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BY EMAIL

March 11, 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 Reply on the Objection to Paragraphs 46 to 49 and Exhibit B of the Judiciary's Principal Submissions

The Government of Canada disputes the judiciary's mischaracterization of the Government's letter of March 8, 2016. The Government maintains its position that paragraphs 46-49 and Exhibit B 1) are irrelevant; 2) impugn the former Deputy Minister's character; and 3) reveal discussions that the Government entered into in good faith with the expectation of confidentiality.

The Government does not challenge the Judicial Compensation and Benefits Commission's ability to consider process issues. However, given that the judiciary has specifically indicated that they do not seek a recommendation from the Commission on this issue, filing the information in question serves no purpose other than to attempt to cast the Government of Canada in a negative light.

Moreover, the judiciary has been inconsistent with its justification for publicly releasing the passages and correspondence in question. In paragraph 49 of its principal submissions, the judiciary states:

The Association and the Council are not seeking any recommendation from the Commission on this question. However, the judiciary considers it essential that the position it adopted as to the requirements of independence and impartiality on the part of Commission members be made public, so as to inform future nominations.

In their submissions of March 10, 2016, the judiciary now suggest that the dispute over the Government's initial nominee must be made public to explain, both to the Commission and the public, a delay in this process.¹

On this issue, the Government brings the Commission's attention to a letter from the undersigned to counsel for the judiciary on July 27, 2015, which identified Commissioner Bloodworth as the Government's nominee to this Commission. Any delay caused by the events set out at paragraphs 46 to 49 of the judiciary's submissions was brief and rectified within two weeks of the former Deputy Minister removing his name from consideration.

On the issue of reputation, the judiciary attempts to separate the former Deputy Minister's position (which it claims is incompatible with appointment to the Commission) from the individual himself. The judiciary claims that by questioning the impartiality of one, they do not impugn the reputation of the other. This artificial distinction misses the point. Indeed, if the judiciary is only concerned with the incompatibility of the office, there is no need to identify the individual or to include correspondence between the parties in the Commission record. In that respect, the revised submissions filed on March 2, 2016 would suffice if the Commission deems it relevant to its inquiry.

If the Commission is not inclined to strike the paragraphs and Exhibit B, the Commission should provide the former Deputy Minister notice of the matter so that he may decide whether to make any submissions. It is only fair that the individual directly impacted by the judiciary's attempt to release this information be provided with this opportunity.

Given the Government and the judiciary's divergent views on the disclosure of pre-hearing correspondence between the parties and the impact on the privacy interests of the deputy minister involved, it was improper for the judiciary to unilaterally place this matter on the public record. The assertion that there was no reasonable expectation of confidentiality or non-disclosure of the correspondence between the parties on this issue is based on an incomplete reflection on the history.

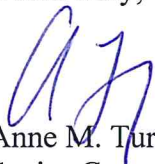
The Government undertook the discussions with the judiciary between June 5 and July 13, 2015 in the spirit of collaboration and good faith and with the expectation of confidentiality. That the judiciary after-the-fact expressed its view, in a letter dated July 16, 2015, that it was a matter of public concern does not alter the circumstances in which the discussions occurred.

In light of the foregoing, the Government asks that the Commission strike paragraphs 46-49 and Exhibit B of the judiciary's principal submissions filed on February 29, 2016. Alternatively, the Government asks that the revised submissions filed on March 2, 2016 be considered as the judiciary's submissions and that Exhibit B be marked as a

¹ Judiciary's submissions dated March 10, 2016, para 28

confidential exhibit. Any considerations relevant to this Commission process can be fully addressed through the revised submissions alone.

Yours truly,

A handwritten signature in blue ink, appearing to be 'AT', is written over the typed name.

Anne M. Turley
Senior General Counsel