GOVERNMENT RESPONSE TO THE 1999 JUDICIAL COMPENSATION AND BENEFITS COMMISSION

This is the Response to the Report of the Judicial Compensation and Benefits Commission, dated May 31, 2000, by the Minister of Justice on behalf of the Government pursuant to s. 26(7) of the *Judges Act*.

1. Background*:* Supreme Court of Canada Independence Decision and a Revised Judicial Compensation and Benefits Process

On November 18, 1997, the Supreme Court of Canada rendered its decision in the *Reference re Remuneration of Judges of the Provincial Court (P.E.I.).*[1] That decision established new constitutional requirements in support of the principle of judicial independence. Every Canadian jurisdiction is required to have "an independent, objective and effective" commission to consider and make recommendations to government regarding the compensation and benefits of judges. The purpose of the commission is to depoliticize the process of judicial remuneration, so that the "courts are both free and appear to be free from political interference through economic manipulation by the other branches of government".[2]

While a commission's recommendations are not binding, governments are required to respond publicly to a commission's report. In the event that recommendations are not accepted, or where it is proposed that a recommendation should be modified, the government concerned must provide a reasonable justification for its decision. The reasonableness of the government's response is reviewable in a court of law and must meet the legal standard of "simple rationality", measured by the reasons and the evidence offered in support by the government.
A statutorily mandated federal judicial compensation commission had been in place prior to the decision in the *P.E.I Judges Reference.* Following that decision, the *Judges Act* was amended in order to reinforce the independence, objectivity and effectiveness of the commission process. The new Judicial Compensation and Benefits Commission ("Commission") is now required to convene every four years, and to make a report with recommendations within nine months of the commencement of its work.

The statutory mandate of the Commission is to inquire into the adequacy of judicial compensation and benefits.[3] In doing so the Commission is directed by statute to consider:[4]

a. the prevailing economic conditions in Canada, including the cost of living, and the overall economic and 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 *Judges Act* requires that the Minister of Justice respond publicly on behalf of the Government of Canada within six months of receipt of the Commission Report.[5] However the ultimate response will come from Parliament. Section 100 of the *Constitution Act, 1867* requires that the salaries and allowances of the federally appointed judiciary be established by Parliament. Accordingly, the Government will introduce a Bill at the earliest reasonable opportunity, proposing amendments to the *Judges Act* to implement this Response.

2. Report of the First Quadrennial Judicial Compensation and Benefits Commission

The first new quadrennial Commission was established on September 1, 1999. To ensure the independence of the Commission, as required by the *Judges Act,* its three members were appointed by the Governor in Council to hold office for a term of four years on good behaviour.[6] The judiciary and the Government each nominated one member of the Commission. Those two members nominated a third member to serve as Chair of the Commission.

The Commission sought and received written submissions, supported by expert and other evidence, from a broad range of interested persons, including representatives of the judiciary and the Government. Two days of public hearings were held on February 14 and March 20, 2000 during which the Commission heard extensive argument from representatives of the Government, the Canadian Judicial Council and the Canadian Judges Conference, and all others who chose to make oral submissions. In addition to the expert evidence provided in the various submissions, the Commission retained its own consultants to assist its deliberations.

The Commission delivered its Report to the Government on May 31, 2000. An excerpt from the Report setting out the text of the Commission's recommendations is attached as Annex A.[7]

3. Response to the Report

Before responding to the Commission's recommendations, the Government wishes to acknowledge and thank the Chair and the Commissioners of this first quadrennial Commission: Chairman Richard Drouin, and Commissioners Eleanore Cronk and Fred Gorbet. The procedure adopted by the Commission in consultation with the Government and representatives of the judiciary provided the transparency and accessibility necessary to ensure public confidence in the independence of the Commission and in the objectivity of its recommendations. The care with which the Commission undertook its preparations and deliberations is evident in its Report. While the Government may not share all the Commission's conclusions, it is clear that the Commission has made a great effort to offer reasons that are carefully explained and supported by evidence, to the extent that evidence was available. The quality and thoroughness of the Report will set the hallmark for future quadrennial Commissions in dealing with the important and often complex issues of judicial compensation.

The Government is committed to the principle of judicial independence and to the effectiveness of the Judicial Compensation and Benefits Commission process in support of that principle. The Government recognizes the particular importance of this first formal Response to these recommendations of the newly constitutionalized quadrennial Commission, both in terms of ensuring public perception of the legitimacy of the process and in reinforcing judicial confidence in the new process. In light of all these factors, the Government is prepared to accept Recommendations 1-7 and 9-21 of the Judicial Compensation and Benefits Commission, and will propose the necessary amendments to the *Judges Act* at the earliest reasonable opportunity. Certain of the recommendations are accepted subject to reasonable qualifications or criteria described below.

However, as also explained below, the Government is not prepared to accept the Commission's recommendations in their entirety. Specifically, Recommendation 8 relating to supernumerary judges will be deferred until further work has been done.[8] The Government does not accept Recommendation 22 relating to judicial representational costs and will propose that an alternative formula for the provision of such costs be established in the *Judges Act.* [9]

a. **Salaries and Allowances: Recommendations 1-5**

The Commission recommends that the salaries of puisne judges be increased from $178,100 to $198,000 inclusive of annual statutory indexing[10] effective April 1, 2000; with an increase of $2,000 in addition to statutory indexing for each of the following years until 2003[11] Equivalent adjustments to the salaries of Chief Justices, Associate Chief Justices and judges of the Supreme Court of Canada are recommended. The Commission further recommended that incidental, Northern and representational allowances be increased.[12]

While the Commission recommends a higher salary increase (11.2%)[13] than the Government had proposed in its written submission (5.7%), the recommended increase is significantly less than that sought by the representatives of the judiciary (26.3%). From this perspective, the recommended increases are within the range of what would be considered reasonable, given the difficulties inherent in assessing the adequacy of judicial salaries. Like Commissions before it, the Commission faced the perennial challenge in establishing a true salary comparator for the judiciary. Below the Government proposes that steps should be taken to address this information deficit in time for the next quadrennial review. However, on the basis of the evidence and the analysis currently available, it would be difficult to clearly demonstrate a substantive basis to challenge the recommendations. The Government will therefore propose to Parliament that the Commission's recommendations relating to salaries and allowances be implemented.

The Government does not accept all the assumptions made or comparators used by the Commission. In particular it appears that the Commission's recommendation for an annual increment above statutory indexing is based on an assumption about how compensation trends will develop over the next three years. This assumption may or may not be borne out by experience. It will be necessary to revisit this approach at the next quadrennial Commission, in light not only of actual trends but also through consideration of an improved information base upon which future assumptions and comparisons can be made. It is to this latter critical challenge that we now turn.

The first quadrennial Commission, like commissions before it, relied on a combination of comparative factors in arriving at its salary recommendations, including the earnings of private sector lawyers, the salaries and performance bonuses of the most senior federal Deputy Ministers, and the significance of judicial annuities in recruiting outstanding candidates to the bench. However, the Commission was required to make the best of a largely unsatisfactory information base, a fact which is to some degree acknowledged in the Report itself. The Commission recognized the insufficiency of the evidence that is currently available as it relates to the compensation of lawyers in private practice.[14] The Commission proposed that the Commission should develop a relevant income measure that would allow the tracking over time and in a consistent way of the relationship between judges' compensation and a compensation measure for the private bar. The Commission further suggested that it should be provided with the necessary resources to conduct a survey of private practitioner incomes on a regular basis.

The Government wholeheartedly agrees that better information is required in order to understand fully the role that compensation plays in the decision to seek judicial office. In the Government's view, relevant factors include not only financial remuneration such as the specific value of salaries, pensions and allowances, but as importantly, the other "quality of life" issues that are indisputably influential in a decision to seek judicial office. For example, what consideration is given by potential candidates to such issues as relative workload including hours of work, vacation and leave benefits? How do candidates take into account tenure considerations including security and risk? What weight is given to the availability of "end of career" options such as early retirement and supernumerary status? And how is a potential reduction of financial remuneration by some candidates weighed against a less tangible but very significant factor: the deep personal satisfaction that comes from the opportunity to make a public contribution in one of the most highly respected offices in Canadian life? How important is the quality of judicial work in a collegial context that allows for intellectual reflection on important or novel issues of legal principle, often a luxury for a practicing lawyer?

Given the unique nature of the federally appointed judiciary, such an analysis will admittedly not be easy. For example, obtaining the information necessary to assess the relative earnings and quality of life expectations of candidates for judicial office will be a new and difficult exercise. Developing an objective measure against which private sector and judicial workloads can be compared will also present a significant methodological challenge. In terms of judicial workload, such an undertaking will require the close co-operation of the federal Government and the provincial and territorial governments who are responsible for administration of justice in their respective jurisdictions. It will also require the active and co-operative participation of the federally appointed judiciary, and in particular Chief Justices, who are for the most part the holders of the information that would be required to develop a workable system capable of producing meaningful results.

It should be noted that another area of necessary information gathering and analysis is identified below in relation to the discussion of the Commission's recommendation relating to supernumerary judges. The Commission reiterated the suggestion of the 1993 Crawford Commission that the Canadian Judicial Council "actively collect relevant information in this area with a view to making it available for future quadrennial commissions".[15] It seems inevitable that any analysis of the impact of the contribution of supernumerary judges to the overall workload of a court will raise similar questions. An assessment that a supernumerary judge "normally works 50% of the time" arguably begs the question unless the workload expectations for a full-time judge are well understood.

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b) Judicial Annuities and Other Benefits: Recommendations 6,7, 9-21

Generally, federally appointed judges who have served fifteen years on the bench can retire with an annuity of two-thirds of their salary. However, a judge who leaves the bench at any time before fulfilling the fifteen year requirement is not entitled to any annuity at all.[16] The Government is prepared to accept the Commission's recommendations for certain modest improvements to the current judicial annuity scheme, including that a judge be entitled to take early retirement with a pro-rated pension after 10 years on the bench. However, in so doing it is important to note that the Commission's recommendations be considered in the context of the pension proposals made on behalf of the judiciary and the Government's position in response before the Commission.

In their Joint Submission to the Commission dated December 20, 1999, representatives of the Canadian Judicial Council and the Canadian Judges' Conference proposed extensive and costly changes to the current judicial annuities scheme. The Government's position was that no additional *ad hoc* changes should be made to fundamental aspects of the scheme. The Government proposed instead to formally refer the issue of judicial annuity reform to the Commission after June 1, 2000 for a comprehensive review in light of the modern pension policy.

The judiciary withdrew, for purposes of this quadrennial review, many of their more extensive and expensive proposals for enhanced annuity options. In the end, the Commission was not persuaded to defer entirely its consideration of annuity improvements until the proposed comprehensive review. However, in the result, the Commission made only limited recommendations in this area. It recommended the provision of an early retirement option based on a pro-rated benefit.[17] The Commission also recommended the pension contribution rate be reduced from 7% to 1% when a judge becomes eligible to retire, which the Government had proposed.[18] In addition, it recommended the reinstatement of entitlement to contribute to RRSPs at the time the judge becomes eligible to retire.[19]

While the Government is prepared to implement these annuity-related recommendations, it remains of the opinion that a comprehensive review of the current judicial annuity regime is needed. The Government continues to believe that there is a need for a thorough re-examination of the basic policy objectives and assumptions that underlie the annuity scheme. Such a study would lay the groundwork for a longer term reform of the judicial annuity scheme, consistent with the *Judges Act* requirement of "adequacy" in support of judicial independence, the current or changing demographics of the judiciary, and the evolution of contemporary pension policy in response to societal changes.

Properly framed, this comprehensive review would include all aspects of pension policy. In addition to the range of annuity proposals made by the judiciary in the Joint Submission, the review would revisit earlier amendments to the *Judges Act* scheme. This would include issues such as the appropriateness and level of annuity contributions, and early retirement options such as the Rule of 80, as well as the current Commission recommendations. Such a study would also provide the opportunity to consider other important pension-related issues, such as pension-splitting within current family law regimes, the continued merits of the current rules relating to retirement on grounds of "permanent disability" in light of advances in modern medicine, and plan restructuring to achieve consistency with contemporary income tax and pension policy.

A comprehensive review of this kind would likely require a staged approach and should ideally be designed with input from all interested persons and groups. The Government will be seeking the views of the Commission and the judiciary as to the most effective way to begin this important undertaking in order to be prepared to address these issues before the next quadrennial Commission.

Before leaving the area of annuities, it should be noted that the Government also accepts the Commission's Recommendations 13-15 relating to enhanced survivor benefits, subject to certain requirements. The Commission's intention is to provide greater flexibility without increasing cost. The Government will propose terms designed to minimize the cost and ensure that the election will be as close to cost neutral as possible.[20]

The Government is also prepared to accept Recommendations 17-21.[21] In terms of Recommendation 17 with respect to insurance, the Commission has called for prompt creation of a separate life insurance plan. However, in Recommendation 18, the Commission recommends that the plan be compulsory for new judges. The requirement for compulsory participation means that this recommendation must be implemented by legislation. The Government will seek the necessary amendments to the *Judges Act*. In terms of the recommendation that the plan be created under the general framework of the Public Service Management Insurance Plan ("PSMIP"), the Government will take all steps that are within its power to implement the recommendation in this manner.[22] If for legal reasons the Government is unable to do so, it will take all necessary steps to provide an alternative plan at as reasonable a cost and taxable benefit to the judiciary as possible.

c) Supernumerary Status: Recommendation 8

The Commission recommends that a judge be entitled to elect supernumerary status upon satisfying the Rule of 80, that is when the judge's combined age and years of service add up to 80.[23]

The Government is not prepared to accept Recommendation 8 at this time, for a number of reasons. Implementation of this recommendation would have implications not only for the federal Government but also for the provinces and territories. As part of their constitutional responsibility for administration of justice, the provinces and territories determine the structure of the superior courts in each jurisdiction. [24] In so doing they decide the number and nature of judicial positions on those courts. It is for the provinces and territories to determine whether, as a policy matter, it is appropriate to create the office of supernumerary judge in the first instance. It is only where a province has enacted such legislation that the authority to pay supernumerary judges pursuant to the *Judges Act* is engaged.[25]

Recommendation 8 has the potential of increasing significantly the number of federally appointed supernumerary judges.[26] A number of jurisdictions have for some years expressed concerns about the growing numbers of supernumerary judges and their implications for the costs associated with provision of facilities and support services to those judges. In discussions with representatives of provincial and territorial governments, it has been proposed that the role of supernumerary judges and their contribution to the workload of the Canadian courts merit a more systematic review.

At the same time, important constitutional issues relating to the status of supernumerary judges will soon be considered by the Supreme Court of Canada.[27] The Court's decision may provide important guidance with respect to the capacity of governments to legislate in this area in the future.

As discussed, the Commission itself has identified the need for better information gathering with respect to the contribution of supernumerary judges to the workload of the courts. In the Government's view, this should be one element of the broader study that we have proposed be undertaken in preparation for the next quadrennial Commission. This would also provide an opportunity for appropriate consultation with provincial and territorial governments in shaping federal government proposals as they relate to supernumerary judges. Those governments would also have the opportunity to make their views known before the next Commission.

d) Representational Costs: Recommendation 22

The Commission recommends that the Government pay 80% of the total representational costs incurred by the judiciary in connection with their participation in the Commission process, subject to a certain maximum.[28]

The Government does not accept Recommendation 22. There is no constitutional obligation on the Government to pay legal or other representational costs of the judiciary incurred as a result of participation in the Commission process.[29] As a policy matter, the Government recognized the public benefit of judicial participation in the Commission process and made an $80,000 *ex gratia* payment to representatives of the judiciary as a fair contribution to the participation of the judiciary before the Commission.

It is the Government's view that, as a matter of policy, the payment formula recommended by the Commission is not reasonable. That formula would afford the representatives of the judiciary a largely unchecked discretion in deciding what costs would be incurred for legal counsel, expert witnesses and the like in preparation for a Commission, with the public being held responsible for the payment of the significant and unpredictable expenditures incurred by the judiciary.

Instead the Government proposes an alternative formula which would provide for a reasonable contribution to the costs of the participation of the judiciary, while at the same time establishing reasonable limits on such expenditures. The costs would be shared equally by the public and the judiciary, the immediate beneficiaries of the Commission's recommendations as to compensation and benefits. The formula would be established by the *Judges Act*, so that the judges would have the benefit of knowing in advance the level of their responsibility, without having to await the recommendation of each quadrennial Commission. The representatives of the judiciary will take that responsibility into account in incurring costs reasonably and prudently.

Accordingly, the Government will propose that 50% of judicial representational costs be paid on a solicitor/client basis, subject to taxation in the Federal Court of Canada.[30] Under the proposed *Judges Act* amendment, this formula would apply to costs incurred before this Commission, as well as future commissions.

ANNEXE "A"

The Commission recommends that:

Recommendation 1

The salary of puisne judges be established as follows:

Effective April 1, 2000: $198,000, inclusive of statutory indexing effective that date;

Effective April 1, 2001: $200,000, plus statutory indexing effective that date;

Effective April 1, 2002 and 2003, respectively: the salary of puisne judges should be increased by an additional $2,000 in each year, plus statutory indexing effective on each of those dates.

(Section 2.4)

Recommendation 2

The salaries of the Justices of the Supreme Court of Canada, and the Chief Justices and Associate Chief Justices should be set, as of April 1, 2000 and inclusive of statutory indexing effective that date, at the following levels:

Supreme Court of Canada:	
Chief Justice of Canada	$254,500
Justices	$235,700
Federal Court and Tax Court:	
Chief Justices	$217,100
Associate Chief Justices	$217,100
Superior and Supreme Courts and Courts of Queen's Bench:	
Chief Justices	$217,100
Associate Chief Justices	$217,100

As of April 1 in each of 2001, 2002 and 2003, these salaries should be adjusted to maintain the same proportionate relationship with the salary of puisne judges established as of April 1, 2000.

(Section 2.6)

Recommendation 3

Incidental Allowances be adjusted to a level of $5,000 per year effective as of April 1, 2000.

(Section 3.1)

Recommendation 4

Northern Allowances be adjusted to a level of $12,000 per year effective as of April 1, 2000.

(Section 3.2)

Recommendation 5

Effective as of April 1, 2000, Representational Allowances be set as follows:

Chief Justice of Canada	$ 18,750
Chief Justices of the Federal Court of Canada and the Chief Justice of each province	$ 12,500
Supreme Court of Canada Puisne Judges, Trial Chief Justices, Other Designated Chief Justices and Senior Judges	$ 10,000

(Section 3.3)

Recommendation 6

Effective as of April 1, 2000, contributions toward a judicial annuity be reduced from 7% of salary to 1% of salary for the period during which a judge is entitled to receive a full annuity but continues to work in either a full-time or supernumerary capacity.

(Section 4.6)

Recommendation 7

Effective as of April 1, 2000, the relevant regulations under the *Income Tax Act* be amended to afford judges the opportunity to contribute to RRSPs at the time they121
cease making contributions to the judicial annuity scheme, on the same basis as public servants are now allowed to do.

(Section 4.7)

Recommendation 8

Effective as of April 1, 2000, judges have the right to elect supernumerary status for a period not exceeding 10 years upon attaining eligibility for a full pension.

(Section 4.8)

Recommendation 9

Effective as of April 1, 2000, to be eligible for early retirement with a pro-rated pension, a judge must serve at least 10 years and must be at least 55 years of age.

(Section 4.9)

Recommendation 10

Effective as of April 1, 2000, a pro-rated pension, available to any judge who has served at least 10 years and is at least 55 years of age, be calculated as 2/3 of salary in the year that early retirement is elected, multiplied by the number of years of service divided by the number of years which the electing judge would have been required to serve in order to earn a full annuity.

(Section 4.9)

Recommendation 11

Effective as of April 1, 2000, the pro-rated pension not be payable without actuarial reduction prior to the judge attaining age 60 and that the amount of the pension be indexed by the Consumer Price Index in each year that it is deferred.

(Section 4.9)

Recommendation 12

Should a judge who is eligible for early retirement wish to elect a pro-rated annuity that is payable immediately, the value of the annuity be reduced by 5% per year for every year that the annuity is paid in advance of age 60.

(Section 4.9)

Recommendation 13

Effective as of April 1, 2000, the annuity provisions of the *Judges Act* be amended to provide judges with the option to elect a survivor's benefit of 60% of the judicial annuity, with a consequent reduction in the initial benefit calculated to minimize any additional cost to the annuity plan.

(Section 4.10)

Recommendation 14

Effective as of April 1, 2000, judges have the further flexibility to elect a survivor's benefit of up to 75% of the annuitant's pension, with an actuarial reduction to initial benefits that will make the election as close to cost neutral as possible.

(Section 4.10)

Recommendation 15

Subsection 44(3) of the *Judges Act* be repealed.

(Section 4.10)

Recommendation 16

Effective as of April 1, 2000, a Justice of the Supreme Court of Canada who retires and who, with the certification of the Chief Justice is required to participate in judgments for up to six-months following retirement, be compensated at full salary (calculated at the time of retirement) for the time that he or she so serves, and be entitled to an appropriate portion of the Incidental and Representational Allowances.

(Section 4.12)

Recommendation 17

A separate plan, under the general framework of the PSMIP, be created promptly for the Judiciary so as to provide the Judiciary with basic life insurance, post-retirement life insurance, and supplementary life insurance benefits that are, in all material respects, the same as those now enjoyed by members of the Executive Plan.

(Section 5.1)

Recommendation 18

Incumbent judges, at the time of introduction of the new plan, have the option, at their sole discretion, of opting out of insurance coverage or electing to accept coverage of 100% of salary, rather than 200% of salary.

(Section 5.1)

Recommendation 19

The Government take all available steps with the trustees of the applicable health benefits plan to effect a change under the plan to the hospital benefits available to the Judiciary, so as to increase such hospital benefits from $60.00 per day to $150.00 per day at no cost to judicial participants in the plan.

(Section 5.2)

Recommendation 20

Effective as of April 1, 2000, survivors of members of the Judiciary who die by accident or an act of violence occurring in the course of, or arising out of, the performance of their judicial duties should receive survivor benefits at the maximum level and on the same basis as now provided for the most senior category of public servants for whom such benefits are currently provided.

(Section 5.3)

Recommendation 21

When the dental plan is amended to provide coverage to retirees, retired judges be eligible to participate on the same terms and conditions as other retirees.

(Section 5.4)

Recommendation 22

The Government pay 80% of the total representational costs of the Conference and Council incurred in connection with their participation in the process of this inquiry as of May 31, 2000, such payment by the Government not to exceed the aggregate amount of $230,000, inclusive of the amount of $80,000 already contributed by the Government as of the date of this report and any extraordinary and explicitly identifiable increase to the budget of the Council in order to fund the participation of the Judiciary in the work of this Commission, and that the remainder of such costs be paid by the Conference and Council in such proportion as they deem appropriate.

(Section 6.5)

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[1] [1998] 1 S.C.R. 3. (*P.E.I. Judges Reference*)
[2] *Ibid*. 88, para. 131.
[3] *Judges Act*, R.S. 1985, c. J-1, as amended (the *"Judges Act"),* s. 26 (1).
[4] *Ibid.,* s. 26(1.1).
[5] *Ibid*., s. 26(7).
[6] *Ibid.*, s. 26.1. The Chair of the Commission is Richard Drouin, O.C., Q.C and the Commissioners at the time of the Report were Eleanore Cronk and Fred Gorbet. Ms. Cronk resigned her position on the Commission on October 12, 2000.
[7] The interim and final Commission Reports, written submissions and supporting materials can be found at www.quadcom.gc.ca .
[8] The further work that is required is described *Infra.,* Section 3(c).
[9] The alternative formula is discussed *Infra.*, Section 3(d).
[10] Section 25(2) of the *Judges Act* provides for an annual adjustment to salaries based on the Industrial Aggregate to protect against inflation. The Industrial Aggregate ("IA") is a measure of average weekly wages and salaries across Canada produced by Statistics Canada. On April 1st of each year, judges receive an increase based on the increase in the IA over the previous twelve months, to a maximum of 7%.
[11] The last salary increase was effective April 1, 1998. The IA on April 1, 2000 was 0.67%, resulting in an all inclusive percentage increase (salary increase plus statutory indexing) of 11.2% as of April 1, 2000.

The $2000 per year incremental salary increases represents a percentage increase of approximately 1% in each year.

[12] The incidental allowance (s. 27(1), *Judges Act*) permits the judiciary to purchase items and equipment, such as robes, law books and computers, which assist in the execution of judicial functions. This allowance has not been increased since 1989. The Northern allowance (s. 27(2), *Judges Act*) is intended to contribute to the higher cost of living in the territories; it has not been increased since 1989 either. Finally, representational allowances (s. 27(6), s. 27(7), *Judges Act*) reimburse Chief Justices and other like senior judges for travel and other expenses actually incurred as they discharge their special extra-judicial obligations such as representing their courts at conferences and public events. Representational allowances have not been increased since 1985.

[13] The 11.2% is inclusive of statutory indexing as set out in Fn. 11.

[14] *Report of the Judicial Compensation and Benefits Commission* ("*Report*"), May 31, 2000, at 116-117.

[15] *Ibid*., at 78.

[16] Section 42(1) of the *Judges Act* sets out the eligibility requirements for retirement with a full annuity. Section 42(1)(c may be seen as an exception to the general rule of holding judicial office for a minimum period of years in that a judge who resigns as a result of a permanent disability may still receive a full annuity.

[17] In Recommendations 9 to 12, the Commission has recommended that the pro-rated, early retirement option be available as of April 1, 2000, effectively making its application retroactive. However, it is not feasible to make the early retirement option retroactive; for example, a judge can not elect a retroactive retirement date of April 2, 2000 when in reality the judge held judicial office from April 2, 2000 to the date of election. Accordingly, the *Judges Act* will be amended to implement Recommendations 9 to 12, but provide that the amendments be effective upon the coming into force of the legislation.

[18] Recommendation 6.

[19] Recommendation 7. This is consistent with the treatment afforded to members of regular employer-sponsored pension plans (including federal public servants) who cease to accrue benefits while still employed.

[20] The option would be exercisable at the time of retirement. (A limited time period will also be extended to retired judges to elect an enhanced survivor benefit.) Exercise of the option would be void if the judge dies within the first year, with original entitlements reinstated. The formula for actuarial reduction would be established by regulation based on mortality tables adjusted over time based on actual experience with the judicial constituency. Finally, although the Commission has recommended that Recommendations 13 and 14 be implemented as of April 1, 2000, it is not feasible to provide for retroactive application. Therefore, the *Judges Act* will be amended to provide an effective date upon the coming into force of the legislation.

[21] Recommendation 20 addresses benefits for accidental death and death caused by act of violence (also known as "slain on duty"). Dependents of judges would be provided an accidental death benefit and a slain on duty benefit equivalent to the level of benefit that is available to the dependents of the most senior category of public servants, being Executive 5. The entitlements would be implemented by statute, with the specifics of the formula provided by regulation. The accidental death benefit would be consistent with the benefit derived using formula provided in the *Government Employee Compensation Act*. The slain on duty benefit would be consistent with the benefit derived using a formula similar to the "Public Service Income Benefit Plan for Survivors of Employees Slain on Duty". Although the Commission recommended that Recommendation 20 be implemented as of April 1, 2000, as it is not feasible to make Recommendation 20 retroactive, the *Judges Act* will be amended to provide an effective date upon the coming into force of the legislation.

[22] PSMIP is a plan which is established and insured contractually with a private insurer. It is administered by a Board of Trustees. Both the consent of the insurer and the concurrence of the Board is required to establish a new plan under PSMIP. Recommendation 19, on the other hand, engages the Public Service Health Care Plan (PSHCP); Treasury Board Secretariat will extend 100% employer-paid coverage under the PSHCP for family hospital provisions Level III ($150/day) to all active judges.

[23] Currently, a judge must be a minimum of age 65 to elect supernumerary status (s. 28(2), *Judges Act*).

[24] The Parliament of Canada establishes the structure of the Federal Court of Canada and the Tax Court of Canada, including the creation of supernumerary offices (s. 28(1), *Judges Act*).

[25] S. 29 (1) of the *Judges Act* provides: Where the legislature of a province has enacted legislation establishing for each office of judge of a superior court or courts of the province the additional office of

supernumerary judge of the court or courts and a judge of such a court has notified the Minister of Justice of Canada and the attorney general of the province of his election to give up regular judicial duties and hold office only as a supernumerary judge, the judge shall thereupon hold only the office of supernumerary judge of that court and shall be paid the salary annexed to that office until he reaches the age of retirement, resigns or is removed from or otherwise ceases to hold office.

[26] Eighty-three (83) additional judges would be eligible to elect supernumerary status. (*Report*, Appendix 9, at 2).

[27] *Rice v. New Brunswick* (1999), 181 D.L.R. (4th) 643 (N.B.C.A.); *Mackin v. New Brunswick (Minister of Finance)* (1999), 40 C.P.C. (4th) 107 (N.B.C.A.); leave to appeal granted 2000 S.C.C.R. No. 21 (QL).

[28] Representational costs include the costs of legal services and disbursements such as expert consultant fees, travel expenses, photocopying and related administrative costs. The Commission recommended that the payment not exceed the aggregate amount of $230,000, inclusive of the amount of $80,000 already contributed by the Government.

[29] The Government's position is explained in its submission to the Commission dated February 3, 2000.

[30] In essence, the judiciary's legal representational costs would be reviewed by an assessment officer of the Federal Court of Canada for reasonableness, and the Government would then pay 50% of the resulting total.