

**IN THE MATTER OF THE 6TH QUADRENNIAL COMMISSION
ON JUDICIAL COMPENSATION AND BENEFITS**

**SUBMISSIONS OF THE PROTHONOTARIES OF THE FEDERAL COURT
TO THE JUDICIAL COMPENSATION AND BENEFITS COMMISSION**

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INTRODUCTION

1. Prothonotaries are judges in all but name for a broad range of purposes. They are full judicial officers who hold office during good behaviour until age 75, have the same immunity from liability as a judge of the Federal Court, and exercise many of the same powers and functions as a judge of that court (FC Judge). It is common ground that the office of Prothonotary attracts the guarantee of judicial independence under the Constitution.

2. Over time, the office of Prothonotary has evolved significantly, to become a *de facto* interlocutory and small to intermediate claims court “for the better Administration of the Laws of Canada”¹. Prothonotaries hear and decide complex cases and motions on a wide variety of matters, including *Charter* issues, commercial matters, specialized areas such as pharmaceutical regulation, intellectual property, Aboriginal law, maritime law, and judicial review. They routinely decide cases or issues as between private entities and the Federal Crown, and/or Ministers of the Crown.

3. In May 2008, after the Prothonotaries’ first ever independent review process, Special Advisor Adams issued a report² setting out comprehensive recommendations regarding the Prothonotaries’ compensation and benefits. He recommended, in particular, that the Prothonotaries salary be increased to 80% of that of a FC Judge. He also recommended that the Minister of Justice and the Chief Justice of the Federal Court should consider establishing the opportunity for Prothonotaries to elect supernumerary status upon retirement, that Prothonotaries receive an annual non-taxable allowance of \$3,000 to assist in the payment of costs associated with carrying out their duties, and that the representation costs of the Prothonotaries should be paid by the Government. However, the global financial crisis intervened, and the Government declined to implement those recommendations at that time.

4. In June 2013, following a second independent review process, Special Advisor

¹ *Constitution Act*, 1867, s.101, Joint Book of Documents (“JBD”) Tab 1.

² Report of Special Advisor on Prothonotaries’ Compensation, dated May 30, 2008 (“Adams Report”), JBD Tab 14.

Cunningham issued a report³ consistent with the findings of Special Advisor Adams and making similar recommendations. He recommended, in particular, that the Prothonotaries' salary be fixed at 80% of the salary of a FC Judge, that they receive an annual non-taxable allowance of \$3,000 to assist with the payment of expenses related to their work, and that the Government reimburse the Prothonotaries for all reasonable legal costs relating to compensation process, up to a maximum of \$80,000.

5. In response to the Cunningham Report, the Government made improvements to the Prothonotaries' compensation and benefits, including an improved pension system and long term disability and sick leave coverage. However, the Government fixed the Prothonotaries' salary at 76% rather than 80% of a FC Judge as recommended by Special Advisor Cunningham, and signaled its intention to establish their salary and benefits in the future under the Quadrennial Commission process set out in the *Judges Act*. The Government also declined to propose that Prothonotaries be entitled to elect supernumerary status and to implement the recommendations relating to incidental allowances and legal representational costs.

6. The Prothonotaries participated in the 5th Quadrennial Commission process. The Commission recommended, and the Government accepted, that Prothonotaries' salary be fixed at 80% of the salary of a FC Judge, that the Prothonotaries receive an incidental allowance of \$3,000 per year, and that the Government pay 95% of the Prothonotaries' costs of the Commission process. With respect to supernumerary status, the Commission recommended that the Government and Chief Justice of the Federal Court of Canada consider the possibility of allowing Prothonotaries to elect supernumerary status under the *Judges Act*, or of creating a senior Prothonotary program for those eligible for retirement.

7. Before this Commission, the Prothonotaries request the following recommendations:

- That the Minister of Justice and the Chief Justice of the Federal Court establish a program for Prothonotaries, once eligible to retire, to elect supernumerary status;

³ Report of Special Advisor on Prothonotaries' Compensation, dated July 31, 2013 ("Cunningham Report"), JBD Tab 15.

- That they be provided with an allowance equivalent to that of Superior Court judges (currently set at \$5000 per year) for costs associated with carrying out their duties; and
- That their title be changed to “Associate Judge/Juge adjoint(e)”.

8. The Prothonotaries understand that the Government is supportive of the proposed recommendation to establish a supernumerary program for Prothonotaries, and that the Government plans to implement the requested change of title to “Associate Judge/Juge adjoint(e)” when implementing those Commission recommendations that it may accept.

9. These Submissions are organized as follows:

- Part I contains a brief overview of the legal and legislative framework and the role of judicial compensation commissions generally;
- Part II gives an overview of the Federal Court’s jurisdiction and role within the Canadian justice system, the nature of the office and the role performed by the Prothonotaries;
- Part III addresses the factors for consideration, and the findings and recommendations contained in the Adams and Cunningham Reports and the Report of the 4th Quadrennial Commission; and
- Part IV details the Prothonotaries’ request for recommendations with respect to supernumerary status, incidental allowances and title.

10. With respect to salaries and annual increases, the Prothonotaries support the position of the Canadian Superior Court Judges Association and the Canadian Judicial Council, and oppose the Government’s proposal to limit increases to an amount less than the annual increases in the industrial aggregate index (“IAI”). The Prothonotaries will elaborate on their position on these issues in their responding submissions. For the purposes of this Commission process only, the Prothonotaries do not seek a change to s.10.1 of the *Judges Act*, whereby their salaries are fixed at 80% of the salaries of FC Judges.

PART I. JUDICIAL COMPENSATION COMMISSIONS: AN OVERVIEW

11. Every federal, provincial and territorial jurisdiction across Canada has some form of constitutionally established administrative body responsible for making recommendations to government about appropriate compensation for judges for the period of that commission's mandate ("Judicial Compensation Commission", or "JCC").⁴

12. Each jurisdiction has designed its JCC process slightly differently with respect to such things as the timing of the commissions, the length of its respective mandates, the persons eligible for appointment to the commission and to what degree the commission's recommendations are binding on government. However, all must meet minimum constitutional requirements.

13. In *PEI Judges Reference*,⁵ then Chief Justice Lamer sought to address the "proper constitutional relationship between the executive and the provincial court judges", which had "come under serious strain".⁶ Lamer CJC outlined the three aspects of judicial independence: financial security, administrative independence and security of tenure. The Court held that a JCC process is necessary to ensure financial security for judges.

14. As the Supreme Court of Canada reiterated in 2005 in *Bodner*:⁷

... financial security embodies three requirements. First, judicial salaries can be maintained or changed only by recourse to an independent commission. Second, no negotiations are permitted between the judiciary and the government. Third, salaries may not fall below a minimum level.

15. In *PEI Judges Reference*, as well as in *Bodner*, the Supreme Court of Canada outlined the flexible requirements for JCC processes, which must be independent, objective and effective. With respect to the requirement of independence, Lamer CJC

⁴ At the provincial level, such administrative body is generally called a judicial compensation commission or committee (JCC). At the federal level, the Quadrennial Judicial Compensation and Benefits Commission established pursuant to the *Judges Act* makes recommendations for federally appointed Judges and Prothonotaries of the Federal Court (Quadcom), and the Quadrennial Military Judges Compensation Committee established under the authority of the *National Defence Act* makes recommendations for Military Judges (MJCC).

⁵ *Reference Re Remuneration of Judges of the Provincial Court of Prince Edward Island* [1997] 3 S.C.R. 3 (*PEI Judges Reference*), JBD Tab 4.

⁶ *PEI Judges Reference*, JBD Tab 4, para. 7.

⁷ *Provincial Court Judges' Assn. of New Brunswick v. New Brunswick (Minister of Justice)*; *Ontario Judges' Assn. v. Ontario (Management Board)*; *Bodner v. Alberta*; *Conférence des juges du Québec v. Québec (Attorney General)*; *Minc v. Québec (Attorney General)*, 2005 SCC 44 (*Bodner*), JBD Tab 6, para. 8.

explained in *PEI Judges Reference*:⁸

The rationale for independence flows from the constitutional function performed by these commissions - they serve as an institutional sieve, to prevent the setting or freezing of judicial remuneration from being used as a means to exert political pressure through the economic manipulation of the judiciary. It would undermine that goal if the independent commissions were under the control of the executive or the legislature.

16. The requirement of objectivity is described as follows:⁹

They must make recommendations on judges' remuneration by reference to objective criteria, not political expediencies. The goal is to present "an objective and fair set of recommendations dictated by the public interest" ... I recommend (but do not require) that the objectivity of the commission be ensured by including in the enabling legislation or regulations a list of relevant factors to guide the commission's deliberations. These factors need not be exhaustive. A list of relevant factors might include, for example, increases in the cost of living, the need to ensure judges' salaries remain adequate, as well as the need to attract excellent candidates to the judiciary.

17. Lamer CJC went on to discuss the requirement of effectiveness which he suggested must be guaranteed in a number of ways:¹⁰

First there is a constitutional obligation for government not to change (either by reducing or increasing) or freeze remuneration until they have received the report of the salary commission. Changes or freezes of this nature secured without going through the commission process are unconstitutional. The commission must convene to consider and report on the proposed change or freeze. Second, in order to guard against the possibility that government inaction might lead to a reduction in judges' real salaries because of inflation, and that inaction could therefore be used as a means of economic manipulation, the commission must convene if a fixed period of time has elapsed since its last report, in order to consider the adequacy of judges' salaries in light of the cost of living and other relevant factors, and issue a recommendation in its report. Although the exact length of the period is for provincial governments to determine, I would suggest a period of three to five years. Third, the reports of the commission must have a meaningful effect on the determination of judicial salaries.

18. And at paragraph 287 (2), Lamer CJC wrote:

Provinces are under a constitutional obligation to establish bodies which are independent, effective, and objective, according to the criteria that I have laid down in these reasons. Any changes to or freezes in judicial remuneration require prior recourse to the independent body, which will review the proposed reduction or increase to, or freeze in, judicial remuneration. Any changes to or freezes in judicial remuneration made without prior recourse to the independent body are unconstitutional. [emphasis and underlining added]

⁸ *PEI Judges Reference*, JBD Tab 4, para. 170.

⁹ *PEI Judges Reference*, JBD Tab 4, para. 173.

¹⁰ *PEI Judges Reference*, JBD Tab 4, paras. 174-175.

19. Lamer CJC explained that while the effectiveness requirement could mean that the JCC's report is binding on government, a variety of models would be consistent with judicial independence. Where the JCC recommendations were not binding, the government could refuse to implement the recommendations if it gave legitimate reasons and could justify its decision, if necessary in a court of law.¹¹

20. *Bodner* involved cases from Alberta, Ontario, Quebec and New Brunswick. In all of the cases, issues had arisen from the failure of a government to implement a JCC report. The Court reiterated that the JCC process is necessary in order to ensure the financial security of the judiciary. The Court described the focus of a JCC as being "on identifying the appropriate level of remuneration for the judicial office in question." The Court clearly enunciated that the task of a JCC is unique, emphasizing, "the process is neither adjudicative interest arbitration nor judicial decision making".¹² It follows that the Commission must focus on what compensation and benefits are appropriate for the office of Prothonotary in light of all the relevant criteria set out in section 26 of the *Judges Act*.

PART II. THE FEDERAL COURT - A BRIEF OVERVIEW

A. *Jurisdiction of the Federal Court*

21. The Federal Court of Canada (now the Federal Court) was established in 1971 to replace the Exchequer Court. Section 3 of the *Federal Courts Act*, RSC 1985, c.F-7 provides that the Federal Court is a court of law, equity and admiralty, and a superior court of record having both civil and criminal jurisdiction.

22. The Federal Court is Canada's national trial court which hears and decides legal disputes arising in the federal domain, including claims against the Government of Canada, civil suits in federally-regulated areas and challenges to the decisions of federal tribunals. The Federal Court is a bilingual court where proceedings may be taken in either or both of Canada's official languages. It is also a bi-judicial court applying both the common law and the civil law. The Court sits regularly across Canada and its judgments have force and effect across the country.

¹¹ *PEI Judges Reference*, JBD Tab 4, paras. 180-183.

¹² *Bodner*, JBD Tab 6, para. 14.

23. Unlike the Superior Courts established by the provinces, the Federal Court does not have inherent, general jurisdiction, although it does have full plenary powers to control its own processes. The jurisdiction of the Federal Court derives primarily from the *Federal Courts Act* and is conferred by almost one hundred federal statutes. These give the Court authority to hear and decide cases in a number of broad categories, including national security, intellectual property, and maritime and admiralty disputes.

24. The Court consists of a Chief Justice, an Associate Chief Justice and 36 other Judges, along with supernumerary judges and (currently) seven Prothonotaries, with two vacancies.

B. Qualifications for Appointment

25. The statutory qualifications for appointment as Prothonotary are set out in subsection 12(1) of the *Federal Courts Act*. Generally, Prothonotaries must be barristers or advocates of a provincial or territorial Bar in good standing and persons who are, in the opinion of the Governor in Council, necessary for the efficient performance of the work of the Court that, under the *Federal Courts Rules*, is to be performed by them. In practice, applicants must have at least 10 years' experience at the bar. These are essentially the same basic qualifications required of a superior court judge. However, in addition, a thorough knowledge of the *Federal Courts Rules* is a prerequisite. Importantly, the incumbent must possess a depth of knowledge and experience to facilitate adjudication of complex matters, often between leading legal practitioners in Canada..

26. Depending on the location of the office, knowledge of English or French or both English and French is a further requirement. The incumbent must also be willing to travel within Canada as required by the Chief Justice.

27. The nature of the role and the duties of Prothonotaries was agreed upon by the Government and the Prothonotaries in an Agreed Statement of Facts filed before Special Advisor Cunningham, which was appended to his report.

C. Nature of the Office of Federal Court Prothonotary

28. There are currently seven Prothonotaries in office – two in Toronto, three in Ottawa, one in Montréal, and one in Vancouver. Two positions (one in Toronto and one in Western Canada) are currently vacant. Each Prothonotary is assigned to a specific location as part of his or her appointment. However, as noted above and given the Court’s pan-Canadian jurisdiction, Prothonotaries travel and sit throughout Canada.

29. The Prothonotaries are the front-line judicial officers of the Court in their respective regions. In most proceedings commenced by way of action, they are the initial contact, and may be the only contact between litigants and the justice system.

30. The office of Prothonotary has evolved into a small and intermediate claims court, with greater monetary jurisdiction (claims up to \$50,000) than most provincial courts.

31. Prothonotaries have similar “trappings” of office as FC Judges:

- They are sworn into office by the Chief Justice at special sittings of the Court.
- They hold office during good behaviour until age 75.
- They have the same immunity from liability.
- They are entitled to the protection of judicial independence, including the requirement to have their compensation determined by an independent judicial compensation review process, conducted on a periodic basis.
- Each Prothonotary is assigned a judicial assistant and has access to a pool of law clerks.¹³
- Lawyers and litigants address the Prothonotary as “Your Honour”.¹⁴
- Administrative and operational support for the Court’s Judges and Prothonotaries is provided by the Courts Administration Service (CAS) and the Registry.¹⁵

¹³ A law clerk, under the direction of the Judge or Prothonotary for whom the clerk works, researches points of law, prepares memoranda of law and generally assists the Judge or the Prothonotary in the work of the Court.

¹⁴ Notice to the Parties and the Profession dated September 3, 2009 - <http://cas-ncr-nter03.cas-satj.gc.ca/fct-cf/pdf/Notice%20-%20Form%20of%20Address%20ENG%20sept-3-2009.pdf>. A special committee of the Federal Court was struck and made the recommendation to change the title to “Associate Judge”.

¹⁵ The role of CAS is to provide administrative services to four courts of law: the Federal Court of Appeal, the Federal Court, the Court Martial Appeal Court of Canada and the Tax Court of Canada. These services permit individuals, companies, organizations and the Government of Canada to submit disputes and other matters to the courts, and enable the courts to hear and resolve the cases before them fairly, without delay and as efficiently as possible. The Registry is responsible for processing, recording and

- Decisions of Prothonotaries are final, subject only to appeal.¹⁶
- Prothonotaries are subject to the Ethical Principles for Judges published by the Canadian Judicial Council.¹⁷
- Prothonotaries are subject to the same disciplinary process, administered by the Canadian Judicial Council, as Judges.¹⁸

D. Role of the Office of Federal Court Prothonotary

32. Prothonotaries are judicial officers appointed by the Governor in Council under the *Federal Courts Act*. Their functions are outlined at section 12 of the *Federal Courts Act*, and set out in the *Federal Courts Rules*.

33. When the Federal Court was created in 1971, the then Masters of the Exchequer Court were renamed “Prothonotaries”. In 1998, the rules of practice of the Federal Court were comprehensively revised for the first time since the creation of the Federal Court of Canada. The jurisdiction of the Prothonotary was significantly enhanced by virtue of amendments to the *Federal Court Act* and the *Federal Court Rules, 1998*.¹⁹

34. Rules 50 and 51 of the *Federal Courts Rules* expanded the jurisdiction of the Prothonotaries by granting trial jurisdiction over monetary claims up to \$50,000. There is a pending proposal to expand this jurisdiction further to at least \$100,000.²⁰

35. Part 9 introduced case management²¹ and dispute resolution services, specifically contemplating that Prothonotaries would carry out these new duties.

directing the flow of all documents filed by the parties to members of the Court, as well as recording all steps and events during the life of the case. The Registry also provides assistance in scheduling hearings and providing support during sittings.

¹⁶ Paragraph 72(2)(e) of the *Immigration and Refugee Protection Act* (IRPA) provides that in an application for leave and judicial review of a decision made under the IRPA, no appeal lies against an interlocutory judgment, rendered by either a FC Judge or Prothonotary.

¹⁷ Canadian Judicial Council, *Ethical Principles for Judges* (2004), https://cjc-ccm.ca/cmslib/general/news_pub_judicialconduct_Principles_en.pdf.

¹⁸ Sections 2 and 63(1) and (2) of the *Judges Act*, JBD Tab 3.

¹⁹ Now the *Federal Courts Act* and the *Federal Courts Rules*.

²⁰ A Sub-Committee on Procedural Amendments of the Federal Courts Rules Committee recently considered whether to increase the monetary limits for Simplified Proceedings and for Prothonotaries from \$50,000 to a minimum of \$100,000; however, no recommendation has yet been made.

²¹ Case management involves the transfer of responsibility for management of the pace of litigation from the litigants to the judiciary. It entails a more active form of management and intervention by the court in the various phases of litigation, with a view to promoting the earlier resolution of cases, to eliminating unacceptable delays, and, ultimately, to reducing costs and enhancing the quality of justice.

36. As noted earlier, the Prothonotaries exercise many of the same powers and functions as a judge of the Federal Court. In particular:

- (a) they exercise full trial jurisdiction for monetary claims up to \$50,000;
- (b) they hear and decide motions on a wide range of matters, regardless of the relief sought or amount in issue, including final determinations such as motions to strike or dismiss proceedings;
- (c) in the context of the Court's admiralty jurisdiction, as well as in exercising jurisdiction over the enforcement of any of the Court's judgments, they make substantive determinations as to the ownership or beneficial interests of parties in vessels and other property that are often worth millions of dollars, direct the manner and amount of their judicial sale, rule on the substantive validity of claims made against the proceeds of sale that can equal or exceed the value of the property, and determine the claimants' respective priorities. In doing so, they apply the general laws of the provinces, as well as highly specialised admiralty and conflicts of interests laws.
- (d) they decide questions such as *Charter* issues and other general questions of law, and adjudicate complex commercial matters;
- (e) they play a critical role in actions commenced pursuant to section 6 of the *Patented Medicines (Notice of Compliance) Regulations*, which are statutorily required to be determined on the merits within 24 months of their commencement. In such proceedings, extensive case management and the timely determination of interlocutory motions are essential. In recognition of their important role in these proceedings, appeals from interlocutory decisions rendered by Prothonotaries are made directly to the Federal Court of Appeal, with leave of that Court (as opposed to being made to a Judge of the Federal Court pursuant to Rule 51 as is normally the case)²².
- (f) they conduct references, pre-trial conferences, and case management of proceedings, including class actions, as designated by the Chief Justice;

²² *Patented Medicines (Notice of Compliance) Regulations*, SOR/93-133, s. 6.11.

- (g) they are trained mediators and conduct a significant number of dispute resolution conferences, which result in the resolution of many complex cases in all areas of the Court's jurisdiction; and
- (h) they routinely decide cases or issues as between private entities and the federal Crown, and/or Ministers of the Crown and other federal officials, including decisions made by quasi-judicial tribunals.

37. In the exercise of their trial jurisdiction, as well as the adjudication of interlocutory matters within their jurisdiction, Prothonotaries have the same powers and functions as FC Judges. They routinely weigh and assess the credibility of evidence adduced by affidavit or through witnesses, rule on questions of evidence, and make factual and legal determinations.

38. The early intervention of a Prothonotary is crucial since the great majority of actions before the Court are resolved at the interlocutory stage without reaching trial. The nature and scope of the work of Prothonotaries was described by the Honourable Mr. Adams as follows:

Prothonotaries are integral to the proper functioning of the Federal Court and both their actual and perceived independence are vital to that Court's integrity. They deal with a broad range of exceedingly complex and sometimes arcane matters unique to the Federal Court's jurisdiction. A prothonotary requires considerable judgment and patience in dealing with such important matters. This is why a minimum of ten years experience as a lawyer has been required. The job's requirements are demanding in terms of volume and front-line pressure....

The responsibilities of the prothonotaries have expanded over the years and this likely will continue given the modern demands of case management and court sponsored alternative dispute resolution initiatives throughout Canada. Pre-trial motions, no matter the nature of the litigation, can be complex and fundamental to the direction of a matter regardless of the standard of review. A prothonotary requires a deep grasp of not only procedural issues but also the substantive law governing the proceedings and the subtle strategies of counsel and their clients who regularly litigate in the Federal Court. A prothonotary must implement all this required knowledge in real time and in a manner that produces confidence in the administration of justice and the Federal Court of Canada.²³

39. The Prothonotaries participate alongside FC Judges in judicial education programs organized by the National Judicial Institute, including the new judges program

²³ Adams Report, JBD Tab 14, pp. 41-42.

and judging in your first five years programs required by the Canadian Judicial Council.²⁴ Prothonotaries are also required to invest the equivalent of ten days per year of professional development required by the Canadian Judicial Council, in the same manner as Judges.²⁵

40. The Prothonotaries are members of committees of the Court, including the Executive Committee, Education Committee, Social Committee, Communications Committee, Technology Committee, and the Federal Courts Rules Committee.²⁶ They are also members of the various bar liaison committees of the Court: Canadian Bar Association Liaison Committee, Indigenous Bar Association - Aboriginal Law Bar Liaison Committee, Maritime Law Bar Liaison Committee, Intellectual Property Law Bar Liaison Committee and Montréal Bar Liaison Committee.

41. Some of the most senior counsel in Canada, with particular expertise in constitutional and administrative law, intellectual property, aboriginal law, and admiralty, routinely appear before Prothonotaries.

42. The Prothonotaries' jurisdiction has expanded substantially over the years. Because of this, and the choice exercised by counsel and unrepresented litigants, it is increasingly the Prothonotaries who have the greatest day-to-day contact with litigants who come before the Federal Court.

²⁴ The National Judicial Institute (NJI) is an independent, not-for-profit institution committed to building better justice through leadership in the education of judges in Canada and internationally.

²⁵ Canadian Judicial Council Professional Development Policies and Guidelines (September 2018), <https://cjc-ccm.ca/sites/default/files/documents/2019/CJC%20Professional%20Development%20Policies%20and%20Guidelines%202018-09-26.pdf>, p.5. While the Guidelines refer to "judges", the Prothonotaries are required by the Court to adhere to these standards as well.

²⁶ Pursuant 45.1(b) of the *Federal Courts Act*, the Federal Courts Rules Committee is composed of members of the judiciary, including one prothonotary designated by the Chief Justice of the Federal Court.

PART III. FACTORS FOR CONSIDERATION

43. The mandate of the Commission is set out in section 26 of the *Judges Act*, which reads, in part, as follows:

Commission

26 (1) The Judicial Compensation and Benefits Commission is hereby established to inquire into the adequacy of the salaries and other amounts payable under this Act and into the adequacy of judges' benefits generally.

Factors to be considered

(1.1) In conducting its inquiry, the Commission shall consider

- (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.

44. The Supreme Court affirmed in *Bodner* that "each commission must make its assessment in its own context".²⁷ The Court held that the "starting point" for the work of each judicial compensation commission should be the date of the previous commission's report.²⁸ The previous report forms the background and context in which the present Commission performs its function. The whole concept of compensation being "adequate" means it must be related to objective criteria or compared with compensation received by other comparable groups. This section explores both the factors which should inform the recommendations and the comparisons which are submitted to be appropriate.

²⁷ *Bodner*, JBD Tab 6, para.14-15.

²⁸ *Bodner*, JBD Tab 6, para. 14.

A. The prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government

45. To avoid duplication, the Prothonotaries adopt the written submissions of the Canadian Superior Courts Judges Association and the Canadian Judicial Council as they relate to this factor. In summary, the Prothonotaries submit that no aspect of the prevailing economic conditions in Canada weighs against any of the recommendations made in this submission.

B. The role of financial security of the judiciary in ensuring judicial independence

46. Judicial independence is a fundamental tenet of our constitutional and the rule of law. It flows “as a consequence of the separation of powers” of the three branches of government - the executive, the legislature and the judiciary. It operates to insulate the courts from interference by parties to litigation and the public generally, as Lamer CJC set out at para 130 of his reasons in *PEI Judges Reference*. Lamer CJC went on to quote from Professor Shetreet, who stated:²⁹

Independence of the judiciary implies not only that a judge should be free from executive or legislative encroachment and from political pressures and entanglements but also that he should be removed from financial or business entanglement likely to affect or rather to seem to affect him in the exercise of his judicial functions.

47. The purpose of the constitutional guarantee of financial security as an aspect of judicial independence is not to benefit the judges who come within its scope. Rather, the benefit that judges derive is purely secondary. Judicial independence is important because it serves important societal goals. It is a means to secure these goals, which include maintaining public confidence in the impartiality of the judiciary, including the perception that justice will be done in individual cases.

48. The challenge identified by Lamer CJC in *PEI Judges Reference* is to ensure that judicial compensation is set in a manner that fulfills the so-called “structural requirement of the Canadian Constitution”, which is that the relationship between the judiciary and the other branches of government must be depoliticized. As Lamer CJC pointed out, the

²⁹ *PEI Judges Reference*, JBD Tab 4, para. 130.

difficulty is that the setting of remuneration from the public purse is “inherently political” and, at the end of the day, the judicial compensation must be fixed by one of the political organs of the Constitution.³⁰

49. The solution identified by Lamer CJC, and confirmed by the Court in *Bodner*, was to require recourse to an independent, objective and effective commission, which would identify and consider objective criteria upon which to base recommendations about appropriate judicial compensation. As the Supreme Court of Canada stated in *Bodner*:

The commission process is an ‘institutional sieve’ (*PEI Judges Reference*, at paras 170, 185 and 189) – a structural separation between the government and the judiciary.³¹

50. It is apparent from *PEI Judges Reference* and *Bodner* that the protection and preservation of judicial independence is the very *raison d’être* of the JCC. As such, it must be fundamental to the Commission’s considerations. This underscores the need for recommendations which should be understood to be independent and objective or, in other words, based on objective criteria rather than primarily political considerations.

51. One aspect of this factor is that it invites particular comparison with other judicial officers who have similar jurisdiction. In *Bodner*, the Supreme Court determined that a JCC would be misdirecting itself if it focused on a comparison with only one comparator to the exclusion or virtual exclusion of other relevant factors.³²

52. Consistent with the reasoning in the Adams Report and the Cunningham Report, consideration must be given to the fact that the nature and function of judicial work shows great similarities among the various levels of courts. While certain judges may have broader jurisdiction, the same qualities of judicial temperament, legal knowledge, and an abiding sense of fairness are required of all judicial officers. It is necessary that judicial officers at all levels of court have the ability to make decisions that will greatly affect people’s lives, without bending to improper influence, the pressure of public demands and expectations, or a consideration of inadmissible material. The key factor is that judicial decision-making is common to all judicial officers.

³⁰ *PEI Judges Reference*, JBD Tab 4, para. 146.

³¹ *Bodner*, JBD Tab 6, para. 14.

³² *Bodner*, JBD Tab 6, para. 72.

53. This factor applies in particular to the proposal to establish a supernumerary program for Prothonotaries. Supernumerary status can assist the court in smoothing out workload and managing retirements that thin the ranks of sitting judicial officers – particularly where there is a small complement, as in the case of Prothonotaries. It can also assist judicial officers in achieving financial security in retirement. Indeed, precisely the same rationale that supported, and continues to support, the availability of supernumerary status for Superior Court and FC Judges applies to Prothonotaries,

C. *The need to attract outstanding candidates to the judiciary*

54. In considering the above criterion, it is submitted that the Commission should weigh the following points: the relevance of the independent compensation review process itself; the need to attract highly qualified candidates; and the competition for applicants from other courts. We discuss these in turn.

55. First, the very existence of a periodic compensation review process contemplated by the Supreme Court of Canada as being both (a) meaningful and effective and (b) grounded on good faith on the part of government, in and of itself attracts applicants to the bench.

56. It is not merely the level of compensation which attaches to the judicial office at the time of appointment which will attract qualified candidates; it is the legitimate expectation that compensation will be regularly, meaningfully, and effectively reviewed, and adjusted by government acting in good faith. Without this assurance, qualified applicants will not be attracted or, at best, a significantly reduced number of them will be attracted. It is noteworthy that appointments of applicants from outside the civil service prior to 2007 were only made when the compensation matched that of Masters, or when an independent, periodic review process was pending.

57. Second, it is not enough that the recommended level of remuneration attract qualified applicants, it must be at a level which attracts outstanding qualified applicants. The importance of judicial remuneration to the recruitment of highly qualified applicants in private practice was commented on in Ontario's Fourth (1999) Triennial Report of the

Provincial Judges Remuneration Commission (the “Beck Report”) on May 20, 1999³³ at page 46:

Another factor that we think is important is the attraction of the Provincial bench to a cross section of the best of the men and women practising at the criminal bar, or with some experience at the criminal bar. For many, appointment to the Provincial Division would see little, if any, increase in salary. For others, such an appointment would constitute a fall, in some cases a very sharp fall, in remuneration. What is absolutely essential is that the level of remuneration (including pension, which will be dealt with below), be set at such a level that it will be attractive, or at least not a disincentive, to the ablest men and women at the bar.

58. Third, in endeavouring to attract outstanding qualified applicants, the Federal Court must compete with other superior and provincial courts. It bears noting that the qualifications required to be appointed as a Prothonotary are essentially the same as those required for appointment as a FC Judge, any Provincial Court Judge or a Master in a Superior Court. A practical challenge for the Federal Court is attracting leading barristers who are familiar with Federal Court practice, preferably bilingual, and willing to travel extensively for court business. Bearing in mind that remuneration must be adequate to continue to attract outstanding candidates to the office, any remuneration which is fixed at a level significantly lower than that of judicial officers who exercise directly comparable jurisdictions (such as Masters and Provincial Court Judges’ civil jurisdiction) is bound to detract from the interest of qualified individuals in the position of Prothonotary. To the extent that such individuals may consider applying for appointment to the bench, it is reasonable to expect that they would apply to be appointed to positions that are higher paid.

59. It is the applicant, and only the applicant, who decides to which Court he or she will seek an appointment. Self-exclusion from potential for appointment as Prothonotary is a real risk if the terms of appointment are significantly less attractive. This factor goes beyond salary, and applies also to matters such as the availability of a supernumerary program, adequacy of the incidental allowance, and title of the office. In particular, for potential candidates, the availability of supernumerary status and the title of Associate Judge/Juge adjoint(e) can significantly enhance the attractiveness of the position of Prothonotary. This is especially so for outstanding candidates from the private sector, who

³³ Ontario’s Fourth (1999) Triennial Report of the Provincial Judges Remuneration Commission (“Beck Report”).

come from leading law firms where their compensation significantly exceeds that of a Prothonotary. To attract such persons to the position, the availability of supernumerary status and the title of Associate Judge/Judge adjoint(e) can assist to significantly offset the reduction in compensation that they will be required to incur upon their appointment to the bench.

PART IV. RECOMMENDATIONS SOUGHT BY THE PROTHONOTARIES

A. *Supernumerary Status*

60. The supernumerary scheme implemented under the *Judges Act* allows a judge who had reached retirement status to work on a part time basis on full salary in lieu of retiring. The supernumerary status can provide numerous advantages to the judicial system while at the same time provide considerable financial benefits to judges.

61. Most Provincial Court Judges and Masters have the opportunity upon retirement to become supernumerary (also referred to in certain jurisdictions as part-time or senior judges). Usually, supernumerary status allows a judge who is in receipt of a pension to continue working part-time, receiving a proportionate salary, and of course, accruing no further pension entitlement. The issue of workload is not addressed in the *Judges Act*, but supernumerary judges are ordinarily required to carry a minimum of half of a full-time judge's workload. That is certainly the case in the Federal Court.

62. As the opportunities for retired judicial officers to be employed and earn revenue after retirement are extremely limited, the ability to opt for supernumerary status is an important benefit of holding a judicial office in terms of future financial security.

63. The availability of supernumerary judges is also of substantial value and benefit to the Courts and the public. Courts retain experienced judicial officers who can be called upon to deal with the most difficult cases, while also providing continuity to a court, mentoring to new judicial officers, and additional assignment flexibility to Chief Justices who are managing full and complicated dockets.

64. There are also benefits in terms of judicial resources: supernumerary judicial officers continue to contribute to courts' workload, and new judicial officers can be

appointed into the vacancies created by supernumerary elections. Judicial salaries and annuities are both paid from the Consolidated Revenue Fund (CRF), so the federal government benefits from the continued (notionally) half-time service of a judicial officer for what is, in effect, only an additional one-third of the cost.³⁴

65. Supernumerary status is also understood to be an attractive option from the judiciary's perspective, which is manifest in the fact that approximately 90 percent of judges elect supernumerary status before retirement. Supernumerary judicial officers continue in office while presumably slowing down towards the end of their career. The reduced volume of work that they are assigned often enables them to focus on more complex or different cases, which can be fulfilling from a professional perspective. At the same time, their continued membership on the court can provide the Chief Justice with flexibility in scheduling, as well as additional resource and an important mentoring capacity. This continued membership on the Court also permits the public to benefit from the valuable human capital of those Prothonotaries who are no longer able or willing to work full time, after they have reached the point where they are eligible for a full pension.

66. The Prothonotaries submit that supernumerary status would enhance their financial security and be of benefit to the Court, for the reasons noted above.

67. In its report to the Minister of Justice dated June 30, 2016, the 5th Quadrennial Commission made the following recommendation in relation to the request by the Prothonotaries that they be granted supernumerary status:

The Government of Canada and the Chief Justice of the Federal Court of Canada should consider the possibility of allowing prothonotaries to elect supernumerary status under the Judges Act or of creating a senior prothonotary program for those eligible for retirement.

68. The Government Response noted that while the Quadrennial Commission linked the recommendation to the need to attract outstanding candidates, the Chief Justice's interest was also in part attributable to his concerns that the complement of Prothonotaries be sufficient to address increasing workloads.

³⁴ A judicial annuity is equal to two-thirds of a judges' final salary, and judges become eligible to elect supernumerary status at the same time as they would have the right to retire with a full annuity. Chief justices are not eligible for supernumerary status; they must step down to a *puisne* judge position in order to make the election.

69. The Government accepted the recommendation of the Quadrennial Commission and committed to “engaging with the Chief Justice of the Federal Court on the issue of possible pre-retirement arrangements, and continuing to communicate with him on workload issues that affect that Court.”³⁵

70. Since that time, the Chief Justice of the Federal Court, the Prothonotaries, and the Department of Justice have had discussions leading to a proposal for a supernumerary program for Prothonotaries and details as to how such a program would work. The Prothonotaries understand that the Government is prepared to support a recommendation from this Commission that a supernumerary program be created with the following features:

- Prothonotaries will be eligible for supernumerary status when eligible for a full *Judges Act* pension (i.e., after at least 15 years in office and age + years in office equal to 80; or upon completing at least 10 years in judicial office and attaining the age of 70).
- Election (whether and when) at Prothonotary’s option.
- Duration of supernumerary status for a maximum of 5 years.
- Workload to be defined in legislation as 50 percent of that of a non-supernumerary Prothonotary.

71. The Prothonotaries support this proposed supernumerary program and therefore seek a recommendation to that effect.

Recommendations on Supernumerary Status

That the Minister of Justice create a supernumerary program for Prothonotaries in consultation with the Chief Justice of the Federal Court, having the following features:

- ***Prothonotaries will be eligible for supernumerary status when eligible for a full Judges Act pension (i.e., after at least 15 years in office and age + years in office equal to 80; or upon completing at least 10 years in judicial office and attaining the age of 70).***
- ***Election (whether and when) at Prothonotary’s option.***
- ***Duration of supernumerary status for a maximum of 5 years.***

³⁵ Response of the Government of Canada to the 5th Quadrennial Commission Report, JBD Tab 13(a), p.5.

- ***Workload to be defined in legislation as 50 percent of that of a non-supernumerary Prothonotary. As with judges, scheduling would be established by the Office of the Chief Justice, in consultation with each Prothonotary.***

B. Incidental Allowance

72. Federally appointed Judges and Prothonotaries receive annually a non-taxable incidental allowance which affords them the opportunity to pay for memberships in law-related organizations, attend functions, conferences or meetings of significance to the legal community served by the Court, both to learn and to represent the Court, to participate in the events and functions that foster the collegiality of the Court, and to pay for amenities and tools that best enable them to accomplish and carry out their duties efficiently given the demands and rigors of their workload and travel, and that are not otherwise funded.

73. However, the amount of incidental allowance available to FC Judges and Prothonotaries differs.

74. Sections 27(1) and (1.1) of the *Judges Act* (the Act) currently state:

27. (1) On and after April 1, 2000, every judge in receipt of a salary under this Act is entitled to be paid, up to a maximum of \$5,000 for each year, for reasonable incidental expenditures that the fit and proper execution of the office of judge may require, to the extent that the judge has actually incurred the expenditures and is not entitled to be reimbursed for them under any other provision of this Act.

27 (1.1) On and after April 1, 2016, every prothonotary in receipt of a salary under this Act is entitled to be paid, up to a maximum of \$3,000 for each year, for reasonable incidental expenditures that the fit and proper execution of the office of prothonotary may require, to the extent that the prothonotary has actually incurred the expenditures and is not entitled to be reimbursed for them under any other provision of this Act.

75. Special Advisor Cunningham, as well as his predecessor, recommended that Prothonotaries receive an annual non-taxable annual allowance of \$3,000. The Government rejected the recommendation at the time. The Prothonotaries sought an annual allowance of \$5,000 before the 5th Quadrennial Commission. However, the Commission recommended that the Prothonotaries only receive the amount recommended by Special Advisors Adams and Cunningham. The Government accepted that recommendation.

76. As a result of amendments to the *Judges Act*, the compensation and benefits of Prothonotaries are administered by the Officer of the Commissioner of Federal Judicial Affairs. To be reimbursable, an expenditure must meet the following requirements: (a) the expenditure and its cost is reasonable; (b) the expenditure is an incidental expenditure that the fit and proper execution of the office of judge may require; and (c) the expenditure is not reimbursable under any other provision of the Act. It is inappropriate that such costs be borne by Prothonotaries personally.

77. The following are examples of expenditures that may currently be reimbursed, as determined by the Commissioner of Federal Judicial Affairs:

- (a) the purchase and repair of a computer, printer, scanner, shredder, laptop, cellphone, tablet and accessories;
- (b) the purchase of software and office supplies;
- (c) monthly costs of cell phone usage and home internet;
- (d) membership fees paid to law and judicial related professional associations;
- (e) the purchase of books or subscriptions to publications for the purpose of legal research;
- (f) the cost of formal judicial attire and the cost of dry-cleaning same;
- (g) the cost of attending judicial and legal conferences or seminars and of obtaining judicial education materials (to the extent not already subject to reimbursement under section 41 of the *Judges Act*);
- (h) the costs of judicial outreach or public education, such as speaking at schools or universities, attending meetings of the Bar, attending a swearing-in ceremony or judging a moot court;
- (i) the purchase, installation and monitoring fees of home security systems;
- (j) the reasonable costs of briefcases and suitcases because of the requirement to travel to attend sittings;
- (k) framing of official documents;
- (l) hearing aids and glasses not covered under the insurance plan; and

(m) parking at the courthouse.

78. There is no principled reason why the Prothonotaries should not benefit from the same allowance available to FC Judges. As is evident from a review of the list of expenditures that are claimable, Prothonotaries incur the same expenses as FC Judges and to the same degree as FC Judges. This was particularly evident in 2020, as both FC Judges and Prothonotaries were required to make expenditures to set up home offices.

79. One of the most significant expenditures in terms of quantum can be the expenses associated with continuing legal education. In that regard, the Prothonotaries are subject to the same continuing legal education requirement as FC Judges.

80. While the Prothonotaries acknowledge that their salaries are fixed at 80% of the salaries of FC Judges, there is no principled basis for pro-rating their incidental as the Prothonotaries' expenditures are the same as those of FC Judges and any pro-rating of their incidental may result in some basic needs of the Prothonotaries not being met. Moreover, the current pro-rating is entirely arbitrary, as a \$3,000.00 incidental does not represent 80% of an FC Judge's incidental.

Recommendation on Allowances

That Prothonotaries receive an annual non-taxable allowance at the same level as FC Judges to assist in payment for memberships in law related organizations, and other costs associated with carrying out their duties as Prothonotaries.

C. Change in Title to "Associate Judge/Judge adjoint(e)"

1. Jurisdiction to make Recommendation

81. This Commission has jurisdiction "to inquire into the adequacy of the salaries and other amounts payable under this Act and into the adequacy of judges' benefits generally".³⁶ "Benefits" should be construed broadly, in light of the context of the *Judges Act* as a whole, and the objects and purposes of the Commission process.

³⁶ *Judges Act*, s.26, JBD Tab 3.

82. The title of a judicial office is an important “benefit” of the office. The 5th Quadrennial Commission noted that “all parties agreed that Canada has an outstanding judiciary”.³⁷ Judges are held in high regard by Canadians. They are trusted to make independent, impartial, and objective decisions on the most important rights and interests of Canadians, even as against the government itself.

83. Put simply, it is an honour and a benefit to be called a judge – to be associated with and counted among the members of the “outstanding judiciary” that Canadians hold in such high regard. Conversely, it is a distinct burden to carry a title that Canadians do not understand, cannot pronounce, and (if they have any awareness of the term at all) are most likely to associate with ecclesiastical office or a court registry officer.³⁸

84. The title of a judicial officer is all the more important for those that serve on the front line of the justice system, as the Prothonotaries do. They function as the small to intermediate claims court of first instance, with trial jurisdiction up to \$50,000. They are the face of the federal court system for a large number of Canadians. It is helpful, to say the least, for Canadians to know who they are and what they do – and to be able to associate them instantly with the independence, impartiality, and objectivity that they ascribe to judges. A recommendation on this issue is entirely consistent with the purpose of this Commission.

2. The Proposed Change to “Associate Judge/Juge adjoint(e)”

85. The proposed change of title has been a longstanding issue. In 2005, the Chief Justice of the Federal Court established a committee of Judges and Prothonotaries to study possible options for renaming of the office. On February 15, 2006, the Committee issued a report recommending that the title be changed to Associate Judge. The recommendation was adopted by Chief Justice Lutfy and members of the Court. Chief Justice Lutfy then issued a Notice to the Parties and the Profession on September 3, 2009

³⁷ Report of the 5th Quadrennial Commission, JBD Tab 13, para. 80.

³⁸ In Nova Scotia a prothonotary is a registry officer, with limited jurisdiction under the *Civil Procedure Rules*. The term “prothonotary” was used in Quebec until 1994. Those officers, formerly known as “protonotaires”, are now known as “Greffiers/Special Clerks”. While Special Clerks have quasi-judicial functions (as set out in articles 70 to 74 of the Code of Civil Procedure), they are more accurately described as public servants. Prince Edward Island has prothonotaries appointed pursuant to section 27 of the Judicature Act. They assess costs, conduct mediations in small claims cases, conduct garnishee hearings and criminal show cause hearings in Provincial Court, execute conveyances, hear all uncontested motions, applications and references, and are empowered to perform civil marriages. The PEI Prothonotary is also the Registrar in Bankruptcy.

that stated that “the Federal Court has recommended that the name of the office be changed from Prothonotary to Associate Judge to promote clarity and access to justice”.³⁹ This recommendation continues to be supported by Chief Justice Crampton.

86. However, the Government has not to date implemented the change by amending the legislation that defines the office of Prothonotary.

87. The change in title is much needed. The current title leads to rampant confusion and a number of other concerns. Specifically:

- (a) “Prothonotary” is an archaic term that is not recognized in popular word-processing, translation, or spell-check applications, which highlight the word as a spelling error in both English and French. Due to their lack of familiarity with the title, both lawyers and litigants struggle with its proper pronunciation. Particularly given the growing trend towards the use of plain language in the Canadian legal system, the perpetuation of this anachronistic title is problematic.
- (b) The misunderstanding regarding the judicial function performed by the Prothonotaries also extends to lawyers who appear before them. This is particularly heightened in Quebec, where the Prothonotaries are not recognized as part of the “judicial order”, and are equated to a “Special Clerk” - a provincially-appointed civil servant with limited jurisdiction. The result is a tendency for Quebec counsel to treat Prothonotaries with less respect than they do FC Judges, as if they were less than judicial officers, similar to a Special Clerk.
- (c) Self-represented litigants have been known to describe Federal Court Prothonotaries as “clerks” in court documents and other communications with the Court. For example, one litigant questioned the legitimacy of an Order made by a Prothonotary on a motion to strike by submitting that “Research into the BNA Act and the Canada Act of 1982 has not shown any grounds for

³⁹ Federal Court, Notice to the Parties and the Profession, Sept. 3, 2009, <https://www.fct-cf.gc.ca/content/assets/pdf/base/Notice%20-%20Form%20of%20Address%20ENG%20sept-3-2009.pdf>.

a disposition to be authored by a clerk” and “he will not comply nor abide by the silly antics of clerks who render law under the label prothonotary”.

- (d) The media have incorrectly described Prothonotaries as “clerks” and “federal mediators” in news reports. A 2008 news article in the Globe and Mail described Justice Lafrenière, then a Prothonotary, as “Roger Lafrenière, prothonotary (chief clerk) of the Federal Court”.
- (e) On December 12, 2014, in Senate debates regarding Bill C-43, Economic Action Plan 2014 Act, No 2, Senator Joseph Day erroneously stated that “Prothonotaries in the Federal Court are clerks who are halfway to being a judge. They are not necessarily legally trained but most of them are.”
- (f) In May 2018, Department of Justice officials incorrectly described Federal Court Prothonotaries as “fonctionnaires de la Cour fédérale” in the news releases relating to new appointments, whereas the English version indicated that Prothonotaries are “judicial officers of the Federal Court”. The same error was also made in 2016 and 2017.
- (g) On July 9, 2020, a party in a Federal Court proceeding sent correspondence to then Prothonotary Furlanetto, copied to the Chief Justice and the Associate Chief Justice, in which he stated:

Dear Furlanetto,

Please be advised that the Respondent, his firm and Counsel will not refer to you by the colonial title 'Prothonotary' as such term refers to the Catholic Church and the role of the recorder of slave deeds and other instruments of slavery. The Respondent respectfully requests that the title no longer be used by Furlanetto or Federal Court of Canada. Referring to themselves as such or members of the Court is evidence of systemic racism that must be addressed in the Federal Court of Canada/ Courts.

- (h) This led the Prothonotaries to research the issue, and it was discovered that prothonotaries in the State of Pennsylvania were the keepers of the registers of “negro” and “mulatto” slaves and children, as well as other slavery

documents, in Adams County, Bedford County, Bucks County and Center County during the period 1780 to 1834.⁴⁰

88. Case Management Masters of the Ontario Superior Court of Justice have raised similar concerns regarding their title. As a result, the Ontario government recently tabled Bill 245, which would change their title to Associate Judge⁴¹.

89. The proposed change in title is supported by the factors to be considered by the Commission. There is no impact on the financial position of the Government. While not a matter of financial security, the proposed change would serve to correct the misunderstanding of the judicial role performed by Prothonotaries, for both the legal profession and the general public. Importantly, this misunderstanding has an adverse impact on the Court's ability to attract outstanding candidates for appointment to that position, and on the morale of the existing Prothonotaries, who were unaware (when they applied for the position) of the perceptions that some members of the public have regarding the office of Prothonotary. To the extent that potential candidates are aware of these misunderstandings or perceptions or speak with the Prothonotaries in deciding whether to apply (which is routine), there is a real potential for this issue to negatively impact a potential candidate's decision as to whether to apply for appointment to the position of Prothonotary, as opposed to another judicial position. Accordingly, the proposed change would assist in attracting outstanding candidates for the position of Prothonotary.

90. The Prothonotaries understand that the Government is prepared to move forward with the proposed change when it implements such recommendations as it may accept from the Commission. The Prothonotaries submit that it would enhance the prospects that this longstanding issue will be resolved, if the Commission made a recommendation on the matter.

⁴⁰ Website of the Pennsylvania Historical & Museum Commission, <https://www.phmc.pa.gov/Archives/Research-Online/Pages/Slavery-Underground-Railroad-Resources.aspx>, Records Group 47 .

⁴¹ Bill 245, *Accelerating Access to Justice Act, 2021*, (current status: 3rd Reading debate) Ontario Legislative Assembly, <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-245>.

Recommendation on Title

That the title of Prothonotary be changed to "Associate Judge/ Juge adjoint(e)"

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

March 29, 2021



Andrew K. Lokan

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