

# 2013 YUKON JUDICIAL COMPENSATION COMMISSION REPORT

## INTRODUCTION

This report of the 2013 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 27, 2013. The proceedings of the commission included convening on January 17, 2014 to receive (1) joint submissions from (a) the Government of Yukon and the Judges of the Territorial Court and (b) the Government of Yukon and the Justice of the Peace Association and (2) individual submissions respecting the remuneration of the Senior Presiding Justice of the Peace from the Government of Yukon and the Senior Presiding Justice of the Peace.

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 V.A. 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."

# PART 1

## BACKGROUND, MANDATE AND PROCESS

### 1. Appointment and term of office of the 2013 Yukon Judicial Compensation Commission

- 1.1 The 2013 Yukon Judicial Compensation Commission (the “commission”) was appointed by Order-in-Council 2013/24 dated February 27, 2013. Order-in-Council 213/24 was made pursuant to the authority of section 13 of the *Territorial Court Act* (the “Act”).
- 1.2 Order-in-Council 213/24 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 shall conclude 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.

- 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, 2007 and 2010 made recommendations respecting the remuneration of the SPJP who was 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 practice of past commissions and, with respect to the justices of the peace, given consideration to and made recommendations in response to submissions received from or on behalf of the Justice of the Peace Association.

[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, Alberta and Saskatchewan establish separate compensation commissions that make recommendations respecting the remuneration of justices of the peace. Saskatchewan, as of 2013, has followed the Yukon model to some degree by requiring the chair of the Saskatchewan Provincial Court Commission to be the sole member of a separate commission covering justices of the peace. The Northwest Territories sets 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 27, 2013.

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, 2007 and 2010 commissions in their recommendations 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 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 (1) *An Act to Amend the Territorial Court Act*, Chapter 16 of the Statutes of Yukon 2003, (2) *An Act to Amend the Territorial Court Act*, Chapter 3 of the Statutes of Yukon 2012, and (3) *Court and Regulatory Statutes Amendment Act*, Chapter 15 of the Statutes of Yukon 2013.

- 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* enacted 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 sixth judicial compensation commission appointed since 1998. The commission, in its consideration of background and context, has referenced the reports of the 1998, 2001, 2004, 2007 and 2010 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 2012/70;
  - (b) *Salaried Presiding Justice of the Peace Remuneration Implementation Order* established by Order-in-Council 2012/72; and
  - (c) *Justices of the Peace Remuneration Implementation Order* established by Order-in-Council 2012/71.
- 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” (the “LOU”) that was completed in January 2005. This LOU is still in place and its provisions were 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 Whitehorse Star and the Yukon News on March 27, April 5, 12, 19 and 26, 2013 and in L'Aurore boreale on March 6, 2013.

- 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, 2013. 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, 2013 was set out in the notice.
- 6.3 The commission informed the parties by letter on May 7, 2013 that no submissions from the public had been received as of that date and that the commission would not be considering any submissions that might be subsequently delivered to it.

## **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 Judicial Compensation Commission is the only commission that has met the deadlines set out in section 25(4). The 2004 Judicial Compensation Commission suggested in its report that the “90-day rule” of section 25(4) be amended.
- 7.3 The 2007 Judicial Compensation Commission welcomed the initiative of the parties to enter into a Letter of Understanding that established an informal procedure for the establishment and conduct of a judicial compensation commission that was said, in the LOU, to be “consistent with the principles referred to in the Act.”

The main provisions of that LOU are as follows:

- 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.

The LOU contains a qualifying provision that states, “If, with respect to the establishment and conduct of a particular JCC the informal procedure proves unworkable, the formal procedure established by the Act applies.”

## **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 April 2, 2013, 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, 2013.
- 1.2 Kevin Drolet of Drolet/Eldred Barristers informed the commission by e-mail on April 23, 2013 that "We have been retained by SPJP Cameron in relation to this matter."
- 1.3 Chief Judge Michael Cozens, in a letter dated May 10, 2013, informed the commission "Judge Karen Ruddy has been selected by the Territorial Court Judges as their representative for the purposes of the 2013 Judicial Compensation process."
- 1.4 Gary Burgess, President of the Justice of the Peace Association, informed the commission, in a letter dated May 15, 2013 that "I will be the representative for the Justice of the Peace Association for the purposes of the 2013 Judicial Compensation process."
- 1.5 Ron MacMillan, Deputy Minister of the Department of Justice, in a letter dated May 24, 2013, informed the commission "Gary Bainbridge will be representing the Yukon Government for the 2013 Judicial Compensation Commission."
- 1.6 Ron MacMillan, in his letter of May 24, 2013, further stated "[T]he government is identifying judicial salary or rate of pay as the only unresolved issue between the government and the judiciary with respect to judicial remuneration."
- 1.7 The commission, in a letter dated June 6, 2013, informed the parties of the names of the representatives for each of the parties.
- 1.8 Judge Karen Ruddy, the representative for the judges, communicated to the commission by an e-mail dated October 18, 2013 that "[W]e have now retained Joseph J. Arvay, Q.C. to represent the judges and deputy judges of the Territorial Court of Yukon in relation to the 2013 Judicial Compensation Commission."



1.9 The commission received no communication, aside from that noted above from Ron MacMillan on behalf of the Government of Yukon, addressing the matter of unresolved issues.

**2. Subsequent communications leading to notice being given of the convening of the commission and the receipt of submissions from the parties**

2.1 The commission, on October 2, 2013, sent e-mails to the parties noting the span of time during which the commission had not received any communication respecting judicial remuneration from the parties. The commission stated “My reading of the Letter of Understanding on the process for Judicial Compensation Commissions that all parties are still bound by left me with the view that we would likely be starting to move forward by now.”

2.2 Conversations took place by way of e-mail and telephone that led to the commission sending a letter to all parties on November 18, 2013. The letter gave notice that the commission would convene at 9:00 a.m. on Friday, January 17, 2014 to informally address any outstanding issues among the parties.

It went on to state:

“The order of business for the JCC will be:

- (1) to review any joint submissions and the process that led to them with the parties that made the submissions;
- (2) to determine, in situations where the parties have not made joint submissions, whether opportunities exist for that to happen; and
- (3) to establish the timing for formal hearings when it is clear that joint submissions will not be made.

It is possible that there may be circumstances where it is already known that there will be no joint submissions. In such a case the JCC would encourage the parties to complete their submissions and transmit them to the JCC. The JCC will follow the procedure established by the 2010 JCC and assume responsibility for the simultaneous forwarding of the submissions to each of the parties.

The JCC encourages the parties to identify to the JCC, at an early time, situations where there will not be joint submissions made and to take the actions needed to have submissions filed with the JCC and subsequently transmitted to the other party. This would open the possibility of conducting a formal hearing on the day set for the JCC to convene (i.e., January 17, 2014).”

With respect to the timing for transmitting submissions to the commission, the letter stated:

“The *Territorial Court Act*, the LOU and court decisions have made clear the need for a JCC to give careful attention to both process and content in reference to the submissions made to it. The JCC, therefore, cannot be placed in a position where it receives submissions a few days before it convenes or holds a hearing. The parties to the 2013 JCC are requested to provide their submissions to the JCC on or before December 20, 2013.”

- 2.3 The commission received, by e-mail, the submission of the Territorial Court Judges and the hourly-rated Justices of the Peace from Joseph Arvay at 12:00 noon on Thursday, December 19, 2013.
- 2.4 The commission received, by courier delivery, the submissions of the Government of Yukon with respect to:
- (1) the Territorial Court Judges and the hourly-rated Justices of the Peace, and
  - (2) the Senior Presiding Justice of the Peace
- from Gary Bainbridge at 4:40 p.m. on Friday, December 20, 2013.
- 2.5 The commission received, by e-mail, the submission of the Senior Presiding Justice of the Peace from Kevin Drolet at 1:52 p.m. on Monday, December 23, 2013. [Mr. Drolet had informed the commission on Friday, December 20 that a winter storm had denied him support staff and had committed to transmitting the submission on Monday, December 23.]
- 2.6 The commission received, by e-mail from Joseph Arvay on January 16, 2014, the Joint Submission of the Territorial Court Judiciary and the Government of Yukon and the Joint Submission of the Justice of the Peace Association and the Government of Yukon.

## **PART 3**

### **CONVENING OF COMMISSION**

#### **1. Convening of the commission on January 17, 2014**

- 1.1 The commission convened at 9:00 a.m. on Friday, January 17, 2014 with Joseph Arvay representing the Judges of the Territorial Court and the Justice of the Peace Association, and Gary Bainbridge representing the Government of Yukon. Mr. Arvay was present by way of teleconference. Kevin Drolet, the representative of the Senior Presiding Justice of the Peace, was also present.
- 1.2 The commission informed the parties that the proceedings would be recorded for the purpose of assisting the commission in the preparation of its report.
- 1.3 The commission informed the parties that, having received joint submissions from the Government of Yukon and the Territorial Court Judiciary and Justice of the Peace Association, the commission, in accordance with the 2005 Letter of Understanding, was convening to review those submissions and the process that led to them and would not be calling a formal hearing.
- 1.4 The commission further informed the parties that its review of the individual submissions received from the Government of Yukon and the Senior Presiding Justice of the Peace revealed that each of the parties was recommending actions that would have identical effect on the remuneration of the SPJP. Article 7.9 of the Letter of Understanding directs that a formal hearing be conducted when agreement has not been reached on outstanding issues. The commission stated that, as a result of there being no disagreement shown in the submissions pertaining to the remuneration of the SPJP, it intended to review the submissions of the Government and the SPJP while the commission was convened rather than to call a formal hearing for that purpose. The parties did not express objection to the procedure set out by the commission.

**PART 4**

**CONSIDERATION OF JOINT SUBMISSIONS  
RESPECTING  
JUDGES OF THE TERRITORIAL COURT  
AND  
JUSTICE OF THE PEACE ASSOCIATION**

**1. Submissions respecting the remuneration of Judges of the Territorial Court and Justices of the Peace tabled**

1.1 The commission tabled the submissions that the commission had received by way of courier delivery and e-mail transmission including:

- (a) *Joint Submission of the Territorial Court Judiciary and the Yukon Government to the 2013 Judicial Compensation Commission;*
- (b) *Joint Submission of the Yukon Justices of the Peace Association and the Yukon Government to the 2013 Judicial Compensation Commission;*
- (c) *Joint Submission of the Judges of the Territorial Court of Yukon and the Justice of the Peace Association to the 2013 Judicial Compensation Commission;*
- (d) *Submission of the Government of Yukon in relation to the Territorial Court Judges and Hourly-Rated Justices of the Peace; and*
- (e) *Supporting Materials of the Government of Yukon in relation to the Territorial Court Judges and Hourly-Rated Justices of the Peace.*

1.2 The agreement respecting the remuneration of judges set out in the *Joint Submission of the Territorial Court Judiciary and the Yukon Government to the 2013 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, 2013:	\$257,606.46 [3% increase]
April 1, 2014:	\$262,758.59 [2% increase]
April 1, 2015:	\$268,013.76 [2% 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 \$1,000.91) 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, 2013:	\$1,030.94 [3% increase]
April 1, 2014:	\$1,051.56 [2% increase]
April 1, 2015:	\$1,072.59 [2% increase]

3. LTD Benefit

The parties are in agreement that the existing monetary cap on long-term disability (“LTD”) benefits for Territorial Court Judges should be removed, and replaced with a cap expressed as a percentage of annual salary, namely a maximum of 70% of annual salary.

4. 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.”

1.3 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 2013 Judicial Compensation Commission* was as follows:

“1. Pay rate for Hourly-rated Justices of the Peace

The parties are in agreement that the Commission should recommend that effective April 1, 2013, the pay rate for hourly-rated Justices of the Peace should be increased five (\$5.00) dollars per hour, as follows:

JP1: From \$30.00 per hour to \$35.00 per hour

JP2: From \$35.00 per hour to \$40.00 per hour

JP3: From \$55.00 per hour to \$60.00 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 the Yukon shall remain unchanged.”

**2. Presentations made to commission respecting the remuneration of Judges of the Territorial Court and Justices of the Peace**

2.1 Gary Bainbridge, representative of the Government of Yukon, and Joseph Arvay, representative of the Territorial Court Judges and representative of the Justice of the Peace Association, then made presentations to the commission and responded to remarks and questions from the commission about (a) the parties’ submissions, (b) the joint submissions, and (c) the process leading to the joint submissions. There was no difference of opinion expressed on any matter at any time by Mr. Bainbridge and Mr. Arvay.

2.2 The following is a summary of the presentations and remarks of Mr. Bainbridge and Mr. Arvay (in their own words or a paraphrasing of their own words).

(1) Role of the Judicial Compensation Commission

The role of the commission is to serve as the constitutional buffer between the government and the judges and the justices of the peace. The commission, on

one hand, is to ensure that the judiciary is receiving fair and reasonable compensation but, on the other hand, is to ensure that the taxpayers are protected as well. The Supreme Court of Canada (in the PEI Reference) ruled that the commission is to serve as an independent, effective and objective filter between the parties and, thereby, assist in eliminating or reducing the friction that can result whenever the judiciary has to negotiate directly with the government.

(2) Process leading to joint submissions

The commission was assured that absolutely no negotiations took place between the judges, the hourly-rated justices of the peace and the government and that the joint submissions were the result of some very brief discussions between the parties to determine if they were on the same page.

(3) Commission process with respect to joint submissions

The commission is not bound by any joint submission but its role is to determine if a joint submission makes reasonable sense and is proper under all the circumstances. Although a joint submission is not binding on the commission, it ought to be very slow not to accept a joint submission in the absence of something very glaringly wrong with it. What the Supreme Court of Canada was hoping to achieve in writing its judgment on the PEI Reference is exactly the kind of joint submission the Government of Yukon and the Territorial Court Judges have been able to present to both the 2013 and 2010 Judicial Compensation Commissions. A joint submission is a sign that the process is working and, although the commission is fully entitled to ask hard questions it would be a backward step if the commission were to become more adversarial than the parties themselves choose to be.

Mr. Drolet, the representative for the Senior Presiding Justice of the Peace, expressed his agreement with the positions of Mr. Bainbridge and Mr. Arvay on this issue.

(4) Submissions presented to the commission

The submissions and supporting documents presented to the 2013 Judicial Compensation Commission, particularly those of the Government of Yukon, were essentially identical to the types of submissions made to the 2010 Judicial Compensation Commission. This was due to the fact that there were no changes in the law respecting the judicial compensation commission process in Yukon nor were there recent judicial decisions that need be taken note of by the Yukon Judicial Compensation Commission. As well, the matters of concern to the parties with respect to remuneration were not significantly different from one commission to the other.

It should not be suggested that the process leading to a joint submission has become too routine or lax. There was a time when earlier judicial compensation commissions experienced a close to dysfunctional relationship between the court and the government. All of the big issues of that era, largely pertaining to getting

salaries to an acceptable level and to reaching agreement on a pension plan, have been settled and there is now a more established and less adversarial approach in place for the judicial compensation commission process.

(5) Factors to be addressed pursuant to section 19 of Territorial Court Act

The commission should accept the written submissions from the parties with respect to the factors addressed in section 19 of the Territorial Court Act. The only factors to be given attention during the convening of a commission are those that the parties raise in their presentations as affecting the recommendations made in their submissions. The commission, in preparing its report, may give due consideration to both the written and oral presentations thereby satisfying the leaning of Madam Justice Schuler when, in her ruling, she wrote that “It is preferable that reasonably detailed reasons be given for a commission’s recommendation, even when it has accepted a joint submission.” (Cameron v. Yukon, 2011 YKSC 35).

(6) Review of recommendations in the joint submissions of the Government of Yukon and (a) the Territorial Court Judiciary, and (b) the Justice of the Peace Association

The changes in the cost of living and in the compensation provided in the comparator jurisdictions (Northwest Territories, British Columbia, Alberta and Saskatchewan) are the most important factors to take into consideration when assessing the recommendations.

(a) Salaries of Territorial Court Judges

The cost of living increases have been quite consistent in Whitehorse averaging about 2.1% over the last 11 years. A first year increase in judges’ salaries of 3% would be a real increase in income and increases of 2% in the following two years would keep pace with inflation. As judges become more experienced their value increases and they should be higher paid. Increases in pay that are slightly above the cost of living provide recognition of gains in experience.

With reference to the salaries of judges in the comparator jurisdictions, there has been a convergence with all but British Columbia being within a few thousand dollars. It was noted that Alberta has a judicial compensation commission underway so there might be a bump in pay in that province. It was further noted that judicial pay was the subject of litigation in British Columbia and, while at the moment being “surprisingly low”, could change in the future. It was said that the increases being proposed for Yukon judges would preserve their status as “close to the top of the grid”.

The commission should be given some comfort in that the salaries being recommended are “in the zone and not way out one way or the other”. The commission should recognize the fact that the recommended increases in judicial salaries are being proposed in a joint submission.

(b) Deputy judges’ salaries

With reference to the increases in the *per diem* sitting rate for deputy judges, the kind of comparators that are used for judges do not exist for

deputy judges. The deputy judges have not indicated any discontent with the level of the *per diem* sitting rate and the level of increase proposed for the *per diem* sitting rate is expected to keep pace with cost of living increases.

(c) LTD benefit

With reference to removing the existing monetary cap on long-term disability benefits for Territorial Court Judges and replacing it with a cap expressed as a percentage of annual salary, namely a maximum of 70% of annual salary, there is no monthly cap on the long-term disability benefits of judges in any of the comparator jurisdictions.

Mr. Bainbridge added that, from the government's perspective, it is desired that everyone participating in the benefit plan, including judges and civil servants, should be treated the same way. No civil servant would receive less than 70% of her or his salary in long-term disability benefits because no pay range is at a level that would cause the benefit to reach the monthly cap of \$15,000. Judges, on the other hand, are already receiving a salary that would put their long-term disability benefits above the monthly maximum. It is, therefore, necessary to take action to rectify a situation where judges are being caught by an imposed maximum that has no effect on the civil servants participating in the benefit plan.

The industry standard for long-term disability benefits is usually 66.6% or 70% and most participants do not have to worry about any maximums.

(d) Pay rate for hourly-rated Justices of the Peace

With reference to the increase in the hourly rate for justices of the peace, the increase of \$5 per hour is the first such increase made since 2004. The 9% to 16% increase, dependent on the category of the JP, is appropriate when taking into account the increase in the cost of living over the previous ten years.

2.3 The commission adjourned its proceedings at 10:40 a.m. on January 17, 2014 and Mr. Arvay took his leave from the proceedings.



## PART 5

### CONSIDERATION OF SUBMISSIONS RESPECTING SENIOR PRESIDING JUSTICE OF THE PEACE

#### 1. Submissions respecting the remuneration of the Senior Presiding Justice of the Peace tabled

1.1 The commission reconvened at 10:50 a.m. on Friday, January 17, 2014 with Kevin Drolet representing the Senior Presiding Justice of the Peace and Gary Bainbridge representing the Government of Yukon.

1.2 The commission tabled the submissions that the commission had received by courier delivery and e-mail transmission including:

- (a) *Submissions of the Senior Presiding Justice of the Peace to the 2013 Judicial Compensation Commission;*
- (b) *Submission of the Government of Yukon in relation to the Senior Presiding Justice of the Peace; and*
- (c) *Supporting Materials of the Government of Yukon in relation to the Senior Presiding Justice of the Peace.*

1.3 The submission of the government, at page 30, stated:  
“The Government proposes that the SPJP (or successor) receive salary increases of 3% in the first year, and then 2% thereafter for the next 2 years, so that the existing salary of \$126,941 will be increased as follows:

Effective April 1, 2013:	\$130,749 [3% increase]
Effective April 1, 2014:	\$133,364 [2% increase]
Effective April 1, 2015:	\$136,031 [2% increase]”

The percentage increases proposed by the government for the SPJP salary were identical to those proposed for the Territorial Court Judges in the *Joint Submission of the Territorial Court Judiciary and the Yukon Government to the 2013 Judicial Compensation Commission*.

1.4 The submission of the SPJP, at page 3, stated:  
“It is respectfully submitted that the Joint Recommendation of the Government and Territorial Court Judges is a reasonable and appropriate measure by which to fix the remuneration of the SPJP.”

1.5 Since the salary of the SPJP was the only matter on which the parties made recommendations and since the effect of the recommendations made by each of the parties had identical effect, there was no element of the remuneration of the SPJP that was at issue in the submissions of the government and of the SPJP.

## **2. Presentations made to commission respecting the remuneration of the Senior Presiding Justice of the Peace**

- 2.1 Mr. Bainbridge and Mr. Drolet then made oral submissions to the commission and responded to questions from the commission.
- 2.2 Mr. Bainbridge stated that there had been no negotiations of any sort between the parties and that the fact that their submissions had made recommendations with the same end result was entirely coincidental.
- 2.3 Mr. Bainbridge said that the report of the 2010 Judicial Compensation Commission had influenced the government when putting together its submission,  
“One of the factors that I do want to draw to your attention as to why I think 3-2-2 is appropriate is based upon your previous ruling and, in your previous ruling Mr. Commissioner, you did not accept the government submission respecting the SPJP and, as I understood your ruling, one of your primary concerns was the issue of the reputation of the court and the fact that, if we were seen to be giving a different rate than the judges it may lead to different perceptions. With respect, Mr. Chairman, I disagree with you. We pay plumbers differently than we pay janitors but, in this particular case, the submissions by the government on salary are exactly the same and so you needn't be concerned in this case that somehow the SPJP is either being looked askance upon or, in fact is getting more, it is the exact same as the judges so, if anyone asks, it's the same as the judges have been proposed by the government.”

The Commission advised, with respect, that Mr. Bainbridge had not given full expression to the reasoning provided by the 2010 Commission for its recommendation respecting the remuneration of the SPJP. The commission gave this advisory to ensure that the parties, when preparing submissions for future judicial compensation commissions, will review the report of the 2010 Commission to gain a thorough understanding of that commission's reasoning and of the true extent of any precedents it may have set.

- 2.4 Mr. Bainbridge said that the comments he had made previously on cost of living and the judges would equally hold with the SPJP. And, as with the judges, a first year increase of 3% in the salary of the SPJP would be a real increase in income and increases of 2% in the following two years would keep pace with inflation.
- 2.5 Mr. Bainbridge referenced the salary schedule for the SPJP and equivalent positions in the comparator jurisdictions that the government had provided in its submission and concluded that, although the salary in Alberta was currently under review, the salary of the SPJP would remain at or near the top of that schedule. He also mentioned that the SPJP has access to the same defined benefit pension plan as the judges of the Territorial Court which results in his total remuneration being well above that of colleagues in the comparator jurisdictions where pension benefits, if any are provided, are of far less consequence.

- 2.6 Mr. Drolet informed the commission that the SPJP, Dean Cameron, would be retiring effective August 1, 2014. He also informed the commission that the government has commissioned a justice of the peace review.
- 2.7 Mr. Bainbridge stated that the pending retirement of Mr. Cameron did not influence the government when putting together its submission as the government felt it necessary to be prepared for the position of the SPJP to be continued. That being said, he acknowledged that no decision had yet been made on whether there would be a new SPJP recruited or whether there might be a fourth judge added to the Territorial Court. He also stated that, if the review of the position leads to a conclusion that a future SPJP should have a law degree, there might be a need to review the pay provided to that position. He said, however, that if a new SPJP is sought under the current terms, the government expects the remuneration proposed in the government submission would be high enough for a replacement to be hired.
- 2.8 Mr. Drolet informed the commission that the primary concern of the SPJP, as he approaches retirement, is less personal and more about maintaining the viability and integrity of the office of Senior Presiding Justice of the Peace.

Mr. Drolet went on to say

“He is not quite as sanguine as the Government of Yukon is about the potential for recruiting somebody with the considerable skill and experience that he brings to the position. This [position] has statutory foundation. The Senior Presiding Justice of the Peace is a member of the Territorial Court and that is legislatively recognized and structured. Moving to a different structure for the Territorial Court is obviously something that is being actively considered. I don’t know whether you’ve heard, Mr. Commissioner, about the justice of the peace review that is being conducted by Commissioner Manson. That will deal with issues of the viability of the injection of the community or common sense delivery of justice, which has been characteristic of the Yukon for a very long period of time, whether that continues to be appropriate, or whether it is, as Mr. Bainbridge has suggested, perhaps appropriate to move to a model that would have another legally trained territorial court judge rather than the lay experience and the community experience that’s been injected into the process. The recommendations of the Senior Presiding Justice of the Peace are geared quite simply towards the notion of maintaining the status quo so that the viability of the position, as an option, is something that the people of the Yukon can choose through their elected representatives and through whatever amendments and appointments are appropriate.”

## 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 2013 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, that there was no bargaining evident, and that each party had their own reasons for recommending the same end result. The commission is of the further opinion that the procedure that led to the end result 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 2013 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 from \$250,103.36 on March 31, 2013 to
  - (i) \$257,606.46 as of April 1, 2013 (a 3% increase),
  - (ii) \$262,758.59 as of April 1, 2014 (a 2% increase), and
  - (iii) \$268,013.76 as of April 1, 2015 (a 2% increase);
- (b) the *per diem* sitting rate for Deputy Judges of the Territorial Court of Yukon be increased from \$1000.91 on March 31, 2013 to
  - (i) \$1,030.94 as of April 1, 2013 (a 3% increase),
  - (ii) \$1,051.56 as of April 1, 2014 (a 2% increase), and
  - (iii) \$1,072.59 as of April 1, 2015 (a 2% increase);
- (c) the existing monetary cap on long-term disability benefits for Judges of the Territorial Court of Yukon be removed and replaced with a cap of 70% of annual salary; and
- (d) 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 from \$126,941.00 on March 31, 2013 to
  - (i) \$130,749.23 as of April 1, 2013 (a 3% increase),
  - (ii) \$133,364.21 as of April 1, 2014 (a 2% increase), and
  - (iii) \$136,031.49 as of April 1, 2015 (a 2% increase);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) the hourly rate for justices of the peace be increased, effective April 1, 2013, to
  - (i) JP1: \$35.00 per hour
  - (ii) JP2: \$40.00 per hour
  - (iii) JP3: \$60.00 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 in this Part the submissions presented to it regarding the factors enumerated in section 19 of the Act.

#### 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 2013-14 fiscal year forecast a \$45.3 million surplus and net financial resources of \$127 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 and the SPJP, neither directly addressed the current financial position of the government. Rather, each cited the Yukon Economic Outlook of September 2013 from the Department of Economic Development, Government of Yukon. The judges’ submission stated “the recommended salary increases are appropriate with regard to Yukon’s Economic Outlook”. The submission of the SPJP summarized “The economic forecast for the Yukon is for continuing growth in the gross domestic product, population increases, strong performance of labour market indicators and record highs in mining exploration and development.”

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 in the future 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 submissions, is that the salaries of judges have increased by 85% over the thirteen years from 1999 to 2012 and that the salary of the Senior Presiding Justice of the Peace increased by 49% in the eleven years from 2001 to 2012. The Consumer Price Index for Whitehorse increased by 27% 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.

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 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 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 three most recent vacancies on the Territorial Court in 2004, 2008 and 2013 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 issue is addressed in the submission of the Senior Presiding Justice of the Peace:

“The arguments in favour of the rates of remuneration required to attract, retain and motivate candidates for the office of Territorial Court judge also apply to the office of the SPJP. The responsibilities and challenges of the positions are admittedly different, and it is not contended they should be compensated equally, but it is nonetheless important that the recommendations of this Commission fix the level of remuneration for the SPJP at a sufficient level that qualified applicants will be encouraged to put their names forward for possible appointment to the position.”

The remuneration of the SPJP, when considering salary and the level of pension and other benefits, 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.

As has been noted in Part 5 of this report the commission was informed that the current SPJP, Dean Cameron, will be retiring effective August 1, 2014. The government has commissioned a justice of the peace review that will lead to a decision as to whether SPJP position is to be continued and, if so, whether applicants for the position will be required to hold law degrees. Such decisions shall, in due course, reveal whether the level of remuneration prescribed for the SPJP is appropriate for filling that vacancy.

The commission concludes from its consideration of the submissions received and in the absence of contrary evidence 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 onerous 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 are solid arguments 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 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 central matter of substance with reference to the remuneration of the judges. It was agreed in the joint submission to leave as is, with the exception of the long-term disability benefit, all 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 does not question that agreement. The commission, therefore, has restricted its consideration of remuneration to the question of salary and to the long-term disability benefit.

The table below sets out the salaries of judges in Yukon and the comparator jurisdictions for the fiscal years from 2012-13 to 2015-16 inclusive. It has been prepared based on information provided to the commission by the Government of Yukon and the Territorial Court Judges in their submissions and by the Department of Justice in each of Saskatchewan and the Northwest Territories upon request from the commission.

	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>
<b>YUKON (proposed)</b>	\$250,103.36	\$257,606.46	\$262,758.59	\$268,013.76
<b>NWT</b>	\$249,582.00 (from NWT Judicial Remuneration Commission of 2012)	\$252,414.00 (from Judges' submission) (using 1.133% NWT CPI)	\$256,054.00 (from NWT Dept. of Justice) (using 1.445% NWT CPI)	2014-15 salary + NWT CPI
<b>ALBERTA</b>	\$263,731.00 (from Yukon Govt. and from Judges' submissions)	TBD (under review by Judicial Compensation Commission)	TBD (under review by Judicial Compensation Commission)	TBD (under review by Judicial Compensation Commission)
<b>SASKATCHEWAN</b>	\$248,010.00 (provided by Sask. Dept. of Justice) (\$260,410.00 when adding 5% northern allowance)	\$254,458.00 (provided by Sask. Dept. of Justice using Sask. CPI + 1%) (\$267,180.00 when adding 5% northern allowance)	\$260,819.00 (provided by Sask. Dept. of Justice using Sask. CPI + 1%) (\$273,860.00 when adding 5% northern allowance)	
<b>BRITISH COLUMBIA</b>	\$231,138.00	\$234,605.00 (from Judges' submission)	TBD (subject to Court decision)	TBD (subject to Court decision)

The salaries proposed in the joint submission and being recommended by the commission for Yukon judges are comparable to those being paid in Saskatchewan and the Northwest Territories, lag a bit behind those paid in Alberta that are currently under review and are a good distance ahead of British Columbia salaries. The comparison with salaries in Alberta and British Columbia may need closer review by a future Yukon Judicial Compensation Commission when the results of the forthcoming report of the Alberta Judicial Compensation Commission and of court actions respecting the response of the Government of British Columbia to the recommendations made by the Judges Compensation Commission in that province are fully known.

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 can be seen from the above table of salaries, parity is not an issue at the moment from the Yukon perspective.

The change to the long-term disability benefits for Yukon judges proposed in the joint submission and being recommended by the commission will assure that those benefits are at a high level when assessed against the level of those benefits in the comparator jurisdictions. The commission, for this purpose, has relied on the "Comparison of LTD Coverage for Judges across Canada" provided by the government in Tab 21 of the *Supporting Materials of the Government of Yukon in*

*relation to the Territorial Court Judges and Hourly-Rated Justices of the Peace.*

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 just compensation in comparison to the compensation of 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 to be dealt with respecting the remuneration of the SPJP and that both parties are proposing the same actions in that regard. 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 2012-13 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. That information has been augmented, with respect to Saskatchewan, by *The Justices of the Peace (Commission) Regulations* (Chapter J-5.1 Reg 2) which became made effective February 11, 2014 (Chapter J-5.1 Reg 2) following the convening of the Yukon JCC on January 17, 2014. The salary of Alberta justices of the peace has been under review by a compensation commission since 2009 and 2012-13 is the last year in its mandate. The figure provided for 2012-13 is the amount being proposed by the Government of Alberta to the commission so there is no assurance that it will be adopted.

	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>
<b>YUKON</b>	\$126,941.00	\$130,749.00	\$133,364.00	\$136,031.00
<b>NWT</b>	No presiding JPs	No presiding JPs	No presiding JPs	No presiding JPs
<b>B.C.</b>	\$99,525.00	\$99,525.00		
<b>ALBERTA</b>	\$131,866.00 (under review by compensation commission)			
<b>SASKATCHEWAN</b>	\$100,268.00	\$121,525.00 (49% of salary of provincial court judge at April 1 of previous year)	\$124,684.00 (49% of salary of provincial court judge at April 1 of previous year)	\$127,801.00 (49% of salary of provincial court judge at April 1 of previous year)

The remuneration of the SPJP, when taking into account salary, pension and other benefits, must be seen to be at or very near the top in relation to the comparators.

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

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

Second, with reference to the government submission, the commission cannot agree that it has a responsibility to “ensure that none of its recommendations would cause the Government to incur an accumulated deficit”. Section 2 of the *Taxpayer Protection Act* 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 will adopt 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 Consumer Price Index from 1988 to 2013 for all provinces and the cities of Whitehorse and Yellowknife was obtained from the government’s submission and Statistics Canada. The total and average increases during the 2002 to 2013 period for Whitehorse and the comparators are set out in the following table.

	<b>CPI Total increase from 2002 to 2013</b>	<b>CPI Average annual increase from 2002 to 2013</b>
<b>WHITEHORSE</b>	22.8%	2.1%
<b>YELLOWKNIFE</b>	26.2%	2.4%
<b>B.C.</b>	17.7%	1.6%
<b>ALBERTA</b>	28.9%	2.6%
<b>SASKATCHEWAN</b>	25.7%	2.3%

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 level

of increases in judicial salaries during that period has exceeded CPI increases and, therefore, consistently provided real income improvements.

None of the parties or the commission was able to obtain up to date information on “per capita income” as directed by paragraph 19(g) of the *Territorial Court Act*.

The government, in its submission, provided some indicators that could be thought to serve in place of per capita income including average person income by Yukon tax filer (\$50,288 in 2011) and personal income tax rates. It would be venturing onto political ground for the commission to attempt an assessment and ranking of the income tax rates but it might be safely concluded that Yukon taxpayers are no more inconvenienced than their colleagues in the comparator jurisdictions.

During the presentations on the submissions of the Government of Yukon and the Territorial Court Judges, Mr. Bainbridge and Mr. Arvay were very clear in expressing the position that the commission should not be comparing the remuneration of judges with that of public servants. Mr. Arvay stated “[while] it’s appropriate to look at, in sort of a general way, what happens to the civil service it would be an error of law for the government and the JCC to attempt to equate judges with the civil service.”

The commission takes the point made by Mr. Bainbridge and Mr. Arvay when accepting the information that the government provides in its submission on the pay of Government of Yukon employees. It notes that the government, in providing that information, states “To determine what is reasonable compensation, appropriate to the judicial office and sufficient to ensure financial security, it is helpful to survey the income in various sectors in the Yukon to gain an understanding of the relative position of the Judges to others in the community they serve.”

The submission of the government set out the percentage increases in the pay of employees of the Government of Yukon under the collective bargaining agreement from 2001 to 2013. The commission was also able to learn, from a government news release, the increase that was provided in that agreement for 2014. The commission was able to deduce, from that information, that the increase in the pay of employees of the Government of Yukon under the collective bargaining agreement was 33.8% during the years from 2002 to 2014.

Over the same period, 2002 to 2014, the salaries of judges will have increased by 52.8% from \$172,000 to \$262,786 and the salary of the SPJP will have increased by 56.9% from \$85,000 to \$133,364.

The *Yukon Economic Outlook 2013*, prepared by the Department of Economic Development of the Government of Yukon, was attached to the submission received from the Judges of the Territorial Court of Yukon and the Justice of the Peace Association. In that submission it was stated that “the recommended salary increases [for judges and justices of the peace] are appropriate with regard to



Yukon's Economic Outlook. . . . It shows growth of 3.4% in the GDP for 2012; estimated growth of 0.9% for 2013; and forecasted growth of 8.8% for 2014." The same report was referenced in the submission of the Senior Presiding Justice of the Peace.

The commission concludes, from its consideration of the submissions received and the information available to the parties and the commission, that the recommendations made by the commission respecting the remuneration of the judges and the SPJP take appropriate account of (1) increases in the cost of living, and (2) other economic indicators provided to the commission.

## 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 HOLDING A FORMAL HEARING

1. **Question raised respecting whether the commission should hold a formal hearing**
- 1.1 As was noted in Part 3 of this report:
  - (a) The commission informed the parties that, having received joint submissions from the Government of Yukon and the Territorial Court Judiciary and Justice of the Peace Association, the commission, in accordance with the 2005 Letter of Understanding, was convening to review those submissions and the process that led to them and would not be calling a formal hearing.
  - (b) The commission further informed the parties that its review of the individual submissions received from the Government of Yukon and the Senior Presiding Justice of the Peace revealed that each of the parties was recommending actions that would have identical effect on the remuneration of the SPJP. Article 7.9 of the Letter of Understanding directs that a formal hearing be conducted when agreement has not been reached on outstanding issues. The commission stated that, as a result of there being no disagreement shown in the submissions pertaining to the remuneration of the SPJP, it intended to review the submissions of the Government and the SPJP while the commission was convened rather than to call a formal hearing for that purpose. The parties did not express objection to the procedure set out by the commission.
- 1.2 At the conclusion of the convening of the commission for the consideration of submissions respecting the Senior Presiding Justice of the Peace [Part 5 of this report], the question of whether the commission should hold a formal hearing was raised by Mr. Drolet. Mr. Bainbridge and Mr. Drolet then provided the commission with their thoughts on the matter.
- 1.3 Mr. Bainbridge cited section 25(1) of the *Territorial Court Act* that states:

Hearings before the commission shall be informal and the commission shall ensure that the public has an adequate opportunity to participate in them.

He said hearings would normally, whether informal or not, still be the gathering of individuals for the purpose of making submissions. He also said, although it may not have been a traditional hearing, the commission had held a hearing on January 17, 2014.
- 1.4 Mr. Drolet said that, notwithstanding the existence of a Letter of Understanding, the

Act governs and, as a result, there still has to be an opportunity provided for public input. He said that his client, the SPJP, has said that, so far as he knows, there has only been one member of the public ever attend a commission. He said that, even though there has not been a great deal of public interest evidenced in the past, the opportunity for public input still has to be offered. With regard to process, he suggested that it could be initiated by a public notification that the commission would be available at a particular time and place to receive any submissions the public wishes to make.

- 1.5 Mr. Bainbridge called attention to section 25(3) of the Act that states, "...the commission may determine its own rules of conduct including rules respecting public hearings."
- 1.6 It was concluded that Mr. Bainbridge would get direction from his client, the Government of Yukon, that the commission would communicate with and receive advice on this matter from the representatives of all the parties by e-mail, that the commission would then make a decision on the matter, and the commission would report that decision to the parties.

## **2. Communications by e-mail on question of whether the commission should hold a formal hearing**

- 2.1 The commission, on January 22, 2014, sent an e-mail to all the parties that included the following:

You will recall that, at the conclusion of the convening of the Judicial Compensation Commission on January 17, the question was raised by Mr. Drolet as to whether the JCC was obliged to hold a public hearing. I understood the preliminary views held by both of you to be leaning toward the necessity for the JCC to hold a hearing. I also understood that the matter was left undecided and that you both committed to ruminating on it and providing the commission with your advice as to what should be done. . . .

If you are recommending holding hearings the commission would also desire your advice on the effect that those hearings should have on the JCC process and the results of that process. Any semblance of transparency would have the public being informed that their input is being sought after the parties (in reference to the Government of Yukon and the Judges and the JPs) have already submitted joint submissions to the JCC. Further, they should be informed that, in accordance with the Letter of Understanding between the parties, the JCC has met with the parties and gone through the process set out in the LOU for reviewing those submissions. It would seem to the commission that informing the members of the public of these facts might well lead to expressions of disappointment on a level that could be damaging to the reputation of the JCC, the Territorial Court, the judiciary and the Government of Yukon.

- 2.2 Gary Bainbridge, representative for the Government of Yukon, responded to the commission by e-mail, copied to the other parties, on January 24, 2014 as follows:

Respecting how any public hearings might be conducted, section 25(3) makes you the master of your own process, as follows:

25(3) Subject to subsection (4), the commission may determine its own rules of conduct including rules respecting public hearings.

The Yukon Government is of the opinion that the idea of the public hearing requirement of the Act is not to ensure that the public hears the Judges' and SPJP's submissions; it is to ensure that you hear from the public. Like an environmental or licensing hearing, it would be quite typical for different parties to make different submissions at different times, yet the hearings are still public.

To the Government, we believe that by publicly inviting the submissions as has already been done, this requirement has likely been discharged.

However, if you feel that an actual "hearing" is required, the Government makes the following suggestion as to how you might conduct that. The Government will create a dedicated page on its website to contain a small explanation about the role of the JCC, and post the written submissions of all parties, together with the Joint Submissions. (This is in fact what is done in most other provinces.) Next, the Government will have ads placed, referencing the location of these submissions, and setting a public hearing date for whoever wishes to attend before the Commission being able to do so at that time. You can then attend at that time, and receive any submissions in the fashion you choose.

I will let the other counsel weigh in on this proposal, but I do wish to confirm that the Government is also anxious to get this process completed and the report issued.

- 2.3 Joseph Arvay, representative of the Territorial Court Judiciary and the hourly-rated Justices of the Peace, provided his response to Mr. Bainbridge's e-mail on January 24, 2014 stating, "I am content with that as well."
- 2.4 Kevin Drolet, representative of the SPJP, provided his response to Mr. Bainbridge's e-mail on January 31, 2014 stating "The SPJP is of the view that YTG's proposal for public posting of the parties submissions with an opportunity for the public to attend and be heard as advertised is appropriate."
- 2.5 The commission provided the parties with its decision by e-mail on January 31, 2014 stating:  
The Judicial Compensation Commission, on January 22, 2014, sent an e-mail to you requesting the advice of the parties on whether the JCC is required to hold a public hearing. Your responses were received by e-mail as follows: Mr. Bainbridge on behalf of the Government of Yukon on January 24, 2014, Mr. Arvay on behalf of the Judges of the Territorial Court and the Justices of the Peace on January 24, 2014, and Mr. Drolet on behalf of the Senior Presiding Justice of the Peace on January 31, 2014.

Mr. Bainbridge provided the most substantive response.

The Commission notes from that response the following:

(1) "25(3) Subject to subsection (4), the commission may determine its own rules of

conduct including respecting public hearings."

(2) "The Yukon Government is of the opinion that the idea of the public hearing requirement of the Act is not to ensure that the public hears the Judges' and SPJP's submissions; it is to ensure that you hear from the public."

(3) "To the Government, we believe that by publicly inviting the submissions as has already been done, this requirement has likely been discharged."

Mr. Bainbridge then goes on to outline a process that could be followed if the Commission should "feel that an actual 'hearing' is required".

Mr. Arvay said, in response to Mr. Bainbridge's e-mail, "I am content with that as well."

Mr. Drolet said "The SPJP is of the view that YTG's proposal for public posting of the parties submissions with an opportunity for the public to attend and be heard as advertised is appropriate."

Neither Mr. Arvay nor Mr. Drolet disputed the content or opinions found in Mr. Bainbridge's e-mail including that (1) the Commission may determine its own rules of conduct respecting public hearings, (2) the public hearing requirement of the Act is not to ensure that the public hears the parties' submissions but to ensure that the Commission hears from the public, and (3) that the process of publicly inviting submissions from the public leads to the belief that the requirement for public hearings has likely been discharged.

The Commission has given full consideration to this matter and to the advice received and will follow the parties' lead when it comes to brevity in conveying its decision. The Commission has determined that the 2013 Judicial Compensation Commission will not be holding public hearings. The full reasoning of the Commission in reaching its decision will be provided in its report.

### **3. Reasoning of commission for not holding public hearings**

- 3.1 The primary reason that the commission did not agree to hold a formal hearing was that it had reached a point in its activities where a formal hearing could not have had any influence on the results. The commission, following the direction of the LOU, had already received the submissions of the parties, determined that there were no outstanding issues among the parties, and convened to review the joint and individual submissions with the parties. During that process the commission had satisfied itself (1) that there had not been any negotiations between the parties, and (2) that there was nothing in their submissions that was so unreasonable, illogical or otherwise questionable as to justify the commission not accepting and adopting the recommendations found therein. The commission found that it would have been unreasonable, illogical and questionable to invite the public to attend a formal hearing to provide input on what, in common parlance, was a "done deal."
- 3.2 The commission has reviewed the reports of past judicial compensation

commissions and found that the only instance in which a submission, written or oral, has been made by anyone other than the directly affected parties, being the Government of Yukon, the Territorial Court Judges, the Justice of the Peace Association, and the Senior Presiding Justice of the Peace, was in 2004 when retired Judge Barry Stuart made both a written and an oral submission.

- 3.3 The commission has also reviewed the reports of judicial compensation commissions from the comparator jurisdictions (Northwest Territories, Saskatchewan, Alberta and British Columbia) provided in the *Supporting Materials of the Government of Yukon in relation to the Territorial Court Judges and Hourly-Rated Justices of the Peace* provided to the commission by the Government of Yukon. It has found, in those reports no instance in which a submission, written or oral, has been made to a commission by anyone other than the affected parties or others with a direct interest such as the local branch of the Canadian Bar Association or an individual judge.
- 3.4 The commission reviewed the *PEI Reference* and related decisions, including the decision of Madam Justice Schuler *Cameron v. Yukon* and found no direction as to the manner in which public input should be sought or dealt with by judicial compensation commissions.
- 3.5 The commission notes, as did Mr. Bainbridge above, the direction of section 25(1) of the *Territorial Court Act* that “Hearings before the commission shall be informal and the commission shall ensure that the public has an adequate opportunity to participate in them.”
- 3.6 The commission further notes the provision in the Letter of Understanding agreed to by the parties, that “If agreement on outstanding issues cannot be reached informally, then a formal hearing will be conducted as and when directed by the JCC.” Since agreement had been reached informally between the parties, the commission adhered to the direction and spirit of the LOU and did not call a formal hearing.

## **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, Joseph Arvai, 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 9<sup>th</sup> day of April, 2014.

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Patrick L. Michael  
Commissioner