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R E P O R T

TASK FORCE ON JUSTICES OF
THE PEACE AND CORONERS

TABLE OF CONTENTS

Introduction: Background and Mandate	1
Terms of Reference	3
Part One: Guiding Principle - Judicial Independence	5
Part Two: Justice of the Peace Review Council	9
Part Three: Jurisdiction and Assignment	10
Part Four: Recruitment and Appointment	12
Part Five: Tenure	16
Part Six: Discipline and Removal	17
Part Seven: Training	19
Part Eight: Remuneration	20
Part Nine: Language	22
Part Ten: Facilities and Infra-Structure	23
Part Eleven: Implementation	24
Part Twelve: Justice of the Peace Associations	25
Acknowledgments	26
Appendix 1: Summary of Recommendations	27
Appendix 2: Footnotes	35

INTRODUCTION - THE MANDATE

"For the last quarter century, much of northern Canada, particularly in its more remote regions, has been a land in crisis. The traditional institutions and the old cultures of its people are being replaced or modified, in collision with influences from the South." (footnote # 1)

Background:

The above comment by Chief Justice Laycraft of the Northwest Territories Court of Appeal summarizes much of the atmosphere of transition which touches all aspects of the rule of law in the Northwest Territories.

A critical turning point in that transition was reached when, in 1984, Ronald Walton filed an Appeal in the Supreme Court of the Northwest Territories challenging the competence of Territorial Justices of the Peace to sit on any matter because they lacked the necessary independence and impartiality required under the 1982 Canadian Charter of Rights and Freedoms.

The judgment in that case, delivered in October 1984, struck down important elements of the existing Justices of the Peace Act and launched a period of profound crisis and re-examination of the basic ideas which underlie the system of Justice in the Northwest Territories. (footnote # 2)

Since Territorial Justice of the Peace Courts encounter nearly 80% of all matters arising in the Territories and since these courts are the only level of judicial office open to the majority of the native population, the decision in the Walton case had far reaching implications for how close any level of court would be to the people it serves.

Evolution:

While the history of Justice of the Peace Courts has its roots in England dating back to the early 12th Century, it has taken on a particularly Canadian flavour in this country and an even more unorthodox evolution in the Northwest Territories. As late as the 1950's, many Justices of the Peace and even Magistrates were members of the R.C.M.P. who held court and adjudicated cases presented to them by fellow members of the same R.C.M.P..

Legitimate concerns arose about the impartiality and fairness of these courts resulting in the development of a Magistrate's Court based on a professional judiciary, known today as the

Territorial Court, and a Justice of the Peace Court, no longer staffed by the R.C.M.P.

When, in 1982, the new Canadian Charter of Rights and Freedoms declared that,

11. Any person charged with an offense has the right

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.

the principle of independence of the judiciary, including independence from other branches of government, became an imperative of the highest law of the land.

On January 7, 1987, the Hon. Michael Ballantyne, Minister of Justice for the Northwest Territories, recognizing the crisis, and responding to both the Walton judgment and a request from Northwest Territories Justice of the Peace Association for a review of the office of Justice of the Peace and a reassessment of Justice of the Peace training programs, announced the appointment of a Task Force on Justices of the Peace and Coroners with a mandate to conduct just such an investigation.

Membership in the Northwest Territories Task Force on Justices of the Peace and Coroners consisted of:

CHAIRMAN:

Mr. R. Peter Baril,
President
Northwest Territories Justice of the Peace Association
Iqaluit, NWT

MEMBERS:

Mr. T. Dialla, Justice of the Peace and Coroner,
Pangnirtung
Mr. S. Lal, Q.C., Deputy Minister of Justice, Yellowknife
Mr. Peter Shaw, Coroner, Fort Simpson
Ms. Evelyn Storr, Justice of the Peace and Coroner,
Aklavik
Mr. A. Whitford, Justice of the Peace and Coroner,
Yellowknife

SPECIAL ADVISOR:

Judge R. W. Halifax
Territorial Court of the Northwest Territories
Hay River, NWT

TERMS OF REFERENCE

The TERMS OF REFERENCE for the Task Force as announced on 7 January 1987 were as follows:

1. Develop a Justice of the Peace Program that meets the special needs of the Northern Justice System and the various people it serves.
2. Recruitment strategies for Justices of the Peace that represent the communities they serve. A special emphasis should be placed on increasing representation of aboriginal people and women.
3. Qualifications, including the minimum standard required and personal characteristics that are desirable.
4. Training, an analysis of the type of instructions to be given, when this instruction should be given, and the implementation of a continuing education program with special emphasis on using aboriginal languages in the training process.
5. Discipline and Tenure, review and recommend the type of procedure and appointing system that should exist, remembering the need for Justices of the Peace to remain independent and neutral.
6. Workload and Remuneration, recommend a system for the rates of pay, and the feasibility of full-time Justices of the Peace. Study the viability of task-specific appointments.
7. Administration and Control, study the feasibility of placing Justices of the Peace under the direction and supervision of the Territorial Court judges.
8. Review the Justices of the Peace Act and recommend amendments in keeping with the Canadian Charter of Rights and Freedoms.
9. Recommend a strategy and sequence for implementing the proposed changes, including a timetable or schedule of the proposals to be implemented.

10. Recommend improved training and educational programs and develop a guide to the new Coroners Act for coroners. (footnote #3)
11. Any other matters concerning the Justices of the Peace which may have an impact upon the proper administration of Justice in the North.

PART I - GUIDING PRINCIPLE: JUDICIAL INDEPENDENCE

It is a fundamental principle of Canadian law, that a person, when sitting in a judicial capacity, is not a civil servant, but rather a primary judicial officer of the State, just as cabinet Ministers are primary officers of the Executive branch and a member of Parliament is a primary officer of the Legislative branch of government.

Virtually every past difficulty in the administration and public perception of the Justice system has its roots in the blurring of this distinction.

While the Task Force has focused on several aspects of the Northwest Territories Justice of the Peace system, (including Recruitment, Selection, Training, Appointment, Tenure, Remuneration and Discipline or Removal,) the principle of judicial independence as it affects Justice of the Peace courts has come to dominate all others.

More important, however, the new Canadian Charter of Rights is very specific in this regard; Section 11(d), especially, states that judicial officers must be independent, free of governmental influence and that they must prevent unconstitutional exercises of governmental power.

With that clearly defined responsibility, the concepts of judicial independence and separation from other branches of government have become legal requirements of the highest law in the land. All levels of government in Canada, including that of the Northwest Territories, are bound by this section of our Constitution and must ensure these principles are implemented in fact as well as in word.

Despite these important changes in law, which are already fully recognized and catered to in other Canadian jurisdictions, especially the Province of Ontario, Justice of the Peace Courts in the Northwest Territories are still perceived to be in the hands of the very Ministry responsible for defending Government interests before those same Courts. The question has therefore arisen whether this ambiguity of function can continue.

Simply put, the strength of the institution and office of Justice of the Peace will remain in doubt as long as program administrators continue to see themselves as civil servants responsible mainly to the executive branch's departmental bureaucracy.

Submissions:

Fortunately, efforts already made in other provinces show this situation can be remedied in an exemplary, cooperative and creative way.

In Ontario, for example, immediately the need to transfer Justice of the Peace Courts under the authority of a judicial officer was recognized, a senior ministerial official responsible for policy and planning in these matters, was promptly seconded to the Chief Judge of the Provincial Court (Criminal Division) during the period of transition and a Judge of the Provincial Court was assigned to supervise all aspects of the Justice of the Peace program.

In this way, compliance with the Charter was immediate even if the actual process of transition, especially the drafting of supporting Legislation, took a longer period.

At its public hearings, as well as in written submissions, the single most common complaint the Task Force received regarding the present Territorial Justice of the Peace program, from recruitment through to final disposition of cases, was the apparent dependence of the Justice of the Peace on various elements of the executive branch such as the R.C.M.P., officials of the Department of Justice and indeed, if we refer to the decision of the Supreme Court of the Northwest Territories in *Walton vs. Hebb*, on the Minister of Justice himself.

The Task Force has received repeated and strong advice that public faith and trust in the Courts is at risk under the existing relationships and that we must clearly separate the Executive and Judicial powers at all levels.

"..it remains to be noted that the Canadian Charter of Rights and Freedoms proclaimed in force April 17, 1982 applies equally to the provincial and federal governments. By this fundamental constitutional document, provincial justices of the peace, as they have done, are empowered to strike down laws inconsistent with the Charter and award other remedies for its violation."

High Court of Ontario: Ewaschuk, J. (footnote # 4)

"One of the greatest difficulties that I have as a JP is getting advice on some item or case that I am obliged to deal with. I would like to see the JP system placed under the jurisdiction of the Territorial Court system and be provided with the option to consult a Judge regarding some

matter. I also think that a move in this direction would elevate the image of the JP Court system to a more deserving level of appreciation and respect."

Aklavik (#45)
(footnote # 5)

"Being both independent and impartial is not possible with the present system. When you take on either task you are completely dependent on the RCMP. Depending on personality and education it is entirely possible you may or may not continue in this mode."

Fort Smith (#4)

"There is an undisputed need for Coroners and Justices of the Peace to appear to be independent. It is strongly felt to maintain the respect and community stature of the office(s) necessary to properly perform their functions, Justices of the Peace and Coroners must not only be independent, they must also appear to be independent."

Yellowknife (#30)

"In the performance of the greater part of their duties, JP's are unavoidably put into close contact with the police. A JP must however be very careful that he does not come to see himself as an agent of the police. He or she must rigorously guard his impartiality and must have the confidence to reject the recommendations of the police on any particular matter... JP's should be encouraged to consult with Judges or other JP's should they have difficulties in the conduct of their duties."

Yellowknife (#43)

"One point about the present system which I feel undermines the present appointments, is the role which the RCMP play in appointing people. I feel the RCMP should be removed entirely from the process as many Justices of the Peace are seen to be RCMP choices."

Yellowknife (#42)

Recommendation:

It is urgent, even critical, that not even the slightest doubt remain concerning the independence of Justice of the Peace Courts and that any apparent administrative conflicts with other branches of the Government be eliminated as soon as possible.

It is therefore essential, and the primary recommendation of this Task Force, that all aspects of the Justice of the Peace program in the Northwest Territories be transferred forthwith under the authority and direction of the Chief Judge of the Territorial Court, or his designate, and be fully integrated into the Territorial Court System.

This transfer would place the Justice of the Peace Court clearly within the Judicial hierarchy and ensure its independence from any real or apparent interference by the other branches of government in the same manner and at least to the same extent as the Territorial Court.

It is the express intent of this recommendation that the distribution of resources once they are allocated and the supervision of training and support staff for Justices of the Peace in the Northwest Territories be effectively placed under the direction of judicial officers and of judicial officers only, such that Justices of the Peace and their supporting staff be clearly within the control of the courts.

PART II - JUSTICE OF THE PEACE REVIEW COUNCIL

Background

Every level of Court in every Canadian jurisdiction requires some form of Judicial Review to ensure that critical tasks which go beyond the day to day administration of the courts, such as selection, discipline and removal of judicial officers, when necessary, is also accomplished by a process which is independent and impartial.

In the Northwest Territories, the means for removal from office was lost when Section 3 (5) of the Justice of the Peace Act was eliminated in late 1984 by the Walton vs. Hebb decision.

"..a declaration shall issue from the Court as follows:

1. Subsection 3(5) of the Justices of the Peace Ordinance is of no force or effect, being inconsistent with paragraph 11(d) of the Canadian Charter of Rights and Freedoms.

2. Section 16 and subsection 17(1) of the Interpretation Ordinance are inoperative in respect of appointments made under the Justices of the Peace Ordinance."

Recommendations:

It is recommended that a Justice of the Peace Review Council be established by legislation which shall consist of the following:

Chairman:

The Chief Judge of the Territorial Court or his designate

Members:

The regional Territorial Court Judge

The President of the Territorial Justice of the Peace Association or his designate

A representative of the Minister of Justice

A representative of the public, appointed by the Minister on approval by the above four.

PART III - JURISDICTION AND ASSIGNMENT

Background:

Unlike other jurisdictions in Canada, the Northwest Territories is composed almost entirely of widespread rural communities where Justices of the Peace are the only available level of court for most of the calendar year.

To meet this broad need, there has only been a single assignment for Justices of the Peace; this included all the duties prescribed under the Criminal Code of Canada as well as those under various other federal statutes, the Territorial Acts and innumerable Municipal Ordinances stemming from those Acts.

This formidable load has presented some difficulties.

First, valuable potential candidates for the office of Justice of the Peace have refused to take on any responsibility because they were expected to assume the whole gamut of duties in a single step.

Secondly, some candidates who accepted appointment on the understanding they would only be required to assume administrative duties, thereafter felt pressured into performing more advanced functions for which they were clearly unprepared.

Thirdly, even long standing and experienced Justices of the Peace have sometimes had to function in areas for which even they were inadequately trained.

Recommendation:

It is recommended that a graduated hierarchy of jurisdictions (assignments) be established whereby J. P.'s would start with relatively simple and routine tasks and only gradually assume more complicated assignments following rigorous training and demonstrated ability as prescribed by the Chief Judge of the Territorial Court.

It is anticipated that this structure would include at its core at least the following criminal jurisdictions:

1. Inactive: by request or upon assignment by the Chief Judge

2. Administrative, Level One: ex-officio, no remuneration
3. Administrative, Level Two: swearing informations, issuing and confirming process and adjournments;
4. Presiding, Level One (Pre-Trial): Information and Warrant for Search, Judicial Interim Release,
5. Presiding, Level Two (Docket Management and Sentencing): Taking plea, hearing facts, pre-sentence reports, sentencing;
6. Presiding, Level Three (Trial): Summary conviction trials.

It is also recommended that the following ancillary or special jurisdictions be available:

1. Marriage
2. Child Welfare
3. Young Offenders
4. Civil Claims

The assigned duties of a Justice of the Peace shall be designated by the Chief Judge after consultation with the Justice of the Peace Review Council and taking into account such factors as training, experience, level of recent activity and community need.

PART IV - RECRUITMENT AND APPOINTMENT

Background:

Suggestions for appointments of Justices of the Peace have too often and with increasing reluctance over the last few years, fallen to the Royal Canadian Mounted Police. Typically, this has been a result of the need for an immediate appointment in a particular community which has gone ahead without a consistent and appropriate policy regarding qualifications and recruitment.

In such cases neither community nor candidate has properly understood the obligations and duties of the office of Justice of the Peace as distinct and independent from those of the police, and most communities came to view the Justice of the Peace Court as somewhat suspect, lacking impartiality and even being police oriented.

While it is recognized that local sources have been consulted from time to time, there has been no consistent policy regarding community consultation, such that many appointments have seemed to ignore basic community needs and preferences.

Submissions:

Parties appearing before the Task Force, including several members of the R.C.M.P., pointed to the urgent need for developing a more acceptable practice in this regard. Reform in the system of appointments which increases consultation with those who are knowledgeable about likely and qualified candidates is crucial; at the same time we must ensure that Justices of the Peace are appointed on the basis of their ability to act in a judicial and impartial manner, not through political or partisan motivation.

"This person is required to make sound decisions based on fact, as well as, their decisions must be respected. Such appointments are important public service positions to the law enforcement program; and therefore, the police involvement in the selection process should be minimum."

Fort Simpson (#17)

"Council has in the past submitted names of individuals for justices of the peace to only find out that the

department has appointed someone else without consulting with Council. Any decision made should include both parties involvement.

Cambridge Bay (#14)

"It is clear to me that the criteria established to ensure intelligent, sensitive and effective performance by coroners and Justices of the Peace will necessarily limit the number of suitable candidates available. This limited number must not be further reduced by arbitrarily excluding whole categories of people, such as government employees, that do not clearly and indisputably need to be excluded."

Yellowknife (#3)

"JP's and Coroners should be appointed by senior members of the Judiciary on the advice of respected and representative groups of the community in which they are to serve. Individuals so chosen must have the respect of the community, and must have the integrity to remove themselves from situations where there is a conflict of interest."

Cambridge Bay (#40)

"It would be ideal if all JP candidates were possessed of a grade 12 education, but imposing such a requirement would eliminate many excellent candidates in smaller communities. As a minimum, however, candidates should be able to read and understand the often complex reference materials that JP's must work with."

Yellowknife (#43)

"It has been seen in other communities where a J.P. has refused to sign documents as they have involved a friend or family. Because small communities are so closely knit and families can be quite extended, this can cause a great deal of problems. When taking an appointment as a J.P., the need for independence and impartiality must be stressed."

Pangnirtung (#31)

"I believe it is unrealistic to expect that you will (be) able to get local native persons to sit as JP's. The consequences of sentencing someone seems to intimidate most native persons from acting in this capacity."

Fort Resolution (#7)

"Lay Justices of the Peace may receive guidance and information on legal principles and on the law as it is applied and declared by the higher courts, but the qualities for which they are chosen and which are most essential to the proper discharge of their duties have always been, and remain today: a robust common sense, a sense of fairness, a knowledge and understanding of ordinary people in their own communities, a keen awareness of the practical realities of life, and a deep and abiding commitment to do what is right by all persons who come before them and whom their decisions may touch."

Walton vs. Hebb

Recommendation:

It is recommended, therefore, that a competent officer of the Territorial Court, under the direction and supervision of the Chief Judge, assess the minimum number of Justices required in each community, in no case less than two, and subsequently maintain at all times a current list of several acceptable potential candidates for each community. It is essential that this list be in addition to the required minimum number of Justices already serving in that community.

This list should be prepared taking into account the following guidelines:

- adequately informing the public of what duties and responsibilities are involved
- full consultation with responsible community organizations
- ensuring candidates have sufficient knowledge of the community and region
- defining selection criteria which reflect local culture, language and social structure
- ensuring that no group or category of persons is automatically excluded from consideration, including those who are at other times employed by other branches or levels of government
- insisting that candidates have the ability to understand and apply the judicial frame of mind

- ensuring that candidates be free of any recent criminal record
- and requiring that there be no obvious general conflict of interest

Following such community consultation, all prospective candidates who have been deemed acceptable on preliminary screening should then undergo a pre-appointment orientation and training program during which both they and the Chief Judge can confirm their continued interest and qualification.

Once a candidate has completed this pre-appointment orientation, and in consultation with the Chief Judge of the Territorial Court, he or she would become a fully qualified potential appointee and be added to the ongoing list of candidates for consideration when the next vacancy occurs.

When a vacancy occurs, the Chief Judge, in consultation with the Justice of the Peace Council, shall submit a list of acceptable candidates to the Minister, from which the appointment shall be made.

PART V - TENURE

Background:

Over time, the real and apparent neutrality of a judicial officer has come to depend on four essential elements:

- security of tenure
- security in court and case management
- immunity from suit in respect of decisions and conduct of a trial
- security from financial concern

Any claim to independence and impartiality of any judicial officer is only empty rhetoric unless these four separate elements are effective.

In the past Justices of the Peace in the Northwest Territories were appointed for a three year term subject to renewal by the Commissioner. As a result of *Walton vs. Hebb*, that provision in the present Justices of the Peace Act was found to be unconstitutional.

This decision had the effect of granting all Justices of the Peace unlimited tenure.

The Task Force found that, in keeping with the first element of judicial independence, security of tenure for Justices of the Peace in other Canadian jurisdictions is the same as that for Provincial Court Judges. In these provinces, retirement occurs at age 65, with a provision for continuing in office beyond that time only with annual approval.

Recommendation:

It is therefore recommended that appointments to the office of Justice of the Peace in and for the Northwest Territories continue in force so long as the incumbent remains a resident of the Northwest Territories, or until resignation or retirement and that these latter be according to conditions similar to those now in place for Territorial Court Judges.

PART VI - DISCIPLINE AND REMOVAL

Background:

In the past, questions of removal and discipline have been dealt with by simply allowing the then existing three year appointment to expire.

As a further result of Walton vs. Hebb, the present Legislation no longer provides for removal when necessary.

Submissions:

"I do not think that there is any room in the legal system for the informal handling of troublesome matters. It may be tempting, given, for example, (and these are only examples) a Justice of the Peace incapacitated through alcohol addiction, or a Justice of the Peace who simply doesn't have the intellectual capacity to function properly, merely not to issue or to revoke an (Assignment), or even more informally, merely to pass the word around that his services should not be used. It may be said that no harm is done by his being allowed to retain his Commission and that it saves embarrassment to him. This may be true, but the informality, for good motive, on one occasion may, on another occasion be the improper circumvention of formal procedures."

Mewett Report (footnote # 6)

"9.-(1) A justice of the peace may be removed from office only by order of the Lieutenant Governor in Council.

(2) The order may be made only if,

(a) a complaint regarding the justice of the peace has been made to the Review Council; and

(b) the removal is recommended following an inquiry on the ground that the justice of the peace has become incapacitated or disabled from the due execution of his or her office by reason of,

(i) infirmity,

(ii) conduct that is incompatible with the duties of his or her office, or

(iii) having failed to perform the duties of his or her office as assigned.

Draft proposed Justice of the Peace Act (Ontario)

Recommendation: Procedure for Complaint

It is recommended that the Chief Judge shall receive and cause to be investigated any complaint regarding a Justice of the Peace and, thereafter, take whatever action he deems necessary, within the powers granted by the Territorial Court Act, including referral to the Justice of the Peace Review Council.

Recommendation: Powers of Council

In this regard, it is recommended that the Justice of the Peace Review Council shall assess all complaints received from the Chief Judge and shall, if necessary, conduct an inquiry into the complaint, allowing opportunity for the Justice of the Peace affected to make full representation.

Based on its findings, the Council may then prescribe discipline by the Chief Judge or recommend removal by the Minister.

PART VII - TRAINING

Background:

At every stage of its work, the Task Force was confronted with irrefutable evidence that the public, the R.C.M.P., other government departments and Justices of the Peace themselves were profoundly troubled by the apparent dependence of the Court on various elements of the Executive branch of government. It is also a universal impression that this critical state has been exacerbated by the lack of judicial training.

"Our comments with regard to Justices of the Peace are in relation to our own departmental needs as they exist within the smaller communities of the NWT. With training, J.P.'s could well serve as Youth Court Judges and could deal with Child Welfare matters also.

The difficulty at present, based on our experience is that the majority depend heavily on the community Social Service Worker to guide them in making a decision and this is contrary to the role we wish to see in any Court system. Training would allow them to assume a more important stance on such matters thereby resulting in a greater protection of children's and parent's rights."

#41 Yellowknife

"Dramatic improvement in both formal and informal training, including the necessary allocation of resources, is required for the appointees to meet their respective mandate."

#30 Yellowknife

Recommendation:

It is recommended that all training shall be under the authority of the Chief Judge who, in consultation with the Executive of the Justice of the Peace Association and representatives of the Minister of Justice, shall assure full and proper training and educational programs for each jurisdiction of Justice of the Peace.

In addition to such core training, every effort must be made to provide Justices of the Peace with up to date communication, including changes in legislation, recent case law and results of Appeals.

PART VIII - REMUNERATION

Background

Historically, the principle that a judicial officer should not be vulnerable to financial influence has been dealt with by appointing candidates who had other sufficient sources of basic income.

Nonetheless, current levels of remuneration do not adequately compensate or recognize active Justices of the Peace for the demands and duties they perform.

A common representation made to the Task Force during its public hearings was the expression of surprise by members of the public at the low rate of remuneration for active Justices of the Peace.

Furthermore, it is now commonly recognized that universal and full employment as it has traditionally been defined in Canada is an unlikely model for the North and that alternative forms of job creation and part time employment are a more probable way for the future. The office of Justice of the Peace lends itself to such a model and therefore competent prospective candidates must not be excluded simply because they are presently jobless or only partially employed in other endeavours.

Submissions:

"I believe that the pay for justices of the peace ought to be sufficient to attract good candidates who will be willing to devote sufficient time to the job, without making the position a full time one. The position should not be a gratuitous public service as it is in England, however, justices of the peace are not independently wealthy and should not do it just for the honour alone. Perhaps payment on an hourly basis rather than by case disposed is more appropriate."

#51 Yellowknife

"We feel that JP's and Coroners, more so JP's, should be paid a greater remuneration for personal time devoted to this most important responsibility"

#13 Aklavik

"I am also recommending that remuneration for work done by the justice of the peace be considered. The issuing of search warrants, show cause hearings, the signing of various documents and informations, undertakings, etc. must be recognized, and proper fees established, with every thought given to the many times that justices of the peace are invariably called to perform judicial duties on week-ends, holidays and evenings."

#2 Yellowknife

Recommendation:

It is recommended, therefore, that an increased annual honorarium be paid to each active Justice of the Peace which properly recognizes the time spent in keeping abreast of current developments in the field and for performing the basic duties associated with an Administrative, Level Two jurisdiction.

It is further recommended that a remunerative structure be established and periodically reviewed which, in addition to the moderate fee for each adjournment, judicial interim release or disposition, allows for fair compensation for Presiding Justices in cases that require travel or result in lengthy sittings. The latter should be based, at least, on per diem and honoraria similar to those paid to members of other Territorial tribunals.

PART IX - LANGUAGE

Background:

It is obvious that difficulties arise in all levels of court from time to time when english language procedures are forced on unilingual non-english speakers.

While this constraint was long thought to be a requirement in Criminal Code matters, it has been under serious review since the appointment of the Northwest Territories Law Reform Committee headed by Mr. Justice T. David Marshall.

Considering the number of unilingual accused and the nature of most court audiences in the Northwest Territories, Justice of the Peace Courts should be conducted in a way that consistently emphasizes the native language in addition to if not instead of the appropriate official language.

"In many communities an ability to speak the native language will be a very significant asset for the JP, and will serve to bring the administration of Justice closer to the people."

Walton vs. Hebb

Recommendation:

Every effort should be made to ensure that Justices of the Peace in the Northwest Territories, whenever possible, speak and understand the first language of the accused person.

Consideration and encouragement should also be given to any incumbent Justice who is willing and able to learn another of the commonly used languages of the Northwest Territories.

In addition, appropriate interpretation and translation services must be provided in all regions, at least to the level provided by other sectors of government. These translation services should include any documents which directly affect the public or an accused person.

Promises to Appear, Summons, Subpoenae, Undertakings, Warrants and other process requiring attendance in court, should be issued in both an official language and the aboriginal language appropriate to each area. In addition, court proceedings should be interpreted to at least the same degree as other public meetings sponsored by other branches of government.

Part X - FACILITIES AND INFRA-STRUCTURE

Background:

In many smaller communities, the contrast between Justice of the Peace Court and the visiting Territorial and Supreme Courts is so great as to seriously affect public perception and credibility in the local court.

Often, buildings and facilities where court is to be held belong to other departments or organizations in the community and a representative of the Court, usually the R.C.M.P. must request the use of facilities on an as available basis.

As well, the most qualified local Justice of the Peace is often called on short notice, perhaps from his or her work place, and must appear in Court dressed as for other work, not in a manner which befits the Court environment.

Recommendation:

In each community, a suitable room or place should be identified as the community Justice of the Peace Courtroom, and provision should be made for such equipment as flags, desks, chairs and decor as lend to the Court the dignity and credibility it deserves.

Provision must also be made for:

- recording equipment which adequately ensures that every Justice of the Peace sitting is reliably recorded;
- gowns to emphasize the dignity and respect due the Court process and for the convenience of Justices who are called into session on short notice without the opportunity of dressing appropriately prior to opening Court;
- annual copies of Martin's Annotated Criminal Code, the Bible and other appropriate reference materials as are deemed necessary by the Chief Judge;
- a suitable form of identification and evidence of authority which is recognizable across the Northwest Territories similar to the identification cards issued to Territorial Court Judges.

PART XI - IMPLEMENTATION

Recommendation:

In implementing the recommendations of this report it is recommended that immediately the program administrator has begun to report to the Chief Judge,

- a) a thorough evaluation of present Justice of the Peace skills and services be conducted,
- b) that a computerized database be established which accurately shows each community's needs and each Justice's training requirements,
- c) and that urgent regional training workshops be conducted to ensure that Justices already serving in the Northwest Territories are qualified to act, at a minimum, at the Administrative Two Level and, where necessary, at the Presiding Level Two jurisdiction.

This preliminary upgrading should be funded as an emergency, non-recurring, special training program to bring the present system up to minimum acceptable standards consistent with public expectations.

It is further recommended that an office of Administrator of the Justice of the Peace Program be established under the Chief Judge of the Territorial Court which shall consist of at least two positions, that of the Administrative Officer and that of a qualified Executive Secretary.

While it is expected that the Department of Justice will proceed without delay to draft appropriate legislation to formalize and implement these recommendations as soon as possible, it is strongly recommended that the Administrator of the Justice of the Peace Program begin immediately to carry out his or her duties under the functional direction of the Chief Judge, pending that legislation.

PART XII - JUSTICE OF THE PEACE ASSOCIATION

Recommendation:

In keeping with observations and recommendations in other areas of this study, the Task Force recommends that the Northwest Territories Justice of the Peace Association consider changes in its structure to better reflect the sharp linguistic and cultural differences in the various regions.

Consistent with the Task Force's strong recommendation for specially tailored, regionally based training programs, it may be more appropriate for the present Territorial Association to restructure along similar lines to other Canadian judicial federations.

This could, for example, take the form of strong regional Justice of the Peace Associations which would each in turn appoint a representative to a Territorial Justice of the Peace Federation.

It is recommended that the Justice of the Peace Federation be funded to allow at least two meetings each calendar year to conduct its own business. These meetings should be separate from any taking place as part of the duties of the Justice of the Peace Council.

ACKNOWLEDGMENTS

The Task Force would like to thank all those who appeared before it during community public hearings and the more than fifty individuals and community organizations who provided written documentation of their concerns and suggestions.

We also want to acknowledge the special and invaluable contribution of the following people who gave generously of their insight and expertise in spite of considerable inconvenience:

Chief Judge J. R. Slaven - Territorial Court of the NWT
Chief Judge F. Hayes - Provincial Court of Ontario
(Criminal Division)
Chief Judge C. Kosowan - Provincial Court of Alberta

APPENDIX 1

RECOMMENDATION #1

It is essential, and the primary recommendation of this Task Force, that all aspects of the Justice of the Peace program in the Northwest Territories be transferred forthwith under the authority and direction of the Chief Judge of the Territorial Court, or his designate, and be fully integrated into the Territorial Court System.

This transfer would place the Justice of the Peace Court clearly within the Judicial hierarchy and ensure its independence from any real or apparent interference by the other branches of government in the same manner and at least to the same extent as the Territorial Court.

It is the express intent of this recommendation that the distribution of resources once they are allocated, and the supervision of training and support staff for Justices of the Peace in the Northwest Territories be effectively placed under the direction of judicial officers and of judicial officers only, such that Justices of the Peace and their supporting staff be clearly within the control of the courts.

RECOMMENDATION #2

It is recommended that a Justice of the Peace Review Council be established by legislation which shall consist of the following:

CHAIRMAN:

The Chief Judge of the Territorial Court or his designate

MEMBERS:

The regional Territorial Court Judge
The President of the Territorial Justice of the Peace
Federation/Association or his designate
A representative of the Minister of Justice

A representative of the public, appointed by the Minister on approval by the above four.

RECOMMENDATION #3

It is recommended that a graduated hierarchy of jurisdictions (assignments) be established whereby J. P.'s would start with relatively simple and routine tasks and only gradually assume more complicated assignments following rigorous training and demonstrated ability as required by the Chief Judge of the Territorial Court.

It is anticipated that this structure would include at its core at least the following criminal jurisdictions:

Inactive:

1. Inactive: by request or upon the declaration of the Chief Judge

Administrative:

2. Administrative, Level One: ex-officio, no remuneration
3. Administrative, Level Two: swearing informations, issuing and confirming process and adjournments;

Presiding:

4. Presiding, Level One (Pre-Trial): Information and Warrant for Search, Judicial Interim Release,
5. Presiding, Level Two (Docket Management and Sentencing): Taking pleas, hearing facts, pre-sentence reports, sentencing;
6. Presiding, Level Three (Trial): Summary conviction trials.

It is also recommended that the following special jurisdictions be available:

1. Marriage
2. Child Welfare
3. Young Offenders
4. Civil Claims

The assigned duties of a Justice of the Peace shall be designated by the Chief Judge after consultation with the Justice of the Peace Review Council and taking into account such factors as training, experience, level of recent activity and community need.

RECOMMENDATION #4

It is recommended, therefore, that a competent officer of the Territorial Court, under the direction and supervision of the Chief Judge, assess the minimum number of Justices required in each community, in no case less than two, and subsequently maintain at all times a current list of several acceptable potential candidates for each community. It is essential that this list be in addition to the required minimum number of Justices already serving in that community.

This list should be prepared taking into account the following guidelines:

- adequately informing the public of what duties and responsibilities are involved
- full consultation with responsible community organizations
- ensuring candidates have sufficient knowledge of the community and region
- defining selection criteria which reflect local culture, language and social structure
- ensuring that no group or category of persons is automatically excluded from consideration, including those who are at other times employed by other branches or levels of government
- insisting that candidates have the ability to understand and apply the judicial frame of mind
- ensuring that candidates be free of any recent criminal record
- and requiring that there be no obvious general conflict of interest

Following such community consultation, all prospective candidates who have been deemed acceptable on preliminary

screening should then undergo a pre-appointment orientation and training program during which both they and the Chief Judge can confirm their continued interest and qualification.

Once a candidate has completed this pre-appointment orientation, and in consultation with the Chief Judge of the Territorial Court, he or she would become a fully qualified potential appointee and be added to the ongoing list of candidates for consideration when the next vacancy occurs.

When a vacancy occurs, the Chief Judge, in consultation with the Justice of the Peace Council, shall submit a list of acceptable candidates to the Minister, from which the appointment shall be made.

RECOMMENDATION #5

It is recommended that appointments to the office of Justice of the Peace in and for the Northwest Territories continue in force so long as the incumbent remains a resident of the Northwest Territories, or until resignation or retirement.

RECOMMENDATION #6

It is recommended that the Chief Judge shall receive and cause to be investigated any complaint regarding a Justice of the Peace and, thereafter, take whatever action he deems necessary, within the powers granted by the Territorial Court Act, including referral to the Justice of the Peace Review Council.

It is recommended that the Justice of the Peace Review Council shall assess all complaints received from the Chief Judge and shall, if necessary, conduct an inquiry into the complaint, allowing opportunity for the Justice of the Peace affected to make full representation.

Based on its findings, the Council may then prescribe discipline by the Chief Judge or recommend removal by the Minister.

RECOMMENDATION #7

It is recommended that all training shall be under the authority of the Chief Judge who, in consultation with the Executive of the Justice of the Peace Federation/Association and representatives of the Minister of Justice, shall assure full and proper training and educational programs for each jurisdiction of Justice of the Peace.

In addition to such core training, every effort must be made to provide Justices of the Peace with up to date communication, including changes in legislation, recent case law and results of Appeals.

RECOMMENDATION #8

It is recommended that an increased annual honorarium be paid to each active Justice of the Peace which properly recognizes the time spent in keeping abreast of current developments in the field and for performing the basic duties associated with an Administrative, Level Two jurisdiction.

It is further recommended that a remunerative structure be established and periodically reviewed which, in addition to the moderate fee for each adjournment, judicial interim release or disposition, allows for fair compensation for Presiding Justices in cases that require travel or result in lengthy sittings. The latter should be based, at least, on per diem and honoraria similar to those paid to members of other Territorial tribunals.

RECOMMENDATION #9

Every effort should be made to ensure that Justices of the Peace in the Northwest Territories, whenever possible, speak and understand the first language of the accused person.

Consideration and encouragement should also be given to any incumbent Justice who is willing and able to learn another of the commonly used languages of the Northwest Territories.

In addition, appropriate interpretation and translation services must be provided in all regions, at least to the level provided by other sectors of government. These translation services should include any documents which directly affect the public or an accused person.

Promises to Appear, Summons, Subpoenae, Undertakings, Warrants and other process requiring attendance in court, should be issued in both an official language and the aboriginal language appropriate to each area. In addition, court proceedings should be interpreted to at least the same degree as other public meetings sponsored by other branches of government.

RECOMMENDATION #10

In each community, a suitable room or place should be identified as the community Justice of the Peace Courtroom, and provision should be made for such equipment as flags, desks, chairs and decor as lend to the Court the dignity and credibility it deserves.

Provision must also be made for:

- recording equipment which adequately ensures that every Justice of the Peace sitting is reliably recorded;
- gowns to emphasize the dignity and respect due the Court process and for the convenience of Justices who are called into session on short notice without the opportunity of dressing appropriately prior to opening Court;
- annual copies of Martin's Annotated Criminal Code, the Bible and other appropriate reference materials as are deemed necessary by the Chief Judge;
- a suitable form of identification and evidence of authority which is recognizable across the Northwest Territories similar to the identification cards issued to Territorial Court Judges.

RECOMMENDATION #11.

In implementing the recommendations of this report it is recommended that immediately the program administration has functionally begun to report to the Chief Judge,

- a) a thorough evaluation of present Justice of the Peace skills and services be conducted,
- b) that a computerized database be established which accurately shows each community's needs and each Justice's training requirements,
- c) and that urgent regional training workshops be conducted to ensure that Justices already serving in the Northwest Territories are qualified to act, at a minimum, at the Administrative Two Level and, where necessary, at the Presiding Level Two jurisdiction.

This preliminary upgrading should be funded as an emergency, non-recurring, special training program to bring the present system up to minimum acceptable standards consistent with public expectations.

RECOMMENDATION #12

It is further recommended that an office of Administrator of the Justice of the Peace Program be established under the Chief Judge of the Territorial Court which shall consist of at least two positions, that of the Administrative Officer and that of a qualified Executive Secretary.

RECOMMENDATION #13

While it is expected that the Department of Justice will proceed without delay to draft appropriate legislation to formalize and implement these recommendations as soon as possible, it is strongly recommended that the Administrator of the Justice of the Peace Program begin immediately to carry out his or her duties under the functional direction of the Chief Judge, pending that legislation.

RECOMMENDATION #14

Consistent with the Task Force's strong recommendation for tailored, regionally based training programs, it may also be more appropriate for the present Territorial Justice of the Peace Association to restructure itself along lines which better reflect the sharp linguistic and cultural differences in the various regions.

This could, for example, result in stronger regional Justice of the Peace Associations which would each in turn appoint a representative to a Territorial Justice of the Peace Federation, similar to national judicial organizations.

It is recommended that the Justice of the Peace Federation be funded to allow at least two executive meetings each calendar year to conduct its own business. These meetings should be separate from those taking place as part of the duties of the Justice of the Peace Review Council.

FOOTNOTES

1. R. v. J.N. [1986] N.W.T.R. 128 at p. 131
2. Walton v. Hebb, Attorney General of Canada and Commissioner of the Northwest Territories [1984] N.W.T.R. 353. This case is referred to throughout this report as, simply, Walton v. Hebb.
3. The Coroners Act portion of the terms of reference was not completed as part of this review. The Task Force concentrated on the issues relating to Justices of the Peace, and left the distinct matter of the Coroners Act to be dealt with separately.
4. Re Currie and Niagara Escarpment Commission (1984) 46 O.R. (2d) 484 at p. 490.
5. References in this report to quotations identified by the name of a community, and by a number, are to statements made at the public hearings held by the Justices of the Peace Task Force. Tapes, or in some cases, transcripts, of these hearings are in the possession of the Court Services Division, Department of Justice, 3rd Floor, Court House, Yellowknife.
6. Report to the Attorney General of Ontario on the Office and Function of Justices of the Peace in Ontario (the Mewett Report), 1981.