

REPORT AND RECOMMENDATIONS OF THE

*NWT Judicial Remuneration
Commission*

March 2, 2004

Submitted to:

The Honourable Charles Dent
The Minister of Justice, Government of the Northwest Territories

By the:

NWT Judicial Remuneration Commission

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Special Notes:

The Commission would like to acknowledge and thank Mr. Gerard Phillips, Commission's Counsel, of the law firm of Phillips and Wright. Mr. Phillips provided exceptional service to the Commission throughout the proceedings.

The Commission would like to point out that it was agreed by Commission members at the outset of our work that members would not act as "advocates" for either side but rather the members would work as a "team" with the intention being to arrive at a fair and reasonable compensation package.

Introduction

This is the decision of the Northwest Territories Judicial Remuneration Commission (the "Commission") made pursuant to section 12.5 of the *Territorial Court Act* R.S.N.W.T. 1988, c.T-2 (the "Act").

The Commission is charged with conducting an inquiry with respect to the salaries, pension, vacation leave, sick leave and other benefits provided to the Judges of the Territorial Court (the "Judges"). This Commission is responsible for making recommendations to the Minister of Justice, Government of the Northwest Territories (the "Minister") concerning these matters for the period April 1, 2004 to March 31, 2007. These recommendations, as described in section 12.91 (b) of the *Territorial Court Act* have the "same force and effect as if enacted by the Legislative Assembly".

At the outset of its tenure, the Commission established a process and schedule to guide its work. It was rigid in its expectation of compliance with this protocol. the Commission would like to thank all parties for their hard work and diligence in assisting the Commission to complete its responsibilities in a timely and cost-effective manner.

The Commission has, in accordance with the Act, conducted its Inquiry, including the holding of a public hearing. In the course of this Inquiry, the Commission has received both written and verbal submissions from counsel on behalf of the Judges and on behalf of the Minister.

Requirements

The Commission is required by virtue of section 12.9 of the Act to consider the following factors in making its report and recommendations:

- (a) the law of the Territories;
- (b) the adequacy of the territorial judges' salaries having regard to the cost of living or changes in real per capita income;
- (c) salaries and benefits of provincial and territorial judges in other jurisdictions in Canada;
- (d) the working conditions under which the territorial judges carry out their duties;
- (e) economic fairness;
- (f) the economic conditions of the Territories;
- (g) any other factors that the Commission may consider relevant to its review.

Before addressing the submissions of the parties, it is important that the Commission detail its interpretation of these factors. That interpretation is presented below.

(a) **The law of the Territories**

We view this as requiring the Commission to look generally at the law of the N.W.T. 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.

(b) **The adequacy of the territorial judges' salaries having regard to the cost of living or changes in real per capita income**

The Commission must inquire into things such as the rate of inflation and changes in the consumer price index in order to ensure that the Judges salaries are keeping pace. Given that the factor states that the Commission should look at "the cost of living OR changes in real per

capita income" the Commission saw itself as having a choice to look at either "cost of living" or "per capita income". The Commission chose to concentrate its research efforts on the cost of living.

(c) **Salaries and benefits of provincial and territorial judges in other jurisdictions in Canada**

We interpret this to mean that the Commission is required, by the Act, to review the salaries and benefits of judges across Canada and compare them to those provided to the Judges.

(d) **The working conditions under which the territorial judges carry out their duties**

The Commission is required to examine the working conditions of the Judges.

(e) **Economic fairness**

The Commission must compare the salaries and benefits of other provincial and territorial judges across the country as well as look at the cost of living in the Territories. The salaries and benefits provided to the Judges must be economically fair. The Commission asked itself the question - Is it fair to ask the Judges to carry out their duties given their remuneration package? The Commission also feels a deep responsibility to act to maintain the principle of judicial independence. This requires that the Judges are free from pressure or influence, which could emanate from their economic circumstances.

(f) **The economic conditions of the Territories**

Our understanding is that the Commission must examine the state of the Territorial economy to determine its relative strength or weakness. We believe we are required to use that information, together with what we learn in relation to the other factors in this list, to make recommendations to the Minister.

(g) **Any other factors that the Commission may consider relevant to its review**

The Commission interprets this phrase as providing it with the authority to look at anything it decides to be relevant to its inquiry into the matter of the Judges' salaries and benefits.

Principle of Judicial Independence

A good deal of caselaw and other authorities have been submitted to this Commission concerning the need for independent Remuneration Commissions, such as this one, to ensure that the Judges are fairly compensated so that the principle of judicial independence is not undermined. As these authorities have been reviewed exhaustively by other Judicial Remuneration Commissions as well as our predecessor Commission we do not feel the need to once again canvass all of the principles relating to the importance of financial security for the Judges. Suffice to say that the Commission agrees and accepts the requirement for judicial independence and this is an underlying principle of all of our recommendations.

It was important that there be no negotiation of the parties' positions throughout the process as this would undermine the principle of Judicial Independence. The Commission was very clear, on this matter, in its directions to both Counsel for the Judges and Counsel for the Minister. While both parties did work congenially throughout the process, on occasion they were in disagreement while at other times they held common positions. Notwithstanding these agreements and disagreements, the commission found that the principle of judicial independence was adhered to at all times.

Issues and Findings

The parties brought many issues to the attention of the Commission. Some issues presented little or no differences between the parties, while others presented considerable divergent positions. The Commission understands that its role is to examine the materials and information presented by both parties and to use that information to develop a fair remuneration package for the Judges. In some cases the Commission may have to independently collect further information in order to develop a balanced view of the issues discussed.

There are some aspects of the Judges' current remuneration package that neither party seemed to have issues with. The Commission generally assumes that these items are unchallenged, and as such, the recommendations of the previous Commissions apply.

The following remuneration items did come up for discussion by at least one of the parties and the Commission will deal with them here, essentially in the order that they were presented throughout the course of this Inquiry. The Commission will present findings and decide on the following five issues:

- Salary
- Annual Leave
- Appointment of Deputy Judges
- Severance Pay
- Parity with NWT Supreme Court Justices

SALARY

The Commission found that the current salary level for both the Judges and the Chief Judge was not adequate to compensate the Judges fairly, considering the work they do and the environment in which they do it. The commission examined all of the information presented, as well as other research and determined that an increase in salary of 6.2%, to be effective April 1, 2004, was warranted. This is to be a

one-time base increase covering the term of this Commission. It is to be adjusted annually to compensate for the cost of living increase. This adjustment amount is to be calculated on a compounded basis in an amount based on the increase in the Northwest Territories Consumer Price Index (CPI) as established for Yellowknife, NT. The CPI is calculated by the NWT Bureau of Statistics for the previous calendar year.

Accordingly, the increase in salary for the Judges for the period from April 1, 2004 to March 31, 2005 is to be comprised of the 6.2% one-time base salary increase with an additional increase of 1.8 %, based on the change in the CPI for 2003 over 2002. The 1.8% CPI increase is to be applied after the base adjustment of 6.2% is added to the previous salary. The new salary for a Judge of the Territorial Court will be \$197,813.95 effective April 1, 2004. This salary will be adjusted on April 1, 2005 by adding the CPI for the previous Calendar Year. A CPI adjustment will also be made on April 1, 2006. In no case will the salary amount be decreased due to a cost-of living decrease.

TERRITORIAL COURT JUDGE SALARY CHART			
SALARY PERIOD	A - BASE SALARY	B - CPI INCREASE	TOTAL = A+B
Salary at April 1, 2003	_____	_____	\$182,972
April '04 - March '05	\$194,316.26	\$3,497.69 (1.8%)	\$197,813.95
April '05 - March '06	\$197,813.95	_____	_____
April '06 - March '07	_____	_____	_____

Relative to the calculations for the Territorial Court Judges the salary for the Chief Judge, as of April 1, 2004 is set at \$211,327.90. This salary will also be similarly adjusted annually based on the CPI.

TERRITORIAL COURT CHIEF JUDGE SALARY CHART			
SALARY PERIOD	A - BASE SALARY	B - CPI INCREASE	TOTAL = A+B
Salary at April 1, 2003	_____	_____	\$195,472
April '04 - March '05	\$207,591.26	\$3,736.64 (1.8%)	\$211,327.90
April '05 - March '06	\$211,327.00	_____	_____
April '06 - March '07	_____	_____	_____

In making this recommendation we have considered Territorial and Provincial Court Judges salaries from across Canada. During the Inquiry we were referred to a table entitled *Territorial/Provincial/Federal Court Judges /Justices Compensation* table, which was a summary of salaries, pensions and benefits provided to various judges across the country. The table was made up of information extracted largely from the *Compensation Survey as of September 1, 2003* from the Canadian Association of Provincial Court Judges (the "CAPCJ Extract"). This survey was accepted by the Commission as fulfilling the obligations set out in Recommendation 11 of the previous Commissions Report (June 15, 2001), for a comprehensive, independent and comparative review of Territorial Court Judges compensation in relation to Supreme Court and Provincial Court Judges compensation packages across Canada. This survey presented salaries ranging from \$145,600.00 for a Judge of the Newfoundland Provincial Court as at April 2003 to the sum of \$182,972.00 for a Northwest Territories' Territorial Court Judge as of the same date. For the Chief Judges of the various Provincial and Territorial Courts they ranged from 168,000.00 to 216,567.00.

The Commission also considered the most recent judicial remuneration report of the Ontario Provincial

Judges Remuneration Commission (the "Ontario Report") dated December 5, 2003, including the minority report contained therein. The Ontario Report recommended increases of 8.8% and 7% (inclusive of the Industrial Aggregate Indexing Provision (the "IAI") which adjusts the salaries annually to ensure they increase at an equivalent pace to average wages across Canada) for the first two years of its mandate with a further 2.2% increase in the third year plus the IAI in that third year. These increases had the effect of raising the salaries of Ontario Provincial Court Judges to \$185,000.00, 198,000.00 and 202,500.00 effective April 1, 2001, and continuing each year to April 1, 2003. (The first two years figures include the adjustment for the IAI while the figure for 2003 does not and would have to be factored into the calculation).

The Commission also considered the submissions of the parties on the matter of parity between the different levels of Courts. We took direction from the previous Northwest Territories Judicial Remuneration Commission's Report to compare and consider the salaries and benefits provided to Superior Court Justices. (Recommendation 11, June 15, 2001). While we have considered the salaries of those Justices in making our recommendation on salaries for the Judges, we are not convinced that salary parity between the two levels of Courts is appropriate. While recognizing that over the years the significance of the differences and level of complexity in the types of cases and the significance of those cases handled by the two levels of Courts have lessened, the fact remains that the Superior Courts are constitutionally recognized as having inherent jurisdiction, something which cannot be said of the Provincial/Territorial Courts. The Provincial/Territorial Courts derive their jurisdiction strictly from the statutes, which create them. Thus the jurisdiction of the Superior Courts is, and always has been, far broader than that of the Provincial/Territorial Courts.¹ That is an important historical distinction in the view of this Commission.

The Commission notes in making its recommendation on salaries that there is no specific opposition from the Government to the Judges being the highest paid Territorial/Provincial Court Judges in the country.² Notwithstanding, this Commission wants to make it clear that being the highest paid Provincial/Territorial Court Judges in Canada is not a relevant consideration and was not a factor in recommending the

increase referred to above.

Included in the Commission's deliberations concerning salary was the issue of recruiting and retaining the ablest individuals for the Territorial Court. The Commission believes that keeping relative pace with the other territories and provinces, in terms of establishing a competitive remuneration package, is critical to recruiting and retaining Judges. This is consistent with the consideration that living and working in the North often places extraordinary demands upon the Judges. This is true in terms of travel and time away from home, and the nature of the cases.

In developing the recommended salaries, the Commission considered the economic conditions of the Territories. The Commission placed more emphasis on the underlying strength of the Territorial economy rather than the financial health of the current Government of the Northwest Territories (the "GNWT"). The Commission does not consider the current fiscal situation of the GNWT to be a relevant factor in setting the salaries and benefits of the Judges.

We were referred to the 2003 budget address of the Finance Minister of the GNWT, (then) the Honourable Joseph Handley, in which he described the economy of the N.W.T. as "booming" and the real Gross Domestic Product as having grown by 19% in 2001. Statistics Canada has reported growth of 3.3% in the real GDP for the N.W.T. for 2002 over 2001.⁴ Thus despite submissions of counsel for the GNWT to the effect that this boom is not translating into additional monies in the coffers of the GNWT, the Commission is of the view that the economic conditions of the Territories are such that an increase in salary of the size recommended above is appropriate.

We were encouraged by counsel for the Judges to consider the 38% salary increase given recently to physician specialists by the GNWT. We do not believe that an increase of that size is appropriate for the Judges.

One of the factors that this Commission is required, by the Act, to consider in its deliberations is “the law of the Territories”. On page 4 of the Initial Presentation of the GNWT (Exhibit 4 at the December 9th hearing) this factor is briefly addressed as follows:

Previous Commission reports have dealt with this factor, and previous submissions on the part of both the Judges and the Government have considered this factor. The Judges handle most of the criminal law matters in the Northwest Territories with superior courts having jurisdiction for some of the most serious matters. Since 2001, there have been no material increases in the statutory responsibility or authority of Judges.

Similarly, at page 6 of the Judges Submission (Exhibit 3 at the December 9th hearing) counsel for the Judges also briefly addressed this topic. They encouraged the Commission to find:

- that there is an increasing overlap in the jurisdictions of the two Courts
- that there is a significantly higher volume of cases in the Territorial Court, and finally
- that the jurisdiction of the Territorial Court is as great as and in some cases, greater than that of other provincial and territorial courts.

The Commission interprets the requirement in the Act that it consider the “law of the Territories” somewhat differently than do respective counsel for the parties. As explained earlier, we believe that that phrase requires us to look at the law of the Northwest Territories generally, and not at any one particular aspect of it. Further, we interpret it to mean that our recommendations must comply with the law of the Northwest Territories. It is our view that our recommendation complies with the law of the Northwest Territories and thus this factor has been duly considered.

Finally, in connection with the matter of salaries, counsel for the GNWT submitted that there should be no change other than that resulting from the required annual indexing based on the change in the CPI. They argued that this should be the only increase from year to year unless the judges were able to show some

change in one or more of the factors listed in section 12.9 of the Act.

The Commission feels that it has the mandate and the responsibility to look at more than CPI indexing. The Commission is striving to recommend a fair remuneration package. In so doing we feel that a “one-time” percentage increase combined with the annual indexing will ensure fair compensation for the Judges.

ANNUAL LEAVE

Counsel for the Judges submits that due to the harsh working conditions, Judges should be provided with greater annual leave than is presently the case. The Judges seek the following annual leave:

- less than 10 years of judicial service *31.5 days*
- 10 years or more, but less than 20 years *35.0 days*
- 20 years or more *40.0 days*

The GNWT believes the annual leave entitlement of the Judges should not be changed.

The Commission is recommending that their annual leave entitlement be increased as set out in the table on page 13. The Commission has recommended this increase for a number of reasons. First, the nature and complexity of the work performed by the Judges is such that they should enjoy more annual leave days than is presently the case. The Commission believes that this will help to attract and retain top candidates. Moreover, the Commission considers the increased number of Annual Leave Days to be a more fair level of compensation for the work performed.

TERRITORIAL COURT JUDGE ANNUAL LEAVE CHART	
Years of Service	Annual Days
Less than 10 years service	<i>31.5 days</i>
10 years to 20 years	<i>35.0 days</i>
More than 20 years	<i>40.0 days</i>

APPOINTMENT OF DEPUTY JUDGES

The Judges seek a recommendation that they be automatically appointed as Deputy Judges of the Territorial Court upon their retirement.

The Commission believes that this type of appointment does not qualify as a “benefit” and is beyond its mandate.

SEVERANCE PAY

The GNWT seeks the termination of the benefit of Severance Pay to the Judges. Its counsel submits that this benefit is being phased out in other jurisdictions, due largely to the fact that generous pension plans now exist for judges. The Judges oppose this request.

The Commission recommends that this benefit be eliminated. In order to treat existing judges fairly the commission recommends that this recommendation be “grandfathered”. This will allow those Judges who have been appointed before April 1, 2005, to continue to be eligible for severance pay while eliminating it as a benefit for anyone appointed after April 1, 2005.

PARITY WITH NWT SUPREME COURT JUSTICES

The Judges want a declaration in principle from this Commission to the effect that parity exists between the Supreme and Territorial Courts of the Northwest Territories. The Judges also ask that the Commission make a recommendation or "suggestion to the Legislature" that section 12.9 of the Act be amended to specifically include the "salaries and benefits of provincial, territorial and federal judges in other jurisdictions in Canada."⁵ in the list of factors that future Commissions are required to consider.

Counsel for the Judges moderated this request somewhat during the course of the Inquiry, implicitly recognizing that since our recommendations are binding on the Legislature, for this Commission to go along with this request would be tantamount to ordering the Legislature to amend the Act. Clearly, that is something that the Commission cannot do. Accordingly, Judges' counsel urged us to "suggest" to the Legislature that it so amend the Act. Counsel referred us to the legislation of New Brunswick and Nova Scotia wherein the salaries and benefits of Superior Court Justices are specifically made comparators for the salaries and benefits of Provincial Court Judges. Further, it was pointed out that historically the salaries of the Judges in the N.W.T. were tied to that of the Justices of the Supreme Court of the N.W.T. in that prior to the June 15, 2001, Report of this Commission, a formula based on the then existing salary figure of Supreme Court Justices was used to determine the pay of the Judges. The Commission in the 2001 report broke away from the use of this formula and since that time there has been no further reliance on it.

Extensive written and verbal submissions were made by counsel for the Judges in support of their request that this Commission explicitly acknowledge that it recognizes parity between the two Courts. The judges point out that over the years the jurisdiction of the Territorial Court has been expanded by various statutes and that virtually all of adult criminal prosecutions are dealt with by that Court. They further rely on the fact that they have seen an increase in cases which raise issues involving the *Canadian Charter of Rights and Freedoms*. They also cite the 1999 report of the Commission as supportive of the notion of parity between the two Courts.

The GNWT opposes any such "declaration in principle" saying that it is beyond the authority of this Commission and that the factors for establishing the salaries of superior court justices are simply not the same as those for territorial court judges.

This Commission is not prepared to make a declaration to the effect that it recognizes a parity between the two levels of Court and it likewise declines to "suggest" that the Act be amended to specifically include the salaries and benefits of Federal Justices in the list of factors it is required to consider in its deliberations concerning the salaries and benefits of the Judges. The Commission recognizes that the differences between the two Courts have lessened over the years but one is still a Court of more or less unlimited inherent jurisdiction while the other is purely a creature of statute with a limited jurisdiction.

This Commission views that continuing historical distinction to be of some importance and while it did in fact consider the salaries paid to the Supreme Court Justices of the N.W.T. (as was recommended in the Commission's June 15, 2001 Report) in its deliberations over the salaries to be paid to the Judges, it is not prepared to make that an absolute requirement of future Commissions by suggesting the Legislature to make the requested amendment. The existing legislation clearly allows for reference to the salaries of Superior Court Justices without it being mandatory.

The Commission has noted that both of the parties have indicated their agreement that Recommendation Number 11 in the Commission's Report of June 15, 2001, requiring a comprehensive study of the Judges salaries and benefits, has in fact been fully satisfied by the inclusion of the CAPCJ extract in the materials submitted to, and reviewed by, the Commission in its present inquiry.

Summary of Recommendations

Having given our reasoning for our recommendations above, we can now summarize them as follows:

RECOMMENDATION 1 - SALARY

The increase in salary for the Judges for the period from April 1, 2004 to March 31, 2005 is to be comprised of the 6.2% one-time base salary increase with an additional increase of 1.8 %, based on the change in the CPI for 2003 over 2002. The 1.8% CPI increase is to be applied after the base adjustment of 6.2% is added to the previous salary. The new salary for a Judge of the Territorial Court will be \$197,813.95 effective April 1, 2004. This salary will be adjusted on April 1, 2005 by adding the CPI for the previous Calendar Year. A CPI adjustment will also be made on April 1, 2006. In no case will the salary amount be decreased due to a cost-of living decrease.

Relative to the calculations for the Territorial Court Judges the salary for the Chief Judge, as of April 1, 2004 is set at \$211,327.90. This salary will also be similarly adjusted annually based on the CPI.

RECOMMENDATION 2 - ANNUAL LEAVE

The following Annual Leave Entitlements will come into force April 1, 2004.

TERRITORIAL COURT CHIEF JUDGE ANNUAL LEAVE CHART	
Years of Service	Annual Days
Less than 10 years service	<i>31.5 days</i>
10 years to 20 years	<i>35.0 days</i>
More than 20 years	<i>40.0 days</i>

RECOMMENDATION 3 - SEVERANCE PAY

Allow those Judges who have been appointed before April 1, 2005, to continue to be eligible for severance pay. Anyone appointed to the Territorial Court on or after that date will not be eligible for this benefit.

RECOMMENDATION 4 - INSURANCES AND PENSIONS

With respect to Insurance and pension matters, the Commission has accepted the joint written submission of the parties and it is repeated in the following recommendation.

4.1 Health Benefits

4.1.1 NWT Health Care Plan

To be covered by the NWT Health Care Plan once they have been in the N.W.T. for longer than three months.

4.1.2 Extended Health Care Benefits

Group medical insurance coverage to be provided through Blue Cross or a similar organization at a level equivalent to that provided to NWT Deputy Ministers through the Public Service Health Care Plan. Premiums to be paid by the GNWT.

A brochure outlining the detailed terms and conditions of this coverage is to be provided to Judges on appointment and on each amendment.

4.1.3 Dental Plan

Dental coverage to be provided through Greenshield or a similar organization at a level equivalent to that provided to GNWT Deputy Ministers. Brochure to be provided as in 1.02.

4.2 Income Security Benefits

4.2.1 Death Benefit

The estate or designated beneficiary of a Judge is to receive a death benefit if the Judge

dies while holding judicial office. If the Judge at the time of death is 65 or younger, the death benefit is to be 4 times the Judge's annual salary. Starting at the age of 66, death benefit coverage for active Judges shall drop by 10% per year. By way of example at age 65 coverage is 3.6 times annual salary. At age 67 coverage is 3.2 times annual salary and so on. The GNWT shall at all times have the right, without being obligated, to obtain commercial life insurance coverage or to enroll the Judges in a government run plan, for all or part (or more) of the death benefit coverage. Any amount of coverage that is not insured is to be self-insured by the GNWT. Death benefit coverage is to continue at a lower coverage level after retirement (see Part III, section 4.03).

The GNWT shall have the right to obtain commercial life insurance coverage that provides excess coverage to that outlined in the preceding paragraph. If it does so, the Judges shall assign back the excess to the GNWT.

The costs of this plan are to be paid by the GNWT.

4.2.2 Sick Leave

Paid sick leave is earned at the rate of one and one-quarter (1 1/4) days per month if the Judge receives pay for a minimum of ten(10) days in the month. There is to be no limit to the number of days that may be accumulated. Absences of up to three consecutive days may be claimed without a medical certificate, to a maximum of nine (9) days in a fiscal year.

If required, Judges may be advanced up to sixty-five days (65) days sick leave with pay, by the Chief Judge.

4.2.3 Salary Continuance for Long Term Disability (LTD)

Salary Continuance Plan to provide Judges with up to 70% of their yearly salary if a Judge becomes disabled for an extended period of time. Benefits are payable until the Judge recovers from the disability, commences a pension, attains age 65 or dies. For the purposes of this benefit, disability means inability, as certified by a medical doctor, to perform the usual and customary duties of a Judge because of injury or illness.

The GNWT may, but is not required to, obtain commercial LTD insurance or an administrative services contract with a commercial LTD provider or to enrol the Judges in a Government run plan for all or part of the LTD coverage. Any amount of coverage that is not insured will be self-insured by the Government.

Claims are subject to a waiting period of 6 months. Prior to the expiry of the waiting period, the Judge may claim sick leave benefits. (See section 2.02 above).

Benefits from this plan are to be offset by any benefits received for this disability from the Judge's pension plans, Canada Pension Plan and Workers' Compensation Board.

The costs of this plan are to be paid by the GNWT.

4.2.4 Workers' Compensation

For purposes of sickness or injury resulting from conditions while on duty, all Judges are to be covered under the GNWT's workers' compensation plan with the Workers' Compensation Board.

4.2.5 Accidental Death and Dismemberment

Accidental death and dismemberment coverage is to be provided through Blue Cross or a

similar organization at a level equivalent to that provided to GNWT Deputy Ministers. Premiums are to be paid by the GNWT.

4.3 Pension Benefits

4.3.1 Canada Pension Plan

The Judges are part of the Canada Pension Plan. The GNWT shall continue to be responsible for part of the required contributions, while the balance is to be payable by the judges through payroll deductions.

4.3.2 Judicial Pension Plans

Pension benefits are to be provided through pension plans established by the “Judges’ Registered Pension Plan Regulations’ and “Judges’ Supplemental Pension Plan Regulations” pursuant to the Act. Judges are to contribute 6% of their annual salaries toward the cost of this plan, up to the maximum permitted under income tax legislation.

4.4 Post-Retirement Benefits (Other than Pension)

4.4.1 NWT Health Care Plan

Coverage shall continue provided the retired Judge continues to reside in the NWT.

4.4.2 Extended Health Care Plan

A former Judge who commences a judicial pension or receives a lump sum in lieu thereof after having become eligible for a judicial pension after leaving judicial office may elect to continue extended health care coverage at a level equivalent to that provided to retired NWT Deputy Ministers through the Public Service Health Care Plan, but will be responsible for contributing a share of the premium costs. The former Judge’s share shall be equivalent to the premium paid by retired public servants under the Public Service Health Care Plan at any given time. The former Judges’ coverage shall be

provided by means of contracts entered into by the GNWT with an extended health plan provider. If a former Judge does not elect to participate at the time of pension commencement, elects to discontinue coverage after having started it or fails to pay premiums when due, the former Judge may not join or re-join at a later date.

The former Judge must make arrangements with the Director of Finance for the payment of premiums.

4.4.3 Death Benefits

A former Judge who commences a pension or receives a lump sum in lieu thereof after having become eligible for a judicial pension after leaving judicial office may elect to continue death benefits coverage under the death benefits plan for active judges (See section 2.01 above) or a similar plan, but will be responsible for contributing a share of the premium. The estate or designated beneficiary of a Judge who is receiving a judicial pension will receive a death benefit in the amount of:

- a) if the deceased former Judge was age 65 or less, two times the former Judges final year's annual salary rate;
- b) if the deceased former Judge was over age 65 and under age 75, two times the former Judge's final year's annual salary rate, less 10% x twice the final year's annual salary rate for each year the Judge is over 65;
- c) if the deceased former Judge was age 75 or older, \$10,000.00;

The former Judge's share of premiums will be \$0.15 for each \$1,000.00 of coverage in excess of the basic \$10,000.00 amount, which is paid for by the GNWT. If a former judge does not elect to participate at the time of pension commencement, elects to discontinue coverage after having started it or fails to pay premiums when due, the former Judge may not join or re-join at later date.

The former Judge is to make arrangements with the Director of Finance for the payment of premiums.

Conclusion

The Commission faced certain difficulties in carrying out its statutory obligations. Unfortunately, we found ourselves at the beginning of our task with little background material at all to work from. There were no procedural guidelines of any kind to follow and there was nothing in the way of historical material left from earlier N.W.T. Judicial Remuneration Commissions (other than two reports). The Commission struggled to gain some perspective, to establish communications protocols and to formulate an efficient plan of action.

The Commission did investigate and eventually obtain various boxes full of binders containing the submissions of the respective counsels for the parties in connection with earlier Inquiries as well as the Reports arising from those Inquiries, but it was not indexed in any way. This made it somewhat difficult to use.

As a result of this lack of organized structure and procedure the Commission will put in place some basic administrative guidelines that will guide its work and the work of future Commissions in hopes that this document will help future Commissions carry out their work more efficiently.

ADMINISTRATION PROCEDURAL GUIDELINES

The Commission will set procedural guidelines for future Commissions. These guidelines will not be mandatory but are intended as a way of providing some background to the legal requirements for the Commission and to set some suggested procedural approaches, supports and tools to aid future Commissions in the application of the responsibilities. These guidelines will include such items:

- Legal framework for the Commission
- Time frames
- Obligations
- Correspondence and communications protocols

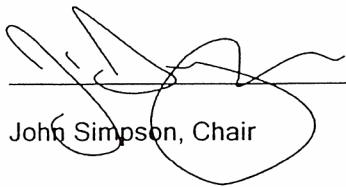
- File maintenance
- Hearing procedures
- Report sample formats
- Ongoing requirements over the three year mandate
- Distribution of Final Report

In addition to producing these procedural and administrative guidelines this Commission will organize and maintain all research and correspondence in an organized and locked cabinet in the law offices of Phillips and Wright of Yellowknife. These files and the locked Cabinet belong to the NWT Judicial remuneration Commission. Future Commissions may choose to move these files and the cabinet to a location of their choosing.

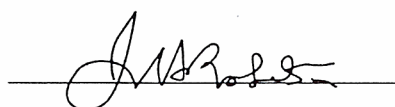
The Commission intends to monitor developments to ensure that its recommendations are implemented.

The Commission thanks all of those who participated in this Inquiry especially counsel for both sides who were at all times diligent and respectful of the process.

Dated at Yellowknife, Northwest Territories the 2nd day of March, 2004.



John Simpson, Chair



James Robertson



David McPherson

References

- 1 *Reference re. New Brunswick Court of Queen's Bench Family Division (N.B.C.A.)* New Brunswick Judgements [1988] N.B.J. No. 1029;
- 2 *Initial Presentation of the Government of the Northwest Territories*, Exhibit number 4 at the hearing of December 9, 2003, at page 12;
- 3 *Submission of the Judges*, Exhibit number 3 at the hearing of December 9th, 2003;
- 4 *2003 Budget Address*, GNWT Department of Finance, www.fin.gov.nt.ca/2003budgetaddress.shtml, page 2, Tab 3.
- 5 *Submission of the Judges*, Exhibit 3 at the hearing held December 9, 2003, at page 18;