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FORTY-FIFTH REPORT

OF

THE SALARIES REVIEW COMMISSION

OF

**THE REPUBLIC OF
TRINIDAD AND TOBAGO**

April 8, 1997

FORTY-FIFTH REPORT OF THE SALARIES REVIEW COMMISSION

Review of the Salaries and other Terms and Conditions of Service of Judges of the Supreme Court

In accordance with section 141(1) of the Constitution of the Republic of Trinidad and Tobago, His Excellency the President, by letter dated December 20, 1996, conveyed his approval for a review by the Salaries Review Commission of the salaries and other terms and conditions of service of Judges of the Supreme Court.

2. The remuneration arrangements of Judges were last reviewed comprehensively in our Twenty-third Report which was submitted in 1991 and which dealt with the terms and conditions of service of all office holders within our purview. Additionally, in our Thirty-sixth Report which was completed in May, 1995, in which we examined some aspects of pensions and other terminal benefits for certain of those office holders, the effect of section 6(2) of the Judges' Salaries and Pensions Act, Chap. 6:02 on the pension of a Judge who had had pensionable service under the Pensions Act, Chap. 23:52 was considered.

3. In the course of our present deliberations, we had the opportunity to examine submissions made on behalf of Judges by the Chief Justice for a revision of certain of their terms and conditions of service. We recalled that in our Nineteenth Report, which was submitted in 1990, we had emphasised the unique position which Judges occupy in our democratic society and we highlighted the need for adequate remuneration to be provided to holders of these esteemed offices so that they would not be placed in a financially precarious position. We wish to reiterate the principles by which we were guided in that Report as far as the review of remuneration arrangements for members of the Higher Judiciary was concerned. We had held then, that

- (i) Judges should enjoy a high degree of financial independence and security in order to ensure the proper discharge of their functions, and
- (ii) an appropriate compensation package should be applicable to Judges in order to facilitate the recruitment of persons of the highest competence and integrity.

We still consider these to be abiding principles.

SALARIES

4. The salaries of Judges were last increased with effect from January 1, 1993, the date from which revised terms and conditions of service of office holders within our purview became effective, following our general review of August, 1991. The existing salary levels are as follows:-

Chief Justice	-	\$15,000 per month
Justice of Appeal	-	\$12,000 per month
Puisne Judge	-	\$11,000 per month.

It is almost six years since our last review of remuneration arrangements for members of the Higher Judiciary and indeed, for the general body of office holders within our purview. We note, by comparison, that holders of executive level positions in the private sector have been benefitting from regular reviews of their remuneration packages, unlike in the public sector where there has been some restraint in wages and salaries. We are of the opinion, therefore, that there is a need at this time for a general review of the terms and conditions of employment of all office holders within our purview. However, the Commission does not think it appropriate to recommend improvements in the salary levels of Judges in isolation from other office holders. In this context, and given the components of the existing remuneration package of Judges as well as the facility enjoyed by them of exemption from income tax and any other tax, we consider that, in the interim, only certain aspects of that package should be reviewed. Our recommendations are set out below.

PERSONAL (JUDGE'S) ALLOWANCE

5. Regulation 10A of the Judges (Conditions of Service and Allowances) Regulations (No. 2) provides each Judge with a Personal (Judge's) Allowance of \$2,000 per month. The Commission notes that that quantum has been in existence since 1980 when the allowance was first introduced. We are of the view that, pending a general review as suggested above, an increase in this allowance would not be unreasonable. We recommend therefore that the allowance be revised to \$3,000 per month with effect from January 1, 1997.

PASSAGE ALLOWANCE

6. In accordance with regulation 7 of the Judges (Conditions of Service and Allowances) Regulations (No. 2), a Judge is entitled, in every alternate year, to go abroad during the long court vacation and to be paid a passage allowance for self, spouse, if any, and unmarried, dependent children under the age of twenty years, if any. The total passage allowance must not exceed the cost of three adult first-class return airfares from Trinidad to Kingston, Jamaica. On each alternate occasion, however, a Judge is entitled to a maximum of three adult first-class return airfares from Trinidad to London.

7. In our deliberations, we recalled the recommendations which we had made in our Thirty-fourth Report in respect of the Overseas Travel facility applicable to Ministers of Government. At that time, we had sought to make the facility more flexible for the office holders by proposing that they be allowed to opt for the retention of the facility which provided for a maximum of four first-class passages to the furthest point on BWIA's route at the end of each full parliamentary term or, alternatively, to receive a Travel Grant of \$15,000 per annum.

8. Similarly, we propose that Judges should be given the flexibility of receiving a Travel Grant in cash should they so choose. We are also of the view that the existing benefit could be enhanced by allowing the office holders to receive a passage allowance equivalent to a maximum of three adult first-class return airfares from Trinidad to London every two years, instead of to Kingston, Jamaica on each alternate occasion. Consequently, we recommend that a Judge should be given the following option with effect from January 1, 1997:-

Either:

- (i) to go abroad, in every alternate year and to be paid a passage allowance not exceeding the cost of three adult first-class return airfares from Trinidad to London for self, spouse, if any, and unmarried, dependent children under the age of twenty, if any;

or:

- (ii) to receive a Travel Grant of \$20,000 per annum payable in cash.

Once the option is exercised, it shall continue in effect for the duration of the Judge's tenure.

JUDICIAL CONTACT

9. In addition to the Passage Allowance outlined above, under regulation 7A, Judges are entitled, once every two (2) years, to a passage allowance covering first-class travel, hotel accommodation and subsistence in respect of the Judge, spouse and not more than two of his children who have not yet attained the age of eighteen years, are unmarried and maintained by him. This benefit covers passages to any part of the Commonwealth served by the 'national airline' to enable a Judge to establish contact with judicial colleagues and to attend conferences, seminars, lectures or similar gatherings. Further, where such judicial contact involves official participation in

- (i) a Commonwealth country not served by the 'national airline'; or
- (ii) the United Nations and its law agencies and organisations,

the cost of supplementary travel is to be authorised.

10. We have recognised a number of difficulties inherent in this existing benefit, the most significant of which is that by making provision for spouse and dependent children, it attempts to combine travel on official business with what is essentially a perquisite. Research has revealed that because of the manner in which funding is provided for the Passage Allowance and Judicial Contact, Judges are often unable in the same year to access the two separate benefits. In that regard, it has been drawn to our attention that:-

- (i) Judges are required on their return from judicial contact to submit an account, supported by bills and receipts, for the expenditure incurred. This account is subject to audit and query. Such a requirement is viewed as incompatible with the position of a Judge;
- (ii) It is difficult to administer the perquisite in a way which is fair and equitable as between one Judge and another. The quantum of the benefit can vary considerably depending on a variety of factors over which the Chief Justice has no control, viz, the countries chosen by the Judges, their marital status and the number and ages of their children, the size of the allocation provided and the number of Judges entitled to judicial contact in any given year; and
- (iii) Judges benefit from the allowance only to the extent that they spend it. There is certainly no incentive to economize.

An examination of the pattern of expenditure on this benefit over the last three years bears out the points made at (ii) and (iii) above. We, therefore, support the submission made on behalf of the Judges that the Judicial Contact perquisite be monetised. In our view, such an arrangement would be more equitable and far more cost effective than the existing benefit. We recommend that the allowance be set at \$5,000 per month and be termed a 'Judicial Contact Allowance'. The new allowance should be introduced with effect from January 1, 1997. However, existing office holders only should be given the option to retain the existing passage allowance for judicial contact or to receive the new allowance. The option once exercised shall continue in effect for the duration of the Judge's tenure.

11. We also note that the relevant regulation would need to be amended to remove the existing reference to the 'national airline' in view of the fact that BWIA is no longer so designated.

HOUSING

12. The Commission has recently reviewed the existing housing arrangements applicable to other office holders within our purview who are entitled to such accommodation. The relevant recommendations are included in our Forty-fourth Report. The benefit applicable to Judges was not included in that Report since we had, by then, received the approval of the President to review the remuneration arrangements of Judges and were of the opinion that it would be preferable to address the terms of Judges, including the provision for housing, in a comprehensive manner. In our deliberations leading to the abovementioned Report, we had examined the problems associated with providing suitable housing accommodation to the various office holders and had noted the difficulties experienced with maintaining properties which are actually allocated. We were also aware of the State's attempt to rationalise its housing stock in the light of the problems mentioned above and took into consideration that for the majority of office holders, the housing benefit had developed into a pure perquisite and was being paid in the form of a housing allowance instead.

13. We had observed, further, that the payment of a housing allowance is in keeping with the design of compensation packages today for executives in the public and private sectors and bearing in mind the difficulties in providing appropriate housing, we had recommended that where such housing is not available, an improved allowance which would assist the office holder in acquiring suitable residential accommodation should be provided. In that regard, we had recommended that office holders who are eligible for super grade quarters should be paid a revised housing allowance of \$5,000 per month. That quantum was

based on approximately 50% of the average monthly rental cost on the open market of housing comparable to the grades for which office holders now qualify.

14. At present, Judges are entitled to be provided with rent free fully furnished super grade residences. Where these are not provided, they are entitled to a housing allowance of \$1,000 per month. We note that in the case of the Judges, difficulties also exist with respect to the provision of appropriate residential accommodation compatible with the status of these office holders. We are of the view that Judges, excluding the Chief Justice, should be allowed to opt for super grade housing where available or to receive an allowance of \$5,000 per month in lieu. In the case of the Chief Justice, however, in recognition of his status as well as the fact that he has traditionally been provided with significantly larger super grade quarters than other office holders, we recommend a revised allowance of \$7,500 per month, where he does not occupy such quarters. The revised benefits should take effect from April 1, 1997.

VACATION

15. Regulation 4 of the Judges (Conditions of Service and Allowances) Regulations (No. 2) states as follows:-

Subject to such assignments for duty as may be made by the Chief Justice for the due execution of vacation business, Judges shall be on vacation during all court vacations.

The Court of Appeal and High Court observe three periods of vacation in each year as follows:-

- (a) the Long Vacation from 1st August to 15th September;
- (b) the first Short Vacation:-
 - (i) in the case of the Court of Appeal - from 22nd December to 10th January; and
 - (ii) in the case of the High Court - from 20th December to 2nd January.
- (c) the second Short Vacation from Good Friday to the Sunday following Easter.

The days on which a vacation begins and ends are included in the vacation period.

16. In the submission made on behalf of Judges, a radical change has been proposed in the existing vacation leave arrangements. This change calls for a severing of the link between the Judges' vacation and the Long Vacation, as defined in the legislation. In its place, it has been recommended that Judges of the Appeal Court be provided with a vacation leave entitlement of six (6) weeks per year and in the case of High Court Judges, the entitlement should be six (6) weeks per year and four (4) weeks per year in alternate years. The intention is that these periods of vacation will be taken at a time or times approved by the Chief Justice and that there would be no accumulation of such leave from one year to the next. The existing Short Vacations at Christmas and Easter will, however, be retained.

17. We note that the proposal with respect to vacation is in keeping with other measures adopted in the reform of the administration of justice. In early 1996, the length of the Long Vacation was significantly reduced to provide for more sittings of the High Court. Further, we understand that, in keeping with trends in other parts of the Commonwealth which have moved to a 12-month Court calendar, suggestions have been made for a further reduction of the Long Vacation and possibly, for its elimination altogether. The proposal for a change in the vacation leave entitlement of Judges is, therefore, an appropriate step in achieving that goal.

18. The Commission supports the proposal to amend the existing vacation leave arrangements but notes that the regulation with regard to the passage allowance payable under regulation 7 of the Judges (Conditions of Service and Allowances) Regulations (No. 2) would need to be amended to allow a Judge to go abroad during the period which the Chief Justice has approved for his vacation, since the benefit is linked to the established Long Vacation.

19. The new vacation leave arrangements should take effect from January 1, 1998. This would provide an adequate period in which appropriate administrative arrangements for the functioning of the Courts can be made.

PENSION

(a) Section 6(2) of the Judges Salaries and Pensions Act

20. In accordance with the provisions of the Judges Salaries and Pensions Act, Chap. 6:02, Judges are entitled to a pension equal to the aggregate of 1/3 of their pensionable emoluments and 1/360ths of their pensionable emoluments in respect

of each month of service, subject to a minimum of 44 1/4% and a maximum of 85% of annual pensionable emoluments. However, under section 6 (2) of the Act, where Judges (other than the Chief Justice) have previous pensionable service under the Pensions Act, Chap. 23:52, the amount of pension payable in respect of their service as a Judge, when added to the pension payable under the Pensions Act cannot exceed 85% of their annual pensionable emoluments received at the date of retirement (as a Judge). The effect of section 6(2) is that the pension earned by such Judges may be reduced if they are in receipt of a pension under the Pensions Act and if, when added together, the sum of the two pensions exceeds 85% of their annual pensionable emoluments at the date of retirement as a Judge. The pension payable in respect of their service as a Judge is tax-free while that in respect of their former public service is taxed.

21. It has been proposed that section 6(2) be repealed to allow Judges so affected to receive the full pension attributable to their service as a Judge. Alternatively, if there must be an abatement of a pension, the Judges have submitted that such abatement should apply to the pension payable under the Pensions Act and not to that payable under the Judges Salaries and Pensions Act.

22. The issue of section 6(2) was examined by us in our Thirty-sixth Report on pensions and other terminal benefits. At that time, we noted the advantages which were enjoyed by an officer leaving the Public Service to take up an appointment as a Judge - advantages which we considered to be significant. These included:-

- (i) the accrual of an additional 5 years service under the Pensions Act by members of the Judicial and Legal Service which allows them to earn a maximum of 35 years pensionable service compared with a maximum of 33 1/3 years for other offices pensionable under the same Act; and
- (ii) the designation of the office of "Judge of the Supreme Court" as an "approved post" under the Pensions Act, the effect being that officers leaving the Public Service to take up appointments as Judges are entitled to receive their public service pension earned under Chap. 23:52 immediately, regardless of age, without actuarial reduction.

In this regard, we concluded that the advantages outlined above provided adequate compensation for Judges appointed from the Public Service.

23. While we appreciate the Judges' concerns with regard to section 6(2), we are of the view, after having considered technical advice received by the Commission, that there should be no variation of section 6(2) of the Judges Salaries and Pensions Act at this time.

(b) Tax liability on pension to widow/widower

24. Another concern expressed by the Judges was in respect of the taxable pension payable to the widow/widower of a Judge. Although pension earned by a Judge is free from tax, that received by his/her survivor is treated as income in accordance with section 5(1)(e) of the Income Tax Act, Chap. 75:01. In considering the matter, we noted that the widow of the President of the Republic of Trinidad and Tobago or a retired President is entitled to receive a survivor's pension exempt from tax in accordance with section 8(1)(a) of the Income Tax Act. Taking into consideration the fact that the widow/widower of a Judge is entitled to only a portion of the pension which the Judge was paid, it appears to us unduly harsh to reduce that entitlement further by subjecting that pension to tax, especially when the full pension was previously paid free of tax. We, therefore, recommend that the pension payable under sections 12 and 13 of the Judges Salaries and Pensions Act, Chap. 6:02 to the widow/widower of a Judge or former Judge should be free of tax with effect from April 1, 1997.

(c) Inclusion of Personal Allowance as pensionable emoluments.

25. We also considered the submission made on behalf of the Judges that the Personal (Judge's) Allowance be included in their pensionable emoluments.

26. The Commission noted that, as a general rule, pensions are calculated on the basic salary a person receives at the time of retirement. This principle is applicable both in the private and the public sectors. It does not appear appropriate for a change in such a fundamental principle to be effected in respect of a single group of office holders only since we are of the view that there are widespread implications, particularly for the rest of the Public Service. We are aware that repeated requests made by Public Service Unions/Associations for the various allowances now payable to public officers to be made pensionable have not been favourably considered. We are of the view that the Personal (Judge's) Allowance should continue to be excluded from a Judge's pensionable emoluments.

MEDICAL BENEFITS

27. Judges are entitled to free medical treatment and hospitalisation services at any hospital or other institution established and maintained by the State under the Hospitals Ordinance. When such services are not available at the relevant hospitals, with the approval of the Chief Justice, the cost of treatment and services at any other hospital, institution or nursing home in Trinidad and Tobago is to be met by the State.

28. The Judges have submitted that the existing facility should be extended to their spouses and dependent children under the age of 21 years, in view of the prohibitive cost of treatment at private hospitals and nursing homes and the serious financial strain with which they would be faced in the event that their family members need to use such facilities.

29. We appreciate fully the concerns of the members of the Judiciary in this matter. In our deliberations, we examined provisions for health care available to top executives and noted that in the private sector, medical benefits, when provided, are normally on the basis of medical plans to which contributions are made by the employee and employer. Where coverage is provided for spouses and dependent children, there is a concomitant increase in contributions on the part of the employee or member of the plan.

30. While we continue to recognise the importance that must be placed on the remuneration of these office holders to ensure that they are not put in a financially precarious position, we must be mindful of the serious cost implications to the State of acceptance of the proposal. The State, at present, bears the medical expenses of a large number of public employees, including other office holders within our purview. We also noted that a number of private medical institutions and insurance companies have developed a variety of options and facilities, such as discount cards and insurance plans, in an attempt to make private medical facilities more affordable and accessible to all citizens of Trinidad and Tobago.

31. We are of the view that Judges can avail themselves of the various options provided by private companies and consequently, we recommend that the existing facility which is available to incumbents of the office of Judge be maintained.

SUMMARY

32. Taking into account the unique status of Judges, the Commission is satisfied that the changes which we have recommended represent a significant improvement in their remuneration package. These recommendations, the implementation of

which would require amendment of legislation, are summarised hereunder:-

A. With effect from January 1, 1997:-

- (i) The existing Personal (Judge's) Allowance of \$2,000 per month should be increased to \$3,000 per month.
- (ii) The Passage Allowance should be revised to give a Judge the option:-

Either

- (a) to go abroad, in every alternate year, and to be paid a passage allowance not exceeding the cost of three adult first-class return airfares from Trinidad to London for self, spouse, if any, and unmarried, dependent children under the age of twenty, if any;

or

- (b) to receive a Travel Grant of \$20,000 per annum payable in cash.

Once the option is exercised, it shall continue in effect for the duration of the Judge's tenure.

- (iii) The existing Judicial Contact facility should be replaced by a 'Judicial Contact Allowance' of \$5,000 per month, except that Judges who are now entitled to the existing facility should be given the option:-

Either

- (a) to retain the existing Judicial Contact facility;

or

- (b) to receive the Judicial Contact Allowance of \$5,000 per month.

Once the option is exercised, it shall continue in effect for the duration of the Judge's tenure.

- (iv) Judges who are due for the Judicial Contact facility in 1997, may utilise that facility in 1997 and with effect from January 1, 1998, should exercise the option at (iii) above.

B. With effect from April 1, 1997:-

- (i) The Chief Justice should be paid a revised housing allowance of \$7,500 per month where he opts not to occupy housing provided by the State. In the case of a Judge, the revised allowance should be \$5,000 per month.
- (ii) The pension payable under sections 12 and 13 of the Judges Salaries and Pensions Act, Chap. 6:02 to the widow/widower of a Judge or former Judge should be free of tax.

C. With effect from January 1, 1998, the Vacation Leave entitlement of Judges should be revised as follows:-

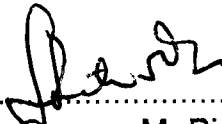
Justice of Appeal	-	Six (6) weeks per annum.
Puisne Judge	-	Six (6) weeks per annum and four (4) weeks per annum in every alternate year.

(The existing Short Vacations at Christmas and Easter should be retained.)

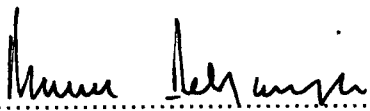
33. With respect to the other submissions examined, we consider that:-

- (i) The Personal (Judge's) Allowance should continue to be excluded from a Judge's pensionable emoluments.
- (ii) There should be no variation of section 6(2) of the Judges Salaries and Pensions Act, Chap. 6:02 at this time.
- (iii) The existing medical benefits should continue to be applicable only to the incumbent of the office of Judge.

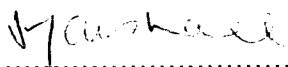
Dated this 8th day of April, 1997.


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Professor George M. Richards
(Chairman)


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Edward Collier


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Rowell Debysingh


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Keith Ortiz


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Joyce Marshall