

JUSTICE's Submissions on
the Consultancy Report on the
System for the Determination of Judicial Remuneration


1. It is a given and beyond dispute that the system for the determination of judicial remuneration must be a buttress for an independent judiciary. We have therefore, considered the contents of the Consultancy Report from this standpoint.
2. The fixing of judicial remuneration (including terms of service such as leave entitlement, pension or gratuities, medical insurance and other benefits) must be established by an independent process. Public confidence and perceptions of judicial independence will clearly be enhanced if judicial salaries and benefits are seen not to be influenced or capable of being influenced by whether judges find in favour of the Government or powerful economic interests. Exactly the same arguments exist for the establishment of an independent body to fix judicial remuneration as for the involvement of an independent body in the appointment of judicial officers. Recommendations 3, 4 and 5 are therefore supported save that we would urge that the Executive be bound to adopt the recommendations of the independent body. The body can build in to its consultative processes the consultation of the Executive in considering the level or amount of judges' remuneration. However, once the body has made its recommendations, the Executive ought to be bound to accept the recommendations. Otherwise, the

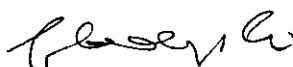
establishment of an independent body to fix judicial remuneration becomes meaningless if the Executive is free to ignore its recommendations.

3. We also agree in respect of recommendation 7 that certain factors should be specified namely (1), (2) and (3). Beyond that, we doubt whether it is necessary or desirable to tie the hands of those fixing judicial remuneration in the factors to be considered. The body should have the freedom to consider whatever other factors its members consider to be relevant.
4. We agree with recommendation 8. Performance pay and productivity bonuses could easily harm perceptions of judicial independence if seen as a reward for particular decisions, even worse, for rushing through cases thus raising the number of cases heard.
5. We generally agree with recommendation 6 although we would suggest that it is unnecessary to make retired judges ineligible for membership of the body. There would be no conflict of interest and retired judges would be well placed in terms of expertise in offering advice on the relevant factors and the weight to be attached to them in fixing salaries and terms of service.
6. We support recommendation 2. However, careful consideration will need to be given to the content of the statutory provision. If judicial remuneration is seen as being but part of the budget for the Judiciary and if the budget for the Judiciary for staff and other expenditure

apart from judicial remuneration is not protected, this may be an indirect means of “starving” or putting pressure on judicial resources. The Judiciary’s budget is also a component in the protection of judicial independence.

7. We support recommendation 9.
8. Recommendation 1 appears to be the most controversial recommendation. Certainly, it is the most widely reported and in some instances, the only recommendation noted in the media. What has not been reported in the media is that legislation prohibiting reductions in judicial remuneration is if not the norm in common law jurisdictions, at the very least widespread.
9. Members of JUSTICE are divided on this issue. Some do not support recommendation 1 but propose in its place a provision that ties judicial remuneration to the cost of living index. Some support recommendation 1 but suggest that the prohibition against reduction of judges’ remuneration should not apply to downward adjustments in line with the cost of living index. Some support recommendation 1 without any elaboration of whether it should or should not apply to downward adjustments in line with the CPI index. All accept that judges remuneration should be insulated from political argument and pressure.


23 April 2003


Gladys Li, SC
Chairman