2025 YUKON JUDICIAL COMPENSATION COMMISSION

REPLY SUBMISSION OF THE THE TERRITORIAL COURT JUDGES AND THE JUSTICES OF THE PEACE

Myers LLP
724-240 Graham Avenue
Winnipeg, MB R3N0Y8

Susan Dawes
Counsel for the Territorial Judges and Justices of the Peace
Tel: 204-926-1501
E: sdawes@myersfirm.com

1. This Reply is filed on behalf of the Territorial Court Judges and Justices of the Peace, in response to the Submission of the Government of Yukon filed on July 17, 2026. For ease of reference, reference is made to the relevant paragraph numbers in the Government's Submission.

2. For its part, the Judiciary did not "prefer" to defer matters to the formal JCC process as the Government suggests at paragraph 12 was a factor. The Judiciary shared their intended proposals very early in the process, in an effort to explore areas of common ground in a manner consistent with the 2005 Letter of Understanding. In any event, the Government argues that its proposals, including both those jointly submitted and contested, should be recommended to the extent they are appropriate, reasonable and logical in the circumstances. While the Yukon Supreme Court stated in *Cameron* that a joint submission should be adopted in that event, the case law from the Supreme Court of Canada is clear that a JCC is tasked with recommending appropriate compensation based on the objective factors.

3. The Government sets out the issues before this JCC at paragraph 26. To be clear though, it is the Government, not the Judiciary, making the proposals regarding Deputy Judges' Medical Insurance Stipend and the Senior Presiding Justice of the Peace position.

Judicial Salaries

4. The Government confirms that the parties are jointly proposing a continuation of the 90% linkage with federal salaries, consistent with the joint position advanced to and recommended by the 2022 JCC. Notably, the 2022 JCC Report was dated February 7, 2025, which is after the Government of Canada and the superior court judges' association had filed their submissions to the Federal Commission. In other words, it would have (or certainly could have) been known to the Government that the federal judges were seeking an increase beyond the IAI-based increases far in excess of the $28,000 that was ultimately recommended by the Federal Commission.[1] Indeed, federally appointed judges have sought

[1] See the filing dates of the various Submissions, and the Submissions themselves on the Federal JCC's website: https://quadcom.gc.ca/en/commission-category/submissions/

increases beyond the IAI-based increases in the past as well, such that this potential outcome ought to have been no surprise to Government.

5. At paragraph 29, the Government misstates the relative ranking of Yukon salaries vis-à-vis other judges in Canada. As set out at Tab 15 in the Joint Book of Documents, the 2024 Yukon salary of $357,030 was less than the judicial salaries in BC ($360,000), Alberta $372,000), Saskatchewan ($364,513) and Ontario ($377,936). It was higher than the salary in the NWT ($350,129). In comparing Yukon with its four statutory comparators, it was 4th out of 5.

6. At paragraphs 30-32, the Government sets out information concerning federal judicial salaries, including the salaries of Yukon Supreme Justices, which is not completely accurate. The chart below repeats the information from the chart at the top of page 26 of the Judiciary's Submission, together with the resulting salaries based on the 90% relationship.

	Federal (implemented by GOC)	Yukon @ 90% of implemented federal salaries	Federal JCC's recommended salary	90% of federal recommended salary
2024	$396,700	$357,030	$424,700	$382,230
2025	$414,900	$373,410	$444,185	$399,767
2026	$429,000	$386,100	$459,280	$413,352

7. While the Government uses an estimate of 3.5% for the IAI for Canada for 2027-28 and 2028-29, the basis for that estimate is unclear. In any event, the parties have never known with certainty what adjustments the federally appointed judges would receive pursuant to s.25 of the *Judges' Act*. This situation is no different.

Deputy Judge Per Diem

8. At paragraph 38, the Government leaves the impression that the change in the Deputy Judge per diem was the result of adopting the rate paid by the NWT. While that may have been the Government's impetus for agreeing, the Judges looked more broadly across Canada. The chart on page 51 of the Judiciary's Submission includes the per diem rates from

across Canada and highlights Yukon's statutory comparators in bold. As demonstrated there, Yukon's current 1/235 formula is clearly out of line with all other jurisdictions, except Newfoundland & Labrador.

Increased Judicial Allowance

9. The Government gives no explanation for why the increase in the judicial allowance was agreed upon. The Judiciary's main Submission addresses the relevant factors, including the loss of purchasing power of the current allowance amount in place since 2004, and the statutory comparators which support the parties' joint position.

Chief Judge Differential

10. At paragraph 44, the Government misstates the Judiciary's position, which is to accord with other jurisdictions across Canada, not simply the NWT.

11. Regarding the comparison with the NWT, the joint submission that was brought to the 2022 JCC had been agreed upon before the 2024 NWT JRC recommended the adoption of a percentage differential in the amount of 7.5% of salary, which is the same proposal now made by the Judiciary for Yukon. Before the 2022 JCC adjusted the Chief Judges' stipend to $15,000, the $10,000 amount had been in place since 2007, and its value had woefully eroded over the ensuing 16 years.

12. Indeed, as set out in the Judiciary's Submission, since the $15,000 differential was recommended effective April 1, 2022, its value as a percentage of salary has eroded from 4.48% of salary, down to 3.89%.

13. The Government's proposal of focusing on PEI as a comparator, rather than the NWT and Yukon's other statutory comparators, does not accord with the approach of past JCCs. The position appears to be based on an unfounded claim that there is a proportionally smaller administrative burden with three judges in Yukon versus four judges in the NWT. This claim is denied, since many of the Chief Judge's duties are required to be completed regardless of the size of the Court. Among these are participation in the Canadian Council of

Chief Judges, and other national committees which focus on improving the administration of justice.

14. The Government relies on the fact that PEI's Chief Judge maintains a regular case load like the Chief Judge in Yukon but ignores the fact that the same is true of the Chief Judge in the NWT. In both Yukon and the NWT, but not in PEI, circuit work takes the Chief Judge away from Whitehorse or Yellowknife, as the case may be, for extended periods, meaning the Chief Judge duties must be fit around the circuit work schedule. As to the Government's efforts to distinguish the larger jurisdictions, as the Judiciary pointed out in their Submission, the larger jurisdictions have multiple other administrative judges (e.g., eight in BC, ten in Alberta) assisting the Chief Judge who does not have a regular case load.

15. The Government asserts, without evidence, that the NWT's Territorial Court has "greater administrative complexity" as compared with Yukon. The Judiciary respectfully disagrees with this assertion. Moreover, while the NWT's judicial salaries are not currently linked with federal salaries, the next NWT JCC will make recommendations for judicial salaries for the period beginning April 1, 2028, and will take into account federal salaries as they are then known, among other factors.

Supervising Judge Differential

16. The Government opposes any change to the stipend for the Supervising Judge of the JPs, such that the amount of $7500 would erode, as a percentage of salary, over the course of this JCC. The Judiciary seeks a change to a percentage differential for the same reasons as for the Chief Judge, including to avoid the need to bring this issue before subsequent JCCs.

Northern Allowance

17. The Government argues the JCC should reject the Judiciary's proposed Northern Allowance. As opposed to basing its argument in the statutory factors that this Commission is obliged to consider, the Government focuses on the situation for Yukon government employees and inaccurate assertions about Federal Government employees.

18. Regarding Yukon employees, the Judiciary's proposal does in fact take the "Yukon bonus" into account, since the proposal contemplates that Judges would no longer receive the Yukon bonus (which makes the actual increase proposed $9758 per judge, less than the $12,000 referenced by Government). The Government claims it would be "inequitable and inappropriate" to recommend a Northern Allowance for judges, over-estimating that the amount sought is approximately five times the Yukon bonus. Other judges have long been considered to be the best comparators when it comes to determining judicial remuneration, a principle reflected in the fact that compensation paid to government employees is not a factor included in the *Territorial Court Act* for consideration by JCCs.

19. The Government asserts that the Yukon bonus was "designed to be an automatic travel benefit for all employees". To be clear, Yukon employees also receive travel related expenses in addition to the Yukon bonus, as do Judges. Regardless, Judges travel extensively on circuit, much more than the average government employee.

20. The Government claims, inaccurately, that "all federal employees receive a northern allowance". Pursuant to the Federal Isolated Posts and Northern Housing Directive included in the Government's Supplementary Documents at Tab 16, *many* federal employees are not eligible for *any* of the three allowances provided for in the policy: the Environment Allowance, the Living Cost Differential or the Fuel and Utilities Differential. Indeed, a salaried federal employee (without dependents) working in Whitehorse is not eligible for any Living Cost Differential, but would receive an Environment Allowance of $2278 per year, and a Fuel Cost Differential of $1725. By contrast, based on recommendations by the Federal JCC, Justices of the Supreme Courts of both Yukon and the NWT, and the Nunavut Court of Justice are all paid the same $12,000 northern allowance proposed by Yukon judges.

21. The Government points to the fact that current and past Judges were already living in Whitehorse and accepted the positions "knowing the costs of living in the north". They also knew, presumably, of all the aspects of compensation available at the time they were appointed, as well as about the existence of this Commission process which must ensure that there is appropriate compensation moving forward based on objective criteria.

22. At paragraph 66, the Government points to the fact that Yukon salaries are already among the highest in Canada. The chart provided ignores that the 2024 salary for Alberta judges was $372,500, such that the 2025 Alberta salary is likely to be higher than the $373,410 that would be paid in Yukon based on the current federal salary. The Government then purports to make a total compensation argument, asserting that "adding $12,000 would increase total TCJ compensation making their compensation among the very highest in Canada". This assertion is without foundation, given that a total compensation analysis must take into account the value of the pension which, after salary, is by far the second most significant aspect of compensation. No pension valuation is provided to support the Government's position.

23. At paragraph 68 of its Submission, the Government points to paragraph 135 of the 2024 Report of the NWT Judicial Remuneration Commission.[2] The NWT Commission had noted earlier in its Report that its task was to attempt "to situate territorial judges' salaries in the upper end of the salary range" (para 127). The Commission then determined at paragraph 135 that the Minister's salary proposals were "not within the upper end", but accepted that it should take into account salary increments received by territorial judges such as the northern allowance of $3700 paid to NWT judges in making that assessment. Nonetheless, the JRC went on to find that the northern allowance was not so great as to elevate salaries to the top end, when added to the Minister's proposed increases. Notably, the JRC also stated: "Provincial and territorial judges in other jurisdictions also receive northern allowances in addition to the salaries above".

24. In other words, the 2024 NWT JRC's analysis goes squarely against the Government's argument, at paragraph 70 of its Submission, that the northern allowances received by eligible Saskatchewan judges should be ignored because they are not made available to all Saskatchewan judges.

[2] Joint Book of Documents, Tab 31, para 135

25. At paragraph 69, the Government cites the change in the CPI for Whitehorse for 2025, which is 3.2%. The incremental change in the cost of living for a particular location is not a basis to compare the cost of living between jurisdictions.

26. As to paragraph 71, and the fact that all Yukon employees receive the Yukon bonus, it is axiomatic that judges are not government employees. As noted above, the benefits afforded to government employees are not among the statutory factors the Commission is to consider, underscoring the relative lack of importance of this consideration.

27. As to the Government's paragraph 72, no JCC in Alberta has yet considered a northern allowance for Alberta judges. The application of the amounts payable by regulation to public sector employees has been the case since prior to the SCC's determination, in 1997, that a JCC process is constitutionally required.

28. Regarding the Government's assertions about a "northern allowance" being paid to federal government employees in Whitehorse, the amounts payable to federal employees in Whitehorse, pursuant to the Federal Isolated Posts and Housing Directive, are set out in paragraph 20 above. Other judges, including the Justices of the Yukon Supreme Court who live and work in Whitehorse, are the most appropriate comparators, not government employees. These justices, along with other justices residing in Whitehorse and other "desirable places" across the north, all received the same $12,000 northern allowance that is proposed for Yukon judges.

29. There is no basis for the assertion that the public would "likely" perceive the allocation of a northern allowance to be excessive and unfair. The same could be said of any aspect of judicial compensation and this is one of the very reasons that an independent and objective process is required.

Increased Hourly Rates for JPs

30. Contrary to the statement in the Government's paragraph 79, the JPs' proposal rests on a continuation of the percentage relationship between the hourly rate for each classification of JPs and the Judges' notional hourly rates, as it existed in 2024. It is unclear

why, in the paragraph that follows, the Government recounts certain details of past discussions between the parties. This is surely a disincentive to engage in fulsome discussions consistent with the 2005 Letter of Understanding.

31. As to the Government's proposals, it is respectfully submitted that the NWT is not a reasonable comparator for JP compensation, given that the NWT hourly rates are unilaterally established by the NWT without an independent, objective and effective commission process. Even aside from the differences in required qualifications, it is no surprise that the unilaterally set hourly rates are much lower in the NWT than they are in BC, Alberta and Saskatchewan, all of which have independent commissions to make recommendations about pay for justices of the peace. In any event, required qualifications are only one thing to consider in determining compensation. Regardless of required qualifications, presiding JPs are performing many of the same duties as JPs in these other provinces.

32. The Government purports to distinguish the salaries paid to other justices of the peace in the comparator jurisdictions, and declares that it considers "other employee groups" to be a more suitable comparator to JPs than Judges. Simply put though, Justices of the Peace are not government employees; they are judicial officers and thus must have an independent, objective and effective process make recommendations about their compensation.[3]

33. The 2024 Saskatchewan Justices of the Peace Commission warned against comparing to the general wage increases negotiated by employees through collective bargaining, for the following reasons, which are apposite here:

> 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,

[3] *Nova Scotia Presiding Justices of the Peace Association v. Nova Scotia (Attorney General)*, 2013 NSSC 40 (CanLII)

such as salaries, but inevitably, something else may be given up. That is a very different process than the compensation commission process.[4]

34. The Government proposes two options of increased hourly rates for consideration by the JCC but does not justify either of those proposals in light of the objective factors to be considered by this JCC (except to say that the result is that Yukon JP3s would be paid more than the equivalent classification in the NWT).

35. The Government further opposes the JPs' proposed continuation of the existing percentage relationship with Judges' salaries for reasons set out at paragraphs 90-96. First, it opposes the linkage to Judges' salaries on the basis that Judges' salaries could change in the event a successful judicial review results in the Government of Canada deciding to give a further increase to federally appointed judges. As set out in the Judiciary's Submission, even if the maximum potential increase is received, the result for JPs would still be an hourly rate below those in BC, Alberta and Saskatchewan, and above the NWT, which is appropriate based on all the factors. By contrast, the Government's proposed alternatives would mean that the JPs' hourly rates could fall substantially relative to Judges' pay, despite the overlap between JPs work and a portion of the duties performed by Judges.

36. At paragraph 92, the Government misstates the SCC's conclusion in *Bodner*. Since then, linkages have been recommended by various commissions, including the 2024 Saskatchewan Justices of the Peace Compensation Commission, taking into account all relevant factors.

37. At paragraph 93, the Government misrepresents the conclusion of the 2024 Saskatchewan JPCC. While it did reject a comparison with the salaries paid to Crown counsel (which is not proposed here by the Yukon JPs), it did <u>not</u> reject a comparison with judges. In fact, it recommended that JPs salaries should continue to be linked to Saskatchewan judges' salaries – at 51%.[5] Notably, Saskatchewan judges' salaries are linked

---

[4] 2024 Saskatchewan Justices of the Peace Compensation Commission Report, Joint Book of Documents, Tab 31, para 272.
[5] 2024 Saskatchewan Justices of the Peace Compensation Commission, Joint Book of Documents, Tab 24, para 294

to federal salaries such that the salaries for both Saskatchewan judges and JPs would rise in the event the federally appointed judges eventually receive all or part of what was recommended by the independent federal commission.

38. At paragraph 94, the Government suggests that there is an established and transparent approach to JP compensation, which is denied by the JPs. Past JCCs have accepted joint submissions of the parties where those were made, and on some occasions no proposal was made. This is the first time a JCC has been asked to determine hourly rates in a contested context.

Four-Hour Minimum for JPs on Weekdays

39. The JPs dispute the Government's claim that the work of JPs on the days they bill less than 4 hours is contiguous. This is not the case. The situation for each day of the week is set out below, which provides information supplementary to the daily schedule set out on Tab 30 (Presiding JP Schedule) in the Joint Book of Documents.

a) Mondays: generally contiguous. However, every second Monday has IRJ court at 3 pm. If the 1 pm Bail Court is done before 3 pm, the JP must be available again at 3 pm. Also see paragraph 40 below.

b) Tuesday and Wednesdays: start is at 9:30 am and JPs must be available for the full day. Depending on the schedule, it may or may not be continuous. Notably, in half of the Tuesday/Wednesdays in May 2026, JPs billed for less than 4 hours despite necessarily needing to be available for a longer day.

c) Thursdays: the hours tend to usually be contiguous, unless the JP is also assigned to the morning Child Protection docket.

d) Friday: the hours are always contiguous, since there is at least an hour of desk duty before Bail Court at 1 pm. Also see paragraph 40 below.

40. In addition to the foregoing, on Mondays and Fridays, the presiding JP is also on call for reviewing bail orders with the accused and sureties as well as reviewing the recognizance

document with a respondent who has been placed on a peace bond. On Tuesdays, Wednesdays and Thursdays, the JP assigned only to desk duty takes care of that responsibility. The need for this work arises when courts, other that the JP Court (i.e. Supreme Court or Territorial trial courts) have ordered an accused be released or placed on a common law peace bond. In those instances, the court clerk would call the assigned JP and ask that they attend the courthouse to deal with the matter. This does not happen every day but it is not an unusual occurrence.

41. As set out in the Judiciary's Submission, it is fair and reasonable to commit to providing JPs with at least a half day's compensation on weekdays. The work is inherently unpredictable, in terms of the number of matters on a docket and whether a resolution might be reached between the parties such that the day is shortened unexpectedly. The proposed minimum provides a measure of fairness for JPs.

42. The Government correctly makes the point at paragraph 109 that there are only a handful of JPs affected by the four-hour minimum proposal: there are 4 JP3s who preside in Whitehorse who would be eligible. There are two additional JP3s who are no longer presiding regularly but who have indicated a preparedness to make themselves available in an emergency. In theory, they too could benefit.

43. The Government's final point at paragraph 110 references the "actual billing data". As no other data has been produced, we presume reference is made to Tab 29 in the Joint Book of Documents. Contrary to the Government's assertion, and contrary to the explanation above, that data does not "confirm" that the hours worked are contiguous.

Interest on Retroactive Salary

44. The Judiciary recognizes that a recommendation for interest would be a first in Yukon, despite it having been recommended repeatedly in Manitoba (i.e., by the 2008, 2011, 2014, 2017, 2020, and 2023 JCCs), for the first time in Newfoundland & Labrador by the 2021 Tribunal and, most recently, for the first time in British Columbia by the 2022 BC JCC (see the 2022 BC JCC Report, at Tab **23** in the Joint Book of Documents). As argued in the Judiciary's

Submission, despite the 2005 Letter of Understanding, delay has become a significant issue in Yukon and this 2025 JCC has itself been significantly delayed.

45. The 90% linkage has indeed simplified the calculation of salaries to be considered by the JCC. Nonetheless, the outcome on judicial salaries still awaits the outcome of the JCC process, and judges do not enjoy the use of the money in the interim.

46. Respectfully, the Judiciary has played no role in the delay associated with the current process. While it is true that the Judiciary's original counsel for the 2022 JCC was appointed to the Bench, a happenstance that can hardly be attributed to the Judiciary, the short delay associated with that has no bearing whatsoever on the current JCC process for which the request is made.

47. Interest does not create a "perverse incentive" as alleged or at all. It is unclear how receiving interest at the proposed rate, which is likely lower than the returns that could be achieved through investment of the funds by each judicial officer if they had the money, is any incentive in any event.

48. Contrary to the assertion at paragraph 117, the Judiciary's position is not rendered internally inconsistent by excluding from the application of interest any increase which may result from the completion of the federal JCC process. That is outside the control of Yukon's Government. Interest, by contrast, would be applicable to amounts payable pursuant to the JCC process, which could and should have been determined and implemented much sooner than they will be because of the Government's own delay of the process.

49. The Judiciary has every reason to believe that if the federal salaries for the relevant years increase at any point, as a result of the federal commission process, the attendant effect for Yukon would be implemented expeditiously. This is markedly different from the currently known adjustments effective April 1, 2025 and April 1, 2026, which have been substantially delayed by the Government's request that the JCC process be delayed to accommodate the territorial election and related matters.

50. Regarding paragraph 118, the suggestion that interest should be rejected because there is no “legislative gap” to fill, should be rejected on principle. Clearly the Government cannot simply legislate other aspects of compensation, and thereby purport to fill any legislative gap. All compensation for the judiciary must be determined in light of the JCC process and interest is no different.

Medical Insurance Stipend for Deputy Judges

51. The Government appears to suggest that, since it currently happens to be the case that there is no Deputy Judge who does not have medical insurance through another means, that the benefit should be abolished as having no practical function. This is only because the most recent Deputy Judge to accept the offer of the medical stipend reached the age of mandatory retirement and thus is no longer sitting.

52. The Judiciary takes the view that this is a useful benefit for those who do not have access to medical insurance, and should remain in place to attract potential deputy judges to the benefit of the public. Notably, it is of no cost presently, and very limited cost, to the extent one or more Deputy Judges were to accept the offer in the future.

Senior Presiding Justice of the Peace Compensation

53. The Government proposes to reduce the compensation payable for the Senior Presiding Justice of the Peace, a position which has remained vacant since 2014. The Government characterizes this reduction euphemistically as, in large part, a “realignment”. The basis for the requested reduction in compensation is entirely unclear.

54. As noted, the position is vacant and has been for many years now, and the Judiciary has committed to not filling the position unless or until it has the Government’s support to so do. The current compensation was presumably established taking into account the role and responsibilities exercised by the former incumbent. To the extent the compensation associated with the position is to be changed, the change ought to take into account the duties to be performed, along with other relevant factors under the *Act*. Yet, the Government proposes to reduce the compensation in the absence of any facts about the position.

55. If there is an intention to fill a version of the position in the future, the parties can discuss appropriate compensation for the position in light of all the factors, following which it would need to be determined by a JCC. Determining compensation in the abstract is inappropriate; it remains to be seen whether a rollback of the associated compensation is justified and appropriate based on all the factors.

Section 19 Analysis and Conclusions

56. The Government's Submission concludes with a section setting out its analysis of the statutory factors set out in section 19 of the *Act*. Regarding the current financial position of Government, the Government references the Path to Balance, which is explained in Fiscal Outlook document from the Budget, provided at Tab 10(c) in the Joint Book of Documents (see page 16ff). To be clear, while there are clearly fiscal challenges, the Path to Balance does not call for fiscal restraint to be exercised across employee groups, and for judges and JPs, as the Government states should be exercised.

57. The Judiciary has addressed each of the relevant factors in detail in its own Submission and relies on those submissions.

Conclusion

58. The Judiciary has addressed above each of the points made in the Government's conclusion throughout the Reply Submission above. The Judiciary relies on its main Submission, together with this Reply, to support its proposals on the various aspects of compensation that have been put in issue by the parties.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 29th DAY OF JULY, 2026

Susan Dawes

Susan Dawes, Counsel for the Judiciary