

2010 YUKON JUDICIAL COMPENSATION COMMISSION REPORT

INTRODUCTION

This report of the 2010 Yukon Judicial Compensation Commission, pursuant to s. 25(4) of the *Territorial Court Act*, is provided through the Minister of Justice to the Government of Yukon and through the Chief Judge to the Territorial Court of Yukon. The commission, as per the direction of the Act, makes recommendations in this report respecting the remuneration of the Judges of the Territorial Court, the Senior Presiding Justice of the Peace and the Justices of the Peace.

The commission was appointed on February 25, 2010 and has taken 21 months to fulfill its mandate. This report contains a description of the actions and an explanation of the delays that led to the extended time needed for completion. As is noted, there was an interregnum in commission activities resulting from a challenge to the legitimacy of the commission's appointment in the Supreme Court of Yukon. The filing with the court of a petition in this respect on July 12, 2010 made it necessary for the commission to cease proceedings and remain moribund until receipt of the decision of the presiding judge, Madam Justice V.A. Schuler, on April 19, 2011.

The proceedings of the commission, subsequent to Madam Justice Schuler's decision, included convening on June 20, 2011 to receive joint and individual submissions from the Government of Yukon, the Judges of the Territorial Court and the Justice of the Peace Association and holding a hearing on the remuneration of the Senior Presiding Justice of the Peace on September 22 and 23, 2011.

The report that has emerged from those proceedings provides detailed information on the background, mandate, and operations of the commission. This results from the attention paid to process when determining whether a judicial compensation commission has properly fulfilled its role. That role was described in decisions of the Supreme Court of Canada (primarily the *PEI Reference*) and relied upon in Madam Justice Schuler's decision in *Cameron v. Yukon* where it was stated "any change made to the remuneration conditions of judges at any given time must necessarily pass through the institutional filter of an independent, effective and objective body so that the relationship between the judiciary and the government remain depoliticized as far as possible."

As well, a significant portion of the report is devoted to addressing the factors set out in section 19 of the *Territorial Court Act*. This is in response to Madam Justice Schuler's direction that "It is preferable that reasonably detailed reasons be given for a commission's recommendation, even when it has accepted a joint submission".

PART 1

BACKGROUND, MANDATE AND PROCESS

1. Appointment and term of office of the commission

- 1.1 The 2010 Yukon Judicial Compensation Commission (the “commission”) was appointed by Order-in-Council 2010/33 dated February 25, 2010. Order-in-Council 210/33 was made pursuant to the authority of section 13 of the *Territorial Court Act* (the “Act”).
- 1.2 Order-in-Council 210/33 states that the appointment of the commission is for a three-year term. This is the maximum term of office as section 18 of the Act directs that, subject to section 29 of the Act, the commission’s term of office ends on the filing of a report containing recommendations on the matters before it.

2. Mandate of the commission

- 2.1 Section 14 of the Act states that the mandate of the commission “shall be to inquire into and make recommendations respecting all matters relating to judicial remuneration of judges, and respecting other related matters as the Minister and the chief judge agree to submit to the commission.”

The term “judges” is defined in the Act as including the judges and the deputy judges of the Territorial Court of Yukon. The term “judicial remuneration” is defined in the Act as meaning “all forms of compensation including salaries, pensions, allowances, and benefits”.

The Minister and the chief judge did not submit any related matters to the commission and the commission has, therefore, restricted its attention to matters relating to judicial remuneration.

- 2.2 Section 58 of the Act expands the mandate of the commission to include the remuneration of the Senior Presiding Justice of the Peace (the “SPJP”). It states “judicial remuneration for salaried justices shall be set by the commission in accordance with Part 3 of this Act modified to suit the case.” [Note: Part 3 of the Act, titled “Judicial Compensation Commission”, is the legislative authority for the appointment, mandate and procedures of a judicial compensation commission.]

The judicial compensation commissions appointed in 2001, 2004 and 2007 made recommendations respecting the remuneration of the SPJP who was and is the only salaried justice of the peace.

- 2.3 Pursuant to section 2 of the Act the judges and the SPJP are all members of the Territorial Court of Yukon.
- 2.4 Although the Act does not provide direction to the commission to review the remuneration of justices of the peace other than the SPJP this commission has followed the evolving practice of past commissions and, with respect to the justices of the peace, given consideration to and made recommendations on submissions received.

[Note: The title “justice of the peace” is not used in the Act other than in the reference to the Justice of the Peace Court in section 2 and in the heading to Part 6 of the Act. Otherwise, the terms “justice” and “salaried justice” are used throughout the Act. Regulations and orders made pursuant to the Act, however, utilize the commonly known titles of justice of the peace and Senior Presiding Justice of the Peace and the same shall be used in this report.]

- 2.5 Yukon is unique in having established a judicial compensation commission responsible for making recommendations regarding the remuneration of both judges and the salaried justice of the peace (i.e., the SPJP). Also, as has been stated above, the Yukon commission makes recommendations respecting the remuneration of justices of the peace.

None of the comparator jurisdictions listed in section 19 of the Act, being the Northwest Territories, British Columbia, Alberta and Saskatchewan, have adopted the Yukon model. Rather, each of those jurisdictions has established judicial compensation commissions with the sole responsibility of making recommendations respecting the remuneration of judges.

The method of determining the remuneration of justices of the peace varies. British Columbia and Alberta establish separate compensation commissions that make recommendations respecting the remuneration of justices of the peace. Saskatchewan and the Northwest Territories set the pay of justices of the peace through order-in-council without prior recourse to a compensation commission.

3. Factors to be considered by the commission

- 3.1 Section 19 of the Act states that the commission, in fulfilling its mandate, may consider “any matter it considers relevant”.
- 3.2 Section 19 of the Act directs the commission to address in its report submissions presented to it regarding
- (a) the current financial position of the government,
 - (b) the need to provide reasonable compensation to judges,
 - (c) the need to build a strong court by attracting qualified applicants,
 - (d) the unique nature of the Yukon,

- (e) the compensation provided to judges in the Northwest Territories and British Columbia, Alberta and Saskatchewan,
- (f) the laws of the Yukon,
- (g) the cost of living in the Yukon including the growth or decline in real per capita income, and
- (h) any submissions by the public filed under section 26.

3.3 Section 19, modified in accordance with section 58 of the Act, is applied in the commission's consideration of the remuneration of the SPJP.

4. Rules respecting recommendations of the commission

4.1 The commission, pursuant to section 15 of the Act, cannot make a recommendation that would result in any judicial remuneration being less than that in place on the date that the commission was established which was February 25, 2010.

4.2 The Letter of Understanding of January 2005 (the "LOU"; see 5.5 and 7.3 below) on the process for judicial compensation commissions sets out that "The recommendations of a JCC will be effective April 1st of the year in which the JCC is established."

This is an established practice respected by the 2004 and 2007 commissions and by the government when making implementation orders respecting judicial remuneration. The parties to this commission in their submissions and this commission in its recommendations have continued to follow that practice.

4.3 Section 17 of the Act directs that the recommendations of the commission shall bind the government. This is qualified by the provision that the commission's recommendations are not binding if they exceed the highest total value of judicial remuneration provided in the four comparator jurisdictions (Northwest Territories, British Columbia, Alberta and Saskatchewan). In a situation where the recommendation of the commission exceeds the highest total value of judicial remuneration in those four jurisdictions, the Commissioner in Executive Council may substitute that highest total value for the commission's recommendation.

5. Legislation, court decisions, reports, and other documents of relevance to the commission

5.1 The legislation governing the commission and all matters pertaining to it is the *Territorial Court Act*, Chapter 217 of the Revised Statutes of the Yukon 2002, as amended by *An Act to Amend the Territorial Court Act*, Chapter 16 of the Statutes of Yukon 2003.

- 5.2 The Supreme Court of Canada has provided important direction respecting the role and operations of judicial compensation commissions in *Reference re Remuneration of Judges of the Provincial Court (P.E.I.)* [1997] 3 S.C.R. 3 (the “*PEI Reference*”). The *PEI Reference* led to the inclusion of Part 3 titled “Judicial Compensation Commission” in the *Territorial Court Act* passed by the Yukon Legislative Assembly in 1998. The *PEI Reference* and related decisions, including the decision filed on April 19, 2011 by Madam Justice V.A. Schuler of the Supreme Court of Yukon (citation: *Cameron v. Yukon*, 2011 YKSC 35; hereinafter “*Cameron v. Yukon*”) have received careful attention from the commission in the undertaking of its operations and deliberations.
- 5.3 The commission is the fifth judicial compensation commission appointed since 1998. The commission, in its consideration of background and context, has referenced the reports of the 1998, 2001, 2004 and 2007 commissions.
- 5.4 The Commissioner in Executive Council responds to recommendations of judicial compensation commissions through the adoption of implementation orders established by Order-in-Council. The implementation orders in force at the time of the appointment of the commission were:
- (a) *Judges Remuneration Implementation Order* established by Order-in-Council 2008/169;
 - (b) *Salaried Presiding Justice of the Peace Remuneration Implementation Order* established by Order-in-Council 2008/170 as amended by the *Order to Amend the Salaried Presiding Justice of the Peace Remuneration Implementation Order (O.I.C. 2008/170)* established by Order-in-Council 210/154; and
 - (c) *Justices of the Peace Remuneration Implementation Order* established by Order-in-Council 2005/158.
- 5.5 The parties to the process (the “parties”), being the Government of Yukon, the Judges of the Territorial Court, the Senior Presiding Justice of the Peace, and the Justice of the Peace Association met and negotiated a “Letter of Understanding on the process for Judicial Compensation Commissions” that was completed in January 2005. This LOU was still in place and its provisions adhered to during the proceedings of this commission.

6. Public submissions to the commission

- 6.1 Section 26(1) of the Act requires the Commissioner in Executive Council to publish in newspapers circulated throughout the Yukon a notice of the commission’s creation and its purpose and inviting the public to make submissions to the commission. Such a notice was published in the Yukon News on March 31, April 7, 14, 21 and 28, 2010 and in the Whitehorse Star on April 1, 7, 14, 21 and 28, 2010.
- 6.2 Section 26(2) of the Act states that submissions from the public must be received within 30 days after its appointment. Pursuant to section 26(3) of the Act the

commission determined that submissions from the public would be received until April 30, 2010. This was communicated to officials in the Department of Justice responsible for the publication of the notice respecting the commission and the deadline of April 30, 2010 was set out in the notice.

- 6.3 The commission informed the parties by letter on May 5, 2010 that no submissions from the public had been received.

7. Timing of the activities of the commission – legislation and Letter of Understanding

- 7.1 Section 25(4) of the Act sets out the timing for the commission to fulfill its mandate as follows:

- (a) ask the Minister of Justice and the Territorial Court of Yukon to identify unresolved issues between the government and the judiciary within 30 days of the commission being appointed;
- (b) employ consensus processes to assist the government and the judiciary in resolving their differences within 60 days of the commission being appointed; and
- (c) issue its final recommendations within 90 days of the commission being appointed.

- 7.2 It appears that the 1998 Commission is the only commission that has met the deadlines set out in section 25(4). The 2004 Commission suggested in its report that the “90 day rule” of section 25(4) be amended.

- 7.3 The 2004 Commission also welcomed the initiative of the parties to enter the LOU that established an informal procedure for the appointment and conduct of a judicial compensation commission.

The LOU contains, in part, the following provisions:

- “7.1 By November 30 of the year preceding the JCC, the parties will identify an individual or individuals (representatives) who have authority to make decisions on their behalf.
- 7.2 By December 31 the representatives will generate a list of possible commissioners with a view to agreeing on a single commissioner for the JCC.
- 7.3 By January 31 of the JCC year, the parties will agree on a single commissioner, and Yukon will proceed with the appointment of this individual in accordance with the Act.
- 7.4 Between January and March, the representatives will meet in order to disclose information (reports and data) and identify the issues they believe will be relevant to the JCC process.
- 7.5 The representatives will identify any additional information that should be obtained and how it should be obtained. This may include a discussion about the use of outside consultants. All relevant information obtained by one representative must be disclosed to the others, whether it is intended to be relied upon or not.
- 7.6 By May 31 the parties will advise each other of their position and rationale on issues they intend to put to the JCC. Each party will endeavor to provide its written response as quickly as possible.

- 7.7 By August 31, the representatives will meet with a view to identifying common ground and exploring the possibility of joint submissions on agreed upon issues.
- 7.8 During September, the JCC will convene to informally address any outstanding issues among the parties.
- 7.9 If agreement on outstanding issues cannot be reached informally, then a formal hearing will be conducted as and when directed by the JCC.
- 7.10 By mutual agreement, the parties may change the dates set out in this section.”

PART 2

PROCESS LEADING TO CONVENING OF THE COMMISSION

1. Initial communications respecting adherence to the Letter of Understanding, identification of the parties' representatives, and unresolved issues

- 1.1 The commission, in a letter dated March 30, 2010, communicated to the parties its intention to respect the agreement of the parties set out in the LOU and to adhere to the timing of activities proposed in that document. The parties were asked to identify the individuals who would be serving as their representatives for the purpose of the commission. The parties were also asked to identify any unresolved issues respecting remuneration between the respective parties to the commission on or shortly after May 31, 2010.
- 1.2 Judge John Faulkner, the representative for the judges, communicated to the commission by a letter dated June 3, 2010 that "the following are the unresolved issues as of the date of this letter: (1) Annual salary for full time Judges; (2) Per diem rates for Deputy Judges. There also remains an issue between the Government and the Yukon Justice of the Peace Association respecting compensation for sitting on statutory holidays."
- 1.3 Dennis Cooley, Deputy Minister of Justice and representative for the government, responded on July 2, 2010 in a letter received by the commission on July 12, 2010, as follows:

"I can confirm that from the perspective of the Department of Justice the outstanding issues in respect of the Territorial Court Judges are:

Salary for the full time Territorial Court of Yukon judges, and
Per Diem remuneration for Deputy Judges of the Territorial Court of Yukon.

In respect of the Senior Presiding Justice of the Peace our view is that there is only one outstanding matter for the Commission and that is salary.

In respect of the Justices of the Peace belonging to the Yukon Justice of the Peace Association, our view is that the only outstanding issue is hourly remuneration."

2. Petition to Supreme Court of Yukon by Senior Presiding Justice of the Peace and its effect on activities of the commission

- 2.1 On July 12, 2010, the commission was served, by the Sheriff's Office, a Petition to the Supreme Court of Yukon, numbered 10-A0057, with the petitioner being Dean Richard Cameron, SPJP, and the respondent being Yukon (Commissioner in Executive Council). The date of filing of the petition was June 30, 2010. Its purpose

was to seek “judicial review in respect of Order-in-Council 2010/33 made by the Commissioner in Executive Council on February 25, 2010 appointing the 2010 Judicial Compensation Commission.”

2.2 In the July 2, 2010 letter of Dennis Cooley referenced above, Mr. Cooley stated the following:

“We also want to take this opportunity to advise you of the situation in which the Yukon government now finds itself vis-à-vis the 2007 and 2010 JCC processes and to seek your direction.

As you may be aware, the 2007 JCC process, along with the Part 3 of the Territorial Court Act and Order in Council 2008/170 are all the subject of litigation brought by the Senior Presiding Justice of the Peace. It is our understanding that counsel for the Senior Presiding Justice of the Peace intends to seek judicial review of the Order in Council establishing the 2010 JCC and that she will seek to have the two matters proceed together.

Given the situation, the Yukon Government believes that it may not be prudent to proceed with the 2010 JCC until the situation is dealt with by the Court. We had proposed proceeding with the 2010 JCC in respect of the Territorial Court Judges alone but no agreement was forthcoming.”

2.3 On July 20, 2010 the commission sent a letter to the parties that contained the above quotation from Mr. Cooley’s letter of July 2, 2010 and then provided the following:

“It is my view that the initiation of a legal process does not override the obligations imposed by the *Territorial Court Act* with respect to the ongoing conduct of the 2010 Judicial Compensation Commission. I am of the opinion that the 2010 JCC can continue its consideration of issues pertaining to Territorial Court Judges, Justices of the Peace and the Senior Presiding Justice of the Peace on either an individual or collective basis.

I have received the required information on unresolved issues from all parties to the 2010 JCC, excepting the Senior Presiding Justice of the Peace, and am prepared to move on to the next step in the process with those parties who have responded. With respect to the Senior Presiding Justice of the Peace, I cannot take any further action until such time as I have received from him a statement of the unresolved issues concerning his position.

Pursuant to the requirements of the *Territorial Court Act* and the supporting letter of understanding, signed in January 2005 between the parties to the process, the next step in the JCC process is set out in subclause 7.8 of the letter of understanding. It provides that ‘During September, the JCC will convene to informally address any outstanding issues among the parties.’

I have set aside the dates of September 13, 14 and 15 to informally address the outstanding issues among the parties. I seek your input as to which of those dates will be suitable for the JCC to convene.”

2.4 The commission was subsequently informed, by letter dated July 28, 2010, from Kimberly M. Eldred, representative for Dean Cameron, SPJP, that “We are of the view that there is no value in the 2010 Judicial Compensation Commission proceeding where it may subsequently be found to be unconstitutional” and “In the event that you convene the 2010 Judicial Compensation Commission in September, be advised that Justice of the Peace Cameron will raise a preliminary objection to

the jurisdiction of the Commission on the grounds set out in the petition filed June 30, 2010.” Ms. Eldred also informed the commission that Mr. Cameron’s constitutional challenge would be heard before the Supreme Court of Yukon during the week of October 18, 2010. Ms. Eldred indicated that, if the commission convened in September, she would be able to participate only on September 13.

- 2.5 The commission was informed by letter of August 20, 2010 from Dennis Cooley, copied to the other parties, that counsel for the government, Gary Bainbridge, would be available to attend a meeting of the commission by teleconference on September 14, 2010. In addition, Mr. Cooley stated, “We would anticipate that, at that meeting, Mr. Bainbridge will be raising the matter of the scheduling of further proceedings of the 2010 Judicial Compensation Commission, given present litigation.”
- 2.6 On August 27, 2010, the commission informed the parties by letter that the commission would not be meeting in September because it had been unable to find dates on which counsel for the government and for SPJP were mutually available. The commission noted that the proceedings before the Supreme Court of Yukon respecting the petition filed by the SPJP had been scheduled for October 18 to October 20, 2010. The commission reiterated its position that it could continue its consideration of issues pertaining to any of the parties on either an individual or collective basis but acknowledged “that the court dates to hear the petition of the Senior Presiding Justice of the Peace are in the relatively near future and that the JCC process may be assisted by having those proceedings concluded before beginning our discussion of unresolved issues.”
- 2.7 The commission was inactive from August 27, 2010 to April 19, 2011 awaiting the court ruling.
- 2.8 Madam Justice V.A. Schuler filed judgments on April 19, 2011 in which she dismissed actions S.C. No. 09-A0143 and S.C. No. 10-A0057. The petitioner and the respondent in each action were, respectively, Dean Richard Cameron, SPJP, and Yukon (Commissioner in Executive Council).

3. Activities of commission following judgment of Madam Justice Schuler

- 3.1 The commission, by letter of April 24, 2011, informed the parties that, given the time that had elapsed since its last communication on August 27, 2010, it was necessary to revisit a number of issues. Each of the parties was requested to:
 - (a) inform the commission whether it would have representatives and, if so, to provide the commission with the names of those representatives by May 31, 2011;
 - (b) inform the commission whether it intended to provide a response or a further response on unresolved issues and to indicate that intention by May 31, 2011;
 - (c) provide any response or further response on unresolved issues by July 31, 2011;

- (d) inform the commission as to whether it wished the commission to convene on September 12, 13 and 14, 2011 to informally address the outstanding issues among the parties (as per s. 7.8 of the LOU); and
- (e) inform the commission by May 31, 2011 if it desired the commission to meet at an earlier date than September 12, 2011.

- 3.2 Judge John Faulkner, by letter of May 10, 2011, confirmed that he was the representative of the judges and the Justice of the Peace Association. He also stated that Joseph J. Arvey, Q.C. was the legal counsel for the judges. Further, he stated "I further confirm that the outstanding issues for the Territorial Court Judges are: (1) Annual salary for full-time judges; and (2) Per diem rates for deputy judges. With respect to the JP Association, the sole issue is with respect to compensation for sitting on statutory holidays." He closed by requesting that the commission hold a "hearing" in the period between June 12 and 24, 2011.
- 3.3 Dennis Cooley, by letter of May 18, 2011, confirmed that he was the representative of the government and that Gary Bainbridge was the legal counsel for the government. Further, he stated "I am confirming that the outstanding issues for the Government of Yukon for the judges are: (1) Annual salary for full time judges; and (2) Per Diem rates for deputy judges. With respect to the Senior Presiding Justice of the Peace (SPJP) the one outstanding issue is: (1) Annual salary for the full time SPJP. With respect to the JP association the sole issue is with respect to compensation for sitting on statutory holidays." He closed by requesting that the commission hold a "hearing" in the period between June 12 and 24, 2011.
- 3.4 Kevin Drolet of Drolet/Eldred Barristers, in a letter of May 27, 2011, informed the commission "I wish to confirm that we have been retained by Senior Presiding Justice of the Peace Dean Cameron as his counsel in relation to the 2010 Judicial Compensation Commission. Ms. Kimberly Eldred will be representing SPJP Cameron at the hearing of this matter and though she is unavailable in June, I can attend as her agent by teleconference upon any of the proposed dates for the preliminary meeting as the Commission directs." He further stated, "We anticipate that from our client's perspective the principal issues will include salary and pension start date, though there may be issues related to additional benefits as well. We will be in a position to confirm these issues by the date fixed by the Commission for our preliminary meeting."

In a subsequent e-mail of June 9, 2011, Mr. Drolet stated that Ms. Eldred could not be available during the dates of September 12, 13 and 14, 2011 as had been proposed for convening the commission in the commission's letter of April 24, 2011. He then stated that Ms. Eldred could be available at any time from September 29 through October 2 inclusive.

- 3.5 The communications from all three of the representatives of the parties used the term "hearing". A judicial compensation commission, pursuant to s. 7.9 of the LOU, only holds a hearing when agreement cannot be reached on outstanding issues

under the process set out in the LOU. The meeting of the commission that was being discussed, with reference to the judges, the Justice of the Peace Association and the government, was to take place pursuant to s. 7.8 of the LOU for the purpose of informally addressing any outstanding issues among the parties. The meeting of the commission that was being discussed, with reference to the SPJP, was to make arrangements for a hearing to take place.

- 3.6 E-mail communications over succeeding days led to arrangements being made for the commission to convene with the representative of the judges and the Justice of the Peace Association and the representative of the government at 9:00 a.m. on Monday, June 20, 2011 and to convene with representatives of the SPJP and the government at 10:30 a.m. on that same date.

[Note: The legal counsel for the Government of Yukon and the Senior Presiding Justice of the Peace were the most common contacts for the commission during its proceedings and appeared before the commission when it convened on June 20, 2011 and at its hearing on September 22 and 23, 2011. The commission, although not having received any communication directly from the SPJP, was informed as per the letter of May 27, 2011 from Kevin Drolet that Drolet/Eldred Barristers had been retained by SPJP in relation to activities of the commission and that Ms. Eldred would be representing the SPJP at the hearing. The legal counsel for the government and the SPJP, although not identified to the commission pursuant to the LOU as being the representatives for their clients, were treated as such by the commission during its proceedings and each have been given the title “representative” throughout much of this report.]

PART 3

CONVENING OF COMMISSION WITH RESPECT TO JUDGES OF THE TERRITORIAL COURT AND JUSTICE OF THE PEACE ASSOCIATION

1. Commission receives (1) joint submissions from (a) Judges of the Territorial Court and Government of Yukon, and (b) Justice of the Peace Association and Government of Yukon; and (2) individual submissions from (a) Judges of the Territorial Court, and (b) Government of Yukon

1.1 On June 16, 2011, an e-mail communication was received by the commission from Judge John Faulkner, representative of the judges and the Justice of the Peace Association, stating "I am pleased to advise you that the Territorial Court Judges and the Yukon fee for service Justices of the Peace have reached joint submissions with respect to the issues outstanding as between themselves and the Yukon Government." Judge Faulkner attached to his e-mail the joint submissions and the submission of the judges in support of the joint submissions. He stated that this final document had been provided to the government and its representative, Gary Bainbridge, on June 15, 2011. He further stated that he would make an oral submission to the commission in support of these documents when the commission convened on June 20, 2011.

1.2 On June 17, 2011, an e-mail communication was received by the commission from Gary Bainbridge, representative for the government, stating, "We enclose herewith, for filing, an electronic copy of the Yukon Government's Written Submissions in relation to Territorial Court Judges, and the hourly-rated Justices of the Peace. In addition, we are attaching to this email the Table of Contents to the Supporting Materials that are referenced in the Written Submissions, as well as Tabs 1 to 4 of the same. So as to ensure no difficulties with transmission, we will send the balance of the Tabs in three subsequent emails with 4 attachments each. Ultimately, we will file hard copies of these documents at the meeting."

The commission subsequently received all e-mails and attachments referred to by Mr. Bainbridge.

2. Convening of the commission on June 20, 2011 to address the remuneration of Judges of the Territorial Court and the Justices of the Peace

2.1 The commission convened at 9:00 a.m. with Judge John Faulkner representing the judges and the Justice of the Peace Association and with Gary Bainbridge

representing the government.

- 2.2 Judge John Faulkner presented the commission with the following documents:
- (a) *Joint Submission of the Territorial Court Judiciary and the Yukon Government to the 2010 Judicial Compensation Commission;*
 - (b) *Joint Submission of the Yukon Justices of the Peace Association and the Yukon Government to the 2010 Judicial Compensation Commission;* and
 - (c) *Submission of the Judges of the Territorial Court of Yukon to the 2010 Judicial Compensation Commission.*

- 2.3 Gary Bainbridge presented the commission with the following documents:
- (a) *Submission of the Government of Yukon in relation to the Territorial Court Judges and Hourly-Rated Justices of the Peace;* and
 - (b) *Supporting Materials of the Government of Yukon in relation to the Territorial Court Judges and Hourly-Rated Justices of the Peace.*

- 2.4 The agreement respecting the remuneration of judges set out in the *Joint Submission of the Territorial Court Judiciary and the Yukon Government to the 2010 Judicial Compensation Commission* was as follows:

“1. Salary for Territorial Court Judges

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

April 1, 2010:	\$235,746.40	[3% increase]
April 1, 2011:	\$242,818.92	[3% increase]
April 1, 2012:	\$250,103.36	[3% increase]

2. Deputy Judges' Salaries

The parties are in agreement that the Commission should recommend that the per diem sitting rate for Deputy Judges (currently \$915) be increased annually by the same percentage increases applicable to Territorial Court Judges per #1 above, and therefore the per diem sitting rates over the next three years will be as follows:

April 1, 2010:	\$943.45	[3% increase]
April 1, 2011:	\$971.75	[3% increase]
April 1, 2012:	\$1,000.91	[3% increase]

3. All other benefits

The parties agree that all other terms, benefits, allowances, stipends, etc. in effect for members of the Yukon Territorial Court shall remain unchanged.”

- 2.5 The agreement respecting the remuneration of justices of the peace set out in the *Joint Submission of the Yukon Justices of the Peace Association and the Yukon Government to the 2010 Judicial Compensation Commission* was as follows:

“1. Holiday pay for Hourly-rated Justice of the Peace

The parties are in agreement that the Commission should recommend that effective April 1, 2010, hourly rated Justices of the Peace receive time and one half pay for all hours worked on designated paid holidays (as available to Government of Yukon employees), such that their hourly rate for hours worked on those holidays would be as follows:

JP1: \$45.00 per hour

JP2: \$52.50 per hour

JP3: \$82.50 per hour

2. All other benefits

The parties agree that all other terms, benefits, allowances, stipends, etc. in effect for hourly rated Justices of the Peace in Yukon shall remain unchanged.”

2.6 Gary Bainbridge, representative of the government, and Judge John Faulkner, representative of the judges and representative of the Justice of the Peace Association, then made oral submissions to the commission. Mr. Bainbridge and Judge Faulkner, in their oral submissions, explained and expanded on how their parties' submissions to the commission provided the parties' independent rationale for supporting the recommendations found in the joint submissions.

2.7 The commission took the following notes when Gary Bainbridge made an oral presentation to the commission.

Gary Bainbridge referenced the “touchstones” as being (1) the constitutional nature of the judicial compensation commission in that Supreme Court rulings require its presence, (2) the legislation (*Territorial Court Act*) that directs the process for review and determination of judicial remuneration, and (3) the joint submissions that the commission is required to fully assess and not just accede to on the basis that they are joint submissions.

Mr. Bainbridge stated that it is essential that the process not be seen as labour negotiations and that there is to be no “dealing” done as that could threaten the independence of the judiciary. Mr. Bainbridge said that the result of the joint submission is to place Judges of the Territorial Court at the top or very near the top of judicial remuneration in comparator jurisdictions. He said that the work of the judges in a northern region has been “historically recognized” as justifying a higher rate of remuneration.

Mr. Bainbridge raised the issue of the forthcoming report of the Alberta Judicial Compensation Commission and the possibility that it would raise the bar when considering judicial remuneration. His conclusion is that there is a need to take action that would ensure judicial remuneration in Yukon does not fall too far behind and require significant corrective action of a future commission.

Mr. Bainbridge stated that the expected rate of inflation should lead to the

recommended salaries in the submission (i.e., 3% increase each year) to lead to a “real” increase of 1% per year. Mr. Bainbridge stated that the approach being taken in British Columbia of no increase over three years is not appropriate in Yukon when considering the differences between the economic circumstances in these two jurisdictions.

- 2.8 The commission took the following notes when Judge John Faulkner made an oral presentation to the commission.

Judge John Faulkner stated that he agreed that the joint submission was a result of following the process set out in the Letter of Understanding, that there was no bargaining nor horse trading, and that each party has their own reasons for supporting the end result.

Judge Faulkner agreed that remuneration of Judges of the Territorial Court should be at or near the top of the comparator list. He said that he recognized that there is an ebb and flow to establishing remuneration in comparator jurisdictions. He said that this results primarily from the differences in timing of the appointment and of the submission of reports of compensation commissions in other jurisdictions. Judge Faulkner agreed that economic factors are not at play in Yukon in the same fashion as seen in British Columbia.

Judge Faulkner said that he feels the joint submission meets the tests of the *PEI Reference* with respect to maintaining independence of the judiciary.

Turning to the joint submission pertaining to the Yukon Justice of the Peace Association and the proposed increase in remuneration for work on statutory holidays, he stated that this would not lead to a material change in the amounts paid by the Government of Yukon to justices of the peace.

PART 4

PROCESS LEADING TO COMMISSION HEARING

1. Convening of the commission on June 20, 2011 to determine the timing of a hearing of the commission on the remuneration of the Senior Presiding Justice of the Peace

- 1.1 The commission convened at 10:30 a.m. on Monday, June 20, 2011 with Gary Bainbridge representing the government and Kevin Drolet representing, in place of Kimberly Eldred, the SPJP. Mr. Drolet was present by way of teleconference.
- 1.2 It was agreed that the purpose of the meeting was to establish timing for a hearing of the commission to inquire into the remuneration of the SPJP.
- 1.3 Mr. Drolet stated that Kimberly Eldred, the representative for the SPJP, planned to attend the commission hearing in person rather than by teleconference. He stated that Ms. Eldred expected the hearing to take two days and that there would be witnesses. Mr. Drolet proposed that the commission convene a meeting of the parties near the end of August to discuss the timing and format of the hearing. He further proposed that the hearing be scheduled near the end of September (as was first mentioned in his e-mail of June 9, 2011). It proved difficult for the parties to find mutually acceptable dates near the end of September. The parties then agreed that dates in the period of August 15 to 31, 2011 would have to be considered. It was further agreed that the goal would be (1) to hold a teleconference meeting to discuss the timing and format of the hearing on August 15, 2011 with Gary Bainbridge and Kimberly Eldred participating, (2) to provide written submissions to the commission on or shortly after August 15, and (3) to aim for August 18 and 19 as hearing dates. The conversation concluded with agreement that Mr. Drolet would consult with Ms. Eldred and that he would then submit proposed timing to the commission and Gary Bainbridge.

2. Teleconference meeting on August 17, 2011 with representatives of the Government of Yukon and the Senior Presiding Justice of the Peace

- 2.1 An agreement was reached following June 20, 2011 between Mr. Drolet, on behalf of Kimberly Eldred, and Mr. Bainbridge that the teleconference meeting would take place at 9:30 a.m. on Monday, August 15, 2011 and that the hearing respecting the remuneration of the SPJP would be scheduled for August 22 and 23.
- 2.2 The teleconference meeting was rescheduled, on request of Kimberly Eldred, to take place on Wednesday, August 17, 2011.

- 2.3 Ms. Eldred explained, in the teleconference meeting of August 17, 2011, that circumstances had arisen that would keep her from being able to participate in a hearing of the commission in August 2011. Mr. Bainbridge indicated that adjournment to a later date was acceptable to the government and informed the commission that the parties had agreed that the hearing should begin on the afternoon of September 22 and be completed on September 23.
- 2.4 Mr. Bainbridge and Ms. Eldred agreed, on inquiry from the commission, that the commission should make best efforts to have the hearing transcribed, that the parties should make best efforts to complete, exchange and provide their submissions to the commission on or before September 16, 2011 and that the commission should give public notice of the hearing.

3. Exchange of submissions between Government of Yukon and Senior Presiding Justice of the Peace and presentation of submissions to commission prior to hearing of commission on September 22, 2011

- 3.1 Kevin Drolet transmitted by e-mail on September 13, 2011 a letter to the commission from Kimberly Eldred, representative of the SPJP, respecting the filing of submissions with the commission. Mr. Drolet's e-mail was copied to Gary Bainbridge, representative of the government. The letter from Ms. Eldred was dated September 13, 2011 and read as follows:

"Unfortunately, the parties have not been able to reach agreement regarding the filing of submissions for consideration by the Commission. The Senior Presiding Justice of the Peace (SPJP) takes the position that the Government should file its Submissions and provide a copy to him, allowing a brief period for him to consider them and respond. This flows naturally from the principles expressed (in) the jurisprudence requiring that the Government periodically justify judicial compensation before an independent, effective and objective commission. The burden is on the Government and the judiciary should have the right of reply. May we have your direction?"

Mr. Bainbridge advises that the Commission hearing with respect to compensation for the Territorial Court Judges (TCJ) was held on June 20, 2011. May we have copies of the Submissions of the Government and TCJ regarding that aspect of the commission process? The SPJP has been provided copies in the past but appears to have been overlooked on this occasion."

- 3.2 The commission asked Gary Bainbridge by e-mail on September 13, 2011 if he would be providing the commission with the government position on the issue raised by Kimberly Eldred. Mr. Bainbridge responded by e-mail on the same date that he was seeking instruction on the matter.
- 3.3 The commission transmitted to Kevin Drolet and copied to Gary Bainbridge and Judge John Faulkner an e-mail on September 13, 2011 stating the following:

"In your e-mail of today's date, it was stated in the attached letter from Kimberly Eldred that Ms. Eldred, representative of the Senior Presiding Justice of the Peace, wished to be provided with copies of the submissions that the Government of Yukon and of the Territorial Court Judges presented to the Judicial Compensation Commission on June 20, 2011.

Please find attached the following:

1. Submission of the Government of Yukon in relation to the Territorial Court Judges and Hourly-Rated Justices of the Peace;
2. Submission of the Territorial Court of Yukon to the 2010 Judicial Compensation Commission;
3. Joint Submission of the Territorial Court Judiciary and the Yukon Government to the 2010 Judicial Compensation Commission; and
4. Joint Submission of the Yukon Justices of the Peace Association and the Yukon Government to the 2010 Judicial Compensation Commission.

Further, attached is the Table of Contents of a document received from the representative of the Government of Yukon entitled "Supporting Materials of the Government of Yukon in relation to the Territorial Court Judges and Hourly-Rated Justices of the Peace". Please let me know if you wish to receive any or all of those supporting materials and I will forward them to you."

- 3.4 Gary Bainbridge transmitted by e-mail on September 14, 2011 a letter of that same date to the commission. Mr. Bainbridge's e-mail was copied to Kevin Drolet. It read as follows:

"This is further to Ms. Eldred's correspondence to your office of September 13, 2011, as well as your e-mail to the writer of the same date.

During our conference call with the Commissioner on August 17, 2011, you will recall that it was agreed that the parties would discuss between themselves when the submissions would be exchanged and filed with the Commission.

We heard nothing until the afternoon of September 12th, when Mr. Drolet contacted the writer. Mr. Drolet did not propose staggering the exchange of submissions. Instead, he asked us what the usual practice was with the JCC respecting the exchange and filing of submissions. We explained that the past practice of the JCC's has involved the parties exchanging submissions simultaneously, and filing them concurrently with the JCC. This is almost certainly due to the fact that JCCs are not intended to be, nor are they set up to be, adversarial proceedings, but in fact are administrative and fact-finding in nature, a point apparently confirmed in section 14 of the Act.

As such, and in response to Ms. Eldred's request, we do not see a reason why there should be a departure from the practice that has been acceptable to several previous Commissions, and that the same process should apply with this JCC.

With respect to the issue of providing copies of the submissions relating to the Judges, we see that you have now provided the same, so submissions by our office will not be necessary."

- 3.5 The commission communicated its decision to Kimberly Eldred and Gary Bainbridge by letter dated September 14, 2011. The letter was transmitted as an attachment to an e-mail of that same date addressed to Kevin Drolet and Mr. Bainbridge. The content of the letter from the commission to the parties is as follows:

"This letter is in response to your letters to the Judicial Compensation Commission (JCC) of September 13, 2011 and September 14, 2011 respecting the manner in which submissions to the JCC should be exchanged between the parties and presented to the JCC.

Ms. Eldred, in your letter, you state "The Senior Presiding Justice of the Peace (SPJP) takes the position that the Government should file its Submissions and provide a copy to him, allowing a brief period for him to consider and respond. This flows naturally from the principles expressed (in) the

jurisprudence requiring that the Government periodically justify judicial compensation before an independent, effective and objective commission. The burden is on the Government and the judiciary should have the right of reply.”

Mr. Bainbridge, in your letter, you provide the information that Kevin Drolet had contacted you on September 12, 2011 on behalf of Ms. Eldred and state “Mr. Drolet did not propose staggering the exchange of submissions. Instead, he asked us what the usual practice was with the JCC respecting the exchange and filing of submissions. We explained that the past practice of the JCC’s has involved the parties exchanging submissions simultaneously, and filing them concurrently with the JCC.” You concluded, “As such, and in response to Ms. Eldred’s request, we do not see a reason why there should be a departure from the practice that has been acceptable to several previous Commissions, and that the same process should apply with this JCC.”

My reading of the *Territorial Court Act*, the Letter of Understanding between the parties and the jurisprudence lead to the conclusion that no one party should be taking the lead in putting forward a submission and then having other parties respond. That could lead to the perception that the process is one of negotiation rather than full meaningful engagement within the JCC.

I am not fully aware of the manner in which submissions have been exchanged and filed with previous JCCs but I have no reason to dispute Mr. Bainbridge’s explanation of past practice. I would add that it is obvious that the parties have, following the exchange of submissions in the past, found occasion to engage in a consultative fashion and that has, on occasion, sometimes led to a joint submission being developed for presentation to a JCC. Madam Justice V.C. Schuler, in her decision of April 19, 2011, found this acceptable stating on page 42 of that decision, “The commission process provided the parties with a framework within which to explore whether they could discover some common ground without the pressure and ‘give and take’ inherent in labour relations type negotiations and subject always to the right of either side to cease discussions and direct their submissions to the JCC.”

In light of current circumstances and constraints respecting the timing of the hearings of the JCC on September 22 and 23, 2011, I would ask that each party complete its submission addressing the factors set out in section 19 of the *Territorial Court Act* and any other factors considered relevant and submit them to the JCC. If it would be of assistance in assuring simultaneous transmission to the parties of their submissions, I offer to be the distributor of those submissions at such time as I have both in hand.”

- 3.6 Following receipt of the letter from the commission, Gary Bainbridge replied by e-mail on September 15, 2011 stating, “please be advised that the Government’s submissions are complete, and we await further direction from the Commission as to the date for exchange and filing.”
- 3.7 The commission responded to Gary Bainbridge by e-mail, copied to Kevin Drolet, on September 15, 2011 stating “Please send the submission of the Government of Yukon to the Commission by e-mail today or, if that is not possible, tomorrow. The Commission will hold the submission until it has received the submission for the Senior Presiding Justice of the Peace. At such point as the Commission has received both submissions, it will do a simultaneous transmission of them to each of the parties. The hearings will begin on September 22 with the tabling by each party of a hard copy of its submission.”
- 3.8 Gary Bainbridge, on September 16, 2011, transmitted to the commission by e-mail the submission of the government respecting the remuneration of the SPJP.

- 3.9 Kevin Drolet, on September 21, 2011, transmitted to the commission by e-mail the submission of the SPJP respecting the remuneration of the SPJP.
- 3.10 Following receipt of the submission from the SPJP the commission, on September 21, 2011, transmitted the submission of each party to the other. These submissions, in response to a request from Judge John Faulkner, were subsequently transmitted to Judge Faulkner in his role as the representative of the judges and the Justice of the Peace Association.

PART 5

**COMMISSION HEARING
FOR
SENIOR PRESIDING JUSTICE OF THE PEACE**

1. Commission hearing on September 22, 2011

- 1.1 The commission hearing opened at 1:00 p.m. on Thursday, September 22, 2011 with Gary Bainbridge representing the government and Kevin Drolet representing the SPJP.

The commission informed the representatives that it had made best efforts to have the hearing transcribed but that had not proven possible and that, in place of transcription, the hearing would be recorded.

The commission further informed the representatives that notice of the hearing had been provided to the public in the Yukon News and the Whitehorse Star on September 16, 2011.

No person other than the representatives of the parties attended the hearing on either September 22 or 23.

- 1.2 Gary Bainbridge presented the commission with the following documents:
- (a) *Submission of the Government of Yukon in relation to the Senior Presiding Justice of the Peace;*
 - (b) *Supporting Materials of the Government of Yukon in relation to the Senior Presiding Justice of the Peace, Volume 1 of 2; and*
 - (c) *Supporting Materials of the Government of Yukon in relation to the Senior Presiding Justice of the Peace, Volume 2 of 2.*

Mr. Bainbridge drew the attention of the commission to pages 29 to 43 of the government's submission. He stated that the issues addressed there, being the SPJP's anticipated salary proposal and the SPJP's pension proposal, had not been brought forward in the submission of the Senior Presiding Justice of the Peace and, therefore, should not be taken into consideration by the commission.

- 1.3 Kevin Drolet presented the commission with the following document:
- (a) *Submissions of the Senior Presiding Justice of the Peace, Territorial Court of Yukon.*

Mr. Drolet advised that he was supplying two additional documents to those electronically provided to the commission and to Mr. Bainbridge on September 21, 2011. These two documents, included as appendices to the submission of the

SPJP, were the affidavit of the SPJP to the Supreme Court of Yukon dated April 21, 2010 and the decision filed on April 19, 2011 by Madam Justice V.A. Schuler of the Supreme Court of Yukon (citation: *Cameron v. Yukon*, 2011 YKSC 35).

- 1.4 Gary Bainbridge and Kevin Drolet then made oral submissions to the commission and responded to questions from the commission. The commission requested that an actuarial valuation of the Territorial Court Judiciary Pension Plan be supplied to the commission and Mr. Bainbridge committed to providing that document.
- 1.5 The only element of the remuneration of the SPJP that was at issue in the submissions of the government and of the SPJP was that of salary.
- 1.6 The submission of the government, at page 27, stated:
“The Government proposes that the SPJP receive salary increases of 2% each year for the next 3 years, so that the existing salary of \$116,169 will be increased as follows:
Effective April 1, 2010: \$118,492
Effective April 1, 2011: \$120,862
Effective April 1, 2012: \$123,280.”
- 1.7 The submission of the SPJP, at page 15, stated:
“It is respectfully submitted that fixing the appropriate level of compensation for the SPJP requires that the disparity perpetuated by the Government’s mischaracterization of the effect of section 17 of the *Territorial Court Act* must be remedied. The salary of the SPJP must be increased to rectify the decline in the relative financial position of the SPJP in relation to both Territorial Court Judges and Alberta’s justices of the peace.”

2. Reconvening of the commission hearing on September 23, 2011

- 2.1 The commission hearing reconvened at 8:30 a.m. on Friday, September 23, 2011 with Gary Bainbridge representing the government and Kevin Drolet representing the SPJP.
- 2.2 The commission invited the parties to consider making a joint submission in which the SPJP would receive salary increases of 3% each year for the three fiscal years of 2010-11, 2011-12 and 2012-13.
- 2.3 Gary Bainbridge stated that the government had gone through a lengthy process that led to the proposal of a salary increase of 2% per annum and that he had no authority to go beyond that. He said that he would be willing to go back to his client to see if there was a possibility of going forward with a joint submission but that he would not do so until the SPJP had indicated that he would participate in a joint submission.

- 2.4 Kevin Drolet stated that he would need to seek instruction from his client and requested a brief adjournment to do so. On his return and the reconvening of the hearing, Mr. Drolet informed the commission that the SPJP would be willing to participate in a joint submission to the commission based on the terms suggested by the commission.
- 2.5 Gary Bainbridge stated that he would consult with his client, the Government of Yukon, to receive instruction on a joint submission and that, in due course, he would inform the commission and Kevin Drolet of the outcome of that consultation.
- 2.6 The hearing of the commission was then adjourned.

3. Receipt of response of the Government of Yukon to possibility of joint submission to the commission

- 3.1 Gary Bainbridge, representative of the government, transmitted by e-mail on September 28, 2011 a letter of that date to the commission. The e-mail was copied to Kevin Drolet, representative of the SPJP. The letter read as follows:

“This is further to the conclusion of the JCC hearings on September 23, 2011. There were two issues arising.

First, as requested, we are enclosing herewith the Actuarial Valuation of the Territorial Court Judiciary Pension Plan, as at March 31, 2011, together with the proposed assumptions.

Second, you raised the issue at the conclusion of the hearing as to whether the parties could agree to a Joint Submission to the 2010 JCC for three successive 3% annual increases to the SPJP’s salary, for 2010, 2011, and 2012. Having fully considered this matter, our client is unable to agree to such a Joint Submission, for the reasons set out in our Written Submissions. More particularly, the SPJP is already the highest-paid JP in the comparator jurisdictions, and with the Government’s proposal of 2%-2%-2% would remain in that position; an increase of 3%-3%-3% would further widen the gap between the SPJP and JPs in the next highest jurisdiction. Moreover, the generous judicial pension plan of which SPJP Cameron is a part further distances his remuneration package from those of his brethren in the comparator jurisdictions.

Based upon the above comments, the Government relies upon its Written and oral submissions previously made to the Commission, and looks forward to your report in due course.”

PART 6

OPINIONS OF COMMISSION RESPECTING PROCESS

1. **Opinion respecting process for Judges of the Territorial Court**

The commission is of the opinion that the *Joint Submission of the Territorial Court Judiciary and the Yukon Government to the 2010 Judicial Compensation Commission* was the result of following the process set out in the *Territorial Court Act* and the Letter of Understanding of January 2005, that there was no bargaining evident, and that each party had their own reasons for supporting the end result. The commission is of the further opinion that the joint submission and the procedure that led to it meet the tests of the various court decisions including the *PEI Reference* and *Cameron v. Yukon*.

2. **Opinion respecting process for Senior Presiding Justice of the Peace**

The commission is of the opinion that the process followed with respect to consideration of the remuneration of the Senior Presiding Justice of the Peace adheres to the direction found in the *Territorial Court Act* and the Letter of Understanding of January 2005 and meets the tests of the various court decisions, including the *PEI Reference* and *Cameron v. Yukon*.

3. **Opinion respecting process for justices of the peace**

The commission is of the opinion that the process followed in achieving the *Joint Submission of the Yukon Justices of the Peace Association and the Yukon Government to the 2010 Judicial Compensation Commission* meets the requirements of the *Territorial Court Act* and the Letter of Understanding of January 2005 and does not offend the rulings of the courts on matters pertaining to judicial compensation commissions.

PART 7

RECOMMENDATIONS OF COMMISSION

1. Remuneration of the Judges of the Territorial Court of Yukon

The commission recommends that the agreement set out in the joint submission of the Judges of the Territorial Court of Yukon and the Government of Yukon respecting remuneration of the Judges of the Territorial Court of Yukon be adopted as follows:

- (a) the annual salary for Judges of the Territorial Court of Yukon be increased by 3% per annum to
 - (i) \$235,746.40 as of April 1, 2010,
 - (ii) \$242,818.92 as of April 1, 2011, and
 - (iii) \$250,103.36 as of April 1, 2012;
- (b) the *per diem* sitting rate for Deputy Judges of the Territorial Court of Yukon be increased by 3% per annum to
 - (i) \$943.45 as of April 1, 2010,
 - (ii) \$971.75 as of April 1, 2011, and
 - (iii) \$1000.91 as of April 1, 2012;and
- (c) the other terms, benefits, allowances, stipends, etc. in effect for Judges and Deputy Judges of the Territorial Court of Yukon remain unchanged.

2. Remuneration of the Senior Presiding Justice of the Peace

The commission recommends, with respect to the remuneration of the Senior Presiding Justice of the Peace, that:

- (a) the annual salary for the Senior Presiding Justice of the Peace be increased by 3% per annum to
 - (i) \$119,654.07 as of April 1, 2010,
 - (ii) \$123,243.69 as of April 1, 2011, and
 - (iii) \$126,941.00 as of April 1, 2012;and
- (b) the other terms, benefits, allowances, stipends, etc. in effect for the Senior Presiding Justice of the Peace remain unchanged.

3. Remuneration of the Justices of the Peace

The commission recommends that the agreement set out in the joint submission of the Justice of the Peace Association and the Government of Yukon respecting remuneration of justices of the peace be adopted as follows:

- (a) effective April 1, 2010, justices of the peace receive time and one half pay for all hours worked on designated paid holidays, such that their hourly rate for hours worked on those holidays will be as follows:
 - (i) JP1: \$45.00 per hour
 - (ii) JP2: \$52.50 per hour
 - (iii) JP3: \$82.50 per hour;
- and
- (b) the other terms, benefits, allowances, stipends, etc. in effect for the justices of the peace remain unchanged.

PART 8

FACTORS ADDRESSED BY COMMISSION

1. Section 19 of the *Territorial Court Act*

1.1 Section 19 of the *Territorial Court Act* states:

“In fulfilling its mandate, the commission shall, in addition to considering any matter it considers relevant, address in its report submissions presented to it regarding

- (a) the current financial position of the government;
- (b) the need to provide reasonable compensation to judges;
- (c) the need to build a strong court by attracting qualified applicants;
- (d) the unique nature of the Yukon;
- (e) the compensation provided to judges in the Northwest Territories and British Columbia, Alberta and Saskatchewan;
- (f) the laws of the Yukon;
- (g) the cost of living in the Yukon including the growth or decline in real per capita income; and
- (h) any submissions by the public filed under section 26.”

1.2 Section 58 of the Act states “judicial remuneration for salaried justices shall be set by the commission in accordance with Part 3 of this Act modified to suit the case.” Section 19, therefore, must be interpreted in a fashion whereby the title “judges” is read to include the SPJP in paragraph (c) and to include a reference in paragraph (e) to positions in other jurisdictions similar to that of the SPJP.

1.3 The commission has addressed below the submissions presented to it regarding the factors enumerated in section 19 of the Act. Consideration is given to other matters the commission considers relevant in Part 9 of this report.

2. Factors set out in section 19 to be addressed by commission

2.1 The current financial position of the government

The current financial position of the government did not receive a great deal of attention in any of the written or oral submissions.

The only statement of the financial position of the Government of Yukon was the information provided in the submissions of the government that the Main Estimates for the 2011-12 fiscal year forecast a \$38.4 million surplus and net financial resources of \$43.1 million.

The government drew attention to its dependence for financial resources on transfer payments from Canada, the difficulty it would face if those transfer payments were reduced, and the “limited tax bases in Yukon” that could be accessed to make up for reductions in transfer payments. The government concluded, from these circumstances, “maintaining sufficient reserves to deal with potential grant downswings is prudent fiscal management.”

The commission accepts the point being made by the government about the risks of its large reliance on federal funding for its operations and the consequent need to pay careful attention to the long term effects on its reserves that result from increasing the levels of remuneration of anyone on its payroll.

Turning to the submissions from the judges or the SPJP, neither directly addressed the current financial position of the government. Rather, each cited the Yukon Economic Outlook 2011 from the Department of Economic Development, Government of Yukon. The judges’ submission stated that “the Yukon economy has entered a boom period” and the submission of the SPJP summarized “The economic forecast for the Yukon is for growth in the gross domestic product, increasing population and employment, record high mining exploration expenditures, growing mineral production and improved retail sales.”

The apparent assumption being made is that a growing economy will have a positive effect on the financial position of the government. That may be. On the other hand, it could well lead, through increasing demands in such areas as health care, social services, education and infrastructure, to a challenging financial picture for government and hard decisions being faced when allocating its resources.

The judiciary is not immune to broadly based government actions that respond to the pressures of the Yukon economy or that are taken in an effort to maintain sufficient reserves in the government’s account. Those initiatives may well have an effect on anyone, including members of the judiciary, who receive their pay from the government’s coffers.

Any action taken by government in response to the pressures of the Yukon economy or any effort to maintain sufficient reserves to make up for potential downswings in transfer payments from the federal government cannot be focused upon the level of remuneration provided to the judges, the SPJP and the justices of the peace. Rather, government policy initiatives to deal with economic pressures or to build and maintain reserves would, in order to be effective, be broadly based and cover a wide range of expenditures made from the public purse. The judiciary is not immune from such policy initiatives but neither is it open to the government to single the judiciary out for special attention if and when action is taken.

The commission concludes, from its consideration of the submissions received, that the recommendations made by the commission can be accommodated within the current financial position of the government.

2.2 The need to provide reasonable compensation to judges and the SPJP

It is accepted by all parties that it is necessary to provide reasonable compensation to the Judges of the Territorial Court and the Senior Presiding Justice of the Peace.

There is little doubt that the judges and the SPJP receive “reasonable compensation” at the current time. The history leading to this includes:

- (a) the decision of the Supreme Court of Canada on the *PEI Reference*,
- (b) the passage of legislation (i.e., Part 3 of the *Territorial Court Act*) in response to the decision of the Supreme Court and the result that a judicial compensation commission is established in Yukon every three years,
- (c) the *Territorial Court Act* directing commissions, when crafting recommendations, to give consideration to the remuneration of the judiciary in the Northwest Territories, British Columbia, Alberta and Saskatchewan, and
- (d) the *Territorial Court Act* binding government to accept the recommendations of the commissions so long as those recommendations do not exceed the remuneration in all the comparator jurisdictions.

The result, as is shown in the government submission, is that the salaries of judges have increased by more than 68% from 1999 to 2009. During the same period the salary of the Senior Presiding Justice of the Peace increased by 87%. The Consumer Price Index for Whitehorse increased by 19.4% in that time frame. These increases in the salaries of the judges and the SPJP, although substantial in comparison to changes in the cost of living, have been necessary to bring the pay of the Yukon judiciary into the same range as that received by their compatriots in the comparator jurisdictions. The “catch up” phase, however, has now passed and it is no longer necessary to look to large jumps in pay to achieve a reasonable semblance of parity with the judiciary in the comparators. This will be dealt with in greater detail below.

It also needs to be mentioned that the pension plan and additional benefits made available to the judges and SPJP compare very favorably with those in place in other jurisdictions. The result is that there are no qualifications to be made about the total Yukon remuneration package, including salaries, allowances, pensions and benefits, when considering it in relation to the comparators.

Although the remuneration of the judiciary is not linked to remuneration in other sectors of the Yukon economy, the commission agrees with the government that it is helpful to survey some of those sectors when making an assessment of reasonable compensation. The government has stated in its submission that “the salaries of the Judges are considerably higher than the salaries of many other sectors of the workforce in the Yukon” and has provided figures to back that statement. The salary of the SPJP is not higher than some of the sectors set out by the government but still must be found to be within reason when comparisons are made.

The commission is aware that it has been suggested to some commissions that the remuneration of provincial or territorial court judges should be linked in some fashion to that of Superior Court Judges. That proposition has been sufficiently laid to rest by past judicial compensation commissions in their reports (see, for example, the report of the 2004 Yukon Judicial Compensation Commission) and by the Supreme Court of Canada (*Provincial Court Judges' Association of New Brunswick v. New Brunswick (Minister of Justice) et al* [2005] SCJ No. 47). Additionally, the commission has not found the information provided to it respecting the pay of the judiciary outside the comparator jurisdictions to be of sufficient significance to cause the commission to rely on that information in its considerations.

The commission concludes, from its consideration of the submissions received, that the recommendations made by the commission result in the continuing provision of reasonable compensation to judges and the SPJP.

2.3 The need to build a strong court by attracting qualified applicants

The commission notes that the requirement to give consideration to “the need to build a strong court by attracting qualified applicants” has been in place for all commissions from 1998 to the present. The commission further notes that the representatives for the parties did not raise, in their submissions, any questions about the amount of time required to build a strong court and at what point this factor might be more properly worded as “the need to retain a strong court”.

The central point to be addressed, of course, is whether the remuneration of the members of the Territorial Court is sufficient, on the departure of any present members, to attract qualified applicants to fill vacancies.

There was no information provided to the commission that would lead to the conclusion that the process for filling the two most recent vacancies on the Territorial Court in 2004 and 2008 was hindered in any way by the level of remuneration on offer. Whether this will hold true for the recruitment of a successor to the Senior Presiding Justice of the Peace is less certain as the incumbent is the only person who has ever held the position. The remuneration of the SPJP, however, is at a higher level than that of his colleagues in the comparator jurisdictions and, in the absence of experience showing otherwise, is held by the commission to be adequate to attract qualified applicants for that position.

The commission concludes, from its consideration of the submissions received, that the recommendations made by the commission will result in a level of judicial remuneration that assists in attracting qualified applicants to fill any future vacancies.

2.4 The unique nature of the Yukon

The commission has encountered some difficulty in addressing the factor “the unique nature of the Yukon”. Its inclusion in the Act leaves the impression that the

Yukon presents challenges that would not be encountered elsewhere and that recommendations respecting the remuneration of the judiciary should take such challenges into account.

The submissions of the Government of Yukon were the only ones to address this factor. Out of five points made in those submissions there is only one that could be perceived as a negative – “However, it is acknowledged that in a small community like Whitehorse, there is some social isolation for the judiciary.”

These things are, of course, a matter of individual perception but there is an argument to be made that the unique nature of the Yukon makes it a privilege, as opposed to a burden, to live and pursue a career here. The opportunities in reference to lifestyle, culture, recreation, education and easy access to the land are immense. Then there are the widely varied, interesting, energetic and talented citizens of the territory including the First Nations people who have a rich history and culture. The commission is not at liberty to do a tourism sales pitch but it does find the notion that Yukon demands sacrifices at a level that would justify additional financial recompense is at odds with reality.

The commission concludes, from its consideration of the submissions received, that the recommendations made by the commission take account of the unique nature of the Yukon.

2.5 The compensation provided to judges and the equivalent of the SPJP in the Northwest Territories and British Columbia, Alberta and Saskatchewan

(1) Judges of the Territorial Court

The submissions received from the judges and the government set out salary as being the only matter of substance with reference to the remuneration of the judges. It was agreed in the joint submission to leave as is the other components of remuneration, including pensions, allowances, stipends, and additional benefits. The parties seem to be in agreement that there is not a significant difference in the value of these components between Yukon and the comparator jurisdictions and the commission has no reason to question that agreement. The commission, therefore, has restricted its consideration of remuneration to the question of salary.

The table below sets out the salaries of judges in Yukon and the comparator jurisdictions for the fiscal years from 2009-10 to 2012-13 inclusive. The salaries for Yukon judges reflect those found in the joint submission of the judges and the government. The figures for Alberta reflect the decisions of the most recent Alberta Judicial Compensation Commission that were made known following the filing of the parties' submissions with the commission. The figures for British Columbia reflect the decision of the Government of British Columbia to reject the recommendation of the British Columbia Judicial Compensation Commission for an increase from \$231,138 per annum in 2011-12 to \$260,000 per annum in 2012-13.

	2009-10	2010-11	2011-12	2012-13
YUKON	\$228,880.00	\$235,746.40	\$242,818.92	\$250,103.36
NWT	\$221,255.00	\$227,254.80	\$233,254.00	TBD
ALBERTA	\$250,000.00	\$255,000.00	\$255,000.00 + Alberta CPI	2011-12 salary +Alberta CPI
SASKATCHEWAN	\$220,916.00 (\$231,961.80 when adding 5% northern all.)	\$229,753.00 (\$241,240.65 when adding 5% northern all.)	\$238,943.00 (\$250,890.15 when adding 5% northern all.)	TBD
B.C.	\$225,500.00	\$231,138.00	\$231,138.00	\$231,138.00

As can be seen, the salaries proposed in the joint submission and being recommended by the commission for Yukon judges will, assuming an annual CPI increase of 3% per year in Alberta, be about \$20,000 less than the salaries paid to Alberta judges during each of the 2010-11, 2011-12 and 2012-13 fiscal years. In comparison to Saskatchewan, the salaries of Yukon judges are higher than the base salary paid to the majority of judges in that province and slightly lower than those paid to judges in northern Saskatchewan who receive an additional allowance of 5% of the base salary. The pay of judges in British Columbia has been frozen with the result that it will fall progressively further behind that of their colleagues in Yukon, Alberta, Saskatchewan and the Northwest Territories.

As has been stated earlier in this report, Gary Bainbridge, during his oral presentations to the commission, raised the issue of the then forthcoming report of the Alberta Judicial Compensation Commission and the possibility that it would raise the bar when considering judicial remuneration. His conclusion was that there is a need to take action that would ensure judicial remuneration in Yukon does not fall too far behind and require significant corrective action of a future commission.

Mr. Bainbridge also said, during his oral presentations, that the approach being taken in British Columbia of no increase over three years is not appropriate in Yukon when considering the differences between the economic circumstances in these two jurisdictions.

Judge Faulkner, in his oral presentation to the commission, agreed that the actions taken in British Columbia would not be appropriate for Yukon. He further stated that the remuneration of Judges of the Territorial Court should be at or near the top of the comparator list.

The pay of judges in the Northwest Territories has received careful attention from past Yukon commissions. The 2001 Commission stated, at page 9 of its report that "achieving parity with the Northwest Territories judges is a fair and proper objective." It is noted at paragraph 84 of Madam Justice Schuler's decision, with reference to the 2007 Commission, that "From the evidence before me, it is clear that the main issue was parity with the Northwest Territories". As is shown in the above table of

salaries, parity is not an issue at this time from the Yukon perspective.

In the final analysis, the commission finds that, while the salaries of Yukon judges will lag a bit behind those paid to Alberta judges, they are appropriately situated in reference to the other comparator jurisdictions.

The *per diem* sitting rates for deputy judges are based on the pay of fulltime judges so there is no need for the commission to delve further into their remuneration.

The commission concludes, from its consideration of the submissions received, that the recommendations made by the commission provide Yukon judges with a just salary in comparison to the salaries paid to judges in the Northwest Territories and British Columbia, Alberta and Saskatchewan.

(2) Senior Presiding Justice of the Peace

The submissions received from the SPJP and the government indicate that the salary of the SPJP is the only matter of substance respecting the remuneration of the SPJP. There was no suggestion made in either submission that the other components of remuneration, including pensions, allowances, stipends, and additional benefits should be altered in any way.

The table below sets out the present salary of the SPJP for 2009-10 and the salaries for the subsequent three fiscal years being recommended by the commission. It also includes salaries for justices of the peace in Alberta, Saskatchewan and British Columbia as provided by the government in its submission and Tab 8 of its supporting materials.

	2009-10	2010-11	2011-12	2012-13
YUKON	\$116,169.00	\$119,654.07	\$123,243.69	\$126,941.00
NWT	No presiding JPs	No presiding JPs	No presiding JPs	No presiding JPs
B.C.	\$97,100.00	\$99,525.00	\$99,525.00	\$99,525.00
ALBERTA	\$110,000.00 (under review by compensation commission)	\$110,000.00 (under review by compensation commission)	\$110,000.00 (under review by compensation commission)	
SASKATCHEWAN	\$95,204.00	\$96,560.00		

The following tables were prepared by the commission to provide a total compensation analysis for the SPJP and justices of the peace in British Columbia, Alberta and Saskatchewan. The commission, in the development of these tables, relied on the information and the formulae provided by the government in the actuarial valuation included in Tab 8 of its supporting materials.

YUKON

	2009-10	2010-11	2011-12	2012-13
BASE SALARY	\$116,169.00	\$119,654.07	\$123,243.69	\$126,941.00
ALLOWANCES:				
- Yukon Bonus	\$ 2,242.00	\$ 2,242.00	\$ 2,242.00	\$ 2,242.00
BENEFITS				
- 10% of salary	\$ 11,616.69	\$ 11,965.41	\$ 12,324.37	\$ 12,694.10
PENSION				
- RPP	\$ 22,653.00	\$ 23,332.54	\$ 24,032.52	\$ 24,753.50
- Top-up	\$ 22,537.00	\$ 23,312.89	\$ 23,909.28	\$ 24,626.55
VACATION TIME OFF	35 days	35 days	35 days	35 days
SCHEDULED DAYS OFF	0 days	0 days	0 days	0 days

BRITISH COLUMBIA

	2009-10	2010-11	2011-12	2012-13
BASE SALARY	\$97,100.00	\$99,525.00	\$99,525.00	\$99,525.00
ALLOWANCES:				
- Professional Development	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
BENEFITS				
- 10% of salary to B.C. Public Service Plan	\$ 9,710.00	\$ 9,952.50	\$ 9,952.50	\$ 9,952.50
PENSION				
- RPP	\$ 16,507.00	\$16,919.00	\$16,919.00	\$16,919.00
VACATION TIME OFF	30 days	30 days	30 days	30 days
SCHEDULED DAYS OFF	0 days	0 days	0 days	0 days

ALBERTA

	2009-10	2010-11	2011-12	2012-13
BASE SALARY (under review)	\$110,000.00	\$110,000.00	\$110,000.00	
ALLOWANCES				
BENEFITS				
- 10% of salary	\$ 11,000.00	\$ 11,000.00	\$ 11,000.00	
PENSION				
- 10% of salary to a defined contribution plan	\$ 11,000.00	\$ 11,000.00	\$ 11,000.00	
VACATION TIME OFF	20 days	20 days	20 days	
SCHEDULED DAYS OFF	0 days	0 days	0 days	

SASKATCHEWAN

	2009-10	2010-11	2011-12	2012-13
BASE SALARY (under review)	\$95,204.00	\$96,560.00		
ALLOWANCES				
BENEFITS - 10% of salary	\$ 9,520.40	\$ 9,656.00		
PENSION - 7% of salary to defined contribution pension plan	\$ 6,664.28	\$ 6,759.20		
VACATION TIME OFF	30 days (after 25 years of service)	30 days (after 25 years of service)		
SCHEDULED DAYS OFF	12 days	12 days		

It is necessary to qualify this information by noting that the remuneration of the Alberta justices of the peace is now under review by a compensation commission and that the remuneration of those justices may well be subject to significant adjustment in the very near future. Nonetheless, the remuneration of the SPJP, including salary, pension, allowances, stipends, and additional benefits, tops that of all the comparators.

There is dispute between the parties as to whether the positions of justice of the peace in other jurisdictions are sufficiently similar to the position of the SPJP for their use as comparators to be valid.

At page 19 of its submission the government states, "In looking at comparator jurisdictions, it is sometimes stated that SPJP Cameron's position is a "unique" one. The Government does accept that there is some uniqueness, given the small jurisdiction, and the fact that he is the only Senior Presiding Justice of the Peace in the jurisdiction. However, the duties performed by SPJP Cameron, compared to other presiding JP's, are not particularly unique, certainly not enough to justify a substantial disparity in salary from his brethren." The government submission then provides an excerpt from the report of the 2010 BC Judicial Justices Compensation Commission that describes the duties of judicial justices of the peace in British Columbia and concludes "SPJP Cameron's duties are not significantly different, nor more responsibility-laden than those of his counterparts in BC."

The submission of the SPJP, at page 8, cited the report of the 2007 Yukon Judicial Compensation Commission wherein it was stated "The Commission, in its deliberations, took into account the contribution that the Senior Presiding Justice of the Peace (SPJP) makes to the efficiency of the Court and his value to the Yukon system of justice. The SPJP participates in the Criminal Docket Court, the Community Wellness Court, the Domestic Violence Treatment Option Court, Family

Court and Youth Court. The position of SPJP in Yukon has a judicial role distinct from any other Justice of the Peace in Canada. The SPJP, as a Justice of the Peace, provides many of the same services provided by provincial and territorial court judges.”

The SPJP submission to the commission included, as an appendix, the “1st Affidavit of Dean Richard Cameron” that was submitted to the Supreme Court of Yukon on April 21, 2010. That affidavit provided, as an exhibit, a document titled “Table 3: Justice of the Peace duties performed by province/territory”. Mr. Cameron stated that this was taken from “an independent study prepared by Jonathan Rudin, Gary Larkin and Cheryl Tschupruk in 2001.” Mr. Cameron covered this document with “an excerpt of my submissions about my duties” in which he asserted the document “clearly shows that the Yukon’s SPJP performs more judicial duties on a daily basis than JPs in other jurisdictions in Canada”. He then added to that excerpt a listing of judicial duties and judicial reviews performed and conducted by the SPJP that are in addition to those listed in the document and the statement that “The only other judicial officers in Canada that perform all these duties are Territorial, Provincial, or Supreme Court Judges.”

While there is disagreement on this between the parties, the commission is constrained, like past Yukon judicial compensation commissions, to considering the remuneration of justices of the peace in the comparator jurisdictions. Madam Justice Schuler has provided backing for this in *Cameron v. Yukon*. She states, in paragraphs 129 and 130 of the decision:

“[129] Section 58 of the *Territorial Court Act* provides that judicial remuneration for salaried justices of the peace shall be set by the judicial compensation commission in accordance with Part 3 of the *Act* (which includes section 17) ‘modified to suit the case’. The *Act* as a whole clearly distinguishes between territorial court judges and justices of the peace. Although the Petitioner performs many of the same functions performed by a territorial court judge, he is appointed as a justice of the peace and there are restrictions on what he can do as compared to a territorial court judge. The purpose of section 58 is clearly to provide the same process to deal with remuneration of salaried justices of the peace as is provided for territorial court judges, but modified to suit the case of salaried justices of the peace. In my view, in the context of the *Act* as a whole, that must mean that the comparator for remuneration is the salary paid to justices of the peace in the specified jurisdictions.

[130] In light of the extensive duties performed by the Petitioner, whether the comparator for a justice of the peace in his unique position should be the salary paid to judges rather than to justices of the peace is a matter for the legislature, not this Court.”

The commission, like the Court, must respect the direction as to appropriate comparators provided by the Legislative Assembly in the *Territorial Court Act*.

The commission concludes, from its consideration of the submissions received, that the recommendations made by the commission provide the Senior Presiding Justice of the Peace with a just salary in comparison to the salaries paid to justices of the peace in British Columbia, Alberta and Saskatchewan.

2.6 The laws of the Yukon

The government is the only party to have addressed the laws of the Yukon in its submissions. The text on this factor is identical in each of its submissions with the exception of Territorial Court Judges being referenced in one and the SPJP in the other.

The government recommended that the commission interpret the requirement of this factor in a manner similar to the direction taken by the 2008 NWT Judicial Remuneration Commission. That commission stated in its report “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.”

The government then goes on to state, “In the Yukon, this means that the JCC must, in making its recommendations, have regard to legislation like the *Taxpayer Protection Act*. Under that Act, the Yukon Government 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.”

First, with regard to the Northwest Territories position, the commission wonders how a commission can “look generally at the law ... and not at any one particular aspect of it” and, from that general viewpoint, be able to “be certain that none of [the commission’s] recommendations undermine or violate that law.” This 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* states “The Executive Council and each of its members, and the Management Board are bound by this Act.” The Act does not identify any other person or agency as being bound by or having responsibilities under it. It most certainly does not specify that it applies to judicial compensation commissions appointed pursuant to the *Territorial Court Act* and, if it did, questions of appropriateness could well be raised.

The government and, in particular, its Department of Finance is in sole possession of the information required to determine whether the government is in danger of incurring an accumulated deficit. The Executive Council and Management Board would receive warning at any time that danger might be increasing and take such

action as it deemed necessary to deal with the situation. Judicial compensation, in such a scenario and within the parameters of section 16 of the *Territorial Court Act*, would not be immune from the broad policy initiatives of the government but it could not be the singular focus of any such initiatives.

The commission would wish to distance itself from the approach adopted by the Northwest Territories Judicial Remuneration Commission as broached in the government submission. Rather, it adopts the position and the language of the 2004 Yukon Judicial Compensation Commission that, at page 6 of its report, 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.”

The commission concludes, from its consideration of the submissions received, that the recommendations made by the commission respecting the remuneration of the judges and the SPJP take appropriate account of the laws of the Yukon.

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

The government, in the supporting materials to its submissions, provided information on the Consumer Price Index from 1986 to 2010 for all provinces and Whitehorse, Yellowknife and Iqaluit (2003-2010). The commission has chosen to review the recent CPI changes from 2003 to 2009 for Yukon and the comparator jurisdictions (see table below). These years have been chosen to match the years for which information has been provided for *per capita* personal income.

	CPI Total increase from 2003 to 2009	CPI Average annual increase from 2003 to 2009
WHITEHORSE	11.90%	1.98%
YELLOWKNIFE	13.29%	2.22%
B.C.	9.88%	1.65%
ALBERTA	16.38%	2.73%
SASKATCHEWAN	14.47%	2.41%

The judges, in their submission, note that the inflation rate has “spiked” in recent times with an increase of 3.3% taking place from April 2010 to April 2011. This point was also brought forward in the submission of the SPJP, “Inflation in Whitehorse has been under 2% *per annum* for the last decade, but during the last year topped 3%.”

The government also provided figures in its submissions for the *per capita* personal income in Yukon from 2003 to 2009 inclusive. That information shows *per capita* income has grown by just over 58% from \$30,613 in 2003 to \$48,407 in 2009. Although it is not entirely relevant to considerations of judicial remuneration, the increase in the pay of employees of the Government of Yukon under the collective bargaining agreement from 2003 to 2009 was 18.2% with no increase of over 3% in any given year.

Over the same period, 2003 to 2009, the salaries of judges increased by 28.6% from \$178,000 to \$228,880 and the salary of the SPJP increased by 33.5% from \$87,000 to \$116,169.

The commission notes that the CPI increase for Yukon in the period under review is lower than the CPI increase in all but one of the comparator jurisdictions. The commission further notes that the judges and the SPJP were not materially disadvantaged by the percentage difference between the increase in the *per capita* personal income in Yukon and the increases in their salaries.

The commission concludes, from its consideration of the submissions received, that the recommendations made by the commission respecting the remuneration of the judges and the SPJP take appropriate account of increases in the cost of living and the growth in *per capita* personal income.

2.8 Any submissions by the public filed under section 26

The commission has noted earlier in this report that the public filed no submissions with the commission.

PART 9

DECISION RESPECTING SENIOR PRESIDING JUSTICE OF THE PEACE

1. Recommendation of the commission and submissions received by the commission respecting the remuneration of the Senior Presiding Justice of the Peace

1.1 As has been provided earlier in this report:

(1) The commission recommends, with respect to the remuneration of the Senior Presiding Justice of the Peace, that:

(a) the annual salary for the Senior Presiding Justice of the Peace be increased by 3% per annum to

(i) \$119,654.07 as of April 1, 2010,

(ii) \$123,243.69 as of April 1, 2011, and

(iii) \$126,941.00 as of April 1, 2012;

and

(b) the other terms, benefits, allowances, stipends, etc. in effect for the Senior Presiding Justice of the Peace remain unchanged.

(2) The submission of the government, at page 27, stated:

“The Government proposes that the SPJP receive salary increases of 2% each year for the next 3 years, so that the existing salary of \$116,169 will be increased as follows:

Effective April 1, 2010: \$118,492

Effective April 1, 2011: \$120,862

Effective April 1, 2012: \$123,280.”

(3) The submission of the SPJP, at page 15, stated:

“It is respectfully submitted that fixing the appropriate level of compensation for the SPJP requires that the disparity perpetuated by the Government’s mischaracterization of the effect of section 17 of the *Territorial Court Act* must be remedied. The salary of the SPJP must be increased to rectify the decline in the relative financial position of the SPJP in relation to both Territorial Court Judges and Alberta’s justices of the peace.”

1.2 The submissions received from the SPJP and the government revealed that the only outstanding issue between the two parties related to the salary of the SPJP.

1.3 As has been stated in Part 5 of this report, the commission, at its hearing of September 23, 2011, invited the parties to consider making a joint submission in

which the SPJP would receive salary increases of 3% each year for the three fiscal years of 2010-11, 2011-12 and 2012-13.

The Senior Presiding Justice of the Peace agreed to participate in such a joint submission.

The Government of Yukon, after consideration, reported to the commission on September 28, 2011 that it was unable to agree to participate in such a joint submission and advised that it relied on its written and oral submissions to the commission in support of its proposed increases of 2% per year for the three fiscal years of 2010-11, 2011-12 and 2012-13.

2. Considerations of commission pursuant to factors in section 19 of the *Territorial Court Act*

2.1 The commission, pursuant to section 19 of the Act modified in accordance with section 58 of the Act, has addressed in Part 8 of this report the submissions presented to it regarding following factors:

- (a) the current financial position of the government,
- (b) the need to provide reasonable compensation to the Senior Presiding Justice of the Peace,
- (c) the need to build a strong court by attracting qualified applicants,
- (d) the unique nature of the Yukon,
- (e) the compensation provided to justices of the peace in the Northwest Territories and British Columbia, Alberta and Saskatchewan,
- (f) the laws of the Yukon, and
- (g) the cost of living in the Yukon including the growth or decline in real per capita income.

The commission, in fulfilling that direction of the Act, has concluded that the recommendations of the commission respecting the remuneration of the SPJP:

- (a) can be accommodated within the current financial position of the government,
- (b) result in the continuing provision of reasonable compensation to the SPJP,
- (c) will fulfill the goal of attracting qualified applicants to fill any future vacancies,
- (d) take account of the unique nature of the Yukon,
- (e) provide the Senior Presiding Justice of the Peace with a just salary in comparison to the salaries paid to justices of the peace in British Columbia, Alberta and Saskatchewan,
- (f) take appropriate account of the laws of the Yukon, and
- (g) take appropriate account of increases in the cost of living and the growth in *per capita* personal income.

- 2.2 The commission stated those conclusions in the context of an increase in the SPJP salary of 3% per annum. The commission kept in mind the government's proposal for an increase of 2% per annum during its review and found that the government's proposal would have been entirely acceptable in different circumstances.
- 2.3 The commission was unable to put the submission of the SPJP to the same test. The commission is not making its recommendation respecting the salary of the SPJP to, as was proposed in the submission of the SPJP, remedy "the disparity perpetuated by the Government's mischaracterization of the effect of section 17 of the Territorial Court Act" nor "to rectify the decline in the relative financial position of the SPJP in relation to both the Territorial Court Judges and Alberta's justices of the peace." It is not the commission's place to revisit the section 17 issue with intent to make determinations as to whether there actually was an effect of what the SPJP calls the "mischaracterization of the effect of section 17" and, if there was, as to the extent of that effect. Further, the commission has not found that there is a decline in the relative financial position of the SPJP in relation to the judges and Alberta's justices of the peace.

3. Considerations of commission pursuant to "any matter it considers relevant" as per section 19 of the *Territorial Court Act*

- 3.1 The conclusions of the commission on the factors set out in section 19, then, were not decisive in the formulation of the commission's recommendation respecting the pay of the SPJP. The decision of the commission, instead, resulted from the authority given it in section 19 of the Act to consider "any matter it considers relevant".
- 3.2 The matter the commission considers relevant, with respect to the salary of the SPJP, is the very small variation between the government's proposal of a 2% per annum increase for the SPJP and the joint submission recommending that there be a 3% increase per annum for judges.
- 3.3 The commission does not take the position that there should be an irrevocable linkage between the salary increases granted to judges and to the SPJP. Rather, it is of the view that, in circumstances where the only issue is salary and where there is a relatively small variation in the proposals for the salaries of judges and the SPJP, there must be substantial justification for the variation. The commission holds that, without an acceptable level of justification, the public and the media will perceive a small variation in its recommendations for salary increases as being significant in a way that could harm the Territorial Court. The commission does not find that the information and advice provided to it during its proceedings is substantial enough to justify recommending a salary increase other than 3% per annum to the SPJP.

- 3.4 The joint submission from the judges and the government proposed changes restricted to the salaries of judges. The submissions of the government and of the SPJP proposed changes restricted to the salary of the SPJP. There were no other changes recommended to the remuneration, including pensions, allowances and benefits, of either the judges or the SPJP. The sole issue at hand was salary and the difference between the joint submission for the judges and the proposal for the SPJP is absolutely clear.
- 3.5 The commission has found that the remuneration of the SPJP exceeds that of the justices of the peace in all the comparator jurisdictions. Whether the commission recommends a 2% or a 3% per annum increase is not going to alter that fact and the government recognized it when proposing a 2% per annum increase in the pay of the SPJP. The commission has not found the submission of the government provides sufficient rationale to justify adopting its proposal rather over the alternative of matching the 3% per annum increase the judges will be receiving.
- 3.6 The financial impact of a 3% per annum increase compared to that of a 2% per annum increase in the salary of the SPJP is, for the government, not material. Based on the figures provided in a table on page 10 of the submission of the government the total increase in funding required for the pay, benefits and pension of the SPJP would, over three years, be \$21,101 for a 2% per annum increase and \$31,759 for a 3% per annum increase.
- 3.7 The commission believes that a recommendation of a 2% per annum increase for the SPJP would result in the SPJP being portrayed, in blunt terms, as the losing party in this process. News stories would be replete with comparisons of the “favourable” treatment of judges to that of their “junior” partner and the perspective taken that they were the winners and he was the loser.
- 3.8 That scenario leads to there being only losers because it harms the reputation of not just the SPJP but of every member of the Territorial Court of Yukon. The loss of reputation and diminished perception of the court could well undermine its independence in the minds of the citizenry. The commission asserts that result is not in the interests of the court nor of the people of Yukon and has made its recommendation for a 3% per annum increase in the salary of the SPJP from that perspective.

CONCLUDING REMARKS

This report and all written submissions to the commission are posted on a web page for the commission that can be accessed through the website of the Department of Justice, Government of Yukon.

The commission thanks the representatives of the parties for their professional, respectful and patient assistance in the activities of the commission. Those include, in particular, Judge John Faulkner, representative of the Judges of the Territorial Court and the Justice of the Peace Association, Kevin Drolet, representative of the Senior Presiding Justice of the Peace, and Gary Bainbridge, representative of the Government of Yukon. The commission also wishes to express appreciation to the public servants in the Department of Justice who provided administrative assistance whenever requested by the commission. This support was timely, efficient and always recognized the independence of the commission.

This report is submitted this 5th day of December, 2011.

Patrick L. Michael
Commissioner