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***SUBMISSION TO QUADRENNIAL COMMISSION ON BEHALF OF THE CHIEF JUSTICE OF
THE COURT MARTIAL APPEAL COURT OF CANADA***

MARCH 26, 2021

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BY E-MAIL

March 26, 2021

Martine Turcotte, Chair
Margaret Bloodworth and **Peter Griffin**,
Members
Judicial Compensation and Benefits Commission
8th Floor
99 Metcalfe Street
Ottawa, ON K1A 1E3

Dear Ms. Chairperson, Commissioner Bloodworth & Commissioner Griffin:

1. EXECUTIVE SUMMARY

Counsel for the Chief Justice of the Court Martial Appeal Court of Canada (“CMACC”) wish to make an oral presentation to this Honourable Commission in Ottawa. Until such time as a hearing may take place, please accept the following submissions on behalf of the Chief Justice.

This Honourable Commission has been established to consider “the adequacy of judges’ benefits generally”.¹ As such, consideration of recommendations to amend s. 31.1 of the *Judges Act* (together with any necessary modifications and amendments to s. 28 of the *Judges Act* and s. 234 of the *National Defence Act*) fits squarely within the mandate of this Honourable Commission. That mandate is also informed by constitutional principles, including the fundamental principle of judicial independence.

Fundamentally, the operational independence of the CMACC is threatened by the contemporary structure of the *Judges Act*² and the *National Defence Act*.³ Whereas the Chief Justices of other federally appointed courts enjoy statutory protections which ensure the independence of their respective courts, the Chief Justice of CMACC is inappropriately entangled with the day-to-day function of his or her source court (as listed at s. 234(2) of the *National Defence Act*). The reasons for this entanglement are, in large measure, due to the structural inadequacies of the *Judges Act* and *National Defence Act*.

¹ *Judges Act*, RSC 1985, c J-1, [s. 26\(1\)](#).

² *Judges Act*, RSC 1985, c J-1.

³ *National Defence Act*, RSC 1985, c N-5.

The *Judges Act* does not adequately protect the independence of the CMACC because it does not appropriately insulate the Chief Justice from the outside interference of other courts. As a result, the significant constitutional mandate of the CMACC, as prescribed by the *National Defence Act*, *The Constitution Act, 1867*,⁴ and *The Constitution Act, 1982*⁵ is potentially compromised.

The *National Defence Act* does not adequately protect the independence of the CMACC because, unlike the *Federal Courts Act*⁶ or the *Tax Court of Canada Act*,⁷ the language of the *National Defence Act* does not say that members of the CMACC can be past or former members of another court. Membership as a judge or even Chief Justice of the CMACC is dependent upon membership as a judge of another source court. This potentially exposes the Chief Justice of the CMACC to the directives of other Chief Justices, thereby compromising his or her capacity to effectively carry out the independent functions of the CMACC.

This issue is reflected in the Order-in-Council which designates the Chief Justice of CMACC, but does not appear for the appointments of Chief Justices in other courts. For example, the Chief Justice of the Tax Court of Canada is not a designated member of another Court. Accordingly, Chief Justice Eugene Rossiter was appointed to the Tax Court of Canada directly from practice, and thereafter was appointed Associate Chief Justice, and Chief Justice.⁸ He is, therefore, not potentially subject to the directives of the Chief Justice of the Federal Court in the same way as the Chief Justice of CMACC.

RECOMMENDATIONS

To the extent that the Chief Justice of the CMACC is potentially bound by the directives of the Chief Justice of his or her source Court, the independence of the CMACC is compromised. To address this issue, these submissions respectfully ask that this Honourable Commission do the following:

- recommend to Parliament that s. 31.1 of the *Judges Act* be amended to provide an incumbent Chief Justice of the CMACC the status of a “standalone” Chief Justice and *ex officio* member of the Federal Court of Appeal (like other appellate Chief Justices in

⁴ [*The Constitution Act, 1867*, 30 & 31 Vict, c 3.](#)

⁵ [*The Constitution Act, 1982*, Schedule B to the *Canada Act 1982 \(UK\)*, 1982, c 11.](#)

⁶ [*Federal Courts Act*, RSC 1985, c F-7.](#)

⁷ [*Tax Court of Canada Act*, RSC 1985, c T-2.](#)

⁸ [*Orders-in-Council Re Chief Justice Eugene Rossiter*.](#)

Canada’s federal courts system), together with any necessary modifications to s. 28 of the *Judges Act* and amendments to the *National Defence Act*;

- recommend to Parliament that s. 234 of the *National Defence Act* be amended such that it mirrors language in the *Tax Court of Canada Act* and the *Federal Courts Act* regarding the appointment of judges.

We ask that this Honourable Commission recommend changes to the *Judges Act* and *National Defence Act* which reflect the following:

- the equal status of the Chief Justice of the CMACC, including that the Chief Justices of the Federal Court, Federal Court of Appeal, and the Court Martial Appeal Court are equally responsible for the judicial and administrative functions of their respective courts, as reflected in s. 8(1) of the *Courts Administration Service Act*.⁹

2. JURISDICTION OF THIS HONOURABLE COMMISSION

Section 26(1) of the *Judges Act* provides that the Judicial Compensation and Benefits Commission is established to inquire into “the adequacy of judges’ benefits generally” and may make recommendations to Parliament.

Section 31.1 involves a “benefit” to the Chief Justice of CMACC in the sense that it governs the juridical pathway of a Chief Justice upon ceasing to perform the duties of that office. In particular, s. 31.1 sets out the duties of a former Chief Justice as those of a “judge of the court on which they serve” and provides that they be paid the salary “annexed to the office of a judge”. Similarly, s. 28 of the *Judges Act* sets out that certain judges may elect to hold the office of supernumerary judge, specifies restrictions on the timing of such election, and lists the duties and salary of a supernumerary judge.

The recommendations herein are provided for the purpose of addressing the adequacy of these sections from the perspective of their impact on fundamental constitutional principles, including the principle of judicial independence. The independence of our judiciary, particularly the independence of members of the CMACC, is a matter of constitutional significance.

Consideration of recommendations to amend s. 31.1 of the *Judges Act* together with any necessary modifications and amendments to s. 28 of the *Judges Act* and the *National Defence Act* fits within the mandate of this Honourable Commission. Section 26(1.1) of the *Judges Act*

⁹ *Courts Administration Service Act*, SC 2002, c 8, [s. 8\(1\)](#). [CASA].

provides that this Honourable Commission conduct its inquiry with reference to the following prescribed criteria:

- (a) the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government;
- (b) the role of financial security of the judiciary in ensuring judicial independence;
- (c) the need to attract outstanding candidates to the judiciary; and
- (d) any other objective criteria that the Commission considers relevant.

The second and third criteria are engaged by the proposed modification to s. 28 of the *Judges Act*. Just as judges of the Federal Court, Federal Court of Appeal, and Tax Court of Canada may elect to become supernumerary judges of their respective courts, the purpose of these revisions, together with revisions to s. 31.1 of the *Act*, are to provide a Chief Justice of the CMACC a route to become a supernumerary judge of the CMACC.

The fourth criterion, namely “any other objective criteria that the Commission considers relevant” was specifically added to allow this Honourable Commission to consider other criteria “that are justified, ones that are measured on objective grounds”.¹⁰ It is submitted that the proposed amendments made herein are clearly justified in these circumstances and that this Honourable Commission may make recommendations to Parliament regarding the impact of the *Judges Act* and *National Defence Act* on the independence of the Chief Justice of CMACC.¹¹

3. THE CHIEF JUSTICE & JUDICIAL RESPONSIBILITIES

A. CHIEF JUSTICE OF CMACC

In 2006, the current Chief Justice of CMACC, Chief Justice Richard Bell, was appointed a judge of the Court of Queen’s Bench of New Brunswick. In 2007, by Order-in-Council 2007-1049, Chief Justice Bell was appointed to the Court of Appeal of New Brunswick.

In 2015, by Order-in-Council 2015-0172, Chief Justice Bell was appointed to be a Judge of the Federal Court, and “a member *ex officio* of the Federal Court of Appeal”.¹² Order-in-Council 2015-0176 “appoints” Chief Justice Bell as a Judge of the Court Martial Appeal Court of Canada,

¹⁰ [*Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, Issue No 37, 1st Sess, 36th Parl, October 22, 1998 p 37:21.*](#)

¹¹ See, for example, the [*Budget Implementation Act, 2017, No. 1, SC 2017, c 20*](#) which introduced amendments proposed at the Fifth Commission in 2015.

¹² [*Order-in-Council 2015-0172.*](#)

pursuant to s. 234(2) of the *National Defence Act*,¹³ and Order-in-Council 2015-0177 “designates” Chief Justice Bell as Chief Justice of the CMACC pursuant to s. 234(3) of the *National Defence Act*.¹⁴

We note that, since Chief Justice Bell has been appointed as a Judge of the Federal Court, he does not make these recommendations (particularly the recommendation that the Chief Justice of CMACC be a standalone position and designated *ex officio* member of the Federal Court of Appeal) for his own benefit. Rather, these recommendations seek to ensure that, on a go-forward basis, the Office of Chief Justice of CMACC be given appropriate consideration and adequate statutory protections to ensure its operational and administrative independence.

B. LEGISLATIVE CHALLENGES TO INDEPENDENCE OF CMACC

The CMACC is established pursuant to s. 234(1) of the *National Defence Act*. Its purpose is to hear and determine all appeals referred to it under Division 9 (Appeals) of the *NDA*.¹⁵ The Governor-in-Council designates or appoints judges to the CMACC pursuant to s. 234(2) of the *NDA*. The judges may be judges of the Federal Court of Appeal, the Federal Court, or a superior court of criminal jurisdiction.

Under the current legislative drafting, at least four of the judges of the CMACC must be judges of the Federal Court of Appeal or the Federal Court who are designated by the Governor-in-Council.¹⁶ CMACC judges may also be judges of a superior court who are appointed by the Governor in Council. Based on the language of s. 234(2)(a) of the *NDA*, judges that come to the CMACC remain judges of the Federal Courts or superior courts from which they are designated.

This designation process has significant practical consequences. Pursuant to s. 5(4) of the *Federal Courts Act*, every judge of the Federal Court is, by virtue of his or her office, a judge of the Federal Court of Appeal and has all the jurisdiction, power, and authority of a judge of the Federal Court of Appeal. As confirmed by Chief Justice Bell’s Order-in-Council, a judge of the Federal Court is also a member *ex officio* of the Federal Court of Appeal.

In the case of the Chief Justice of the CMACC, he or she may be a member of up to three separate Courts. As such, as a member of courts other than the CMACC, he or she may be subject to the directives of the Chief Justice of those courts. This presents a significant

¹³ [Order-in-Council 2015-0176](#); *National Defence Act*, RSC 1985, c N-5.

¹⁴ [Order-in-Council 2015-0177](#); *National Defence Act*, RSC 1985, c N-5.

¹⁵ *National Defence Act*, [s. 234\(1\)](#).

¹⁶ *National Defence Act*, [s. 234\(2\)](#).

challenge to the Chief Justice of CMACC's capacity to maintain the operational and administrative independence of the CMACC.

4. PROPOSED STRUCTURAL CHANGES & RATIONALE

A. PROPOSED CHANGES

It is recommended that, in future, the Chief Justice of CMACC be appointed as a standalone judge (and designated *ex officio* to the Federal Court of Appeal) in order to remove the challenges associated with having the Chief Justice of the CMACC balance his or her responsibilities to the CMACC against the directive to serve as a regular puisne judge of any source court.

The other members of the CMACC may continue to be members of the Federal Court, Federal Court of Appeal, or superior court from which they are designated members of the CMACC. However, with regard to the Chief Justice, respectfully, there is a constitutional imperative (as informed by the fundamental principle of judicial independence) to ensure he or she is free from interferences which affect the independence of the CMACC. As such, on a go-forward basis, the Chief Justice of CMACC should be appointed as a "standalone" position.

The purpose of these recommendations is to:

- ensure the independence of the CMACC;
- ensure that the Chief Justice can perform his or her administrative functions in a manner which reflects both the perception and reality of independence;
- ensure the Chief Justice of the CMACC can perform his or her judicial functions on CJC disciplinary matters without the perceived influence of the Chief Justice of his or her source court; and
- ensure the Chief Justice of the CMACC can speak forcefully at meetings of CAS and the CJC without fear, or the perception of fear or favour, from the Chief Justice of his or her source court.

I. REQUIRED AMENDMENTS TO *JUDGES ACT*

The *National Defence Act* itself does not explicitly say whether the Chief Justice of the CMACC must continue to be a judge of the Federal Court, Federal Court of Appeal, or superior court from which they are designated/appointed. However, the need for the CMACC to be based in Ottawa makes it impracticable to consider making the Chief Justice of the CMACC an *ex officio*

judge of a provincial superior court. In addition, the *Judges Act* strongly indicates that the Chief Justice of CMACC must remain a member of his or her court of origin upon appointment as Chief Justice of the CMACC. This is because s. 31.1 of the *Judges Act* does not specify that the Chief Justice return to a role on the Court Martial Appeal Court of Canada upon ceasing to be Chief Justice but instead refers to “the court on which they serve”.

By way of contrast, s. 31(1) of the *Judges Act*, which deals with the election of the Chief or Associate Chief of the Federal Court, Federal Court of Appeal or Tax Court, omits the phrase “of the court on which they serve”. The implication being that it is assumed they do not also serve on another court.

Given the role of the Chief Justice in ensuring the smooth operation and continued functioning of the CMACC, and the increase in workflow to the CMACC following the Supreme Court of Canada’s recent decisions in *Stillman*,¹⁷ the ability to manage the CMACC’s processes and proceedings must take priority over the needs and wishes of other courts that may otherwise have the ability to assign judicial work.

To bring the office of the Chief Justice of CMACC into conformity with other Federal Courts,¹⁸ it is proposed that s. 31.1 of the *Judges Act* be modified or amended such that where the Chief Justice of CMACC notifies the Minister of Justice of Canada of their election to cease to perform the duties of that office, they return to performing the duties of a judge of the CMACC and hold only the office of a judge of the CMACC and *ex officio* member of the Federal Court of Appeal. To reflect the seniority of the Chief Justice of the CMACC, s. 31.1 of the *Judges Act* could be modified to say that, upon ceasing to perform the duties of that office, the Chief Justice would return to performing the duties of a judge of the CMACC.

It is proposed that the following amendment to s. 31.1 of the *Judges Act* would accomplish these reasonable objectives:

Current Drafting	Proposed Draft
31.1 If the Chief Justice of the Court Martial Appeal Court of Canada notifies the Minister of Justice of Canada of their election to cease to perform the duties of that office and to perform only the duties of a judge of the court	31.1 If the Chief Justice of the Court Martial Appeal Court of Canada notifies the Minister of Justice of Canada of their election to cease to perform the duties of that office and to perform only the duties of a <u>judge of the Court</u>

¹⁷ *R. v. Stillman*, [2019 SCC 40](#).

¹⁸ See attached “Chart 1” which compares the Chief Justice of the CMACC to other federally-appointed Chief Justices on the issue of status after ceasing to be Chief Justice.

on which they serve, they shall, after giving that notice, hold only the office of a judge and shall be paid the salary annexed to the office of a judge, until they reach the age of retirement, resign or are removed from or otherwise cease to hold office	<u>Martial Appeal Court of Canada and <i>ex officio</i> member of the Federal Court of Appeal</u> , they shall, after giving that notice, hold only the office of a <u>judge of the Court Martial Appeal Court of Canada</u> and shall be paid the salary annexed to the office of a <u>judge of that Court</u> , until they reach the age of retirement, resign or are removed from or otherwise cease to hold office
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As a corollary to the proposed change at s. 31.1 of the *Judges Act*, it is recommended that a further revision be implemented at s. 28 of the *Act*. Section 28 does not currently provide a means for the Chief Justice of the CMACC to become a supernumerary judge of the CMACC, though it confers that benefit to judges of the Federal Court, Federal Court of Appeal, and Tax Court of Canada.

To further ensure the equality of the Chief Justice of CMACC, and to provide the Minister of Justice greater flexibility, the Chief Justice should have a legislative means to become a supernumerary judge of the CMACC. Doing so ensures consistency and continuity; amending s. 28 of the *Judges Act* is a step towards bringing the CMACC into conformity with other federally-appointed courts, and provincial courts of appeal across Canada (from British Columbia to Prince Edward Island).¹⁹

The contemporary language of s. 28 does not explicitly list the CMACC as being subject to the benefit of supernumerary status. While the current Chief Justice is a member of the Federal Court and *ex officio* member of the Federal Court of Appeal, for greater certainty and to ensure consistency as between the proposed change to s. 31.1, it is suggested that s. 28 be modified²⁰ as follows:

Current Drafting	Proposed Draft
Federal Courts and Tax Court	Federal Courts and Tax Court

¹⁹ *Court of Appeal Act*, RSBC 1996, c 77, [s. 2\(2\)](#); *Court of Appeal Act*, RSA 2000, c C-30, [s. 4](#); *The Court of Appeal Act, 2000*, SS 2000, c C-42.1, [s. 3\(5\)](#); *The Court of Appeal Act*, CCSM c C240, [s. 2\(2\)](#); *Courts of Justice Act*, RSO 1990, c C.43, [s. 3\(4\)](#); *Courts of Justice Act*, CQLR c T-16, [s. 6](#); *Judicature Act*, RSNB 1973, c J-2, [s. 2\(2\)](#); *Judicature Act*, RSNS 1989, c 240, [s. 16\(2\)](#); *Court of Appeal Act*, SNL 2017, c C-37.002, [s. 12](#); *Judicature Act*, RSPEI 1988, c J-2., [s. 22\(2\)](#).

²⁰ Note: the requirements imposed by [s. 28\(2\)](#) of the *Judges Act*, RSC 1985, c J-1 would continue to apply to the modified [s. 28\(1\)](#).

<p>28 (1) If a judge of the Federal Court of Appeal, the Federal Court or the Tax Court of Canada notifies the Minister of Justice of Canada of his or her election to give up regular judicial duties and hold office only as a supernumerary judge, the judge shall hold the office of supernumerary judge of that Court from the time notice is given until he or she reaches the age of retirement, resigns or is removed from or otherwise ceases to hold office, or until the expiry of 10 years from the date of the election, whichever occurs earlier, and shall be paid the salary annexed to that office.</p> <p>...</p> <p>(3) A judge who has made the election referred to in subsection (1) shall hold himself or herself available to perform such special judicial duties as may be assigned to the judge</p> <p>(a) by the Chief Justice of the Federal Court of Appeal, if the judge is a judge of that Court;</p> <p>(b) by the Chief Justice or the Associate Chief Justice of the Federal Court, if the judge is a judge of that Court; or</p> <p>(c) by the Chief Justice or the Associate Chief Justice of the Tax Court of Canada, if the judge is a judge of that Court.</p> <p>(4) The salary of each supernumerary judge of the Federal Court of Appeal, the Federal Court or the Tax Court of Canada is the salary annexed to the office of a judge of that Court, other than the office of a Chief Justice or Associate Chief Justice.</p>	<p>28 (1) If a judge of the Federal Court of Appeal, the Federal Court, or the Tax Court of Canada, <u>or the Chief Justice of the Court Martial Appeal Court of Canada</u> notifies the Minister of Justice of Canada of his or her election to give up regular judicial duties and hold office only as a supernumerary judge, the judge shall hold the office of supernumerary judge of that Court from the time notice is given until he or she reaches the age of retirement, resigns or is removed from or otherwise ceases to hold office, or until the expiry of 10 years from the date of the election, whichever occurs earlier, and shall be paid the salary annexed to that office.</p> <p>...</p> <p>(3) A judge who has made the election referred to in subsection (1) shall hold himself or herself available to perform such special judicial duties as may be assigned to the judge</p> <p>(a) by the Chief Justice of the Federal Court of Appeal, if the judge is a judge of that Court;</p> <p>(b) by the Chief Justice or the Associate Chief Justice of the Federal Court, if the judge is a judge of that Court;</p> <p>(c) by the Chief Justice or the Associate Chief Justice of the Tax Court of Canada, if the judge is a judge of that Court; <u>or</u></p> <p><u>(d) by the Chief Justice of the Court Martial Appeal Court of Canada, if the judge is a judge of that Court.</u></p> <p>(4) The salary of each supernumerary judge of the <u>Federal Court of Appeal, the Federal Court, the Tax Court of Canada, or the Court Martial Appeal Court of Canada</u> is the salary annexed to the office of a judge of that Court, other than the office of a Chief Justice or Associate Chief Justice.</p>
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II. REQUIRED AMENDMENTS TO *NATIONAL DEFENCE ACT*

It is recommended that the *National Defence Act* be brought into conformity with the *Federal Courts Act* and *Tax Court of Canada Act* by removing the requirement that members of the CMAAC also occupy the position of judge on a separate source court.²¹

At the present time, the Chief Justice of CMAAC is designated from among the judges of the CMAAC pursuant to s. 234(3) of the *National Defence Act*. As such, the candidate pool for Chief Justice is restricted to CMAAC judges, who retain the judicial status of judges of the Federal Court, Federal Court of Appeal, or a superior court.

This is markedly different from the language governing the appointment of the Chief Justice of the Tax Court of Canada. The *Tax Court of Canada Act* provides that:

“**any person** may be appointed a judge of the Court who
(a) **is or has been** a judge of a superior court in Canada;
(b) **is or has been** a barrister or advocate of at least ten years standing at the bar of any province, or
(c) has, for an aggregate of at least ten years,
(i) been a barrister or advocate at the bar of any province, and
(ii) after becoming a barrister or advocate at the bar of any province, exercised powers and performed duties and functions of a judicial nature on a full-time basis in respect of a position held pursuant to a law of Canada or a province.”²²

There is no limit as to who may be appointed Chief Justice of the Tax Court of Canada other than that they have been a barrister or advocate of at least ten years standing and that either the Associate Chief or the Chief Justice must be “a person who is or was a member of the bar of the Province of Quebec”.²³ Accordingly, there is no obligation imposed on the Chief Justice of the Tax Court of Canada to perform the functions of a puisne Judge.

The *Federal Courts Act*²⁴ similarly does not require that, as a condition of membership on either the Federal Court or Federal Court of Appeal, a member judge must *also* belong to a separate

²¹ See attached “Chart 2”, which compares legislative provisions governing the appointment of judges to the Tax Court of Canada, Federal Court and Federal Court of Appeal, and the CMAAC.

²² *Tax Court of Canada Act*, RSC 1985, c T-2, [s. 4\(3\)](#).

²³ *Tax Court of Canada Act*, RSC 1985, c T-2, [s. 4\(4\)](#).

²⁴ [Federal Courts Act, RSC 1985, c F-7](#).

Court (other than that they are *ex officio* members of either the Federal Court or Federal Court of Appeal):

5.3 A person may be appointed a judge of the Federal Court of Appeal or the Federal Court if the person

- (a) **is or has been** a judge of a superior, county or district court in Canada;
- (b) **is or has been** a barrister or advocate of at least 10 years standing at the bar of any province; or
- (c) has, for at least 10 years,
 - (i) been a barrister or advocate at the bar of any province, and
 - (ii) after becoming a barrister or advocate at the bar of any province, exercised powers and performed duties and functions of a judicial nature on a full-time basis in respect of a position held under a law of Canada or a province.

The only requirement imposed is that a certain number of judges be from Québec:

5.4 At least five of the judges of the Federal Court of Appeal and at least 10 of the judges of the Federal Court must be persons who have been judges of the Court of Appeal or of the Superior Court of the Province of Quebec, or have been members of the bar of that Province.

The Chief Justice of the CMAAC should not be a designated member of another court. The Chief Justice of the CMAAC should enjoy a similar degree of judicial independence, afforded to the Chief Justices of other Courts. This could be accomplished by amending s. 234 of the *National Defence Act* to reflect the more flexible language contained in the *Tax Court of Canada Act* and the *Federal Courts Act* as follows:

Current Drafting	Proposed Draft
Court established 234 (1) There is hereby established a Court Martial Appeal Court of Canada, which shall hear and determine all appeals referred to it under this Division. Judges (2) The judges of the Court Martial Appeal Court are (a) not fewer than four judges of the Federal Court of Appeal or the Federal Court to be designated by the Governor in Council; and (b) any additional judges of a superior court of criminal jurisdiction who are appointed by the Governor in Council. Chief Justice	Court established 234 (1) There is hereby established a Court Martial Appeal Court of Canada, which shall hear and determine all appeals referred to it under this Division. Judges <u>(2) The judges of the Court Martial Appeal Court are persons:</u> <u>(a) designated by the Governor in Council from among the judges of the Federal Court, the Federal Court of Appeal, or of a superior court of criminal jurisdiction in Canada; and,</u> <u>(b) a Chief Justice appointed by the Governor in Council who:</u> <u>(i) is or has been a judge of a superior</u>

(3) The Governor in Council shall designate one of the judges of the Court Martial Appeal Court to be the Chief Justice thereof, who shall preside, when present, at any sittings of the Court and shall, subject to subsection (4), appoint another judge to preside at any sittings of the Court at which the Chief Justice is not present.	<u>court of criminal jurisdiction in Canada;</u> <u>(ii) is or has been a judge of the Federal Court or the Federal Court of Appeal;</u> <u>or</u> <u>(iii) has, for at least 10 years, been a barrister or advocate at the bar of any province.</u>
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B. RATIONALE FOR PROPOSED AMENDMENTS

I. THE ROLE OF CMACC & NEED FOR GREATER INDEPENDENCE

In *R. v. Stillman* (a matter involving a decision of the CMACC), the Supreme Court of Canada reviewed the history of Canadian military law and noted that the military justice system is now a “parallel system of justice that largely mirrors the civilian criminal justice system”.²⁵ The court martial system has withstood challenges under s. 11(d) of the *Canadian Charter of Rights and Freedoms* and has been found to be an independent and impartial tribunal.²⁶

The *National Defence Act* ss. 230, 230.1 and 230.2 provide a right to appeal to the CMACC. The CMACC has a range of powers in terms of disposing of an appeal as set out in ss. 238 to 243. For instance, it may enter a finding of guilty, not guilty, or direct a new trial by a court martial. The CMACC may also modify or substitute the sentence. The decisions of the CMACC are subject to further appeal only to the Supreme Court of Canada under the terms spelled out in s. 245 of the *National Defence Act*.

The *National Defence Act*²⁷ and the *Courts Administration Service Act*²⁸ together set out the current administrative powers of the Chief Justice of the CMACC.²⁹ Section 235(1) of the *National Defence Act* provides that the Chief Justice of the CMACC “shall arrange for sittings

²⁵ *R. v. Stillman*, [2019 SCC 40](#) at para. 53. The statement in *Stillman* as to the history of the military justice system echo what the Court said over 25 years earlier in *R. v. Généreux*, [1992 CanLII 117 \(SCC\)](#), [\[1992\] 1 S.C.R. 259](#) at 295, where it affirmed “[t]he existence of a parallel system of military law and tribunals, for the purpose of enforcing discipline in the military”.

²⁶ *R. v. Généreux*, [1992 CanLII 117 \(SCC\)](#), [\[1992\] 1 S.C.R. 259](#); *Canadian Charter of Rights and Freedoms*. [Charter].

²⁷ *National Defence Act*, RSC 1985, c N-5. [NDA].

²⁸ *Courts Administration Service Act*, SC 2002, c 8, [s. 8\(1\)](#). [CASA].

²⁹ See attached “Chart 3” which sets out the powers of Chief Justices across Canada with respect to administration, scheduling, and sitting.

and hearings” of appeals. Section 244(1) states that the Chief Justice is responsible for making rules of appeal procedure with the approval of the Governor-in-Council in the following areas:

- (a) the seniority of members of the Court for the purpose of presiding at appeals;
- (b) the practice and procedure to be observed at hearings;
- (c) the conduct of appeals;
- (c.1) the conduct of reviews of directions made under Division 3;
- (d) the production of the minutes of the proceedings of any court martial in respect of which an appeal is taken;
- (e) the production of all other documents and records relating to an appeal;
- (f) the extent to which new evidence may be introduced;
- (g) the circumstances in which, on the hearing of an appeal, the appellant may attend or appear before the Court;
- (h) the provision for and the payment of fees of counsel for an appellant or a respondent, other than the Minister;
- (h.1) the awarding and regulating of costs in the Court in favour of or against appellants and respondents; and
- (i) the circumstances in which an appeal may be considered to be abandoned for want of prosecution, and the summary disposition by the Court of such appeals and of appeals showing no substantial grounds.³⁰

In addition to these powers, s. 8(2) of the *CASA* provides that the Chief Justice of the CMAAC (like the Chief Justices of the Federal Court of Appeal, Federal Court, and Tax Court of Canada for their respective courts) is responsible for the judicial functions of the CMAAC, including the direction and supervision over court sittings and the assignment of judicial duties.³¹ Section 8(2) provides a list of “Included powers” under that *Act*:

- (a) determine the sittings of the court;

³⁰ These rules are found in [*Court Martial Appeal Court Rules, SOR/86-959*](#).

³¹ [*Courts Administration Service Act, S.C. 2002, c.8*](#).

- (b) assign judges to sittings;
- (c) assign cases and other judicial duties to judges;
- (d) determine the sitting schedules and places of sittings for judges;
- (e) determine the total annual, monthly and weekly work load of judges; and
- (f) prepare hearing lists and assign courtrooms.³²

In addition to the powers expressly conferred by statute, the Chief Justice has powers, which are “necessarily implied in the [statutory] grant of power to function as a court of law”, such as the power to control the court’s processes.³³

In light of these significant powers and responsibilities, it is recommended that the Chief Justice of CMAAC be afforded a greater degree of independence, including by ensuring that the Chief Justice is not inappropriately encumbered by tasks potentially assigned by the Chief Justice of the Federal Court, or other source court from which they may be appointed.

II. THE EQUAL STATUS OF THE CHIEF JUSTICE

The proposed amendments fit into a wider pattern of legislative reform affecting all members of the CASA, and the CMAAC in particular.

For example, pursuant to the *Federal Courts Act*, the Chief Justices of the Federal Courts have the powers to organize the work of their respective courts.³⁴ Section 8 of the CASA complements the *Federal Courts Act* by providing that all Chief Justices “are responsible for the judicial functions of their courts, including the direction and supervision over court sittings and the assignment of judicial duties.”³⁵ Section 8(2) specifically refers to the power to assign

³² *Courts Administration Service Act*, S.C. 2002, c.8, [s. 8\(2\)](#).

³³ *R. v. Cunningham*, [2010 SCC 10 \(CanLII\)](#), [\[2010\] 1 S.C.R. 331](#), at para. 19, *per* Rothstein J. See also *Herman et al. v. Deputy Attorney General (Canada)*, [\[1979\] 1 SCR 729](#) at 749, [1978 CanLII 177 \(SCC\)](#) which sets out the test for when a judge is acting in the capacity as a judge and *Mennes v. Canada (Attorney General)*, [1998 CanLII 7930 \(FC\)](#) at paras. 16-19 in which the Court applied the “*Herman test*” to insulate the Chief Justice of the Federal Court from judicial review.

³⁴ *Federal Courts Act*, RSC 1985, c F-7, [ss. 15-16](#).

³⁵ *Courts Administration Service Act*, SC 2002, c 8, [s. 8\(1\)](#).

judges to sittings and assigning cases and other judicial duties to judges. Under the *CASA*, “CAS” courts are given equal treatment.

The equal status of the Chief Justice of CMACC is further confirmed by the *Budget Implementation Act, 2017*,³⁶ which introduced s. 31.1 of the *Judges Act* and s. 10.2, which provides that the yearly salary of the Chief Justice of CMACC is the same as the set salaries for Chief Justice of the Federal Court of Appeal, Federal Court, and every provincial Court of Appeal.³⁷

Moreover, pursuant to s. 5(4) of the *Federal Courts Act*, “[e]very judge of the Federal Court is, by virtue of his or her office, a judge of the Federal Court of Appeal and has all the jurisdiction, power and authority of a judge of the Federal Court of Appeal.”³⁸ As such, where the Chief Justice of CMACC is appointed as a Judge of the Federal Court, he or she is currently designated an *ex officio* member of the Federal Court of Appeal. Likewise, s. 5.1(4) of the *Federal Courts Act* provides that a Judge of the Federal Court of Appeal is a Judge *ex officio* of the Federal Court: “[e]very judge of the Federal Court of Appeal is, by virtue of that office, a judge of the Federal Court and has all the jurisdiction, power and authority of a judge of the Federal Court.”³⁹ Accordingly, the proposed amendments herein merely update legislation already governing the Chief Justice of CMACC (e.g. the *NDA*, the *Judges Act*, and *Federal Courts Act*) to reflect other recent amendments to the *Judges Act*⁴⁰ and *NDA*.⁴¹ As set out in detail by the Supreme Court of Canada in *Stillman*, the role of the CMACC has evolved dramatically:

The military justice system has come a long way. It has evolved from a command-centric disciplinary model that provided weak procedural safeguards, to a parallel system of justice that largely mirrors the civilian criminal justice system...The continuing evolution of this system is facilitated by the periodic independent reviews mandated by s. 273.601 of the *NDA*, ensuring the system is rigorously scrutinized, analyzed, and refined at regular intervals. This speaks to the dynamic

³⁶ [*Budget Implementation Act, 2017, No. 1, SC 2017, c 20*](#).

³⁷ See also ss. [10](#), [11-22](#) of the *Judges Act*, RSC 1985, c J-1.

³⁸ *Federal Courts Act*, RSC 1985, c F-7, [s. 5\(4\)](#).

³⁹ *Federal Courts Act*, RSC 1985, c F-7, [s. 5.1\(4\)](#).

⁴⁰ Including an amendment to provide the Chief Justice of CMACC access to a representational allowance: [An Act to amend the Judges Act and certain other Acts in relation to courts, SC 2006, c 11](#).

⁴¹ *R. v. Stillman*, [2019 SCC 40](#) (CanLII) at paras. 35-54; see also [National Defence Act, S.C. 1950, c. 43](#) and [Bill C-25, An Act to amend the National Defence Act and to make consequential amendments to other Acts, 1st Sess., 36th Parl., 1998](#).

nature of the military justice system. Just as the civilian criminal justice system grows and evolves in response to developments in law and society, so too does the military justice system. We see no reason to believe that this growth and evolution will not continue into the future.⁴²

The proposed amendments ensure that the equal status of the Chief Justice is recognized, and the independence of the CMAAC affirmed so that the military justice system may continue its evolution as an equal-status court, with a standalone Chief Justice.

III. CURRENT WORKLOAD

Following the decision in *R. v. Stillman*, it is anticipated that the business of the CMAAC is subject to increase significantly. The nature of the military justice system and the *NDA* means that most appeals before the CMAAC address complex constitutional matters. It is noteworthy that the Chief Justice of CMAAC currently sits on every appeal. This is in addition to numerous motion decisions, which are coordinated by the Chief Justice of CMAAC.⁴³

The Chief Justice has numerous responsibilities under the *Court Martial Appeal Court Rules*,⁴⁴ including:

- designation of the judge or judges to hear an appeal or other proceeding (Rule 4.1);
- fixing the time and place of hearings (Rule 4.1);
- setting down “without delay” applications made pursuant to Division 3 or 10 of Part III of the *NDA*, including an appeal under s. 248.9 of the *NDA* for hearing and directing the manner in which such applications proceed (Rule 13(1));
- approving the appointment by the Director of Defence Counsel Services of counsel for unrepresented parties (Rule 20);
- providing directions (or bringing an *ex parte* application and/or his or her own motion) to address the circumstance in which an unrepresented party, in a Notice

⁴² *R. v. Stillman*, [2019 SCC 40](#) (CanLII) at para. 53.

⁴³ Pursuant to Rule 26(1) of the [Court Martial Appeal Court Rules, SOR/86-959](#), the Chief Justice “shall, by order, fix the time, date and place for the oral hearing of every motion to be so heard and shall designate the judge or judges to hear the same”.

⁴⁴ [Court Martial Appeal Court Rules, SOR/86-959](#).

of Appeal or otherwise, gives notice of an address for service outside Canada (Rule 20(6) and Rule 20(7));

- designating judges to cross-examine persons regarding affidavit materials (Rule 24(4));
- providing directions for an application to be disposed of on personal appearance of the parties (Rule 25(2));
- fixing the time, date and place for the oral hearing of every motion and designating the judge or judges to hear the same (Rule 26(1));
- making orders regarding the attendance at a hearing of a party in custody and prescribing the terms/conditions by which same may be brought before the Court (Rule 27);
- making orders for special dispositions (Rule 28);
- approving the seal of the Court (Rule 38); and
- designating and providing directions to the Administrator (Rule 40).

Notwithstanding COVID-19, the CMACC continues to be available to deal with urgent matters in writing or by teleconference.⁴⁵ In the year 2020, the CMACC released the following decisions: *R. v. Darrigan*; *R. v. Duquette*; *R. v. Edwards*; *R. v. Banting*; *R. v. Renaud*; and *R. v. McGregor*.⁴⁶ The Chief Justice of CMACC sat on each of these appeal matters. In addition to the appeal itself, Case Management Conferences and various motions are typically held in respect of each appeal.

In addition to responsibilities under the *Court Martial Appeal Court Rules*, the Chief Justice has implemented a policy requiring that all decisions be filed in both official languages. Under the policy, all panel members review, edit, and provide comments on the original decision as well as the translation. The Chief Justice reviews both the French and English language versions. In

⁴⁵ [CMACC Notice COVID-19 Update of April 7, 2020](#).

⁴⁶ *R. v. Darrigan*, [2020 CMAC 1 \(CanLII\)](#); *R. v. Duquette*, [2020 CMAC 4 \(CanLII\)](#); *R. v. Duquette*, [2020 CMAC 7 \(CanLII\)](#); *R. v. Duquette*, [2020 CMAC 6 \(CanLII\)](#); *R. v. Edwards*, [2020 CMAC 3 \(CanLII\)](#); *R. v. Banting*, [2020 CMAC 2 \(CanLII\)](#); *R. v. Renaud*, [2020 CMAC 5 \(CanLII\)](#); *R. v. McGregor*, [2020 CMAC 8 \(CanLII\)](#).

every CMACC matter, the Chief Justice, together with his colleagues and senior staff, exchange approximately one hundred emails. The purpose of these communications is to, *inter alia*:

- select a panel (checking availability, competencies, language profile, etc);
- select dates (coordinating members and counsel);
- exchange deliberations;
- exchange drafts;
- finalize drafts;
- coordinate translation;
- distribute translations among the panel; and
- review translated decisions.

The role of the Chief Justice of the CMACC is expanding. The responsibilities of the Chief Justice include:

- appointing the Military Judges Inquiry Committee;
- participating in Canadian Judicial Council Committees;
- participating in the Military Justice Stakeholders Forum;⁴⁷
- actively participating in CASA committees;
- serving as a member of the Canadian Judicial Council (“CJC”);
- organizing and developing an education program for CMACC judges to explain the unique role of the CMACC and military justice system;
- maintaining knowledge of criminal and military law by attending training sessions; and
- collaborating with other military appeals courts (i.e. in five-eye countries and India).

⁴⁷ The Forum is an opportunity for members of the Canadian military justice system to meet and discuss common issues of relevance to the military justice system. Members include the JAG, Chief Military Judge, Provost Marshall of the Canadian Armed Forces, the Director of Military Prosecutions, and the Director of Defence Counsel Services.

If the Chief Justice of CMACC is not available to perform these essential tasks, there is no Associate Chief Justice, and no one else at the CMACC designated to complete this work. Accordingly, a full-time position, independent from the responsibilities of any source court from which the Chief Justice may be appointed, is justified.

For example, pursuant to the *CASA*, the Chief Justice of CMACC participates in meetings with the Chief Justices of other courts subject to the *CASA* and which determine, among other practical matters, courtroom allocations and sitting availabilities.⁴⁸ In the event of conflict between two courts on such issues, it is intolerable that one Chief Justice be beholden to another. He or she must be free to fully defend his or her court's position.

The Chief Justice holds one of four positions with full voting and participatory rights with the Courts Administration Service. This responsibility is shared equally with the Chief Justices of the Federal Court of Appeal, Federal Court, and the Tax Court of Canada. In this context, the Chief Justice of CMACC may be subject to the directives of the Chief Justice of his or her court of origin, creating a direct conflict with the day-to-day operations of the CMACC and practical challenges for the Courts Administration Service. To the extent that the Chief Justice of the CMACC is potentially bound by the directives of the Chief Justice of his or her source Court, the Chief Justice's capacity to participate in these important functions is compromised.

In addition, by virtue of s. 59(1) of the *Judges Act*, the Chief Justice of the CMACC is an equal member of the Canadian Judicial Council ("CJC"). In his or her capacity as member of the CJC, the Chief Justice of CMACC may be called upon to chair disciplinary panels concerning federally-appointed judges from across Canada and other committees established by the CJC. The CJC is a further significant context in which the status of the Chief Justice of CMACC as equal to and independent from other Chief Justices listed in the *Judges Act* is imperative.

Plenary and preliminary meetings of the CJC are significant for the administration of justice in Canada. Each member of the CJC must provide an equal and effective voice. Where the day-to-day functioning of one member's court is potentially affected by the directives of another, the integrity of that member's decision making may be perceived as compromised.

⁴⁸ *Courts Administration Service Act, S.C. 2002, c.8.*

C. JUDICIAL INDEPENDENCE RATIONALE

I. THE IMPORTANCE OF AN INDEPENDENT CMACC

An independent judiciary is the “lifeblood of constitutionalism in democratic societies”.⁴⁹ The Chief Justice seeks to uphold the benefits of an independent judiciary, including the three components of the constitutional principle of independence – security of tenure, financial security, and administrative (or institutional) control.

In the context of the CMACC, the principle of judicial independence is also essential to the preservation of the fundamental normative order of the Canadian military. Confidence in our system of justice requires the maintenance of a healthy perception of the CMACC’s judicial independence amongst members of the Canadian Armed Forces. The principle requires that the CMACC, and the Chief Justice, be independent both in fact and perception.

The Supreme Court of Canada, in *Valente*,⁵⁰ confirmed the test for tribunal independence (within the meaning of s. 11(d) of the *Charter*)⁵¹ is whether a reasonable, well-informed person having thought the matter through would conclude that an administrative decision-maker is sufficiently free from factors that could interfere with his or her ability to make impartial judgments.⁵²

The degree of independence owed to the CMACC is high. Judicial independence means ensuring that judges are free from interference or influence. As noted, there are three core characteristics of judicial independence: (1) security of tenure, (2) financial security, and (3) administrative (or institutional) control.⁵³ These conditions attempt to assure the public that interference in the judicial decision-making is reduced as much as possible. The concern is usually about interference by the executive or legislature, but it can also be from other sources, including other parts of the judiciary. In *Beauregard v. Canada*, Chief Justice Dickson described the core of judicial independence as freedom from outside interference:

⁴⁹ *Beauregard v Canada*, [1986] 2 SCR 56, p. 70.

⁵⁰ *Valente v. The Queen*, [1985] 2 SCR 673, 1985 CanLII 25 (SCC).

⁵¹ The Court uses “tribunal independence” as it is used in s. 11 of the *Charter* which appears under the heading “Proceedings in criminal and penal matters”.

⁵² *Valente* at paras. 12-13; *Mackin v. New Brunswick (Minister of Finance)*; *Rice v. New Brunswick*, [2002] 1 SCR 405, 2002 SCC 13 at para. 38.

⁵³ *Valente v. The Queen*, [1985] 2 SCR 673, 1985 CanLII 25 (SCC).

Historically, the generally accepted core of the principle of judicial independence has been the complete liberty of individual judges to hear and decide the cases that come before them: no outsider--be it government, pressure group, individual or even another judge--should interfere in fact, or attempt to interfere, with the way in which a judge conducts his or her case and makes his or her decision. This core continues to be central to the principle of judicial independence. Nevertheless, it is not the entire content of the principle.⁵⁴

When Justice Stratas quoted this passage in his reasons in *Felipa v. Canada (Citizenship and Immigration)*, he added “even a Chief Justice” to the quote after “even another judge”.⁵⁵ Simply put, the principle of judicial independence requires that judges be completely independent from other entities in the performance of their judicial functions.⁵⁶ In *R. v. Lippé*,⁵⁷ the Supreme Court of Canada confirmed the freedom afforded to judges is not just freedom from state influence, but from other judges as well:

I do not intend, however, to limit this concept of "government" to simply the executive or legislative branches. By "government", in this context, I am referring to any person or body, which can exert pressure on the judiciary through authority under the state. This expansive definition encompasses, for example, the Canadian Judicial Council or any Bar Society. I would also include any person or body within the judiciary which has been granted some authority over other judges; for example, members of the Court must enjoy judicial independence and be able to exercise their judgment free from pressure or influence from the Chief Justice. I emphasize that in expanding the word "government" for the purposes of defining "judicial independence", I in no way intend to set out a definition for the purposes of s. 32 of the Canadian Charter.⁵⁸

To the extent that the Chief Justice of the CMAAC is potentially bound by the directives of the Chief Justice of his or her source Court, the independence of the CMAAC is compromised. The recommendations of the Chief Justice herein are a path to ensuring that the independence of the CMAAC is both respected and enhanced.

⁵⁴ *The Queen v. Beaugard*, [1986] 2 SCR 56 at 69, 1986 CanLII 24 (SCC) at para. 21. [Emphasis added].

⁵⁵ *Felipa v. Canada (Citizenship and Immigration)*, 2011 FCA 272 at para. 172.

⁵⁶ *Mackin v. New Brunswick (Minister of Finance); Rice v. New Brunswick*, [2002] 1 SCR 405, 2002 SCC 13 at para. 35.

⁵⁷ *R. v. Lippé*, 1990 CanLII 18 (SCC), [1991] 2 S.C.R. 114.

⁵⁸ *R. v. Lippé*, 1990 CanLII 18 (SCC), [1991] 2 S.C.R. 114 at 138. [Emphasis added].

II. PRESERVING OPERATIONAL INDEPENDENCE

The Supreme Court of Canada has described two dimensions of judicial independence:

- the individual independence of a judge; and
- the institutional or collective independence of the court or tribunal of which that judge is a member.⁵⁹

Administrative or institutional control is particularly relevant to these recommendations. In *Ref re Remuneration of Judges of the Prov. Court of P.E.I.*, the Supreme Court of Canada specifically noted that administrative independence could have both an individual and an institutional or collective dimension: “To be sure, sometimes a core characteristic only attaches to a particular dimension of judicial independence; administrative independence, for example, only attaches to the court as an institution (although sometimes it may be exercised on behalf of a court by its chief judge or justice).”⁶⁰

It is clear that a Chief Justice plays an instrumental role in the administrative independence of a court. The contemporary language of the *Judges Act* and *National Defence Act* compromises that role by requiring that the Chief Justice of the CMAAC periodically forfeit those responsibilities to work at the direction of another Chief Justice.

III. THE CHIEF JUSTICE OF CMAAC IS SUBJECT TO DIRECT AND INDIRECT CONTROL BY THE CHIEF JUSTICE OF HIS OR HER SOURCE COURT

Given the role of the Chief Justice in ensuring the smooth operation and continued functioning of the CMAAC, the ability to manage the CMAAC’s processes and proceedings should take priority over the needs and wishes of other courts that may otherwise have the ability to assign judicial work.

The combination of the *Judges Act*, *Federal Courts Act*, and *CASA* empower the Chief Justice of the Federal Court or Chief Justice of the Federal Court of Appeal to include the Chief Justice of

⁵⁹ *Ref re Remuneration of Judges of the Prov. Court of P.E.I.; Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I.*, [\[1997\] 3 SCR 3, 1997 CanLII 317](#) (SCC) at para. 118.

⁶⁰ *Ref re Remuneration of Judges of the Prov. Court of P.E.I.; Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I.*, [\[1997\] 3 SCR 3, 1997 CanLII 317](#) (SCC) at para. 120.

the CMAcc (assuming the Chief Justice of the CMAcc holds office as a judge of the Federal Court or Federal Court of Appeal) in a non-CMAcc sitting schedule. However, just as the Chief Justice of the Federal Court/Federal Court of Appeal or any other source court have administrative functions, so too does the Chief Justice of the CMAcc under s. 8(1) of the *CASA*.

The same issue arises where the Chief Justice of CMAcc is appointed from a superior court in a Province or Territory. For instance, in Ontario, s. 5 of the *Courts of Justice Act* provides that the Chief Justice of Ontario “has general supervision and direction over the sittings of the Court of Appeal and the assignment of the judicial duties of the court.”⁶¹ Likewise, the Chief Justice of the superior court has similar powers over their court.⁶²

Under the contemporary drafting of the *Judges Act* and *National Defence Act*, the exercise of such power could be constitutionally improper where it impacts the administrative independence of the CMAcc.

5. CONCLUSION

The Chief Justice wishes to thank this Honourable Commission for its consideration of his proposed recommendations. Although the current drafting of the *Judges Act* and *National Defence Act* does not appropriately vouchsafe the independence of the CMAcc, it is respectfully submitted that by adopting recommendations to amend these Acts of Parliament, the CMAcc can maintain an equal level of independence to other federally administered courts.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of March, 2021.

Yours truly,

Supreme Advocacy LLP
per Eugene Meehan, Q.C. & Cory Giordano

⁶¹ *Courts of Justice Act*, RSO 1990, c C.43, [s. 5](#).

⁶² *Courts of Justice Act*, RSO 1990, c C.43, [s. 14](#).

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