

**2019 Yukon Judicial Compensation Commission**

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

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## **SECTION I: INTRODUCTION**

### **The Territorial Court**

1. The Yukon Territorial Court (“Territorial Court”) is akin to a provincial court in Canada. Its constitution and powers are set out in the *Territorial Court Act*, RSY 2002, c 217 (“TCA”). The Territorial Court serves Whitehorse and all other Yukon communities, including Watson Lake and Dawson City. It consists of three (3) full-time judges and approximately 30 deputy judges (full-time or retired judges from other jurisdictions) to provide additional coverage to the Territorial Court.<sup>1</sup>

2. The Territorial Court makes decisions on criminal and provincial offences, young offenders, child protection laws, and civil matters up to \$25,000 (in Small Claims Court). Its criminal duties cover matters such as first appearances; bail hearings; receiving pleas of guilty and not guilty; and preliminary inquiries, trials and sentencings (in both summary conviction and indictable matters).

3. The Territorial Court also encompasses the Yukon Justice of the Peace Court. Justices of the Peace provide additional court and legal support services, such as receiving and swearing informations, issuing search warrants, receiving pleas and conducting summary conviction sentencing hearings under territorial (or federal) legislation. There are 31 part-time Justices of the Peace who are remunerated on an hourly basis

### **The PEI Reference Case**

4. The decision of the Supreme Court of Canada in *Re Provincial Court Judges*, [1997] 3 SCR 3 (the “PEI Reference Case”), recognized financial security as one of the three core characteristics of judicial independence, the other two being security of tenure and institutional

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<sup>1</sup> Yukon Courts, “Territorial Court” (2013) online: <<http://www.yukoncourts.ca/courts/territorial.html>>

independence. (See full text of the case at **Tab 1** of Supporting Materials). Lamer C.J.C. for the majority of the court explained the concept of financial security this way at paragraph 133:

First, as a general constitutional principle, the salaries of provincial court judges can be reduced, increased, or frozen, either as part of an overall economic measure which affects the salaries of all or some persons who are remunerated from public funds, or as part of a measure which is directed at provincial court judges as a class. However, any changes to or freezes in judicial remuneration require prior recourse to a special process, which is independent, effective and objective, for determining judicial remuneration, to avoid the possibility of, or the appearance of, political interference through economic manipulation.

5. The majority of the Court held that there is a constitutional obligation to establish bodies which are “independent, effective, and objective”, indicating at paragraph 287:

... 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.

6. And at paragraph 147, Lamer C.J.C. described the constitutional purpose of these independent bodies:

The constitutional function of this body would be to depoliticize the process of determining changes to or freezes in judicial remuneration.

7. In addition to the requirement that a commission be interposed between the judiciary and the executive of the Government to make recommendations on judicial remuneration, the Court also indicated that financial security requires that judicial remuneration be adequate and that it not fall below a basic minimum level. The reason for this, as noted by the Court at paragraph 135, is as follows:

Public confidence in the independence of the judiciary would be undermined if judges were paid at such a low rate that they could be perceived as susceptible to political pressure through economic manipulation, as is witnessed in many countries.

8. However, the Court also emphasized that the guarantee of a minimum acceptable level of judicial remuneration is not a means to shield the courts from the effects of deficit reduction. The Court observed:

Nothing would be more damaging to the reputation of the judiciary and the administration of justice than a perception that judges were not shouldering their share of the burden in difficult economic times (paragraph 196).

9. Moreover, the Court noted that salary increases can also be powerful economic levers and cautioned as follows:

...salary increases also have the potential to undermine judicial independence. (paragraph 159)

10. What is required, the Court held, is that an independent commission make recommendations on judicial remuneration that are grounded in objective criteria, not political expediencies, supported by reasons which relate to the public interest, broadly understood.

### **Part 3 of the Territorial Court Act – Mandate of the Commission**

11. As a result of the *PEI Reference* case, Part 3 (sections 13 to 29) of the *Territorial Court Act* (set out at **Tab 2** of Supporting Materials), which provides for the establishment every third year of a Judicial Compensation Commission (the “Commission”) was enacted. The Government and the judiciary both have input into the selection of the members in the manner set out in section 21. The Commission is mandated to make recommendations respecting all matters of “judicial remuneration” (section 14) which is defined as all forms of compensation including salaries, pensions, allowances and benefits.

12. In developing its recommendations, the Commission is directed by section 19 of the *Territorial Court Act* to consider any matter it considers relevant, and in addition, address in its report submissions made to it regarding the following:

- (a) the current financial position of the government;
- (b) the need to provide reasonable compensation to the 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 and decline in real per capita income; and
- (h) any submission by the public filed under section 26.

13. The recommendations made by the Commission are binding on Government to the extent that they do not exceed the highest total value of judicial remuneration provided to the provincial or territorial judges of British Columbia, Alberta, Saskatchewan or the Northwest Territories.

14. The Commission is thus established, as required by the *PEI Reference* case, as an independent body to make binding recommendations on judicial remuneration that are justified on an objective basis.

**MODIFIED PROCESS**

15. Following the conclusion of the 2004 Judicial Compensation Commission (“JCC”), and in part in response to the recommendations of that Commission, the parties met and negotiated a Letter of Understanding to simplify and economize the JCC process (see **Tab 3** of Supporting Materials). This hearing is being conducted pursuant to that Letter of Understanding. The constitutionality of this modified process was upheld by Schuler J. of the Yukon Supreme Court in *Cameron v. Yukon*, 2011 YKSC 35, [2011] Y.J. No. 37 (Q.L.) (see **Tab 4** of Supporting Materials).



## **SECTION II: OVERVIEW OF THE GOVERNMENT'S SUBMISSION**

### **Salary**

16. The Territorial Court Judges currently earn a base salary of \$287,213.60 per annum, which became effective April 1, 2018.<sup>2</sup> The Government acknowledges the valuable contribution of the Territorial Court, and proposes an increase to the Judges' salaries effective April 1, 2019.

17. Such an increase will keep the Territorial Court Judges' salaries in line with judicial salaries currently being paid in the four comparator jurisdictions. Further, it is not appropriate that there be parity in salary with superior courts, as different considerations apply in setting the level of remuneration for federally appointed justices and because of the historical differences in jurisdiction between Provincial/Territorial courts and Superior Courts.

18. It should also be noted that over the past two decades, the compensation of the Territorial Court judiciary has seen a substantial increase. Over the last 19 years, there has been more than a 111% increase in income for the Judges.<sup>3</sup> As inflation in Whitehorse over the same period (1999-2018) has only been 43.6% in total,<sup>4</sup> this amounts to a real increase in income of approximately 74% over 19 years. Both the rate of increase and the absolute value of this salary are well above that enjoyed by most other sectors of Yukon's workforce.

19. Given the above, and for the reasons more fully developed below, the Government of Yukon proposes a salary increase for the Judges of 0.5% in 2019, 0.5% in 2020, and 0.5% in 2021. This, together with their robust judicial pension and other benefits, ensures the level of compensation remains well above the level required to maintain judicial independence.

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<sup>2</sup> Government of Yukon, OIC 2019/068, "*Order to Amend the Judges Remuneration Implementation Order (2019)*", online: < [http://www.gov.yk.ca/legislation/regs/oic2019\\_068.pdf](http://www.gov.yk.ca/legislation/regs/oic2019_068.pdf)>.

<sup>3</sup> From \$135,770 per annum in 1999 to \$287,213.60 per annum in 2018.

<sup>4</sup> Average CPI in Whitehorse for 1999 was 92.9 and the CPI for 2018 was 133.4 (increase of 43.6%) [information published by Statistics Canada, "Consumer Price Index" (Table 18-10-0005-01, formerly CANSIM 326-0021) online: <<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1810000501&pickMembers%5B0%5D=1.29>> [See **Tab 5** of Supporting Materials].

20. In particular, this proposal would bring the base salary of the Judges from \$287,213.60 (in 2018) to \$288,650.00 in the first year (effective April 1, 2019), \$290,093.00 in the second year (effective April 1, 2020), and \$291,543 in the third year (effective April 1, 2021).

21. As the maximum salaries (in 2020) for the most senior Government of Yukon lawyers range from \$118,147 to \$158,036 per annum (effective January 1, 2020, Yukon Government Legal Officer)<sup>5</sup> or \$176,296 to \$215,691 per annum for federal Justice lawyers (effective May 10, 2019, Federal Government Law Practitioner LP-05)<sup>6</sup>, it is submitted that this remuneration for judges is sufficient such that qualified applicants will be attracted to and remain with the Court, especially given the significant pension benefits that accompany the salary. The low turnover experienced at the Court over the last 30 years appears to back that conclusion.

22. With respect to other aspects of remuneration for the judiciary, the Government of Yukon proposes as follows:

### **Deputy Judges' Salaries**

23. At the 2016 JCC, it was agreed and recommended that the *per diem* sitting rate for Deputy Judges, as and from April 1, 2018, be based on one two-hundred-thirty-fifth (1 / 235th) of the annual base salary of sitting Territorial Court Judges. As such, with the increases proposed above for Territorial Court Judges, the salaries of Deputy Judges will be as follows:

April 1, 2019: \$1,228.30 (0.5% increase from previous year)

April 1, 2020: \$1,234.44 (0.5% increase from previous year)

April 1, 2021: \$1,240.61 (0.5% increase from previous year)

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<sup>5</sup> Government of Yukon, "Deputy Ministers, Managers, and Legal Officers Salary Grid" effective January 1, 2020 online: <[https://yukon.ca/sites/yukon.ca/files/psc/psc-deputy-ministers-managers-legal-officers-salary-grid-january-2020\\_0.pdf](https://yukon.ca/sites/yukon.ca/files/psc/psc-deputy-ministers-managers-legal-officers-salary-grid-january-2020_0.pdf)> [Tab 6 of Supporting Materials]

<sup>6</sup> "Appendix 'A' – LP-05 – Law Practitioner Group Annual Rates of Pay" excerpts found at Tab 7 of Supporting Materials]. See also: *Agreement between the Treasury Board and the Association of Justice Counsel* (2019 Collective Agreement, September 5, 2019) at page 65 online: <<https://www.tbs-sct.gc.ca/agreements-conventions/view-visualiser-eng.aspx?id=13>> [excerpts from which can also be found in Tab 7 of Supporting Materials].

### **Deputy Judges' Medical Coverage**

24. Currently, Deputy Judges are not eligible for enrollment in the medical insurance plans available to Territorial Court Judges for their travel to and from the Yukon, or their work while in the Yukon. It is proposed that the Government of Yukon will provide a once-annual stipend if a Deputy Judge attends the Yukon. This stipend is intended to cover the premium for medical insurance during the travel of Deputy Judges to and from the Yukon, as well as for time actively working in the Yukon (as opposed to presence for personal reasons).

25. The Government of Yukon proposes \$220 as the annual stipend for attending Deputy Judges.

26. The Territorial Court Judges have signified their agreement to this proposal, and have reached a Joint Submission (filed) on the same.

### **Justices of the Peace**

27. The parties propose that effective April 1, 2019, the pay rate for Justices of the Peace be increased by 2% per annum, resulting in the following:

JP 1: April 1, 2019: From \$45.00 per hour<sup>7</sup> to \$45.90 per hour [2% increase]  
April 1, 2020: From \$45.90 per hour to \$46.82 per hour [2% increase]  
April 1, 2021: From \$46.82 per hour to \$47.75 per hour [2% increase]

JP 2: April 1, 2019: From \$50.00 per hour<sup>8</sup> to \$51.00 per hour [2% increase]  
April 1, 2020: From \$51.00 per hour to \$52.02 per hour [2% increase]  
April 1, 2021: From \$52.02 per hour to \$53.06 per hour [2% increase]

JP 3: April 1, 2019: From \$70.00 per hour<sup>9</sup> to \$71.40 per hour [2% increase]  
April 1, 2020: From \$71.40 per hour to \$72.83 per hour [2% increase]  
April 1, 2021: From \$72.83 per hour to \$74.29 per hour [2% increase]

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<sup>7</sup> Government of Yukon, Order-in-Council 2019/69: *Order to Amend the Justices of the Peace Remuneration Implementation Order (2019)*, online: <[http://www.gov.yk.ca/legislation/regs/oic2019\\_069.pdf](http://www.gov.yk.ca/legislation/regs/oic2019_069.pdf)>

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

**All other benefits (Pension, LTD, benefits, allowances, stipends, etc.)**

28. Except for the above, no modifications are proposed by the Government to any other terms, benefits, allowances, stipends, etc. in effect for members of the Yukon Territorial Court or for Justices of the Peace in the Yukon.

### **SECTION III: HISTORY OF YUKON COMMISSIONS**

#### **1998 Commission**

29. In December of 1998, following the *PEI Reference* case, the first Yukon Judicial Compensation Committee was established by Order in Council. The Commission increased the salaries of the Territorial Court Judges. The Salaried Presiding Justice of the Peace (“SPJP”) and the hourly rated Justices of the Peace were not included in the process at that time; however, it did specify an additional payment where a Territorial Judge acted as a “Supervising Judge” for Justices of the Peace. The Commission’s report (“Yukon 1998 JCC Report”) is included at **Tab 8** of the Supporting Materials. Highlights of the binding recommendations made by the Commission are set out in Appendix A to these Submissions.

#### **2001 Commission**

30. In the autumn of 2001, the second Commission was established pursuant to the provisions of Part 3 of the *Territorial Court Act*. The Commission again increased the salaries of the Territorial Court Judges. For the first time, the Commission addressed and increased the salary of the SPJP. The Commission did not change the wage rate of the Justices of the Peace. The complete report (“Yukon 2001 JCC Report”) was issued in April 2002 and is found at **Tab 9** of the Supporting Materials. Highlights of the binding recommendations made by the Commission are set out in Appendix A.

#### **2004 Commission**

31. In the spring of 2004, the third Commission was established pursuant to the Act, and its recommendations again included the Territorial Court Judges, the SPJP, and the hourly rated Justices of the Peace. The Commission’s final report (“Yukon 2004 JCC Report”) was issued in February of 2005, and can be found at **Tab 10** of the Supporting Materials. Highlights of the recommendation of this Commission are also included in Appendix A herein.

### **2007 Commission**

32. In 2007, the fourth Commission was established pursuant to the Act, and its recommendations again included the SPJP and hourly rated Justices of the Peace. The Commission's final report ("Yukon 2007 JCC Report") was issued in March 2008, and can be found at **Tab 11** of the Supporting Materials. Highlights of the recommendation of this Commission are also included in Appendix A herein.

### **2010 Commission**

33. In 2010, the fifth Commission was established pursuant to the Act. Its recommendations included salaries for Territorial Court Judges, the SPJP, and hourly-rated Justices of the Peace. The Commission's final report ("Yukon 2010 JCC Report") was issued in December 2011 (due to the intervention of the *Cameron v. Yukon* judicial proceedings), and can be found at **Tab 12** of the Supporting Materials. Highlights of the recommendation of this Commission are also included in Appendix A herein.

### **2013 Commission**

34. In 2013, the sixth Commission was established pursuant to the Act, and its recommendations addressed remuneration for Judges of the Territorial Courts, the SPJP and hourly rated Justices of the Peace. The Commission's Final Report ("Yukon 2013 JCC Report") was issued on April 9, 2014, and can be found at **Tab 13** of the Supporting Materials. Highlights of the recommendation of this Commission are included in Appendix A herein.

### **2016 Commission**

35. In 2016, the seventh Commission was established pursuant to the Act, and its recommendations addressed remuneration for Judges of the Territorial Courts and hourly rated Justices of the Peace. The Commission's Final Report ("Yukon 2016 JCC Report") was issued on

January 18, 2019, and can be found at **Tab 14** of the Supporting Materials. Highlights of the recommendation of this Commission are included in Appendix A herein.

## **SECTION IV: APPLYING THE FACTORS SET OUT IN THE ACT**

36. The Government will review each of the factors which the Commission is required to address in its report pursuant to s. 19 of *The Territorial Court Act*.

### ***1) The Current Financial Position of the Government***

#### **Projected Surplus or Deficit**

37. Prior to the COVID-19 pandemic, the Government of Yukon’s budget (published in March 2019) projected small deficits for 2018-19 and 2019-20, with a small projected surplus in 2020-2021 and 2021-22.

#### **Surplus (Deficit) 2018-19 to 2021-2022 (Estimated and Planned) (\$000s)**

	2018-19 Main estimates	2018-19 Supplementary estimates	2019-20 Main estimates	2020-21 Plan	2021-22 Plan
Revenue	1,166.7	1,185.7	1,251.1	1,272.4	1,316.1
Expense	(1,305.3)	(1,326.2)	(1,325.3)	(1,348.5)	(1,389.6)
Accounting adjustments	134.1	133.4	68.3	81.1	77.2
Surplus/Deficit	(4.5)	(7.1)	(5.9)	5.0	3.7

Source: Government of Yukon, “2019-20 Fiscal and Economic Outlook” online: <https://yukon.ca/sites/yukon.ca/files/fin/fin-budget-2019-20-fiscal-economic-outlook.pdf> at page 3 [found at **Tab 15** of the Supporting Materials]

38. The Government has relied on its accumulated financial resources and accumulated surpluses to offset the recent annual deficits.

39. The Government further addresses its financial position below, under the heading “Other Relevant Matters”.



## **Net Financial Resources**

40. Prior to the onset of the COVID-19 pandemic, the Government’s net financial resources from the 2019-20 Supplementary Estimates were as follows:

### **Calculation of Net Financial Assets (\$000s)**

	2019-20 Voted To date	Change	2019-20 Revised Vote
(Net Debt) Net Financial Assets, beginning of year	(11,206)	10,798	(408)
Surplus (Deficit) for the year	(20,002)	1,445	(18,557)
Effect of change in non financial assets	(47,647)	5,844	(41,803)
<b>(Net Debt) Net Financial Assets, end of year</b>	<b>(78,555)</b>	<b>18,087</b>	<b>(60,768)</b>

Source: Government of Yukon, “2019–20 Supplementary estimates no. 2 Financial summary”, online: <<https://yukon.ca/sites/yukon.ca/files/fin/fin-2019-20-budget-supp-2-financial-summary.pdf>> [found at **Tab 16** of the Supporting Materials]

41. These projections are expected to change in the fall of 2020, given the effects of COVID-19.

## **Territorial Formula Financing Agreement**

42. The Government is highly dependent on transfer payments from Canada. The grant that comes through the Territorial Formula Financing Agreement (“TFFA”) alone makes up a significant proportion of the Government’s revenues.<sup>10</sup> Other major federal transfer payments (e.g. Canada Health Transfer), when combined with the TFFA grant, make up the vast majority of the Government’s total revenues. The remaining source of revenues are made up of “own source revenues”, including taxes and fees.

43. Even if “own source revenues” were to increase in volume because of improved economic activity, the TFFA mechanism results in an offset or claw back against the grant received such that

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<sup>10</sup> Approximately 85% of revenues: see Tab 15, page 6.

the net financial position of the Government would not be improved and in fact could worsen. Increasing tax rates is an option available to the Government to increase revenue flows and to improve the Government's fiscal position; however, the *Taxpayer Protection Act*, RSY 2002, c. 214 at section 8 dictates that the Government generally first seek the public's consensus through a plebiscite for a tax increase. This is a complex endeavour that could take some time to accomplish and is not a politically appealing undertaking.

44. Even if rates were to be increased on some taxes, owing to the limited tax bases in the relatively small population, minimal additional revenues can be raised.

45. This dependency on federal transfer payments, accompanied by the volatility and unpredictability of the complex TFFA grant elements, makes the accurate predictions of the Government's fiscal position challenging. For example, a decline in the provincial/local expenditure escalator used in the TFFA to calculate the grant could result in a several million dollar loss in the transfer payment. Similarly, if our population growth lags behind the national average growth, this results in losses in the TFFA grant. Equally, the full extent of the negative economic ramifications of the influx of the COVID-19 pandemic are yet to be seen.

46. On this latter point, it is important to recognize that Canada is facing a deficit as a result of costs incurred during the pandemic. On April 30, 2020, the Office of the Parliamentary Budget Officer released an updated scenario analysis that stated the "*latest fiscal results include \$146.0 billion in federal budgetary measures that have been announced as of April 24*" and that if the GDP was to decline by 12% in 2020 the "*budget deficit would increase to \$252.1 billion in 2020-21*".<sup>11</sup>

47. Given this volatility, maintaining sufficient reserves to deal with potential grant downswings is prudent fiscal management.

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<sup>11</sup> <<https://www.pbo-dpb.gc.ca/en/blog/news-releases--communiqués-de-presse/pbo-releases-updated-scenario-analysis-covid-19-pandemic-oil-price-shocks--dpb-public-une-mise-jour-analyse-scenario-chocs-dus-pandemie-covid-19-chute-prix-petrole>> [Tab 17 of Supporting Materials]

### **Cost of Implementing Commission Recommendations**

48. In making recommendations on judicial remuneration, the cost of the recommendations to the public purse needs to be considered. In considering costs, it must be remembered that salary increases have an impact on pension, group insurance and leave benefit costs.

49. While the cost of straight salary increases are simple enough to compute, and may at first glance appear modest, it cannot be forgotten that there is a “multiplier effect” in terms of the costs to the Government when the increased pension costs are factored in, as the Territorial Court Judges enjoy enrolment in a defined benefit pension plan which allows a 70% pension after approximately 23 years of service.

#### ***2) The Need to Provide Reasonable Compensation to the Judges***

50. Financial security as a component of judicial independence requires that judicial salaries be above an adequate minimal level required for the office of a judge. At the same time, large salary increases that cannot be justified on an objective basis are also to be avoided. Thus, there is a range of compensation, the top and bottom margins of which identify the points that “public confidence in the independence of the judiciary would be undermined” (*PEI Reference* case, paragraph 135).

### **Relative Financial Position of the Judiciary**

51. To determine what is reasonable compensation, appropriate to the judicial office and sufficient to ensure financial security, it is helpful to survey the income in various sectors in the community to gain an understanding of the relative financial position of the Judges to the community they serve. Judges currently earn \$287,213.60 per annum, effective April 1, 2018.

The average personal income in Yukon between 2013 & 2017 (the most current data available from StatsCan) has been as follows:<sup>12</sup>

2013: \$43,110

2014: \$43,980

2015: \$44,800

2016: \$45,410

2017: \$47,520

52. Relative to other legal and government professionals, provincial judges are better-paid. The income levels for other legal sectors are as follows:

- For 2020, a deputy minister with the Government of Yukon earns between \$182,079 and \$243,581.<sup>13</sup>
- For 2018, a senior lawyer with the Government of Yukon earns between \$118,147 and \$158,036.<sup>14</sup>
- Effective July 1, 2019, teachers with 10 or more years of experience earned between \$108,023 and \$117,393.<sup>15</sup>
- Effective April 1, 2019, the Premier of Yukon has an annual salary of \$163,340 which is comprised of an MLA Indemnity of \$79,408, and Premier Pay of \$64,085. The Premier is also entitled to an annual tax-exempt MLA Expense Allowance of \$19,847.<sup>16</sup> These salary and allowance entitlements are set out in sections 39, 41, and 42 of the *Legislative Assembly Act*, RSY 2002, c. 136 and include an annual April 1st Consumer Price Index adjustment (section 39(2)).

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<sup>12</sup> Statistics Canada. “Tax filers and dependants with income by total income, sex and age” (Table 11-10-0008-01) online: <<https://www150.statcan.gc.ca/t1/tb11/en/cv.action?pid=1110000801>> [Tab 18 of Supporting Materials].

<sup>13</sup> Government of Yukon, “Deputy Ministers, Managers, and Legal Officers Salary Grid”, *supra* at Tab 6.

<sup>14</sup> *Ibid.*

<sup>15</sup> Government of Yukon, “Teacher Pay Grid”, *Collective Agreement between The Government of Yukon and the Yukon Teachers’ Association (Effective July 1, 2018 to June 30, 2021)* at page 56, Appendix “A”, available online: <<https://yukon.ca/sites/yukon.ca/files/psc/psc-yg-yta-collective-agreement.pdf>> [Excerpts at Tab 19 of Supporting Materials].

<sup>16</sup> Yukon Legislative Assembly, “Indemnities, expense allowance and salaries of members of the Yukon Legislative Assembly”, available online: <<https://yukonassembly.ca/resources/members-salaries-and-benefits>>.

53. For the term of this JCC (2019-2021), Government of Yukon employees will receive the following increases:<sup>17</sup>

**2019:** 1.75%                      **2020:** 1.75%                      **2021:** 1.75%

54. Manager and legal officers employed by the Government received wage increases of 1.5% in January 2017, 1.00% in January 2018, and 2.00% in January 2019. There was a 2.25% increase in 2020, but this was provided in return for loss of severance entitlements (payable on resignation or retirement) after December 31, 2019.

55. In considering these increases, it is crucial to bear in mind that all of the above salaries were set or agreed to prior to the pandemic.

56. It is apparent, then, that the salaries of the Judges are currently considerably higher than the salaries of most other sectors of the local workforce. This salary has over the last number of years grown at a significant rate. It should also be noted that the Judges may receive a Yukon Bonus benefit of \$2,242.00 per year to offset the cost of travel to and from the Yukon, after qualifying with sufficient service.<sup>18</sup> Moreover, the judicial pension plan is a robust one that is considered more beneficial than the plan applicable to territorial and federal employees, for example,<sup>19</sup> and is an important aspect of compensation which also contributes to the financial security of the judiciary.

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<sup>17</sup> Government of Yukon, *Collective Agreement between Government of Yukon and the Public Service Alliance of Canada/Yukon Employees' Union (Effective January 1, 2019 to December 31, 2021)* at Letter of Understanding "Y" page 162, available online: <[https://yukon.ca/sites/yukon.ca/files/psc/yc\\_psac\\_yeu\\_collective\\_agreement.pdf](https://yukon.ca/sites/yukon.ca/files/psc/yc_psac_yeu_collective_agreement.pdf)> [Excerpts at **Tab 20** of Supporting Materials].

<sup>18</sup> *Judges Remuneration Implementation Order*, Y OIC 2012/70 at s. 9 (as amended), available online: <[http://www.gov.yk.ca/legislation/regs/oic2012\\_070.pdf](http://www.gov.yk.ca/legislation/regs/oic2012_070.pdf)> [**Tab 21** of Supporting Materials].

<sup>19</sup> For example, the accrual rate for the judicial pension plan is 3%, while under the public service superannuation plan it is 2%; the pension benefit for the judiciary is based on best average earnings over 2 years while under the PSSP the benefit is based on best average earnings over 5 years: See *Territorial Court Judiciary Pension Plan Act, 2003*, SY 2003, c.29 at Schedule 1, section 4 & Schedule 3, s. 8. Compare: *Public Service Superannuation Act*, R.S.C., 1985, c. P-36 at s. 11 and *Public Servants Superannuation Act*, RSY 2002, c.182.

### **Parity With Superior Court Judges' Salaries Not Appropriate**

57. It is sometimes suggested at JCCs involving Provincial or Territorial Court Judges that there ought to be parity, or near parity, with salaries of the Superior Court Judges, for after all, “a Judge is a Judge”.

58. This proposition has been laid to rest by the Supreme Court of Canada, after it had been rejected by several Canadian JCCs.

59. In the 2001 New Brunswick JCC, the Commission set the Provincial Court Judges salaries at 85% of a Superior Court Judge’s salary. The New Brunswick government refused to accept the Commission’s recommendations for several reasons. One of the reasons it rejected the Commission’s recommendations was because it felt it inappropriate to compare Provincial Court Judges salaries to Superior Court Judges salaries, given the different considerations that go into setting the latter.

60. The Judges challenged the Government’s decision in Court. At the New Brunswick Court of Appeal, in *Provincial Court Judges’ Association of New Brunswick v. New Brunswick (Minister of Justice)*, 2003 NBCA 54, 260 N.B.R. (2d) 201 [Tab 22 of Supporting Materials] the Court held that it is important to consider salary and benefits of appropriate comparator groups such as Provincial or Territorial Court Judges, and to avoid using inappropriate comparator groups such as Justices of the Superior Court. Robertson JA held as follows:

...the Association’s claim to salary parity with federally appointed puisne judges is misguided. The federal salary is fixed by reference to factors that have no application in the provincial context. Specifically, the fact that the federal salary is uniform, so as not to reflect regional differences, and that it is set at a level that is capable of attracting qualified candidates in major metropolitan areas throughout Canada, where salary levels are much higher than in the small urban centres, are factors that need not concern provincial remuneration commissions. [at para 163]

61. The case was appealed to the Supreme Court of Canada, where in *Provincial Court Judges’ Association of New Brunswick et al v. New Brunswick (Minister of Justice) et al.*, 2005 SCC 44,

[2005] 2 S.C.R. 286 [Tab 23 of Supporting Materials], the Supreme Court upheld the Government's decision to reject the Commission's recommendations. The Court specifically commented on the "parity" argument as follows:

The Court of Appeal correctly highlighted the facts relied on by the Government and the weakness of the Commission's report in this regard (at para. 159):

Historically, federal judicial remuneration commissions have consistently accepted that the federal salary should be uniform and, with one exception, not reflect geographic differences. Additionally, federal commissions have consistently recognized that the uniform salary must be set at a level that is capable of attracting highly qualified candidates. This factor is problematic with respect to potential applicants practising law in Canada's larger metropolitan centres. Their incomes and salary expectations are understandably greater than those practising in smaller communities. Rather than recommending a salary differential based on the geographic location of a judge's residence, federal commissions have concluded that the salary level must be set at a level which does not have a chilling effect on recruitment in the largest metropolitan areas of the country. For this reason, the recommended federal salary is adjusted to reflect this geographic disparity.

¶ 72 The role of the reviewing court is not to second-guess the appropriateness of the increase recommended by the Commission. ***It can, however, consider the fact that the salaries of federally appointed judges are based on economic conditions and lawyers' earnings in major Canadian cities, which differ from those in New Brunswick. As a result, while the Commission can consider the remuneration of federally appointed judges as a factor when making its recommendations, this factor alone cannot be determinative.*** In fact, s. 22.03(6)(a.1) of the *Provincial Court Act* requires the Commission to consider factors which may justify the existence of differences between the remuneration of Provincial Court judges and that of other members of the judiciary in Canada, yet the Commission chose not to address this. ***Moreover, it is inappropriate to determine the remuneration of Provincial Court judges in New Brunswick by applying the percentage ratio of average incomes in New Brunswick to those in Canada to the salary of federally appointed judges, because the salary of federally appointed judges is based on lawyers' earnings in major Canadian cities, not the average Canadian income.*** [emphasis added; at paras. 71 & 72]

62. In the 2004 Yukon JCC Report, the Commission rejected the concept of parity or a direct relationship between territorial court judges and Supreme Court judges. It made these comments on this point:

No doubt because of the joint submission, the issue of parity was not raised in oral argument. Nevertheless, and because the Commission must decide what is fair and reasonable, the question was considered by the Commission. Without any claim to bind the hands of any future commission, the Commission feels obligated to say only that, in its opinion, fair compensation has regard to work done but more so to level of responsibility. The Commission should consider both. In this regard, *the Commission notes that the present judicial system offers different responsibility, whether as between general jurisdiction courts like the Yukon Supreme Court compared with limited jurisdiction courts like the Yukon Territorial Court, and as between the Yukon Territorial Court judges and the Territorial Court Justices of the Peace.* Moreover, the salaries of the Supreme Court are set by the Government of Canada for judges all over Canada, and this may involve criteria different from those set out in s. 19 of the *Act*. [supra **Tab 10** of Supporting Materials, page 5; emphasis added]

63. So while there may be some overlap in the interests and needs of federally-appointed Supreme Court justices and territorial/provincial court judges, the needs and concerns of the courts are not identical. The Supreme Court has broader jurisdiction in civil matters, and requires judges with different experience; for example, familiarity with corporate matters. Finally, and perhaps most importantly, it must not be forgotten that judges of the Territorial Court and federally-appointed Supreme Court justices are compensated by a different government with different financial constraints and expectations.

### **Nunavut Court of Justice**

64. There has also sometimes been suggestions that a comparison with the remuneration of the Judges of the Nunavut Court of Justice should be specifically read into sections 17 or 19 as a comparator jurisdiction under the *Territorial Court Act* in determining remuneration for the Judges because NWT and Nunavut were, prior to April 1, 1999, one jurisdiction. The Government does not agree with this suggestion, if it is made.

65. The unified Nunavut Court of Justice was created at the same time Nunavut was created on April 1, 1999. It is acknowledged that prior to April 1, 1999, the NWT Territorial Court and the NWT Supreme Court had jurisdiction in the eastern Arctic. However, the jurisdictions of those 2 courts have been brought together and a new court created. The judges of the Nunavut Court of Justice are federally appointed, have the jurisdiction of Superior Court Justices and are



remunerated pursuant to the federal *Judges Act*, R.S.C., 1985, c. J-1 and the federal compensation commission process.

66. Section 19 of the TCA sets out that the Yukon JCC Commission is to address in its report submissions presented to it on compensation provided to the **territorial or provincial judges** in the NWT, B.C., Alberta and Saskatchewan. It also provides that the JCC may, in fulfilling its mandate, consider any matter it considers relevant. However, section 17 sets out that the recommendations of the JCC are binding only to the extent they do not exceed the highest total value of the judicial remuneration provided to **territorial or provincial** judges of B.C., Alberta, Saskatchewan or the NWT [emphasis added].

67. While the Commission may consider any matter it considers relevant, it is not appropriate to read into sections 17 or 19 of the TCA a reference to the Justices of the Nunavut Court of Justice. To do so would require one to disregard the clear reference in the TCA to Territorial and Provincial Judges and would, it is submitted, be a step in the direction of achieving parity with superior court Justices, a concept which has been rejected by Courts and compensation commissions alike as noted above.

68. Given the recent growth in judicial salaries, the relative financial position of the judiciary to others in the community they serve and the pension plan the judiciary enjoys, it is submitted that the salary increases and other remuneration proposed by the Government of Yukon is reasonable, and ensures the level of compensation of the Judges remains well above the adequate minimum level required by the *PEI Reference* case to maintain judicial independence. At the same time, the increases are not so large so as to undermine public confidence in judicial independence.

### 3) *The Need to Build a Strong Court by Attracting Qualified Applicants*

69. The Government of Yukon wants a strong court as does the public. There are several factors that attract lawyers to the judiciary including a professional desire to discharge the important and challenging role a Judge plays in our society. The ability to make a difference and

have a meaningful impact on society through one's work, especially in a small jurisdiction like Yukon, is certainly one of the non-monetary rewards. Judges, like elected officials, assume these positions in the government structure to serve the public and accept the fact that public service may have some drawbacks.

70. Compensation is also one of the factors in attracting qualified candidates to the bench and keeping them. The compensation must be seen to be reasonable given the responsibilities and challenges of the position.

71. Certainly, there has been very low turnover at the Territorial Court. Retirements from the Bench have followed lengthy service. This is evidence that the remuneration associated with the position of Judge has not been a deterrent to staying with the Court.

72. In terms of the size of the local Bar, there are approximately 158 resident members of the Yukon Law Society.<sup>20</sup>

73. Not only do the judges of the Territorial Court already receive higher earnings and salaries than government lawyers and managers, they also have a valuable pension plan. The pension plan must also be considered in terms of the ability to attract qualified candidates. As stated by the New Brunswick Court of Appeal:<sup>21</sup>

It is universally accepted that the value of the judicial pension is a significant factor to be taken into account in comparing the income position of judges and lawyers in private practice....This is because lawyers in private practice do not have the benefit of pension arrangements or pension schemes and are obliged to save for their retirement.

74. Given the foregoing, it is submitted that there is little risk that qualified candidates would be deterred from applying for the position of Territorial Court Judge on the basis that the compensation proposed by the Government is not adequate.

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<sup>20</sup> Law Society of Yukon, available online: <[https://lawsocietyyukon.com/find-a-lawyer/?fwp\\_membership=resident](https://lawsocietyyukon.com/find-a-lawyer/?fwp_membership=resident)>

<sup>21</sup> *Provincial Court Judges' Assn. of New Brunswick v. New Brunswick (Minister of Justice)*, *supra*, **Tab 21** at paragraph 168.

4) *The Unique Nature of the Yukon*

75. The Yukon is a wonderful place to live and raise a family. Wilderness activities including hiking, paddling and camping are easily accessible and Yukoners live in a rugged and beautiful landscape. Interesting sporting events are a part of life as well including the Chilkat Bike Relay from Haines Junction to Haines, the Klondike Road Relay from Skagway to Whitehorse, various triathlon events and the Yukon River Quest to name a few.

76. Whitehorse also boasts a vibrant arts scene which includes local, national and international musical and theatrical presentations at the Yukon Arts Centre and the Guild Hall; music, storytelling and writers' festivals; and several art galleries. The Yukon also enjoys a varied demographic, enriched by First Nations' culture, and has been in the forefront of some major social changes, including the settlement of modern day treaties and the implementation of self government arrangements for First Nations. All of this makes the Yukon an enviable place to live.

77. At the same time, direct air connections to Vancouver, Edmonton and Calgary allow residents to easily travel south. Affluent residents make regular trips to destinations outside of the Yukon for holiday, shopping or to attend cultural events.

78. However, it is acknowledged that in a small community like Whitehorse, there is some social isolation for the judiciary.

79. Moreover, it is recognized that the substantial First Nations population in the Territory requires the Court to be familiar with and sensitive to aboriginal culture and practices.

80. The Government is aware of the contribution which the Territorial Court makes to life in the Yukon and the innovative approaches it has utilized to assist in the administration of justice.

5) *The Compensation Provided to Judges in the Northwest Territories, British Columbia, Alberta and Saskatchewan*

81. To assist the Commission in comparing the salary and benefits of Judges in the comparator jurisdictions, the Government has included the most current reports of Judicial Compensation Commissions (“JCCs”), as follows:

1. Report of the 2016 British Columbia Judicial Compensation Commission, recommending judicial salaries and benefits for April 1, 2017 to March 31, 2020 (“BC 2016 JCC Report”) [Tab 24 of Supporting Materials].
2. Report of the 2019 British Columbia Judicial Compensation Commission, recommending judicial salaries and benefits for April 1, 2020 to March 31, 2023 (“BC 2019 JCC Report”) [Tab 25 of Supporting Materials].
3. Report of the 2017 Alberta Judicial Compensation Commission recommending judicial salaries and benefits for April 1, 2017 to March 31, 2021 (“Alberta 2017 JCC Report”) [Tab 26 of Supporting Materials];
4. Report of the Saskatchewan Provincial Court Commission dated December 2017, recommending judicial salaries and benefits for April 1, 2018 to March 31, 2021 (“Sask. 2017 JCC Report”) [Tab 27 of Supporting Materials]; and
5. Report of the 2016 NWT Judicial Remuneration Commission, recommending judicial salaries and benefits for April 1, 2016 to March 31, 2020 (“NWT 2016 JCC Report”) [Tab 28 of Supporting Materials].

82. There is a very important caveat to the recommendations made by two of these JCCs – namely, that some of their recommendations have not been accepted – nor therefore implemented – by the respective Governments.

83. In BC, the salary recommendations of the 2016 JCC for 2017 to 2020 were not accepted nor implemented by the BC Government, and instead salaries lower than those recommended by the JCC were substituted by the Government. The Judges filed a petition for judicial review disputing the government's adoption of a lower salary grid than that in the recommendations. The matter is currently tied up in litigation over whether a Cabinet submission which the Government relied upon in rejecting the recommendations is required to be disclosed, a separate issue that was argued before the Supreme Court of Canada on December 9, 2019. Judgment on that production issue has been reserved.<sup>22</sup> As the Government's rejection of the JCC's salary recommendations and substitution of lower salaries has not at this time been overturned by the Courts, it is those substituted salaries that are used hereafter in these submissions, though the Government of Yukon recognizes that the outcome of the litigation may ultimately see those recommendations reinstated and implemented.

84. The BC situation is further complicated by the fact that a subsequent (2019) JCC has been held, and recommendations for subsequent (2020 to 2023) salary increases were made. That 2019 report was tabled in the BC Legislature in November of 2019, but at the time of writing, there is as yet no resolution by the BC Government as to its acceptance or rejection of any or all of the recommendations. For that reason, when dealing with the BC 2020-2023 salaries, it is the BC JCC's recommended salaries that are used hereafter in these submissions.

85. In Alberta, the Government likewise rejected the salary recommendations of the 2017 Alberta JCC for 2017 to 2021, and imposed its own figures. The Government of Yukon is unaware of any litigation arising from this rejection and substitution, and accordingly has used the actual imposed salaries hereafter in these submissions, rather than the recommended salaries.

86. Bearing the above caveats in mind, then, the salaries of the Judges in the four comparator jurisdictions set out in the TCA are as follows:

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<sup>22</sup> <https://www.scc-csc.ca/case-dossier/info/dock-regi-eng.aspx?cas=38381>

**PROVINCIAL AND TERRITORIAL COURT JUDGES'  
SALARIES FOR COMPARATOR JURISDICTIONS**

	2017	2018	2019	2020	2021	2022
Yukon	\$280,208	\$287,213	\$288,650 (Proposed)	\$290,093 (Proposed)	\$291,543 (Proposed)	2022 JCC
NWT	\$278,828	\$289,733	\$299,869	2020 JCC	2020 JCC	2020 JCC
Alta.	\$293,991	\$293,991	\$293,991	\$293,991	2021 JCC	2021 JCC
Sask.	\$290,848	\$295,792	\$304,074	\$304,074 + 1% + CPI	2020 JCC	2020 JCC
BC	\$262,000	\$266,000	\$270,000	\$287,000	\$297,000	\$307,000

87. The salary rates for provincial court Judges in other (non-comparable) provinces for 2018 & 2019 are as follows, and they confirm that Yukon judicial salaries are very close to the highest compared to other Canadian jurisdictions:

▪ Manitoba:	\$265,475	(2018)
	\$272,908	(2019)
▪ Ontario:	\$300,600	(2018)
	\$310,337	(2019)
▪ Quebec:	\$254,518	(2018)
	Awaiting JCC	(2019)
▪ NB:	\$257,280	(2018)
	\$263,920	(2019)
▪ PEI:	\$271,832	(2018)
	\$278,230	(2019)
▪ NS:	\$237,599 <sup>23</sup>	(2018)
	\$238,513 <sup>24</sup>	(2019)

<sup>23</sup> This salary was imposed by Nova Scotia's Government, despite a recommendation for a higher salary by the Nova Scotia JCC. Judicial review proceedings by the Judges were launched, appeals pursued, and this appeal was argued before the Supreme Court of Canada in December 2019 at the same time as the case involving the BC Provincial Court Judges, *supra*.

<sup>24</sup> *Ibid*.

▪ Nfld/Lab:	\$247,546	(2018)
	\$251,506	(2019)

88. Finally, and with regard to the hourly rates of the justices of the peace, the Government of Yukon states that its submissions are comparable to what would be expected for other jurisdictions.

**British Columbia:** Called “Judicial Justices” in British Columbia, there are full-time Judicial Justices that are paid an annual salary, and part-time Judicial Justices that are paid on a *per diem* basis. The *per diem* rate is based on a fraction of a Judicial Justice’s salary (similar to Deputy Judges, as referenced above). As of 2018, the *per diem* was \$787.00 which, assuming an 8 hour day, would work out to \$98.38 per hour. Note, however, that since 2007, new Judicial Justices in BC are required to have a law degree and have been in practice for at least 5 years.

**Alberta:** The Justices of the Peace 2017 Compensation Commission (“JPCC”) is currently underway to set Justice of the Peace judicial compensation for the April 1, 2017 – March 31, 2021 period. For the last JPCC in Alberta in 2013, the Commission recommended that the *per diem* amount to be paid to part-time Justices of the Peace should be a formula based on the full-time Justice of the Peace salary. Effective April 1, 2016 the salary of a full-time JP was \$151,813. Based on the formula, the Government of Yukon estimates the *per diem* rate to be \$961.97,<sup>25</sup> and again assuming an 8-hour workday, a wage rate of over \$120/hour. In Alberta, since 1999, sitting Justices of the Peace must have a law degree and have been in practice for 5 years.

**Saskatchewan:** The 2018 Saskatchewan Justice of the Peace Compensation Commission recommended that the Justice of the Peace salary for April 1, 2019 should be 51% of a

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<sup>25</sup> Report and Recommendations of the Justices of the Peace 2013 Compensation Commission (Alberta, June-July 2017) at page 29-30, online: <<https://open.alberta.ca/publications/report-and-recommendations-of-the-justices-of-the-peace-2013-compensation-commission>> [Excerpts at **Tab 29** of Supporting Materials].

Provincial Court Judge’s salary (or \$155,077.74 as of April 1, 2019), and that the hourly rate for JPs is 1/1760 of that annual salary, or \$88.11/hour.<sup>26</sup>

**NWT:** Justices of the Peace in NWT receive \$480 each year for being “active”. They also receive \$55/hour or \$65/hour to a maximum of \$335 or \$395 per day (respectively), depending on whether they are assigned administrative or sitting duties.<sup>27</sup>

**Yukon:** The hourly rates for Justices of the Peace in the Territorial Court are currently \$45/hour (for JP1), \$50/hour (for JP2), and \$70/hour (for JP3). The Government of Yukon submits that the following hourly wage increases would be appropriate, effective April 1, 2019:

- JP 1: April 1, 2019: From \$45.00 per hour to \$45.90 per hour [2% increase]  
 April 1, 2020: From \$45.90 per hour to \$46.82 per hour [2% increase]  
 April 1, 2021: From \$46.82 per hour to \$47.75 per hour [2% increase]
- JP 2: April 1, 2019: From \$50.00 per hour to \$51.00 per hour [2% increase]  
 April 1, 2020: From \$51.00 per hour to \$52.02 per hour [2% increase]  
 April 1, 2021: From \$52.02 per hour to \$53.06 per hour [2% increase]
- JP 3: April 1, 2019: From \$70.00 per hour to \$71.40 per hour [2% increase]  
 April 1, 2020: From \$71.40 per hour to \$72.83 per hour [2% increase]  
 April 1, 2021: From \$72.83 per hour to \$74.29 per hour [2% increase]

89. It should also be noted that the provincial and territorial comparables may not be exact “apples to apples” comparisons. Currently Justices of the Peace receive different employment benefits, such as statutory holiday pay differentials, compared to other jurisdictions.

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<sup>26</sup> Report and Recommendations of the 2018 Saskatchewan Justice of the Peace Compensation Commission (December 2018), online: <<https://publications.saskatchewan.ca/api/v1/products/92946/formats/110049/download>> [Excerpts at **Tab 30** of Supporting Materials].

<sup>27</sup> *Remuneration and Allowances Regulations*, NWT Reg 056-1998 as amended at sections 1-2, online: <<https://www.justice.gov.nt.ca/en/files/legislation/justices-of-peace/justices-of-peace.r1.pdf>>.



6) *The Cost of Living in the Yukon, Including the Growth or Decline in Real Per Capita Income*

**Cost of Living**

90. Cost of living increases in Whitehorse have been very modest over the past 20 years. At **Tab 5** of the Supporting Materials are the historical summaries maintained by Statistics Canada of provincial consumer price index (CPI) rates. On average, the annual rate of inflation for Whitehorse has been 2.3% over 1998-2018.<sup>28</sup> The all-items CPI for Whitehorse, while not directly proportional to any other jurisdiction, is similar to that of the rest of Canada.

91. The Yukon Bureau of Statistics indicates that the 2019 Consumer Price Index (CPI) for Whitehorse increased 2.0% over 2018 while Canada's CPI increased 1.9% over that same period.<sup>29</sup>

92. There appears to be a downward trend in the cost of living with the COVID pandemic. In its report of May 20, 2020, Statistics Canada notes<sup>30</sup> that CPI fell 0.2% on a year-over-year basis in April, down from a 0.9% gain in March, followed by a 0.4% drop in May 2020. April's decline was the first year-over-year decline in the CPI since September 2009.

**Per capita income**

93. As noted earlier, the average personal income in the Yukon from 2013 to 2017 has increased from \$43,110 to \$47,520, or 10.23%.<sup>31</sup> The increase in the Consumer Price Index in Whitehorse over that same 5-year period (2013-2017) has been approximately 7.6%.<sup>32</sup>

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<sup>28</sup> Per Statistics Canada, CPI has gone from 91.3 (in 1998) to 133.4 (in 2018). See **Tab 5**.

<sup>29</sup> Yukon Bureau of Statistics, "Consumer Price Index 2019" (released February 2020), online: <[https://yukon.ca/sites/yukon.ca/files/ybs/2019cpiannual\\_0.pdf](https://yukon.ca/sites/yukon.ca/files/ybs/2019cpiannual_0.pdf)> at page 1 [**Tab 31** of Supporting Materials]

<sup>30</sup> See <<https://www150.statcan.gc.ca/n1/daily-quotidien/200520/dq200520a-eng.htm?indid=3665-1&indgeo=0>> and <<https://www150.statcan.gc.ca/n1/daily-quotidien/200617/dq200617a-eng.htm?HPA=1&indid=3665-1&indgeo=0>> [**Tab 32** of Supporting Materials]

<sup>31</sup> See footnote 7.

<sup>32</sup> Whitehorse average CPI was 122.8 in 2013 and 130.4 in 2017. See **Tab 5**.

94. The annual salary of Territorial Court judges far exceeds the average per capita income. Fewer than 200 people filed a tax return in 2016 that claimed an income of over \$250,000.<sup>33</sup>

### **Economic Growth Rates**

95. The following Table demonstrates the real economic growth rates for the Yukon, as well as those in the comparator provinces:

**Growth Rates of GDP (All-industries) (Contribution to percent change)<sup>34</sup>**

	<b>Yukon<sup>35</sup></b>	<b>NWT</b>	<b>Sask.</b>	<b>Alberta</b>	<b>British Columbia</b>
2014	<b>0.651%</b>	4.746%	1.864%	5.857%	3.548%
2015	<b>(7.594%)</b>	1.022%	(0.75%)	(3.484%)	2.325%
2016	<b>7.214%</b>	(1.104%)	(0.323%)	(3.638%)	2.949%
2017	<b>0.973%</b>	1.585%	1.925%	4.865%	3.939%
2018	<b>3.243%</b>	1.586%	1.635%	1.933%	2.672%

### **Tax Rates**

96. Yukon residents enjoy relatively low personal income tax rates. The following chart for 2020 tax rates taken from CRA published information provides a good comparison with other jurisdictions' provincial tax rates:<sup>36</sup>

<b>Provincial/territorial tax rates for 2020 (combined chart)</b>	
<b>Provinces and territories</b>	<b>Rates</b>

<sup>33</sup> Yukon Bureau of Statistics, "Yukon Income Statistics: 2016 Taxation Year" (Information Sheet No. 7, May 2019), online: <[http://www.eco.gov.yk.ca/stats/pdf/2016\\_income\\_statistics.pdf](http://www.eco.gov.yk.ca/stats/pdf/2016_income_statistics.pdf)> [Tab 33 of Supporting Materials]

<sup>34</sup> Statistics Canada. "Gross domestic product (GDP) at basic prices, by industry, provinces and territories" (Table 36-10-0402-01), online: <<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3610040201>> [Tab 34 of Supporting Materials]

<sup>35</sup> For more detail re the Yukon GDP, see: <[https://yukon.ca/sites/yukon.ca/files/economic\\_accounts\\_2018.pdf](https://yukon.ca/sites/yukon.ca/files/economic_accounts_2018.pdf)>

<sup>36</sup> See Government of Canada, "Provincial and territorial tax rates for 2020", online: <http://www.cra-arc.gc.ca/tx/ndvdl/fq/txrts-eng.html#provincial>.

Newfoundland and Labrador	8.7% on the first \$37,929 of taxable income, + 14.5% on the next \$37,929, + 15.8% on the next \$59,574, + 17.3% on the next \$54,172, + 18.3% on the amount over \$189,604
Prince Edward Island	9.8% on the first \$31,984 of taxable income, + 13.8% on the next \$31,985, + 16.7% on the amount over \$63,969
Nova Scotia	8.79% on the first \$29,590 of taxable income, + 14.95% on the next \$29,590, + 16.67% on the next \$33,820, + 17.5% on the next \$57,000, + 21% on the amount over \$150,000
New Brunswick	9.68% on the first \$43,401 of taxable income, + 14.82% on the next \$43,402, + 16.52% on the next \$54,319, + 17.84% on the next \$19,654, + 20.3% on the amount over \$160,776
Quebec	15% on the first \$44,545 20% for more than \$44,545 but not more than \$89,080 24% for more than \$89,080 but not more than \$108,390 25.75% for more than \$108,390
Ontario	5.05% on the first \$44,740 of taxable income, + 9.15% on the next \$44,742, + 11.16% on the next \$60,518, + 12.16% on the next \$70,000, + 13.16% on the amount over \$220,000
Manitoba	10.8% on the first \$33,389 of taxable income, + 12.75% on the next \$38,775, + 17.4% on the amount over \$72,164
Saskatchewan	10.5% on the first \$45,225 of taxable income, + 12.5% on the next \$83,989, + 14.5% on the amount over \$129,214
Alberta	10% on the first \$131,220 of taxable income, + 12% on the next \$26,244, + 13% on the next \$52,488, + 14% on the next \$104,976, + 15% on the amount over \$314,928
British Columbia	5.06% on the first \$41,725 of taxable income, + 7.7% on the next \$41,726, + 10.5% on the next \$12,361, + 12.29% on the next \$20,532, +

	14.7% on the next \$41,404, + 16.8% on the amount over \$157,748
Yukon	6.4% on the first \$48,535 of taxable income, + 9% on the next \$48,534, + 10.9% on the next \$54,404, + 12.8% on the next \$349,527, + 15% on the amount over \$500,000
Northwest Territories	5.9% on the first \$43,957 of taxable income, + 8.6% on the next \$43,959, + 12.2% on the next \$55,016, + 14.05% on the amount over \$142,932
Nunavut	4% on the first \$46,277 of taxable income, + 7% on the next \$46,278, + 9% on the next \$57,918, + 11.5% on the amount over \$150,473

97. Further, there is no Territorial sales tax, and fuel taxes in the Yukon are some of lowest in Canada. Combined, these lower tax burdens suggest that the Territorial Court judges enjoy a higher disposable income, relative to other provinces.

#### 7) *The Laws of the Yukon*

98. Paragraph 19(f) of the *Territorial Court Act* requires the Commission to consider submissions made to it on the laws of the Yukon. There appear to be two possible interpretations of this paragraph. One interpretation is that the Commission is required to consider submissions made to it on the number, nature and complexity of the laws of the Yukon in setting judicial remuneration for the Territorial Court Judges who must interpret and apply that law.

99. However, it is submitted that the interpretation given to a similar provision to consider “the laws of the [Northwest] Territories” in the equivalent legislation of the NWT by the 2004 NWT Judicial Remuneration Commission is the approach to be preferred. At page 2 of its report, the Commission stated as follows:

We view this as requiring the Commission to look generally at the law of the NWT and not at any one particular aspect of it. That is, we must be cognizant of the law in making our recommendations and be certain that none of our recommendations undermine or violate that law.<sup>37</sup>

100. The Government submits that the above passage means that the JCC must, in making its recommendations, have regard to the *Territorial Court Act* and its associated regulations, the previous Yukon JCC Reports, as well as binding and persuasive case law applicable to the Yukon.

101. The Government also submits that the JCC must consider legislation such as the *Taxpayer Protection Act*. Under that Act, the Government of Yukon is prohibited from incurring an accumulated deficit without dissolving the Legislative Assembly and recommending that an election be held. The Act also stipulates that new taxes may not be imposed nor fuel taxes increased without first holding a public referendum. Accordingly, the Commission must ensure that none of its recommendations would cause the Government to incur an accumulated deficit as this would “undermine” or “violate” that Act.

102. The proposals submitted by the Government of Yukon would not lead to any contravention of the *Taxpayer Protection Act*.

103. The Government of Yukon notes that in the 2013 Yukon JCC Report, the Yukon JCC indicated that it did not accept the interpretation suggested by the government:

... The commission does not expect that anything it has done or is recommending will be found to run afoul of any legislation but to quote a famous philosopher, “never say ‘never’”.

Second, with reference to the government submission, the commission cannot agree that it has a responsibility to “ensure that none of its recommendations would cause the Government to incur an accumulated deficit”. Section 2 of the *Taxpayer Protection Act* ...does not specify that it applies to judicial compensation commissions appointed pursuant

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<sup>37</sup> Report and Recommendations of the NWT Judicial Remuneration Commission, (March 2, 2004) [Tab 35]

to the *Territorial Court Act* and, if it did, questions of appropriateness could well be raised.  
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104. The 2013 Yukon JCC Report also adopted the comments made by the 2004 Yukon JCC on this factor, which read as follows:

No particular law was drawn to our attention as being a complication, detriment or an advantage. In the view of the Commission, the overall legislative framework is neither so complex, simple, or unique as to substantially affect performance or comparisons with other jurisdictions.<sup>39</sup>

105. While the Government accepts that it may not be possible to ensure that this JCC's recommendations will "never" run afoul of the law, the Government submits that the general law of the Yukon is not a factor to be ignored. Where the changes sought by one party are not in conformity with the general law of the Yukon, and the Commission is made aware of this problem, the Commission should not recommend changes which undermine the law.

**8) *Other Relevant Matters***

106. In the opening words of s. 19 of the Act listing the factors the Commission is to address in its report, the Commission is also empowered to consider "any matter it considers relevant". The Government of Yukon submits that the worldwide COVID 19 pandemic is an important and entirely relevant factor for the Commission to consider.

107. As everyone has witnessed and somehow been affected by this pandemic, little explanation of its profound effect on daily life and normal routines needs to be provided here. Relevant to this Commission, the pandemic has brought upheaval to worldwide economies, with Canada being no exception.

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<sup>38</sup> Yukon 2013 JCC Report, *supra* **Tab 13** at page 30-31.

<sup>39</sup> Yukon 2004 JCC Report, *supra* **Tab 10** at page 6, cited at page 31 of Yukon 2013 JCC Report, *supra* **Tab 13**.

108. In Leonard and Lemelin-Bellerose, “Impacts of COVID-19 on Selected Sectors of Canada’s Economy” (Library of Parliament)<sup>40</sup>, the authors state what is likely obvious to every Canadian:

The COVID-19 pandemic is having a major impact on Canada’s economy as a whole. Some industries have been particularly affected or will take a long time to return to normal.

109. The authors then set out examples of some of the very significant effects on select sectors, noting the widespread layoffs in various industries, as well as the “double whammy” of the precipitous drop in oil prices occasioned by the price war between Russia and the Middle East.

110. While at the time of writing there are some cautious signs of improvement as provinces start to tentatively “re-open”, it would be naïve to think that a significant rebound is around the corner. In a report prepared by the Royal Bank of Canada in April 2020,<sup>41</sup> its economists are forecasting a recession in Canada amid the falling oil prices and COVID-19 pandemic:

The immensity of the COVID-19 shock to our economy is rapidly sinking in. The mind-blowing 1 million job losses recorded nation-wide in March far exceeded anything we’ve ever experienced. What’s more disturbing is this is likely to pale in comparison to the losses that will be reported for April. No region of the country is being spared from the shock. We have downgraded our provincial growth forecast (yet again!) across the board in light of recent developments and dynamics currently at play. We now project all provinces will slip into a severe recession this year. Still, we remain of the view the eventual easing of social distancing measures and unprecedented policy response will set the stage for a recovery (albeit partial) in the second half of 2020, returning provincial growth to the positive column in 2021.

111. Canada is a member of the Organization for Economic Cooperation and Development (“OECD”), a 37-country organization dedicated to developing economic policy. The OECD recently released its 2020 economic outlook in June 2020,<sup>42</sup> which unsurprisingly devotes a

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<sup>40</sup> < <https://hillnotes.ca/2020/04/08/impacts-of-covid-19-on-selected-sectors-of-canadas-economy/> > [Tab 36 of Supporting Materials]

<sup>41</sup> < <https://royal-bank-of-canada-2124.docs.contently.com/v/covid-19-recession-deepens-fast-from-coast-to-coast-report> > [Tab 37 of Supporting Materials]

<sup>42</sup> The full report is 336 pages, and is available online at <<https://www.oecd-ilibrary.org/sites/0d1d1e2e-en/index.html?itemId=/content/publication/0d1d1e2e->

significant amount of attention to the worldwide economic effects of COVID-19. In its Editorial (which is essentially an Executive Summary), the authors speak of the tremendously negative effects of the pandemic, though are heartened by many government policies to curb the spread of the virus.

112. Pages 157 to 161 of the Report are devoted to an analysis of Canada's particular economic situation. The opening paragraph of their analysis is important:

Annual output is projected to shrink by 9.4% in 2020 in the event of a second virus outbreak and related shutdown, and by 8% if recovery is uninterrupted. The rebound will not be dynamic enough for output to attain pre-COVID-19 levels by the end of 2021 under either scenario. Similarly, the rate of unemployment will still be elevated. Fiscal balances will deteriorate sharply from additional spending commitments and tax-revenue losses and then recover somewhat thanks to declining outlays in support payments and recovering incomes. Weak demand will push down consumer price inflation. [at p. 157]

113. The Yukon's economy will not emerge unscathed from the pandemic. The budget figures set out above were all prepared in 2019, prior to the arrival and onset of the pandemic. As a result, the Yukon's projected surpluses set out above are no longer expected to occur.

114. The Government of Yukon has publicly announced \$26.7 million in support for businesses, residential rent relief, individuals requiring leave, etc. These measures recognize that minimizing the health impacts of the pandemic have resulted in economic challenges and hardships to individuals and businesses across the territory. It is too early to understand the full financial impact to the Government of Yukon and to what extent the costs associated with the pandemic will result in a re-allocation of funds or a potential deficit.

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[en&\\_csp\\_=bfaa0426ac4b641531f10226ccc9a886&itemIGO=oced&itemContentType=#>](#). The Government has provided a redacted hard copy version, containing the opening provisions, and the chapter relating to Canada, at **Tab 38** of the Supporting Materials.



## **SECTION V: DISCUSSION OF THE GOVERNMENT'S SUBMISSION**

### **A. SALARY**

115. The Government of Yukon submits that an appropriate salary for the three years of the report should be as follows

<b>2019</b>	<b>2020</b>	<b>2021</b>
\$288,650 [0.5%]	\$290,093 [0.5%]	\$291,543 [0.5%]

116. The rationale for these increases is as follows.

117. First, the Government takes the position that the mere requirement of an independent commission every three years does not automatically mean that salaries must increase every three years. Constitutional principles require that salaries of the judiciary not increase “just because”. Instead, the question for each triennial commission is as follows: what is fair and reasonable compensation at that time?

118. Secondly, there has not been a significant increase in workload for the Judges, or significantly changed duties, since the last Commission which recommended the current salaries (which Report is dated January 18, 2019).

119. Thirdly, however, the Government does accept that a moderate salary increase is appropriate, both to keep pace with inflation, and in recognition of the salaries in comparator jurisdictions.

120. With respect to the salaries in comparator jurisdictions, the increases proposed by the Government will keep Territorial Court Judges’ salaries “in the running” amongst their provincial comparators. While the outcome of ongoing litigation in other provinces may change the Territorial Court Judges’ relative standing, the salaries proposed by the Government of Yukon will keep them comparable to Alberta and BC.

121. For all of these reasons, the Government respectfully submits that the proposed salary increases for the next three years will ensure that the salary remains competitive with its comparators and that it is easily high enough to attract “the best and the brightest” to the Bench.

**B. PENSION CHANGES FOR TERRITORIAL COURT JUDICIARY PENSION PLAN**

122. The Judges have raised a concern respecting the 2016 JCC recommendation respecting changes to judicial pensions. While the parties are continuing to discuss this issue between themselves, the Government has advised that it objects to the jurisdiction of this currently-constituted JCC to deal with the same.

123. The parties have agreed to adjourn this issue to later in the year, where the parties’ respective positions can be advanced at that time, if necessary.

**C. STIPEND FOR THE CHIEF JUDGE**

124. A review of the stipends in the comparator jurisdictions reveals that Yukon’s stipend, which is a reflection of the additional administrative responsibilities that accompany the office of the Chief Judge of the Territorial Court, is appropriate when the size of the Court is taken into account. The current stipend is \$10,000 per annum.

125. In BC, the Chief Judge receives an additional 12% of base salary.<sup>43</sup> This figure is therefore over \$30,000 per annum. The most recent JCC report for BC noted that Chief Judge in BC is responsible for 122 full-time judges, and 22 senior (i.e. supernumerary) judges (effective 2017/2018).<sup>44</sup>

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<sup>43</sup> BC 2019 JCC Report, *supra* **Tab 25** at page 27.

<sup>44</sup> *Ibid.* at page 1.

126. In Alberta, the Chief Judge receives an additional 10% of base salary.<sup>45</sup> This again is a figure close to \$30,000 per annum. However, there are some 160 Judges in Alberta.<sup>46</sup>

127. In Saskatchewan, the Chief Judge receives a stipend of 7.5% of a Judge's salary, which for 2019 was over \$22,000 per annum.<sup>47</sup> There are 48 Judges in addition to the Chief Judge.<sup>48</sup>

128. Finally, the Chief Judge in the NWT receives \$15,000 per annum,<sup>49</sup> and there are 3 Judges. As can be seen from the other jurisdictions, the amount paid in the NWT is clearly exceptional, given the few Judges who the Chief Judge oversees. For example, in PEI, the other jurisdiction where there are only 3 Judges, the stipend is only \$5,000 per annum.

129. The Chief Judge's stipend was last increased in 2007, from \$8,000 to \$10,000 per annum. It is also important to note that this stipend is considered part of salary for pension purposes, resulting in increased benefit beyond the amount of the stipend.

130. Based upon the comparability of the stipend with other jurisdictions when the smaller size of the Yukon Territorial Court is considered, the Government proposes that this stipend remain unchanged.

#### **D. SUPERVISING JUDGE'S STIPEND**

131. Section 61 of the TCA requires that the Chief Judge appoint a Supervising Judge, who is responsible for the supervision and training of all JPs. The Supervising Judge receives an annual stipend for these additional administrative duties.

132. The Government does not propose any increase to the Supervising Judge's stipend.

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<sup>45</sup> Alta. 2017 JCC Report, *supra* **Tab 26** at page 10, footnote 10.

<sup>46</sup> *Ibid.* at p. 33.

<sup>47</sup> Sask. 2017 JCC Report, *supra* **Tab 27** at page 57.

<sup>48</sup> *Ibid.* at p. 6.

<sup>49</sup> NWT 2016 JCC Report, *supra* **Tab 28** at page 2.

133. In general, the Government believes that increases to stipends are not the appropriate mechanism to provide cost of living increases or salary increases over time. Rather, stipends are paid to compensate the supervising judge for the extra administrative workload associated with supervising the Justices of the Peace.

134. In 1998, the Commission recommended that the stipend for the soon to be created position of Supervising Judge be set at \$3,500. The 2001 Commission declined to increase the stipend despite the request of the Judges to increase it to \$7,000, the amount paid to the Chief Judge. However, the 2001 Commission did roll the stipend into earnings for the purposes of pension.

135. In 2004, the stipend was increased 14% from \$3,500 to \$4,000. In 2007, the stipend was increased 25% from \$4,000 to \$5,000 per annum.

136. Since that time, there have been no increased duties or workload associated with this supervising role. Therefore, for this reason, the Government is not proposing an increase.

#### **E. DEPUTY JUDGES' SALARIES**

137. The Territorial Court is required to use Deputy Judges from other jurisdictions to assist with judicial duties, on occasion when required. They are paid a *per diem* sitting date.

138. The *per diem* payment for Deputy Judges was recently raised with the last JCC, which completed its work in 2019. In particular, the parties agreed – and the Commissioner recommended – that the payment formula change (effective April 1, 2018) from Deputy Judges receiving 1/250<sup>th</sup> of a Territorial Court Judge's salary to 1/235<sup>th</sup>. This denominator adjustment amounted to an increase of approximately 9% over the 2017 *per diem* rate.

139. Given the recency of these changes, and the fact that Deputy Judges' salaries rise at the same rate as the Territorial Court Judge's salaries, the Government does not believe further adjustments to this *per diem* rate are necessary at this time.

## **F. DEPUTY JUDGES' MEDICAL COVERAGE**

140. The Judges have proposed that Deputy Judges be provided with travel insurance, which would include full medical health coverage for the periods that they are working as deputy judges, including travel to and from the Yukon.

141. The existing Government benefits package that provides coverage for Territorial Court Judges would not be applicable to Deputy Judges. Deputy Judges are not considered to be employees, and therefore would have to be accepted into the Plan by the Joint Management Committee (JMC), comprised of employee and employer representatives. The JMC may have concerns about how this external group would affect the experience or costs of the Plan. There have been past cases of the JMC refusing or limiting access to the Plan to individuals employed at arm's length from the Government of Yukon. The JMC cannot be mandated to allow the Deputy Judges to enter into the Plan.

142. Further, the current Plan administration includes specific terms and conditions for eligibility which the Deputy Judges would not be able to satisfy; for example, they must be actively at work for a minimum period of 90 days before coverage comes into effect, or be on an approved leave of absence from the Government of Yukon.

143. In light of the fact that the "in house" Plan will therefore not work, the Government has looked for alternatives, namely, providing such insurance through a private carrier. Perhaps unsurprisingly, obtaining travel insurance in Canada for out-of-province travel has suddenly become quite difficult given the pandemic concerns. While the Government has located one policy that would be applicable, the same requires proof of medical eligibility for those over 59 years of age. In addition, there is a requirement that a self-declaration be provided if the individual is a smoker. This may raise potential privacy concerns for the Deputy Judges; while none of this information would get back to the Government, the designation of the rate category does give some indication of an individual's health categorization and smoking practices.

144. Accordingly, to meet the Judges' request, the Government is proposing that instead of obtaining a policy, it would instead make an annual payment to each Deputy Judge who attends work in the Yukon. That payment would be comparable to the premium that would be charged for travel insurance, so that each individual Deputy Judge could decide if they wished to obtain insurance, or not. If the Deputy Judge chooses not to purchase insurance, then they could simply keep the annual payment.

145. Based on its investigations, the Government's proposal is that an annual premium payment in the sum of \$220.00 should be sufficient to cover all or the majority of the premium for all or the majority of the Deputy Judges.

### **G. JUSTICES OF THE PEACE**

146. Under the *Territorial Court Act* and its regulations, there are three categories of Justices of the Peace (other than the SPJP),<sup>50</sup> being JP3, JP2 and JP1.<sup>51</sup> Both JP3s and JP2s may be presiding as well as administrative justices. The JP1 category is for administrative responsibilities only.

147. The hourly rate paid to Justices of the Peace was last increased by the most recent JCC (2016), and the Government believes a further increase is warranted at this time. The Government proposes, and the JP Association has agreed, that increases of 2% per annum to the hourly rates of pay is appropriate. As such, the proposal is as follows:

JP 1: April 1, 2019: From \$45.00 per hour to \$45.90 per hour [2% increase]  
 April 1, 2020: From \$45.90 per hour to \$46.82 per hour [2% increase]  
 April 1, 2021: From \$46.82 per hour to \$47.75 per hour [2% increase]

JP 2: April 1, 2019: From \$50.00 per hour to \$51.00 per hour [2% increase]  
 April 1, 2020: From \$51.00 per hour to \$52.02 per hour [2% increase]  
 April 1, 2021: From \$52.02 per hour to \$53.06 per hour [2% increase]

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

<sup>50</sup> The SPJP position is currently vacant.

<sup>51</sup> *Territorial Court Act*, *supra* **Tab 2** at sections 53-63. See also Government of Yukon Order-in-Council 2019/69: *Order to Amend the Justices of the Peace Remuneration Implementation Order* (2019), online: [http://www.gov.yk.ca/legislation/regs/oic2019\\_069.pdf](http://www.gov.yk.ca/legislation/regs/oic2019_069.pdf)

April 1, 2020: From \$71.40 per hour to \$72.83 per hour [2% increase]  
April 1, 2021: From \$72.83 per hour to \$74.29 per hour [2% increase]

148. A Joint Submission by the parties reflecting the above increases has been filed earlier with the Commission.

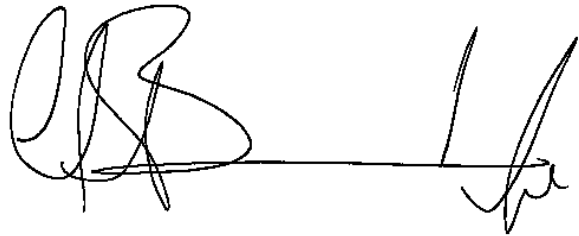
**SECTION VI: CONCLUSION**

149. The Government submits that its proposals above should be adopted as the recommendations of the Commission. The Government's salary proposals ensure that the Judges' salaries are well above the adequate minimal level required for judicial office, and keep the Judges at a salary that is not the highest amongst the 4 comparator jurisdictions, but is also not the lowest during these times of considerable uncertainty as to what the future holds. Accordingly, with this proposal, the public confidence in the independence of the Territorial Court would be maintained.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 7<sup>th</sup> day of July, 2020.

**BAINBRIDGE JODOUIN CHEECHAM**

A handwritten signature in black ink, appearing to read 'GARY L. BAINBRIDGE', written over a horizontal line.

Per:

GARY L. BAINBRIDGE, QC  
Solicitors for the Government of Yukon



## APPENDIX A

### SUMMARY OF RECOMMENDATIONS OF YUKON JUDICIAL COMPENSATION COMMISSIONS

#### 1998 Commission

##### a) Salary

- **Territorial Court Judges:** the salary for a Judge was increased from \$114,423<sup>52</sup> to \$135,000 effective September 18, 1998 to be adjusted annually on April 1 by the Whitehorse Consumer Price Index (CPI) of the preceding year which resulted in the following salaries:
  - \$135,270 as of April 1, 1999
  - \$138,246 as of April 1, 2000
  - \$141,702 as of April 1, 2001
- **Deputy Judges:** Prior to the JCC Report, Deputy Judges received \$400/day, which was increased by the JCC to \$500/day effective September 18, 1998.
- **Chief and Supervising Judges:** The Chief Judge received an additional \$7000 per year as compensation for additional duties. Similarly, the “Supervising Judge” for the Justices of the Peace received an additional \$3500 per year in addition to the base salary if he was to be a Territorial Court judge.

##### b) Pension

- Judges’ contributions to pension would be 7.5% of their salary.
- The annual accrual rate was increased from 2% to 3% for service after September, 1998.
- Retirement with full pension was set at 23.33 years.
- Pension to be based on the average of the highest 3 years of income rather than 6 years.
- Voluntary retirement without penalty was permitted at 60 years of age or 20 years of service, whichever occurs first.
- Post retirement survival benefits for spousal pension increased from 50% to 60%.

##### c) Other Benefits

- Vacation leave was set at 30 days per year.

#### 2001 Commission

##### a) Salary

- **Territorial Court Judges:** the salary for a Judge, which at the time of the Commission’s report was \$141,702, was increased to:
  - \$166,000 as of September 1, 2001
  - \$172,000 as of April 1, 2002

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<sup>52</sup> The salary of a Judge as at March 31, 1993 was \$114,423. This was rolled back by 2% as part of a Government wide roll back on April 1, 1993. The annual salary was then restored to \$114,423 for the period April 1, 1993 to September 17, 1998 to comply with the judgment of the Supreme Court of Canada in the *PEI Reference Case*.

➤ \$178,000 as of April 1, 2003

- **Deputy Judges:** The per-day pay for deputy judges was increased from \$500 to \$800 effective April 1, 2002.
- **Senior Presiding Justice of the Peace (SPJP):** The salary of the sole SPJP was increased from \$62,779/year to \$85,000 as of September 1, 2001, and thereafter to \$87,000 on April 1, 2003.

#### b) Stipends:

- Judges' stipends were not increased. The SPJP was not granted the stipend for supervising Justices of the Peace included in salaries for pension purposes.

#### c) Pension

- Judges' stipends were included in salaries for pension purposes.
- Judges' contributions to their pension plan were increased to a flat 7% for service after September 1, 2001 (and that they would also pay CPP contributions).
- The annual accrual rate of 3% was made applicable to service prior to September 18, 1998 as well.
- Pension was to be based on the average salary of the highest 2 years rather than 3 years
- Pensionable service can continue when a judge is on a sabbatical or educational leave.

#### d) Other Benefits

- Annual vacation entitlement for the Judges was increased from 30 days to 35.
- Territorial Judges would receive educational leave (4 months off every 4 years) to replace sabbatical leave (one year off every 5 years), paid at 70% of regular salary.
- The Judges' "reasonable" representation costs to be paid by the Yukon Government.
- No changes to "existing" remuneration package for Justices of the Peace

### 2004 Commission

#### a) Salary

- **Territorial Judges:** the salary for a Judge, which was \$178,000 at the time of the Commission's report, was increased to \$189,900 effective April 1, 2004, to be adjusted annually thereafter by the Whitehorse Consumer Price Index of the preceding year; as of April 1, 2006, this salary had thus risen to \$199,901.
- **Justices of the Peace:** The hourly rate was increased for Justices of the Peace. Whereas before the hourly wage rate for JPI, JP II, and JP III classifications was \$25, \$30, and \$50 per hour respectively, that wage rate was increased to \$30, \$35, and \$55 per hour effective April 1, 2004. The monetary cap on such fees was removed at the same time.
- **SPJP:** The salary of the SPJP was increased to \$98,500 effective April 1, 2004 and annual increases equivalent to the cost of living percentage increases for Territorial Court Judges.

#### b) Stipends

- The Chief Judge's stipend was increased from \$7,000 to \$8,000 per annum.
- The stipend for the Supervising Judge (who is the Judge designated to supervise the JP Program) was increased from \$3,500 to \$4,000 per annum.

### c) Other Benefits

- Effective April 1, 2004, each Judge would receive a professional allowance of \$3,000 per annum to cover reasonable expenditures.
- Territorial Court Judges (and the SPJP) were entitled to the benefit plans available to the management group of the Yukon public service. The terms of those benefit plans (except those terms inapplicable to the judiciary) would apply to Territorial Court Judges and SPJP in the same manner as they applied to the management group.
- The SPJP was also entitled to the educational leave.
- The Judges' reasonable representation costs for the JCC were to be paid by the Yukon Government to a maximum of \$50,000 (plus GST), less a contribution of \$500 per Judge.
- Deputy Judges were to receive payment for travel time of \$400 *per diem* to compensate for travel time to and from the Yukon.
- Training payments for Justices of the Peace were reinstated and increased.

## 2007 Commission

### a) Salary

- **Territorial Court judges:** the salary for a Judge, which was \$199,901 at the time of the Commission's report, was increased by approximately 7.9% to \$215,742 effective April 1, 2007, by 3% to \$222,214 effective April 1, 2008, and by 3% to \$228,880 effective April 1, 2009.
- **Deputy Judges:** salaries were increased by the same percentages as Territorial Court Judges' salaries were. Prior to this report, Deputy Judges were paid \$800/day. Effective April 1, 2007 the *per diem* was increased to \$863.39; and thereafter \$889.29 (April 1, 2008); and \$915.97 (April 1, 2009).
- **SPJP:** The Commission increased the salaries of the SPJP by ~5.6% (April 1, 2007); 3% (April 1, 2008), and 3% (April 1, 2009).

### b) Judges' Stipends

- The Chief Judge's stipend was increased from \$8,000 to \$10,000 per annum.
- The stipend for the Supervising Judge (who is the Judge designated to supervise the JP Program) was increased from \$4,000 to \$5,000 per annum.

### c) Other Benefits

- The judicial pension was modified to ensure that any salary increases that took place in the "window period" between the date a Commissioner is appointed and the date of the Commissioner's recommendations would be included in pensionable earnings, notwithstanding that the Judge may have retired in that period.
- Deputy Judges previously received travel *per diems* set at \$400. These were increased for by the same percentages and in the same manner as the Territorial Court judges' salaries

were increased. Effective April 1, 2007 the travel *per diem* was increased to \$431.70; then \$444.65 (on April 1, 2008), and \$457.99 (on April 1, 2009).

- The Chief Judge was given authority, in exceptional cases, to grant preparation time to Deputy Judges sitting on complex cases.

## 2010 Commission

### a) Salary

- **Territorial Judges:** the salary for a Judge, which was \$228,880 per annum at the time of the Commission's report, was increased by 3% to \$235,746.40 effective April 1, 2010, by 3% to \$242,818.92 effective April 1, 2011, and by 3% to \$250,103.36 effective April 1, 2012.
- **Deputy Judges:** Deputy Judges' *per diems* were increased by the same percentages as Territorial Court Judges' salaries were. The *per diem* sitting rate increased from \$915.97 to \$943.45 (April 1, 2010); \$971.75 (April 1, 2011); and to \$1000.91 (as of April 1, 2012)
- **SPJP:** The annual salary of the SPJP was increased in the same manner as it was for Territorial Court Judges, being 3% per annum in 2010, 2011, and 2012.

### b) Other Compensation or Benefits

- The hourly rate for JPs was increased to time and one half for hours worked on statutory holidays.

## 2013 Commission

### a) Judges' Salaries and Income

- **Territorial Judges:** the salary for a Judge, which was \$250,103.36 per annum at the time of the Commission's report, was increased by 3% to \$257,606.46 effective April 1, 2013, by 2% to \$262,758.59 effective April 1, 2014, and by 2% to \$268,013.76 effective April 1, 2015
- **Deputy Judges:** the per-day sitting rate for Deputy Judges was increased by the same percentages as Territorial Court Judges' salaries were. The sitting rate, which was \$1,000.91 at the time of the Commission's report, was increased to \$1,030.94 (on April 1, 2013), and then \$1,051.56 (April 1, 2014) and \$1,072.59 (on April 1, 2015)
- **SPJP:** The salary for the SPJP (Senior Presiding Justice of the Peace) was increased by the same percentages as Territorial Court Judges' salaries were.
- **Justices of the Peace:** The base hourly rate for JPs was increased by \$5 per hour across all classifications of Justice of the Peace.

### b) Other Benefits

- Long-term disability (LTD) benefits were altered such that the existing monetary cap of LTD benefits was removed and replaced with a cap of 70% of annual salary.

## **2016 Commission**

### **a) Judges' Salaries and Income**

- **Territorial Judges:** the salary for a Judge, which was \$268,013.76 per annum at the time of the Commission's report, was increased by 2% to \$273,374.04 effective April 1, 2016, by 2.5% to \$280,208.39 effective April 1, 2017, and by 2.5% to \$287,213.60 effective April 1, 2018.
- **Deputy Judges:** the per-day sitting rate for Deputy Judges was increased by 2% to \$1,094.40 effective April 1, 2016, and by 2.5% to \$1,129.39 effective April 1, 2017. Effective April 1, 2018, the funding formula for Deputy Judges was changed from the *per diem* rate being calculated as 1/250<sup>th</sup> of a Territorial Court Judge's salary to 1/235<sup>th</sup>.
- **Justices of the Peace:** The base hourly rate for JP1s was increased from \$35/hour to \$45/hour, for JP2s from \$40/hour to \$50/hour, and for JP3s from \$60/hour to \$70/hour

### **b) Other Benefits**

- Three changes were recommended to the *Territorial Court Judicial Pension Plan Act, 2003* to ensure that the benefits between the two pensions plan provisions (Registered and Supplementary) were harmonized
- For Justices of the Peace, a multiplier of 1.5 times regular hourly rate for working on statutory holidays (instead of a prescribed hourly rate) was recommended, with retroactive effect to April 1, 2013