August 15, 2019

Sent By E-mail

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Your reference

Our reference 1001078900

Members of the Commission:

## Referral dated May 31, 2019 by the Minister of Justice under s. 26(4) of the Judges Act

We represent the Superior Courts Judges Association in the above-captioned matter, in which we filed a submission on July 18, 2019. Abbreviations used in this letter were defined in our previous submission.

While we wait for the Commission's directions on the scheduling of the Parties' responding submissions, we write to bring to the Commission's attention a discrete but non-insignificant issue that was raised with the Association regarding the Proposed Amendment.

In the scenario where a judge's accrual of pensionable service is suspended, the Proposed Amendment, the Commission has been informed, contemplates a corresponding suspension of the judge's obligation under the *Judges Act* to contribute 7% of the judicial salary toward his or her judicial annuity ("**Contribution Obligation**"). This is mentioned at paragraph 16 of the Submission of the Government of Canada dated July 18, 2019, and paragraph 4(iv) of the submission of the Association. Under the Proposed Amendment, there will be a Snapback Provision that restores the suspended pensionable service where the removal recommendation is overturned or rejected.

The issue is whether the previously suspended Contribution Obligation will also be restored as part of the Snapback Provision. In other words, in those cases where the full calculation of years of service is restored, will there be a corresponding obligation to pay the 7% contribution in respect of the period of suspension?

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While the Submission filed by the Minister is silent on this issue, the Association considers it logical and fair that the Contribution Obligation be re-imposed in the event the suspended pensionable service is restored. The two go together. Otherwise, the judge in question would receive a windfall without any justification, and be left in a more favorable financial position than all those colleagues who were not subject to a removal recommendation.

The only concern that may arise from re-imposing the Contribution Obligation is the sudden financial burden imposed on the judge of having to pay 7% of all judicial salary collected during the period that the Contribution Obligation was suspended. To address this, a formal notice could, as a matter of practice, be given to the judge at the time the Contribution Obligation is suspended advising that he or she should take measures to set aside the necessary amounts in order to be in a position to satisfy the Contribution Obligation should the Snapback Provision apply.

We look forward to receiving the Minister's position on this issue. As always, we remain at the Commission's disposal to respond to any questions.

Respectfully submitted,

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Senior Partner

CC:

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