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Canada

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BY EMAIL

March 8, 2016

Our File Number: 7821380

Louise Meagher
Executive Director
Judicial Compensation and Benefits Commission
99 Metcalfe Street, 8th Floor
Ottawa, Ontario
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Dear Ms. Meagher:

**Re: Government's Objection to Paragraphs 46 to 49 and Exhibit B of the
Judiciary's Principal Submissions**

The Government of Canada asks the Judicial Compensation and Benefits Commission to strike paragraphs 46 to 49 and Exhibit B of the judiciary's principal submissions, filed February 29, 2016. In the alternative, and in order to protect the reputation of the individual involved, the Government asks that the revised version of the judiciary's submissions filed March 2, 2016 be considered the judiciary's submissions and that Exhibit B be excluded from the public record.

The Government objects on the following three grounds: (1) relevance to the Commission's inquiry; (2) prejudicial impact on the former Deputy Minister's reputation; and (3) the adverse impact on candour and trust between the parties.

Paragraphs 46 to 49 and Exhibit B of the judiciary's submissions are not relevant to any question before this Commission. These paragraphs and the attached correspondence do not assist the Commission in determining the adequacy of judicial compensation based on the criteria set out in the *Judges Act*. The correspondence attached as Exhibit B pre-dates the constitution of this Commission and relates to discrete events that have no bearing on this Commission's process. Since these paragraphs and correspondence are not relevant to any recommendations that the Commission has been asked to make, they do not usefully contribute to the record before the Commission. What their inclusion does do, whether intentionally or not, is imply bad faith and cast the Government's actions in a negative light.

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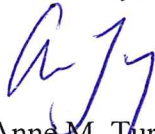
Of equal concern is the fact that the public identification of the particular former Deputy Minister involved will have a significant impact on this individual's reputation. The judiciary's statements impugn the former Deputy Minister's professionalism and reputation. Throughout the correspondence between the parties, the judiciary alleges that the former Deputy Minister's nomination would erode confidence in the Commission's process. Indirectly, the judiciary challenges the former Deputy Minister's judgement and questions his ability to remain impartial. The impact of the federally-appointed judiciary casting doubt upon this individual's judgement and impartiality cannot be underestimated.

Finally, allowing the correspondence between the parties to be filed could significantly and detrimentally impact the future relationship of trust and confidence between the parties. The judiciary have recognized the need to preserve candour in discussions between the parties.¹ As past Commissions have emphasized, the Quadrennial Commission process must remain a collaborative and non-adversarial process.² Candour in exchanges between the parties is essential to this collaboration. The correspondence in Exhibit B was undertaken by the Government in good faith and with an implicit understanding that it would remain between the parties. Filing such correspondence with the Commission for no substantive purpose will have a chilling effect on the frank exchanges between the parties, and can only be inimical to the good will and collaboration on which an effective Commission process depends.

Paragraphs 46 to 49 of the judiciary's submissions have no bearing on any issue before this Commission. In the interests of ensuring a collaborative and productive process and to avoid unfairly tarnishing the reputation of a former Deputy Minister, the Government therefore asks that these paragraphs and Exhibit B be struck from the record.

In the alternative, and in order to protect the reputation of the individual at issue, the Government requests that the judiciary's revised submissions filed on March 2, 2016 be considered the judiciary's principal submissions. The Government further requests that Exhibit B be marked as a confidential exhibit and not be released to the public

Yours truly,



Anne M. Turley
Senior General Counsel

¹ Submissions of the Canadian Superior Courts Judges Association and the Canadian Judicial Council dated February 29, 2016, para 35

² Report of the Fourth Judicial Compensation and Benefits Commission dated May 15, 2012, paras 112-118; Report of the Third Judicial Compensation and Benefits Commission dated May 30, 2008, para 203