

***Judicial Compensation
and Benefits Commission***



***Commission d'examen de la
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Ruling Respecting Preliminary Issue: Objection to Paragraphs 46-49 and Exhibit B of the Judiciary's Principal Submissions.

March 22, 2016

Gil Rémillard (Chair); Margaret Bloodworth (Commissioner); Peter Griffin (Commissioner)

The Government of Canada has requested that the Commission strike paragraphs 46-49 and Exhibit B of the Judiciary's principal submission, filed on February 29, 2016. In the alternative, it requests that the revised submission (with a redacted version of paragraphs 46-49) filed on March 2, 2016 be considered as the Judiciary's submission and that Exhibit B be marked as a confidential exhibit.

The Commission received written submissions, dated March 8, 2016 and March 11, 2016, from counsel for the Attorney General, and written submissions dated March 10, 2016 from counsel for the Canadian Superior Courts Judges Association and the Canadian Judicial Council. The Commission has carefully considered the written submissions.

The paragraphs and Exhibit in question reflect the circumstances surrounding the proposed nominee of the Government to this Commission and the objection to that nomination by the Judiciary. Pending the decision on the Government's objection, the Judiciary's revised submissions formed part of the public record and Exhibit B was treated as confidential.

The Government objects to the paragraphs and Exhibit on three grounds:

1. relevance to the Commission's inquiry;
2. prejudicial impact on the proposed nominee's reputation; and
3. adverse impact on candour and trust between the parties.

The Commission considers it important to note at the outset that the Judiciary has been explicit in its endorsement of the undoubted integrity of the individual involved, something which this

Commission fully accepts and likewise endorses. In the Commission's view there is no question as to the integrity of the proposed nominee and nothing surrounding the events referred to in the paragraphs and Exhibit suggests otherwise.

With respect to the grounds for objection raised by the Government, the Commission finds as follows:

1. It is premature for the Commission to conclude that the question of process surrounding the appointment of nominees is irrelevant to the questions it must decide;
2. There is no question as to the integrity of the individual involved. Prior involvement by an individual on behalf of a party before a commission or tribunal is the type of activity that may dictate that individual's recusal from a decision-making role. In most circumstances, as in this one, there is no suggestion of actual bias. It is the appearance of impartiality which is at issue; and
3. The nomination of a member to the Commission, whether it be by the Government or the Judiciary, is part of the process of a public proceeding. The Commission is not convinced that there is any confidence or privilege which would attach to the documents in question.

The courts have recognized limited circumstance in which documents filed in a public proceeding would be sealed or struck in the manner requested by counsel for the Attorney General. In the view of the Commission, none of those circumstances apply here.

Accordingly, the request of the Attorney General is denied. The original version of paragraphs 46-49 of the Judiciary's principal submission is reinstated and Exhibit B will form part of the public record.

Given its findings on ground 2 above, the Commission does not consider it necessary to accede to the Government's request that the proposed nominee be invited to comment.