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December 11, 2003

Roderick A. McLennan, Q.C., Chair
Judicial Compensation and Benefits Commission
99 Metcalfe Street
Ottawa, Ontario
K1A 1E3

Dear Mr. McLennan:

Re: 2003 Judicial Compensation and Benefits Commission

It has come to my attention that the second Quadrennial Commission on Judicial Compensation and Benefits is currently receiving submissions from the public. The Law Society of Alberta made extensive submissions to the 1993 Crawford Commission and further submissions in 1996 and 2000. Copies of those submissions are enclosed as background. You will note that the key principles of concern to The Law Society at the time of previous submissions were: protection of the public interest through judicial independence, and financial security as an integral part of that judicial independence. We remain steadfast in our position.

In order to maintain judicial independence, it is not open to judges, either through representative organizations or individually, to engage in negotiations over remuneration with the legislature. As a result, their interests must be represented by a commission. The 1998 amendments to the Judges Act, R.S.C. 1985, c. J-1 which established the Quadrennial Commission recognize the importance of an effective and objective judicial compensation process.

The Law Society is not an advocate for specific remuneration or benefit packages. It is submitted, however, that the Commission must be mindful of the objective of financial security as a component of judicial independence while at the same time ensuring that judges receive compensation and benefits to provide financial security in the interests of judicial independence with a view to ensuring that outstanding candidates continue to be attracted to the Bench.

Thank you for considering The Law Society's comments.

Yours truly,

Cheryl Gottselig, Q.C. President

Encl.

Peacock Linder & Halt

Our File: 2354
Your File:

J. Patrick Peacock, Q. C.
Direct Line (403) 296-2281
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January 13, 2000

Mr. Richard Drouin, O.C., Q.C.
Chairperson/President
Judicial Compensation and Benefits Commission 99 Metcalfe
Ottawa, Ontario KLA IE3

Dear Sir.

Re: The Law Society of Alberta

We have been asked on behalf of The Law Society of Alberta to reply to your letter to Peter Freeman, Q.C. of November 23, 1999 inviting Submissions with respect to the adequacy of salaries and other amounts payable under the Judges' Act and to the adequacy of Judges' Benefits generally.

Your letter advises that you wish to have Submissions received by December 20, 1999, and obviously The Law Society of Alberta has not been able to provide its input within that time frame.

Your letter indicates parties wishing to make comments on other Submissions received by the Commission provide comments by January 21, 2000. Perhaps you might receive our observations and Submissions in this letter as comments on the Submissions of the Canadian Judges' Conference/Canadian Judicial Council to your Commission dated December 20, 1999.

1. The Process – The Law Society of Alberta made Submissions to both the Crawford Commission and to the Scott Commission in 1993 and 1996 respectively. We enclose The Law Society's letter to the Scott Commission of January 4, 1996, attaching The Law Society's Submission to the Crawford Commission in December of 1992 for your consideration as background.

As you can see, the concern of The Law Society of Alberta expressed in its Submissions to the Triennial Commissions was the fact that the "depoliticizing" of judicial remuneration through the use of Commissions was essentially a failure. The Scott Commission in its 1996 Report echoed its concern over the failure of the Triennial Commission process to meet its objectives.

As is pointed out in the Canadian Judges' Conference/Canadian Judicial Council Submissions to your

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Commission, the 1998 amendments to the Judges' Act establishing the new Quadrennial Commission were made in stated recognition by the Minister of Justice of the importance of an objective Judicial Compensation process that is effective. We urge this Commission as we urged the previous Triennial Commissions to echo in its Report the depoliticizing judicial remuneration by the effective and proper use of an independent commission process.

2. **Judicial Independence** – The Law Society of Alberta supports the Submissions of the Canadian Judges' Conference/Canadian Judicial Council that judicial- independence and impartiality are essential to a fair and respected Justice System and that the financial security for Judges is essential and an integral component of judicial independence.

The Law Society of Alberta urges that your Commission be vigilant and mindful of the objective of financial security as a component of Judicial Independence. The Law Society of Alberta does not advocate specific remuneration or benefits packages and has not studied or presented detailed information in that regard. It is however, the submission of The Law Society of Alberta that your Commission ensure that Judges receive compensation and benefits to provide financial security in the interests of judicial independence and with a view to ensure that outstanding candidates era attracted to the Judiciary.

The Law Society of Alberta wishes to thank your Commission for the opportunity of providing its' comments by way of these Submissions.

Yours truly,

J.P. PEACOCK

JPP/js

Enclosures

January 4, 1996

Mr. David W. Scott, Q .C.
Chairman
Commission on Judges' Salaries
and Benefits
110 O'Connor Street
OTTAWA, Ontario
K1A 1B3

Dear Sir:

I reply to your letter inviting the Law Society of Alberta to make submissions to the Commission relative to judges' salaries and benefits. Your invitation was discussed at our December Convocation and I have been asked to communicate the Benchers' views to you.

Clearly a fair compensation plan for judges is a matter of vital importance. Without that the best of the profession will not be attracted to judicial service and the quality of justice will suffer. Past Commissions have identified a number of serious inequities and have recommended to the government that changes be made. Unfortunately, these reports and recommendations have simply been ignored. In the result one is left with the impression that the government is appointing Commissions only to meet its legal obligations under s. 26 of the Judges Act and without any intention to implement the recommended changes.

In our submissions to the Crawford Commission dated December 1992, we were very critical of the government's neglect of Commission reports. We expressed our concern that the integrity of the process and judicial independence were being compromised. Indeed, we suggested that the process was being abused:

"It is the submission of the Law Society of Alberta that the manner in which s. 26 of the Judges Act has been dealt with in practice has been a disservice to the concept of the independence of the judiciary. To comply with the legislation in establishing Commissions, and then to essentially ignore the recommendations of those

Commissions is to defeat the purpose of the legislation. It is arguable that misusing s.26 of the Judges Act in this fashion is as demeaning to the concept of judicial independence as was the situation prior to 1981, in that the very proposal designed to ensure and enhance a healthy and independent judiciary has all the appearances of being used by government as a mechanism to deflect the legitimate and real concerns that must be addressed in the public interest. The issues are too important to be ignored.”

Sadly, nothing has changed. We understand that not a single recommendation of the Crawford Commission was implemented. The concerns voiced in our report to that Commission remain. [I have attached a copy of those submissions for your information.] I am confident that you and your fellow Commissioners share our frustration and disappointment. I must tell you that until the government declares a genuine interest in the work of the Commission, we are unwilling to participate further in the process.

Yours very truly,

PETER MARTIN, Q.C
President

PM/lo

ENCL.

December, 1992

SUBMISSION OF THE LAW SOCIETY OF ALBERTA

TO THE

1992 COMMISSION ON JUDGES' SALARIES AND BENEFITS

The Law Society of Alberta is, for the first time, putting forth a submission to the Triennial Commission on Judges' Salaries and Benefits appointed pursuant to Section 26 of *The Judges Act*. The Law Society of Alberta has not made submissions to the previous three Triennial Commissions although the Law Society supports and endorses the adoption of the recommendations of the predecessors to this Commission.

The Law Society of Alberta has had an opportunity of reviewing the submissions made by the Canadian Judicial Council and the Canadian Judges Conference and the Canadian Bar Association to the Commission. The Law Society of Alberta, in reviewing those submissions, supports the principles and positions put forward in those two submissions, and urges the Commission to accept and endorse the principles and positions contained in those submissions in its recommendations to Parliament at the conclusion of its deliberations.

The main reason why the Law Society of Alberta has intervened at this time is the concern that the Law Society has for the process itself. Those concerns are set forth clearly and forcefully in the submissions of both the Canadian Judicial Council and the Canadian Judges Conference, and the Canadian Bar Association.

The independence of the judiciary is the fundamental cornerstone on which the mechanism of Triennial Commissions was established. It is the view of the Law Society that establishing commissions and essentially ignoring their recommendations is a misuse of the very process designed to ensure judicial independence. The Commissions themselves have expressed frustration. The comments of the 1989 Courtois Commission at pages 6 and 7 bear repeating:

“The acknowledged purpose of the Triennial Commission review process is to reduce the element of partisan politics in the determination and adjustment of judicial compensation and to reinforce the principle of judicial independence by obtaining the recommendations of persons with experience and expertise after a full and independent review. The process was instituted by parliament in the public interest, which can only be fulfilled if the process functions effectively. Failure to adopt the recommendations of Triennial Commissions renders meaningless this independent review process and effectively thwarts the evident intention of Parliament.

The alternative to the Triennial Commission process would be to put the judiciary in the invidious position of having to engage in constant and ongoing discussions with the executive branch of government with regard to salaries and benefits. As that same branch of government also appears frequently in the Courts, the mere appearance of the judges having to negotiate with the executive branch would only erode the public perception of judicial independence.

The Triennial Commission review process cannot prevent this highly undesirable result if the results of the Commissions are not acted upon positively and with reasonable promptness. Otherwise, the integrity of the review process would be irreparably unpaired, which not only would defeat the intentions of

Parliament, but also would seriously attenuate the only means available to judges to provide meaningful input with regard to compensation and benefit issues."

The Guthrie Commission (1986), expressed similar concerns about the integrity of the process. Parliament's response to the Guthrie Commission has been, at best, piecemeal. The bulk of its recommendations were ignored. The Courtois Commission (1989) which expressed its concern for the process in strong and clear language, has had none of its recommendations adopted prior to the commencement of the period for the operation of the current Commission.

The Law Society of Alberta wishes to go on record as strongly condemning the failure of Parliament to give substantive effect to Section 26 of *The Judges Act*. In doing so it joins and supports the Canadian Judicial Council, the Canadian Judges Conference, the Canadian Bar Association, and the previous Commissions in expressing its concerns.

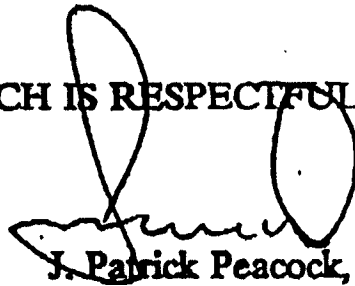
It may well be that in adding its voice to the concerns of all of those associated with the process, and in making these submissions to the Commission itself, the Law Society is pushing on an open door. The Law Society urges the Commission to echo the concerns expressed by all of those participating in the Commission's proceedings. in making its recommendations to Parliament,

It is the submission of the Law Society of Alberta that the manner in which Section 26 of *The Judges Act* has been dealt with in practice has been a disservice to the concept of the independence of the judiciary. To comply

with the legislation in establishing commissions, and then to essentially ignore the recommendations of those commissions is to defeat the purpose of the legislation. It is arguable that misusing Section 26 of *The Judges Act* in this fashion is as demeaning to the concept of judicial independence as was the situation prior to 1981, in that the very proposal designed to ensure and enhance a healthy and independent judiciary has all appearances of being used by Government as a mechanism to *deflect the* legitimate and real concerns that must be addressed in the public interest. The Issues are too important to be ignored.

The Law Society of Alberta urges the Commission to echo these concerns in its deliberations and recommendations.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



J. Patrick Peacock, Q.C.

Calgary, Alberta
December 18th, 1992.