

2022 YUKON JUDICIAL COMPENSATION COMMISSION

**SUBMISSION OF THE TERRITORIAL COURT JUDICIARY IN RELATION TO
THE TERRITORIAL COURT JUDGES AND
THE JUSTICES OF THE PEACE**

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OVERVIEW

1. The mandate of this Judicial Compensation Commission (“JCC” or “**Commission**”) is to inquire into and make recommendations concerning judicial remuneration of Judges and Justices of the Peace (“JPs”) for the three-year period from April 1, 2022 to March 31, 2025. To assist the Commission with this task, the judiciary of the Territorial Court, which includes both the Territorial Judges and Justices of the Peace (collectively, the “TCYJ”), provide the following submission.

2. Part I provides a brief overview of the work of the Territorial Court and the duties of the Judges and Justices of the Peace within the justice system in Yukon.

3. Part II describes the role and purpose of a JCC and provides an abbreviated overview of past JCC processes in the Yukon.

4. Part III addresses each of the factors to be considered by the JCC in assessing what is appropriate compensation for the TCYJ. In considering the relevant factors, the TCYJ rely on the decisions of past JCCs as well as the reasoning of JCCs in other jurisdictions.

5. Part IV details the TCYJ’s recommendations for adjustments to compensation, all of which are the subject of a joint submission with the Government of Yukon (“**Government**” or “**GY**”). These include recommendations on the following aspects of compensation:

- a) judicial salary increases in each of the years within this JCC’s mandate;
- b) an amendment to the *Territorial Court Act* to provide, *inter alia*, for a presumption that judge’s salary shall be equal to 90% of the salary paid to a federally-appointed judge in the same fiscal year;
- c) an increase in the stipend for the Chief Judge and Supervising Judge of the JPs;
- d) an amendment to the *Territorial Court Judiciary Pension Plan Act*;
- e) an hourly rate increase for JPs;
- f) an increased daily allowance for training at a Justice of the Peace College and in the hourly rate for training; and
- g) a change in the standby pay available for certain JPs.

6. The Submission below outlines how the specific proposals are appropriate in light of the factors required to be considered by the Act.

PART I –THE TERRITORIAL COURT OF YUKON – A BRIEF OVERVIEW

7. The Territorial Court deals with most adult criminal prosecutions under the *Criminal Code*, the *Controlled Drug and Substances Act*, and other federal statutes.¹ The Territorial Court also hears all young offender matters and prosecutions under territorial laws. It deals with first appearances, bail hearings, receiving pleas of guilty and not guilty, trials and sentencings, in both summary conviction and indictable matters, and conducts preliminary inquiries.

8. The Territorial Court has exclusive jurisdiction over child protection matters under the *Child and Family Services Act*. In addition, unlike many Provincial Courts across Canada, judges of the Territorial Court exercise civil jurisdiction in Small Claims Court in respect of claims for up to \$25,000.

9. The Territorial Court consists of three full-time sitting judges and approximately 27 deputy judges who are sitting or supernumerary judges from Yukon or other jurisdictions. In addition, a justice of the Court of Appeal or a judge of the Supreme Court may sit as a judge of the Territorial Court and, when that justice or judge does so, they are a judge of the Territorial Court.

10. While the Court sits permanently in Whitehorse, it also provides services to 13 other communities on a regular basis. There are three permanent court registries located in Whitehorse, Dawson City and Watson Lake.

11. Judges of the Territorial Court were instrumental in the establishment of the Domestic Violence Treatment Option Court, which has been operating since the year 2000,² and the Community Wellness Court, which opened in 2007, as an innovative therapeutic court designed

¹ The description of the Court's work in paragraph 2 of the Government's Submission does not reference other federal statutes.

² <https://www.yukoncourts.ca/index.php/en/courts/domestic-violence-treatment-option-court>

to contribute to safer Yukon communities through crime reduction.³ The other specialized Court in Yukon is the Youth Criminal Justice Court, which hears all *Criminal Code* charges brought against young persons who are between ages 12 to 18 years.⁴

12. The Justice of the Peace Court is part of the Territorial Court and is staffed by 20 part-time Justices, who are located in Whitehorse and communities throughout Yukon. Justices of the Peace are not required to be lawyers, but they provide a range of valuable legal services depending on their training and authorization. As lay officers of the Court, JPs have responsibility to perform specific judicial duties based on authorities granted by the Chief Judge and the judge supervising the JP program.

13. Justices of the Peace may receive and swear informations, issue search warrants, deal with adjournment applications in court, receive pleas, and conduct sentencing hearings under territorial legislation and in summary conviction matters under federal legislation. Certain JPs conduct trials under territorial legislation, and also hear matters in Youth Court and in child protection cases.

14. All Justices of the Peace are trained before taking on responsibility. As well, a strong program of continuing education is offered under the direction of the Supervising Judge of the JP program and the Yukon Justice of the Peace Association.

PART II – HISTORY AND OVERVIEW OF THE COMMISSION PROCESS IN YUKON

Judicial Compensation Commission: an Overview

15. Every federal, provincial and territorial jurisdiction across Canada has some form of constitutionally established judicial compensation tribunal responsible for making recommendations to government about what is appropriate compensation for judges for the period of that tribunal's mandate. While some jurisdictions had some form of commission process in place prior to 1997, the processes as they now exist are a direct result of the 1997 Supreme Court

³ <https://www.yukoncourts.ca/en/courts/community-wellness-court>

⁴ <https://www.yukoncourts.ca/index.php/en/courts/youth-justice-court-yukon>

of Canada (“SCC”) decision generally known as the *PEI Reference* case. Each jurisdiction has designed its commission process slightly differently with respect to such things as the timing of the commissions, the length of their respective mandates, the persons eligible for appointment to the commission, and to what degree the commission’s recommendations are binding on government.

16. In the *PEI Reference*, the SCC considered cases which originated from Alberta, Manitoba and PEI, all of which concerned the independence of the judiciary. In his reasons for decision, Chief Justice Lamer commented on the “national scope” of the issues before the Court, which demonstrated that the “proper constitutional relationship between the executive and the provincial court judges ... ha[d] come under serious strain.”⁵

17. In Manitoba, the Provincial Judges’ Association challenged the constitutionality of the reduction in salary for provincial judges that resulted from the enactment of Bill 22, *The Public Sector Reduced Work Week and Compensation Management Act*. The judges alleged that the Bill infringed judicial independence as protected by section 11(d) of the *Charter*, and argued that the salary reduction was unconstitutional because it effectively suspended the operation of Manitoba’s JCC, a body created under the then *Provincial Court Act*. The judges also alleged that the government’s ordered withdrawal of court staff and personnel on unpaid days of leave interfered with judicial independence. Further, the Association alleged that the government had interfered with the independence of the judiciary by exerting improper pressure in the course of salary discussions in an effort to convince the judges not to launch the constitutional challenge.⁶

18. In Alberta, the situation was slightly different in that the cases eventually determined by the SCC originated with three accused who challenged the constitutionality of their trials, alleging in essence that because of what was effectively a 5% salary reduction imposed by the Government

⁵ *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. Ekmeçic; R. v. Wickman; Manitoba Provincial Judges’ Association v. Manitoba (Minister of Justice)*, [1997] 3 S.C.R. 3 (“*PEI Reference*”), TCYJ’s Book of Documents, **Tab 1**, para 7

⁶ *PEI Reference*, *supra*, TCYJ’s Book of Documents, **Tab 1**, paras 21-22

on Provincial Court of Alberta judges' salaries by *Alberta Regulation 116/94*, the Provincial Court was no longer an independent tribunal as required by section 11(d) of the *Charter*. Further, the accused challenged the constitutionality of changes to the judges' pension plan that reduced the base salary for calculating pension benefits and limited cost of living adjustments to 60% of the annual percentage change in the Consumer Price Index. The accused also challenged the constitutionality of the Attorney General's power to designate court sitting days and judges' place of residence.⁷

19. In Prince Edward Island, the case arose as a reference by the Lieutenant Governor, who referred two constitutional questions to court after numerous accused challenged the constitutionality of the Provincial Court of Prince Edward Island following the passage of provincial legislation which reduced the pay of judges.⁸

20. The decision in the *PEI Reference* was a major turning point in the history of the courts in Canada, as it underscored the importance of judicial independence and, in particular, the financial security aspect thereof. Chief Justice Lamer outlined the three aspects of judicial independence: financial security, administrative independence and security of tenure. According to the majority decision, a JCC process is necessary to ensure financial security for judges.

21. As the SCC reiterated in its later 2005 decision referred to as *Bodner* (discussed below at paragraphs 22 and 23):

“... 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

22. In the *PEI Reference*, as well as in *Bodner*, the SCC outlined the flexible requirements for

⁷ *PEI Reference*, *supra*, TCYJ's Book of Documents, **Tab 1**, paras 16-18

⁸ *PEI Reference*, *supra*, TCYJ's Book of Documents, **Tab 1**, paras 11-13

⁹ *Provincial Court Judges' Assn. of New Brunswick v. New Brunswick (Minister of Justice)*; *Ontario Judges' Assn. v. Ontario (Management Board)*; *Bodner v. Alberta*; *Conférence des juges du Québec v. Québec (Attorney General)*; *Minc v. Québec (Attorney General)*, 2005 SCC 44 (“*Bodner*”), TCYJ's Book of Documents, **Tab 2**, para 8, emphasis added

JCC processes, which must be independent, objective and effective. With respect to the requirement of independence, Chief Justice Lamer explained in the *PEI Reference*:

“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.”¹⁰

23. The requirement of objectivity is described as follows:

“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” ... 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 judges’ salaries remain adequate, as well as the need to attract excellent candidates to the judiciary.”¹¹

24. Chief Justice Lamer went on to discuss the requirement of effectiveness, which he stated 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 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. Third, the reports of the commission must have a meaningful effect on the determination of judicial salaries.”¹²

25. Lamer CJC made it clear that before any change can be made to judicial remuneration, the change must be first proposed to a JCC. He wrote at paragraph 287(2):

¹⁰ *PEI Reference, supra*, TCYJ’s Book of Documents, **Tab 1**, para 170, emphasis added

¹¹ *PEI Reference, supra*, TCYJ’s Book of Documents, **Tab 1**, para 173, emphasis added

¹² *PEI Reference, supra*, TCYJ’s Book of Documents, **Tab 1**, paras 174-175, emphasis added

“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.” [emphasis and underlining added]¹³

26. Chief Justice Lamer explained that while the effectiveness requirement could mean that the JCC’s report is binding on government, a variety of other models would be consistent with judicial independence. Where the JCC recommendations were not binding, the government could refuse to implement the recommendations if it gave legitimate reasons and could justify its decision to reject recommendations, if necessary, in a court of law.¹⁴

27. Section 17(1) of the *TCA* gives the recommendations of this JCC binding effect.¹⁵ As a result, the process in the Yukon has been considerably more efficient than in most other jurisdictions.

28. The process for determining judicial compensation is unique. As the Supreme Court stated in *Bodner*, “the process is neither adjudicative interest arbitration nor judicial decision making”. Rather, the focus must be on what is appropriate remuneration for judges in light of relevant objective factors. The purposes of the process are to protect judicial independence and depoliticize the setting of judicial remuneration.¹⁶

History of the JCC Process in the Yukon

29. A review of previous JCCs in the Yukon provides context for this JCC in making its recommendations. According to the Supreme Court of Canada in *Bodner*, past JCC Reports are not binding on a subsequent JCC, but are nonetheless highly relevant:

All relevant issues may be addressed. The process is flexible and its purpose is not simply

¹³ *PEI Reference, supra*, TCYJ’s Book of Documents, Tab 1, emphasis added

¹⁴ *PEI Reference, supra*, TCYJ’s Book of Documents, **Tab 1**, paras 180-183

¹⁵ Recommendations are binding except in the circumstance set out in s.17(2) of the *Act*, which circumstance is not applicable here.

¹⁶ *Bodner, supra*, TCYJ’s Book of Documents, **Tab 2**, paras 14, 31

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.¹⁷

30. The Court explained further:

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.¹⁸

31. Given that the parties have reached a joint submission on all proposals, only an abbreviated history of past processes will be provided, with a focus on the most recent two Commissions.

32. The first Yukon JCC was established in 1998, in furtherance of a recommendation by Mr. E.M. Ted Hughes, K.C., who had been appointed by Government following the decision in the *PEI Reference*, to examine outstanding issues. The Act was amended so that beginning in 2001, and in each third year thereafter, a Commission would be established to address judicial remuneration. Beginning with the 2004 JCC, at least some, if not all, of the proposals made to each successive Commission were brought as joint submissions. As noted in the Government’s Submission, a Letter of Understanding was signed by the parties in 2005 and continues in effect. The Letter of Understanding promotes a cooperative approach to the JCC process, including proceeding by consensus where possible in order to promote cost effectiveness.¹⁹

2016 JCC

33. The 2016 JCC was first established pursuant to OIC 2016/22; however, due to health issues

¹⁷ *Bodner, supra*, TCYJ’s Book of Documents, **Tab 2** para 14

¹⁸ *Bodner, supra*, TCYJ’s Book of Documents, **Tab 2**, para 15

¹⁹ Letter of Understanding, 2005, GY’s Submission, **Tab B**

of the Commissioner who had been appointed, it was necessary to abolish that Commission and re-establish a new Commission. The 2016 JCC was then established pursuant to OIC 2017/90 dated May 11, 2017. The Commissioner was Timothy S. Preston, Q.C.²⁰

34. On November 9, 2018, an application was made by the parties to the Commission to approve a joint submission on behalf of the judges and Government on the one hand, and the JPs and Government on the other. The 2016 JCC noted that “[t]he 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”.²¹ It continued: “[t]he 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.”

35. The 2016 JCC reviewed the provisions in the *Act* which call for a mediated and consensus approach, and noted that these provisions needed to be understood in light of the Commission’s role, as per Lamer CJ in the *PEI Reference*, as an “institutional sieve”²². It went on to review the Yukon Supreme Court decision in *Cameron v. Yukon*, where Madam Justice Schuler set out the approach to be followed by a Commission in the event of a joint submission being 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, ..., that what the JCC is dealing with is not an exact science, there is no reason why it should not do so.²³

36. The Commission concluded that it “...should be cautious in substituting its opinion for that of the parties with respect to issues of remuneration and benefits”, and should not do so “...unless it is convinced that same are unreasonable, illogical or otherwise questionable...”.²⁴

²⁰ 2016 JCC Report, TCYJ’s Book of Documents, **Tab 3**, page 3

²¹ 2016 JCC Report, TCYJ’s Book of Documents, **Tab 3**, page 9

²² *PEI Reference, supra*, TCYJ’s Book of Documents, **Tab 1**, para 170

²³ *Cameron v. Yukon*, [2011] Y.J. No. 37, para 100, discussed in 2016 JCC Report, TCYJ’s Book of Documents, **Tab 3**, at page 12

²⁴ 2016 JCC Report, TCYJ’s Book of Documents, **Tab 3**, page 15

37. After reviewing the submissions made on each of the points within the joint submission, the 2016 JCC concluded that each of the joint proposals was appropriate and reasonable.

2019 JCC

38. The 2019 JCC was established effective June 24, 2019 and was chaired by Ms. Debra Fendrick. After an adjournment requested by the parties, the Report was issued on March 5, 2021.²⁵

39. The 2019 JCC echoed the reasoning of the 2016 JCC on the approach to be taken by a Commission to a joint submission.²⁶ It identified that the JPs and Government had agreed on a joint submission regarding all aspects of compensation, while the Territorial Judges had agreed on all except salary. The reasoning of the JCC will be discussed further below in relation to the specific proposals that are before this 2022 JCC.

The Role and Jurisdiction of this 2022 Judicial Compensation Commission

40. This 2022 JCC is tasked with making recommendations about appropriate compensation for Territorial Judges and Justices of the Peace for the three-year period beginning April 1, 2022.²⁷

41. The JCC must make fair and appropriate recommendations for compensation, after considering the various factors set out in section 19 of the *Act*, including any other matter the Commission considers relevant. In assessing the relevant factors, it should consider the reasoning of past JCCs in light of the particular circumstances before it.

42. The Supreme Court of Yukon in *Cameron* held 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

²⁵ 2019 JCC Report, GY’s Supplementary Materials, **Tab 4**

²⁶ 2019 JCC Report, GY’s Supplementary Materials, **Tab 4**, pages 5-7

²⁷ Letter of Understanding, Appendix B to GY’s Submission, Article 6.0; Also see the *Act*, GY Book of Authorities, **Tab 1**, section 13-14, and 58

commissions.”²⁸ These comments are consistent with sections 14 and 19 of the *Act*.²⁹ Each of the factors is discussed below.

PART III: FACTORS FOR CONSIDERATION

43. No Commission could be expected to make recommendations about appropriate compensation in a vacuum. The whole concept of compensation being appropriate means it must be related to objective criteria or compared with compensation received by comparable groups. Accordingly, this section explores both the principles which guided the TCYJ’s decision to enter into a joint submission on changes to certain aspects of compensation, and the specific comparisons which are submitted to be appropriate and supportive of the proposed changes.

44. The *Act* provides:³⁰

19 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.

45. The *PEI Reference* and *Bodner* decisions are clear that the protection and preservation of judicial independence is the *raison d’être* of a JCC. As such, it must be fundamental to the JCC’s considerations. This underscores the need for recommendations that are based on objective criteria

²⁸ *Cameron v. Yukon*, *supra*, as referenced in 2019 JCC Report, GY’s Supplementary Materials, **Tab 4**, para 104

²⁹ *Act*, GY’s Supplementary Materials, **Tab 1**, s. 19

³⁰ GY’s Supplementary Materials, **Tab 1**

rather than primarily political considerations.³¹ The factors identified in the *Act* are considered below.

A) The current financial position of the government

46. The current financial position of the government is stable, in that in each year of this JCC's mandate, there has been an actual and or forecasted surplus. This has occurred amidst a healthy economy which is currently benefiting from a resilient labour market and resurgent tourism sector.³²

47. The two primary resources that will assist this Commission to understand the financial position of Government in the fiscal years 2022-23 through 2024-25 are *Solid Foundations: Yukon's Outlook to 2045*, prepared by the Conference Board of Canada, dated April 30, 2024 and the most recent Yukon Budget, for the fiscal year 2024-25 that was brought in during the 1st session of the 35th Legislature, Yukon Legislative Assembly with the Budget Address of the Minister of Finance, Sandy Silver on March 7, 2024.³³

48. The Government's *Fiscal and Economic Outlook*, which formed part of the Budget documents, provides a fiscal summary in Table 1. The discussion that follows included the following main points:

- **Net debt** had been increased as a result of government spending outpacing 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.³⁴ As a result, Yukon's net debt position is forecast to "level out" in 2025/26, and decline significantly by 2028-29.³⁵
- Projected **revenue** growth is being led by growth in federal transfers, as well as a positive

³¹ *PEI Reference, supra*, TCYJ's Book of Documents, **Tab 1**, para 173

³² Conference Board of Canada: "Solid Foundations: Yukon's Outlook to 2045", April 30, 2024, TCYJ's Book of Documents, **Tab 4**, ("***Solid Foundations***"), page 4

³³ *Budget Address, March 7, 2024*, Available at: <https://yukon.ca/sites/yukon.ca/files/fin/fin-2024-25-budget-address.pdf>

³⁴ *Fiscal and Economic Outlook*, March 2024, GY's Supplementary Materials, **Tab 2**, page 5

³⁵ *Fiscal and Economic Outlook*, March 2024, GY's Supplementary Materials, **Tab 2**, page 3

outlook for 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.³⁶
- 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”³⁷. 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. Yukon is well-positioned to borrow, should 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**”³⁸.

49. In its *Solid Foundations: Yukon’s Outlook to 2024-25*, the Conference Board of Canada highlighted the following points about Yukon’s economy.³⁹

- 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.

³⁶ Fiscal and Economic Outlook, March, 2024, GY’s Supplementary Materials, **Tab 2**, page 9

³⁷ *Fiscal and Economic Outlook*, March 2024, GY’s Supplementary Materials, **Tab 2**, page 3

³⁸ *Fiscal and Economic Outlook*, March 2024, GY’s Supplementary Materials, **Tab 2**, page 3

³⁹ *Solid Foundations*, *supra*, TCYJ’s Book of Documents, **Tab 4**

- 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.

50. The chart below shows the percentage increase in both the real (adjusted for inflation) and nominal Gross Domestic Product (GDP) for Yukon for the years commencing in 2022:⁴⁰

Year	Nominal GDP % Increase	Real GDP % Increase
2022	9.4	5.9
2023	8.7	3.6
2024	4.6	1.6

51. For the years 2025 through 2028, the forecast is for real GDP growth averaging 2.5 percent, aligning closely with the forecast for Canada as a whole throughout that period.⁴¹

52. 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.

B) The need to provide reasonable compensation

53. This factor must be considered in light of the unique role of Territorial Judges and JPs within the Yukon economy. Given the uniqueness of that role, and the difficulty of comparing

⁴⁰ *Fiscal and Economic Outlook*, March 2024, GY's Supplementary Materials, **Tab 2**, page 35

⁴¹ *Solid Foundations*, *supra*, TCYJ's Book of Documents, **Tab 4**, page 4

with the duties and responsibilities of deputy ministers, for example, the TCYJ submit that this factor ought to focus on the attributes of the judicial positions at issue, rather than on comparators within the Yukon civil service. While the Government references the compensation paid to deputy ministers in its Submission,⁴² JCCs in other jurisdictions have rejected this comparator given the difference in the roles and the requirement that compensation for judicial officers must be determined based on objective criteria, not political expediencies.⁴³

Judicial Independence

54. The TCYJs' proposals will ensure increased compensation for both Judges and JPs during the mandate period and, accordingly, 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. The importance of protection against erosion is discussed below in the context of the increased cost of living in Yukon.

Restraints on Ability to Earn Income

55. For judges, reasonable compensation must take into account that they face restraints on their ability to earn income from other sources or endeavors that are not faced by lawyers in private practice. A judge has no opportunity to earn income from other sources. Section 12(1) of the *Act* provides that a judge: "shall not carry on directly or indirectly any occupation, profession, or business other than his or her judicial responsibilities."⁴⁴

56. This restraint is in contrast to lawyers and civil servants who are quite free to engage in businesses outside their work. Even lawyers who choose not to engage in non-legal business have the option of increasing their professional incomes by taking on additional or more lucrative work. Lawyers who choose an academic career have the opportunity to do consulting work on the side.

⁴² GY's Submission, para 28

⁴³ See for example, the excerpt of the 2001 Manitoba JCC, TYCJ's Book of Documents, **Tab 5**, page 47-54, and the excerpt of the 2001 Newfoundland & Labrador Provincial Court Judges' Salary and Benefit Tribunal, TCYJ's Book of Documents, **Tab 6**, page 11-13

⁴⁴ *Act*, GY's Supplementary Materials, **Tab 1**

57. An appointment to the Bench is viewed as a long-term commitment, not a stepping-stone to another career, as judges cannot count on moving on to other opportunities. Following retirement, the options for engaging in remunerative work are limited, as a return to the practice of law is not generally an option -- especially in a small jurisdiction such as Yukon.

C) The need to build a strong court by attracting qualified applicants

58. The TCYJ shares the desire, expressed in the Government's Brief, for a strong Court and considers this to be very much in the public interest.⁴⁵ This factor will be considered first as it relates to Judges, and then to JPs.

Judges

59. Prospective applicants for the office of a judge are members of the Bar of at least ten years' standing.⁴⁶ The experience from across Canada suggests these candidates will in fact be outstanding practitioners who have at least 10 and, more likely, at least 15 years at the Bar. Regard must be had to what lawyers with the requisite years of experience, and the appropriate degree of ability, are earning.

60. However, one cannot simply look at the average earnings of lawyers who fall into the group likely to be appointed as judges. It must also be remembered that these lawyers are entering their most lucrative years of practice. This opportunity must be foregone, and that earning potential will be weighed just as heavily as present earnings when a lawyer is considering an appointment to the bench.

61. There is insufficient reliable data available concerning the incomes of private lawyers. For that reason, the TCYJ does not rely on such data in this process and instead focuses on the other options open to highly desirable candidates. Previous JCC's have recognized that the tradition in the Yukon has been to seek judges not just from candidates living and working in the Yukon but

⁴⁵ GY's Submission, para 30

⁴⁶ Act, GY's Supplementary Materials, **Tab 1**, s.7(b)

elsewhere, and judicial earnings elsewhere are therefore a factor to consider in this context as well.⁴⁷ A comparison of the judicial salaries in the jurisdictions of primary importance is offered below.

62. In addition, a comparison with federally appointed judicial salaries is appropriate in considering the need to build a strong court, for two reasons. First, both courts recruit from the same pool of candidates, a point which was referenced by the 2019 JCC in its Report,⁴⁸ and is acknowledged in the Government's Submission.⁴⁹ Second, the courts are similar in the level of difficulty and complexity of the respective workloads, skills demanded by the work, and in the qualifications required for appointment as a judge.

63. The nature and function of judicial work shows great similarities among various levels of courts. While one level is purely appellate in nature, and another deals with jury trials as opposed to sitting and deciding as a judge alone, the same qualities of judicial temperament, legal knowledge, and an abiding sense of fairness are required of all judges. It is necessary that judges at all levels of court have the ability to make decisions that will greatly affect people's lives, including the potential loss of freedom, without bending to improper influence, the pressure of public demands and expectations, or a consideration of inadmissible material. The key factor is that judicial decision-making is common to all judges.

64. Cases that come before the Territorial Court of the Yukon are becoming increasingly complex and there are increasing numbers of multi-day trials. As the Judges argued during the 2019 JCC process, amendments to the criminal law in recent years are expected to lead to an even greater case load for the Territorial Court of the Yukon. That increase in workload is likely to be the very cases that would, before, have gone before the Yukon Supreme Court. Specifically, Bill C-75 limited an accused's right to a preliminary inquiry. In the past, defense counsel used preliminary inquiries to test the evidence of the Crown. Restricting the availability of preliminary inquiries means that more cases are likely to proceed to trial in the Territorial Court, rather than the Supreme

⁴⁷ 2004 JCC Report, p. 5, available here: <https://open.yukon.ca/sites/default/files/TAB%252010%2520-%2520Yukon%25202004%2520JCC%2520Report.PDF>

⁴⁸ 2019 JCC Report, GY's Supplementary Materials, **Tab 4**, para 133

⁴⁹ GY's Submission, paras 56-57

Court. As well, there are increasing 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. Thus, the nature and function of judicial work shows great similarities among various levels of courts.

65. Recognizing the importance of federally-appointed judges as a comparator, Saskatchewan, Ontario, New Brunswick and Nova Scotia have all adopted a linkage between the salary for Provincial Court judges and that for federally appointed judges. The circumstances in Saskatchewan are discussed further below, as it is a specific comparator identified in s.19(e) of the *Act*.

66. In Ontario, the most recent JCC recommended a series of salary adjustments such that judicial salaries reached 95.27% of the federally appointed judges' salary in 2021/22.⁵⁰ The next JCC has yet to report. A similar move was the subject of a joint recommendation to the 2023 JCC in Nova Scotia (for a linkage at 80% of the federal salary, a level deemed appropriate based on all relevant criteria in that province) and is reflected in the outcome of past commissions in New Brunswick (where 80% of the federal salary was also considered to be the appropriate linkage based on all the relevant factors).

67. Federally appointed judges were paid a salary of \$372,200 as of April 1, 2022. According to section 25 of the *Judges Act*, the salaries of federally appointed judges are adjusted each year based on the percentage increase in the Industrial Aggregate Index ("IAI") for Canada (also known as Average Weekly Earnings), over the preceding twelve months.⁵¹

68. The yearly salaries of federally appointed puisne judges in the Yukon, NWT and Nunavut are:

⁵⁰ In the Matter of the Courts of Justice Act and in the Matter of an Inquiry by the 9th and 10th Provincial Judges Remuneration Commissions (2014-2018, 2018-2022) between Her Majesty the Queen in Right of the Province of Ontario and the Ontario Conference of Judges, dated April 18, 2018, TCYJ's Book of Documents, **Tab 7**, p. 6,

⁵¹ *Judges' Act*, RSC 1985, ss. 25, available at <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-j-1/latest/rsc-1985-c-j-1.html>

- a) 2022: 3.0% increase to \$372,200 + \$12,000 northern allowance;
- b) 2023: 3.0% increase to \$383,700 + \$12,000 northern allowance.
- c) 2024: 3.4% increase to \$396,700 + \$12,000 northern allowance.⁵²

69. The Government's Submission makes repeated reference to the value of the judicial pension.⁵³ It has long been recognized that judicial pensions must provide for financial security in retirement, and must reflect that one is appointed to the position later in life. While it may be that the territorial judicial pension is more valuable than most civil service pensions, this is true of all pensions offered to provincial and territorial judges in other jurisdictions.

70. What is missing from the Government's discussion of the judicial pension is that the judicial annuity offered to federally appointed judges (i.e., Justices of the Yukon Supreme Court) is substantially more valuable. This is something that prospective candidates to both benches will undoubtedly consider in deciding to which Court to apply.

71. First, a federally appointed judge accumulates a full judicial annuity (pension) over only 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 on the basis of what has already been noted to be a higher salary than the salary paid to a territorially appointed judge.

72. A federally appointed judge's annuity is calculated based on the salary actually being paid at the moment of 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 actually being paid at the moment of 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.

⁵² *Judges Act*, RSC 1985, ss. 22, 25, 27, available at <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-j-1/latest/rsc-1985-c-j-1.html>

⁵³ GY's Submission, paras 29, 33 and 68

73. A federally appointed judge has the ability to elect supernumerary status after 15 years (or even earlier in certain circumstances). A supernumerary judge will generally sit two-thirds of the time and, upon full retirement, receives a judicial annuity based on the salary as at the moment of full retirement. No similar program exists for Territorial Judges.

74. A large gap in the compensation paid to judges of the Territorial and Supreme Courts will negatively affect the ability of the Territorial Court to attract the best-qualified applicants. Both Courts will draw applicants from the same pool of lawyers. 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.

75. Lawyers should be able to select judicial appointments that align with their abilities and experience. Gross differences between courts in remuneration levels will significantly influence lawyers to choose judicial appointments based on remuneration rather than on what best aligns with their experience and interest. The misalignment of work and experience serves neither the public nor the courts.

76. As many JCC's have already noted, judicial remuneration must be sufficient not only to attract the best-qualified candidates, but also to retain and motivate those candidates who are appointed.

Justices of the Peace

77. Just like for judges, 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 in order to ensure the delivery of justice in remote areas.

D) The unique nature of the Yukon

78. The unique nature of the Yukon has a significant impact on the work of the Territorial Court and the lives of its judges.

79. As noted above, the Court sits permanently in Whitehorse, but also provides services to 13 other communities on a regular basis. Delivery of justice through the circuit courts necessitates an extensive travel schedule, which makes the job both physically demanding and exhausting. Put simply, the conditions under which the Judges preside and the facilities for overnight accommodation and meals are not the same as what is available in Whitehorse. Circuit court travelling time and nights away from home have a substantial impact on a judge's family life.

80. Also as noted above, the Justice of the Peace Court is part of the Territorial Court and consists of 20 part-time Justices, who are located either in Whitehorse or other communities throughout the Territory.

81. Whether they are working in Whitehorse or elsewhere, both Judges and JPs must face the daily strain of dealing with difficult and seemingly intractable social problems. The toll is greater because members of the judiciary must consciously strive to avoid becoming jaded, callous and cynical. They must remain sensitive and responsive to the circumstances of the parties before them, while building up sufficient "mental armour" to avoid being overwhelmed by facts and issues that can be profoundly disturbing.

82. Governmental policy of community and restorative justice initiatives can place additional demands on the judiciary.⁵⁴ The substantial First Nations population in the Territory requires the judiciary to be familiar with and sensitive to Aboriginal and/or Indigenous culture, practices, mores and conventions, many of which will vary among communities.

83. The efforts of the Court in fostering community justice result in the judges participating in many meetings and training sessions in addition to the regular court sittings.

84. The small size of the judiciary and the large area served means that members of the judiciary will receive calls at all hours from police officers in Whitehorse, or in any of a dozen rural detachments, seeking search warrants, tele-warrants or Feeney arrest warrants.

⁵⁴ 2016 JCC Report, TCYJ's Book of Documents, **Tab 3**, p. 20

85. Social isolation is a factor that was considered by the 2016 JCC, and which is acknowledged in the Government's Submission.⁵⁵ 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 TCYJ routinely encounter persons they have dealt with in court. For this reason, a judge or JP can also become socially quite 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 TCYJ 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 difficulty job.

E) The compensation provided to Judges and JPs in the Northwest Territories and British Columbia, Alberta, and Saskatchewan Judges

Judges

86. Consideration of the salaries and benefits of provincial and territorial court judges in other jurisdictions in Canada is useful because the judiciary is unique both in constitutional status and job function and is therefore not a "job" that can easily be compared with others in the Yukon.

87. The key comparators established in the *Act* are BC, Alberta, Saskatchewan and Northwest Territories. The table below sets out the salary paid in each of the statutorily defined comparator jurisdictions from 2012 until the most recent data available. Where the data is in **red italics**, the salary shown is what was paid for those years, but may not be a final figure, as there is an ongoing judicial review in that jurisdiction concerning the Government's decision to reject the JCC's recommendations. The narrative that follows the chart considers the data in more depth.

⁵⁵ 2016 JCC Report, TCYJ's Book of Documents, **Tab 3**, p. 19; GY's Submission, para 38

Fiscal Year	AB	BC	Sask	NWT	Yukon
April 1, 2012	\$263,731	\$231,138	\$248,010	\$249,582	\$250,103
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	\$252,290	\$282,184	\$272,000	\$273,374
April 1, 2017	\$293,392	\$262,000	\$290,848	\$278,828	\$280,208
April 1, 2018	\$302,304	\$266,000	\$295,792	\$289,733	\$287,213
April 1, 2019	\$309,500	\$270,000	\$304,074	\$299,869	\$298,702
April 1, 2020	\$318,500	<i>\$276,000</i>	\$312,685	\$304,699	\$304,676
April 1, 2021	<i>\$321,685</i>	<i>\$282,500</i>	\$316,970	\$304,918	\$307,722
April 1, 2022	<i>\$328,119</i>	<i>\$288,000</i>	\$343,045	\$311,724	Joint Proposal: \$334,980
April 1, 2023	<i>\$337,963</i>	\$343,000	\$353,590	\$333,456	Joint Proposal: \$345,330
April 1, 2024	<i>\$348,102</i>	\$360,000	\$364,515	\$350,129	Joint Proposal: \$357,030
April 1, 2025	2025 JCC	CPI	\$376,865	\$365,885	2025 JCC (presumption of 90% of federal salary)

Alberta:

88. The 2021 Alberta JCC made its recommendations on June 30, 2023 and, *inter alia*, recommended increases in judicial salaries in each of the fiscal years 2021-22 through to 2024-

25.⁵⁶ On October 26, 2023, the salary recommendations were rejected by the Lieutenant-Governor in Council, and the salaries shown in red are those which were substituted for the recommendations.⁵⁷ The Alberta Provincial Justices' Association has filed an application for judicial review in the Alberta Court of King's Bench, which is scheduled to be heard in May 2025.⁵⁸ As such, the outcome for those Alberta's judicial salaries will remain unknown until after this JCC issues its Report.

British Columbia:

89. The history of judicial salaries in BC is complex, given the government's rejection of the salary recommendations of three successive JCCs⁵⁹ and ensuing litigation. Currently, the only outstanding litigation relates to the BC government's rejection of the 2019 BC JCC's salary recommendations for 2020/21 through 2022/23. At first instance, the BC Supreme Court quashed the government's motion to reject, *inter alia*, the salary recommendations, but that decision was overturned by the BC Court of Appeal, which upheld the government's response. The judges' association recently filed an Application for Leave to Appeal to the Supreme Court of Canada, which Application will not be dealt with by the time this JCC issues its Report.

90. In the meantime, the 2022 BC JCC completed its recommendations regardless of the outcome of that outstanding judicial review. And, for the first time since the 2010 JCC, the salary recommendations were accepted by the government.

NWT (and Nunavut)

91. Since the *Act*, was passed, the NWT has split into two jurisdictions. For this reason, the Judges submit that, both as a matter of statutory interpretation and policy, Nunavut must be considered a comparator jurisdiction. In Nunavut, the Territorial and Supreme Courts have been

⁵⁶ 2021 Alberta JCC, GY's Supplementary Materials, **Tab 6**

⁵⁷ Provincial Judges and Application Judges Compensation Order (Alberta), GY's Supplementary Materials, **Tab 10**

⁵⁸ Alberta Court of King's Bench Action 2403 04470

⁵⁹ The recommendations of the 2010, 2013, 2016, and 2019 JCCs were rejected by the BC Government, which rejections were challenged in Court by the Provincial Court Judges' Association of British Columbia.

merged into one court. This court provides a practical demonstration of the similarity of the workload and experience required on both courts, as is discussed above. Indeed, a Territorial Court Judge, Justice Kilpatrick, became the Senior Judge of the Nunavut Court when Nunavut was established, although he has now retired.

92. The yearly salaries of the judges of the Nunavut Court of Justice are as follows:

- a) 2022: 3.0% increase to \$372,200 + \$12,000 northern allowance;
- b) 2023: 3.0% increase to \$383,700 + \$12,000 northern allowance.
- c) 2024: 3.4% increase to \$396,700 + \$12,000 northern allowance.⁶⁰

93. In the NWT, the recommendations of the Judicial Remuneration Commission (“JRC”) are binding. The 2020 JRC made recommendations for the fiscal years 2020/21 through 2023/24, and recommended salary increases in each year, based on the percentage change in the Consumer Price Index for Yellowknife over the preceding calendar year.

94. The 2024 NWT JRC released its recommendations on April 19, 2024.⁶¹ For 2024/25, the Commission recommended that appropriate compensation could be achieved through adjustments made over two years: a 5% adjustment in the judicial salary for 2024/25, followed by a 4.5% adjustment for 2025/26. It further recommended a CPI-based adjustment in each of the following two years. The 2024 NWT JRC found that the territorial judges’ salaries should remain in the “upper range amongst their peers” in the other provincial and territorial courts. It referred to the broad jurisdiction exercised within a challenging northern context, the high cost of living, and recent inflationary pressures. As argued below, many of the same considerations support the joint proposals for Yukon Judges’ salaries.

⁶⁰ *Judges Act*, RSC 1985, c J-1, ss. 22, 25, 27, available at: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-j-1/latest/rsc-1985-c-j-1.html>

⁶¹ 2024 NWT JRC Report, TCYJ’s Book of Documents, **Tab 8**

Saskatchewan

95. For the three years commencing with 2020, the 2020 Saskatchewan JCC recommended that the salaries of Saskatchewan judges should be increased each year such that, by April 1, 2022, they would be equal to 95% of the previous year's salary payable to federally appointed judges. The same was recommended for April 1, 2023.⁶²

96. In addition, Saskatchewan's *Provincial Court Act*, 1998, P-30.11⁶³ was amended to create a presumption of a 95% relationship for the years commencing April 1, 2024 with the exception that the presumption does not apply in "extraordinary circumstances", which include:

- a. a year-over-year increase, for any annual period during the period since the most recent regulations mentioned in clause 41(1)(b) came into force, of 20% or more in the average of the 'all-items' Consumer Price Index for Saskatchewan, as reported by Statistics Canada in accordance with the Statistics Act (Canada), that is not reflected in the salary paid to the justices of the Court of Queen's Bench;
- b. a decrease over the period commencing on the day on which the most recent regulations mentioned in clause 41(1)(b) came into force, of more than 10% in the nominal gross domestic product for Saskatchewan, as reported by Statistics Canada in accordance with the Statistics Act (Canada);
- c. a failure to update the salary paid to the justices of the Court of Queen's Bench as required pursuant to the Judges Act (Canada); and
- d. an agreement between the association and the minister that there is an extraordinary situation that warrants commission review.

97. In support of the proposal to set the salary of Saskatchewan judges at 95% of the federal salary, the Government of Saskatchewan submitted: "The certainty provided by the link to the federal salary will also assist one of the traditional goals of the Government and the Provincial Court itself, namely attracting and retaining qualified individuals to the Provincial Court."⁶⁴

⁶² 2020 Saskatchewan JCC Report, TCYJ's Book of Documents, **Tab 9**, page 12

⁶³ *Provincial Court Act* (Saskatchewan), 1998 P-30.11, section 38.1, available at: <https://www.canlii.org/en/sk/laws/stat/ss-1998-c-p-30.11/latest/ss-1998-c-p-30.11.html>

⁶⁴ Government of Saskatchewan: 2020 Submission (<https://publications.saskatchewan.ca/#/categories/4793>), page 26, para 55

98. In addition to the base salaries noted in the table above, pursuant to section 5 of the *Provincial Court Compensation Regulations*, some Saskatchewan Provincial Court judges receive an additional 5% of their annual salary as a northern allowance.⁹⁵

99. The 2023 Saskatchewan JCC released its Report in December 2023, and recommended the continuation of the linkage based on 95% of the prior year's federal salary.⁶⁵

Yukon Analysis

100. Given the uncertainty about Alberta's judicial compensation for the years at issue for this 2022 JCC, it is submitted that British Columbia, Saskatchewan and the Northwest Territories are the most useful and reliable comparators for this 2022 JCC.

101. The 2019 Yukon JCC recommended salary increases which "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."⁶⁶ The recommendations were also recognized to prevent salary erosion, to be consistent with the healthy financial position and the economic situation more generally, and to help ensure a strong Court then, and in the future. As detailed below, these considerations are all reflected in the joint submission of the parties to this JCC.

Justices of the Peace

102. A comparison with the compensation paid to Justices of the Peace in other jurisdictions is much more challenging because differences in the work performed, the qualifications required, and whether there has yet been an independent commission established to make recommendations about JP compensation.

103. Attached as **Tab 10** in the TCYJ's Book of Documents is a Jurisdictional Review prepared by the Hearing Office Review Committee established in June 2015 in Alberta. While

⁶⁵ 2023 Saskatchewan JCC Report, GY's Supplementary Materials, **Tab 7**

⁶⁶ 2019 JCC Report, GY's Supplementary Materials, **Tab 4**, para 219

certain information may be out of date by now, the document illustrates the significant differences that exist across the country. Attached as **Tab 11** in the Government’s material is a chart prepared by the Government of Alberta for use before the 2021 Alberta Justices of the Peace Compensation Commission. The chart compares the compensation paid to JPs only in the jurisdictions where there is an independent commission making recommendations.

104. In **Alberta**, JPs are required to be legally trained, with at least 5 years of legal experience, and their compensation is determined through a commission process. That said, the salaries for Alberta Justices of the Peace for the period of this JCC’s mandate have yet to be established. The 2021 Justices of the Peace Compensation Commission made recommendations for the four years commencing April 1, 2021, but the Lieutenant-Governor in Council has yet to respond to the recommendations. The chart below shows the actual salary paid for 2020, and the recommendations for the next four years.

Year	Full-time Salary	Per Diem Rate ⁶⁷	Hourly (based on 8 hours per day)
April 1, 2020	\$151,813	\$961.97	\$120.25
April 1, 2021	\$156,367	\$990.13	\$123.77
April 1, 2022	\$164,186	\$1038.47	\$129.81
April 1, 2023	\$170,753	\$1079.08	\$134.89
April 1, 2024	\$175,876	\$1110.76	\$138.84

105. In **British Columbia**, Judicial Justices are required to be legally trained, with at least 5 years of legal experience, and their compensation is determined through a JCC process. The 2022 British Columbia JCC recommended a significant adjustment to the salaries for full-time Judicial Justices for the four years commencing April 1, 2023, noting a looming attraction and retention problem, and the fact that JJ salaries were well below their comparators. The recommendations were accepted by the BC Government.

106. Accordingly, the 2022 salary shown below is that which the 2022 BC JCC determined to be “not reasonable” and thus meriting a significant adjustment, while the figures for 2023 and 2024

⁶⁷ The Alberta JP per diem is calculated based on the following formula: (FT Salary + 13.1% of salary + 20% of salary + \$5,000) / 215.25

reflect the new recommendations:

Year	Full-time Salary	Per Diem Rate	Hourly
April 1, 2022	\$133,500	\$848.91	\$106.11
April 1, 2023	\$172,000	\$1072.10	\$134.01
April 1, 2024	\$177,000	\$1101.09	\$137.64
April 1, 2025	\$182,000	\$1130.07	\$141.26
April 1, 2026	\$187,000	\$1159.06	\$144.88

107. In **Saskatchewan**, JPs are required to be legally trained and their compensation is determined through a JCC. The salary for 2022 had been set by a commission which released its recommendations in 2018. For the years commencing in 2023, the salary for a full-time Justices of the Peace has been set at 51% of the salary paid to a judge of the Provincial Court of Saskatchewan and, in turn, the per diem rate is based on 1/220th of that salary. As such, the salaries, per diem and hourly rates are as follows:

Year	Full-time Salary	Per Diem Rate	Hourly
April 1, 2022	\$343,045	\$1559.30	\$194.91
April 1, 2023	\$353,590	\$1607.23	\$200.90
April 1, 2024	\$364,515	\$1656.89	\$207.11
April 1, 2025	\$376,865	\$1713.02	\$214.13

108. The Government argues in its Submission that the **Northwest Territories** is the best comparator for Yukon JPs. This is based on both jurisdictions not requiring a law degree but is also presumably based on similarity of the jurisdictions and that both pay JPs on an hourly basis. A significant difficulty with the comparison, however, is that the NWT does not use an independent commission to set JP compensation.

109. As set out in the Government's Submission, the rates paid to Justices of the Peace in the NWT have been \$73.00 per hour since November 25, 2022.⁶⁸

110. **Nunavut** also does not require JPs to have legal training. While two full-time JPs in Nunavut do have legal training, the vast majority (approximately 25-30) are part-time community

⁶⁸ GY's Submission, page 14. Also see Regulation 070-2022, at **Tab 12** of the GY's Supplementary Materials.

JPs who are not legally trained and are paid on a fee for service basis at an hourly rate. The hourly rates provided to JPs are prescribed by Commissioners in Council. Much of the work is “on call” to hear applications and requests for warrants.

111. As detailed below, the 2019 Yukon JCC noted that the hourly rates jointly proposed to that Commission would place 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.” As detailed below, the same considerations support the joint submission to this 2022 JCC.

F) The laws of the Yukon

112. As successive JCCs have recognized, the laws of Yukon give TCYJs jurisdiction that is more extensive than that of many provincial court judges. Moreover, because of the small size of the Court, all members are called upon to deal with all of the wide-ranging matters dealt with by the Court. This is in contrast to the situation in many of the provinces, Alberta being one example, where judges may be assigned to specific court divisions (criminal, civil, family or youth).

113. The laws of the Territory also place additional and, somewhat unique, responsibilities on the TCYJ. Such duties include:

- 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 a large number of other

regulatory statutes.

114. Government policy supports community and restorative justice initiatives. This places additional demands on TCYJs, including attending community meetings and developing alternative court procedures to accommodate the interests of the community. This also includes participation in the Domestic Violence Treatment Option Court and the Community Wellness Court, both of which include responsibilities that extend beyond simply adjudicating in these courts.

115. As referenced above, recent amendments to criminal law are likely to lead to additional work for Territorial Judges.

G) The cost of living in Yukon including the growth or decline in real per capita income

Changes in the cost of living

116. The impact of inflation is an important consideration which was specifically identified by Lamer CJC in *PEI Reference*.⁶⁹ Lamer determined that one key to the effectiveness of the JCC process is that the process should be held regularly, such as every three to five years, in order to guard against the erosion of judicial salaries because of inflation.¹⁰⁴

117. 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 on a monthly basis. 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.

118. The following chart shows the known percentage increases in CPI for Whitehorse and Canada, for the years 2021 to 2023, the most recent year for which annual data is available.⁷⁰ The

⁶⁹ *PEI Reference*, *supra*, TCYJ's Book of Documents, **Tab 1**, para 174

⁷⁰ The data are available here: <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1810000501>

2024 forecast for Whitehorse comes from the Government’s Budget.⁷¹

	Whitehorse	Canada
2021	3.3%	3.6%
2022	6.8%	6.8%
2023	4.9%	3.9%
2024 (f)	3.0%	

119. The annual percentage increase in Whitehorse’s CPI was slightly lower than that of Canada as a whole in 2021, was on par with Canada’s increase in 2022, and was well above that of Canada in 2023.

120. At paragraph 70 of its Submission, the Government 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%.⁷² Assuming the Joint Submission is adopted by this 2022 JCC, Judges’ salaries will have risen 31.4% over this period, slightly less than the average for employees.⁷³

Changes in Real *Per Capita* Income

121. Although it continues to be referenced in s. 19 of the *Act*, Statistics Canada has not tracked “real *per capita* income” since 2010. While that statistical measure is no longer available, other measures are available to track the growth or decline in earnings and incomes generally.

122. One available income measure is median total family income. A comparison of median total income of families across Canada reveals that incomes of families in the Yukon are

⁷¹ *Fiscal and Economic Outlook*, GY’s Supplementary Materials, **Tab 2**, page 35

⁷² These data are available at <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410020401> and <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1810000501&pickMembers%5B0%5D=1.29&cubeTimeFrame.startYear=2019&cubeTimeFrame.endYear=2023&referencePeriods=20190101%2C20230101>

⁷³

Calculated using the 2014 salary shown in the chart at **Tab 9** of the GY’s Supplementary Materials, and the jointly proposed salary for 2023.

consistently higher than in any other jurisdiction in Canada, with the exception of the NWT and Nunavut. In 2022, the median after tax income for families and unattached individuals in Yukon, was third highest in Canada at \$84,500.⁷⁴

123. Another measure is Average Weekly Earnings.⁷⁵ The data for the 2021 to 2023 years reflects that AWEs in Yukon exceed the AWEs for Canada as a whole:

	Yukon	Canada
2021	\$1,299.40	\$1,130.17
2022	\$1,335.54	\$1,165.29
2023	\$1,376.77	\$1,205.01

124. Another measure is household income. The Yukon Government forecasts that household incomes will increase significantly in each of the years within this JCC’s mandate:⁷⁶

Year	Change in Primary Household Income
2022	7.2%
2023	9.3%
2024 (forecast)	7.2%

125. 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.

H) Any submissions by the public filed under section 26

126. This factor will be addressed in the oral submissions, should any members of the public make submissions.

⁷⁴ These data are available at the following website, accessed September 21, 2024:
<https://yukon.ca/sites/yukon.ca/files/ybs/fin-canadian-income-survey-territorial-estimates-2022.pdf>

⁷⁵ These data are available from Statistics Canada here:
<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410020401>

⁷⁶ Fiscal and Economic Outlook, March 2024, GY’s Book of Authorities, **Tab 2**, page 35

I) Other Relevant Considerations

127. The preamble to section 19 makes clear this Commission may consider any matter it considers relevant. The Joint Proposals appended to the Government's Submission as Appendix A are clearly relevant considerations, which should be considered. These are reviewed below.

PART IV – RECOMMENDATIONS SOUGHT

128. The Joint Submission forms **Tab A** to the Government's Submission. Each aspect of it is discussed below in light of the relevant factors reviewed above.

1. Salaries for Territorial Court Judges

129. The parties are agreed that this 2022 JCC should recommend the salaries set out in the chart below.

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 (i.e., \$357,030)

130. It is respectfully submitted that the increased salaries shown in the table above are appropriate and reasonable in light of the relevant factors identified in the *Act* and the reasoning of past JCCs, in that they:

- fairly reflect the changed circumstances since implementation of the report of the previous commission;⁷⁷
- will maintain Yukon judges' salaries near parity with the salaries of judges in the identified comparator jurisdictions, including in particular the NWT;⁷⁸
- 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

⁷⁷ 2019 JCC Report, GY's Supplementary Materials, **Tab 4**, para 219

⁷⁸ 2019 JCC Report, GY's Supplementary Materials, **Tab 4**, para 219

remuneration;⁷⁹

- 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;⁸⁰
- reflect that others 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;⁸¹
- will ensure a strong Court,⁸² taking into account that the Territorial and Supreme Courts compete for applicants from the same pool of Yukon lawyers, and lawyers in other nearby jurisdictions; and
- fall within the range of compensation that will protect judicial independence and ensure public confidence in the judiciary.⁸³

2. Recommendations for Amendment to the *Territorial Court Act*, R.S.Y., 2002, c.217

131. The parties jointly propose that the Commissioner should recommend legislative changes to the *Act* to give effect to the following points.

- Commencing April 1, 2025, link the salaries of TCJs to the current year salary of federally appointed justices of the Supreme Court of Yukon;
- 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.
- If this percentage results in a reduction in the salary of a TCJ, the salary to be paid to the

⁷⁹ 2016 JCC Report, TCYJ's Book of Documents, **Tab 3**, page 19

⁸⁰ 2019 JCC Report, GY's Supplementary Materials, **Tab 4**, para 219

⁸¹ 2019 JCC Report, GY's Supplementary Materials, **Tab 4**, para 219; 2016 JCC Report, TCYJ's Book of Documents, **Tab 3**, page 18

⁸² 2019 JCC Report, GY's Supplementary Materials, **Tab 4**, para 219

⁸³ 2016 JCC Report, TCYJ's Book of Documents, **Tab 3**, page 18

TCJ is the annual salary that was paid in the previous annual period.

- The presumption (of 90%) set above 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, being British Columbia, Alberta, Saskatchewan and the Northwest Territories;
 - 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.
- It is understood that pensions, benefits, northern allowances and the like, are not to be considered in determining whether the presumption applies.
- The parties agree that, 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.
- 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 *Territorial Court Act*.
- The parties (Territorial Court Judges, Government of Yukon, and Justices of the Peace), are in agreement to recommend a legislative change to the duration of a Judicial Compensation Commission from the current three years to four years for each Judicial Compensation Commission starting April 1, 2025.

132. It is submitted that the proposed legislative change is reasonable and appropriate considering the factors set out in section 19 of the *Act*, including that the amendments will:

- balance the need for reasonable and appropriate compensation with flexibility being available in extraordinary circumstances;

- take into account the unique nature of Yukon and its laws, where the travel, social isolation and social issues contribute to the work being uniquely challenging;
- ensure that judicial compensation for Territorial Judges will continue to reasonably compare with the compensation paid to territorial judges in NWT and provincial judges in BC, Alberta and Saskatchewan;
- ensure judges are protected against erosion due to increases in the cost of living and that their salaries will not erode against the incomes of others generally, in that federal salaries are increased each year by at least the percentage increase in the industrial aggregate index for Canada; and
- protect the public interest by providing for reasonable certainty as to the level of judicial compensation moving forward, except in extraordinary circumstances, which will enhance the ability of the Court to attract the best possible candidates to the Bench and the ability of the Court to compete with the Yukon Supreme Court for candidates.

133. Regarding the proposed change in the frequency of commissions, from being conducted every three years to every four, the TCYJ note that this would bring Yukon into line with the NWT, which conducts its JCC process every four years, and with some other provincial jurisdictions (Alberta being one example).

3. Stipends for Territorial Court Judges

134. It is jointly proposed that the stipend for Supervising Judge of the JPs will be increased to \$7500 per year. The Chief Judge stipend will be increased to \$15,000 per year.

135. The last time either stipend was increased was effective April 1, 2007, when the Chief Judge's stipend was raised from \$8,000 to \$10,000, and the stipend paid to the Supervising Judge was increased from \$4,000 to \$5,000.⁸⁴

⁸⁴ 2007 Yukon JCC Report, page 9: the Report is available here: <https://open.yukon.ca/sites/default/files/TAB%252011%2520-%2520Yukon%25202007%2520JCC%2520Report.PDF>

136. It is submitted that the joint proposal should be recommended by this JCC in that:

- the compensation is reasonable taking into account the financial position of Government and the economic situation generally;
- it is necessary and appropriate to provide a stipend to the Supervising Judge of the JPs and to the Chief Judge, taking into account the increased duties assumed by the judges who undertake these important roles, to the benefit of the public that is served by the Court;
- the stipends will ensure the continuing ability to the Court to attract judges toward undertaking these roles 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.

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). 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 Yukon's Chief Judge.

4. Recommendations for Amendment to the Territorial Court Judiciary Pension Plan Act

138. The parties are in agreement that this Commissioner should recommend legislative changes to the Territorial Court Judiciary Pension Plan Act as follows:

(2.01) If the member dies after 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.

139. As noted in the Government's Submission at paragraph 87-88, this amendment is designed to ensure fairness in the event of a death of a member.

5. Salary for Justices of the Peace

140. The parties agreed to jointly propose the following hourly rate increases for JPs:

- Effective April 1, 2022, hourly rates will increase by the percentage of change of the CPI for Whitehorse for the 2021 calendar year;
- Effective April 1, 2023, hourly rates will increase by the percentage of change of the CPI for Whitehorse for the 2022 calendar year;
- 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.

141. According to the Justice of the Peace Compensation Order, as of April 1, 2021, there are three different hourly rates for JPs, as follows:

JP1: \$47.75 per hour;

JP2: \$53.06 per hour;

JP3: \$74.29 per hour.

142. As noted in the Government's Submission, the JP1 classification is for JPs with administrative responsibilities only, while the JP2 and JP3 classifications may be presiding as well as administrative JPs.

143. The percentage change in the cost of living that will apply in each of the relevant years will be:

	CPI Increase (based on prior year)
April 1, 2022	3.3%
April 1, 2023	6.8%
April 1, 2024	4.9%

144. The jointly proposed increases are supported by the following points, arising out of the factors set out in s.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 Justices of the Peace;
- 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.

6. Allowances and Hourly Rates for Training for Justices of the Peace

145. It is jointly proposed that there will be:

- a. an increase to the daily allowance for training at a Justice of the Peace College from \$100 per day to \$150 per day for a full day, or \$75 for a half day, starting April 1, 2022; and

- 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.

146. Regarding the daily allowance, the JPs rely on the following points.

- 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. As many JPs are not called upon to perform their duties consistently there is an ethical obligation for JPs to participate in these JP colleges.

147. 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. In support of the joint proposal, the JPs rely on the following points.

- 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.
- An increase in the hourly rate is necessary to recruit suitable candidates.

7. Standby Pay for Justices of the Peace

148. 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 four hours, and at the applicable rate above four hours, starting April 1, 2022.

149. It should be noted that this weekend/statutory holiday duty has been covered by two of our senior JPs for many years. One of those JPs has stepped away from that duty and the other JP reached the age of 75 in December of 2022 and was not longer able to provide this very important service.

150. In order to recruit potential candidates to cover this essential service there is a pressing need to offer compensation that is appropriate.

CONCLUSION:

151. For the foregoing reasons, the TCYJ submit that the proposed joint submissions for changes in judicial compensation are reasonable and appropriate in light of the factors set out in the *Act*. Further, consistent with the reasoning of past JCCs, the fact that these proposals are the product of a joint submission should weigh heavily in favour of their acceptance by this Commission.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27TH DAY OF SEPTEMBER,
2024**



Susan Dawes, Counsel for the
Territorial Court Judges and Justices of the Peace