

2007 Yukon Judicial Compensation Commission

Government of the Yukon

- and -

Territorial Court Judges

- and -

Senior Presiding Justice of the Peace for Yukon

- and -

Justice of the Peace Association

**REPORT AND RECOMMENDATIONS
OF THE COMMISSION**

MARCH 31, 2008

David A. Ordish, C.A.
Commissioner

Ordish & Ordish
Chartered Accountants
302 - 204 Lambert Street
Whitehorse, YT Y1A 1Z4
Ph: 867.668.7500

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	TERRITORIAL COURT ACT	2
III.	MANDATE	2
IV.	HISTORY OF YUKON COMMISSIONS	3
V.	THE PROCESS	4
VI.	ISSUES	8
VII.	ANALYSIS AND RECOMMENDATIONS	8
A.	<i>Territorial Court Judges</i>	8
A1.	Salary for Territorial Court Judges	9
A2.	Stipend for Chief Judge	9
A3.	Supervising Judge Stipend	9
A4.	Pension	10
A5.	Deputy Judges' Salaries	10
A6.	Deputy Judges' Travel Per Diem	11
A7.	Preparation Time for Deputy Judges	11
A8.	All Other Benefits	12
B.	<i>Senior Presiding Justice of the Peace</i>	12
B1.	Salary for Senior Presiding Justice of the Peace	14
B2.	Pension Start Date for Senior Presiding Justice of the Peace	16
B3.	All Other Benefits	17
VIII.	SUMMARY OF RECOMMENDATIONS	17

IX.	CONCLUDING REMARKS	20
X.	APPENDIX "A", LETTER OF UNDERSTANDING	21

I. INTRODUCTION

Until the early part of the 1980s, the executive branch of all the governments in Canada considered it was its 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 to 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 to 28 of the *Territorial Court Act* (the Act). These sections deal with the establishment of a Judicial Compensation Commission (the Commission).

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 and the Chief Judge shall endeavour to agree and make every effort to recommend the appointment of a single commissioner.

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 practicing 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; and
- (d) a member of the Legislative Assembly.

The Government of the Yukon and the Chief Judge agreed on the appointment of a sole commissioner for the 2007 Judicial Compensation Commission. They selected David A. Ordish, C.A. of Whitehorse. The Commission was established by Order in Council 2007/83 dated May 24, 2007.

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 of the Act 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 by the Judicial Compensation Commission as set forth in section 19 of the Act 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 26.

Other relevant factors may also be considered.

IV. 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.

The Yukon Judicial Compensation Commission for 2001 was comprised of three commissioners. The Senior Presiding Justice of the Peace was included in this commission as well as members of the

Territorial Court Judges and the Justice of the Peace Association.

The 2004 Judicial Compensation Commission was comprised of three commissioners and included the same parties as the 2001 Yukon Judicial Compensation Commission.

V. THE PROCESS

In addition to the provisions in the *Territorial Court Act*, representatives of the parties (Department of Justice, Territorial Court Judges, Senior Presiding Justice of the Peace and the Justice of the Peace Association) signed a Letter of Understanding following the conclusion of the 2004 Judicial Compensation Commission on its recommendation to set out a process for the parties to follow with respect to subsequent Judicial Compensation Commissions.

The purpose of The Letter of Understanding was to establish an informal procedure that will apply to the establishment and conduct of a Judicial Compensation Commission. If, with respect to the establishment and conduct of a particular Judicial Compensation Commission, the informal procedure proves to be unworkable then the formal procedure established by the Act applies. The Commission followed the process in the provisions in the Letter of Understanding attached hereto as Appendix "A".

The process was initiated under the following provisions of the Letter of Understanding:

- 4.1 The JCC procedure should be cost effective, involving minimal use of legal counsel and proceeding by way of consensus whenever possible.
- 4.2 Based on previous experience, the parties recognize that unexpected delays can occur and agree that no party should benefit from this.

4.3 Cost effectiveness can be achieved by the parties in a number of ways, including but not limited to the following:

- 4.3.1 The parties will identify outstanding issues at an early stage of the proceedings.
- 4.3.2 The parties will agree at an early stage on the information (reports, data, etc.) to be provided to the JCC.
- 4.3.3 If a consultant is required to provide advice or a report on an issue, the parties will make every attempt to agree on one consultant who will be the JCC's witness.
- 4.3.4 The parties will make full disclosure of all relevant information.

The 2007 Judicial Compensation Commission, thus established, had a preliminary meeting on June 28, 2007 in Whitehorse with representatives of the Territorial Court of Yukon in attendance and Mr. Gary Bainbridge of Bainbridge Jodouin Cheecham, Barristers & Solicitors, representing the Government of Yukon, attending via conference call.

In accordance with 4.3.1 of the Letter of Understanding, the Chief Judge of the Territorial Court of Yukon identified three outstanding issues from the Court's position letter and the Government's response and the Senior Presiding Justice of the Peace identified two outstanding issues from his position letter and the Government's response.

As required by the Act, advertisements were placed in the Whitehorse Star, Yukon News and L'Aurore Boreale inviting the public to make written submissions on judicial remuneration in the Yukon, by September 14, 2007. No comments were received.

It was agreed that an informal hearing as contemplated by Article 7.8 of the Letter of Understanding be convened on October 22, 2007 with the Territorial Court Judges. Given the nature of the issues identified by the Senior Presiding Justice of the Peace Cameron he advised he wished to proceed directly to the formal hearing as contemplated under Article 7.9 of the Letter of Understanding, and the *Territorial Court Act*. This was set for October 23, 2007 and no mediative process was attempted.

There was no response to the request to identify issues from Mr. Gary Burgess of the Justice of the Peace Association.

The parties participating in the informal procedure agreed to Rules for the Informal Meetings as were developed by the 2004 Yukon Judicial Compensation Commission, as follows:

1. Each party must come with people with authority to make decisions.
2. Each may make brief opening statements by counsel and by authorized decision-maker. Emphasis on possible areas of acceptable compromise is urged.
3. All issues between the parties will be on the table except the question reserved by the Government of Yukon.
4. Each party may then respond to opening comments of the other. Emphasis on possible areas of acceptable compromise is urged.
5. The Commission may intervene with comment or questions.
6. From time to time the Commission may adjourn the plenary session when it deems fit.
7. The Commission may invite each party to caucus and make offers on all, or any, issues.
8. The Commission may or may not offer to meet privately with one or both parties, depending on the circumstances.
9. The purpose of the discussions will be that the parties agree on a joint submission to the Commission on all, or some issues.
10. All discussions will be without prejudice and confidential and will form no part of the record before the Commission.
11. The Commission promises to disregard the discussion when making its decision on issues, and the parties will be asked formally at the outset to accept this undertaking.
12. Any comment by any member of the Commission will not be taken as decisive, but merely as a possible basis for a compromise.

The Commission began to conduct its informal hearing with the Territorial Court Judges on Monday, October 22, 2007 at the Windsor Room, Edgewater Hotel in Whitehorse. Mr. Gary Bainbridge of the firm Bainbridge Jodouin Cheecham, Saskatoon, Saskatchewan appeared for the Government of Yukon and Mr. T. Murray Rankin, Q.C. of the firm Heenan Blaikie, Victoria, B.C. appeared for the Territorial Court Judges.

The Government's submissions included evidence received from the Government as presented by Mr. Gary Bainbridge. Mr. Rankin made submissions on behalf of the Territorial Court Judges. Chief Judge Faulkner of the Territorial Court also participated.

During the informal hearing and the mediative process it was submitted that the parties involved intended to place a Joint Submission before the Commission. The hearing was then adjourned pending approval from Management Board of the Government of Yukon. It was felt this Joint Submission, if agreed to, would obviate the need for the continuation of the informal procedure or for a formal hearing.

The Commission agreed to accept a Joint Submission as a consensus process to resolve differences between the parties as authorized by sections 24(2) and 25(4)(b) of the *Territorial Court Act* which state:

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

The commission shall 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.

The Commission conducted its formal hearing with Senior Presiding Justice of the Peace Cameron on Tuesday, October 23, 2007 at the Windsor Room, Edgewater Hotel in Whitehorse. Both Senior Presiding Justice of the Peace Cameron and the Government of Yukon submitted evidence to the Commission. Senior Presiding Justice of the Peace Cameron made a formal presentation of his position and Mr. Gary Bainbridge presented the position of the Government of Yukon. There was a discussion by all parties present of the evidence presented and their respective positions. Mr. Doug Ayers, Court Reporter, transcribed the formal hearing.

On February 12, 2008 all of the Territorial Court Judges issues were placed before the Commission as a Joint Submission from the Territorial Court Judges and the Government of Yukon.

VI. ISSUES

The issues between the parties and raised by the Territorial Court Judges which were put before the Commission are as follows:

1. The salary to be paid to judges during the period April 1, 2007 to March 31, 2010;
2. The per diem rate to be paid to deputy judges during the same period; and
3. The payment to be made to deputy judges in the event they expend time in preparation or judgement writing on days other than sitting days.

The issues between the parties and raised by the Senior Presiding Justice of the Peace which were put forth before the Commission are as follows:

1. Salary and how it should be determined during the period April 1, 2007 to March 31, 2010;
and
2. Pension start date.

VII. ANALYSIS AND RECOMMENDATIONS

In accordance with the mandate of the Commission consideration was given to the factors set out in s. 19 of the *Territorial Court Act* as was submitted in the evidence from Mr. Gary Bainbridge on behalf of the Government of Yukon and Mr. T. Murray Rankin, Q.C. who made submissions on behalf of the Territorial Court Judges and from Senior Presiding Justice of the Peace Dean Cameron who made submissions on his own behalf. This Commission is independent and objective as required by the P.E.I. Reference (1997) 3 S.C.R. 3.

A. *Territorial Court Judges*

The parties with respect to the issues agreed upon a Joint Submission dated February 12, 2008. There were no other outstanding issues to be adjudicated other than those set out in the Joint Submission, as follows:

A1. Salary for Territorial Court Judges

A Territorial Court Judge's salary as at March 31, 2007 is \$199,901 per annum.

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

April 1, 2007: \$215,742 [~7.924% increase]

April 1, 2008: \$222,214 [3% increase]

April 1, 2009: \$228,880 [3% increase]

The Commission recommends that the Yukon Territorial Court Judges have their salaries increased from the present level to \$215,742 per annum, effective April 1, 2007 and they be further increased April 1, 2008 to \$222,214 and April 1, 2009 to \$228,880.

A2. Stipend for Chief Judge

The parties are in agreement that the Commission should recommend that the stipend of the Chief Judge be increased from \$8,000 to \$10,000 per annum, effective April 1, 2007.

The Commission recommends the stipend paid to the Chief Judge be increased to \$10,000 per annum, effective April 1, 2007. The stipend is to continue to be included in the salaries for pension purposes.

A3. Supervising Judge Stipend

The parties are in agreement that the Commission should recommend that the Supervising Judge's stipend be increased from \$4,000 to \$5,000 per annum, effective April 1, 2007.

The Commission recommends the stipend paid to the Supervising Judge be increased to \$5,000 per annum, effective April 1, 2007. The stipend paid will be included in salary for pension purposes.

A4. Pension

The parties are in agreement that the Commission should make the following recommendation regarding the Territorial Court Judges' Pension Plan.

In order to avoid any inequities that might arise, where a Judge or judicial person retires in the "window period" between the date a Commission is appointed under the *Territorial Court Act*, and the date of the Commission's appointment shall be included in the calculation of "pensionable earnings" pursuant to s. 9 of the *Territorial Court Judiciary Pension Plan Act*.

For greater clarity, this recommendation is intended to ensure that any salary increase payable in respect of the window period is included in a Territorial Court Judge's or judicial person's pensionable earnings, regardless of the fact that the person was not in "active employment" during the entirety of the window period. This recommendation will be strictly limited to those persons who retire during the window period, and shall be applied to the survivor's benefits of any such person.

The Commission recommends that where a Judge or judicial person retires in the "window period" between the date a Commission is appointed under the Territorial Court Act, and the date the Commission issues its recommendations, any salary increase retroactive to the date of the commission's appointment, shall be included in the calculation of "pensionable earnings" pursuant to s. 9 of the Territorial Court Judiciary Pension Plan Act.

A5. Deputy Judges' Salaries

The parties are in agreement that the Commission should recommend that the *per diem* sitting rate for Deputy Judges (currently \$800) be increased annually by the same percentage increases applicable to Territorial Court Judges, and therefore the per diem sitting rates over the next three years will be as follows:

April 1, 2007: \$863.39 [~7.924% increase]

April 1, 2008: \$889.29 [3% increase]

April 1, 2009: \$915.97 [3% increase]

The Commission recommends the per diem sitting rate for Deputy Judges be increased annually by the same percentage increases applicable to the Territorial Court Judges, and therefore the per diem sitting rates over the next three years will be increased from the present level to \$863.39 effective April 1, 2007 and they be further increased April 1, 2008 to \$889.29 and April 1, 2009 to \$915.97.

A6. Deputy Judges' Travel Per Diem

Further, the parties agree that the travel *per diem* for Deputy Judges (currently set at \$400) be increased annually by the same percentage increases applicable to Territorial Court Judges, and therefore the Deputy Judges' travel *per diem* over the next three years will be as follows:

April 1, 2007: \$431.70 [~7.924% increase]

April 1, 2008: \$444.65 [3% increase]

April 1, 2009: \$457.99 [3% increase]

The Commission recommends that the travel per diem for Deputy Judges be increased annually by the same percentage increases applicable to Territorial Court Judges, and therefore the Deputy Judges' travel per diem over the next three years will be increased from the present level to \$431.70 effective April 1, 2007 and they be further increased April 1, 2008 to \$444.65 and April 1, 2009 to \$457.99.

A7. Preparation Time for Deputy Judges

The parties are in agreement that the Commission should recommend that under the following circumstances as approved by the Chief Judge, Deputy Judges should receive remuneration for

preparation time as follows:

The Chief Judge shall have the authority, in exceptional cases, to offer preparation time to Deputy Judges who are called upon to sit on cases raising complex issues. These situations are expected to be rare, but where they exist, the Chief Judge will have the authority, on a case by case basis, to determine whether preparation time would be payable, and for how many days.

The Commission recommends that the Chief Judge shall have the authority, in exceptional cases, to offer preparation time to Deputy Judges who are called upon to sit on cases raising complex issues. These situations are expected to be rare, but where they exist, the Chief Judge will have the authority, on a case by case basis, to determine whether preparation time would be payable, and for how many days.

A8. All Other Benefits

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

For clarity, the Commission is making separate recommendations for the Territorial Court Judges and the Senior Presiding Justice of the Peace.

The Commission recommends that all other terms, benefits, allowances, stipends etc. in effect for Territorial Court Judges shall remain unchanged.

B. *Senior Presiding Justice of the Peace*

The Commission, in its deliberations, took into account the contribution that the Senior Presiding Justice of the Peace (SPJP) makes to the efficiency of the Court and his value to the Yukon system of justice. The SPJP participates in the Criminal Docket Court, the Community Wellness Court, the Domestic Violence Treatment Option Court, Family Court and Youth Court. The position of the SPJP in Yukon has a judicial role distinct from any other Justice of the Peace in Canada. The SPJP, as a Justice of the Peace, provides many of the same services provided by provincial and territorial court judges.

The Commission also took into account that the current financial position of the Government of Yukon would not preclude it from paying a reasonable salary to the SPJP. The Commission considered the compensation paid to Justices of the Peace in British Columbia, Alberta and Saskatchewan. With respect to the Northwest Territories there are no presiding Justices of the Peace and accordingly no comparisons are available.

The Commission considered the need to ensure the compensation would be adequate to attract applicants for the position of SPJP if a vacancy occurred. The duties performed by SPJP Cameron and the cost of living in Yukon were also considered in order to assess a reasonable compensation package.

The Commission considered the benefits component of the compensation received by SPJP Cameron. He currently receives the pension benefit, travel allowance, educational leave, medical benefit and holiday benefit of thirty-five days per year the same as the Territorial Court Judges. Educational leave is paid up to one month per year, with accommodation and travel expenses paid by the Government of Yukon. This leave does not necessarily involve extensive periods of academic studies at institutions of higher learning, but may be for shorter study leaves, as approved by the Chief or Supervising Judge.

The SPJP receives the incidental expense allowance of up to \$3,000 per annum for professional expenditures.

Yukoners have high expectations of all members of the court and expect their justice system to operate on a fair, impartial and open basis. A judicial system of fairness to all Yukoners implies that there is impartiality and independence which is absolutely essential to the principle of judicial independence. As a member of the Court all Judges, including the SPJP, must receive adequate compensation to maintain his independence from political interference through economic manipulation.

The Commission considered that the SPJP is not required to be a lawyer as they are in some other jurisdictions. The Senior Presiding Justice of the Peace has served the Yukon as a full-time sitting member of the Court since July 1, 1994.

B.1 Salary for Senior Presiding Justice of the Peace

The position of the Senior Presiding Justice of the Peace was that because of his blended Justice of the Peace duties with judicial responsibilities, his salary should not be limited to salaries within the range of Justice of the Peace salaries, but should be a judicial salary within the range of Judges' salaries. He requested a reasoned formula which equates the Justice of the Peace salary within the range of salaries afforded to Judges.

The Government of the Yukon proposed increases to the Senior Presiding Justice of the Peace salary of 3% each year for the next 3 years, acknowledging that "SPJP Cameron is extremely close to the maximum salary which is permitted by the legislation". Government of Yukon also stated:

The Yukon Government very much accepts the uniqueness of SPJP Cameron's role, and its significant "judicial" component.

But in fact, that is the very reason SPJP Cameron is one of the highest paid JPs in Canada. Had the Government any doubt about the uniqueness of the "judicial nature" of the role, it would likely be suggesting little or no increase in salary, so that his salary would be more in line with comparator JPs. However, the Government is in fact proposing real increases to his income and is content for SPJP Cameron to have the distinction as potentially the highest paid JP in Canada.

The Commission accepts that the salary proposal by the Government of Yukon would not lend to any contravention of the *Taxpayers Protection Act*.

The Commission wishes to note that it is of the opinion that judicial remuneration is not just salary in dollars terms but should also include the value, in dollars, of benefits, with which to compare to compensation provided to Justices of the Peace in the Northwest Territories, British Columbia, Alberta and Saskatchewan.

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. The Commission accepts the Government of Yukon's interpretation that the "total wage and benefit package" must be considered. However, comparators to total salary and benefits in other jurisdictions suffer from several limitations including being unable to apply the comparators in dollar terms. The roles, responsibilities and qualifications for Justices of the Peace vary in other jurisdictions. Alberta provides to full time salaries 10% allowance in lieu of pension, vacation time of four weeks (twenty days) and other benefits. Justices of the Peace in Alberta must be legally trained with at least five years experience at the Bar. They are appointed for non-renewable limited term contracts for a full-time salary but may earn additional income providing other independent non-justice of the peace services.

British Columbia allows Judicial Justices of the Peace (JJP) to belong to the Public Service Pension Plan. This is less than the more generous pension benefits afforded to BC Judges. In British Columbia JJPs receive between twenty two and thirty five day vacation entitlements. In the future existing JJPs will have their vacation entitlement grandfathered at thirty-five days since new JJPs will be entitled to only thirty days. JJPs in British Columbia are not required to be legally trained.

In Saskatchewan Justices of the Peace are members of the Saskatchewan Public Employees Pension Plan which is not the plan applicable to Provincial Court Judges.

***SALARIES OF JUSTICE OF THE PEACE IN COMPARATOR JURISDICTIONS
FOR THE YEAR ENDING MARCH 31***

	2004	2005	2006	2007	2008
Alberta	100,000	105,000	110,000	110,000	110,000
B.C.	73,872	73,872	75,600	77,112	78,564
Saskatchewan	73,464	80,200	81,020	83,156	87,992
Yukon	87,000	98,500	101,356	103,687	TBA

The Commission notes that the pension plan benefit as afforded to SPJP Cameron, which is the same as the pension for Territorial Court Judges, was believed to be an extraordinary benefit according to the 2004 British Columbia Judicial Compensation Commission.

Given Government's comments that it is content for the Senior Presiding Justice of the Peace to potentially be the highest paid JP in Canada, and giving due consideration to the enumerated other relevant factors according to s. 19 of the Act, the Commission makes the following recommendation:

The Commission recommends that the salary of the Senior Presiding Justice of the Peace be increased from the present level to \$109,500 per annum, effective April 1, 2007 [~5.606% increase] and it be increased April 1, 2008 to \$112,785 [~3% increase] and April 1, 2009 to \$116,169 [~3% increase]. Although in no way binding on subsequent Commissions, this Commission suggests that the salary should not be determined by way of a formula but continue to be decided considering the factors enumerated in section 19 of the Territorial Court Act and any other relevant factors.

B2. Pension Start Date Senior Presiding Justice of the Peace

The issue of pension start date was raised by the Senior Presiding Justice of the Peace.

The Senior Presiding Justice of the Peace started full-time services for the Government on July 1, 1994. The employment start date of July 1, 1994 was to be a pilot project for a two-year trial period. At the end of that two year trial period the Chief Judge designated that the position of Senior Presiding Justice of the Peace become a full-time position. The 2001 Judicial Compensation Commission report dated April 12, 2002 recommended that the Senior Presiding Justice of the Peace's "pensionable service be deemed to have commenced on April 1, 1996."

The Commission reiterates the position expressed by the 2004 Commission, that it “must proceed on the basis that the Commission has no authority to consider itself as having any kind of appeal or review role regarding the work of earlier Commissions.” If there was an obvious mistake or error made or argument missed a subsequent Commission could potentially examine the error. The 2001 Commission considered that the Senior Presiding Justice of the Peace was not included in the 1998 Commission and recognized his important role in the justice system in Yukon in making its recommendations.

This Commission is not of the opinion that an error was made in setting the pension start date as the date that full-time, permanent employment commenced and makes the following recommendation:

The Commission recommends that no change be made to the pension start date of April 1, 1996. The Commission further recommends that the “window period” as recommended in A4. be applicable to the Senior Presiding Justice of the Peace.

B3. All Other Benefits

The Senior Presiding Justice of the Peace discussed the judicial benefits to which he is entitled and has enjoyed to date. These are the same as other members of the Territorial Court.

The Commission recommends that the Senior Presiding Justice of the Peace continue to receive the same terms, benefits, allowances, stipends etc. that are currently in effect for the Senior Presiding Justice of the Peace.

VIII. SUMMARY OF RECOMMENDATIONS

The Commission recommends that:

1. The Yukon Territorial Court Judges have their salaries increased from the present level to \$215,742 per annum, effective April 1, 2007 and they be further increased April 1, 2008 to \$222,214 and April 1, 2009 to \$228,880.
2. The stipend paid to the Chief Judge be increased to \$10,000 per annum, effective April 1, 2007. The stipend is to continue to be included in the salaries for pension purposes.
3. The stipend paid to the Supervising Judge be increased to \$5,000 per annum, effective April 1, 2007. The stipend paid will be included in salary for pension purposes.
4. Where a Judge or judicial person retires in the "window period" between the date a Commission is appointed under the Territorial Court Act, and the date the Commission issues its recommendations, any salary increase retroactive to the date of the commission's appointment, shall be included in the calculation of "pensionable earnings" pursuant to s. 9 of the Territorial Court Judiciary Pension Plan Act.
5. The per diem sitting rate for Deputy Judges be increased annually by the same percentage increases applicable to the Territorial Court Judges, and therefore the per diem sitting rates over the next three years will be increased from the present level to \$863.39 effective April 1, 2007 and they be further increased April 1, 2008 to \$889.29 and April 1, 2009 to \$915.97.
6. The travel per diem for Deputy Judges be increased annually by the same percentage increases applicable to Territorial Court Judges, and therefore the Deputy Judges' travel per diem over the next three years will be increased from the present level to \$431.70 effective April 1, 2007 and

they be further increased April 1, 2008 to \$444.65 and April 1, 2009 to \$457.99.

7. The Chief Judge shall have the authority, in exceptional cases, to offer preparation time to Deputy Judges who are called upon to sit on cases raising complex issues. These situations are expected to be rare, but where they exist, the Chief Judge will have the authority, on a case by case basis, to determine whether preparation time would be payable, and for how many days.
8. That all other terms, benefits, allowances, stipends etc. in effect for Territorial Court Judges shall remain unchanged.
9. The salary of the Senior Presiding Justice of the Peace be increased from the present level to \$109,500 per annum, effective April 1, 2007 and it be increased April 1, 2008 to \$112,785 and April 1, 2009 to \$116,169. Although in no way binding on subsequent Commissions, this Commission suggests that the salary should not be determined by way of a formula but continue to be decided considering the factors enumerated in section 19 of the *Territorial Court Act* and any other relevant factors.
10. No change be made to the pension start date of April 1, 1996. The Commission further recommends that the "window period" as recommended in A4. be applicable to the Senior Presiding Justice of the Peace.
11. The Commission recommends that the Senior Presiding Justice of the Peace continue to receive the same terms, benefits, allowances, stipends etc. that are currently in effect for the Senior Presiding Justice of the Peace.

IX. CONCLUDING REMARKS

The Commission would like to express my appreciation to the Territorial Court Judges and their counsel Mr. T. Murray Rankin, Q.C. and counsel for the Government of Yukon, Mr. Gary Bainbridge for their informal presentations and cooperative attitude.

The Commission would like to express my appreciation to Senior Presiding Justice of the Peace Dean Cameron and Mr. Gary Bainbridge representing the Government of Yukon for their formal submissions and presentations respecting their positions.

It was satisfying to conclude the Commission's hearings with Senior Presiding Justice of the Peace Cameron's comment that he had had a good hearing with respect to his issues.

This report is respectfully submitted this 31st day of March, 2008.

David A. Ordish, CA
Commissioner