

2001 Yukon Judicial Compensation Commission

Government of the Yukon

- and -

Territorial Court of Yukon

REPORT AND RECOMMENDATIONS
OF THE COMMISSION

APRIL 12, 2002

David A. Ordish, C.A.
Chair

Ordish & Ordish
Chartered Accountants
302-204 Lambert Street
Whitehorse, YT Y1A 1Z4
Ph. 867. 668.7500

Judy Gingell
Commissioner

PO Box 10485
Whitehorse YT Y1A 7A1
Ph. 867. 660.5974

Bryan Williams, Q.C.
Commissioner

Miller Thomson LLP
Barristers & Solicitors
Suite 1000, 840 Howe Street
Vancouver BC V6Z 2M1
Ph. 604.643.1213

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	TERRITORIAL COURT ACT	2
III.	MANDATE	3
IV.	THE PROCESS	4
V.	HISTORY OF YUKON COMMISSIONS	4
VI.	ISSUES	6
VII.	ANALYSIS AND RECOMMENDATIONS	7
1.	Increases to the Judges' Salaries	7
2.	The Senior Presiding Justice of the Peace Salary Increase	9
3.	The Stipends for the Chief Judge and for Supervising the Justices of the Peace	10
4.	Judges' Vacation Days	10
5.	Senior Presiding Justice of the Peace Stipend and Vacation Days	11
6.	Judges' Pensions	11
7.	Senior Presiding Justice of the Peace Pension	15
8.	Sabbaticals	15
9.	Northern Allowance	16
10.	Deputy Judges	16
11.	Judicial Benefits	16
12.	Representation Costs	17
13.	Other Issues	17
VIII.	SUMMARY OF RECOMMENDATIONS	17

I. INTRODUCTION

Until the early part of the 1980s, the executive branch of all the governments in Canada considered it was their mandate alone to establish judicial compensation.

In a number of cases decided from the Supreme Court of Canada, the need for financial security for the judges of our country was emphasized, and in what is now known as the PEI Reference case [1997] 3 S.C.R. 3, the Supreme Court of Canada in recognizing the importance of the independence of the judiciary and proper financial security commensurate with that independence, said in its judgment (Lamer C.J.C. for the majority):

First as a general constitutional principle the salaries of provincial court judges can be reduced, increased or frozen either as part of an overall economic measure which affects the salaries of all or some persons who are remunerated from public funds or as part of the measure which is directed at provincial court judges as a class. However, to avoid the possibility of or the appearance of political interference through economic manipulation, a body such as a commission must be interposed between the judiciary and the other branches of government. The constitutional function of this body would be to depoliticize the process of determining changes to or freezes in judicial remuneration... Provinces are thus under a constitutional obligation to establish bodies which are independent, effective and objective. Any changes to or freezes in judicial remuneration made without prior recourse to the body are unconstitutional. (p.13)

It is clear from the PEI decision that the judiciary, the third branch of government (along with the legislative and executive branches), is and must be at all times independent of interference from those other branches of government, and that to achieve this position there must be security of tenure and institutional and individual independence which frees the court of improper pressures so that government cannot politically influence the court with this protection. This way, all Canadians and others who appear before our courts will receive fair and honest judgment whether the government be a party to the litigation or not. The executive and legislative branches are not machiavellian in attitude towards judges, but they have a different priority as stewards of the public purse and as elected members who must react to constantly changing public attitudes.

II. TERRITORIAL COURT ACT

In accordance with the PEI decision, the Yukon Territory enacted sections 13-28 of the *Territorial Court Act* (the "Act"). These sections deal with the establishment of a Judicial Compensation Commission and the same are attached as Tab A to this report.

Section 13 says:

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.

Section 21 deals with the appointment of commissioners and provides that the Minister shall nominate one commissioner from a list of candidates provided by the Chief Judge, and the Chief Judge shall nominate one commissioner from a list provided by the Minister. It provides further that the two commissioners thus appointed will select a third commissioner (ensuring that the composition of the Commission is representative of the demographics of the Yukon).

Section 20 of the Act also provides:

Unless otherwise agreed by the Minister and by the Chief Judge the following are not to be appointed as a commissioner:

- (a) a practising member of the Law Society of the Yukon;
- (b) a current member of the judiciary;
- (c) a member of the Public Service of the Yukon;
- (d) a member of the Legislative Assembly.

The Government of the Yukon arranged for the appointment of this Board. It selected from the judge's list the Honourable Bryan Williams, Q.C. as a representative on the Commission, and the judges selected David Ordish from the Government's List. Messrs. Ordish and Williams then selected Judy Gingell, a member of the Kwanlin Dun First Nation, as the third member. The Commissioners agreed that Mr. David Ordish should act as Chair.

Mr. Williams disclosed that he was also qualified to practice in the Yukon, and under section 20 both the Chief Judge and the Minister agreed that that should not impede his appointment.

III. MANDATE

The mandate of the Commission is set forth in section 14 of the Act and reads:

The mandate of the Commission shall be to inquire into and to 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.

Section 17 provides that recommendations are binding upon 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".

The factors to be considered as set forth in section 19 are:

- (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, 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 25.

Section 22 provides:

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

In this regard, both Ms. Judy Gingell and Mr. Williams have considerable experience in the field of mediation and the consensus process.

The operating principles in section 23 provide that the Commission shall operate efficiently and economically and that it shall make every effort to use mediation and other consensus processes to resolve differences between the parties.

IV. THE PROCESS

The Commission, thus established, began its work in the fall of 2001 and had a preliminary hearing on November 19, 2001 to organize the substantive hearings and hear a preliminary motion. In accordance with the statute, an advertisement was placed in the Whitehorse Star newspaper inviting the public to make comment by December 3, 2001 to the Commission. No comments were received therefrom except a Letter of Support from Yukon Justice of the Peace Association (supporting the Senior Presiding Justice of the Peace (S.P.J.P.)).

The Committee began to conduct its hearings (time having to be extended by agreement of the parties) on Monday, February 25, 2002, at the Edgewater Hotel in Whitehorse and completed same on Wednesday, the 3rd day of hearings. Mr. Tom W. Wakeling, Q.C. of the firm of Fraser Milner Casgrain, Edmonton, Alberta, appeared for the Government, and Mr. T. Murray Rankin, Q.C. of the firm of Arvay Finlay in Victoria, for the judges and the S.P.J.P.

The Government's submissions included evidence informally received from certain representatives of the Government and from Mr. Pavol Gvozdjak, an actuary with Aon Consulting, Vancouver. Mr. Rankin made submissions on behalf of the judges and the Senior Presiding Justice of the Peace, and we also heard informally from all three of the judges, the S.P.J.P., Mr. Frank Fingland, the former Deputy Minister of Finance for the Yukon, and Mr. Donald M. Smith, an actuary with Western Compensation & Benefits Consultants, Vancouver.

Mr. Williams met with the parties in order to discharge the Commission's responsibilities, as contemplated in s. 23 (2) of the Act.

V. HISTORY OF YUKON COMMISSIONS

In December, the 1998 Yukon Judicial Compensation Committee was established in furtherance of a recommendation by Mr. E.M. Ted Hughes, Q.C., who had been appointed by the Yukon Government to examine the outstanding issues and make recommendations, and by virtue of the P.E.I. Reference case from the year before. It was an independent compensation commission to

"provide a fair and objective process for the resolution of the compensation issues specifically relevant to the circumstances of Yukon and of the court which serves the public interest through the administration of justice in the Yukon". It should be noted that the Government excluded from this commission the Senior Presiding Justice of the Peace.

That commission made certain recommendations, including:

1. salaries set for 1998 at \$135,000 per annum;
2. deputy judges be paid \$500 per day;
3. with respect to pensions, that
 - a) the judges' contribution to the pension plan be maintained at 7.5% of salary;
 - b) annual accrual rate be set at 3%;
 - c) retirement with full pension be set at 23.33 years;
 - d) pension be based on the average of the highest three years of income;
 - e) a pension cap of 70% be maintained;
 - f) voluntary retirement without penalty can occur at either 60 years of age or 20 years service, whichever first occurs;
 - g) post-retirement survival benefits for spousal pensions be set at 60%;
4. the Chief Judge's and Supervising Judge's allowances be excluded from pension calculations; and
5. vacation leave for judges be set at a flat rate of 30 working days per year regardless of years of service.

VI. ISSUES

The issues between the parties raised by the judges and the S.P.J.P. which were put before the Commission are as follows:

1. substantial increase in judges' salaries with annual incremental increases until the next Compensation Commission review;
2. a substantial increase in the salary of the S.P.J.P. with annual increments as above, as well as vacation days equal to the judges;
3. an increase in the stipends for the Chief Judge, both for his duties as Chief Judge and for supervising of the Justices of the Peace;
4. a stipend for the S.P.J.P.;
5. the inclusion of these stipends in the pension plan for both the judges and the S.P.J.P.;
6. judicial pensions - including a pension plan for the S.P.J.P. and a rectification of the judges' pension plan to correct the inequities among the current and future judges, and to permit, among other things, the current judges of the court to achieve a reasonable pension at a reasonable age and that, among other issues, the salary base to be taken for pension purposes be the last year of the judges' salary;
7. that the Government adopt the "Rule of 80";
8. that the sabbatical program be replaced by educational leave (subject to certain other matters being accepted by the Government);
9. that annual holiday leave entitlement be increased from 30 to 35 days;
10. that a northern allowance be paid to the judges and the S.P.J.P.;

11. that deputy judges' per diem be increased;
12. that judicial benefits be reviewed including disability, benefits, life insurance and extended medical and dental coverage.
13. that the S.P.J.P. receive the same benefits as judges.

VII. ANALYSIS AND RECOMMENDATIONS

1. Increases to the Judges' Salaries.

In accordance with the mandate of the Commission, we took into account the factors set forth in section 19 of the Act, and the contribution of judges to the efficiency of the Court and their value to the Yukon system of justice. We determined that the current financial position of the Government was not such as to preclude it from paying an appropriate and proper amount for its judges and S.P.J.P. We carefully considered the compensation provided to all other judges in Canada but focused on the Northwest Territories, British Columbia, Alberta and Saskatchewan territorial or provincial courts.

We also considered the cost of living, which is higher in the Yukon than any of the other jurisdictions, and of course the laws and unique nature of the Yukon, including some very stressful travel arrangements to the various parts of the Territory.

Of particular importance, we recognized the need to provide a reasonable compensation to judges and the need to build a strong court by attracting qualified applicants.

In addition to cost of living, of course, there are a lot of other features which go into the establishment of a proper compensation package, including catch-up, workload, income tax, etc. These we have tried to take into account.

We considered the substantial First Nations populations in the Yukon and the innovation of judges - "circle sentencing". These judges are familiar with Aboriginal culture, practices, mores and conventions.

The judges proposed that we should seriously consider raising the Yukon Territorial Court judges' salaries to a level commensurate with the federally appointed judges in Canada and, in particular, the federally appointed judges in the Yukon.

As a fallback, Mr. Rankin contended that, at very least, the increase should be such as to bring them up to parity with the Northwest Territories.

At the present time, the judges are paid \$141,702 per year for salary. The Government of the Yukon has proposed what it considers to be an appropriate salary of \$158,000 per year. The Supreme Court of the Yukon judges, as of April 1, 2002, under the federal Judges Act receive \$210,200, but in addition they receive a personal allowance of \$5,000 and a northern allowance of \$12,000.

It is not easy, nor is it totally accurate, to just compare salaries. For example, Alberta pays a professional allowance, while the Yukon pays a travel allowance. Some are stated to be for a certain year with an increase in one year where others are not. Some have other allowances added. Suffice it to say that, from the figures we were given, as of April 1, 2002, judges in the Supreme Court of the Yukon, under the federal Judges Act, were receiving \$227,200 including northern allowance and personal allowance. In Nunavut, all judges (Territorial and Federal, which Courts have now been combined) receive \$227,200 under the federal Judges Act as of April 1, 2002. In the Supreme Court of the Northwest Territories, \$227,200; and the Queen's Bench or Supreme Court of all provinces, \$215,200. These of course all include certain allowances. In the Northwest Territories Territorial Court, the judges receive approximately \$178,000 including an allowance; the Alberta Provincial Court, \$172,500 including a \$2,500 allowance; the British Columbia Provincial Court, \$160,000 including a \$2,000 allowance; Saskatchewan Provincial Court, \$153,000 including a \$7,000 allowance for northern judges and a \$3,000 professional allowance. In the Yukon, it is \$143,744 (with travel allowance). Most of the Provinces and the Northwest Territories will be receiving increases between now and the year 2003.

This Commission does not consider comparisons with the civil servants in the Yukon to be relevant; in our view a judge is a part of the judicial system, and the comparisons should be made with other judges not other government or private sector positions.

While we were not persuaded that the Yukon judges should be paid on the same basis as those judges who have been federally appointed, we do agree that achieving parity with the Northwest Territories judges is a fair and proper objective. Indeed, it makes common sense to work toward that as quickly as possible.

Our recommendation then is that the Yukon judges have their salary increased from its present level to \$166,000 per annum as of September 1, 2001 and that it be increased April 1, 2002 to \$172,000, and April 1, 2003 to \$178,000.

2. The Senior Presiding Justice of the Peace Salary Increase

It seems that historically governments, perhaps for their own budgetary purposes, have treated Justices of the Peace as civil servants rather than members of the judicial family. They are, by all standards one can imagine, judicial officers. Indeed, they are, as has been described, the front row of the judicial system. It is the view of this Commission and, we believe the Government as well, that the S.P.J.P. must be treated as a judicial officer and must be properly compensated for the work done.

The S.P.J.P. in the Yukon is in a rather unique position. The current holder of that office is the only full-time Justice of the Peace in the Yukon; others are paid on a different basis, depending on the work they do, but essentially are only part-time. In addition, the duties performed by the S.P.J.P. are much broader than, for example, British Columbia and many other jurisdictions. Indeed, they are more like the regime in Ontario. In Ontario, the 2000 Justice of the Peace Remuneration Commission said:

Justices of the Peace are judicial officers. As noted by the 1995 Commission in its report Justices of the Peace make up the first level bench which impacts on the lives of thousands of Ontarians. The Justices of the Peace make decisions which affect the liberty and privacy rights of Ontarians... The Justice of the Peace is the first line of defence against abuse of the process.

In that province the Justice of the Peace is not required to be a lawyer (as they are in Alberta and Quebec) but must clearly be properly paid to preserve their independence.

The position of the S.P.J.P. in the Yukon was created in 1994, and the pay was established at \$62,000 per annum. There are no full-time Justices of the Peace in Nunavut, Northwest Territories, Manitoba, New Brunswick, Prince Edward Island and Newfoundland, but currently, on a

comparison, Saskatchewan pays \$70,000 per annum; British Columbia, \$68,597; Quebec, \$98,564 plus \$2,000 expenses per annum; Alberta, \$105,000 (2002); Ontario, \$78,694 and \$83,804 for regional senior Justice of the Peace. The current salary for the S.P.J.P. in the Yukon is \$66,779 per annum. Bearing in mind the remarks of Mr. E.M. Hughes, Q.C. in 1997 regarding the tenure of J.P.s, the fact that this is the first time there has been a review (the *Territorial Court Act* was amended in May 2001 to include J.P.s and in October 2001, the Government said they all should be considered by this Commission), is of some importance to the office.

There is no doubt that in the Yukon, the S.P.J.P. plays a very important role in the justice system, even more so than many of the other jurisdictions. The current holder of that office is not a lawyer but a highly respected member of the justice community.

Our recommendation is that the S.P.J.P.'s salary be increased from its present level to \$85,000 per year as of September 1, 2001 and that it remain as such until April 1, 2003 when it shall be increased to \$87,000.

3. The Stipends for the Chief Judge and for Supervising the Justices of the Peace

At the present time, the Chief Judge receives \$7,000 as a stipend. There is another stipend of \$3,500 for supervising the Justices of the Peace. This is somewhat less than in other jurisdictions, but in our view, since there are only a total of three judges in the Yukon Territories plus one S.P.J.P., we do not consider that it warrants an upward adjustment at this time.

We do, however, recommend that the stipends paid to the Chief Judge and to the judge supervising the Justices of the Peace be included in their salaries for pension purposes.

4. Judges' Vacation Days

Judges are currently entitled to 30 vacation days per year. Currently, senior civil servants in the Yukon Government receive 35 days of annual vacation.

We recommend that the judges' annual vacation entitlement be increased from 30 to 35 days effective September 1, 2001.

5. Senior Presiding Justice of the Peace Stipend and Vacation Days

Because of the salary increase which we are recommending for the S.P.J.P., because he is the only full-time J.P., and because a Territorial Court Judge bears responsibility for supervising J.P.s, we do not consider it appropriate to grant any stipend at this time.

Regarding the vacation days for the S.P.J.P., we recommend they be the same as the judges of the court as of September 1, 2001, that is 35 days per year. There is to be no retroactive catch-up before that date.

6. Judges' Pensions

There should be no question in anyone's mind as to where pensions fit in the process of judicial compensation. It is every bit as much a part of compensation as are salaries and other allowances. That, of course, stems from the PEI case referred to above and has been rather neatly set forth by Professor Friedland in his report in 1995: A Place Apart: Judicial Independence and Accountability in Canada:

Pensions are a crucial part of judicial security. If a judge's pension is inadequate or insecure there is a danger that the judge will not be fully independent while sitting on the bench. Section 100 of the Constitution states that salaries, allowances and pensions shall be fixed and provided by the Parliament of Canada. If the pension is not adequate and secure the judge may be inclined to favour a side that may be important in the judge's future, in particular the government that may be looked to for a pension. Worse, the judge may be tempted to accept favours or bribes from litigants while on the bench. ...

That is important of course for judicial salaries but equally, as Professor Friedland points out, for pensions.

The existing pension plan for the judges in the Yukon is quite inadequate as it stands at present.

As earlier stated, the 1998 Commission report required that:

1. judges' contributions to the pension plan be maintained at 7.5% of salary;
2. the annual accrual rate be set at 3% without CPP integration;
3. retirement with full pension be set at 23.33 years;
4. pension be based on the average of the highest three years of income;

5. the pension cap of 70% be maintained;
6. voluntary retirement, without penalty, can occur at either 60 years of age or 20 years service, whichever occurs first;
7. CPI indexing of pensions be maintained;
8. post retirement survivor benefits for spousal pensions be set at 60%;
9. the Chief Judge and Supervising Judge allowances be excluded from pension calculations.

The 1998 changes relating to the 3% annual accrual rate, 3-year salary average and 60% survivor pension were applied only to judicial service after September 18, 1998. The pension for the pre-September 18, 1998 service of the existing judges continued to be in accordance with the federal Public Service Pension Plan formula – that is, an annual pension accrual rate of 2% of highest 5-year average salary, less a CPP offset after age 65.

The effect of this combination of pension formulas for the existing judges is that none of them will be able to accrue the full 70% pension within the 23 1/3 year period. In fact, after 23 1/3 years of service, the present Chief Judge will have accrued a pension of only 47.4% of his estimated highest 3-year average salary.

Although the 1998 changes excluded the Chief Judge and Supervising Judge stipends from the calculation of pension benefits, pension contributions are and always have been made by both the judge and the Government on these stipends. This is inequitable.

While the pension plan may be appropriate for judges appointed in the future, we consider it to be quite inadequate as it stands at present for the existing judges.

For comparison, the main characteristics of judges' pensions in the four comparator jurisdictions listed in the Act are:

- ♦ Northwest Territories
 - Contributions: none prior to April 1, 1999, 6% of salary after April 1, 1999
 - Pension is based on annual salary rate at retirement

- Accrual rate: 2% for service prior to April 1, 1999, 3% for service after April 1, 1999
- Pension is capped at 70% of annual salary at retirement

◆ British Columbia

- Contributions: 7% of judges' full salaries
- Pension is based on the best three year average salary
- Accrual rate: 3% less CPP offset for service prior to January 1, 2001, 3% for service after January 1, 2001
- Pension is capped at 70% of best three year average salary

◆ Alberta

- Contributions: none prior to April 1, 1998, 9% of salary between April 1, 1998 and April 1, 2000, 7% of salary since April 1, 2000
- Pension is based on the average salary over the three consecutive years during which the salary was highest
- Accrual rate: 2% for service before April 1, 1998, 2.67% for service between April 1, 1998 and April 1, 2000; 3% for service after April 1, 2000
- Pension is capped at 70% of highest average salary

◆ Saskatchewan

- Contributions: 5% of salary
- Pension is based on the best three year average salary
- Accrual rate: 3%
- Pension is capped at 70% of best three year average salary
- Judges who retire with at least 18 years of judicial service and who are either age 65 or over or whose age plus years of judicial service is at least 80 receive an enhanced pension equal to 70% of average of their best three years' salary.

We made no comparisons with the pension arrangements for civil servants in the Yukon, since civil servants' pensions are based on a full career of thirty-five years or more. Judicial pensions are unique.

It is apparent from the above comparison that Yukon judges historically have made higher contributions and accrued lower pension benefits than judges in the other jurisdictions. We recommend that there be a rectification of the pension situation by the Government as of September 1, 2001.

We recommend that the judges' existing pension arrangements be revised as follows:

1. The judges' contributions to the pension plan for service after September 1, 2001 be changed to 7% of their pensionable earnings. For greater certainty, the judges will pay this rate in addition to their CPP contributions;
2. Judges' pension contributions cease when they have accrued the maximum pension of 70% of best average earnings;
3. The annual pension accrual rate of 3% apply to all pensionable service as a judge including service prior to September 18, 1998, subject to the pension cap of 70% of best average earnings;
4. The pension be based on the judges' highest twenty-four months of pensionable earnings;
5. The Chief Judge and Supervising Judge stipends be included in the calculation of best average earnings for pension purposes;
6. While a judge is on a sabbatical or educational leave, pensionable service and pensionable earnings be determined as if the judge continued in active service and received full salary. For greater certainty, no change is intended with respect to the existing pension arrangements as regards leave without pay.

The Rule of 80 was also requested by the judges, such that a judge who retires after his or her age and pensionable service total at least 80 years may receive a pension of 60% of best average earnings.

We are not prepared at this time to recommend the Rule of 80 for the Yukon Territorial judges.

Yukon judges' pensions are presently financed through a combination of the federal Public Service Pension Plan and a supplementary pension arrangement provided under the *Territorial Court Judiciary Pension Plan Act*. It is apparent that the Yukon Government is incurring an enormous cost for judges

to participate in the federal Public Service Pension Plan, particularly the non-registered, or "retirement compensation arrangement", aspect of that plan. We believe that the Yukon Government can finance the territorial court judges' pensions far more cost-efficiently than under the current system.

We recommend that the Government utilize the expertise and experience of the actuarial consultants to ensure that the Commission's recommendations are appropriately reflected in amendments to the Territorial Court Judiciary Pension Plan Act.

7. Senior Presiding Justice of the Peace Pension

The S.P.J.P. presently is not provided with any pension plan.

We recommend that the S.P.J.P. receive a pension on the same basis as the territorial court judges will receive under the rectification set forth above, subject to the following in respect of the present S.P.J.P.:

1. pensionable service be deemed to have commenced on April 1, 1996;
2. the S.P.J.P. be required to make pension contributions for the period from April 1, 1996 to August 31, 2001 based on his salary during that period and the contribution rates specified under the federal *Public Service Superannuation Act*. For greater certainty, the S.P.J.P.'s pension contribution rate for service after September 1, 2001 will be the same as for the judges, i.e., 7% of his salary.

8. Sabbaticals

The judges at the present time receive one year off after five years as a sabbatical, and they have indicated they are prepared to give that up for what is described as "educational leave", which provides for four months leave after four years during which leave the judges shall receive 70% of regular salary.

In light of the other recommendations we have made, we recommend that the educational leave replace existing sabbatical arrangements. All past earned

sabbatical leave up to September 1, 2001 will be set off first against educational leave and any additional earned sabbatical leave will be paid out in holiday leave on the basis of one month of sabbatical credit = .7 months of holiday leave. From September 1, 2001, then, judges would earn 1 month of educational leave each year.

9. Northern Allowance

This item speaks for itself and, although it is paid in certain jurisdictions, we are not prepared to recommend that it be paid at this time to the Territorial judges or the S.P.J.P.

10. Deputy Judges

Deputy judges are essential in the operation of the court to replace judges who may be away or otherwise unable to sit.

Because of some difficulty that has been experienced in obtaining them, we recommend that deputy judges be paid \$800 a day from April 1, 2002. Mandatory retirement age for a deputy judge shall be confirmed as 75.

11. Judicial Benefits

These matters were not discussed at length by the parties in the hearing, and we are not prepared to make any change in the existing judicial benefits package other than those which have been referred to above.

The S.P.J.P. presently is not provided with any benefits.

We recommend that the S.P.J.P. receive the same judicial benefits as those received by the judges with effect from September 1, 2001, except sabbatical or educational leave.

12. Representation Costs

The Commission recommends that the Yukon Government pay the reasonable representation costs of the Territorial Court of Yukon. If the Government and the Territorial Court cannot agree, the Commission reserves the jurisdiction to decide this issue.

13. Other Issues

1. The Commission confirms that current judges are not subject to the mandatory retirement age of 65.
2. Part-time J.P.s shall continue to receive the existing remuneration package.

VIII. SUMMARY OF RECOMMENDATIONS

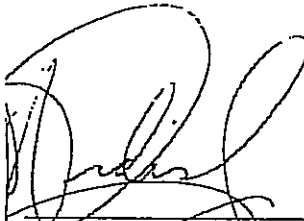
We recommend that:

1. Yukon judges' salary be increased from its present level to \$166,000 per annum as of September 1, 2001 and that it be increased April 1, 2002 to \$172,000, and April 1, 2003 to \$178,000;
2. the S.P.J.P. salary be increased from its present level to \$85,000 per annum as of September 1, 2001 and that it remain as such until April 1, 2003, when it should be increased to \$87,000;
3. stipends paid to the judges be included in their salaries for pension purposes;
4. judges' annual vacation entitlement be increased from 30 to 35 days effective September 1, 2001;
5. vacation days for the S.P.J.P. be the same as the judges of the court as of September 1, 2001, but that there be no retroactive catch-up before that date;
6. the proposed educational leave replace existing sabbatical arrangements;
7. deputy judges be paid \$800 a day from April 1st 2002. Mandatory retirement age limit be 75;


8. the judges' contributions to the pension plan for service after September 1, 2001 be changed to 7% of their pensionable earnings. For greater certainty, the judges will pay this rate in addition to their CPP contributions;
9. judges' pension contributions cease when they have accrued the maximum pension of 70% of best average earnings;
10. the annual pension accrual rate of 3% apply to all pensionable service as a judge including service prior to September 18, 1998, subject to the pension cap of 70% of best average earnings;
11. the pension be based on the judges' highest twenty-four months of pensionable earnings;
12. the Chief Judge and Supervising Judge stipends be included in the calculation of best average earnings for pension purposes;
13. while a judge is on a sabbatical or educational leave, pensionable service and pensionable earnings be determined as if the judge continued in active service and received full salary. For greater certainty, no change is intended with respect to the existing pension arrangements as regards leave without pay;
14. the Government utilize the expertise and experience of the actuarial consultants to ensure that the Commission's recommendations are appropriately reflected in amendments to the *Territorial Court Judiciary Pension Plan Act*;
15. the S.P.J.P. receive a pension on the same basis as the judges, subject to the following in respect of the present S.P.J.P.:
 - (a) pensionable service be deemed to have commenced on April 1, 1996;
 - (b) the S.P.J.P. be required to make pension contributions for the period from April 1, 1996 to August 31, 2001 based on his salary during that period and the contribution rates specified under the federal *Public Service Superannuation Act*;
16. the S.P.J.P. receive the same benefits as judges effective September 1, 2001, except sabbatical or educational leave;

17. the Yukon Government pay the reasonable representation costs of the Territorial Court of Yukon. If the Government and the Territorial Court cannot agree, the Commission reserves the jurisdiction to decide this issue.

This report is respectfully submitted this 12th day of April, 2002.



David A. Ordish, C.A.
Chair



Judy Gingell
Commissioner



Bryan Williams, Q.C.
Commissioner