territories valid comparators, is the level of knowledge and expertise required of a provincial or territorial court judge.

[104] The Commission recognizes, however, that territorial judges in the Northwest Territories have a broader scope of jurisdiction than some of their counterparts in provinces and territories. We are unable conclude they have the broadest jurisdiction in the country, but it is certainly broad, and the requirement to be capable across the full range of the Territorial Court mandate applies to all of its judges.

[105] Territorial judges must be able to act as mediators of civil claims, serve as trainers for justices of the peace, and engage alternative approaches to the resolution of criminal charges in Wellness Court and Drug Treatment Court. Territorial judges must be highly skilled, and highly adaptable to fulfill the responsibilities required of them.

[106] The size of the Territorial Court is small and so all its judges must be able to work comfortably in criminal law, regulatory matters, family law and child protection, and civil

claims. The volume of matters, other than criminal and quasi-criminal matters, may be small; but territorial judges must be competent in those areas whenever they exercise their jurisdiction.

[107] As a result, this factor supports continuing to pay territorial judges in the upper range compared with other jurisdictions.

Adequacy of Salaries having regard to Cost of Living

[108] The Commission took particular interest in this factor in this inquiry, recognizing that the cost of living was affected by economic consequences of the Covid-19 pandemic. The prior Commission issued its report at the outset of the pandemic in the spring of 2020. The recommendations on territorial judges' salaries made in that report took effect in the context of considerable uncertainty as to what the next four years would hold.

[109] The Commission acknowledges the evidence of Dr. Tombe in explaining what has happened with respect to the cost of living in recent years, and for his forecasts for inflation. It is relevant to this inquiry that in late 2021, inflation surged in many jurisdictions, including the Northwest Territories, with the period between 2019 and 2022 marking the highest period of increases in consumer prices in over half a century.

[110] The surge in inflation is reflected in the 6.9% salary increase received by territorial judges in 2023/24. This increase was based on the 2020 Commission's recommendation that territorial judges should receive, for each year of the Commission's mandate, an amount equal to the average percentage increase in CPI for Yellowknife over the preceding calendar year.

[111] Statistics Canada tracks changes in the cost of a fixed basket of consumer goods on a monthly basis to determine changes to CPI. The CPI is a useful tool to align salary increases with statistically established cost of living increases, and the yearly average for Yellowknife has been used as the metric to calculate territorial judges' salary increases since 2017/18.

[112] Applying this metric, territorial judges received salary increases in the respective amounts of 1.6% for 2020/21, 0.1% for 2021/22, 2.0% for 2022/23 and 6.9% for 2023/24. Territorial judges also received salary increases using the same methodology, going back to the second, third and fourth years of the 2016 Commission's mandate.

[113] All other factors being equal, the easiest way to maintain the relative spending power of territorial judges' salaries might appear to be to simply adjust the salaries every year based on actual CPI increases. This is an appropriate time, however, to re-evaluate this premise, due to the extraordinary inflationary situation of the past years. The percentage increase for 2023/24 was a considerably higher increase than territorial judges have seen in previous years. This raises questions as to whether the average CPI is still a useful methodology.

[114] It is in this context that the Commission asked the parties to the 2024 inquiry to explain their approach or methodology for arriving at their proposals. The territorial judges' submission is that the Commission should increase territorial judges' salaries to $360,000 in the first year of the mandate and then revert to the approach of increasing salaries in an amount equal to the average percentage increase in CPI for Yellowknife over the preceding calendar year, for each of the subsequent remaining three years. The Minister's submission is the Commission should award fixed percentage increases for all four years of the Commission's mandate.

[115] The fixed increases proposed by the Minister for each of next four years are all lower than the predicted CPI increases for those years, regardless of whether the percentages forecast by the Conference Board of Canada or Dr. Tombe are used. In response to the interrogatory posed by the Commission, the Minister acknowledged that the GNWT proposal was not based on a specific methodology and was simply an attempt to suggest a modest increase considering all the factors in section 12.9.

[116] The cost of living is the one factor in section 12.9 which can be addressed empirically, with reference to statistically-based predictions that are validated by Statistics Canada on a regular basis. It is therefore difficult to accept that this factor can be addressed by applying an arbitrarily set increase that does not in some way factor in anticipated cost of living increases.

[117] In the current environment, inflation is still unpredictable although Dr. Tombe anticipates some easing of the consumer price volatility that has characterized recent years. This anticipated stabilization does not support the conclusion that territorial judges should receive only modest increases for the next four years, since it is hard to envision how this would not erode the value of their overall package in terms purchasing power and ensuring judicial independence.

[118] The territorial judges endeavoured to rationalize a large increase, amounting to 8% or $360,000 in 2024/25, relying on Dr. Tombe's opinion that average wage growth has occurred at approximately 1.5% higher than inflation. Pre-pandemic, inflation averaged approximately 2% per year, while average wage inflation hovered at 3.5% per year. This suggests that the judges' salaries did not reflect the additional 1.5% per year as their increases from 2017/18 to 2023/24 were limited to only CPI increases.

[119] As a result of the recommendations of the 2020 Commission, territorial judges received relatively small increases in the first three years followed by an increase of 6.9% in 2023/24 based on the CPI. This does not mean the larger increase in 2023/24 was excessive, however, as it kept salaries on pace with changing prices.

[120] There has been no rationale offered by the Minister to support awarding the lesser percentages they proposed of 1.0% for 2024/25, 1.0% for 2025/26, 1.5% for 2026/27, and 1.5% for 2027/28. Nor did the Commission hear any evidence that inflation is likely to reverse as opposed to simply levelling off.

[121] That being said, the territorial judges' proposed increase to $360,000 for 2024/25 would represent a second large increase on a year-to-year basis. This does not make it inherently wrong, and the Commission is prepared to recommend increases that are not strictly tied to CPI. For reasons related to the trend in salaries received by other provincial and territorial judges (addressed below), the Commission accepts that territorial judges should be moving towards the $360,000 salary to maintain their standing in the upper tier amongst their peers nationally.

[122] The Commission recommends, however, that this increase be phased in over a period of two years, with respective increases of 5.0% for 2024/25, and 4.5% for 2025/26. The graduated increase of judicial salaries provides for compensation that protects against erosion, in a manner that is evenly distributed over time and can be integrated into government financial planning over the coming years. This graduated increase aligns with the pattern noted by Dr. Tombe whereby wages generally grow faster than consumer prices.

[123] The Commission is satisfied, for the remaining two years of its mandate, to continue increasing territorial judges' salaries based on an amount equal to the average percentage increase in CPI for Yellowknife over the preceding calendar year. The Commission accepts the CPI as a methodologically sound indexation factor to adjust earnings over the last two years of the Commission's mandate.

Salaries of Judges in Other Jurisdictions

[124] The salaries provided to provincial and territorial judges elsewhere in Canada are a factor that enables the Commission to best evaluate salary based on an effective and accurate comparison. Judges across the country require homogenous education, skills, ethics, and expertise, applying the same and similar laws.

[125] Commissions in the Northwest Territories have consistently concluded that this factor, along with other factors in the *Territorial Court Act*, warrants territorial judges' salaries at the upper end of salaries for provincial and territorial judges. This is also the conclusion of the current Commission, based on all the evidence and argument presented to the inquiry in 2024, for reasons outlined throughout this report.

[126] The parties included in the Joint Book of Documents a table entitled, "Puisne Judges Salaries Across Canada from 2013, as at November 2023." Counsel provided updates subsequent to November 2023 at the hearing held on January 17, 2024. The table is attached to this report as Appendix A.[35]

[127] The Commission's task of attempting to situate territorial judges' salaries in the upper end of the salary range requires interpretation of various factors and forecasting based on available information. Some judicial salaries in other jurisdictions remain to be

[35] Joint Book of Documents, Tab 13: Puisne Judges' Salaries Across Canada, as at November 2023

determined, or subject to judicial review, in the current year. Looking forward to the four years for which the Commission must make its recommendations, there are even more unknowns.

[128] The parties can expect that territorial judges' relative position, compared with other judges, may change over the four year mandate of the Commission. The Commission therefore prefers to frame its conclusion in terms of placing territorial judges in the upper end, as opposed to assigning a specific ranking or percentile range within which salaries should land.

[129] The Commission notes the upper range of judicial compensation for provincial and territorial judges appears to be converging towards the $360,000 range, consistent with the salary proposed by the territorial judges for 2024/25. This conclusion is premised on certain forecasts being realized.

[130] In Ontario, provincial judges' salaries are already within this higher range at $361,000 for 2023/24. The methodology for future increases will see their salaries aligned to increases in the Industrial Aggregate Index (IAI) with possible further recommended increases to maintain salaries at approximately 95% of federally-appointed judges' salaries. Increases are to be determined and will likely keep Ontario judges in the upper end nationally.[36]

[131] In Saskatchewan, the figure for provincial judges' salaries in 2024/25 is $365,515, applying the statutory presumption of maintaining salaries at 95% of the previous year's salary for federally-appointed judges.[37]

[132] The Commission notes that legislation introduced this presumption through amendments in 2022. The resulting salary moves Saskatchewan judges to the top end for this year, but the Northwest Territories' legislation has not been changed and this must be recognized when using Saskatchewan as a comparator jurisdiction.

[133] In British Columbia, the provincial government's acceptance of commission recommendations places provincial judges' salaries at $360,000 for 2024/25. This result makes British Columbia a relevant comparator in the upper tier. The Commission notes the British Columbia judges' salary increase for 2025/26 will be based on CPI increases, consistent with the methodology for increases that has been used in the Northwest Territories.[38]

[134] In Alberta, the provincial government has set salaries at $348,102 for 2024/25, notwithstanding a commission recommendation that would pay provincial judges $372,500 in 2024/25. In the absence of a judicial review, which may yet happen, provincial

[36] Joint Book of Documents, Tab 13: Puisne Judges' Salaries Across Canada, as at November 2023
[37] Joint Book of Documents, Tab 13: Puisne Judges' Salaries Across Canada, as at November 2023
[38] Joint Book of Documents, Tab 13: Puisne Judges' Salaries Across Canada, as at November 2023

judges' salaries in Alberta are still in the upper end without attaining the $360,000 range. This rate remains higher than salaries in the maritime provinces and Manitoba.[39]

[135] The Minister's salary proposals are not within the upper end, as the above review of the nation's highest judicial salaries demonstrates. The Commission accepts the Minister's submission, however, that consideration of this factor should take into account any salary increments received by territorial judges, such as the northern allowance of $3,700 per annum paid to territorial judges. The full salary package should be considered for an accurate comparison.

[136] Based on the evidence provided to the Commission, the territorial judges' northern allowance is not so great as to elevate salaries into the top end when added to the increases proposed by the Minister. Provincial and territorial judges in other jurisdictions also receive northern allowances in addition to the salaries described above.

[137] The Commission is satisfied that territorial judges' salaries now require a percentage increase that exceeds the cost of living increases they have received since 2020/21. This is necessary to maintain territorial judges in the upper end of provincial and territorial judges across the country, recognizing all the other factors addressed in this report.

[138] The territorial judges' position relative to judges elsewhere does not need to be achieved by an immediate increase to $360,000 as the territorial judges propose. While the upper salary range appears to be converging towards that number, other upper-end jurisdictions like Alberta and the Yukon are not yet at that level, and many jurisdictions pay far less.

[139] The Commission's preferred approach to maintaining territorial judges at the upper end is to pace increases through two fixed percentage increases of 5.0% in 2024/25 and 4.5% in 2025/26. The approach of applying an amount equal to the average percentage increase in CPI for Yellowknife over the preceding calendar year, for increases in 2026/27 and 2027/28, is expected to maintain salaries consistent with the cost of living increases until the next Commission in 2028.

Working Conditions of Territorial Judges

[140] The working conditions of territorial judges are a significant factor in support of paying salaries that are in the upper range relative to judges' salaries in other provinces and territories. This has always been the case.

[141] The Territorial Court operates north of the 60th parallel and across an expansive and remote territory. The challenges of circuit work include improvised facilities, uncertain travel schedules and harsh working environments. Past Commissions have consistently

[39] Joint Book of Documents, Tab 13: Puisne Judges' Salaries Across Canada, as at November 2023

recognized that these conditions warrant higher than average salaries for territorial judges.

[142] It is not necessary to find that territorial judges endure the most challenging conditions amongst their counterparts to conclude that higher wages are in order. The Minister has correctly noted that territorial judges are not alone in performing challenging work on circuits. Judges in other provinces and territories also hold court in remote locations where it is difficult to ensure adequate supports and amenities.

[143] The Commission does not have sufficient evidence to determine whether circuits are more or less challenging in the Yukon or the northern parts of provinces, for example, where judges may be able to drive as opposed to flying into a community. The parties' submissions on this factor contain numerous impressionistic statements as to whether these differences make conditions worse or better than elsewhere; but this is not a factor that lends itself to an empirical ranking of the various jurisdictions. Nor is this necessary.

[144] What is known and undisputed is that the Territorial Court is small. It operates in a remote jurisdiction where the largest community, Yellowknife, is itself small by provincial standards. The territorial judges are all required to carry their share of circuit courts outside Yellowknife, which means lengthy days and weeks of travel, presiding over long hours, staying in hotels with limited facilities, isolating themselves socially to maintain the fact and appearance of independence, and conducting court in gymnasiums and community centres with limited or no private space and unpredictable climate control.

[145] Challenging conditions are part and parcel of the work of the Territorial Court as with other courts, or branches of courts, that operate in remote northern locations in Canada. Those conditions are the norm, not the exception for territorial judges, and continue to warrant pay in the upper tier.

[146] The territorial judges submit that conditions have worsened for various reasons. Foremost among these reasons is the passage of Bill C-75 which, the territorial judges submit, increased the number of trials and the need to schedule special circuits outside Yellowknife.

[147] The Commission accepts that changes to the *Criminal Code* led to changes in the way cases proceed through the courts. The impact of these changes on working conditions is more challenging, however, to calibrate. Territorial judges may now have more trials than preliminary inquiries, but the work in either proceeding involves presiding over a matter and receiving evidence and argument. In terms of additional circuit time being required, the Commission does not have sufficient evidence before it to establish a quantifiable difference from before and after the coming into force of Bill C-75.

[148] The territorial judges further submit that they have had increasing demands on their time, for example, to train and supervise justices of the peace and to reinvigorate alternative courts like the IPVTO. The Commission is unable to draw from these submissions a definitive conclusion to the effect that working conditions have worsened.

The working demands of territorial judges will necessarily change from time to time. The Commission expects judges, like all professionals, must constantly prioritize tasks within the time available to perform their duties.

[149] The Minister also plays a role ensuring there are sufficient judges appointed to the bench to complete the necessary work of the court, recognizing that the demands of the job may periodically require more time on areas like training justices of the peace, for example. The organization of the territorial judges' time and scheduling has been described as an administrative issue by past Commissions, and not solely a working conditions issue.

[150] The Commission received information in response to interrogatories that shows the use of deputy judges by the Territorial Court, presumably to alleviate the workload of the resident judges for reasons including, but not limited to, territorial judges being on leave. This illustrates that administrative solutions to the workload of the territorial judges exist and are being used to address this workload. The Commission does not have empirical evidence, however, showing that territorial judges' working hours have changed, and in these circumstances, cannot conclude that working conditions have suffered from the lack of administrative management of workloads.

[151] The Minister submits that the Covid-19 pandemic led to creative solutions to improve access to justice through the greater availability of videoconferencing, and that these changes should improve working conditions for territorial judges going forward.

[152] It may be reasonable to infer technological solutions used during the pandemic may be adopted going forward. The territorial judges do not accept as a given, however, that changes will improve conditions. Without evidence to support either of these conflicting perspectives, the Commission does not propose to speculate on how potential technological changes will emerge, or the impact they may have.

[153] Working conditions have always been a factor supporting higher salaries for territorial judges in the Northwest Territories. Territorial judges have a wide and varied jurisdiction, which requires adaptability to physical changes, legislative changes, and occasional workload re-alignments. This continues to be the case even if we cannot conclude that conditions have markedly worsened or improved.

Economic Fairness

[154] The parties' submissions on this factor present differing views on the relative merits of assessing fairness against the salaries of other provincial and territorial judges, other professionals in the Northwest Territories and Canada, as well as senior members of the public service.

[155] The *Territorial Court Act* specifically requires the Commission to look at salaries paid to other provincial and territorial judges, under subsection 12.9(c). This comparison,

outlined above, is particularly useful in that it looks at judges who perform the same or very similar functions, and who possess the same or similar qualifications and highly skilled and experience lawyers prior to appointment to the bench. This factor is not the sole means of determining judicial salaries, and the inclusion of subsection 12.9(c) in the legislation directs the Commission to take a wider view and to include further information in evaluating economic fairness.

[156] Both the territorial judges and the Minister address economic fairness in relation to the nature of employment and salaries in the Northwest Territories. The economic evidence, outlined in Dr. Tombe's report, is that public sector employment comprises a particularly large share of total employment in the Northwest Territories and that public sector jobs pay higher in the Northwest Territories than in other jurisdictions, even when the higher cost of living is considered. In addition, professional scientific and technical jobs in the Northwest Territories have seen even greater growth than public sector jobs, experiencing an average salary growth rate of 6.1% per year since 2019.

[157] The evidence does not appear to be contested by either party, but the Commission must determine what these facts mean in terms of economic fairness. The territorial judges' argument is effectively that judges who live in an environment characterized by high salaries should, in fairness, have high salaries. There is merit to this proposition, since judicial compensation aims to maintain judicial independence by providing a level of compensation that ensures judges are not perceived to be susceptible to interference.

[158] In the interests of maintaining judicial independence, territorial judges' salaries should provide a measure of economic fairness in relation to other professionals who have enjoyed high average salary growth since 2019.

[159] The Minister argues that territorial judges' salaries should not deviate too far from Deputy Ministers' salaries. There are historical examples for this approach, but territorial judges' salaries have not been closely tied to Deputy Ministers' salaries since the judicial compensation inquiry model was implemented in the *Territorial Court Act*.

[160] There is no statutory reason to focus a comparison of territorial judges' salaries on Deputy Ministers' salaries. There is likewise no compelling reason to focus on the salaries of other high earning professionals compensated by the territorial government, such as physicians. In evaluating fairness, the Commission can consider comparators holistically, but it would not be rational to directly align salaries between positions that are distinguishable.

[161] The Minister submits that territorial judges and Deputy Ministers are paid from the public purse, and that there should be some relative alignment of salaries at the top levels of the different branches of government. This argument may be intuitively attractive, but the Commission accepts that differentials in pay exist amongst officials paid from the public purse, for many legitimate reasons including the level of education and expertise required, as well as expectations around working hours and conditions.

[162] The fact that territorial judges' salaries may have grown faster than Deputy Ministers' is not a stand-alone reason for limiting territorial judges' salary increases during the mandate of the Commission. With respect to every judicial appointment to the Territorial Court, the requirement is that the appointee will come with post-secondary education in law and years of experience as a skilled and respected lawyer. Amongst Deputy Ministers, the job requirements are far more variable, appointments are often political, and the wide range in Deputy Ministers' salary bands reflects this variability.

[163] Even if the Commission accepted that Deputy Ministers' salaries were a particularly valuable comparator, the Commission did not receive evidence of their gross remuneration packages including bonuses. In addition, territorial judges received a 6.9% salary increase in 2023/24, but the Deputy Ministers' increment for this same period is linked to the public service increase and remains to be determined. It is also too early to tell if Deputy Ministers will achieve a greater or lesser retroactive raise for 2023/24.

[164] In assessing economic fairness, the Commission questions the value of relying on comparator positions such as those of Deputy Ministers. The comparisons are always inadequate, not least because the requirement of judicial independence is the key distinguishing aspect of judicial remuneration that does not apply to other professions, whether they be doctors, engineers, accountants, or Deputy Ministers. The only comparator of direct relevance is the salaries of provincial and territorial judges in other jurisdictions in Canada. The analysis of economic fairness should be broad and not be reduced to forced and specific comparisons with occupations which are not judicial in nature.

[165] On this factor, the Commission is therefore satisfied that economic fairness favours territorial judges being paid at the upper end of judicial salaries relative to other provinces and territories, having considered the economic evidence the inquiry received respecting employment and salaries in the Northwest Territories.

Economic Conditions of the Northwest Territories

[166] The economic conditions factor requires the Commission to consider what is happening with the economy in the Northwest Territories and how this should affect judicial compensation. The evaluation of this factor will always involve an assessment of the current economic situation, as well as economic forecasts which come with an element of uncertainty. The Commission may be guided in determining appropriate salaries for territorial judges by whether the economy is doing well or poorly, as this could affect the fairness of their compensation as compared to others earning wages in the same economy.

[167] The Commission appreciates expert opinion regarding the economic conditions of the Northwest Territories. Dr. Tombe's evidence was helpful in interpreting material the

parties provided from the Conference Board of Canada as well as from the Minister of Finance.

[168] The Commission accepts Dr. Tombe's conclusion that conditions in the Northwest Territories are "generally strong relative to other jurisdictions and are predicted to remain so in the coming years." He was able to explain this conclusion with information showing that GDP in the Northwest Territories is amongst the highest amongst provinces and territories. The labour market is also tight with near full employment, and median household incomes in Yellowknife are amongst the highest in the country. This economic strength is maintained even after higher costs of living are considered.

[169] The current economic condition of the Northwest Territories reflects an economy that rewards residents with high paying employment opportunities, particularly in the mining and public sectors. In this context, the Commission maintains that territorial judges should be able to partake in the healthy economy as do other residents of the Northwest Territories. Allowing them to do so is not only fair but also promotes judicial independence by eliminating suspicion of underpaid judges being susceptible to political interference. Paying territorial judges competitively also contributes to making the bench attractive to quality candidates from the local legal community.

[170] There are certainly challenges and risks to the Northwest Territories economy, as pointed out by the Minister in their submissions, and Dr. Tombe was able to address these items during his testimony at the inquiry.

[171] The economy will be confronted with a decline in diamond production in the future, and there is a concern that new mines will not begin production quickly enough, or with sufficient production, to offset losses in the mining sector. Dr. Tombe accepted that timelines for new mining ventures and approvals can be difficult to predict, but he made the point that projects are slated to begin in 2026 and current mines may extend operations. The process of project initiation and approval is ongoing. He also explained how the Northwest Territories is partially insulated from the impact of job losses in the mining industry because of the concentration of workers from outside the territories, whose home jurisdictions will bear much of the impact.

[172] Dr. Tombe also addressed concerns raised by the Minister about the lack of diversification in the Northwest Territories economy, pointing out that the Northwest Territories is not alone in having mining as a primary sector or in relying heavily on the public sector. In this context, he pointed out that the economy benefits from a high level of capital investment, the Northwest Territories being among the most capital intensive regions in Canada on a per capita basis. He also points out that increased activity is predicted in areas including construction, health care and public administration.

[173] In considering the challenges and risks outlined above, the Commission notes that its recommendations will determine territorial judges' salaries for the next four years. The Commission's focus is therefore on economic conditions in the short-term. The Conference Board of Canada may deem the economic outlook for the Northwest

Territories modest, but this does not translate to a poor economy in rapid decline. How the economy will emerge beyond the four-year mandate of the Commission is subject to multiple unknowns and uncertainties. The Commission accepts Dr. Tombe's opinion that the economy is robust in the relevant forecast period.

[174] The economic situation of the Northwest Territories suggests a continuity of conditions that make the GNWT a high wage environment in which it is appropriate for territorial judges to receive compensation at the upper end of judicial salaries.

Any Other Factor the Commission considers Relevant

[175] The territorial judges and the Minister dispute whether the fiscal position of the GNWT is relevant to the Commission's inquiry and deliberations on judges' salaries and benefits.

[176] In some jurisdictions, judicial compensation legislation specifically includes the fiscal position of the government as a factor to be considered by the Commission responsible for making recommendations on judges' salaries and benefits. The *Territorial Court Act* does require the Commission to consider economic conditions under subsection 12.9(f) and "any other factor that the Commission may consider relevant" under subsection 12.9(g).

[177] The Minister has asked the Commission to consider the fiscal position of the territorial government. The Commission does not view the legislation as prohibiting consideration of the factor, although as noted the *Territorial Court Act* does not enumerate the government's finances as an item the Commission is required to consider. In other jurisdictions, legislation enacted to fulfill the Supreme Court of Canada's expectations for an independent Commission process does include government finances as a factor.

[178] The Commission could perhaps consider the fiscal position of the government under subsection 12.9(f), but this would require tangible evidence to show a correlation between the government's finances and the economic conditions of the Northwest Territories. There is arguably even greater latitude for the Commission to consider the government's fiscal position under subsection 12.9(g). This subsection is discretionary, and the Commission needs to consider whether the government's fiscal position is relevant.

[179] The Commission need not resolve the interpretive question as to whether it can or cannot consider the government's fiscal position. The evidence does not establish that the economic conditions of the Northwest Territories threaten the government's financial situation, or specifically its ability to deliver adequate compensation to territorial judges over the next four years. The Commission is not satisfied the government's fiscal position is highly relevant in this inquiry.

[180] Dr. Tombe addressed the GNWT's major concerns regarding its fiscal position. One concern is a decline in revenues obtained through the TFF due to declining populations relative to overall population growth in Canada. This does not appear to pose an immediate threat to government finances since, as Dr. Tombe explained, the TFF formula also uses multipliers based on spending needs and increases regularly over time. In his opinion, the TFF insulates the Northwest Territories from large economic shocks, since it provides the majority of GNWT revenue using a formula that is not dependent on resource or other economic activity.

[181] Another concern is the unknown cost of natural disasters, and in particular, costs associated with the wildfires that affected the Northwest Territories and resulted in mass evacuations of territorial residents in the summer of 2023. Dr. Tombe pointed out that most of these costs can be shifted to the federal government through the Disaster Financial Arrangements program, which is intended to shift up to 90% of disaster-related expenses. The Commission appreciates this may not happen immediately, and reimbursement may not be complete, but the evidence does not point to an impact that will unduly affect the economic outlook over the next four years.

[182] The Minister also poses a concern that the GNWT is approaching its borrowing limit. Dr. Tombe explained for the Commission how this concern is alleviated by the fact the GNWT maintains a $120 million cushion below the borrowing limit to ensure a severe expenditure shock does not take the government beyond its mandated limit. The Commission accepts this explanation.

[183] The overall conclusion to be drawn is that the GNWT has systems in place to manage its financial situation, which are capable of withstanding challenges through conservative and prudent application of sound fiscal policy.

[184] In addition, the Commission has not heard evidence to suggest the overall cost of judicial salaries for territorial judges, even at the highest level proposed to the Commission by the judges, cannot be borne by the government. Based on this lack of evidence, the government's fiscal position has not been established as a relevant factor for the Commission to consider in this inquiry.

Conclusions

[185] Territorial judges' salaries should remain in the upper range amongst their peers in other provincial and territorial courts. The jurisdiction of the Territorial Court is broad, and the working conditions in which territorial judges exercise their jurisdiction continues to be very challenging in the northern context.

[186] Territorial judges also live and work in the Northwest Territories where goods cost more, and decreased purchasing power can and should be offset by higher salaries. The Northwest Territories is not only an expensive place to live but is also not immune from

inflationary pressures which have affected all provinces and territories in the post Covid-19 economic environment.

[187] Since the Commission last issued recommendations on salary in 2020, territorial judges were protected from inflationary shock by receiving increases equal to CPI increases for Yellowknife over the preceding calendar year. This resulted in a notable 6.9% increase in salary as of April 1, 2023, following exceptionally high inflation in 2022.

[188] The Commission therefore is not prepared to recommend an even larger percentage increase of 8%, effective April 1, 2024, as proposed by the territorial judges. This proposal exceeds the Conference Board of Canada's forecast increase in CPI by 4.9%. Conversely, the Commission is unable to accept the Minister's proposed increase of 1.0% for April 1, 2024. This is well below predicted increases in CPI.

[189] In determining a percentage increase that is appropriate to maintain and promote judicial independence, inflation is a significant, but not an exclusive, consideration. The Commission notes that judges in other jurisdictions have seen significant salary adjustments, in addition to cost of living increases, while territorial judges have received cost of living increases since April 1, 2017.

[190] The Commission therefore accepts that wage adjustments are now necessary, in keeping with the trend across Canada to bring judicial salaries (including various northern incentives) into the range of approximately $360,000 per annum.

[191] Rather than recommending a single large percentage increase in 2024, the Commission has resolved to achieve appropriate compensation by means of fixed percentage increases in 2024/25 and 2025/26. This will be followed by further increases, in an amount equal to the average percentage increase in CPI for Yellowknife over the preceding calendar year, for 2026/27 and 2027/28.

[192] The fixed increases for 2024/25 and 2025/26 are premised on forecast increases in CPI for the preceding years, plus approximately 1.5% representing the average wage adjustment in new contracts in the decade leading up to the Covid-19 pandemic. Increases over the first two years are graduated and prevent the erosion of judicial salaries by keeping them on pace with provincial and territorial judges in the upper end across Canada.

[193] The Commission's recommendation is that territorial judges' salaries increase by 5.0% for 2024/25; by 4.5% for 2025/26; and by an amount equal to the average percentage increase in CPI for Yellowknife over the preceding calendar year, for each of 2026/27 and 2027/28.

Chief Judge Differential

[194] The parties agree that the Chief Judge's differential should change from the current fixed amount of $15,000 per year, to 7.5% of the territorial judge salary. The Commission is prepared to accept this recommendation and appreciates the opportunity to apply a methodological approach to the Chief Judge differential.

[195] There is consensus that the Chief Judge should receive additional pay in consideration for the added responsibilities that come with the role. In accepting the parties' joint position on the Chief Judge differential, the Commission has considered the same factors that are used to determine territorial judges' salaries. Justification for additional salary arises as a matter of jurisdiction and working conditions and is affirmed by differentials paid in other provinces and territories.

[196] The Chief Judge of the Territorial Court has administrative responsibility with respect to policy decision and court directives, as well as supervision and direction over the assignment of the territorial judges' sittings and hearings.

[197] Many of the Chief Judge's additional responsibilities flow directly from the *Territorial Court Act*. These include, for example, supervising justices of the peace, establishing and maintaining a plan for the continuing education of territorial judges, addressing allegations of misconduct of a territorial judge, and participating on the Judicial Appointments Committee which makes recommendations for the appointment of new territorial judges.

[198] The territorial judges have provided evidence of the amounts Chief Judges receive in other provinces and territories across Canada. In virtually every jurisdiction, the Chief Judge differential is determined as a percentage increase over and above the standard judicial salary. The range for the differential is between 6% and 12%.

[199] The percentage approach presents a rational way of determining the Chief Judge differential, since it means the differential will increase proportionately as salaries increase. It is therefore an appropriate way of recognizing the Chief Judge's additional responsibilities over time. Applying this approach, the 7.5% differential agreed upon by the parties is reasonable and falls within the range in other jurisdictions.

Pension, Leave and Benefits

[200] This report has focussed exclusively on the issues identified by the territorial judges and the Minister as requiring determination in the inquiry held on January 17, 2024. The Commission feels obliged, however, to address all issues within their statutory mandate under section 12.9 of the *Territorial Court Act*. Items other than salary are set out in subsection 12.5(1)(b).

[201] The 2022 Commission only recently made recommendations with respect to extended health benefits for full-time judges and retired judges. This was a special

Commission held outside the regular four year cycle at the request of the Chief Judge. The Commission relies on and affirms the recommendations of the 2022 Commission.

[202] The same conclusion also applies to the most recent recommendations of past Commissions concerning the other items listed in subsection 12.5(1)(b), namely pension, vacation, leave, sick leave, and other benefits.

Summary of Recommendations

[203] The following is a summary of the Commission's recommendations:

1. The Minister will adjust territorial judges' salaries by 5.0% for 2024/25; by 4.5% for 2025/26; and by an amount equal to the average percentage increase in CPI for Yellowknife over the preceding calendar year, for each of 2026/27 and 2027/28.

2. The Minister will adjust the Chief Judge's differential to award the Chief Judge of the Territorial Court an additional 7.5% of territorial judges' salary, effective April 1, 2024.

3. The Minister will continue to provide territorial judges with the previously established pension, vacation leave, sick leave, and other benefits.

Dated this 19th day of April 2024 at the City of Yellowknife, Northwest Territories.

"David Gilday"

_____

(Original Signed by)

David Gilday, Chairperson

APPENDIX A

Puisne Judges Salaries Across Canada
from 2013, as at November 2023

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	IAI & 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	287,000	297,000	307,000	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	95% of 2024 federal salary	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	2023 JCC	2023 JCC	2023 JCC	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	*80% federal salary*	*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	national average	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	2024 JRC	2024 JRC	2024 JRC
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

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 conducted 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*.

Puisne Judges Salaries Across Canada
from 2013, as at November 2023

[2] The 2019 JCC recommended the salaries reflected in the chart. The BC Government substituted: $276,000, $282,500 and $288,500. A judicial review was filed and the Government's response was quashed. The report has been remitted back to government for reconsideration. 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 chance in BC CPI for 2024. The BC Government has yet to respond.

[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 is likely.

[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 JCC conducted its hearings in summer 2023 and a report is expected soon, with recommendations for the period April 1, 2023 to March 31, 2026.

[6] The 2014-2021 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 yet to be scheduled by the Supreme Court of NL.

[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 2019 Yukon JCC conducted a hearing in summer 2020 and issued its report in 2021. The recommended salaries have since been implemented.

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Yukon Territorial Outlook Spring 2026

Signal49 Research

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Key Findings

- Yukon's real GDP is forecast to expand at a compound annual rate of 2.5 per cent over the next five years. Growth is set to accelerate in the early 2030s as two new mines enter the fold.
- Population growth will continue to slow in the coming years as lower federal immigration targets limit labour force expansion.
- Business and consumer confidence remain subdued, but gradual improvement in sentiment over time will support higher spending and investment.
- Yukon's outlook faces notable risks, including inflationary pressures tied to geopolitical conflict abroad and the growing impacts of climate change, though mining and federal investments in the North offer significant upside potential.

Overview



Yukon's economy is projected to grow by 1.5 per cent in 2026, before strengthening in 2027 through the early 2030s as new mining developments come into operation.

Mining remains the cornerstone of Yukon's economic outlook and will continue to drive activity over the forecast period. While the 2024 heap leach failure at the Eagle Gold Mine was a setback—with remediation still ongoing—the longer-term outlook for mining is more positive. Rising output at the Keno Hill silver mine, alongside progress on the Kudz Ze Kayah and Casino projects, is expected to support future production gains. However, risks related to project delays, cost overruns, and environmental scrutiny remain significant.

Population growth is becoming increasingly reliant on immigration as fertility rates decline and the resident population ages. Strong population gains in 2023 and 2024 were supported by higher federal immigration and temporary resident inflows. More recently, however, reduced intake targets slowed population growth in 2025, a trend expected to persist in the coming years.

Yukon's labour market remains tight even by historical standards, with a low unemployment rate reflecting sustained employment growth. Job gains in 2025 were strongest in the public sector. The unemployment rate is expected to remain just above 4.0 per cent throughout most of the forecast horizon, keeping Yukon among the tightest labour markets in Canada.

Strong wage growth helped offset some of the impact of higher inflation in Whitehorse over the past year, but in 2026, the conflict in the Middle East is pushing up inflation nationwide. The length of the conflict will have a direct impact on how long inflation remains elevated, something that could affect household budgets in a meaningful way, especially if wages are not able to keep up.

Although borrowing costs have declined following interest rate cuts, both business and consumer confidence remain subdued. Sentiment is expected to improve gradually, however, supporting a pickup in consumer spending and business investment over time.

Risks to the outlook are extensive. On the downside, climate change poses an intensifying challenge, with Yukon experiencing faster warming than much of Canada due to Arctic amplification. At the same time, there are notable upside risks. Additional mining developments—such as the Coffee and Rogue gold projects, which are not included in this outlook—could boost growth. Federal ambitions to transform Canada's North also present upside potential, with several major initiatives tied to Yukon, including the Northwest Critical Conservation Corridor, a project to connect Yukon's and British Columbia's power grids, and, most recently, a proposed operational support hub in Whitehorse, part of a network of support sites to enable the Canadian Armed Forces to defend the Arctic.

Overview Data

Table 1 - Key economic indicators

Table 1
Key economic indicators

	2024	2025	2026f	2027f	2028f	2029f	2030f
Real GDP	-2.5	-1.1	1.5	2.0	2.2	2.8	4.0
Nominal GDP	4.0	1.4	3.3	3.8	4.0	4.7	5.9
Consumer price index	2.0	3.1	3.0	2.1	2.0	2.0	2.0
Household disposable income	6.6	4.3	3.3	3.3	3.3	3.4	3.6
Employment	6.0	2.3	0.8	0.6	0.6	0.5	0.6
Unemployment rate (level)	4.3	4.2	4.5	4.4	4.3	4.2	4.1
Labour force	6.9	2.2	1.1	0.4	0.4	0.4	0.5
Retail sales	1.4	1.2	1.6	3.2	3.6	3.5	3.4
Wages and salaries per employee	-0.7	3.6	2.3	2.3	2.4	2.5	2.7
Population	4.8	1.4	0.7	0.3	0.8	1.1	1.1

Note: Shaded area represents forecast data. Real GDP, nominal GDP, household disposable income, retail sales, wages and salaries per employee are estimated in 2025. All data are percentage change unless otherwise noted.
Sources: Signal49 Research; Statistics Canada.

Chart 1 - Real GDP index, Yukon

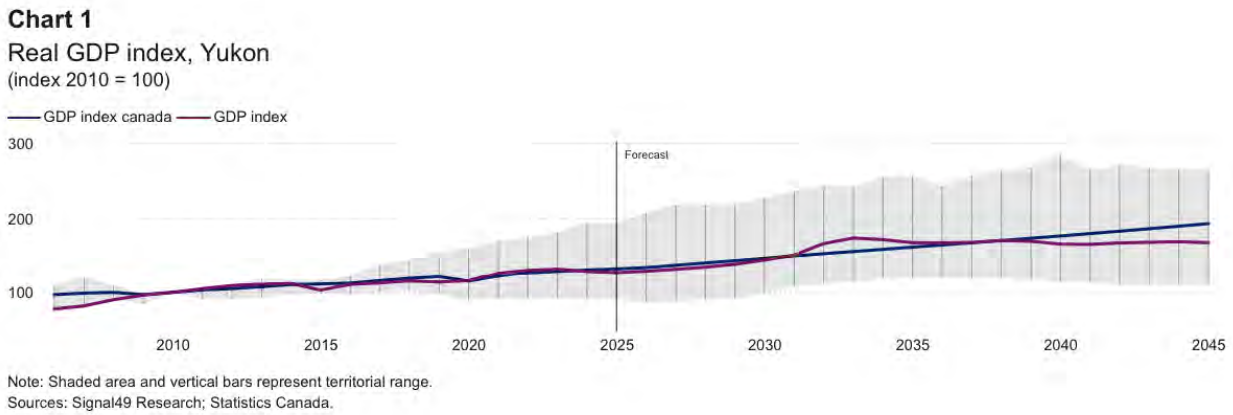


Chart 1 - GDP growth outlook, Yukon

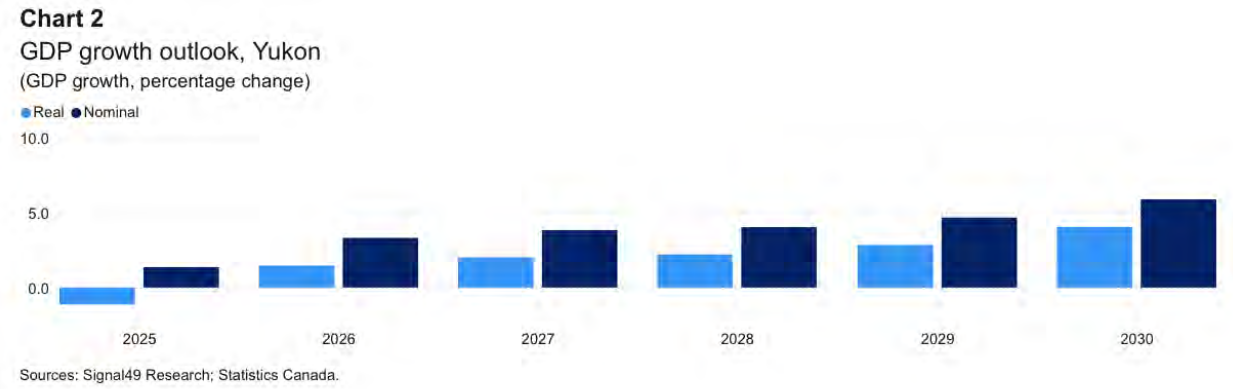


Chart 2 - Sources of population growth, Yukon

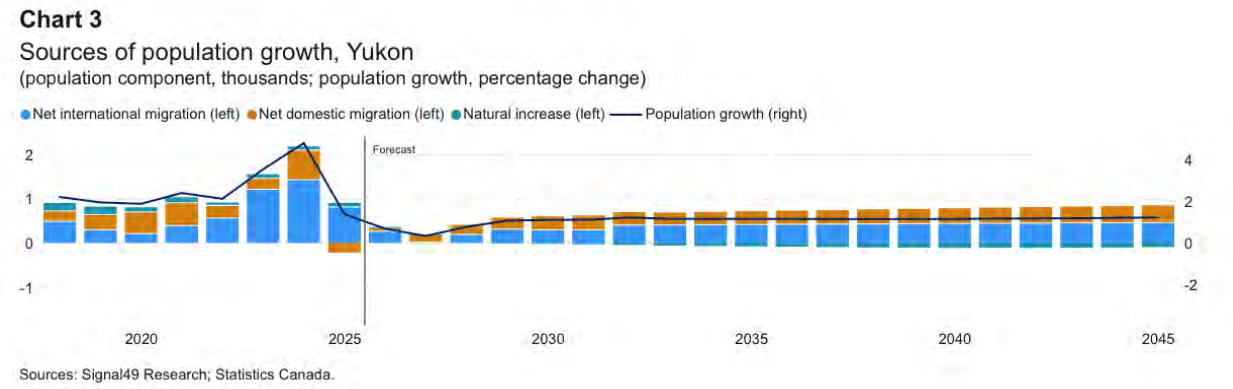


Chart 3 - Economic diversity, Yukon

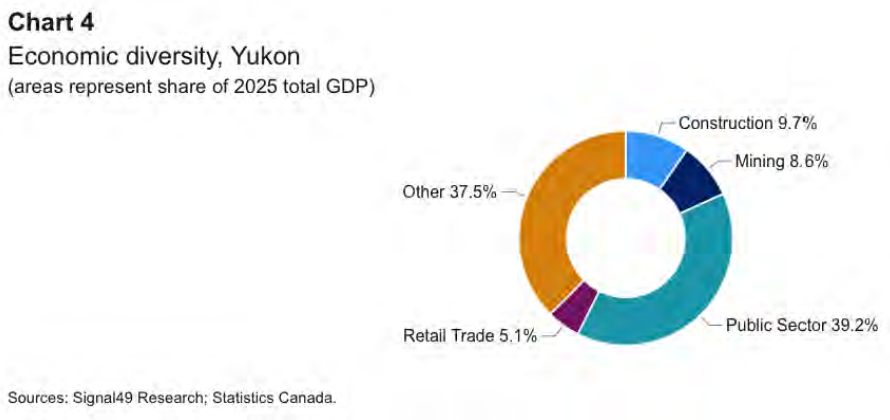
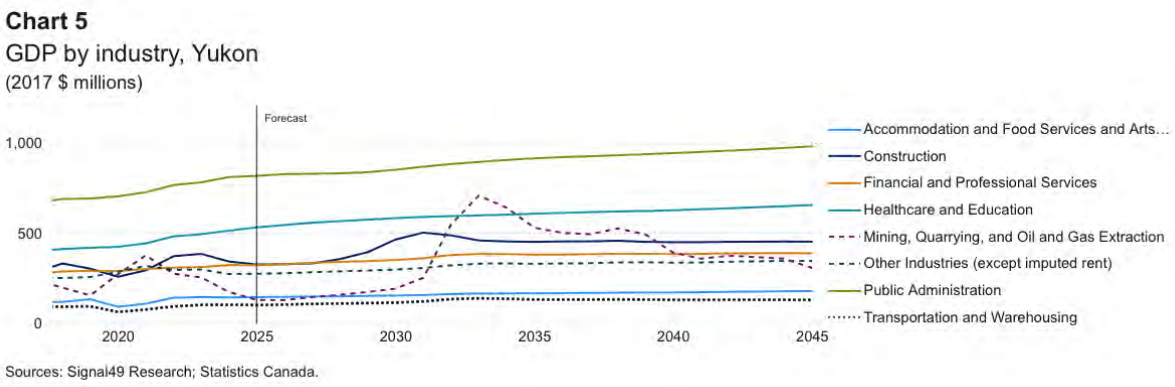


Chart 4 - GDP by industry, Yukon



Demographics and labour markets

Key Findings

- Population growth is expected to continue to moderate in the coming years as easing international migration weighs on overall gains, with reliance on newcomers playing a key role in sustaining growth.
- Yukon's labour market looks likely to remain resilient, supported by steady employment growth, low unemployment, and increased demand across several key sectors.

Migration at the core of population growth



Yukon's population growth has been driven primarily by record international migration in recent years, which averaged an annual net inflow of roughly 1,300 people in 2023 and 2024. This surge was supported by higher federal immigration targets and an increase in temporary residents. However, recent policy changes have started to moderate immigration, with net inflows easing to around 800 people in 2025. This slowdown is expected to continue over the next few years, with net inflows largely flatlining in 2027 before picking up again thereafter, though they will remain well below the record highs of recent years.

At the same time, interprovincial migration recorded a net outflow of about 220 people in 2025, limiting overall population growth to 1.4 per cent. A return to positive net interprovincial migration is expected in 2026, but weaker international inflows will more than offset this improvement, resulting in slower overall growth of 0.7 per cent. This comes as the natural rate of increase (births minus deaths) continues to soften alongside declining birth rates and an older demographic profile.

Looking further ahead, Yukon's population is projected to exceed 50,000 people by 2030 and reach 55,000 people by 2039. Growth is expected to average just 0.8 per cent annually between 2026 and 2030, before strengthening to 1.2 per cent per year over the outer 15 years of the forecast. With fertility rates trending downward over the past decade, migration—along with the retention of those moving to the territory—will play an increasingly important role in sustaining long-term population growth.

Labour market continues to be resilient

Yukon's historically tight labour market has long helped attract workers. In 2025, however, net interprovincial migration turned negative, with more people leaving the territory for other parts of Canada than arriving. A key factor behind this shift has been rising housing costs, especially in Whitehorse, combined with housing shortages. While these housing constraints are structural and pose issues, we expect interprovincial migration to become positive again in the near term as demand for labour picks up.

Employment and labour force growth are both projected to average 0.7 per cent annually over the next decade, supported by robust demand in sectors such as mining, construction, utilities, transportation and warehousing, and non-commercial services. In 2025, some of the largest employment gains were recorded in public administration and defence and in non-commercial services, with each adding roughly 400 jobs.

Yukon's unemployment rate is expected to remain low by historical standards, averaging 4.1 per cent over the next two decades. At the same time, the participation rate is projected to stay the highest in Canada, reflecting the territory's demographic composition. Wages and salaries per employee are also forecast to grow steadily, increasing at an average annual rate of 2.4 per cent over the next 15 years, supported by ongoing competition for skilled labour.

Demographic and labour markets data

Chart 1 - Sources of population growth, Yukon

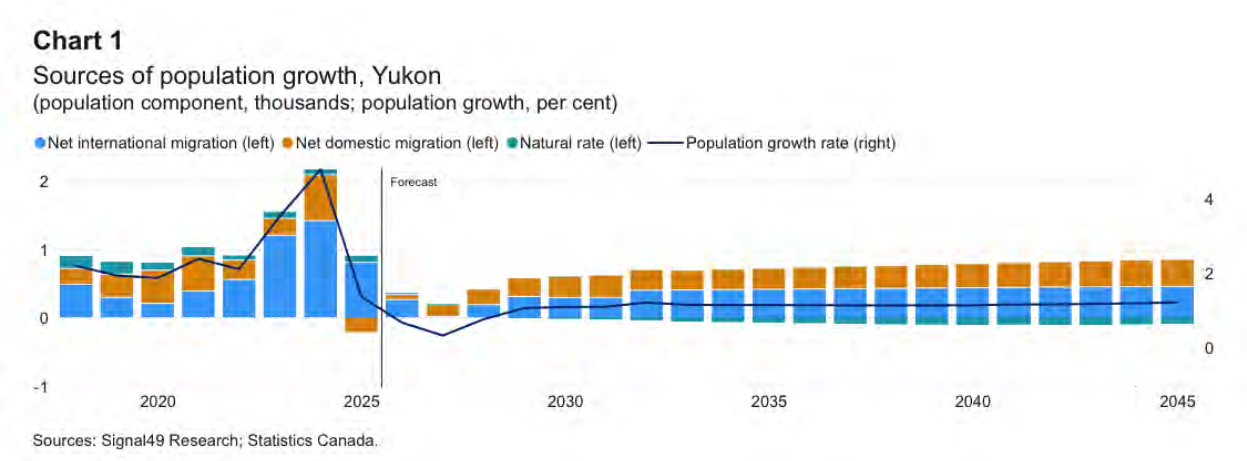


Chart 2 - Population growth, Yukon

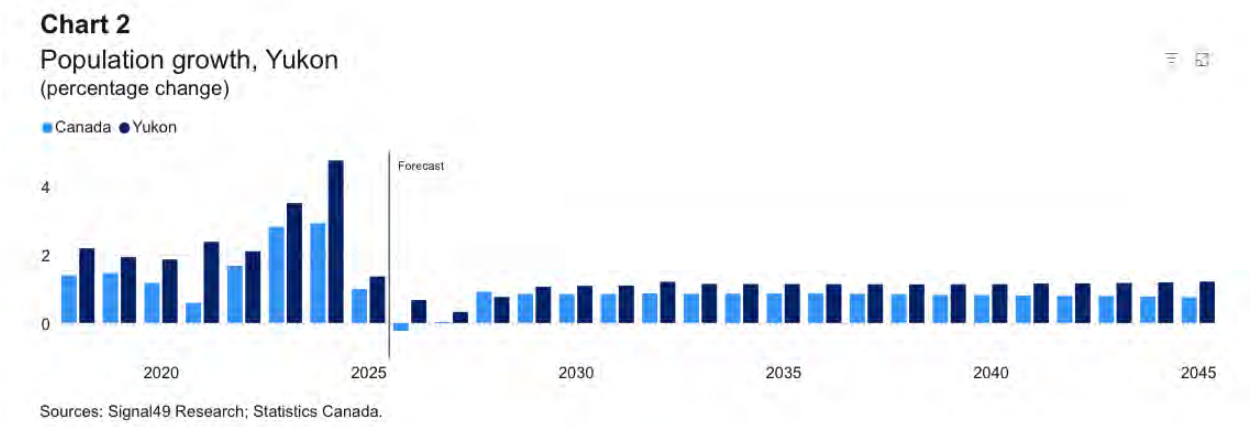


Chart 3 - Population age structure, Yukon

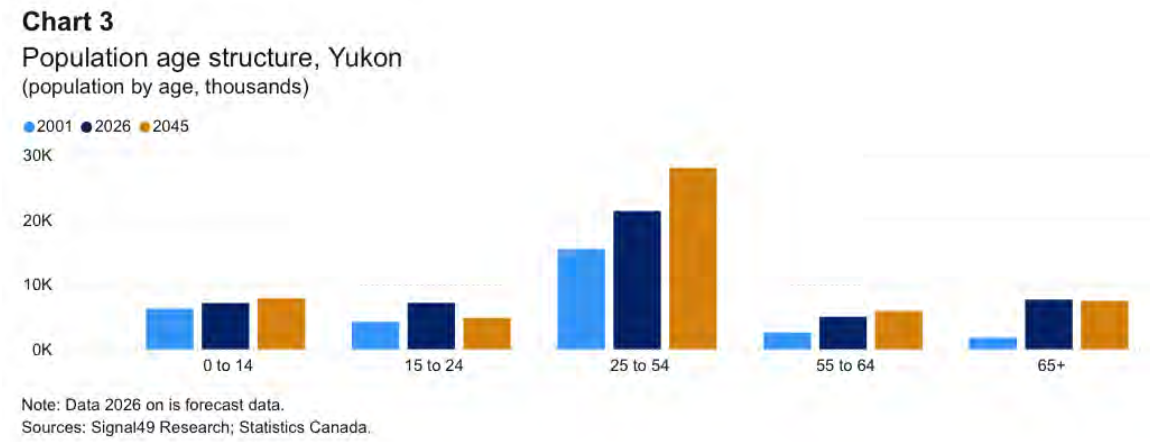


Chart 4 - Interprovincial migration flows, Yukon

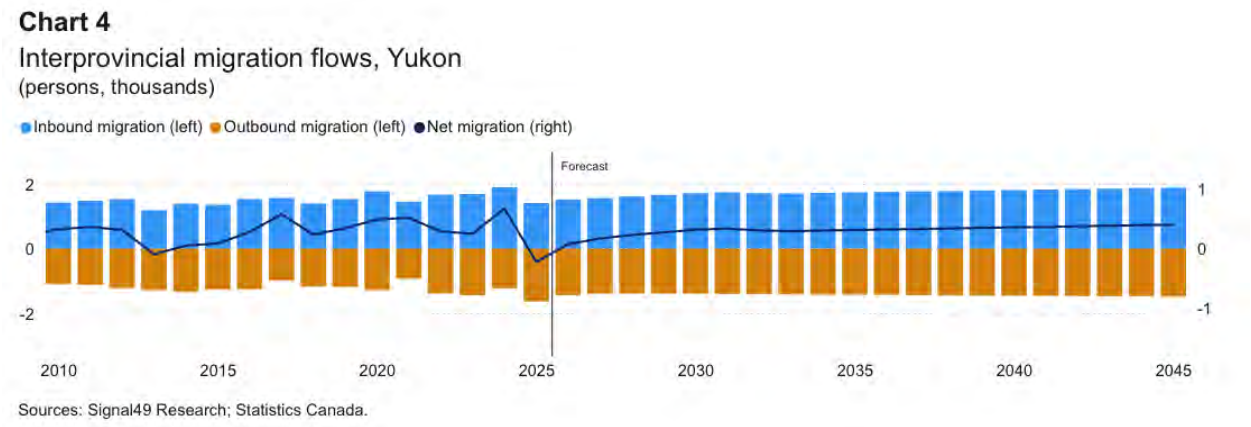
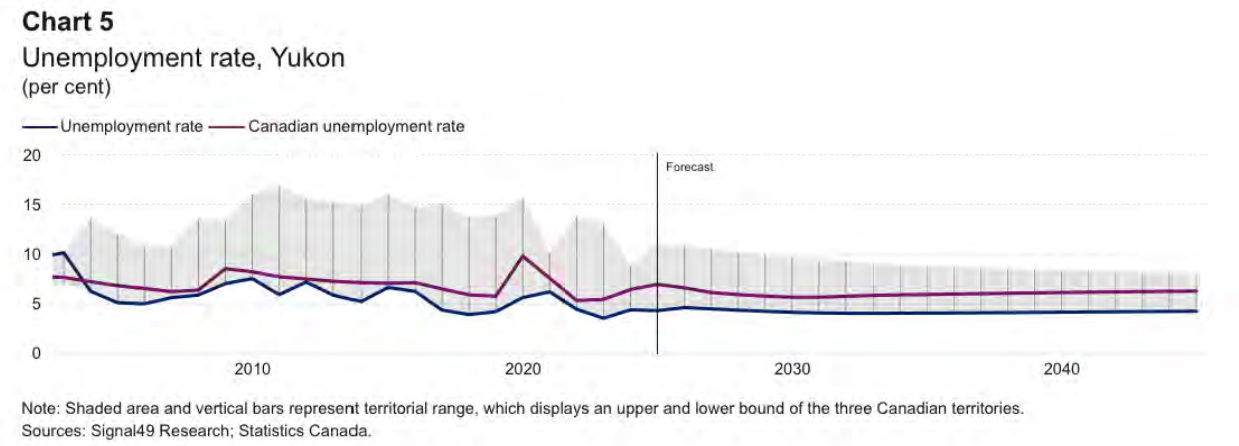
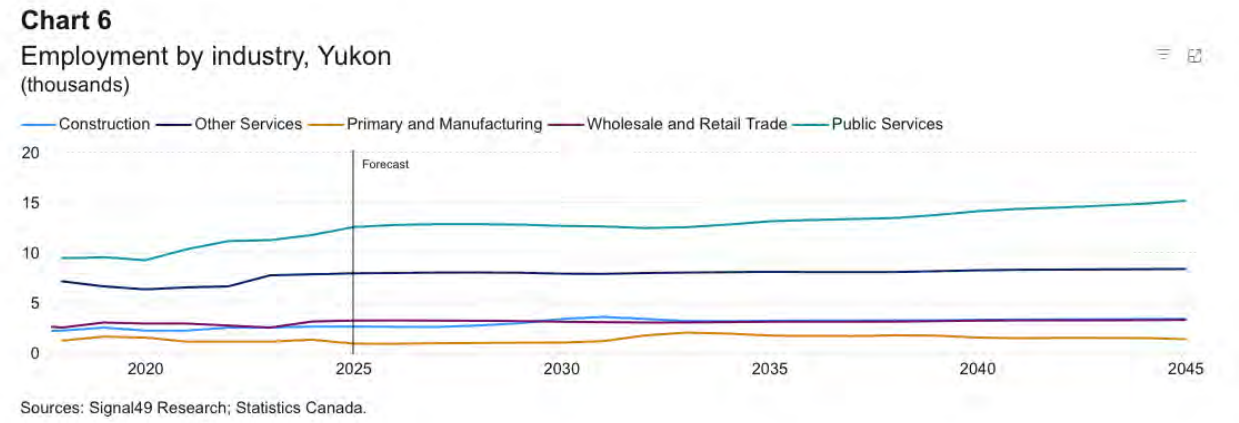


Chart 5 - Unemployment rate, Yukon



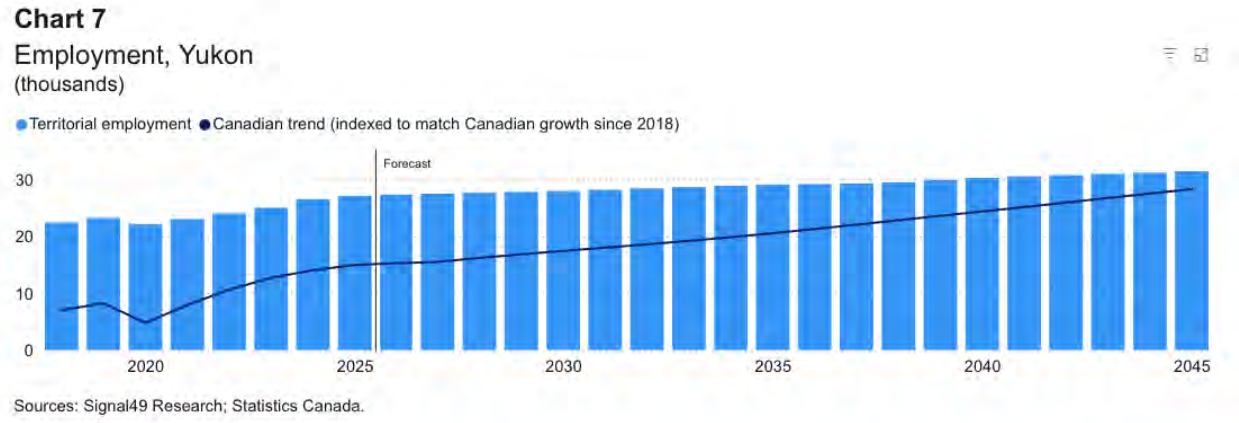
Note: Shaded area and vertical bars represent territorial range, which displays an upper and lower bound of the three Canadian territories.
Sources: Signal49 Research; Statistics Canada.

Chart 6 - Employment by industry, Yukon



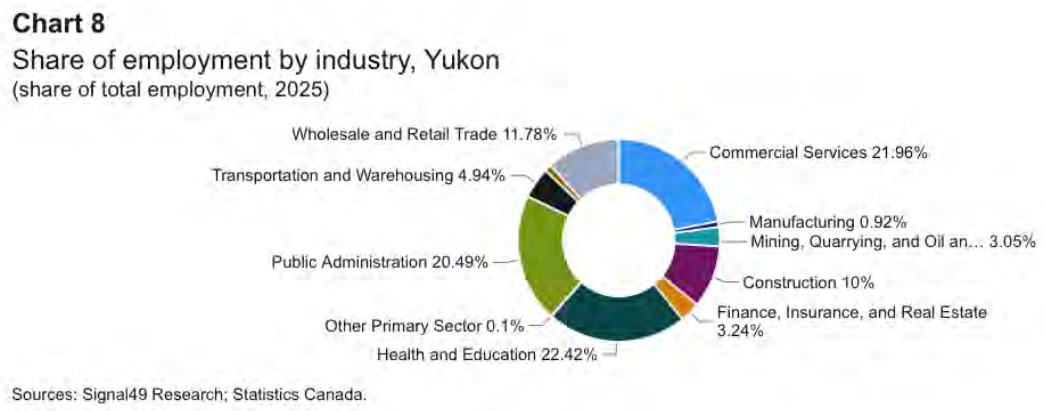
Sources: Signal49 Research; Statistics Canada.

Chart 5 - Employment, Yukon



Sources: Signal49 Research; Statistics Canada.

Chart 6 - Share of employment by industry, Yukon



Households and spending

Key findings

- Whitehorse's inflation rate is expected to remain elevated in the near term, with risk for higher inflation stemming from higher oil prices feeding through transportation costs and broad-based price pressures across goods and services.
- Despite inflation risks, growth in household incomes, lower borrowing costs, and stronger tourism activity are expected to support consumer spending and underpin solid retail sales growth over the next decade.

Geopolitical conflict at the root of inflationary concerns



After averaging 3.1 per cent in 2025, Whitehorse's inflation rate is expected to average 3.0 per cent in 2026. However, the outlook remains vulnerable to significant risk from ongoing geopolitical tensions in the Middle East, which have driven oil prices higher since late February. A sustained period of elevated oil prices would increase Yukon's exposure to higher diesel and gasoline costs, as well as more expensive freight and delivery services, with these pressures likely to cascade through supply chains and feed into higher retail prices for food, building materials, and other consumer goods.

Early effects are already evident in national data. Within the consumer price index energy basket, both March and April recorded increases, with Whitehorse rising above the national average in each month on a year-over-year basis. In April alone, energy prices in the territory increased by 25.5 per cent year-over-year, contributing to an overall inflation rate of 4.2 per cent. While these developments are concerning, there is cautious optimism that oil prices will moderate in the second half of the year, easing some of the inflationary pressure. Nonetheless, persistently high energy prices remain a key near-term risk that could push inflation above our current forecast.

Beyond energy, last year's series of Bank of Canada interest rate cuts have helped reduce borrowing costs, providing some relief to households. This could support a gradual recovery in consumer confidence, which currently remains subdued. Household incomes in Yukon have also strengthened in recent years, supported by sustained wage growth and a resilient labour market. Disposable incomes are projected to grow at an average annual rate of 3.4 per cent through 2030.

Yukon's tourism sector also posted an excellent year in 2025, supported by strong numbers in both border crossings and air arrivals. Given the sector's reliance on U.S. visitors—who tend to spend more than domestic travellers—American tourism plays a key role in supporting local economic activity. U.S. visits are expected to increase in 2026, aided by a stronger exchange rate, with future benefits linked to improved accessibility thanks to work to restore the stretch of the Alaska Highway and Haines Road known as the Shakwak corridor. The return of the Canada Strong Pass in summer 2026 is also expected to support domestic travel by providing free access to national parks, benefiting Yukon's retail and hospitality sectors. Although retail sales grew modestly by 1.2 per cent in 2025, rising wages, higher incomes, and stronger tourism activity are expected to support average annual growth of 3.2 per cent between 2026 and 2035.

Households and spending data

Chart 1 7- Retail sales, Yukon

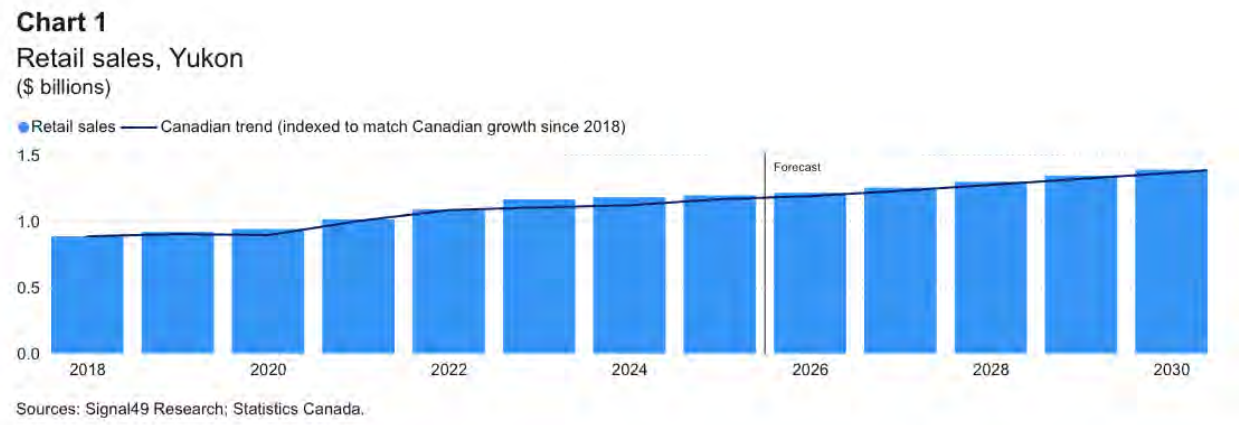


Chart 8 - Per capita retail sales, Yukon

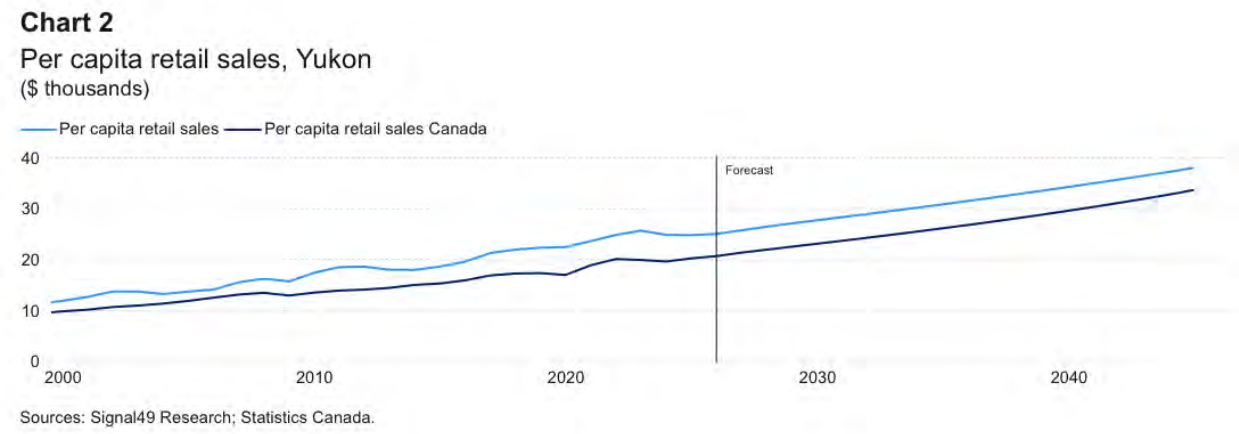


Chart 3 - Wages and inflation, Yukon

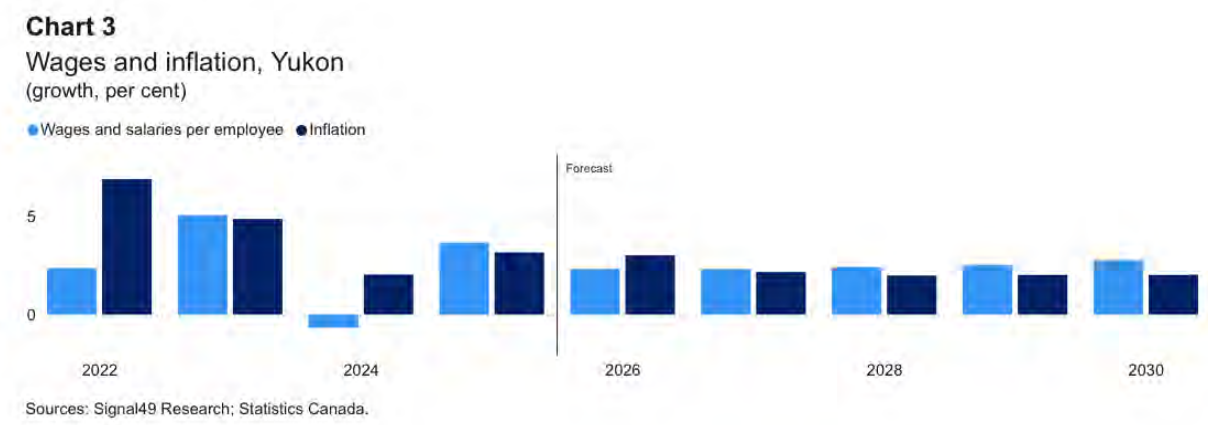


Chart 4 - Household consumption outlook, Yukon

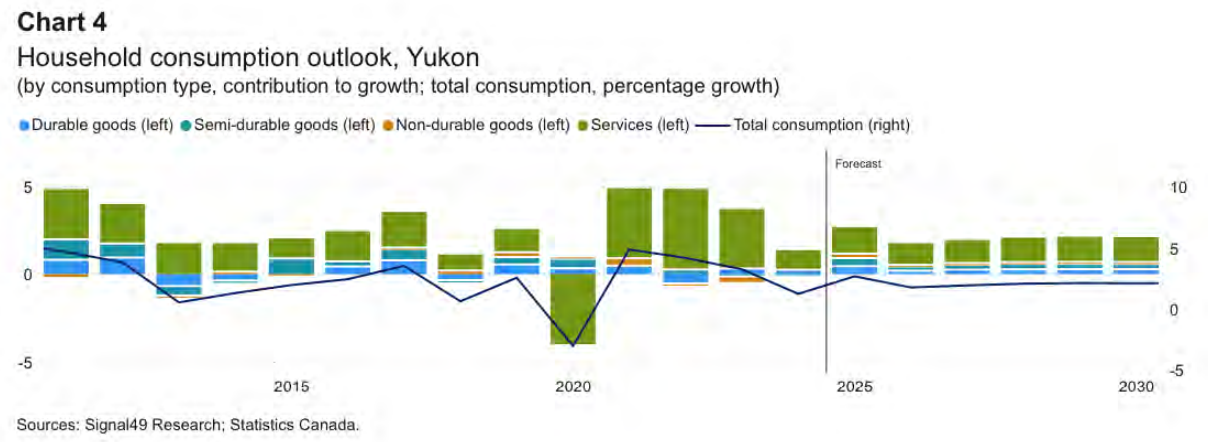
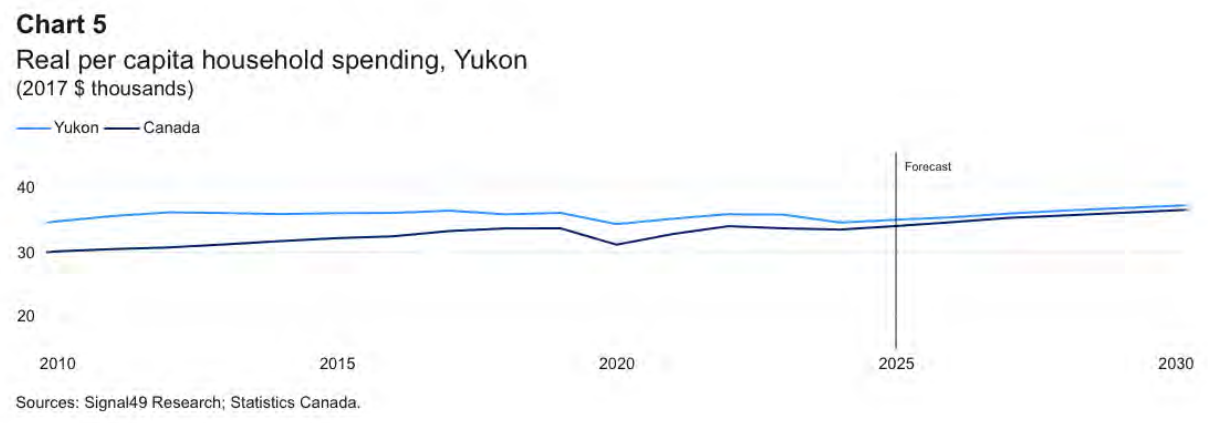


Chart 5 - Real per capita household spending, Yukon



Investment

Key findings

- Housing remains a key pillar for Yukon's development, with ongoing affordability and supply challenges prompting continued policy support and investment aimed at expanding residential construction.
- Non-residential investment will be centred on major mining projects, with development of Kudz Ze Kayah and Casino expected to drive robust growth later in the decade, while broader federal Arctic investment initiatives present additional upside potential.

No overnight fix for housing needs



Real output in residential building construction increased by 1.1 per cent in 2025. Although the average value of residential building permits declined for the year, underlying activity and demand remained strong, with housing continuing to represent one of the territory's most pressing structural challenges.

As part of the ninth annual intake of its Housing Initiatives Fund (from February to March 2026), the Yukon Housing Corporation sought partner proposals for new affordable rental developments aimed at improving housing affordability. Eligible projects could receive up to $1 million in funding, provided they commit to maintaining affordable rental rates for 20 years. Since its launch in 2018, the program has committed nearly $40 million to the construction of more than 1,000 housing units across Yukon, serving as an important driver of residential development.

We expect real investment in residential structures to grow at a compound annual rate of 3.9 per cent over the next five years, reflecting steady progress in increasing Yukon's housing supply. While permitting delays and labour constraints may continue to limit the pace of construction, ongoing government initiatives are expected to provide meaningful support and reinforce positive momentum in the housing sector.

Next wave of investment could be transformative

Non-residential investment in Yukon remains largely anchored by the mining sector, although community and infrastructure projects continue to support broader construction

activity. In 2025, real output in non-residential building construction increased by 3.5 per cent, with additional gains supported by remediation work at the Eagle Gold Mine.

Looking ahead, non-residential investment is expected to gain momentum later in the decade as the Kudz Ze Kayah and Casino mines move into development, with both anticipated to begin producing in the early 2030s. Infrastructure work such as the Yukon Resource Gateway Project, which aims to enhance road access to high-potential mineral areas, are also expected to support investment growth over the outlook period.

In addition, the federal government's plan to defend, build, and transform Canada's North includes billions of dollars in proposed investments, with roughly $10 billion tied to major projects. Among these is a new operational support hub for the military in Whitehorse, forming part of a wider network designed to strengthen year-round Arctic and Northern operations and improve rapid deployment capabilities. This initiative adds to other previously announced projects with potential transformational impacts for Yukon, including the Northwest Critical Conservation Corridor—which includes investment in infrastructure and conservation areas in a corridor that overlays significant critical mineral deposits—and connecting the Yukon power grid to British Columbia's North Coast Transmission Line.

Investment data

Chart 1 - Real investment outlook, Yukon

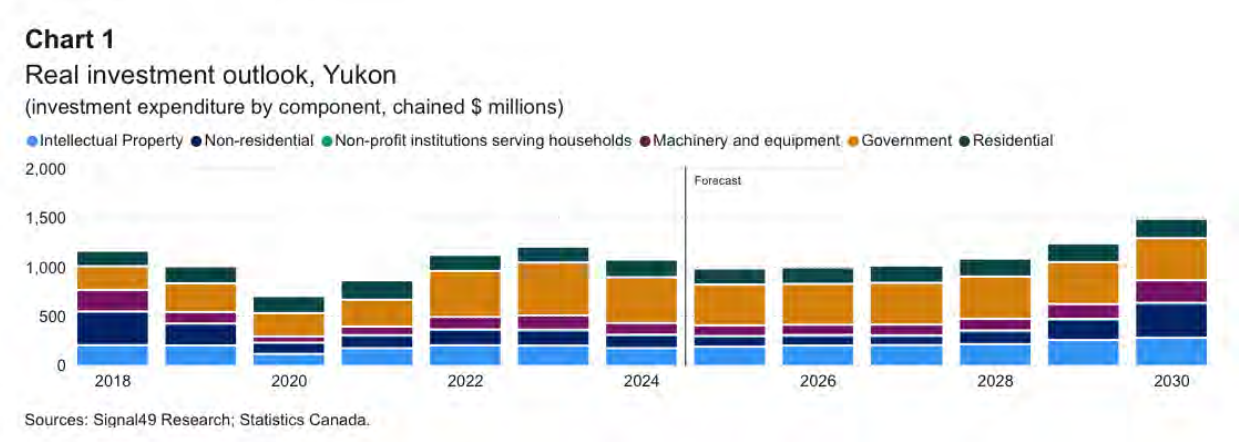


Chart 2 9- Construction outlook, Yukon

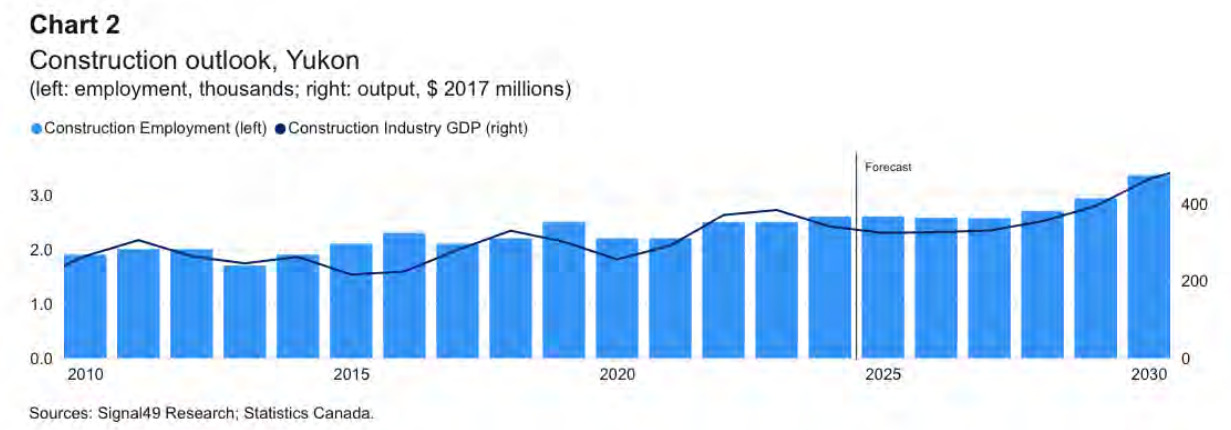


Chart 3 10- Non-residential investment as a share of total Real GDP, Yukon

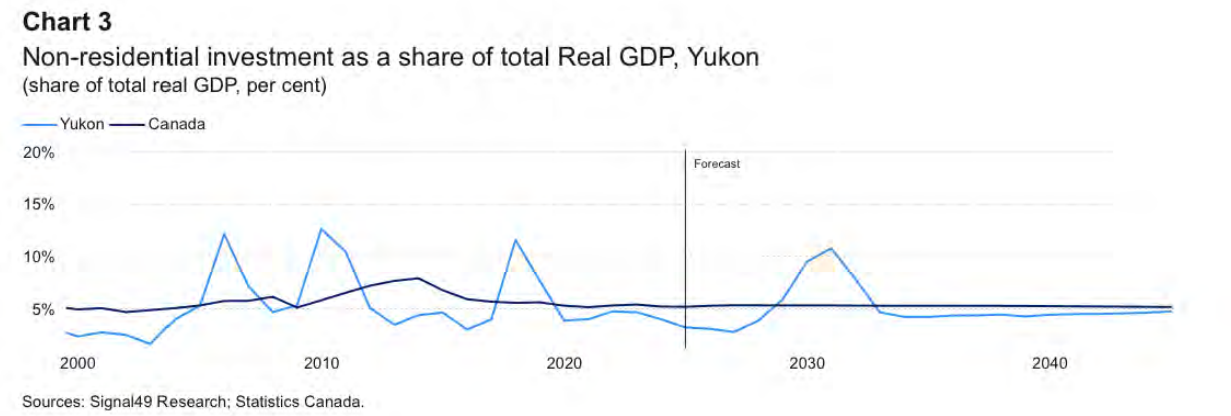


Chart 11 - Investment in building construction, Yukon

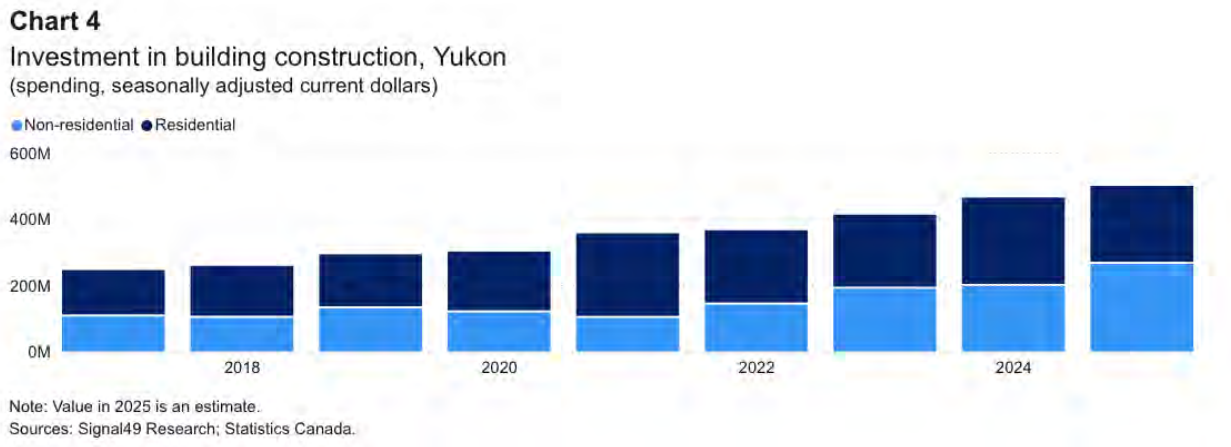
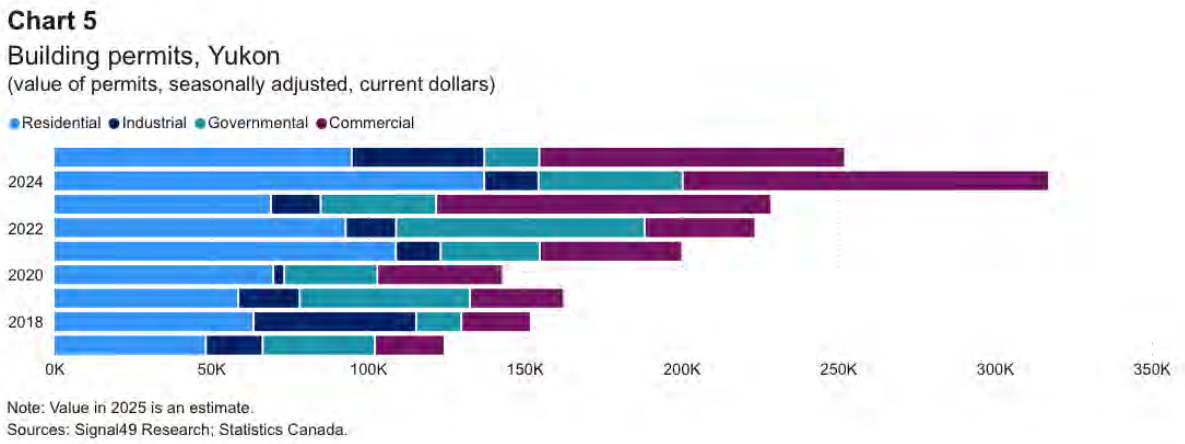


Chart 5 - Building permits, Yukon



Mining

Key findings

- Following a series of recent disruptions, Yukon's mining sector is expected to stabilize in 2026 before returning to growth in 2027, with stronger gains anticipated in the 2030s as new projects come online.
- Elevated gold and silver prices are supporting more exploration, though regulatory uncertainty, environmental scrutiny, and project delays continue to pose risks to future development.

A brighter vista after a series of setbacks



Yukon's mining sector showed resilience in 2025, following the 2023 closure of the Minto copper mine and the heap leach failure at Victoria Gold's Eagle Gold Mine in 2024, which triggered a landslide and ceased operations.

With two major producers offline, Hecla's Keno Hill silver mine has become the primary driver of mining activity in the territory. Silver production exceeded 3.0 million ounces in 2025, and production is expected to rise to over 6.1 million ounces by 2030. In line with company guidance, our outlook assumes production in 2026 will remain broadly similar to 2025 levels. First-quarter results released in early May showed a 36.7 per cent year-over-year decline in output, reflecting reduced power supply due to extreme cold and lower ore grades. Despite this decline, the operation recorded its fourth consecutive quarter of positive free cash flow, supported by strong silver prices.

Meanwhile, placer mining—retrieving gold from riverbeds and gravel deposits—continues to play a key role in Yukon's mining sector. Following a strong performance in both 2024 and 2025, production is expected to again exceed 80,000 fine ounces in 2026, supported by elevated gold prices and heightened global uncertainty, which provide added short-term incentives for placer miners.

Overall, mining output is projected to remain relatively flat in 2026, before posting a 12.9 per cent gain in 2027 as Keno Hill operations ramp up. More significant growth is expected in the early 2030s as new mining projects come online.

Impressive project pipeline

Our outlook for Yukon's mining sector assumes the development of two projects: Kudz Ze Kayah and Casino.

Kudz Ze Kayah faced a setback in December 2024 when the Yukon Court of Appeal determined that federal and territorial governments had not sufficiently consulted the Kaska First Nation on the project's economic feasibility. Although approvals were reinstated in April 2026, ongoing opposition from local Indigenous communities is creating potential timeline delays. Our forecast assumes production will begin in 2031, with a projected 10-year mine life and the potential to become Canada's largest zinc producer.

The Casino project also faces heightened scrutiny, particularly due to its reliance on a large heap leach facility—significantly larger than the one involved in the Eagle Gold Mine failure. This has intensified environmental concerns and added regulatory uncertainty. Nevertheless, Western Copper and Gold Corp. continues to advance the project following the submission of its environmental and socio-economic effects statement to the Yukon Environmental and Socio-economic Assessment Board in October. Our forecast assumes a 2032 start date, though environmental risks and delays remain key considerations.

Beyond these projects, additional upside potential exists outside our current forecast assumptions. Fuerte Metals Corp.'s Coffee gold heap leach project is progressing, including with the awarding of a contract in March to construct a 214-kilometre, $77-million all-season access road. At peak construction, the project could support more than 650 jobs.

Meanwhile, Snowline Gold Corp.'s Rogue project is also gaining traction, with the company targeting construction readiness by 2030. A positive preliminary economic assessment released in the second quarter of 2025 outlined a potential 20-year mine life, including 544,000 ounces of payable gold annually in the first five full years of production. Initial capital costs are estimated at $1.7 billion, with a construction timeline of roughly three-and-a-half years.

Exploration momentum continues to build

Exploration activity in Yukon remains centred on base and precious metals, with increasing interest in critical minerals. Elevated gold and silver prices have created a more supportive environment for exploration, encouraging firms to take advantage of favourable market conditions. As traditional safe-haven assets, precious metals have continued to attract investment amid global uncertainty and geopolitical tensions. This environment is expected to support expanded production over the coming years, particularly as export

opportunities evolve. Sustained global demand could drive greater diversification into international markets.

According to Natural Resources Canada's February release for 2026 exploration and deposit appraisal spending intentions, Yukon is expected to see spending reach $322.9 million—an increase of 33.6 per cent from 2025 preliminary estimates.

Mining data

Chart 1 - Mining outlook, Yukon

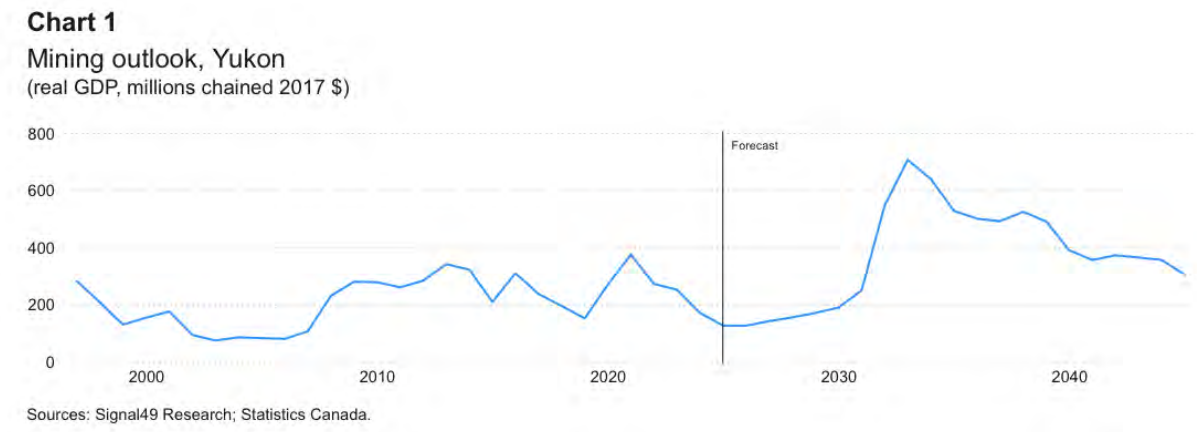


Chart 2 - Mining GDP growth, Yukon

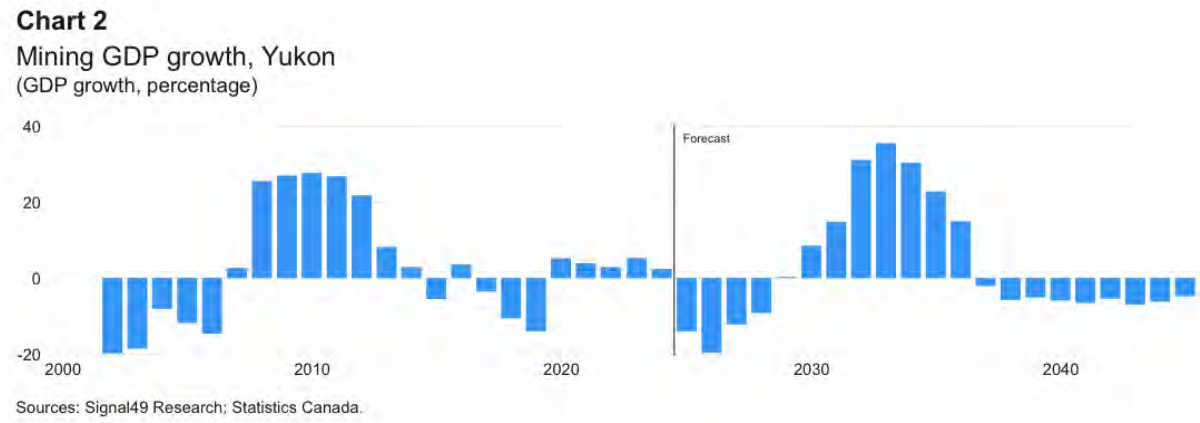


Chart 3 - Exploration spending, Yukon

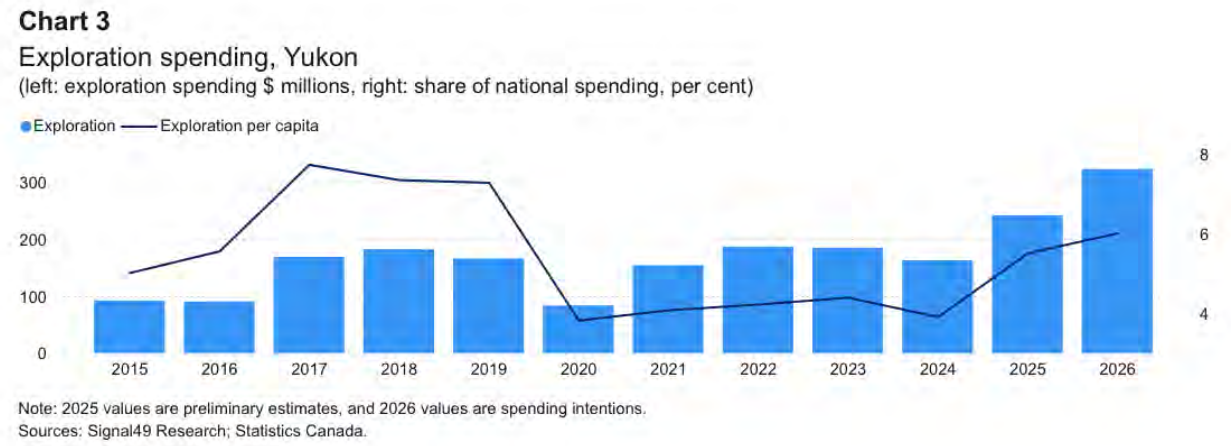


Chart 4 - Mineral production, Yukon

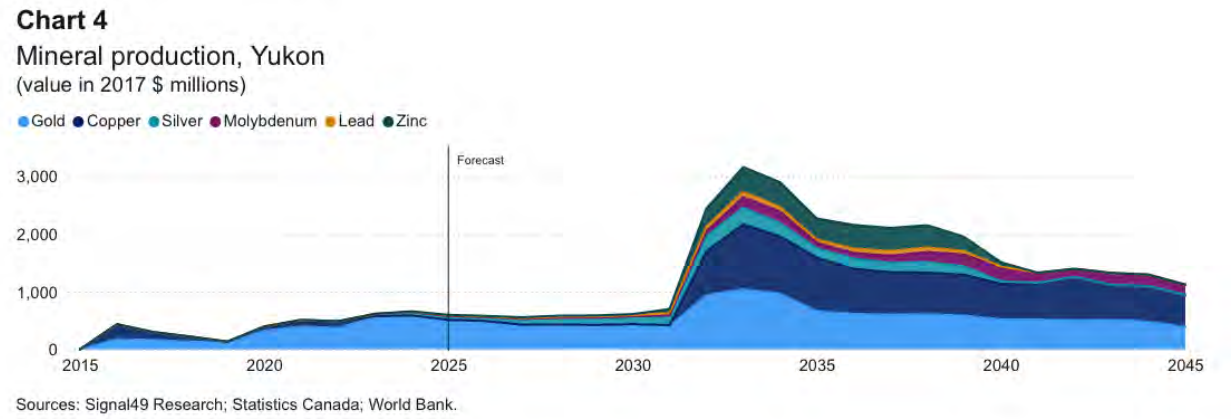
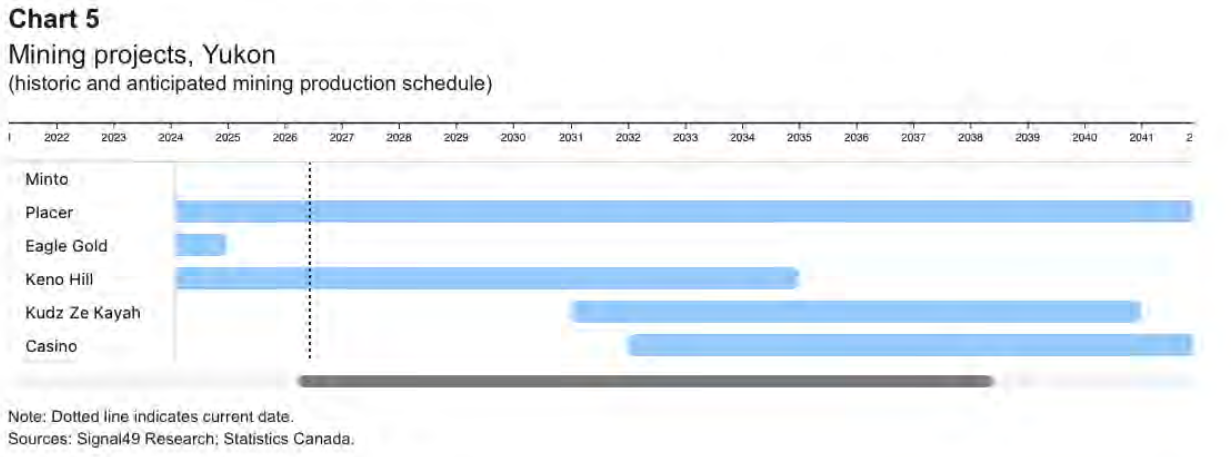


Chart 5 - Mining projects, Yukon

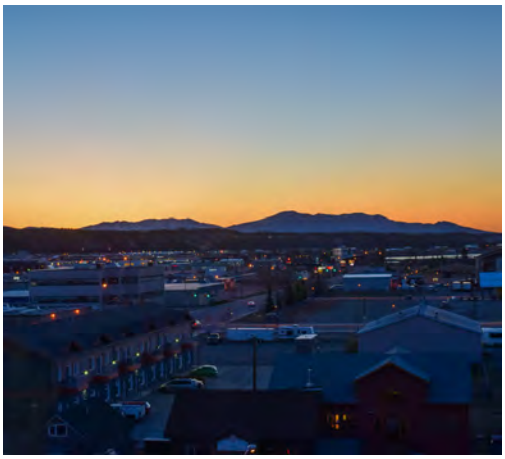


Government

Key findings

- Yukon's spending priorities continue to focus on health and social services, alongside targeted allocations for contingency planning and remediation efforts such as the Eagle Gold Mine cleanup. Capital investment continues to expand at a pace broadly aligned with infrastructure priorities.
- Revenues are expected to grow steadily over the next decade, with federal transfers remaining the primary funding source, while the start-up of two new mines in the early 2030s is expected to broaden Yukon's corporate tax base.

Upcoming fiscal year points to a deficit, but hinges on contingencies



Yukon's 2026–27 Budget, tabled in March, projected an $81.8-million deficit for the upcoming fiscal year.

On the expenditure side, health and social services continue to account for the largest share of planned spending by function of government. Other priorities outside healthcare were also identified, including a new $100-million contingency fund to respond to unforeseen events such as wildfires, as well as several million dollars for remediation work at the Eagle Gold Mine. On the revenue side, tax revenues are expected to increase by 4.8 per cent this fiscal year (compared with the latest estimates from fiscal year 2025–26), although federal transfers will remain the primary source of government funding.

Our public accounts outlook anticipates total revenues will grow at an average annual rate of 3.5 per cent over the next decade beginning in fiscal year 2026–27. Federal transfers are expected to remain the dominant source of revenue, while own-source revenues are projected to rise by 3.1 per cent annually as well. Among own-source categories, corporate tax revenues are expected to see the biggest jump in the early 2030s as two new mines begin operating. The onset of operations will likely coincide with higher profits, which in turn will expand the territory's corporate tax base.

Meanwhile, total spending is forecast to grow slightly more slowly, at 3.4 per cent per year, reflecting an emphasis on fiscal sustainability alongside continued investment in key areas such as healthcare, education, housing, and infrastructure—all commitments outlined in the new territorial government's pre-election platform. Healthcare spending is expected to

take on an increasingly large share of the budget as the population ages, reaching over 40 per cent of total expenditures by the mid-2030s.

Over the next 10 years, government fixed capital formation is projected to increase at a compound annual rate of 2.8 per cent, supported by ongoing policy priorities and investment in the territory's long-term development.

Government data

Chart 1 - Government balance as a share of GDP, Yukon

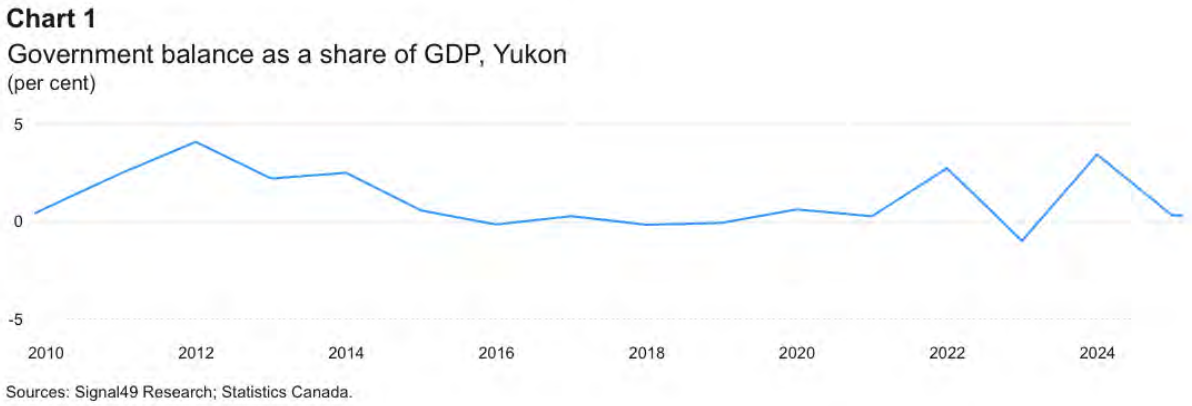


Chart 2 - Government revenue, Yukon

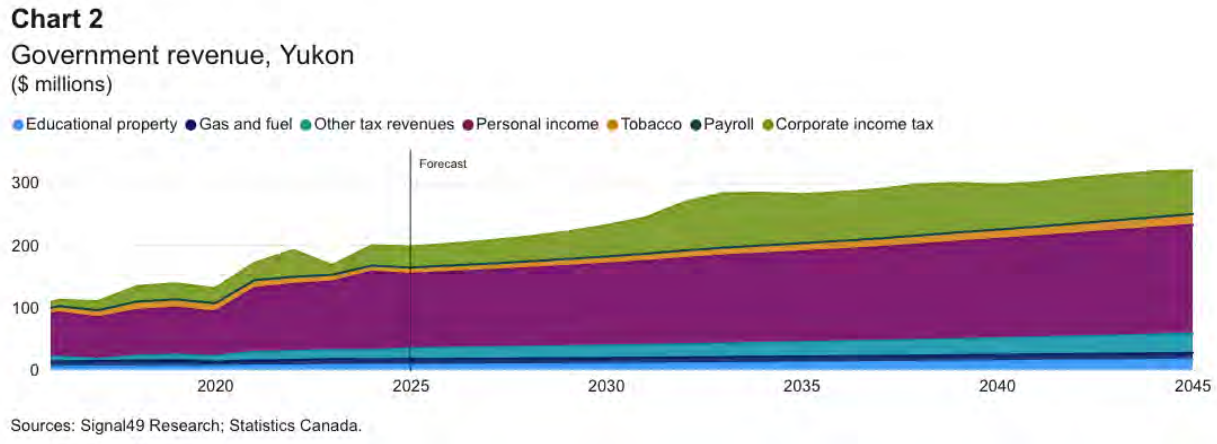


Chart 3 - Sources of revenue, Yukon

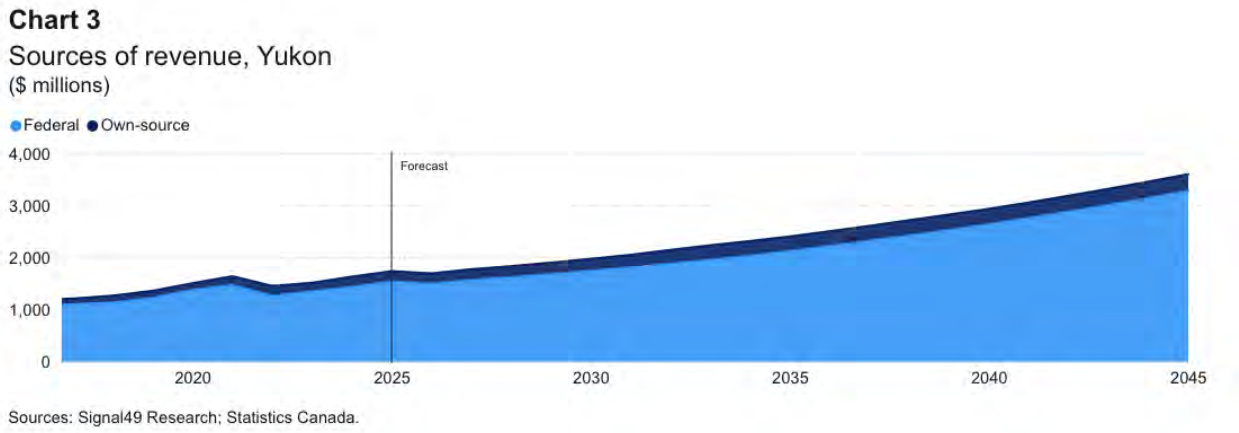


Chart 4 - Government expenditures, Yukon

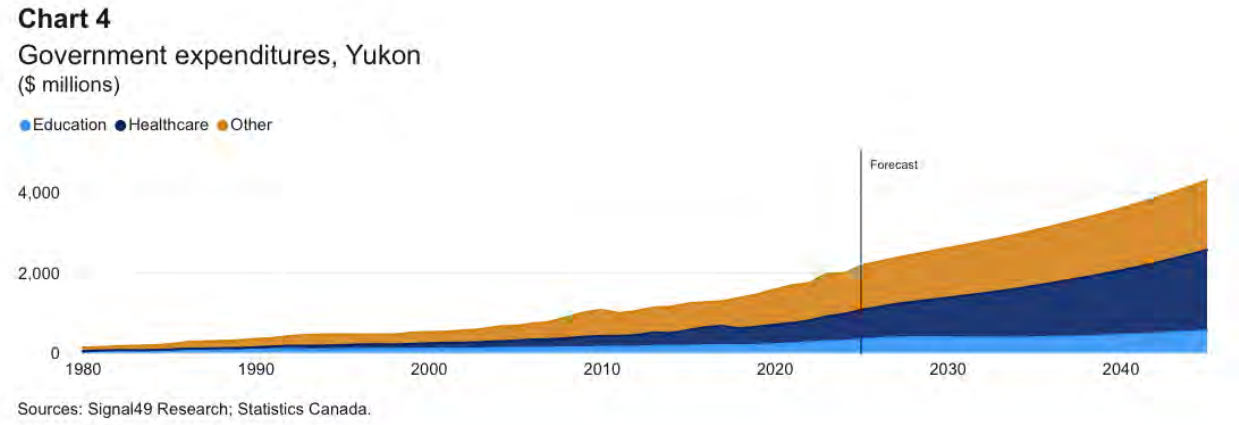


Chart 5 - Real general government consumption expenditure, Yukon

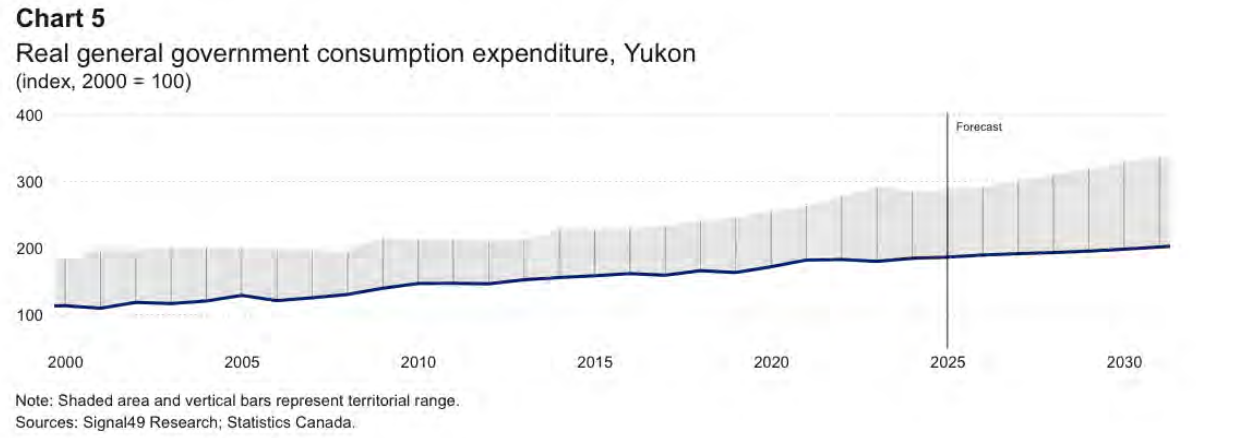


Chart 6 - Real per capita general government consumption expenditure, Yukon

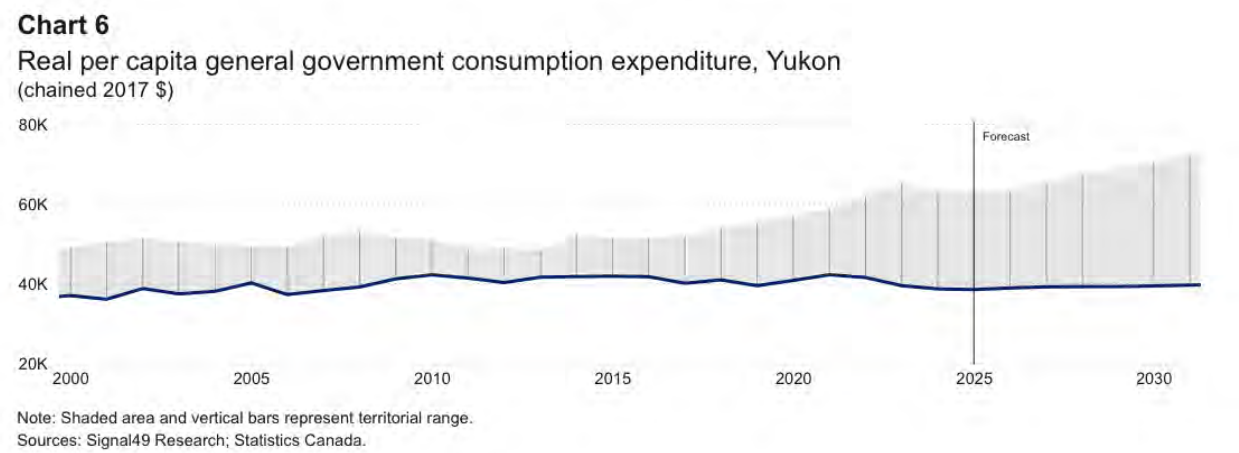


Chart 7 - Real general government fixed capital expenditure, Yukon

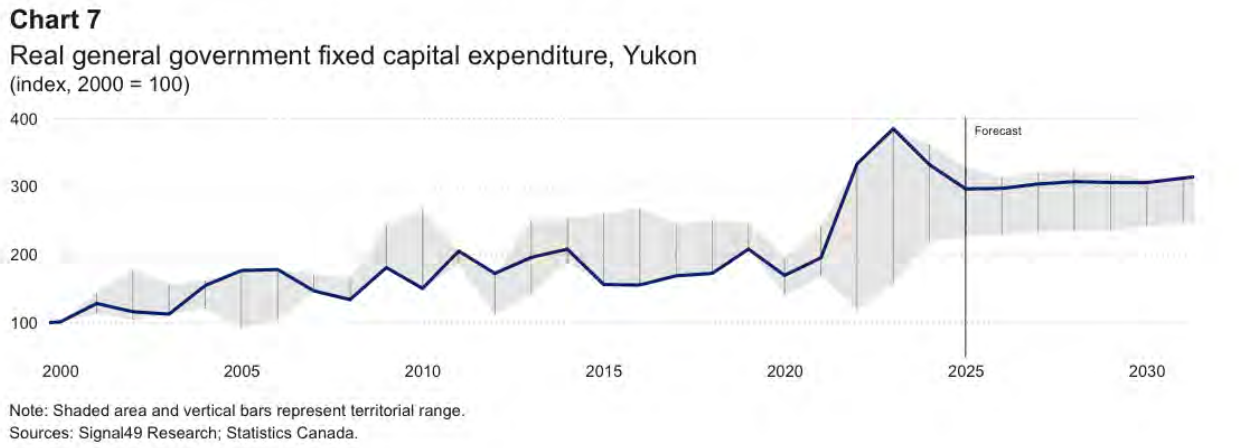
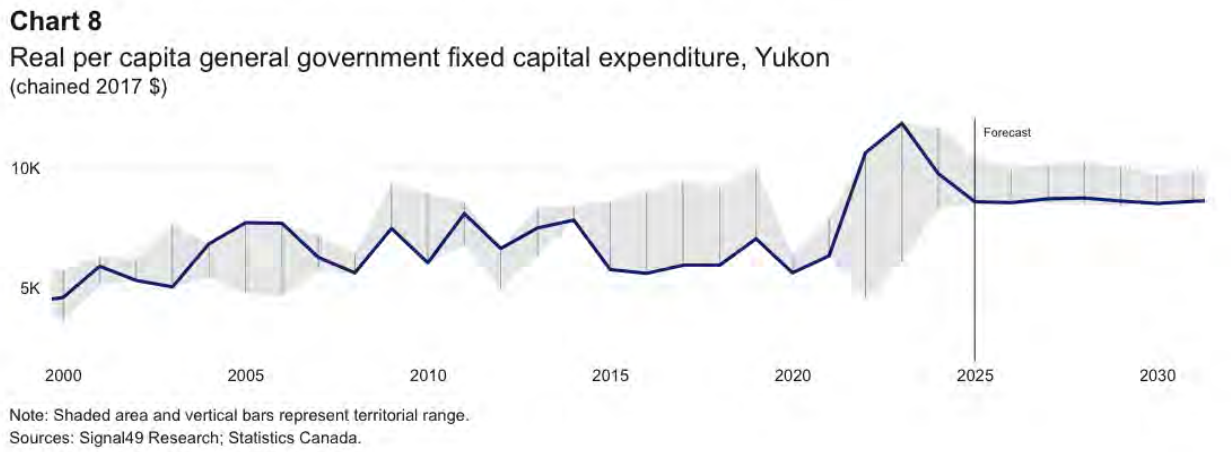


Chart 8 - Real per capita general government fixed capital expenditure, Yukon



Special issue: Population growth reset

Population growth reset: Weighing the trade-offs for Canada's North



Following a period of exceptional population growth, Canada's demographic trajectory has now shifted.

After record-high migration levels in 2023 and 2024, federal policy changes aimed at curbing temporary resident inflows have taken hold. By the second half of 2025, Canada recorded consecutive quarters of population decline. With a continued policy focus on lowering the share of non-permanent residents to below 5.0 per cent by 2027, population growth is expected to slow further through 2026 and 2027.

Similar trends have emerged in the territories. According to our estimates, population growth has decelerated notably, with Yukon slowing from 4.8 to 1.4 per cent, the Northwest Territories from 1.4 to 1.0 per cent, and Nunavut from 1.2 to 1.1 per cent between 2024 and 2025. While the demographic dynamics of each territory differ considerably, a period of slower population growth presents a mix of opportunities and challenges for Canada's North.

Infrastructure strain could soften

Infrastructure systems across the territories are small in scale, capacity-limited, and costly to expand due to remote locations and harsh weather conditions. Periods of rapid population growth can strain essential systems such as water and wastewater services, healthcare facilities, transportation networks, and energy supply.

Slower population growth gives governments and communities more time to plan and implement infrastructure improvements in a measured way. It reduces the urgency for immediate expansion, supports more thorough consultation, and helps extend the lifespan of existing assets by easing peak demand pressures.

Housing pressures could ease

Housing supply in the territories is highly constrained due to shorter construction seasons, higher material costs, and persistent labour shortages. As a result, many communities face chronic undersupply. Rapid population growth exacerbates these conditions, pushing vacancy rates toward zero and driving sharp increases in rent and home prices.

A slower pace of population growth provides an opportunity for housing supply to better align with demand. Even modest improvements in availability can have meaningful impacts in small northern markets, helping to ease affordability pressures and reduce overcrowding over time.

Smart, strategic spending

Territorial governments operate with limited fiscal capacity and rely heavily on federal transfers. Rapid population increases often force a shift toward more "reactive" spending, including emergency housing and temporary infrastructure solutions, while stretching capital budgets across multiple urgent priorities.

With slower growth, governments can adopt a more strategic approach to capital planning. More spending can be directed toward maintenance, modernization, and long-term investments, rather than short-term fixes, improving the overall efficiency and impact of public spending.

Labour shortages could deepen

Canada's territories already face persistent labour shortages in key industries, including natural resources, construction, healthcare, and services. Temporary resident, rotational, and fly-in, fly-out workers have historically played an important role in filling these gaps.

A slowdown in population growth—particularly when driven by reduced temporary resident inflows—could further tighten labour supply. Even small declines can have outsized effects in northern economies, potentially leading to project delays, higher labour costs, and reduced business expansion.

Existing demographic pressures could intensify

Demographic pressures—including youth outmigration, difficulties in retaining skilled workers, and aging populations in some communities—are ongoing concerns for the territories. Immigration has helped offset these trends to some extent of late.

Slower population growth increases the importance of attracting and retaining residents. Without success on this front, the working-age population could shrink, demographic aging could accelerate, and it may become more difficult to sustain investment growth in essential services such as education, healthcare, and community infrastructure.

Local markets are vulnerable

Territorial economies are characterized by small domestic markets that depend on local consumption to sustain businesses and services. Population growth lifts demand for goods and services, helping to support economic activity in these regions.

With slower population growth, demand may stagnate, placing pressure on business revenues and profitability. This could lead to reduced service availability in some communities, particularly in sectors such as retail and food services, and may contribute to higher costs for consumers, adding to existing affordability challenges.

Methodology

The Territorial Outlook provides the economic and fiscal outlook for each of Canada's three Northern territories, including output by industry, labour markets, and demographics.

This forecast was completed on April 27, 2026.