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Via Email and Mail

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Gil Rémillard
Margaret Bloodworth,
Peter Herbert Griffin
c/o Louise Meagher
2015 Quadrennial Commission
99 Metcalfe Street, 8th floor
Ottawa, Ontario, K1A 1E3

Dear Members of the Commission:

**Re: Quadrennial Commission on Judicial Compensation –
Representational Costs of Prothonotaries**

I write to request that the Commission immediately recommend that the prothonotaries receive full funding for their representational costs in connection with the Quadrennial Commission process.

There are currently only 5 prothonotaries of the Federal Court. They are judicial officers whose valuable work has been recognized by two previous Special Advisors, in 2008 (Special Advisor Adams) and 2013 (Special Advisor Cunningham). Following the Report of Special Advisor Cunningham in 2013, the Government elected to amend the *Judges Act* to include them within the Quadrennial Commission process, rather than hold a separate process for them.

In the two previous processes, the prothonotaries received an *ex gratia* payment of \$50,000 towards their representational costs. That amount proved to be wholly insufficient, and required the prothonotaries to conduct a large part of the work of preparing for the process themselves, thereby distracting them from their judicial duties. In addition, the prothonotaries were each required to contribute in excess of \$5,000 from their own funds (in addition to the *ex gratia* payment) towards their representational costs in both 2008 and 2013.

Chief Justice Paul Crampton of the Federal Court gave evidence in 2013 that the insufficiency of funding had a significant impact on the Court and the public.

Both Special Advisor Adams and Special Advisor Cunningham recommended in their reports that the prothonotaries be reimbursed for their representational

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costs in excess of the *ex gratia* payments. However, in both cases the Government declined to implement this recommendation. The Government's responses relied upon the fact that judges receive reimbursement for two-thirds of their costs of the Quadrennial Commission process pursuant to s.26.3 of the *Judges Act*.

The prothonotaries respectfully submit that they are not in the same position as the Judges.

First, there are over a thousand federally appointed judges, who participate in the Quadrennial Commission process through the Superior Court Judges' Association. Due to economies of scale, their participation does not require them to spend their personal funds to the degree that the prothonotaries have had to in their previous processes.

Second, the judges are provided with an incidental allowance that may be used on such matters as membership dues for their association. The prothonotaries do not have the benefit of any such incidental allowance.

Third, the prothonotaries earn significantly less than federally appointed judges do. Their salaries are currently fixed at 76% of the salary of a federally appointed judge. As such, they are less able to bear the costs of participation.

Further, the prothonotaries are now required to participate in a process that is significantly more complex and elaborate than the previous processes before Special Advisors Adams and Cunningham. The prothonotaries will likely be required to respond to positions put forward by both the Minister of Justice and the Superior Court Justices Association/Canadian Judicial Council, as well as a broader range of interveners, and may be required to engage on a broader range of issues than in the previous processes. We also understand that the hearing days will likely be in Ottawa, adding travel costs to the process.

We understand that the Minister of Justice takes the position that s.26.3 of the *Judges Act* is an impediment to the payment of any amount in addition to the two-thirds of actual costs assessed on a solicitor-client basis referred to in that section. We respectfully disagree with that interpretation. The section provides as follows:

Costs payable

26.3 (1) The Commission may identify those representatives of the judiciary participating in an inquiry of the Commission to whom costs shall be paid in accordance with this section.

Entitlement to payment of costs

(2) A representative of the judiciary identified under subsection (1) who participates in an inquiry of the Commission is entitled to be paid, out of the Consolidated Revenue Fund,

two thirds of the costs determined under subsection (3) in respect of his or her participation.

Determination of costs

(3) An assessment officer of the Federal Court, other than a judge or a prothonotary, shall determine the amount of costs, on a solicitor-and-client basis, in accordance with the Federal Courts Rules.

We submit that this clearly sets out an *entitlement* to payment of two-thirds of the costs of participation, but does not prevent the Minister from providing additional funding where appropriate.

We note that the Minister has consistently provided full funding for representational costs to another small group of judicial officers, the four Military Judges, who have their own process. As a matter of fairness, and to ensure the proper functioning of the Quadrennial Commission process, the prothonotaries respectfully request that the Commission recommend, on a preliminary basis, that the prothonotaries likewise be provided full funding for this process.

You will recall from our teleconference call that the prothonotaries have directly requested full funding from the Minister, but have not yet heard back on their request. We hope that this is a matter on which Ms. Turley can advise us prior to the scheduled conference call on February 8, 2016.

Yours very truly,

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP



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- c. Anne Turley, Department of Justice
Pierre Bienvenu and Azim Hussain, counsel to the Superior Court Judges
Association and Canadian Judicial Council
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