

IN THE MATTER OF the Judicial Compensation and Benefits
Commission;

AND IN THE MATTER OF the *Judges Act*, R.S. 1985, c.J-1

Submission of the Government of the Northwest Territories

Submitted by:

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Background:

The Northwest Territories has both a Territorial Court and a Supreme Court, with three full time judges serving on each. The Territorial Court judges have essentially the equivalent jurisdiction as their provincial counterparts.

The Northwest Territories Judicial Remuneration Commission (the "JRC") was established pursuant to the provisions of the *Territorial Court Act*, R.S.N.W.T 1988,c.68, amended in response to and as a result of the ***PEI Reference Case***. The JRC is charged with making recommendations with respect to the salaries, pensions, vacation leave, sick leave and other benefits provided to Territorial Court Judges. In making its recommendations the JRC must consider a number of factors, the salaries of superior court judges not being one of them. However, the JRC may consider "any other factors it may consider relevant."

Parity with Federal Judges

At the time of writing this submission, this government is preparing for the next inquiry by the JRC, to be held in December of 2003. In their submissions to the JRC, the Territorial Court judges have argued "a judge is a judge" and that they should have parity with their federal colleagues. The point is made by them that in previous inquiries the JRC has considered the salaries of federal judges, and that to do so is expressly provided for in the legislation in a number of provinces. They also submit that the provincial judges associations in other jurisdictions have argued, and will no doubt continue to do so, for parity with their federal counterparts. To date no province or territory has adopted the concept of parity.

As indicated above, these are the same arguments made to the last JRC in 2000/2001, and follow the refrain heard by similar commissions in many other jurisdictions. This government argues in its submissions that the Territorial Court judges received significant increases in the past to reflect the increase in their sphere of jurisdiction, heavy workload, unique northern working conditions, the differential between them and federal judges, and the myriad other reasons raised. Nevertheless, the same arguments are cited again in support of parity, or at least for a substantial increase which would bring their salaries much closer to those of federal judges.

The concern of this government is the continuing "ratcheting effect" as the various commissions across the country opine on judicial salaries, and increases occur. Judges in each jurisdiction will argue they should have parity with their counterparts in other jurisdictions, and/or with federal judges, and so the cycle will continue. As a result we have seen judicial salaries increasing significantly

across Canada over the last few years. We do not suggest judges should not be properly compensated, but there must be checks and balances, and the cost to governments cannot be simply ignored. If federal salaries are increased significantly, you may be sure that the provincial and territorial judges in every jurisdiction will continue their argument for parity, and while they may not succeed entirely, it will nonetheless mean concomitant increases in judicial salary levels across the country.

Salary increases mean all other costs increase – pensions, disability insurance, and pre and post retirement life insurance. Those costs vary of course depending on the specifics of the group plan in each jurisdiction, the number of participants, and so on. In a small jurisdiction it has proved impossible to purchase any of the benefits on a “group” basis, which has resulted in a combination of exceedingly high costs and the assumption of significant risk on a self-insurance basis.

As pointed out recently by the New Brunswick Court of Appeal in *Provincial Court Judges’ Association of New Brunswick v. Her Majesty the Queen in Right of the Province of New Brunswick*, the remuneration package should be looked at as a whole rather than simply focusing on salary. Robertson J.A., writing for the court, states at p.6 “Once the value of the judicial annuity is added to the present salary level, the value of the remuneration package lies between \$192,000. and \$215,000. per annum.”¹ Taking into consideration the pension plan and other benefits paid to federal judges, the value of their current remuneration package presumably exceeds \$300,000.

The Judicial Compensation and Benefits Commission should consider at some point that the salaries of federal judges have been fairly set by past Commissions, after having reviewed all other comparators, therefore all future increases need only reflect increases to the cost of living to prevent erosion. After all, working conditions do not change significantly, there is no lack of suitable candidates, the pension scheme is second to none, and the benefits are generous.

Supernumerary Judges and the Rule of 80

This government wishes to point out that whatever may be granted to federal judges with respect to supernumerary status, or a shorter term of eligible service for pension entitlements will, as pointed out above, become benefits, for lack of a better term, which will be sought by provincial and territorial judges.

¹ The annual salary of a provincial judge was approximately \$141,000. in New Brunswick at the time its 2001 Judicial Remuneration Commission was conducting its inquiry.

In addition, should federal judges become eligible for supernumerary status when combined age and years of service total 80, there will be an operations and maintenance cost to the Northwest Territories. Additional office space, furniture, and support staff would be required for the full time judge appointed to fill the position vacated when someone becomes eligible for and elects supernumerary status. While they would vary, the initial capital cost could be between \$100,000. and \$125,000. while ongoing O & M could be in the range of \$45,000. to \$50,000. per annum.

Respectfully submitted this 1st. day of December, 2003.

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