

SUBMISSIONS OF THE SENIOR PRESIDING JUSTICE OF THE PEACE
TO THE 2010 JUDICIAL COMPENSATION COMMISSION

PART 1: CONSTITUTIONAL AND LEGISLATIVE OVERVIEW OF THE COMMISSION PROCESS

1. Judicial independence is the “lifeblood of constitutionalism in democratic societies”. It is “one of the pillars upon which our constitutional democracy rests”. The freedom of the judiciary from the influence of the other branches of government is “essential to the achievement and proper functioning of a free, just and democratic society based on the principles of constitutionalism and the rule of law.”

Mackin v. New Brunswick (Minister of Finance), 2002 SCC 13 at para. 34 [hereinafter “*Mackin*”].

Ell v. Alberta, 2003 SCC 35 at paras. 18-19 [hereinafter “*Ell*”].

Provincial Court Judges’ Assn. of New Brunswick v. New Brunswick (Minister of Justice), 2005 SCC 44 at para. 4 [hereinafter “*New Brunswick Judges*”].

2. Yet the judiciary is the most vulnerable of the three branches of government. It has no means by which it can generate revenue to sustain itself. It is entirely reliant on the other branches of government for its most basic, practical needs. This sort of dependency is entirely inconsistent with impartiality that the judiciary must bring to bear in every case in order to see justice done while preserving our rights and freedoms, constitutional order, and the rule of law. To protect the integrity of the administration of justice from the specter of economic manipulation of the judiciary by the other branches of government, all matters affecting judicial remuneration must be assessed by an independent, objective and effective commission before the executive or legislature can alter judicial remuneration. This, as the Supreme Court of Canada has held, is not for the benefit of judges; it is for the benefit of the judged.

Ell, ibid. at para. 29.

New Brunswick Judges, ibid. at para. 4.

1. THE CONSTITUTIONAL IMPERATIVE FOR JUDICIAL INDEPENDENCE

3. The Supreme Court of Canada has held that judicial independence is indispensable in a free and just constitutional democracy based on the rule of law. It is “an unwritten constitutional principle” whose origins can be found in the *Act of Settlement of 1701* and the preamble to the *Constitution Act, 1867*. It is also protected as a right in section 11(d) of the *Charter*:

11. Any person charged with an offence has the right

* * *

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, [1997] 3 S.C.R. 3 at paras. 83 & 109 [hereinafter the “*PEI Reference*”].

Mackin, *supra* at paras. 34 & 37.

Ell, *supra* at paras. 18-19.

New Brunswick Judges, *supra* at para. 4.

Constitution Act, 1867 (U.K.), 30 & 31 Vict., c. 3.

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (U.K.), 1982, c.11 [the “*Charter*”].

4. Judicial independence is the separation of the judiciary from other branches of government or bodies that could use the power conferred on them by the state to exert pressure on the judiciary. It is necessary to ensure that the rules of the court are based “solely on the requirements of law and justice”.

PEI Reference, *ibid.* at paras. 111-113.

Mackin, *supra* at paras. 37 & 54.

5. The Supreme Court of Canada has held that the constitutional imperative of judicial independence extends to justices, judges and justices of the peace – both sitting and non-sitting.

Ell, *supra* at paras. 24-26.

6. In order to maintain public confidence in the administration of justice, it is not enough for a court to *be* independent. It is equally important that a court be *seen to be* independent. So much so that the test for independence is whether a reasonable, informed person would perceive that a court is independent. As the Supreme Court of Canada held in *Mackin*, “in order for independence in the constitutional sense to exist, a reasonable and well-informed person should not only conclude that there is independence in fact, but also find that the conditions are present to provide a reasonable perception of independence. Only objective legal guarantees are capable of meeting this double requirement.”

PEI Reference, supra at paras. 111-113.

Mackin, supra at paras. 38 & 40.

a. THE ROLE OF AN INDEPENDENT, EFFECTIVE AND OBJECTIVE COMMISSION

7. The Supreme Court of Canada held that the other branches of government cannot change or freeze judicial remuneration without prior recourse to an independent, objective and effective process for determining judicial remuneration. This avoids the possibility of even the appearance of political interference with the judiciary through economic manipulation. Any changes to judicial remuneration that are made without recourse having been made to a compensation commission that is independent, effective and objective are unconstitutional.

PEI Reference, supra at paras. 133, 147, 200, 217, 219, 224 & 287.

Mackin, supra at para. 69 .

8. This applies equally to the remuneration of judges and justices of the peace.

New Brunswick Judges, supra at para. 121.

9. To be independent, a commission must be free from the influence or control of any branch of government.

PEI Reference, supra at paras. 170-172.

10. To be objective, a commission must make its recommendations based on “objective criteria, not political expediencies”. Objectivity is enhanced where the commission is fully informed before it determines its recommendations.

PEI Reference, supra at para. 173.

11. To be effective, the recommendation of the commission need not be binding, but the executive or the legislature must formally respond to the recommendations. If the executive chooses not to implement one or more of the recommendations, it must be able to justify this course of action and support it with reasons that meet the rationality standard. The greater the threat of economic manipulation, the more stringent the standard of rationality will be. Across-the-board measures are easier to justify than ones aimed solely at the judiciary *or subsets of the judiciary*.

PEI Reference, supra at paras. 133 & 179-184.

Mackin, supra at para. 57.

New Brunswick Judges, supra at para. 21.

12. Both the Supreme Court of Canada and the *Territorial Court Act* require that a commission provide reasons for its recommendations. This requirement is critical to the integrity of the commission process. A Commission which supports its recommendations with strong and well-articulated reasoning, ultimately demands an equally reasoned response from government.

New Brunswick Judges, supra at para. 4.

Territorial Court Act, R.S.Y. 2002, c. 217, s. 25(5).

13. While commissions may be organized differently in different jurisdictions, if they are not independent, objective and effective they cannot satisfy their constitutional role in fixing judicial remuneration.

PEI Reference, supra at para. 185.

b. FINANCIAL SECURITY AS AN ELEMENT OF JUDICIAL INDEPENDENCE

14. At an institutional level, judicial independence has three core elements: 1) security of tenure; 2) financial security; and 3) administrative independence. The Judicial Compensation Commission process engages the second element – financial security. For

the judiciary to be financially secure, courts must “be free and appear to be free from political interference through economic manipulation”. The constitutional prerequisite of financial security does not exist for the benefit of the judiciary. It exists to maintain the rule of law, our constitutional order, and public confidence in the administration of justice.

PEI Reference, supra at paras. 9-10, 115, 138-146 & 156.

Mackin, supra at para. 54.

Ell, supra at paras. 3, 23 & 29.

New Brunswick Judges, supra at paras. 4 & 6.

15. The specter of political manipulation of judicial remuneration is not limited to reductions in salary. It rises equally with increases or freezes to judicial remuneration. Judges cannot be seen to be “singled out for differential treatment”. This might be reasonably interpreted by members of the public as leading to manipulation of the judiciary by the other branches of government.

PEI Reference, supra at paras. 156 & 159.

16. Judicial independence implies not only that judicial officers should be free from political pressures, but also that they are removed from financial or business entanglements that may appear to affect the exercise of judicial functions. To “enhance the impartiality of the judges as well as the perception of such impartiality”, judges must therefore minimize their involvement in matters regarding the determination of judicial remuneration. Indeed, the executive and the legislature are not merely enjoined from using their control of the public purse to influence the judiciary. They are also under a positive obligation to actively protect judicial independence.

Mackin, supra at paras. 55 and 60.

PEI Reference, supra at para. 130.

2. THE STRUCTURE OF JUDICIAL COMPENSATION COMMISSIONS IN THE YUKON

17. The structure of the judicial compensation commission process for judges in the Yukon is set out in Part 3 of the *Territorial Court Act*. Remuneration for salaried justices of the peace is “set by the commission in accordance with Part 3 of this Act

modified to suit the case”. The mandate of a judicial compensation commission is to “inquire into and to make recommendations respecting all matters relating to judicial remuneration”, which the *Territorial Court Act* defines as “all forms of compensation including salaries, pensions, allowances, and benefits”.

Territorial Court Act, supra, ss. 1, 14 & 58.

18. When formulating its recommendations, *along with any other relevant factors*, the Commission is obligated to consider:

- a) The Government’s current financial position;
- b) Ensuring reasonable compensation for judges;
- c) Building a strong court by attracting applicants;
- d) The unique nature of the Yukon;
- e) The compensation that judges receive in British Columbia, Alberta, Saskatchewan and the Northwest Territories;
- f) The laws of the Yukon;
- g) The cost of living in the Yukon along with changes in *per capita* income; and
- h) Any submissions filed by the public.

Territorial Court Act, supra, s. 19.

19. The recommendations of the Commission are binding on the Government except “to the extent that these exceed the highest total value of judicial remuneration provided to the territorial or provincial judges of British Columbia, Alberta, Saskatchewan or the Northwest Territories”. Where this occurs, the Commissioner in Executive Council may depart from the recommendation of the Commission and substitute instead the highest total value of judicial remuneration in the comparator jurisdictions, provided it can satisfy the rationality standard for departing from the recommendation of the Commission, as outlined in paragraph 11, *supra*.

Territorial Court Act, supra, s. 17.

3. THE HISTORY OF JUDICIAL COMPENSATION COMMISSIONS IN THE YUKON

20. In 1997, shortly after the decision of the Supreme Court of Canada in the *PEI Reference, supra*, the independence of the Territorial Court was challenged in proceedings before the Senior Presiding Justice of the Peace [the “SPJP”]. The Honourable E. N. (Ted) Hughes was then asked by the Yukon’s Minister of Justice to conduct an enquiry into the administration and operation of the Territorial Court. Among the issues that he was asked to consider were the remuneration of judges *and justices of the peace*, how communications between the Court and the government, which had been characterized by tension in the past, should take place, and what steps should be taken to ensure compliance with the decision in the *PEI Reference, supra*. The *Territorial Court Act* was subsequently amended in accordance with the recommendations of the Hughes’ Commission.

Cameron v. Yukon, 2011 Y.K.S.C. 35 at para. 16 [hereinafter “*Cameron*”].

21. The first Judicial Compensation Commission [“JCC”] was established by order-in-council and omitted justices of the peace from its mandate. Prior to the 1998 JCC, the Territorial Court judges’ annual salary was \$112,179. . The salary of the SPJP was \$62,000. By 2001, the Territorial Court judges’ salaries had risen 26.3% to \$141,702. The salary of the SPJP had risen 7.7% to \$66,779

OIC, 1998/168 (YK).

1998 Yukon Judicial Compensation Commission, *Report and Recommendations*, December 1998, at 3 (hereinafter the “1998 Yukon JCC Report”).

22. Following amendment of the *Territorial Court Act, supra*, the SPJP was included in subsequent judicial compensation commissions in 2001, 2004 and 2007, the principal issues of which have been salary and pension . The SPJP has not previously been represented by counsel. As illustrated in Table 2 of these Submissions, the disparity has continued to widen between the SPJP and his most appropriate comparators, the Territorial Court judges and Justices of the Peace in the Province of Alberta, through each of the subsequent JCC’s.

a. THE RECOMMENDATIONS OF THE 2007 JUDICIAL COMPENSATION COMMISSION

23. On March 31, 2008, the 2007 JCC issued its decision entitled *Report and Recommendations of the Commission* [the “2007 JCC Report”].

2007 Yukon Judicial Compensation Commission, *Report and Recommendations of the Commission*, March 31, 2008 (hereinafter the “2007 Yukon JCC Report”).

24. Without comment or reasons, beyond citing the agreement of the parties, the 2007 JCC endorsed the Joint Submission of the Government and Territorial Court judges. The JCC recommended that Territorial Court judges’ salaries be increased by 7.924%-3%-3% in each of three years, with the same percentage increases to be applied to deputy judges’ salaries and to their travel *per diem*. The 2007 JCC also endorsed the Joint Submission that the stipends for the Chief Judge and the Supervising Judge be increased.

2007 Yukon JCC Report, at 8, 17 and 18.

25. In its recommendations, the 2007 JCC “took into account the contribution that the Senior Presiding Justice of the Peace makes to the efficiency of the Court and his value to the Yukon system of justice”. It recognized that the judicial role of the SPJP in the Yukon was unlike any other Justice of the Peace in Canada, and acknowledged that SPJP. Cameron provides many of the functions of a judge.

2007 Yukon JCC Report, at 11.

26. The 2007 JCC specifically considered:

- SPJP Cameron’s duties;
- The high expectations that Yukoners have of all members of the Territorial Court, including the SPJP;
- The need to attract applicants if the position became vacant;
- The fact that the SPJP need not be a lawyer;
- The SPJP’s benefit package, including pension, travel allowance, annual leave, medical benefits, and professional expenditures; and
- The cost of living in the Yukon.

The 2007 JCC concluded that the financial position of the government at the time would not preclude an increase in the salary and benefits payable to the SPJP.

2007 Yukon JCC Report, at. 11-12.

27. However, the 2007 JCC accepted the Government's submission that it was bound by section 17 of the *Territorial Court Act* not to recommend a remuneration package for the SPJP that exceeded the highest remuneration for justices of the peace in the comparator jurisdictions:

It is the opinion of the Commission that Section 17 of the *Territorial Court Act* limits the compensation that can be recommended for the Senior Presiding Justice of the Peace to the maximum total value of remuneration provided to a Justice of the Peace in the comparator jurisdictions. It is the Commission's further opinion that it cannot use a formula to set the Senior Presiding Justice of the Peace salary where it would contravene section 17 of the Act.

2007 Yukon JCC Report, at 13.

28. As commissioners had in previous proceedings, reports and recommendations, the 2007 JCC struggled in its attempts to find a meaningful comparator for assessment of the appropriate compensation for the SPJP, given the disparity in the roles, responsibilities and qualifications of justices of the peace in other jurisdictions.

2007 Yukon JCC Report, at 13-14.

29. Ultimately, citing the Government's contentment with the potential that the SPJP be the highest paid justice of the peace in Canada, the 2007 JCC recommended that the salary of the SPJP be varied as follows:

- \$109,500 annually, effective April 1, 2007 [\approx 5.606% increase]
- \$112,785 annually, effective April 1, 2008 [\approx 3% increase]
- \$116,169 annually, effective April 1, 2009 [\approx 3% increase]

2007 Yukon JCC Report, at 14 and 18.

b. IMPLEMENTATION OF THE 2007 JCC RECOMMENDATIONS BY ORDERS-IN-COUNCIL 2008/170 and 2010/154 (YK)

30. In OIC 2008/170 (YK), the Government rejected the salary recommendations made by the 2007 JCC for the SPJP and, instead, substituted the salary increases that the government had proposed – salary increases that the Commissioner had rejected:

- \$106,798 annually, effective April 1, 2007 [≈ 3% increase]
- \$110,001 annually, effective April 1, 2008 [≈ 3% increase]
- \$113,302 annually, effective April 1, 2009 [≈ 3% increase]

1st Affidavit of Dean Richard Cameron, filed April 21, 2010 at exhibit “F”.

31. The Government purported to set out its reasons for departing from the recommendation of the Commission in the Appendix to OIC 2008/170 (YK).

1st Affidavit of Dean Richard Cameron, filed April 21, 2010 at exhibit “G”.

32. In the Appendix to the OIC, the Government noted that subsections 17(1) & (2) of the *Territorial Court Act* make the recommendations of a judicial compensation commission binding on the Government unless they “exceed the highest total value of the judicial remuneration” in British Columbia, Alberta, Saskatchewan and the Northwest Territories. If this occurs, the Government stated that it may “substitute the highest total value of judicial remuneration in the comparator jurisdictions for the Commission’s recommendation” pursuant to subsection 17(3).

1st Affidavit of Dean Richard Cameron, filed April 21, 2010 at exhibit “F”.

33. The Government set out the values of the remuneration packages recommended by the Commission and those proposed by the Government to the 2007 JCC, based on actuarial calculations. Both the recommendation and the Government proposal exceeded the “value of remuneration for a justice of the peace” in Alberta, which the Government claimed was the highest of the comparator jurisdictions.

1st Affidavit of Dean Richard Cameron, filed April 21, 2010 at exhibit “F”.

34. The Government concluded that the recommendation of the 2007 JCC was not binding because it exceeded the value of remuneration for justices of the peace in Alberta. The government further concluded that this allowed it to substitute the remuneration package that it had proposed to the 2007 JCC.

1st Affidavit of Dean Richard Cameron, filed April 21, 2010 at exhibit “F”.

35. The Government did not provide any further reasons for its departure from the recommendation of the 2007 JCC nor did it proffer any further facts in the Appendix to the OIC.

36. On August 19, 2010, the Government promulgated OIC 2010/154 (YK). It amended OIC 2008/170 to implement the salary recommendations of the 2007 JCC for the SPJP. The OIC contains no explanation for why the Government took such action at the time.

1st Affidavit of Dean Richard Cameron, filed April 21, 2010 at exhibit “F”.

PART 2: RELEVANT FACTORS THAT THE SPJP PROFFERS FOR CONSIDERATION BY THE COMMISSION

1. THE UNIQUE ROLE OF THE SENIOR PRESIDING JUSTICE OF THE PEACE IN THE YUKON

37. The Territorial Court of Yukon is comprised of four full-time sitting members: three Territorial Court judges and one Senior Presiding Justice of the Peace. SPJP Cameron was born in the Yukon and has lived here for all but six years of his life. He has been a justice of the peace since November 16, 1984, and has sat on the Territorial Court of Yukon full-time since July 1, 1994, longer than any other member of the Court.

1st Affidavit of Dean Richard Cameron, filed April 21, 2010 at paras. 2-5.

38. The SPJP has a “judicial role distinct from any other Justice of the Peace in Canada”. He presides over many matters commonly dealt with by provincial or territorial court judges in other jurisdictions. The SPJP sits daily in the Territorial Court. He presides over contested bail hearings, tries territorial and municipal offences, sits in

criminal court, family court, youth court, child protection court, Community Wellness Court and the Domestic Violence Treatment Option Court. He determines *ex parte* applications for search warrants and production orders. Attached as Table 1 of these Submissions is a summary of the broad range of territorial legislation in which the SPJP plays a key role in the administration of justice in the Yukon.

1st Affidavit of Dean Richard Cameron, filed April 21, 2010 at paras. 6-9, exhibit “A” & exhibit “E”, at p. 72.

39. Like Territorial Court judges, the SPJP is appointed by the Minister of Justice on the recommendation of the judicial council.

Territorial Court Act, *supra* at s. 54(1).

40. The *Territorial Court Act* confers jurisdiction upon the SPJP in the same terms as those used to confer jurisdiction on a Territorial Court judge – subject to the limitations set out in section 56 of the *Territorial Court Act*.

Territorial Court Act, *supra*, at ss. 3 & 53.

41. Section 56 reiterates that the SPJP has the jurisdiction to exercise all of the powers and perform all the duties of a Territorial Court judge. The section places an upper limit on the lengths of custodial sentences (90 days), conditional sentences (180 days), and non-consensual temporary child protection orders (3 months) that the Presiding Justice of the Peace can impose. The only power that a Territorial Court judge possesses that a Presiding Justice of the Peace is precluded entirely from exercising is the jurisdiction to issue non-consensual permanent care and custody orders in child protection matters.

Territorial Court Act, *supra*, at s. 56.

2. THE FINANCIAL POSITION OF THE GOVERNMENT

42. 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 Commission has received the *Yukon Economic Outlook 2011* published by the Department of Economic Development.

43. Although financial resources are not unlimited, the Government did not take the position before the Commission in relation to the Territorial Court judges that its financial position requires a general program of fiscal restraint, so it is anticipated that the SPJP will have no further submissions on this factor.

3. THE COST OF LIVING IN THE YUKON

44. Inflation in Whitehorse has been under 2% *per annum* for the last decade, but during the past year topped 3%. The Yukon has maintained its relative position with respect to tax rates and the cost of living in comparator jurisdictions. Given the position taken by the Government of Yukon in its Submissions regarding recommendations for the compensation of Territorial Court judges, it is not anticipated that the SPJP will have any further submissions on this factor.

4. THE NEED TO BUILD A STRONG COURT BY ATTRACTING QUALIFIED CANDIDATES

45. The *Territorial Court Act* does not require that the SPJP be a lawyer. In its submissions to the 2007 JCC, however, the Government acknowledged that “the likely pool of the SPJP’s successor will be lawyers”. This is a reasonable concession given the breadth of the jurisdiction of the office of SPJP, the rights and interests of the citizenry that are implicated in the decisions of the SPJP, and the 25 years of training and experience that will have to be replaced when SPJP Cameron resigns from the Bench. There is no doubt that Court will need to attract candidates of a high caliber into this position.

46. The arguments in favour of the rates of remuneration required to attract, retain and motivate candidates for the office of Territorial Court judge apply equally to the office of the SPJP, including competition with judicial postings in the Northwest Territories. While there are different responsibilities and challenges associated with each office, the need to attract qualified candidates is the same, as is the pool from which those candidates will be drawn.

5. THE NEED TO REDRESS THE ERROR OF LAW COMMITTED BY THE 2007 JUDICIAL COMPENSATION COMMISSION

47. Upon judicial review of OIC 2008/170 and 2010/154 by Petition brought by SPJP Cameron, Madam Justice Schuler held that, contrary to the position taken by the Government its submissions to the 2007 JCC, section 17 does not operate as a restraint on the power of a Judicial Compensation Commission to recommend the level of remuneration that it deems appropriate to preserve judicial independence in the Yukon. In fact, section 17 is not a matter to be considered by the Commission at all. Its operation is restricted solely to constraining the Government's response to the recommendations of the Commission after it has received them.

Cameron, supra at paras. 122, 126 and 131.

48. To the extent that the recommendations of the 2007 JCC were wrong in law, they are neither binding nor persuasive precedent for consideration by subsequent commissions such as this. There is nothing on the face of the 2007 JCC that justifies the SPJP receiving a lower percentage increase than the judges, other than the erroneous application of section 17. Specifically, there has been no change in relative jurisdiction, workload or responsibilities between the offices of the judges and the SPJP that could justify the SPJP's relative decline in salary.

6. THE NEED TO REDRESS THE DECLINE IN THE RELATIVE SALARY OF THE SPJP

49. One of the legislative purposes behind the inclusive language found in section 19 of the *Territorial Court Act* must be that *attracting* qualified candidates is not the only relevant factor in the judicial appointment process. Once highly qualified candidates have been appointed, they must be retained, particularly as they acquire invaluable judicial experience, and motivated to continuing excellence. Reasonable compensation is critical to that process.

50. Reasonable compensation is just, fair and appropriate; neither more nor less than what is expected in the circumstances. The reasonableness of compensation for the SPJP is diminished by the decline in his financial position in relation to both Territorial Court

judges and Alberta justices of the peace as illustrated in Table 2. Such a continuing disparity creates the appearance that the government has diminished the powers and responsibilities of the SPJP, which is not the case, and erodes public confidence in the Territorial Court's justices of the peace.

51. The percentage increase in the salaries paid to Territorial Court judges since 1998, when the process of determining judicial compensation by the commission process began, is 104%. The percentage increase in salaries paid to justices of the peace in Alberta during the same period is 100%. The office of the SPJP, with a percentage increase of 87% since the baseline was established in 1998, has not kept pace with either comparator. No justification for this decline in relative salary has been proffered by any of the JCCs previously held in the Yukon. Reversing the relative decline in the financial position of the SPJP and restoring the office to the position it enjoyed in relation to its two most appropriate comparators will strengthen judicial independence by correcting the apparent imbalance.

PART 3: RECOMMENDATIONS OF THE SPJP

52. 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 the Territorial Court Judges and Alberta's justices of the peace.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated this 21st day of September, 2011.

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LIST OF AUTHORITIES

Cameron v. Yukon, 2011 Y.K.S.C. 35.

Ell v. Alberta, 2003 SCC 35.

Mackin v. New Brunswick (Minister of Finance), 2002 SCC 13.

Provincial Court Judges' Assn. of New Brunswick v. New Brunswick (Minister of Justice), 2005 SCC 44.

Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, [1997] 3 S.C.R. 3.

APPENDIX 1

RELEVANT STATUTORY PROVISIONS

Territorial Court Act, R.S.Y. 2002, c. 217.

1. In this Act,

* * *

“judicial remuneration” means all forms of compensation including salaries, pensions, allowances, and benefits;

* * *

3.(1) A judge has jurisdiction throughout the Yukon to exercise all the power conferred on, and perform all the duties imposed on a judge, a justice or two or more justices sitting together, or a provincial court judge by or under an enactment of the Yukon or of Canada.

(2) For the purposes of the *Young Offenders Act* (Canada), the court shall be deemed to have been designated as a youth court and every judge of the court shall be deemed to have been designated a youth court judge.

13. There shall be established in the year 2001 and in each third year thereafter a commission which shall consist of either one commissioner or three commissioners to be appointed by the Commissioner in Executive Council in accordance with this Part.

14. 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.

15. Subject to section 16, no recommendation of the commission shall result in less judicial remuneration than the remuneration provided to judges to whom this Part applies on the day on which the commission was established.

17.(1) Subject to subsection (2), recommendations made by the commission with respect to judicial remuneration in accordance with section 14 shall bind the government.

(2) Recommendations made by the commission with respect to judicial remuneration shall not bind the government to the extent that these exceed the highest total value of judicial remuneration provided to territorial or provincial judges of British Columbia, Alberta, Saskatchewan, or the Northwest Territories.

(3) If the recommendation of the commission exceeds the highest total value of judicial remuneration set out in subsection (2), the Commissioner in Executive Council may substitute the highest total value of judicial remuneration for the commission's recommendation.

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

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

20. Unless otherwise agreed by the Minister and by the chief judge, the following are not to be appointed as a commissioner:

- (a) a practicing member of the Law Society of Yukon;
- (b) a current member of the judiciary;
- (c) a member of the public service of the Yukon; and
- (d) a member of the Legislative Assembly.

21. Subject to section 22, the selection and appointment of commissioners shall occur in the following manner

- (a) the Minister and the chief judge shall endeavour to agree and to make every effort to recommend the appointment of a single commissioner;
- (b) if the Minister and the chief judge cannot reach agreement on the recommendation of a commission composed of a single commissioner by February 1 in a year a commission is to be appointed, each shall submit a list of three candidates who, when practicable, represent the demographics of the Yukon;

(c) by March 1, the Minister shall nominate one commissioner from the list of candidates provided by the chief judge and the chief judge shall nominate one commissioner from the list of candidates provided by the Minister;

(d) by April 1, the two commissioners who have been selected shall select a third commissioner and when practicable the selection of the third commissioner should ensure that the composition of the commission is representative of the demographics of the Yukon;

(e) all persons selected shall be appointed immediately by Order in Council;

(f) Unless the Minister or the chief judge otherwise agree, a failure for any reason to meet any deadline may be submitted by consent of both the Minister and chief judge to mediation or arbitration proceedings they may agree on. Failing agreement, either the Minister or the chief judge may refer the matter to the Supreme Court which shall take whatever action it considers necessary to enable the work of the commission to be carried out in accordance with this Part.

23. If practicable, at least one commissioner should be skilled in mediation or other consensus processes to resolve differences.

24.(1) The commission shall operate efficiently and economically. The commission and the parties appearing before it shall ensure that the commission works in a manner that minimizes its time and costs.

(2) The commission shall make every effort to use mediation and other consensus processes to resolve differences between the parties.

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

(2) If the commission is composed of three members, the commission may designate one or more of its members to act on behalf of the commission and those commissioners shall act on behalf of the commission to the extent of their designated responsibilities.

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

(4) The commission shall

(a) ask the Minister and the court to identify unresolved issues between the government and the judiciary within 30 days of the commission being appointed;

- (b) employ those consensus processes that the commission considers advisable to assist the government and the judiciary in resolving their differences within 60 days of the commission having been appointed; and
 - (c) issue its final recommendations and provide these to the government through the Minister and to the court within 90 days of having been appointed.
- (5) The commission shall provide written reasons for all of its final recommendations.
- (6) When there are three commissioners, any recommendation concurred in by two commissioners shall be the recommendation of the commission.

53.(1) A justice may be appointed to exercise either administrative functions or presiding functions or both and the terms of the justice's appointment will determine their jurisdiction.

(2) Subject to this section and sections 54 to 56, a justice has jurisdiction throughout the Yukon to exercise all the power conferred on, and perform all the duties imposed on a judge, on a justice or two justices, or on a judge of the provincial court by or under an enactment of the Yukon or Canada.

(3) Subject to this section and sections 54 to 56, a justice shall be deemed to have been designated a youth court judge for the purposes of the *Young Offenders Act* (Canada).

54.(1) The Minister, on the recommendation of the judicial council, may appoint any justices that the Minister considers necessary, subject to any conditions as to residence or occupation that the council recommends. The appointment shall specify that the justice exercise either administrative functions or presiding functions or both.

(2) A justice shall before entering into the duties of office, swear or affirm an oath as follows: "I, _____, do solemnly swear that I will duly, faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me as a justice for so long as I shall continue to hold office, without fear or favour, and that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, her heirs and successors."

(3) Justices of the Court of Appeal, judges of the Supreme Court, and judges may exercise all the authority and powers of justices.

55. Justices exercising administrative functions may

- (a) receive informations;

- (b) issue process;
- (c) conduct small claims mediations and pretrial conferences; and
- (d) perform other similar duties as determined by the supervising judge.

56(1) Subject to subsection (2), a justice exercising presiding functions has jurisdiction to exercise all the powers conferred on, and perform all the duties imposed on a justice or on two justices or on a judge by or under an enactment of the Yukon or Canada.

(2) A justice who exercises presiding functions

- (a) in a criminal matter, shall not impose a custodial sentence in excess of 90 days or a conditional sentence in excess of 180 days; or
- (b) in a child protection matter
 - (i) shall not make a permanent care and custody order unless all parties to the application consent to such an order, and
 - (ii) shall not make a temporary care and custody order for a period exceeding three months unless all the parties to the application consent to such an order.

(3) If a justice becomes aware in the course of hearing a criminal matter or child protection matter that a disposition being sought will place the justice in a position where the justice may be required to dispose of the matter contrary to the justice's jurisdiction as determined by subsection (2), the justice shall adjourn the matter so that it is heard by a judge.

58. Subject to section 59, judicial remuneration for salaried justices shall be set by the commission in accordance with Part 3 of this Act modified to suit the case.

59. Until such time as the commission established in the year 2001 reports, a salaried justice shall be paid such remuneration as had been established under the *Territorial Court Act* before the coming into force of this Act.

TABLE 1

**STATUTORY POWERS
OF THE SENIOR PRESIDING JUSTICE OF THE PEACE
UNDER TERRITORIAL ACTS AND REGULATIONS**

Emergency Intervention Orders

Family Violence Prevention Act, R.S.Y. 2002, c. 232, s. 4(1), including the *Family Violence Prevention Regulation* (unofficial title), Y.O.I.C. 1999/190, and empowers a justice of the peace to hear applications for emergency intervention orders, victims' assistance orders and warrants of entry.

Impoundment Orders

Motor Vehicles Act, R.S.Y. 2002, c. 153, s. 244(1) as well as *Impoundment of Vehicles Regulation* (unofficial title), Y.O.I.C. 1999/92, made pursuant to section 222.11 of the *Act* and provides in section 6 that every justice of the peace is also a review officer with power under section 222.3 of the *Act*.

Marriage

Marriage Act, R.S.Y. 2002, c. 146, s. 5(2).

Production Orders

Employment Standards Act, R.S.Y. 2002, c. 72, s. 70 (7).

Motor Vehicles Act, R.S.Y. 2002, c. 153, s. 116(8).

Municipal Act, R.S.Y. 2002, c. 154, s. 347(2)(b).

Occupational Health and Safety Act, R.S.Y. 2002, c. 159, ss. 33(8).

Restraining Orders

Municipal Act, R.S.Y. 2002, c. 154, s. 347(2)(a).

Victims' Assistance Orders

Family Violence Prevention Act, R.S.Y. 2002, c. 232, ss. 10 and 11(2)(b), including the *Family Violence Prevention Regulation* (unofficial title), Y.O.I.C.

1999/190, and empowers a justice of the peace to hear applications for emergency intervention orders, victims' assistance orders and warrants of entry.

Warrant to Enter

Adult Protection and Decision-Making Act, R.S.Y. 2003, s. 64(5).

Electrical Protection Act, R.S.Y. 2002, c. 65, s. 3(4).

Employment Standards Act, R.S.Y. 2002, c. 72, s. 70 (7).

Family Violence Prevention Act, R.S.Y. 2002, c. 232, s. 11(2)(a)

Motor Vehicles Act, R.S.Y. 2002, c. 153, s. 116(7).

Occupational Health and Safety Act, R.S.Y. 2002, c. 159, ss. 33(7).

Warrant to Search

Agricultural Products Act, R.S.Y. 2002, c. 3, ss. 7(2) and 8(3).

Coroners Act, R.S.Y. 2002, c. 44, s. 7(6).

Family Violence Prevention Act, R.S.Y. 2002, c. 232, s. 11(2)(c).

Fuel Oil Tax Act, R.S.Y. 2002, c. 97, s. 24(3).

Gas Burning Devices Act, R.S.Y. 2002, c. 101, s. 9(2).

Parks and Land Certainty Act, R.S.Y. 2002, c. 165, s. 77(1).

TABLE 2
DECLINE IN RELATIVE FINANCIAL POSITION
OF THE SENIOR PRESIDING JUSTICE OF THE PEACE

	T.C. Judges	% increase on '98 baseline	S.P.J.P.	% increase on '98 baseline	J.P.(AB)	% increase on '98 baseline
1998	\$112,135ⁱ		\$ 62,000ⁱⁱ		\$ 55,000ⁱⁱⁱ	
1999	\$135,000				\$ 75,000	
2000	\$141,702 ^{iv}		\$ 66,779 ^v		\$ 80,000	45%
2001	\$166,000^{vi}	48%	\$ 85,000^{vii}	37%	\$ 80,000^{viii}	
2002	\$172,000		\$ 85,000		\$ 85,000	
2003	\$178,000		\$ 87,000		\$ 85,000	
2004	\$189,000^{ix}	68.5%	\$ 98,500^x	59%	\$100,000^{xi}	82%
2005					\$105,000	
2006	\$199,901		\$101,356		\$110,000	
2007	\$215,742^{xii}	92.4%	\$109,500^{xiii}	77%	\$110,000^{xiv}	
2008	\$222,214		\$112,785		\$110,000	100%
2009	\$228,880	104%	\$116,169	87%		
2010						

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- i 1998 Yukon Judicial Compensation Commission, *Report and Recommendations*, December 1998, p. 3 (1998 Yukon JCC Report).
- ii 2001 Yukon Judicial Compensation Commission, *Report and Recommendations of the Commission*, April 12, 2002, p. 9 (2001 Yukon JCC Report).
- iii 2000 Alberta Justices of the Peace Compensation Commission, *Commission Report*, February 29, 2000, p. 19 (2000 Alberta JPCC Report).
- iv 2001 Yukon JCC Report, p. 8.
- v 2001 Yukon JCC Report, p. 10.
- vi 2001 Yukon JCC Report, p. 9.
- vii 2001 Yukon JCC Report, p. 10.
- viii 2006 Alberta Justices of the Peace Compensation Commission, *Report and Recommendations*, January 15, 2007, p. 13 (2006 Alberta JPCC Report).
- ix 2004 Yukon Judicial Compensation Commission, *Report of the Commission*, February 21, 2005, s. 4.2 (2004 Yukon JCC Report).
- x 2004 Yukon JCC Report, s. 6.4.3.
- xi *Justice of the Peace Regulation*, Alta Reg 6/1999 (as amended 178/206 and 48/2007) s. 6.
- xii 2007 Yukon Judicial Compensation Commission, *Report and Recommendations of the Commission*, March 31, 2008, p. 8 (2007 Yukon JCC Report).
- xiii 2007 Yukon JCC Report, p. 14.
- xiv *Justice of the Peace Regulation*, Alta Reg 6/1999 (as amended 178/206 and 48/2007) s. 6.