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1999 JUDICIAL COMPENSATION AND BENEFITS COMMISSION

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TABLE OF CONTENTS

Page

SECTION I: INTRODUCTION **1-1**

Overview 1-2

The Role of the Judiciary in Society 1-5

A History of Ignored Triennial Commissions 1-8

The Executive's Pattern of Reluctant Response to Salary Recommendations 1-12

The Executive's Prompt Response to Needed Compensation Adjustments for Senior Public Servants 1-14

SECTION II: SALARIES **2-1**

The General Approach 2-1

The *Judges Act* Criteria 2-3

A. Economic conditions and the financial position of government 2-3

B. The role of financial security of the judiciary in ensuing judicial independence 2-5

C. The need to attract outstanding candidates to the judiciary 2-6

The Comparators 2-10

A. DM-3's 2-10

B. Judges' salaries in other jurisdictions: 2-13

(i) United Kingdom 2-13

(ii) U.S. Federal Circuit Court Judges 2-13

(iii) Australian Judges 2-14

C. Members of the private bar 2-14

Summary of Conclusions and recommendations 2-15

SECTION III: RETIREMENT BENEFITS 3-1

PART 1 – BACKGROUND 3-1

I. Introduction 3-1

II. Rationale for Proper Retirement Benefits 3-4

III. Historical Background 3-7

PART 2 – DISCUSSION OF RECOMMENDATIONS 3-14

I. Equity Issues 3-14

A. Introduction. 3-14

B. Common law and same sex marriages 3-14

C. Inequities based on gender and age 3-16

1. The changing face of the Canadian judiciary 3-16

2. Unequal burden of contributions and value of benefits 3-17

(a) Younger appointees 3-17

(b) Supernumerary judges 3-20

3. Election of supernumerary status 3-21

D. Recommendations to correct gender and age inequities 3-23

1. The right to retire after 15 years of service on a full annuity of 2/3 salary, payable either at age 60 or when the judge would be entitled to retire on a Rule of 80 basis, whichever comes first 3-23

2. The right to elect supernumerary status for a period not exceeding 10 years after 15 years of service and upon attaining age 55 or, alternatively on reaching Rule of 80 eligibility 3-24

3. Eliminate all contributions to retirement benefits after 15 years of service 3-24

4. Consider the economic impact on the compensation package of the loss of RRSP contributions and, in any event, reinstate the right to contribute after 15 years of judicial service 3-25

5. Increase judicial annuities for long service by an amount equal to 2.2% of salary per year to a maximum of 90% of salary 3-25

6. Provide for an early retirement option 3-25

7. Older Appointees 3-31

E. Single judges 3-34

F. Unfairness of s. 44(3) 3-37

II. Current inadequacies 3-37

A. Basing retirement benefits on current judicial salaries 3-38

B. Spousal benefits 3-41

1. Standard spousal annuity 3-41

2. Joint survivor option 3-42

PART 3 - SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS 3-43

SECTION IV: INCIDENTAL AND NORTHERN ALLOWANCES 4-1

Incidental Allowance 4-1

Northern Allowance 4-2

Summary of Conclusions and Recommendations 4-5

SECTION V: INSURANCE AND RELATED BENEFITS 5-1

Introduction 5-1

Relevant data 5-3

Specific benefit proposals requiring immediate attention 5-4

A. Life insurance 5-4

1. Basic life insurance 5-4
2. Supplementary life insurance 5-4
3. General comments 5-5

B. Health Benefits 5-6
C. Survivor benefits following death on duty 5-8
D. Dental plan 5-9
Summary of Conclusions and Recommendations 5-9

SECTION VI: SUMMARY OF RECOMMENDATIONS 6-1

APPENDICES

I Geographic distribution of sitting Judges

II *Judicial Appointments: Information Guide* (1988)

III Chart depicting the average incomes of lawyers practicing law in Ontario, age 40-50

IV Average age of judicial appointees, 1987-1999

V Cost of maintaining legal electronic and print publications

VI Terms and Conditions of Employment for Full-Time Governor in Council Appointees (June 1997)

SECTION I

INTRODUCTION

> " I think Canadian judges are entitled to receive fair compensation that reflects both the importance of their role and the personal demands of their office.
>
> In deciding what was reasonable, the Scott Commission, in my view correctly, recognized that a complex range of factors must be considered in establishing an appropriate level of remuneration, including the need to ensure levels of compensation that attract and keep the most qualified."[1]

> " . . . I feel it is our responsibility, as members of Parliament, to ensure that the status given the members of the judiciary, that special status in our society whereby they are completely separate from the legislative and the executive orders, must be respected, the division of powers in Canada must be respected and the matter of their remuneration must not be made a topic of a political debate."[2]

> "To my mind, financial security for the courts as an institution has three components, which all flow from the constitutional imperative that, to the extent possible, the relationship between the judiciary and the other branches of government be depoliticized. . . . [I]n the context of institutional or collective financial security, this imperative demands that the courts both be free and appear to be free from political interference through economic manipulation by the other branches of government, and that they not become entangled in the politics of remuneration from the public purse."[3]

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1 The Hon. Anne McLellan, Minister of Justice and Attorney General of Canada, in speaking to the Standing Committee on Justice and Human Rights regarding Bill C-37, *an Act to Amend the Judges Act*, May 11, 1998.

2 The Hon. Jean Chretien, Minister of Justice, in introducing an amendment to the *Judges Act* which established the triennial commission process, *House of Commons Debates* (December18, 1980) at 5898-99.

3 *Reference Re Remuneration of Judges of The Provincial Court of Prince Edward Island, et al.* [1997] 3 S.C.R. 3, per Lamer C.J.C., at 88 (hereinafter "*Provincial Court Judges Reference*").

Overview

These submissions to the 1999 Judicial Compensation and Benefits Commission ("Quadrennial Commission") are made on behalf of the Canadian Judges Conference ("Conference") and the Canadian Judicial Council ("Council").

The Conference was founded in 1979 and incorporated in 1986 under the name "Canadian Judges Conference – Conférence canadienne des juges". Its objects (amongst several) include:

(a) the advancement and maintenance of the judiciary as a separate and independent branch of government;

(b) liaison with the Council to improve the administration of justice and to complement its functions through conferences and various educational programs;

(c) taking such actions and making such representations as may be appropriate in order to assure that the salaries and other benefits guaranteed by s. 100 of the *Constitution Act*, *1867*, and provided by the *Judges Act* are maintained at levels and in a manner which is fair and reasonable and which reflects the importance of a competent and dedicated judiciary;

(d) seeking to achieve a better public understanding of the role of the judiciary in the administration of justice;

(e) monitoring, and where appropriate, seeking to enhance the level of support services made available to the judiciary in cooperation with the Council; and,

(f) addressing the needs and concerns of supernumerary and retired judges.

Over 90% of Canada's 1016 federally appointed judges are members of the Conference.

The Council was established by Parliament in 1971 and its statutory mandate is described in the *Judges Act*, s. 60. The Council is comprised of the Chief Justice of Canada and the Chief Justices, Associate Chief Justices of the provincial and territorial superior courts, Federal Court of Canada, Tax Court of Canada and the Court Martial Appeal Court of Canada. The objects of the Council are to promote efficiency and uniformity, and to improve the quality of judicial service in the those courts. It also deals with complaints and disciplinary matters concerning federally appointed judges. As part of its mandate to improve the quality of judicial services, the Council has established a Judicial Salaries and Benefits Committee to work in conjunction with the Canadian Judges' Conference in preparing for and making representations to the Quadrennial Commission.

The Conference and the Council have worked closely together in preparing the submissions made to the Quadrennial Commission on behalf of federally appointed judges. The recommendations sought from the Commission have all been approved in principle by the directors and executive council of the Conference, and by the Judicial Salaries and Benefits Committee of the Council.

The citations quoted at the outset of these submissions provide an instructive backdrop to these submissions. The citations reflect a recognition of the important and demanding role played by judges in today's society and of the need to establish "fair compensation" which is responsive to that role and which meets the need to attract the most qualified candidates to fulfil it. They also reflect a recognition of the need to shield judicial remuneration from being "made a topic of a political debate". It was for this latter reason that the triennial commission process was established in the first place, in 1980.

Unfortunately, the triennial process has not been a success, in terms of "depoliticizing" judicial remuneration or in terms of enhancing the financial security of judges. Federally appointed judges have not received a substantive salary increase since 1988, and the effect of that increase was offset by a two-year suspension of the cost of living protection imposed at that time. All subsequent salary changes have been the result of indexing. In addition, there have been few improvements in judicial benefits in comparison to what has consistently been recommended by successive triennial commissions. As the Scott Commission noted in its 1996 Report, "regrettably, the result [of the triennial commission process] has been a failure in practice to meet the desired objectives".

The Scott Commission strongly and eloquently pointed out in its 1996 Report, that

> ". . . the Government has, by the process of referral, excused itself from responding to its recommendations in the clear and nonpartisan way that was promised . . .
>
> . . . [I]t would appear, the appointment of successive commissions has simply served to distance the Government from the performance of its obligations when it was thought that it would ensure a prompt and practical response to Parliament's constitutional obligations."
>
> (at 9-10)

Partly in recognition of that failure, and partly as a result of the "constitutional imperative" articulated by the Supreme Court of Canada in the *Provincial Court Judges Reference* case, the Government enacted further amendments to the *Judges Act* in 1998 to establish the new Quadrennial Commission. The present Minister of Justice acknowledged the constitutional imperative when addressing the Standing Committee on Justice and Human Rights during its consideration of Bill C-37. She said:

> "A very important part of Bill C-37 is improvements to the judicial compensation commission process *designed to reinforce the independence, objectivity, and effectiveness of the process* as a means of further enhancing judicial independence. . . . To be objective, a commission must use objective criteria in coming to its recommendations, *and to be effective governments must deal with the commission's recommendations with due diligence and reasonable dispatch.*" (italics added)

The Canadian Judges Conference and the Canadian Judicial Council welcome this fresh recognition by the Executive of the importance of an objective judicial compensation process with its attendant acknowledgement of the constitutional requirement for a timely and responsive reaction on the part of Parliament to the recommendations of the Commission. In the spirit of that renewed recognition, then, we are pleased to make the following submissions to this, the first *Quadrennial* Commission, on behalf of the members of the federally appointed judiciary.

The Role of the Judiciary in Society

The role of the judiciary is fundamental to our society. As Professor Martin Friedland put it, succinctly, in the opening statement of his Report *A Place Apart: Judicial Independence and Accountability in Canada*,[4]

> "Independent and impartial adjudication is essential to a free and democratic society."

In a speech to the Canadian Bar Association in 1994, Chief Justice Antonio Lamer described the importance of such independence and impartiality, in the context of the rule of law, in this way:[5]

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[4] Canadian Judicial Council, *A Place Apart: Judicial Independence and Accountability in Canada,* by Martin L. Friedland, O.C. Q.C. (Ottawa: Communications Canada Group, 1995) at 53-54 (hereinafter the "Friedland Report").

[5] From a speech at the Annual Meeting of the Canadian Bar Association at Toronto, August 20, 1994 at 4.

> "The rule of law, interpreted and applied by impartial judges, is the guarantee of everyone's rights and freedoms. We cannot expect judges to be superhuman; we can expect them, indeed require them, to work in institutions where the conditions promote and protect that impartiality. Otherwise, how could the system work? How could the accused get a fair trial if the judge is not independent and seen to be independent of the prosecution? How could one government in a dispute with another have confidence in the judge in absence of actual and perceived impartiality". Judicial independence is, at its root, concerned with impartiality, in appearance and in fact. And these, of course, are elements essential to an effective judiciary. Independence is not a perk of judicial office. It is a guarantee of the institutional conditions of impartiality."

This role of judges as impartial adjudicators occasionally places them at the centre of controversy, because of the decisions they are called upon to make. Since the advent of the *Canadian Charter of Rights and Freedoms* ("*Charter*") in 1982, however, this has become the norm rather than the exception. Judicial decisions at all levels have become more and more the subject of scrutiny and the focus of criticism by the media, politicians, academics, and by the public. This phenomenon in itself is neither alarming nor exceptional. Decisions made by judges must be open to vigorous criticism. Nonetheless, judges are increasingly called upon to adjudicate on sensitive and contentious matters of a socio-political nature. They arise out of the *Charter* and the multi-faceted character of our society. This trend has been enhanced by the willingness of Parliament and the provincial Legislatures to leave such issues for determination by the courts – as illustrated by the recent decisions of *Vriend* v. *Alberta*[6], *M.* v. *H.*[7], and *Marshall* v. *R.*[8], as examples. As a result, the judiciary has become a lightning rod for the disappointment – and, indeed, anger – of those who, usually for their own legitimate life-view reasons, are opposed to whatever social direction a particular

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6 [1998] 1 S.C.R. 493.

7 [1999] 2 S.C.R. 3.

8 (September 17, 1999), No. 26014 (S.C.C.)

decision is seen to be moving the law and the country. At the same time, there are other groups who support the result of such decisions. Consequently, the judiciary finds itself more and more at the vortex of political debate.

This situation has implications for the judiciary and society in several areas. However, we emphasize it before the Quadrennial Commission because it has ramifications for the fixing of judicial remuneration in a fair and "de-politicized" fashion. At any given time there will always be articulate and vocal groups in society who are disaffected with the judiciary. They are able, readily, to have their views presented through a media which has become more and more interested in judicial affairs, and therefore their views are influential. That these same groups, on another occasion, may be very much in favour of something the judiciary has done matters not. On the different occasions there will be *other* groups upset. The point is that there will seldom be a time when there is widespread public or media support for improving judicial salaries and benefits.

Thus, decisions about what constitutes fair and reasonable remuneration for the judiciary require a willingness to look beyond the dust created by political debate. Notwithstanding the Triennial Review Process that was created in 1980 to put in place a mechanism which would lead to just such a result, the brief history of the Triennial Review which follows demonstrates that it failed in achieving its objective. As Chief Justice Lamer observed, in the same speech to the Canadian Bar Association cited above, the Triennial Commission,

> "looks good on paper, but it has one problem: it just does not work. Why? Because the Executive and Parliament have never given it a fair chance."

The last of the Triennial Commissions, the Scott Commission, agreed, as we have noted.

A History of Ignored Triennial Commissions

Judges may be forgiven for having a jaded view of the efficacy of the commission process in the past. The process is recognized to have failed. Indeed, a review of the history of the Triennial Commissions will show how a concept born in optimism died in pessimism and scepticism. It was not intended to be that way.

The original intent was set out by the then Minister of Justice, Jean Chretien, when he introduced the triennial process in the form of an amendment to the *Judges Act* on December 1, 1980. Part of what he said has been cited at the outset of this Submission. More fully, however, he explained the reasons for the amendment in this fashion:

> "The matter of the remuneration of Judges has never been the subject of a political debate. The Constitution stipulates that we must set the remuneration of the judiciary; they are the only group of citizens whose salaries are discussed specifically in the House, which makes it a very delicate situation, I feel.
>
> I am sure everyone in Canada agrees that we have a judiciary that works very well. It poses very few problems. All those who have accepted the appointment, whatever their political hue, if any, have always set aside political considerations to serve justice. In Canada, we have three orders of power: the executive, the legislative and the judiciary. . . . I feel it is our responsibility, as members of Parliament, to ensure that the status given the members of the judiciary, that special status in our society whereby they are completely separate from the legislative and the executive orders, must be respected, the division of powers in Canada must be respected and the matter of their remuneration must not be made a topic of political debate.[9]

As previously mentioned, however, it has not worked out that way. The process has indeed become politicized.

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[9] *House of Commons Debates* (December 18, 1980) at 5898-99.

The reality is that over the past 25 years judges have received a total of only three (3) substantive salary increases. One of those predated the establishment of the triennial process. The second occurred in 1985, and the third in 1987.

On December 17, 1987, Parliament passed legislation[10] in response to the Guthrie Report (which had been released on February 27, 1987). Under those amendments to the *Judges Act*, Parliament created an unusual but badly needed three-stage increase in judicial salaries. Under the first stage, retroactive to April 1, 1986, the salary level went up to $115,000 from $105,000; in the second stage, effective April 1, 1987, the salary level went up to $121,300; and, finally, in the third stage, effective April 1, 1988, the salary level went to $127,000. This was the last real salary increase given to the federal judiciary to the present day. All other increases have been the result of indexing.

It may be noted as well that the 1987 three-stage increase did not, in fact, fully implement the Guthrie recommendations. Guthrie had recommended that the judicial salary should be increased to $127,700 effective April 1, 1986, whereas Parliament only provided for this level as of April 1, 1988. At the same time, as previously noted, the legislation *suspended* indexing for the last two years of the three-stage salary increase without any consultation with the judiciary and directly in contravention of the Guthrie recommendation that the indexing clause should remain unimpaired.

Later salary increases since 1988 have, of course, been a result of the annual indexing adjustments to reflect inflation in the economy. This includes the "catch-up" increase of 8% in 1998, following the Scott Commission recommendation, to reflect the indexing of increments lost during the freeze period between 1992 and 1996.

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[10] S.C. 1987, c. 47.

It is easy to appreciate, then, why the triennial review process established in 1981 to provide a non-partisan mechanism for remuneration adjustments for judges has over the years lost credibility with the judges. In 1995, the Scott Commission vividly described the problem, in these terms:

> The result has been a failure in practice to meet the desired objectives. Since the first Triennial, there have been four Commissions (Lang (1983), Guthrie (1986), Courtois (1989) and Crawford (1992)). In spite of extensive inquiries and exhaustive research in each case, recommendations as to the establishment of judicial salaries and other benefits have fallen almost totally upon deaf ears. The reasons for this state of affairs have been largely political.
>
> Prior to the establishment of the present process, the dictates of section 100 of the *Constitution Act* have required successive Ministers, on a regular basis, to ensure that Governments discharge their constitutional responsibilities. Success has frequently been mixed. An unanticipated and unintended result of the establishment of the present Triennial process has been the insulation of Ministers from the otherwise pressing requirements of the Constitution with respect to salaries and benefits. Upon delivery of successive reports, political debate in Committee has been followed with governments behaving as though, "having caused the report to be laid before Parliament," they were thereby absolved from their constitutional responsibilities. This situation represents not only an unexpected, but a highly undesirable, result of the establishment of the Triennial Review Commission model. What was seen as a positive step has in many ways proved to have been negative. **In spite of the thorough recommendations by successive Commissions, Parliament has failed in a proactive sense, to fix judicial salaries and benefits for many years. Furthermore, successive reports have failed to generate any meaningful response from government. The whole subject of judicial salaries and benefits has, in spite of the best intentions, been politicized.** The present Commission has detected in its hearings and consultations a very definite impact on judicial morale caused almost entirely by the fruitlessness of the present process. [at 7-8, emphasis added]
>
> . . . . .

> The problem is not simply that the report of the Triennial Review Commission is laid before Parliament as the *Judges Act* requires but that the Government has, by the process of referral, excused itself from responding to its recommendations in the clear and nonpartisan way that was promised. One could argue that the establishment of the Commission has created an imperative obligation on the Government to consider Commission reports and make recommendations to Parliament thereupon, apart altogether from the adoption of any of the specific recommendations contained in the report. Continued indifference on the part of Governments (and through such Governments successive Parliaments) to recommendations made by Review Commissions has undermined the system and the expectations which accompanied its creation in 1981. Not only has inaction on the part of the government disheartened the judges, but a greater concern is the fact that it will undoubtedly have a negative effect, over the course of time, upon candidates for the judiciary best suited for judicial appointment, candidates who are required almost inevitably to make significant economic sacrifice in order to accept the appointment. Judicial despondency, interestingly, is not attributable so much to Parliament's failure to accept the recommendations of successive Commissions as it is to the Government's failure to react to such recommendations in advance of general debate or, indeed, at all. Regrettably, it would appear, the appointment of successive commissions has simply served to distance the Government from the performance of its obligations when it was thought that it would ensure a prompt and practical response to Parliament's constitutional obligations. [at 9-10]

This history may be contrasted, for example, with the response of government to the Strong Report[11] on remuneration for executive-level public servants, including the DM class, received by the Government in *late January, 1998.* On *February 20, 1998*, the Executive made an Order in Council providing for *implementation in full* of its recommendations. The Scott Commission reported on judicial remuneration and benefits in *September, 1996*. Legislation enacted to give effect to certain of its recommendations only received Royal Assent on *November 18, 1998*. As noted earlier, its recommendations were only *partially* implemented by legislation in that the recommended salary "catch-up"

[11] *Advisory Committee Report on Senior Level Retention and Compensation*, released January, 1998.

was staged over a two-year period and numerous other recommendations were ignored.

It is against this background that the Conference and the Council ask the Commission to consider the particular history of past triennial commissions.

The Executive's Pattern of Reluctant Response to Salary Recommendations

The Lang Report was issued on October 6, 1983; the Executive and Parliament delayed their response until October, 1985. They refused to accept and follow the commission recommendations, claiming that the Government was in a period of fiscal restraint (although the Minister of Justice acknowledged in the House that the country was on the road to recovery). Instead, Parliament set judges' salaries at a rate considerably lower than that recommended by Lang, who had proposed that the salary of a superior court judge in 1975 be accepted as the baseline.

The next report was the Guthrie Report, released on February 27, 1987. The Guthrie Commission concluded that the 1975 baseline approach taken by Lang was the appropriate one, but found that Lang had made a calculation error which translated into a further increase of $9,000 per year from the salary recommended by Guthrie. In November, 1987, the Government of the day responded by introducing legislation which enacted the recommended salary increase, but which did so over a period of three years and which largely offset the increase by removing the judges' cost of living protection for two years. The Minister of Justice explained the Government's response in this way:[12]

> "The government has accepted the findings and recommendations of the commission regarding salaries and is implementing the recommendations in this Bill. However, in the context of the

[12] *House of Commons Debates* (November 5, 1987) at 10789.

> Government's fiscal framework, we will be phasing in the proposed adjustment over three years. Clause 1 allows for increase effective April 1 in each of the years 1986, 1987 and 1988.
>
> The Bill supersedes indexing adjustments for 1987 and 1988 during this phase in period. *I think it is important to understand* that. Therefore, Hon. Members will realize *that a certain portion of the adjustments being affected in Bill C-88* _*would have been received in any event*_ through the operation of the indexation provisions in the Judges Act, indexation provisions which, I might add, use the industrial aggregate index as is the case for Members of Parliament and others." (emphasis added)

In short, Parliament purported to implement the Guthrie Report recommendations, but what it gave with the one hand it took away with the other through (a) the delayed response, (b) the three year phase in period, and (c) the offset of salary increase by the removal of cost of living protection. Indeed, the suspension of the indexing clause for 1987 and 1988 expressly disregarded the conclusion of the Guthrie Commission that it should not be interfered with.

On March 5, 1990, the Courtois Commission released its report. It again confirmed the 1975 baseline and reasserted the basic principle that judicial salaries should have rough equivalence with those of senior deputy ministers. The Government's response to the Courtois Report was allowed to die on the Order Paper.

The 1992 Crawford Commission released its report on March 31, 1993. It recommended no further salary increase because, at the time, the Canadian economy had fallen into recession and the salary level of judges was roughly that of the base salary for DM-3 senior public servants. This latter point ignores the fact that senior public servants are eligible for annual bonuses and may receive annual increments within their salary range. The Crawford Commission was still extant when the Government froze public sector salaries. The freeze was imposed

on the judiciary without regard to the existence of the Commission and without consultation with the judiciary or its representatives.

The Scott Commission reported on September 30, 1996 (after obtaining an extension to its mandate). In addition to its strong criticism of the process – to which we have earlier alluded – Scott recommended a "catch-up" of about 8% to reflect the indexing lost during the freeze period between 1992 and 1996. Scott, therefore, did not provide a real salary increase. All the Scott Commission proposed was that Parliament should restore the judges' salary to the level it should have reached had the earlier salary freeze not been unilaterally imposed without consultation or recommendation from the Crawford Commission.

The Executive's Prompt Response to Needed Compensation Adjustments for Senior Public Servants

The Executive and Parliament did not respond to the Scott Commission with legislation until 1998. Interestingly, the Government introduced the legislation in the Spring Session which then languished on the Order Paper over the summer months. This may be contrasted with the comparatively swift parliamentary treatment of legislation increasing the compensation of Members of Parliament and Senators and giving senior public service managers large increases – on the basis, in the case of the latter, of the Strong Report which had only been released in late January of that year. In its opening chapter, entitled "The Future of the Public Service", the Strong Committee declared:

> "Canadians and their elected representatives have long enjoyed an ethical, non-partisan and professional Public Service – a Public Service respected as one of the best in the world. We believe that these core values need to form the foundation for the Public Service in the next millennium.
>
> . . . . .

> While we do not wish to sound overly dramatic, it is our view that the government has reached a watershed with respect to the quality of the Public Service leadership group. To continue the current approach to human resources will lead to an inevitable weakening of this cadre. Not only will departures accelerate over the short term, but the Public Service will not be able to attract and retain the people it needs to replace the very high proportion of managers expected to retire in the next decade."

As we have already noted, Treasury Board and Cabinet recognized this need, and caused the Strong Report's recommendations to be implemented, effectively in full, within a month of its receipt, for senior level public servants. The Conference and Council ask for nothing more than a similar constructive and prompt response to the recommendations to be made by this Quadrennial Commission.

SECTION II

SALARIES

The General Approach

Apart from indexing protection[13] there has not been a real and substantive increase in the salaries of federally appointed judges in Canada since 1988. As a result, the gap between judges' remuneration and that of private practitioners – from amongst whom the bulk of candidates for the judiciary are to be drawn – has become considerable. This is particularly the case in the high cost urban areas, where a large portion of Canada's federally appointed judges now reside. There is also a similar, although lesser, gap between judges' remuneration and that of senior public servants.

The time has come for a real and substantive increase in the salaries of federally appointed judges.

Prevailing conditions in the Canadian economy and the overall economic and current financial position of the federal government are buoyant. The recent amendments to the *Judges Act* confirm these factors as key criteria which the Commission is required to take into account. In addition, those same amendments give legislative force to the imperative that judicial remuneration reflect the need to attract <u>outstanding</u> candidates to the Bench. The *Act* does not mandate the attraction of "average" candidates, or even "good" candidates. It

[13] There is an issue as to whether that cost of living protection was unconstitutionally removed by the Government in December 1992, since the issue was not brought before the Crawford Commission which was in the midst of its deliberations at the time.

mandates the attraction of "*outstanding*" candidates. In previous Triennial Commission exercises the Commissioners have repeatedly adopted the standard of the need to attract "individuals of outstanding character and ability". The amendments now give statutory effect to that criterion. As noted at the outset of these Submissions, the present Minister herself has referred to the need to attract the "most qualified" to the Bench.

The various comparators, which will be addressed later, all indicate that salaries of the Canadian judiciary have fallen behind. They support the contention that a quantitative leap is justified to bring those salaries (and benefits) more in line with what is appropriate for superior and appellate judicial remuneration as we move into the 21st century. In Ontario, Provincial Court judges were recently awarded a salary increase of approximately 30%, to $170,000 per annum by the year 2000, in recognition of the role played by that level of judiciary in the Province. This amount is just slightly below the present level of income for the federally appointed judges who exercise a much broader general jurisdiction of the superior court nature.

It is our submission that a judicial salary of at least $225,000 per year, effective April 1, 2000, is required to meet the criteria established by the *Judges Act* itself, and to establish the necessary reasonable relationship between judicial remuneration and that of the pool of talent from which judges are traditionally and most frequently drawn, i.e., the private Bar. Moreover, given the four year intervals between Quadrennial Commissions, and likely delays in implementing salary recommendations, provision will have to be made to supplement the $225,000 base salary with further staged increments, in addition to indexing adjustments, for the duration of the period until the appointment of the next Quadrennial Commission as necessary to reflect any parallel movement in the remuneration of the DM-3 comparator group.

The *Judges Act* Criteria

Section 26 of the *Judges Act* deals specifically with the establishment of the Judicial Compensation and Benefits Commission, its mandate, and the criteria it is to consider. It states:

> s. 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 <u>shall</u> 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.
>
> (emphasis added)

A. Economic conditions and the financial position of government

The prevailing economic conditions in Canada and the overall economic and current position of the federal government are better at the present time than has been the case for many years. In his 1999 Economic and Fiscal Update, delivered on November 2, 1999, Hon. Paul Martin, Minister of Finance, noted that "on almost every economic measure that matters, [Canada has] made enormous strides". He emphasized that the country's "strong economic performance

reflects in part [its] strong financial performance", and declared that "this country is in the process of achieving a financial turnaround of historic proportions." Against such a backdrop, he predicted planning surpluses over the next 5 years of the following magnitude:[14] for fiscal year 2000-2001, a surplus of $5.5 billion; for 2001-2002, a surplus of $8.5 billion; for 2002-2003, a surplus of $12.5 billion; for 2003-2004, a surplus of $17.5 billion; and for 2004-2005, a surplus of $23 billion. This totals over $67 billion in surplus over the next 5 years. Moreover, on December 1, 1999 *The Globe and Mail* reported that the incomes of Canadians are rising as the economy surges ahead and cited predictions of between 1.5 and 2 percent per year in real personal disposable income per person over the next few years. If these predictions are accurate, Canadians generally will be experiencing "real" increases in income, in addition to cost-of-living protection they may have, over the life of this Quadrennial Commission. We ask the Commission to keep in mind, then, the need to look forward from the time its Report is made through the remainder of its life, when determining what recommendations it will make.

Thus, while fiscal responsibility remains the order of the day, the Government's financial affairs appear to have been put in order and the need for governmental restraint can no longer be raised as an excuse for ignoring the Commission's recommendations. The state of the Canadian economy generally is robust. In short, the factors relating to the criteria in subsection 26(1.1)(a) of the *Judges Act* are therefore conducive to an overdue and needed increase of a substantive and quantum nature in judicial salaries.

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[14] These estimates specifically exclude an annual contingency reserve of $3 billion and an additional "extra prudence" of $1 billion rising to $4 billion in the fifth year.

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

There is a link between the components of institutional financial security for judges and the concept of the separation of powers which mandates the "depoliticization" of judicial remuneration. Chief Justice Lamer made the following observations in that regard, in the *Provincial Court Judges Reference* case:

> "These different components of the institutional financial security of the courts inhere, in my view, in a fundamental principle of the Canadian Constitution, the separation of powers. As I discussed above, the institutional independence of the courts is inextricably bound up with the separation of powers, because in order to guarantee that the courts can protect the Constitution, they must be protected by a set of objective guarantees against intrusions by the executive and legislative branches of government.
> (…)
> What is at issue here is the character of the relationships between the legislature and the executive on the one hand, and the judiciary on the other. These relationships should be depoliticized. (…)
> (…)
> The depoliticized relationships I have been describing create difficult problems when it comes to judicial remuneration. On the one hand, remuneration from the public purse is an inherently political concern, in the sense that it implicates general public policy. Even the most casual observer of current affairs can attest to this. (…)
> (…)
> On the other hand, the fact remains that judges, although they must ultimately be paid from public monies, are not civil servants. Civil servants are part of the executive; judges, by definition, are independent of the executive. The three core characteristics of judicial independence – security of tenure, financial security, and administrative independence – are a reflection of that fundamental distinction, because they provide a range of protections to members of the judiciary to which civil servants are not constitutionally entitled." (at 42-43)

In a recent report prepared for the Canadian Judicial Council, Professor Friedland argues that by providing a level of judicial remuneration which is more than "just adequate" judicial independence is enhanced since:

> "(1) it secures to judges a level of income sufficient that they may devote their full attention to being protectors of the Constitution unfettered by financial concerns;
>
> (2) it promotes public confidence in the integrity and dignity of the judicial function;
>
> (3) it ensures a satisfactory pool of talented members of the bar willing to forego the benefits of the private practice of their profession to assume a position on the bench."[15]

C. The need to attract outstanding candidates to the judiciary

Even with the indexing catch up effective April 1997, the gap between judicial salaries and the average incomes of members of the private Bar – who form the basic pool from which candidates for the judiciary are to be selected – is now quite significant. This is particularly so in the increasingly congested – and highly expensive – urban areas, where a very large portion of the judiciary is now based. If "outstanding" candidates are to be attracted to the Bench, this gap cannot be allowed to continue or, worse, to widen.

The Scott Commission (1996) considered "the relationship between judicial income and income at the private Bar from which candidates for judicial office are largely drawn" to be of very high importance. The Commissioners wrote:

> The provisions of s. 25 of the *Judges Act* are reflective of much more than a mere indexing of judges' salaries. They are, more specifically, a statutory mechanism for ensuring that there will be, to the extent possible, a constant relationship, in terms of degree, between judges' salaries and the incomes of those

15 Friedland Report, *supra* Note no. 4, at 53-54.

> members of the Bar most suited in experience and ability for appointment to the Bench. *The importance of the maintenance of this constant cannot be overstated. It represents, in effect, a social contract between the state and the judiciary.* By its statutory terms, the judges, who by acceptance of judicial office close the door, on a permanent basis, to any real prospect of a return to their previous lives at the Bar, can at least be certain that their commitment in accepting a judicial appointment will not result over the years in a less favourable financial situation as between judicial service and practice at the Bar than that which prevailed at the moment of their appointment. (at 14-15)
>
> (emphasis added)

A large majority of judges now reside in urban Canada. While cost of living factors are generally accounted for in judicial remuneration through the indexing provisions, there remains a cost of living impact that relates not so much to inflationary pressures themselves, but to the difference between working and living in Canada's more costly urban centres and working and living in smaller towns and rural areas in the country. With the pressures of urbanization – and its inevitable ripple effect on workload and impact on judicial resources – an increasingly larger proportion of judges are facing the economic realities of this differential. Attached as Appendix I to this Submission is a Chart showing the number of federally appointed judges in Canada by "official cities". Of a total of 1016 judges, 512 of them – more than 50% – are from highly urban centres such as Vancouver, Calgary, Edmonton, Toronto, Ottawa-Hull and Montreal. When one includes Halifax, Quebec City, Hamilton, Winnipeg and Regina, the proportion of judges sitting in urban centres increases to about 2/3 of all federally appointed judges.

Judicial remuneration needs to reflect this urbanization factor in the cost of being a judge in modern society.

Anecdotal information provided to members of the Conference indicates that many senior private practitioners in centers such as Vancouver, Calgary, Toronto and Montreal are earning yearly incomes in the range of $450,000 to $600,000, and sometimes in excess of those sums. Indeed, the range for *younger* partners appears to be around $200,000 to $225,000 in such communities. Similar information for Halifax, a smaller urban centre, indicates that regardless of the size of firm, senior practitioners in private practice earn between approximately $250,000 and $325,000 per year. Thus, the gap between judicial salaries and private practitioner income is substantial, particularly in the more highly populated urban centres where the majority of federally appointed judges now reside. To confirm the existence of this substantial gap, the Conference and Council are in the process of having a survey prepared based upon data obtained from Revenue Canada and derived from income tax returns.

It is sometimes noted, by way of distinction between the position of a judge and a lawyer, that judges have "a pension" whereas lawyers in private practice, for the most part, do not have pension plans. This is a distinction we recognize. However, judges are required to contribute 7% of their annual income towards their annuity and, unlike members of the Bar, they do not have the right to contribute to RRSP's. Nor do judges have the advantage of the various tax deductions for business expense purposes which lawyers and other business people enjoy. Finally, unlike most people in society who choose to do so, judges have no opportunity to supplement their income in any other way. They are precluded from doing so.[16]

The loss of the opportunity to contribute to RRSP's is significant, particularly for younger appointees. In 1992, the Government unilaterally removed this opportunity, thereby affecting all judges who had accepted judicial

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[16] *Judges Act*, s. 55.

office when the right to contribute was in place. Previously, the Government had held out in materials prepared for the purpose of attracting people to the judiciary, the advantages of being able to make RRSP contributions.[17] Hon. Kim Campbell, the then Minister of Justice, herself acknowledged the negative effect of the loss of the judges' right to make such contributions in a letter sent to the Chair of the 1992 Triennial Commission. She observed that the changes to the RRSP rules had had "a significant negative impact" in terms of "overall net compensation of judges", and urged the Crawford Commission to take the loss of that benefit into account "in assessing the adequacy of judicial salaries and other benefits."[18] The courts have ruled against the judges in a challenge of the RRSP regulations in this respect.[19] However, the same negative impact on the overall net compensation of judges remains.

We urge the Quadrennial Commission to consider the effect of the loss of the right to make RRSP contributions on judges' overall compensation, and to take that loss into account in determining the appropriate level for judges' salaries. At the very least, the judges' right to contribute to an RRSP should be reinstated after 15 years of service.

Finally, we note that judges do not get the kind of regular salary adjustments which are available to employees in the public and private sectors – through collective bargaining or otherwise. This is accounted for by a number of factors – the "depoliticization" of the judicial remuneration process and the lengthy periods between Commissions (now 4 years); a further period of "repoliticization" during which questions of implementation are dealt with; and

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17 *Judicial Appointments: Benefit Guide* (Ottawa: Commissioner for Federal Judicial Affairs, 1988), at 8, reproduced as Appendix II.

18 Letter from Hon. Kim Campbell to Purdy Crawford, Q.C., October 1, 1992.

19 *Trussler* v. *R.*, [1996], 1 C.T.C. 2355 (T.C.C.), affirmed [1999] 3 C.T.C. 580 (Fed. C.A.).

the simple reality that judges cannot “negotiate”. In short, judges do not get the advantages of the “ups” in the economy, but – as the past history of Triennial Commission reports illustrates – they frequently suffer the consequences of the “downs”. No Government has ever fully implemented the recommendations of a triennial commission. The Scott Commission began its work in 1995. It reported on September 30, 1996. While the Government did in fact respond in a more positive fashion to Scott than in previous instances, it was more than 2 years later before the legislation giving effect to that response was finally enacted, and only after the decision of the Supreme Court of Canada in the *Provincial Court Judges Reference*.

The Comparators

There are three groups of comparators, each one of which signals the need for a real and substantial increase in the remuneration of the federal Canadian judiciary. These groups are: the DM-3’s; members of comparable judiciaries in other countries; and members of the private Bar in Canada, from which the bulk of the members of the Canadian judiciary are drawn.

A. DM-3’s

The 1992 Crawford Commission (Report released March 31, 1993) recommended that “an appropriate benchmark by which to gauge judicial salaries is rough equivalence with the mid-point of the salary range of the most senior level of federal public servant, the Deputy Minister 3, commonly referred to as “DM-3”.

In its written submission to the Crawford Commission, the Government conceded that the DM-3 was an appropriate measuring stick. The same criteria has been considered by other Triennial Commissions, although not necessarily

exclusively. For example, the Courtois Commission Report (1989) stated that the DM-3 measure of equivalence appeared to them to,

> "reflect what the market place expects to pay individuals of outstanding character and ability, which are attributes shared by deputy ministers and judges."

The DM-3 designation is reserved for the Deputy Heads of the major government departments, and is the highest range of salaries for senior public servants. Information provided by the Department of Justice on December 9, 1999 indicates that the *base salary range* for the DM-3's, effective April 1, 1998, is between $173,000 and $203,500, with the mid-point being $188,250. In addition to their base salary, however, they receive an additional amount of up to 10% of base salary (at the present time) by way of performance pay. These additional amounts are not "bonus" payments, but rather – as the Strong Report termed it – are "an integral part of total compensation" and are paid annually on the basis of performance measured against agreed targets. That performance based payments are inappropriate for the judiciary is obvious; but it is the total compensation package for the DM-3's which needs to be considered on a comparative basis in terms of judicial compensation. The 10% additional amount is projected to increase to 20% in 2001, but retroactive to 1999/2000.

Thus, the total annual compensation for the DM-3 (leaving aside benefits), as of April 1, 1999, could be as high as $203,500 plus 20% ($40,700) for a total of $244,200. Taking the mid-range of the base salary at $188,250, the total would be 225,900.[20]

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[20] This information comes from the *Report of an Advisory Committee on Senior Level Retention and Compensation*, dated January 1998, and accepted and approved by Treasury Board in February, 1998.

The Strong Report urged that by fiscal 2000-2001, for all employees who perform fully satisfactorily, "the payouts under the new performance pay scheme [should be expanded] to 100 per cent of potential." It concluded that by April, 2001,

> ". . . full integrity should be restored to the salary structure, i.e., the vast majority of managers should be at their proper position within the salary structure as merited by their performance.
>
> Assuming that the period from the time of publishing this report to 2001 will continue with low inflation, *it will in all likelihood be appropriate at this time to revisit the underlying salary structure."*
>
> (emphasis added)

Thus, provision is made for a review of *the underlying salary structure* of senior public servants within one year of the time when the Quadrennial Commission will be making its Report – leaving aside the issue of when Parliament and the Executive might respond to that Report. If judicial salaries are not brought in line at least with the remuneration of such senior public servants by April, 2000, and provision made for a structural increase in salaries on a staged basis throughout the life of the Quadrennial Commission, the gap is quite likely to again widen greatly by the time of the next Quadrennial process in September, 2003.

We urge this Commission to take those factors into account. We submit that the salaries of federally appointed judges should be at least that of such senior Deputy Ministers.

B. Judges' Salaries in Other Jurisdictions

(i) United Kingdom

As of April 1, 1999, the salary of an English High Court judge is £123,787, or about $309,500 Cdn (at an exchange rate of $2.50).

It is worth noting, as well, that the judges in the United Kingdom have had substantial pay increases on three occasions since 1997. Canadian federally appointed judges have not had a pay increase unrelated to indexing since 1988. Lower court judges in the U.K. have also received substantial increases in the past few years. Circuit judges now receive the equivalent of about $232,000 Cdn (using the same exchange rate of $2.50), and even District judges (who have no criminal jurisdiction, and who hear smaller civil cases) at the equivalent of about $186,000 Cdn, are more highly paid than Canadian superior court and appellate court judges.

It is often said that the above salaries simply reflect the significantly higher cost of living in England, and do not make good comparators. It must be noted, however, that U.K. income tax rates are considerably more favourable than those in Canada.

(ii) U.S. Federal Circuit Court Judges

U.S. federal district court judges now earn $136,700 U.S. At an exchange rate of $1.50, this translates into about $205,000 Cdn. American income tax rates are also significantly lower than ours.

(iii) Australian Judges

Our present information indicates that our Australian counterparts earn about $200,000 Australian, which translates into about the same amount in Canadian dollars.

C. Members of the Private Bar

Earlier we referred to the substantial gap which has developed between judicial salaries and the income of senior private practitioners who form the primary group from which the bulk of the judiciary is appointed. The Scott Commission commented on the great importance of maintaining a reasonable relationship between the income levels of the two groups, saying "it represents, in effect, a social contract between the state and the judiciary". Both the anecdotal information alluded to above <u>and</u> information based upon data provided by Revenue Canada and derived from income tax returns confirm that the gap has reached significant proportions.

In its submissions to the Fourth Triennial Provincial Judges' Remuneration Commission (1998), the Ontario Provincial Judges' Association relied upon data from Revenue Canada for the 1996 taxation year to illustrate average incomes for lawyers in Ontario between the ages of 40 and 50 (the age group from which 70% of appointees to that Court are drawn). As mentioned, the Conference and the Council are in the process of having prepared a survey based upon Revenue Canada data for presentation to the Quadrennial Commission. The full survey will not be completed until January, 2000. It will focus on the income levels of the age group between 44 and 56 – which is a more accurate range for appointees to superior and appellate courts in Canada.

Information is available presently, however, with respect to the 40 to 50 year age group used for purposes of the Provincial Court, and for the 1997 taxation year. That information demonstrates that the top third of the private Bar between the ages of 40 and 50 and practicing law in Ontario earned *on average across Ontario*, more than $380,000 per year. The figures are higher than this for Toronto and the Greater Toronto area, and lower in the balance of the Province.

Filed as Appendix III to these Submissions is a Chart illustrating the average income, and average percentile incomes, of Ontario lawyers between the ages of 40 and 50 working fulltime as lawyers in the private sector during 1997.[21]

Summary of Conclusions and Recommendations

All of the foregoing supports a submission that the time is appropriate for a real and substantial increase in the salaries of Canada's federally appointed judges – a "catch up" with the Bar, the DM-3's and Canadian judges' counterparts in other jurisdictions.

It is submitted that the appropriate level for these salaries is $225,000 per annum, effective April 1, 2000. Moreover, given the four year intervals between Quadrennial Commissions, and likely delays in implementing salary recommendations, provision will have to be made to supplement the $225,000 base salary with further staged increments, in addition to indexing adjustments, for the duration of the period until the appointment of the next Quadrennial Commission. The salaries of judges of the Supreme Court of Canada, and of Chief Justices and Associate Chief Justices should also be adjusted upwards proportionately.

[21] The Chart excludes lawyers earning less than $50,000 from the sample, as a statistical mechanism for eliminating lawyers in the age group in question who work on a part-time basis.

Such a salary level -- together with the indexing protection – will ensure that the remuneration of federally appointed judges is fair and that it will not lag behind a reasonable relationship with the income levels of the practising Bar and those of senior public servants.

We therefore urge the Commission to make the following recommendations:

1. That, in order to re-establish parity of judicial remuneration with the mid-point salary level of DM-3's, and to better reflect current remuneration earned by preeminent members of the Bar in private practice, the base salary of judges effective April 1, 2000, be set at $225,000.

2. To prevent further erosion in the adequacy of judicial remuneration, the $225,000 recommended base salary be supplemented by staged increases, in addition to the indexing provided for by the *Judges Act*, over the remaining incumbency of the present Quadrennial Commission, which would at least reflect further increases in DM-3 remuneration.

SECTION III

RETIREMENT BENEFITS

PART I: BACKGROUND

Introduction

Federally appointed judges are entitled to a pension by virtue of section 100 of the *Constitution Act, 1867* (hereinafter "B.N.A. Act"). They are the only group in society constitutionally entitled to such a benefit and, indeed, the principle of judicial independence requires such an entitlement. The right is translated into a benefit in the form of an annuity granted pursuant to what is now section 42 of the *Judges Act* although, as will be seen below, judicial annuities have existed in one form or another by statute since before Confederation.

At the time of Confederation, and in the years following, judges had life tenure. They were entitled to retire voluntarily, however, and if they chose to do so they had (1) the *right to retire at any age after 15 years of service on an annuity equal to 2/3 salary payable immediately*, and, (2) the right to receive an increased annuity equal to full salary for long service. In addition, they had no obligation to contribute financially towards these benefits.

Today, judges have none of those benefits.

Federally appointed judges are now required to retire at age 75. They are entitled to retire with an annuity equal to 2/3 salary when:

a) they have served 15 years in office and their combined age and years in office total 80 (a modified "Rule of 80");

b) they have continued in office for at least 15 years and have resigned, and in the opinion of the Governor in Council, their resignation is conducive to the better administration of justice or is in the national interest;

c) they have become afflicted with a permanent disability which prevents them from performing their judicial duties; or,

d) they have attained the mandatory retirement age of 75 and have held office for at least 10 years (if 75 with less than 10 years in office, they are entitled to an annuity prorated 1/10 of the full annuity for each year in office).

Judges of the Supreme Court of Canada also have the right to retire at age 65 with 10 years of service on that Court.

There is an urgent need for changes to the present annuity regime. This need arises because,

(a) given the changing makeup and character of the federally appointed judiciary in recent years, the current annuity scheme leads to unequal treatment amongst judges (a characteristic which raises *Charter* implications); and,

(b) not only has there been an actual erosion in retirement benefits for judges, there has also been a relative erosion in such benefits *vis à vis* other Canadians.

During the past fifty years in particular, benefits and pension rights in the public and private sectors have increased substantially. This is not so for the judiciary. Consequently, what was once an attractive part of the judicial compensation package and designed as a key element in assuring financial

security for judges, has now deteriorated relative to retirement benefits currently available to others of similar education and experience. Moreover, the disproportionate adverse impact of certain features of the current judicial regime on various minority groups within the judiciary – such as young appointees (the majority of whom are women), older appointees, single judges, and judges living in common law and same sex relationships – raises *Charter* concerns.

It must be remembered that judges, unlike lawyers in private practice, are prohibited by statute from engaging in any extra-judicial business or occupation, nor do they have the same freedom to make RRSP contributions.

In this Submission, therefore, the Conference and the Council ask the Quadrennial Commission to make recommendations to Parliament to rectify the existing inadequacies and deficiencies in the judges' current annuity plan. Changes are required in order to correct inequalities arising from the more varied makeup of today's judiciary in terms particularly of its age and gender, and to provide long needed improvements in survivor and early retirement provisions. The changes we are proposing are in the nature of "add-ons" to the existing scheme and are consistent with the common understanding and agreement between the Department of Justice (hereinafter "the Department") and the Judiciary that no changes will be made to the basic structure of judicial annuities. What we seek is an annuity scheme which will ensure equal, fair and adequate retirement benefits in the future and which will respect the Constitution.

Specifically, in the discussion which follows below, we will ask the Commission to consider various aspects of the annuity regime which today produce inequities, such as:

- the current criteria necessary to qualify for retirement with an entitlement to a full 2/3 annuity;

- the criteria necessary before a judge may elect for supernumerary status;
- the obligation to make contributions to the judicial annuity for the entire length of service up to retirement;
- the absence of an equitable early retirement option, with the further option of collecting benefits in advance of age 60 on a prorated basis;
- inadequacies in the spousal survivor benefit;
- the economic impact on judges, particularly younger appointees, of the loss of the right to contribute to private RRSPs;
- inequities which result from the modified Rule of 80;
- the failure to provide single judges with a benefit of equivalent value to the spousal benefit;
- subsection 44(3) of the *Judges Act*;
- the lack of a joint survivor option;
- the fact that annuities and benefits payable under the *Judges Act* are not linked to current judicial salaries.

Rationale for Proper Retirement Benefits

There are several reasons why retirement benefits are a key ingredient in the judicial compensation package.

1. First and foremost, as noted above, financial security is one of the cornerstones of judicial independence. Accordingly, retirement benefits are essential to satisfy the constitutional requirement for an independent

and impartial judiciary. Society is not well served if judges are required to have one eye on decision-making and another on how they are going to survive economically once their judicial career ends.

2. An inclusive system of justice requires that not only the independently wealthy be chosen as judges. Therefore, ensuring that judges are financially secure on retirement is a benefit to Canada as well as to the judge because it militates in favour of a diversified, representative judiciary.

3. The judiciary is no longer a homogeneous group. To ensure that this diversity continues, it is essential that the retirement benefits plan meet the needs of an increasingly diverse group of judges – young and old, rich and poor, male and female, those appointed at a young age and those appointed at an older age, judges who are married and judges who are single, and those who live in varying relationships with others whether that be common law, heterosexual or same sex.

4. Judges, unlike other Canadians, are statutorily prohibited from engaging in other businesses or income-earning activities while on the Bench. Hence, there is no ability, once a judicial appointment is accepted, to supplement income in an effort to provide for retirement. For those who accept appointments to the Bench at a relatively young age, before they have had the chance to build up a sufficient retirement portfolio, retirement benefits (and salary) consistent with the principle of financial security are essential.

5. Fair and appropriate retirement benefits ensure that highly qualified, indeed outstanding, candidates from the practising Bar are prepared to come to the Bench. This is critical to the continuation of the high quality of the service required. Given the dramatic changes in private sector wages and pension plans, including increased RRSP limits, it is essential that the retirement benefits be fair, competitive and attractive if qualified appointees are to be attracted to the Bench in their peak earning years, and are to remain there.

6. In accepting appointments to the Bench, appointees generally forego the high earnings potential of their peak career years at the Bar, and this is in part recognized by providing a suitable annuity.

7. Unlike other Canadians, the options for judges on retirement are extremely limited. Judges may be prohibited (as they are in several provinces) from appearing in court on retirement. And yet court work is the one thing in which they have expertise. That prohibition may only last for a set time but time is the one thing they do not have. Once a practitioner is appointed, he or she loses their clients, their practice and their partners, the reality is that there is no going back to a conventional law practice. Nor can one ignore the fact that many retirees have neither the desire nor the energy to continue to work after retirement. Nor should they have to do so. Financial security means just that – the right to retire without needing to work to supplement income.

8. Finally, in the work world today, retirement benefits have become a key element in executive and employee compensation packages. The mere fact that judges' retirement benefits rest on a constitutional bedrock does not in any way lessen their importance to judges personally. One only has to

examine the transformation which has occurred in pension plans in this country over the past 50 years to see that what was once a constitutional imperative for judges has now become a common benefit in today's economy. This helps explain why retirement benefits for judges must keep pace with the increasing enhancements in public and private pension plans. The judicial benefits package has not done so.

To sum up, not only do retirement benefits have constitutional legitimacy; they are also a vital component of the judicial compensation package, which must apply fairly and equally to all judges.

Historical Background

An examination of the current judicial annuity regime in its historical context, rather than in isolation, helps to demonstrate why the Conference and the Council believe strongly that the time has come to update and upgrade judicial retirement benefits. What follows, therefore, is a brief summary of the history of judicial pension and annuities since Confederation.

Both the B.N.A. Act and the *Judges Act* provided, in 1867, for life tenure and the appointment of judges during good behaviour. Judges were appointed for life, but were entitled to **retire voluntarily at any age after 15 years of service** and to receive an annuity equal to **2/3 salary** payable immediately and continuing for life.[22] Judges had no obligation to contribute financially to the funding of these benefits.

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[22] This regime was in place in the courts of Upper Canada even before Confederation: See *An Act to amend an Act Respecting the Superior Courts of Civil and Criminal Jurisdiction in Upper Canada*, S. Prov. C. 1866, c.40, s.1. Immediately following Confederation, the following *Act* confirming the right to retire voluntarily after 15 years on 2/3 salary was passed: See *An Act Respecting the Governor General, the Civil List and the Salaries of certain Public Functionaries*, S.C. 1868, c.33, s.3. See also later *Acts* which confirmed this right: *Judges of Provincial Courts Act*, R.S.C. 1887, c.138, s.14; and *Supreme and Exchequer Courts Act*, R.S.C. 1887, c.135, s.8.

In 1903, Parliament recognized that long service – judicial service beyond 15 years – should be compensated. It amended the relevant legislation[23] to provide that as long as a certain number of years of service were reached by a certain age, judges could **retire voluntarily and receive an annuity equal to *full salary***. For example, if a judge retired at 75 after 20 years of service, an annuity equal to full salary was payable. Again, judges had no obligation to contribute financially to the funding of these benefits. We stress that these rights to retire voluntarily on **full salary** were in addition to the option to retire after **15 years on 2/3 salary**. The choice as to which option to take remained with the individual judge.

In 1919, Parliament eliminated the right to retire voluntarily after 15 years service on 2/3 salary and provided that this could only be done if the Governor in Council decided it was "in the public interest".[24] Such a restriction had never existed before. Thus, a judge's ability to retire voluntarily after 15 years went from a right to a benefit dependent upon the government's blessing. In addition, for future appointees, Parliament terminated the right to receive an annuity equal to full salary for long service. Life tenure with full salary still remained the law, however.

Needless to say, these options made an appointment to the Bench very attractive, and were sufficient to attract the best qualified members of the Bar. Indeed, we note that the right to retire with a lifetime full salary remains the norm for U.S. federal judges.

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23 See *An Act to Amend the Supreme and Exchequer Courts Act, the Exchequer Courts Act and the Act respecting the Judges of Provincial Courts*, S.C. 1903, c.29, s.1.

24 *An Act to Amend the Judges Act*, S.C. 1919, c.59, s.11. The formulation today is whether the resignation is "conducive to the better administration of justice or is in the national interest".

It was not until 1927 that the first imposition of a mandatory retirement concept was introduced.[25] Judges of the Supreme Court of Canada and of the Exchequer Court were required to retire at 75. In exchange for life tenure at full salary, they received an annuity upon compulsory retirement, limited to 2/3 salary. Later, in 1946, the right of a judge to receive a full salary annuity upon voluntary retirement was abrogated and replaced with an annuity based upon 2/3 salary.[26]

Following the 1946 amendments, then, the alternatives for federally appointed judges, except for those serving on the Supreme Court of Canada and the Exchequer Court, were the following: they could remain in office for life, with full salary; or, if eligible for voluntary retirement, they could elect to retire on an annuity based on 2/3 salary. Even with the substantial change in the annuity, introduced by the 1946 amendments, the judicial retirement package remained very attractive in its time. Private disability insurance or RRSPs were then unknown, and there were very few private pension schemes. Thus, the security granted to judges through the retirement portion of their compensation package constituted a distinct benefit and advantage when compared to what was available to the rest of society.

In 1960, however, Parliament made a very substantial change to the judges' retirement regime. The Constitution was amended to eliminate life tenure and to impose mandatory retirement on all superior court judges at age 75.[27] At the same time the *Judges Act* was amended to provide for retirement annuities in lieu of lifetime salary. The then Minister of Justice made it clear in

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25 *An Act to Amend the Judges Act*, S.C. 1927, c.33, s.2.

26 *Judges Act*, 1946, S.C. 1946, c.56, s.22.

27 *Constitution Act, 1960* (U.K.), 1960, c.2, reprinted in R.S.C. 1985, App. II, No. 37.

addressing Parliament that the constitutional amendment and the bill amending the *Act* were complementary and interdependent.[28] The removal of life tenure was conditional upon and completed only after Parliament had provided for retirement annuities in lieu of salary.

The 1960 amendments did not change the basic system of judicial tenure in Canada, however. Judges were – and are – still appointed during good behaviour. Once appointed, the judge was entitled to a salary and to a mandatory retirement annuity in lieu thereof. Nonetheless, the benefits granted were limited compared to what had been available historically. Although 15 years remained the norm for qualification for an annuity equal to 2/3 salary, a judge could not take advantage of this right until he or she was 70 years of age with 15 years of service. Notwithstanding these changes in 1960, however, judges still had an attractive retirement package compared to others in society, taking into consideration the limited availability of other insurance and pension schemes, the ability of judges at that time to contribute to individual RRSP schemes, and the fact that the judges' regime remained non-contributory.

In 1971, judges were permitted to retire at 65 years of age and 15 years of service, instead of at 70 and, after 15 years of service they were allowed the additional option of becoming supernumerary judges from age 65 to compulsory retirement at 75.[29]

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[28] *House of Commons Debates* (June 21, 1960) at 5221.

[29] S.C. 1970-71-72, c. 55. These amendments came into force on October 6, 1971.

In 1975 the non-contributory feature of judges' annuities ended[30]. Thereafter, all new appointees were required to contribute 7% of their salary to payment of future annuities. One percent of this was for indexing of retirement benefits even though such benefits had been indexed since 1969-1970.[31]

Notably, at the same time that this financial burden was imposed on judges, there was little improvement in the retirement benefits package. Indeed, the only change in retirement benefits at the time was to increase spousal pensions from 2/9 of the judge's salary to 1/3. This change was no doubt motivated in large part by pension reform legislation in the public and private sector. Today, the relevant legislation requires that surviving spouses receive pensions equivalent to 60% of that received by their retired spouse.

Given the minor benefit received, and the historical background relating to judges retirement benefits, it is not surprising therefore that our expert actuary, Thomas Weddell of Eckler Partners Ltd., has concluded that the imposition of mandatory contributions in these circumstances was tantamount to a 7% salary reduction. Indeed, two of the first three Triennial Commissions recommended that these contributions cease. Unfortunately, this was at a time when the process in place allowed the government to ignore these recommendations – and it did just that.

While judicial retirement benefits were actually being eroded through negative changes to the plan, very significant changes were occurring in Canadian society in this area. Pension plans were becoming a vital component of employee compensation packages. That is certainly so today. Government recognized the need to ensure that Canadians saved for their retirement years and

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[30] S.C. 1974-75, c. 81. These amendments came into force on June 19, 1975.

[31] Existing judges were grandfathered but required to contribute 1 1/2% of salary for indexing of retirement benefits.

adopted one specific tax policy to encourage this: RRSPs. Judges had the opportunity, along with other taxpayers, to contribute to their retirement through this vehicle. Many of the judges on the Bench today were appointed at a time when this right was clearly entrenched. The importance of this opportunity, particularly to young appointees, cannot be overstated.

In 1992, however, Parliament stripped judges of this ability. In recognition of the potential adverse effect which this change might have on young appointees to the Bench, the then Minister of Justice, Kim Campbell, expressly invited the Triennial Commission to consider this issue. She said with respect to the RRSP change, "in terms of ... overall net compensation of judges, it has had a significant negative impact". Accordingly, she invited the Crawford Triennial Commission to take the loss of that benefit "into account in assessing the adequacy of judicial salaries and other benefits."[32] Despite the Minister's urgings, no progress has been made in alleviating this significant negative impact, and we urge this Commission to keep this in mind in assessing the adequacy of judicial retirement benefits in two respects: (i) the overall judicial compensation package in terms of fairness to current sitting judges and (ii) the necessity of attracting "outstanding" candidates to judicial office in the future.

In 1999, Parliament finally implemented the Rule of 80, which had been recommended by four of the last Triennial Commissions. Although the judiciary had sought an unrestricted Rule of 80, Parliament introduced a modified version. The history of the adoption of the modified Rule of 80 is a good example of the deficiencies of the Triennial Commission process. We stress that, to achieve a modified Rule of 80, – which everyone including the Department acknowledged was a modest improvement at best, with minimal financial implications – *took five Triennial Commissions and more than 16 years*. This delay factor is

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[32] Letter from Kim Campbell to Purdy Crawford dated October 1, 1992.

relevant, and important to understand, because achievement of even the modified Rule of 80 has had a significant drag effect on enhancements to other judicial benefits. As the years went by and succeeding governments ignored the recommendations of succeeding Triennial Commissions, judges were forced to forego other reasonable requests for much-needed changes to retirement benefits.

What has happened to judicial retirement benefits may also be viewed in the larger context of changes to pension plans in Canada. While judicial retirement benefits were being eroded, pension plans for Canadians changed dramatically – for the better. The government recognized the need to protect employees and the social utility in providing proper retirement benefits for Canadians and their families. Quite apart from the legislated statutory minimums mandated by government, generous pension plans were bargained for, and secured, in both the private and public sector. Parliamentary pensions and those available to senior executives, including those for Deputy Ministers, improved significantly from what had historically been the case. In the private sector, pension plans for employees expanded considerably and today, for senior executives, these plans are commonly supplemented by top-up retirement benefits which are usually non-contributory.

By contrast, the result overall of the changes in judicial retirement benefits has been a reduction in benefits. It is true that some changes have been positive (for example, improving spousal pensions and the move towards a Rule of 80) but the trend has been generally negative. The Conference and the Council submit that the judicial retirement package as it presently exists no longer remains an influential and attractive reason for outstanding candidates to seek or accept appointment to the Bench, and thus falls short of the objective mandated by s. 26(1.1)(c) of the *Judges Act*. Importantly, too, as we have noted, the

present terms of the retirement benefits plan raise inequality issues which call for rectification.

We therefore ask the Quadrennial Commission to recommend adjustments to the current judicial retirement benefits package to take into account the realities of the year 2000 and beyond, including the current makeup of the judiciary and prevailing social conditions. The recommendations which we urge the Commission to adopt we group for analysis under two broad categories: equity issues, and the need for current improvements.

PART 2 – DISCUSSION OF RECOMMENDATIONS

I. Equity Issues

A. Introduction

The equity issues arise from the unequal application to all judges of a judicial compensation package designed for a judiciary which was more homogeneous in makeup and values than is the case today. This unequal treatment crosses many lines – including gender, age, marital status and sexual orientation, and has been compounded by the actual and comparative erosion in benefits already mentioned. Ironically, were the original criteria selected by the founders of our country at Confederation for retirement with a 2/3 annuity still intact – 15 years of service without contribution or age limitation – many of the present inequalities would not exist.

B. Common law and same sex marriages

There are some overriding equality issues regarding common law and same sex spouses, which relate to the current judicial annuity scheme and other benefits. We understand that government policy is to ensure that retirement

benefit plans nationally are amended to provide that a person who is living in a common law relationship, whether with someone of the opposite or same gender, enjoys the same right to spousal benefits as does an individual who is legally married. In fact, in light of recent jurisprudence of the Supreme Court of Canada, the government has in the past year moved to ensure that statutory provisions to this effect are included in the relevant pension benefits legislation.

The equities in making these changes are obvious. In a relationship based on mutual rights and responsibilities, it is understandable that the government would wish to allow any person in that position to make provision for his or her significant other. Moreover, a judge in this situation has certainly earned this "spousal benefit". Independently of the equities of the matter, however, the Constitution quite simply requires that this change be made, and the necessity of bringing the *Judges Act* into conformity with the *Charter* cannot be seriously questioned.

While there will be some costs associated with remedying these inequalities, we respectfully suggest to the Quadrennial Commission that, insofar as the costs relate to the alleviation of *Charter* equity problems, they cannot properly be characterized as costs associated with improvements to the judicial compensation package. To the extent that changes to the regime are mandated by the Constitution, they should be treated separately and not considered as a part of determining improvements to the overall compensation package.

> **Accordingly, we ask that the Commission recommend that the *Judges Act* be amended to bring it into conformity with existing law to provide that a judge who is living in a common law or same sex relationship will enjoy the same right to extend retirement benefits to their partner as does a judge who is legally married.**

C. Inequities based on gender and age

This Quadrennial Commission comes at a propitious moment for the consideration of inequalities in the benefits regime under the *Judges Act*. Coming as it does in the wake of significant developments in the *Charter* jurisprudence in this area, the Commission is well placed to take inspiration from the letter and spirit of these court decisions and address other inequities in the legislation beyond merely the situation of common law and same sex couples.

1. The changing face of the Canadian judiciary

Historically, the judiciary was for the most part comprised of lawyers appointed after the age of 50. Understandably, judicial benefits were designed to meet the needs and interests of that age group, which until recently was composed of men. Over the past 20 years, however, there has been a dramatic change in the composition of the Canadian judiciary, in terms of both gender and age, to meet society's legitimate interest in a more representative and diversified judiciary.

Nevertheless, although the make-up of the judiciary has changed, judicial retirement benefits have not been adjusted to recognize the needs of, or to provide equal or comparable benefits for, this differently-composed judiciary. This has led to inequality for younger appointees, many of whom are women. Women are overwhelmingly appointed prior to the age of 50. In fact, over the last 12 years, women have been appointed on average at ages 7.6 years younger than men.[33] A one-size-fits-all judicial retirement package is no longer suitable.

Some may suggest that the inequalities will be cured with the passage of time, as the supply of senior female members of the Bar increases. Although that

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[33] Attached as Appendix IV is a table which shows the average age of appointees over the past 12 years.

may be so in part, it is no answer to the problem which exists for those women judges already appointed at a younger age, and will not remedy the inequalities pertaining to them. The government sought out, and chose to appoint, women in their late 30's and early 40's; it should ensure that they are treated fairly.

2. Unequal burden of contributions and value of benefits

The current plan, despite the modified Rule of 80, does not provide comparable or equal benefits for comparable or equal contributions and service. For instance,

> A judge appointed at age 65, after serving 10 years, and *paying* into the plan for *10 years*; and
>
> A judge appointed at age 50, after serving 15 years and *paying* for *15 years;* and
>
> A judge appointed at age 36, after serving 22 years and *paying* for 22 years; and,
>
> A judge who has elected supernumerary status after at least 15 years of service and on reaching age 65 and who retires later *after paying following entitlement to retire*, *will all receive the same 2/3 annuity on retirement*.

(a) Younger appointees

Clearly, then, younger appointees work more years and pay longer before being entitled to retire with exactly the same benefits as colleagues who may have been judges for half the same length of time.

There are a number of reasons why this disparity in treatment has developed. For one thing, federally appointed judges in Canada were not required to contribute towards their retirement benefits for more than 100 years after Confederation. Not surprisingly, therefore, judicial retirement benefits were not designed with the possibility in mind of judges making widely differing monetary contributions for a 2/3 annuity. Moreover, since the age of appointment was generally 50 or more, there was little reason to be concerned about differing periods of service, particularly since judges became entitled to retire at age 65 with 15 years of service. When mandatory contributions of 7% of salary were introduced in 1975, however, the seeds for serious inequalities in treatment were sown.

The effect of compulsory contributions has been to penalize young appointees in ways that may never have been contemplated. Younger appointees work longer and pay more to receive the same 2/3 annuity as judges appointed at age 50 or later. Yet for those judges who are appointed before the age of 50 there is no way out, under the current annuity regime – even though they may have served 15 years in office – until they reach the Rule of 80 eligibility. They cannot even retire from the Bench and elect to receive their full annuity later. Parliament, however, has consistently recognized since Confederation that 15 years of service can entitle the judge to an annuity based upon at least 2/3 salary. It has been the traditional qualifying norm in terms of years in office. In spite of this, however, judges who have served and contributed for at least 15 years, but who still cannot meet Rule of 80 requirements, cannot leave the Bench without forfeiting all rights to an annuity.

We submit that requiring younger appointees to work significantly longer and to pay significantly more than their older appointee colleagues, once they have met the qualifying norm of 15 years for a fully earned 2/3 annuity, raises serious equality issues. This is particularly so given the disproportionate representation of women in this affected category. For all those judges who have worked and paid contributions for at least 15 years, there is no fair reason for requiring continued contributions. Moreover, there is no logical reason for not providing additional benefits for the extra years worked in recognition of longer service.

We ask the Commission to keep in mind that the 7% amounts which are withheld from judges' salaries and contributed to their annuity scheme are not genuine contributions on account of that annuity. There is no fund into which those amounts are remitted. Annuities of retired judges are not paid from a funded plan.[34] The monies deducted from judges' salaries are simply monies kept by the government and, in fact, constitute an actual reduction in judicial salary for symbolic reasons. Both the Guthrie and Courtois Commissions have recommended the elimination of all contributions. These recommendations were consistent with the true nature of the judges retirement annuity, i.e., that it constitutes a payment for life of part of a judge's salary, in exchange for the loss of life tenure at full salary.

The Conference and the Council recognize, as they have done since the decision of the Supreme Court of Canada in the *Beauregard*[35] case, that it may be unrealistic, from a political point of view, to expect Parliament to totally remove the obligation to contribute. We respectfully submit, however, that such contributions should cease after 15 years of service – the norm, in terms of years

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[34] The *Judges Act*, s. 53 provides that the amounts payable under the *Act* are to be paid directly from the Consolidated Revenue Fund.

[35] *Beauregard* v. *R.*, [1986] 2 S.C.R. 56.

of service, for entitlement to an annuity. The elimination of contributions after 15 years of service is one way of addressing the inequalities between judges appointed at younger ages and those appointed later in life. It would level the annuity contributions to 15 years for all judges, regardless of their age at the time of appointment to the Bench.

(b) Supernumerary judges

The *Judges Act*[36] permits federally appointed judges, with the exception of judges of the Supreme Court of Canada, to elect supernumerary status upon meeting certain eligibility criteria, discussed more fully below. The salary of a supernumerary judge is the same as that of any other puisne justice of that Court.

The introduction of compulsory contributions which continue until retirement has also resulted in unequal treatment for supernumerary judges. As matters now stand, supernumerary judges are required to continue making contributions towards retirement benefits even though they have reached the age at which they could retire on a full 2/3 annuity. Rather than retiring on a full annuity, the supernumerary judge works approximately 50% of his or her time for the remaining 1/3rd of salary. Yet the judge must still pay contributions equal to 7% of gross income.

We note that all public service pension schemes – including the Public Service Superannuation plan, the RCMP plan, the Canadian Forces plan, and the Members of Parliament retiring allowances scheme – provide that members no

[36] Sections 28 and 29.

longer have to make contributions after becoming eligible to retire on full pension. They are only required to make contributions of 1% of salary to meet enhancements from salary increments.

The continued payment of the 7% contribution means that supernumerary judges are, in effect, receiving only 93% of the nominal salary. Since they are entitled to a full annuity (66 2/3% of salary) should they choose to retire, supernumerary judges are earning only 26 1/3% (93% minus 66 2/3%) of the full judicial salary for 50% of the full judicial function. This makes no sense and would be remedied by the elimination of the contributions for all judges after 15 years of service.

3. Election of supernumerary status

At the present time a judge is not entitled to elect supernumerary status until he or she turns 65 years of age. There is no option to go supernumerary upon attaining Rule of 80 eligibility. This means,

a) that a judge appointed at age 36 will not have the option to elect supernumerary status until he or she has served and paid for *29 years*;

b) while a judge appointed at age 50 will have the option to elect supernumerary status after having served and paid for *15 years* and a judge appointed at age 60 will have the right to elect supernumerary status after having served and paid for *10 years.*

These disparities give rise to further considerations, in addition to the question of continued contributions referred to above. First, the Rule of 80 does nothing to address the situation of younger appointees who may wish to elect supernumerary office, because the election is not available under the *Judges Act* if the judge is under 65, even if he or she has satisfied the Rule of 80. Supernumerary status is no longer linked to retirement as had been the case since its inception. Thus, younger appointees do not have access to the option on an equivalent basis to judges appointed at later ages. The former continue to have to work longer and pay more than the latter group, if they wish to elect supernumerary status. This inequity has never been addressed.

As a result, a young appointee may be faced with a choice between a partial remedy to rectify this unequal treatment (that is, retirement on the Rule of 80) or no remedy at all (that is, working and paying until age 65 to elect supernumerary status). Both options come at a steep cost, however. If the young appointee elects the partial remedy, namely retirement on the Rule of 80, he or she loses the right to work as a supernumerary judge at full salary for 10 years. On the other hand, if the young appointee works till 65 so as to be able to elect supernumerary status, this comes at the cost of working disproportionately longer and paying disproportionately more than others, in order to exercise the right.

Ironically, supernumerary status is not only cost neutral to the federal government, but is a net benefit. This is the case even without judges' contributions. A supernumerary judge not required to make the 7% contributions would work half time for 1/3 of his or her salary, meaning therefore that the government would receive 16 2/3% of a judicial work year for no pay. The fact that the benefit to government would have been reduced through elimination of judicial contributions from 23 2/3% of a judge year for no pay to 16 2/3% of a

judge year for no pay does not make this a cost to the government. This would still be a net benefit to government.

D. Recommendations to correct gender and age inequities

To rectify these inequities, we urge this Commission to recommend the following add-ons to the existing retirement benefits plan.

1. **The right to retire after 15 years of service on a full annuity of 2/3 salary, payable either at age 60 or when the judge would be entitled to retire on a Rule of 80 basis, whichever comes first.**

The common thread that has run through judicial retirement benefits since Confederation has been the fact that **15 years of judicial service has been the norm** for qualification for a judicial annuity. The only question is the age at which judges have the right to retire voluntarily. As noted, originally there was *no age limit* for the entitlement to the 2/3 annuity and judges received annuities equal to their full salary for long service. This system avoided the inequalities of treatment which we have described above.

We therefore urge the Commission to recommend a return towards a more equal regime. We submit that a reasonable solution is to grant a right to retire on a full annuity of 2/3 salary to judges who have served in judicial office and contributed for 15 years. The annuity would be payable once the retired judge reaches the age of 60 or has attained Rule of 80 eligibility.

Such a solution would minimize many of the existing inequities. It is not unreasonable when compared to pension plans for senior executives in both the private and public sectors. Acquiring a right to a 2/3 annuity after15 years of service amounts to the benefits becoming due at about 4.4 % per year. This is in line with some executive plans which accrue at 5% a year or sometimes more.

Moreover, those plans are generally far more generous because it is rare for an executive plan to be contributory and the base salaries on which the pension is calculated are typically higher. Nor is a 4.4% accrual rate out of line with that for Deputy Ministers who are entitled to accrue benefits at 4% a year for 10 years.

2. **The right to elect supernumerary status for a period not exceeding 10 years after 15 years of service and upon attaining age 55 or, alternatively, on reaching Rule of 80 eligibility.**

For reasons explained above, we recommend that judges have the right to elect supernumerary status at any time after 15 years of service providing that they are at least 55 years of age, and for a period not exceeding 10 years. The right to elect supernumerary status should be linked to the fulfillment of contribution obligations and to some reasonable age. At the very least, judges should be able to elect supernumerary status upon attaining Rule of 80 eligibility, but again for a period not to exceed the present maximum of 10 years.

3. **Eliminate all contributions to retirement benefits after 15 years of service.**

As has been noted above, two past Triennial Commissions have recommended that all contributions cease. Our expert actuary, Thomas Weddell, likened the imposition of this contribution obligation to a 7% salary reduction. For reasons earlier stated, the Conference and the Council do not ask this Commission to recommend the elimination of contributions altogether. Rather, we urge the Commission to recommend that contributions cease after a judge has served and contributed for the qualifying 15 year term.

4. Consider the economic impact on the compensation package of the loss of RRSP contributions and, in any event, reinstate the right to contribute after 15 years of judicial service.

We urge the Commission to consider the effect of the loss of the RRSP on the overall judicial compensation package. As noted, this is an unfinished piece of business which should be addressed. At a minimum, the judges' right to contribute to an RRSP after 15 years of service should be reinstated.

5. Increase judicial annuities for long service by an amount equal to 2.2% of salary per year to a maximum of 90% of salary.

The principle that longer periods of judicial service merit enhanced annuities was endorsed by the Guthrie Commission in 1986. Again, government ignored this recommendation. The principle was recognized historically in relation to judges' retirement benefits and is currently recognized in other areas of the economy. Therefore, we also recommend that longer service by judges be recognized by providing that judicial annuities increase by an amount equal to 2.2% of salary per year for every year of service as a full time judge in excess of 15 years to a maximum of 90% of salary.

With respect to supernumerary judges, in recognition of the fact that they work 50% of the time, we recommend that the supernumerary judge earn 1.1% (one-half of the recommended 2.2% increase in retirement benefits for long service by a full-time judge) for every year of supernumerary service.

6. Provide for an early retirement option.

At the present time, judges must serve in office and contribute until they have attained Rule of 80 eligibility before they are entitled to *any* retirement benefits. The benefit at that time is the right to receive a full annuity of 2/3 salary. Judges have no right to leave office early on partial retirement benefits. All they receive is the return of their contributions, with some interest.

We ask the Commission to recommend that there be a right to take early retirement at any age, after 10 years of judicial service, on a prorated reduced annuity. In the event of such an election we propose that,

a) the prorated annuity be payable at age 60;

b) the amount of the annuity be based upon a *pro rata* share of the full annuity of 2/3 salary, calculated as the number of years of judicial service (or part thereof) divided by 15;

c) the amount of the prorated annuity be tied to the salary in effect at the time of commencement of payment; and,

d) in the alternative to payment at age 60, judges should be entitled to elect to receive their prorated annuity immediately on a discounted basis, the rate of discount not to exceed 3% for each year in advance of age 60.

The Rationale

We submit judges should have an early retirement option for several reasons – apart from the fact that historically they had one.

Judging is a stressful and responsible occupation in today's society. It can readily lead to burnout. Requiring judges at a younger age to spend 20 or more years on the Bench – about 2/3 of their working lives -- before they can retire on *any* benefits only enhances the effects of these factors. Furthermore, as we have noted in these Submissions, the regime produces an unfair result for those who are required to serve, and to contribute monetarily, for much longer periods than others, in order to become entitled to the same benefits. This unfairness is bolstered by the lack of any ability to exit after reasonable service on some form of reduced benefit. There is no logical reason for not allowing early retirement on an annuity prorated on some reasonable basis.

Equality and flexibility in the annuity regime for judges is important to encourage a diverse and representative Bench. The reforms we suggest will help attract top candidates to the Bench generally. A solid but flexible retirement benefits plan should be a key component of the judicial compensation package. This is particularly so if the Canadian judiciary is to continue to draw from experienced senior members of the practicing Bar. Moreover, as previously mentioned, *a retirement benefits package is compensation in part for the fact that judging is one of the only professions which does not allow incumbents to supplement their incomes in any way.*

Prior to the change in the judicial profile, the lack of an early retirement option was not a serious concern because, for those appointed around the age of 50, there was little likelihood of burnout or the desire to leave before eligibility. Neither holds true today. Burnout does exist. The public policy concerns of forcing judges to serve when they have lost the heart for the job are evident. Neither the public interest nor the administration of justice is served when judges are effectively forced to cling to office on pain of losing every retirement benefit for which they have worked and earned.

In addition, the failure to provide for early retirement ignores the fact that different judges – like different Canadians in other walks of life – may have different values and needs in terms of their personal priorities. The Canadian judiciary today is composed of young judges, senior judges, single judges, single judges with young children, married judges with children, married judges without children, judges whose spouses have taken early retirement, judges with a disabled spouse or children, etc. This being so, it is not unreasonable to expect that there will be a wide variation in life choices and values and needs amongst such a diverse group, which highlights the importance of providing for increased flexibility in the judicial retirement benefits plan. Recognizing and accommodating such differences has been one of the driving forces underlying

the constant reforms in pension legislation in Canada at both the provincial and federal government levels. Judges have not been immune to these changing needs and values. There should be a recognition that judges, as do Canadians generally, hold different values, duties, wants and objectives which influence their lives.

For instance, early retirement may be as significant a judicial benefit to younger appointees as the right to long-term employment, now reflected in the provision for supernumerary status, is to others. Moreover, the lacuna in the current scheme of providing no option for early retirement impacts particularly – again – on female judges who, as we have already noted, are appointed at an average age approximately 7.6 years younger than male judges.

Judges themselves have recognized the need to have in place an early retirement option for those who wish to take advantage of it. In 1991, a study conducted by William M. Mercer Ltd. canvassed Canadian judges on certain pension reform options. Although a majority of judges in Canada favoured an early retirement option, an overwhelming majority of those who could take advantage of the option indicated that they would not exercise such an option before a full annuity was available. Interestingly, however, amongst female respondents, a *significantly larger proportion of women judges indicated that they would make use of the early retirement option*. Again, this is indicative of a differing perspective which some younger women judges bring to retirement considerations.

The Executive is aware of the need to provide an early retirement option for judges. Indeed, in 1992 the then Minister of Justice, Hon. Kim Campbell, invited the Crawford Commission to give consideration to including a provision for early retirement in the judicial annuity scheme, particularly in view of the

impact of the lack of such a provision on younger female judges. She said: “Female judges are, on average, appointed at a much younger age than male judges. (…) This makes early retirement of more concern to women judges. Your consideration of compensation factors that particularly affect women judges would be appreciated.”[37]

Although, proportionately, young women appointees are more affected by these factors than male appointees, the same considerations apply to younger male appointees. It is young appointees, generally, who face long years before retirement. They need an early retirement option. Otherwise, the effect of the current regime on a long-serving judge who chooses to retire before attaining Rule of 80 eligibility are draconian. If the judge leaves the Bench one day before reaching eligibility, he or she will lose *all* entitlement to retirement benefits completely. This situation is compounded by the fact that judges have lost the right to make RRSP contributions as well. The loss of all entitlement to retirement benefits if the judge leaves before reaching normal retirement years is, we submit, close to punitive. The judge will have no entitlement to any benefits and no chance to make up for what has been lost during that period of service through contributions to an RRSP or similar vehicle.

Sometimes, people come to the Bench for all the right reasons but find that judging is not for them. Perhaps, they are not suited in terms of personality or temperament. Perhaps they never appreciated the degree of financial sacrifice and their economic needs. Perhaps they feel that they just do not fit in. Or perhaps they or some member in their family suffer from ill health, making judicial life a difficult one. Furthermore, it is a known fact that many judges accepted appointments to the Bench assuming that the Triennial process would be effective. Whatever the reason, they should not be penalized for recognizing

[37] Letter from Hon. Kim Campbell to Purdy Crawford, Q.C., dated October 1, 1992, at 2.

that they are not suited to judicial life. In these circumstances, it is in the public interest that they leave. Having retirement benefits which become due after 10 years of judicial service meets that objective, while at the same time preserving the characteristic of the judiciary as a long term commitment consistent with its role as society's impartial and objective adjudicator of public and private disputes.

We therefore ask that the Commission recommend that there be a right to early retirement at any age after 10 years of service on a prorated reduced annuity based upon number of years of service divided by 15 with the entitlement that retirement benefits be payable at age 60 or attainment of Rule of 80 eligibility whichever is sooner.

The *Pro Rata* Calculation

The following are examples of how the *pro rata* calculation might work.

If a judge came to the Bench at age 43, and elected to retire at 53, after 10 years of service, he or she would be entitled to 10/15 of the 2/3 annuity, but could not start collecting the prorated annuity until age 60. If the same judge chose to retire at age 55 after 12 years of service, the judge would be entitled to an annuity equal to 12/15 times 2/3 annuity payable at age 60. However, if the judge worked 15 years till 58, he or she would receive the full 2/3 annuity, again, payable at age 60. As noted, those payments would be based on the amount of the judicial salary then in effect.

The Further Discount

The plan should also provide for an early retirement option on a discounted annuity, as do most other retirement benefit plans. A retiring judge would have a retirement benefit on which he or she could start drawing at 60 or, alternatively, the judge could commence drawing an actuarially discounted

benefit at an earlier age. A typical discount for senior executives would be in the range of 3% or lower. Thus, the discount should be no more than 3% per year for each year in advance of 60.

For example, the same judge appointed at age 43 might choose to retire at 53 after 10 years of service. He or she would then be entitled to an annuity equal to 10/15 of the 2/3 annuity at age 60. An option to retire at a discounted annuity would allow the judge to elect to commence receiving that annuity immediately on retirement. The result would be to have a further discount of 3% for each year in advance of 60.

Conclusion

The absence of an early retirement option is a product of earlier times. It is now necessary to consider and correct the omission. Providing for early retirement options will likely be relatively cost neutral. This has proven to be so for the Rule of 80. To date, few judges have elected to take advantage of the Rule of 80. It is not expected that the numbers of judges electing early retirement would be substantially greater. However, although the option could potentially affect very few, this is no reason for inaction. For those affected, it is very important. It achieves equity for the younger appointees and it provides a degree of security which is important to all working Canadians.

7. Older Appointees: (1) An Unrestricted Rule of 80
(2) The Guthrie Proposal Revisited

The lack of an early retirement option is a matter of legitimate concern for older appointees as well. It is not just young appointees who require flexibility. Judges appointed after 60 may also encounter life situations which change their plans considerably. They too need a way out. Under the current plan, such

judges must serve 15 years or reach the mandatory retirement age of 75 before they can retire. There is no logical reason for not allowing early retirement on an annuity prorated on some reasonable basis particularly since judges can elect supernumerary status at 70 after 10 years of service. Depriving senior judges of the right to retire early, at the price of having no entitlement to retirement benefits at all as the only alternative, is also unjust. A right to retire early after 10 years of service on a prorated reduced annuity based upon years of service divided by 15, as previously outlined, would address this problem. So, too, would an unrestricted Rule of 80.

> **We therefore ask the Commission to recommend that the Rule of 80 be amended to delete the requirement for a minimum of 15 years of judicial service by adopting the unrestricted Rule of 80. We further ask the Commission to recommend specifically that a judge who has reached the age of 65 and who has 10 years of judicial service be entitled to retire on a prorated reduced annuity based upon years of service, calculated as outlined above.**
>
> These options are not identical.

An unrestricted Rule of 80 – that is, one which is not encumbered by a 15 year minimum service requirement – would also address the need for earlier retirement options and flexibility for older judges. Both age and length of service on the Bench may cause an erosion of a judge's capacity to do the required work. This erosion is inevitable as it relates to the judiciary viewed as a whole, but unpredictable as it relates to particular judges. It is in the public interest, in our submission, that a judge be permitted to retire early, but on full pension, if that judge as a result of either age or length of service on the Bench is unable to discharge the required workload effectively. The Rule of 80 provides a workable, fair and realistically limited access to that early retirement.

The Guthrie Commission earlier recommended that judges who have reached the age of 65 and who have 10 years of judicial service should be able to retire on a prorated reduced annuity. The recommendation was not implemented by Parliament. However, for the reasons which we have outlined earlier, such a retirement option is important to older appointees to the Bench, and we urge this Commission to renew the recommendation. The option is simply a version of the more general submission made above for a right to retire early after 10 years on a reduced annuity. It is mentioned here specifically in the context of retirement benefits pertaining to older appointees, however.

There is a refinement in the calculation of the annuity in such circumstances which we ask the Commission to consider.

A distinction may validly be made respecting years of service beyond the age of 65. Under the present regime, judges who have attained the age of mandatory retirement (75) with at least 10 years service receive the full 2/3 annuity. If they have served less than 10 years before mandatory retirement, they receive a *pro rata* annuity based on the number of years of service (as defined in the *Judges Act*) over 10. Thus, for any judges appointed after 65, retirement benefits are effectively calculated at present at the rate of 1/10 of the full 2/3 annuity for each year of service.

> **We accordingly ask the Commission to recommend that the prorated annuity of judges who retire after a period of service beyond the age of 65 be calculated on the basis of a rate of 1/10 of the 2/3 annuity for those years, rather than the normal basis of 1/15.**

Thus, if a judge were appointed at 57 and chose to retire early at 67, the judge would be entitled to receive benefits based on 8 years at the rate of 1/15 each year and for 2 years based on a rate of 1/10 each year to a maximum of the full annuity.

In summary, the administration of justice would be better served by providing more flexible rules of retirement.

E. Single judges

Single judges (and by this we mean a judge who is unmarried[38] and not living in a common law or same sex relationship at the time the judge leaves the Bench) pay the same contributions towards their annuity as do married judges who have the benefit of a spousal pension. Not only is there no opportunity to trade this right for a larger annuity, but there is no right to name an alternate beneficiary so long as the judge is single. In brief, there is no benefit for single judges equivalent to the spousal pension. As a result, the single judge receives the same annuity as the married judge but, because of marital status and the resulting lack of spousal benefits, receives a benefit of much less value than does a married judge.

As noted by the actuary Thomas Weddell, this inequality of treatment in the judicial retirement benefits package is demonstrably unfair to single judges. Originally, there was no spousal annuity attached to the judicial retirement benefit. However, as pension reforms occurred in Canada and government mandated the requirement for spousal pensions to be included as a key component of employee pension plans, it became necessary for government to update the judicial retirement benefits package. The first form of spousal annuity associated with the judicial retirement package offered an option to judges to select a spousal benefit. The exercise of that option allowed a 2/9 spousal annuity (that is the spouse would receive an annuity equal to 2/9 of the judge’s salary) along with a reduction in the judge's annuity during the judge’s lifetime to 2/3 of the 2/3 annuity.

[38] "Unmarried" includes judges who are divorced, never married or widowed.

In 1975, the *Judges Act* was amended to increase the spousal annuity to 1/3 of the judge's salary if he or she died in office and one-half of the 2/3 annuity if the judge died after retirement. However, when this amendment was made, there was no provision included for any equivalent benefit for single judges and no corresponding relief from the mandatory requirement, implemented at the same time, for all judges, irrespective of their marital status, to contribute 7% of gross income towards the retirement annuity. For example, single judges were given no right to name an alternate to a spousal beneficiary.

Not allowing single judges the right to participate in some way in the spousal benefits aspect of the plan discriminates against single judges on the basis of marital status. It is this simple: single judges do not receive an equivalent to the spousal benefit even though they have paid the same contributions. The plan ignores the fact that a single judge may still have children who may not be eligible for any benefit under the retirement benefits plan but in respect of whom the judge has a lifelong commitment. In addition, the single judge may have financial obligations of other kinds, whether to parents, brothers, sisters or other family members. Similarly, the single judge may have lived with a child, other relative or friend other than a spouse for years with at least a moral, if not legal, obligation towards that person. This is not fair. A single judge receives an annuity benefit which is significantly less in value than does a married judge, due to the lack of survivor benefits or post-retirement death benefits. The issue is one of equity.

We ask therefore that a provision be included in the *Judges Act* which would provide that, in addition to receiving the earned annuity for life, a single judge would receive an amount equal to the actuarial equivalent of a spousal annuity. This would be accomplished by allowing the judge an option of electing

an enhanced annuity (actuarially calculated) or receiving a guarantee of annuity payments for 15 years or until the judge reaches 85 years, whichever first occurs, payable to his or her estate. If the judge dies within this "guarantee" period, a lump sum equal to the present value of the payments owing for the balance of the guarantee period would be paid to his or her estate.

While not an equity issue in itself, this option would be of considerable interest to those judges whose spouses were terminally ill. Thus, this same benefit should be extended to judges with spouses. In other words, on retirement, the married judge would elect, with his or her spouse's consent, to receive either the spousal benefit or the single judge equivalent.

In addition, if a single judge dies in office, his or her estate should receive an amount equivalent to the death benefit which would have been paid to a spouse had the deceased judge been married plus the present value of the benefit which would have been paid to a spouse had the deceased judge been married to a person of the same age.

As with correcting other inequalities, these changes should be viewed as an issue of equity rather than an issue of cost. In any event, the additional costs would not be significant.

Therefore, we ask that the Commission recommend as follows:

That single judges be provided a benefit in an amount equal to the actuarial equivalent of a spousal annuity, calculated as follows:

a. Where the single judge dies in office, a payment to the judge's estate of the death benefit received by spouses and payment of the actuarial equivalent of a spousal annuity, calculated assuming the deceased judge had been married to a person of the same age.

b. Where a singe judge retires, he or she is entitled to his or her earned annuity and, in addition, he or she would be entitled, at his or her election, to one of the following:

(i) an increase in annuity to be actuarially calculated to represent the equivalent value of a spousal annuity, or

(ii) a guarantee of annuity payments for 15 years or age 85, whichever comes first. In the event that the judge dies during the guarantee period, then a lump sum payment equivalent to the present value of the amount owing for the balance of the guarantee period will be paid to the judge's estate.

In addition, all judges would have the right on retirement to elect the single judge option with the consent of his or her spouse.

F. Unfairness of Subsection 44(3) of the Judges Act

At the present time, the *Judges Act* provides that a surviving spouse cannot be in receipt of more than one annuity under that section (s.44(3)). It applies where the spouse of a deceased judge remarries another judge. The notion that a judge's dependants should lose the benefit for which the judge has worked merely because he or she chooses to remarry another judge is illogical. This unfair limitation must be removed.

We therefore urge the Commission to recommend that subsection 44(3) of the *Judges Act* be repealed.

II. Current Inadequacies

The following submissions address the present inadequacies of the judicial retirement benefits package and the need to update and adjust provisions which are either inadequate in themselves, or in relative terms or are no longer reflective of current realities, whether social or economic.

A. Basing retirement benefits on current judicial salaries

There exists an unjustified variation in the amount of the retirement benefits received by retired judges. This unfair differential has arisen in large part due to an ineffective process for assessing judicial benefits and then implementing recommended changes. Even when the process has led to change, it has been slow and cumbersome, often resulting in judges reaching mandatory retirement age and being forced to retire before the implementation of an adjustment to judicial salary to which they were entitled.

The salaries and benefits of federally appointed judges in Canada, unlike those of judges in many other common law countries, are not reviewed annually. Indeed, the new Quadrennial Review process itself – unilaterally implemented by Parliament and the Executive without any prior consultation with the Third Branch of government – altered the pattern from one involving a review every 3 years to one of 4 years, despite the fact that the Scott Commission had made no such recommendation. Thus, judges are now in the position where reviews of judicial benefits are only mandatory every 4 years. It will be evident how this approach will entail further delay. Adequate time must be allowed for the Commission to do its work, after which there will remain the always difficult question of implementation. The length of the implementation process is unknown, although the Department has acknowledged that there is a constitutional imperative for Parliament and the Executive to react in a timely and responsive fashion. We do not know how long this will take. Given past experience, however, one must consider the possibility that additional delay will occur at the implementation stage as well, although it is hoped that this will no longer be so.

Thus, even under the new regime when one takes into account the period up to the appointment of the next Quadrennial Commission, the period until it reports, Executive response and implementation, salary increases may not occur for as much as 6 years or longer – and this assumes the best, namely, implementation of a Commission's recommendations. From this, it will be evident how inequities can arise. Recommendations for salary adjustments are often intended as a catch-up to remedy past salaries and benefits which have proved insufficient and to bring them up to date. Yet in the past, it has taken years for adjustments to be made. However, those judges forced to retire during this lengthy process were not eligible for any increases in salary since their retirement benefits were tied to their salary at the date of retirement. The reason for this is that both surviving spouses benefits and retired judges annuities are calculated on the basis of judges' salary, either at the time of death or at the time of retirement. From thereon, both are indexed, on the CPI data basis by virtue of the *Supplementary Retirement Benefits Act,* without any continued correlation to judicial salaries. Judicial salaries are themselves adjusted yearly on the basis of the industrial aggregate index.

By way of example, if a Commission were to find that judicial salaries had fallen behind and it was appropriate to adjust judicial salaries immediately, a judge who had retired the month before implementation of the new salary would not receive the benefit of that adjustment. Yet it was that individual's salary which was considered inadequate. Moreover, the judge would for the rest of his or her lifetime receive less than a colleague who worked only one month longer.

Spousal annuities provide an instructive illustration of the resulting unfairness and inequalities. The annuity of the spouse of a judge who died on March 31, 1986, or that of the spouse of a judge who died on March 31, 1997, are from $5,000 to $6,000 lower than the annuity of the spouse of a judge who

died on April 1 of those respective years. In each of those years, Parliament partially implemented the increases recommended respectively by the Guthrie and Scott Triennial Commissions. Indeed, some spouses of deceased judges in this country are receiving just over $30,000 a year – an inadequate amount to provide any form of financial security in today's economy – while others are receiving nearly double that.

The same is true for judges who happened to reach compulsory retirement age on those two same dates. In the latter case (i.e., March 31-April 1, 1997), the differential between retired judges was further compounded by the salary freeze which lasted from April 1, 1993 to March 31, 1997.[39] Moreover, these unfair differentials are also compounded annually, following indexation.

To avoid these problems in the future, we recommend that retirement benefits for both retired judges and their dependants be linked to current judicial salaries.

There is another simple but compelling reason in support of this recommendation. The financial security component of judicial independence means security for life. A sitting judge should not be preoccupied by how he or she will make ends meet upon leaving judicial office. Life expectancies have generally increased over the last century and, in addition, an individual's life expectancy increases as the person ages. Therefore, the retirement benefit must be adequate to provide that security for the life of the judge and his or her spouse.

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[39] In such a similar situation, because of the then very high C.P.I., judges who retired in early 1975 were making more, as pensioners, in March 1980, than sitting judges.

The fact that all these inequities have occurred is a reflection of the principal – and continuing – problem with the current process: salary increases for judges do not occur on a timely basis.

We therefore ask the Commission to recommend that the *Judges Act* be amended to provide that the annuity of a retired judge and all benefits flowing therefrom be based on the current judicial salaries or on the basis of the salary of the deceased or retired judge, duly indexed since the date of death or retirement, depending upon which is the higher.[40] This should be done retroactively.

B. Spousal benefits

1. Standard spousal annuity

A surviving spouse is currently entitled to receive an annuity equal to 1/3 of the salary of the judge on the date of his or her death. If the judge is already receiving retirement benefits, the spouse is entitled to one-half of the judge's annuity. This level of pension has to be considered in light of the fact that a judge, upon being appointed, is not eligible to contribute either to a personal or a spousal RRSP. Apart from life insurance, the annuity is the only liquid asset arising out of a judge's work that a judge can leave to his or her spouse.

It is not reasonable to think that 50% of the cost of maintaining a proper standard of living will disappear upon the death of a judge who dies while retired. The amount by which the income for the spouse will decrease if the judge dies in office, however, is 66 2/3% which is clearly an unreasonable expectation of the impact of the death of the retired judge on the surviving spouse's standard of living. Actuarially and experientially, the death of one person in a couple will not reduce what would otherwise have been the expenses

[40] It must be remembered that 1% of the mandatory monthly contributions go towards indexation so that pensioners should not be hurt by a salary freeze.

for both by more than about 1/3. In other words, a surviving spouse cannot maintain the standard of living to which he/she is entitled, after sharing 25 to 30 years of judicial life and lifestyle, with a pension of only 1/3 of the judge's salary.

Two previous Commissions have recommended that the spousal benefits be increased to 60% of retired judges' annuities or 40% of salary. Indeed, a previous government introduced a bill (Bill C-50) to implement this very recommendation. It died on the Order Paper when an election was called. However, this was 7 years ago. We submit it is now time to do what two Triennial Commissions and one government recognized needed to be done.

We therefore ask the Commission to recommend that the surviving spouse annuity be increased to an amount equal to 40% of the judge's salary, if the judge dies while in office, or to an amount equal to 60% of the annuity payable, if the judge dies after retirement.

2. Joint survivor option

The Conference and the Council are concerned, however, that even these increased amounts – given current tax burdens and the cost of living in Canada – will be inadequate to meet a surviving spouse's future needs. We therefore ask that the Commission recommend the inclusion of a joint survivor option in the retirement benefits plan for judges. Many retirement plans in the private and public sector already provide for this option. It would allow a retiring judge to elect a joint annuity for the period of the lifetime of the survivor of the judge and his/her spouse. This would mean lower annuity payments during the joint lifetime of the couple, but higher ones for the surviving spouse, assuming the survivor were the spouse and not the judge.

This is a request which is cost neutral. The reduction of the basic annuity payable upon retirement would be calculated on an actuarial basis in each individual case, taking into consideration the age of the retiring judge, the age of the spouse and their respective life expectancy. It may not be often that such an option will be exercised, because couples may anticipate a difficult time adjusting to the drop in family income required while both spouses live. However, this option should be available. It is, as noted, cost neutral; widely available to others; and would be of particular assistance where, for example, a judge were terminally ill on retirement or even in poor health.

We therefore ask the Commission to recommend that the *Judges Act* be amended to provide judges with a joint life annuity option.

PART 3. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

For all the reasons mentioned, we therefore submit and urge the Commission to make the following recommendations:

Recommendations to Remedy Equity Issues

1. Amend the *Judges Act* to bring it into conformity with existing law insofar as spousal benefits are concerned with respect to both common law and same sex marriages.

2. That a judge be entitled to retire at any age after 15 years of service, on a full annuity of 2/3 salary payable either at age 60 or when the judge would be entitled to retire on a Rule of 80 basis, whichever comes first.

3. That a judge be entitled to elect supernumerary status after 15 years of service and upon attaining age 55, such right to subsist for 10 years.

4. That contributions to retirement benefits after 15 years of judicial service be eliminated.

5. That the right to contribute to an RRSP be reinstated after 15 years of judicial service.

6. That long service be recognized through an increase in the annuity for a full time judge for every year worked past 15 years of service (or part thereof) by an additional 2.2 % of salary; and for a supernumerary judge, by an additional 1.1% of salary.

7. That judges have the right to elect for early retirement at any age, after 10 years of judicial service, on a prorated reduced annuity as follows:

   a) the prorated annuity be payable at age 60;

   b) the amount of the annuity be based upon a *pro rata* share of the full annuity of 2/3 salary, calculated as the number of years of judicial service (or part thereof) divided by 15;

   c) the amount of the prorated annuity be tied to the salary in effect at the time of commencement of payment; and,

   d) in the alternative to payment at age 60, judges should be entitled to elect to receive their prorated annuity immediately on a discounted basis, the rate of discount not to exceed 3% for each year in advance of age 60.

8. That the Rule of 80 be amended to delete the requirement for a minimum of 15 years of judicial service by adopting the unrestricted Rule of 80.

9. That a judge who has reached the age of 65 and who has 10 years of judicial service be entitled to retire on a prorated reduced annuity based upon years of service.

10. That the prorated annuity of judges who retire after a period of service beyond the age of 65 be calculated on the basis of a rate of 1/10 of the 2/3 annuity for those years, rather than the normal basis of 1/15.

11. Provide to single judges a benefit in an amount equal to the actuarial equivalent of a spousal annuity, calculated as follows:

    a. Where the single judge dies in office, a payment to the judge’s estate of the death benefit received by spouses and payment of the actuarial equivalent of a spousal pension, calculated assuming the deceased judge had been married to a person of the same age.

    b. Where a single judge retires, an entitlement to his or her earned annuity and, in addition, he or she would be entitled, at his or her election, to one of the following:

        (i) an increase in annuity to be actuarially calculated to represent the equivalent value of a spousal annuity, or

        (ii) a guarantee of annuity payments for 15 years or age 85, whichever comes first. In the event that the judge dies during the guarantee period, then a lump sum payment equivalent to the present value of the amount owing for the balance of the guarantee period will be paid to the judge's estate.

In addition, all judges would have the right to elect the single judge option rather than the spousal annuity providing the judge has the consent of his or her spouse.

12. Repeal subsection 44(3) of the *Judges Act*.

Recommendations to Remedy Current Inadequacies

13. That the *Judges Act* be amended to provide that the annuity of a retired judge and all benefits flowing therefrom be tied to and based upon the higher of the current judicial salary being paid, or the salary of the deceased or retired judge, duly indexed since the date of death or retirement, depending upon which is the higher.
All existing annuities should be adjusted accordingly.

14. That the surviving spouse annuity be increased to an amount equal to 40% of the judge's salary, if the judge dies while in office, or to an amount equal to 60% of the annuity payable if the judge dies after retirement.

15. That the *Judges Act* be amended to provide judges with a joint life annuity option.

SECTION IV

INCIDENTAL AND NORTHERN ALLOWANCES

Incidental Allowances

Subsection 27(1) of the *Judges Act* provides that federally appointed judges are entitled to be reimbursed up to $2500 each year “for reasonable incidental expenditures that the fit and proper execution of the office of judge may require”. This entitlement is known as the “incidental allowance”.

No adjustments have been made to this allowance since April, 1989. It is not indexed, and needs to be. In addition, it needs to be adjusted to reflect the true cost of expenditures incidental to the proper execution of judicial office in today’s society, and not measured by a simple inflationary increase.

For instance, the cost of court attire and of basic resources such as the annual rules of court, the Criminal Code, the Civil Code and office versions of various annotated statutes, have all risen over the past few years. The cost of legal texts has exploded, fuelled by the present trend to periodical loose-leaf volumes (e.g. Sharpe on Injunctions, McWilliams or Ewaschuk on Criminal Law, Crimji, etc.) with regular updates required at great annual cost to keep the volumes current. Attached as Appendix V is current information regarding the cost of acquiring and maintaining selected legal electronic and print publications. Texts, statutes and commentaries needed to enable superior court judges of general jurisdiction to keep abreast of developments in a host of legal areas, are increasingly being made available on CD-ROM and in other electronic formats -- none of which was contemplated when the incidental allowance was fixed at $2,500 in 1989. With the complexity and expansion of the law, it is necessary for a judge to have quick and easy access to a greater number of legal sources

than ever before. General jurisdiction judges do not always have the time to go to a library to conduct legal research in the middle of a *voir dire* in a jury trial. In some cases personal insurance office policies may be required to protect the new technological resources, such as CD-ROM's and software programs, printers, scanners and other equipment used in judges' personal judicial offices at home.

The area of personal security for judges and their families is also a matter of greater concern than was the case a decade ago. There is a growing need on the part of the judiciary to spend personal funds for protection of their homes, phones, vehicles, computers and so forth. It is simply the nature of the job that gives rise to these unfortunate concerns.

Finally, we note that almost all professional and educational associations have increased their membership fees in recent years. These include the Canadian Bar Association, the Canadian Judges Conference, the Canadian Institute for the Advancement of Justice, and many local provincial associations.

We ask the Commission to take these matters into account, and to recommend an increase in the incidental allowance to at least $5,000 (subject to annual indexing), not only to account for inflation since 1989, but also to adjust for a quantum increase in the cost to judges of maintaining expenditures necessary for "the fit and proper execution of the office of judge" in the year 2000 and beyond.

Northern Allowance

Subsection 27(2) of the *Judges Act* provides for an additional "northern allowance", which is presently fixed at $6000. It is paid to federally appointed judges in the Yukon, Northwest Territories and Nunavut.

The northern allowance, like the incidental allowance, is not indexed and has not been adjusted since April, 1989. Since it is described as "a non-

accountable yearly allowance of $6,000 as compensation for the higher cost of living in the territories", it needs to reflect more than simply a normal cost of living adjustment; but it does not. There is ample information available to support a substantial living cost differential between communities such as Yellowknife, Whitehorse and Iqaluit, on the one hand, and communities in other parts of Canada, on the other hand. Although judges serving in the North were once provided with subsidized federal Government housing accommodation, this is no longer the case. While the price of housing is a major component of the increased cost of living in the North, northern residents also experience abnormally high prices for food, fuel, transportation, and general household items.

For instance, the following cost items – as of December, 1999 – are revealing:

a) one litre of gasoline: Whitehorse – 73.9 – 81.9 cents/litre
Yellowknife – 77.9 cents
Iqaluit – 73 cents

b) one kwh/hour of electricity: Whitehorse – 11 cents for 1000kwh
Yellowknife – 11.72 cents
Iqaluit – 33 cents

c) one litre of home heating fuel: Whitehorse – 45.9 cents
Yellowknife – 42.3 cents
Iqaluit – 39.7 cents

d) As at May 20, 1999, grocery item prices in Iqaluit included:

1 quart of 2% milk	$2.89
1 dozen eggs	$2.95
1 pound of butter	$4.49
2.84L orange juice	$2.49
Roasting chicken	$7.99 kg

Chicken breasts	$9.99 kg
Loaf of bread	$2.99
1 kg apples	$5.15
5 pound potatoes	$5.09
coffee	$15.99 kg
10 kg bag of flour	$19.99
lean ground beef	$11.79 kg
striploin steak	$27.99 kg

Members of the Canadian Forces, the RCMP and other federal public servants all receive higher adjustments for these factors than do federally appointed judges. We are informed that they receive a special allowance pursuant to an Isolated Post Directive issued by Treasury Board.[41] The special allowance has three components to it – an environmental allowance, a living cost differential, and a fuel and utilities differential – which are adjusted regularly. For federal public servants, military officers and RCMP officers resident in Yellowknife and in Iqaluit, these allowances are presently $8,751 and $15,099, respectively. In addition, we understand that suitable housing is provided on a subsidized basis to senior officers in the federal public service, the Canadian Forces, and the RCMP.

We ask the Commission to recommend that federally appointed judges be placed in a similar position. Fairness requires that a section 96 judge resident in the northern territories be placed on a similar footing to that of section 96 judges in the southern provinces.

We therefore ask that the *Judges Act* be amended to increase the northern allowance substantially, to a figure in the range of $16,000 to $20,000.

[41] The Department has been asked to provide details of this Directive which, when received, will be brought to the attention of the Commission.

Summary of Conclusions and Recommendations

The allowances provided for in s. 27 of the *Judges Act* are long overdue for an increase to more adequately compensate for the actual cost of the factors which these allowances were intended to address.

We therefore submit and urge the Commission to make the following recommendations:

1. That the *Judges Act* be amended to increase the incidental allowance to at least $5,000, subject to annual indexing.

2. That the *Judges Act* be amended to increase the northern allowance substantially, to a figure in the range of $16,000 to $20,000.

SECTION V

INSURANCE AND RELATED BENEFITS

Introduction

With respect to financial benefits other than salary and annuities, and particularly as regards insurance, federally appointed judges had, until a few years ago, been led to believe that they enjoyed parity with Deputy Ministers and certain other senior federal public service executives. The fact is, however, that judges are, and for some considerable time have been, ranked well below this senior group. The benefits enjoyed by full-time Order in Council appointees (the OIC Executive group) are, in fact, very significantly better than those available to judges. Beginning on July 1, 1981, a superior plan was introduced for those senior officials appointed by Order in Council and for certain defined others. The Treasury Board assumed the cost of providing certain enhanced insurance benefits under the Public Service Management Insurance Plan ("PSMIP") and the Public Service Health Plan.[42]

It is essential to note here that Members of Parliament, Senators, Lieutenant Governors, the Governor General and a significant group of other senior government officials are treated for insurance purposes as if they were part of the OIC Executive group. Nonetheless the judges, for no apparent reason or justification, have been left in a much less advantageous position under the PSMIP.

[42] Attached as Appendix VI is a copy of the Terms and Conditions of Employment for Full-Time Governor in Council Appointees, and several rules and regulations that have been promulgated since 1981.

Since this inequity became apparent, it has repeatedly been discussed with Department of Justice and Treasury Board officials and there have been assurances given that steps would be taken to remedy the situation. The very deep concern of the judges in this area was expressed to the Scott Commission. Its 1996 report recommended that "*the government-paid insurance coverage for judges be brought more closely into line with that provided to Deputy Ministers*." Members of the Conference and Council were thereafter given reason to hope that the insurance issue could be resolved on an agreed basis with or without legislation. Regrettably, nothing has been done and all attempts to resolve the issue have been met with the standard answer - "take it to the Quadrennial Commission."

> **We therefore ask the Commission to recommend that federally appointed judges be included in the Government's Order in Council Executive Plan.**

The inclusion of judges in the OIC Executive Plan is reasonable, and supported by precedent. Industrial standards for senior management and benefits available to Other Public/Not for Profit organizations (OPNP) as a rule are as favourable as, or more favourable than, the OIC Executive Plan.

The observations made earlier in this submission about compensation levels apply equally to insurance. After referring to the 1997 report of the Treasury Board Advisory Committee and the work of Lawrence F. Strong, our consultants, Ekler Partners Ltd., commented as follows:

> The findings of an October 1997 Executive/Senior Level Total Compensation Survey prepared by Mercer for the Advisory Committee to the President of the Treasury Board on Senior Level Retention and Compensation were dramatic. The survey indicated that federal Executives were 7% to 19% behind their OPNP counterparts, and 27% to 143% those in comparable roles in the private sector.

The Strong Report relied heavily on the findings of this survey and selected the "broader public sector" or the OPNP as the key comparator group to benchmark compensation for federal Executives. We submit it is reasonable for a similar approach to be taken with respect to insurance benefits for the federal judiciary.

In this part of our Submission, the Commission is directed to those insurance and insurance-related benefits which are of particular concern to the judges and which require the attention of this Commission. To ensure that the judges, and the Commission, are fully informed in this regard, the Department has been asked to disclose all insurance and insurance-like benefits received by Order in Council appointees which are not presently available to judges. There is absolutely no reason, we submit, why the federal judiciary should not be brought up to and maintained at a level at least of parity with the federal public service Executives.

It should be noted here that there is one significant insurance benefit available to others that judges do not require. Because of the unique nature of judicial annuities, no separate long-term disability insurance is required.

Relevant data

Our approach to this subject will not be technical or complicated. For convenience, however, we provide the following data:

- As of October 12, 1999 there were 1,008 federally appointed judges in Canada, 792 males and 216 females.
- The current estimated payroll is $178 million. [43]

[43] This represents 0.67% of total annual salaries, benefits and superannuation payments of $17.5 billion, to employees subject to Treasury Board authority.

- The average age of sitting male judges is 61.6 years, and the average age of sitting female judges is 51.6 years.

Specific benefit proposals requiring immediate attention

A. Life insurance

1. Basic life insurance

Under the PSMIP, judges can currently subscribe, but must themselves pay, for a basic benefit equal to 100% of annual salary until they reach age 60. Insurance then reduces by 10% (of the original amount) per year beginning at age 61. By age 69 the benefit has reduced to 10% and remains at that level thereafter.

We submit, consistent with the foregoing suggested standards, that judges ought to have automatically, from the time of their appointment, an "employer-paid" benefit equal to one enjoyed by all members of the OIC Executive plan, i.e. 200% of annual salary. There should be no reduction in this benefit until retirement. Thereafter, the coverage should continue for the first year of retirement; then reduce to 75% of final salary in the second year of retirement; 50% of adjusted salary in the third year of retirement; and finally to 25% of annual salary in the fourth year and thereafter, continuing for life. This benefit must be provided to all judges regardless of age and regardless of insurability, without premiums.

We therefore ask the Commission to recommend that federally appointed judges be included in the Government's Order in Council Executive plan so that the basic life insurance benefits currently enjoyed by members of the Order in Council Executive Plan be extended to the judges with no reduction in the benefit until retirement and, thereafter, reductions as follows:

(a) First year after retirement – No reduction;

(b) Second year after retirement – 75% of final salary;

(c) Third year after retirement – 50% of adjusted salary;

(d) Fourth year after retirement and for the remainder of the beneficiary's life – 25% of annual salary.

2. Supplementary life insurance

At the present time judges can, at their own expense, purchase a supplementary benefit equal to 100% of annual salary subject to satisfactory evidence of insurability. The same rapid reduction formula applies to the supplementary insurance as to the basic life insurance benefit.

The judges propose that supplementary benefits be available to them on the same basis as they are to the OIC Executive group, that is that they have the option of purchasing, at their expense, additional coverage equal to one, two or three times annual salary subject to evidence of insurability. Accordingly, a judge who is insurable, or who has already qualified for, and has purchased insurance under the existing plan, would have available a benefit equal to five times annual salary — two times under the basic guaranteed coverage and three times under the supplementary coverage.

As the situation exists under the present scheme, there are judges of both genders and of all ages who are uninsurable and who will die leaving their families quite insecure. Some have died in such circumstances already, during the period of time when judges were being given reason to hope that the insurance issue could and would be resolved.

We therefore ask the Commission to recommend that judges have the option of purchasing, at their own expense, supplementary life insurance coverage equal to one, two or three time annual salary subject to evidence of insurability.

3. General comments

Judges recognize that any "employer-paid" premium, by law, becomes a taxable benefit for the insured pursuant to the *Income Tax Act*, and that increased benefits in this regard will result in an additional tax payment for most judges equivalent to approximately 50% of the deemed tax benefit. However, the inclusion of judges in the Government's Executive Plan which is available to other Order in Council appointees would limit that benefit to the same amount paid by those other Plan members. We estimate the increased tax payment for judges, associated with the improved coverage sought, to be in the neighbourhood of $500 annually.

To conclude this submission on life insurance, we note that the Ontario Judicial Commission, which recently addressed the salary and benefits of Provincial Court judges, recommended a life insurance benefit equal to five times salary – all to be paid from public funds. This recommendation was satisfactory to the Ontario Provincial Court judges and has been accepted by the government. Other provinces make life insurance plans available to their provincial judges that are, in some cases, superior to the one now available to federally appointed judges.

We ask the Commission to recommend that, for life insurance purposes generally, the judges be treated as part of the Order in Council Executive group.

B. Health benefits

Under the current plan, the judiciary has government-paid coverage providing 80% reimbursement of all eligible medical expenses after an annual

deductible of $25 for an individual or $40 for a family. This includes rather minimal allowances for vision care and hearing aids.

Of most significance for present purposes, however, is the issue of the government-paid hospital benefit up to $60 per day. Judges have the option of upgrading hospital coverage from level I to level III, that is up to $150, at their own expense.

The proposal at this time is that the current health benefit be upgraded to the enhanced employer-paid $150 per day hospital benefit which is provided to OIC Executives. The only explanation as to why federal judges are not covered on that basis now is that they were intentionally or unintentionally left out of the Executive plan when it was created.

We conclude this brief submission on health benefits by pointing out that Ontario Court – Provincial Division judges enjoy 90% reimbursement for drugs under an employer-paid health plan. Their supplementary benefit is 70% funded and includes vision care expenses up to $400 every 24 months, and hearing aids up to $1,500 every 5 years. This coverage is superior to that enjoyed by the federal OIC Executive group and, of course, even better when compared to the judiciary.

> **We therefore ask the Commission to recommend that the health benefit currently enjoyed by the judges be upgraded to the government-paid $150 per day hospital benefit which is provided to members of the Order in Council Executive Plan.**

C. Survivor benefits following death on duty

The above heading may bring to mind only a situation where someone meets their death as a result of an automobile or airline accident. Unfortunately, judges must now recognize that there is the possibility of an intentional killing. While there has not yet been such an occurrence in Canada, attempts and threats have been made. This frightening contingency is not in any way addressed by the existing judges' plan. All that now exists is a provision that a survivor benefit equal to one third of salary will be paid in the event of death from any cause while in active service.

When inquiries into this situation were made, it was discovered that OIC Executives have an undertaking from the government that their families will be provided with protection equivalent to full salary continuance up to the normal date of retirement, and full pension thereafter. Where the precise terms of this agreement can be found, we have never been told, although details have now been formally requested from the Department. It is unreasonable and unfair that a group so exposed in the discharge of public duties as judges should have the least protection.

The only further comments that need be made on this subject are that, according to our understanding, the government does not insure or fund this particular benefit but is committed to pay in the event that the contingency arises. Thankfully the frequency of such claims will be low, and accordingly the cost is not material.

We ask the Commission to recommend that the families of judges who die by reason of, or in the performance of, their judicial duties be provided for to the same extent as families of Order in Council Executives.

D. Dental plan

At present the judges' dental plan pays 90% for basic services, and 50% for major restorative and orthodontic services. Maximum benefit limits are $1,250 for basic and major, and $2,500 lifetime for orthodontia. Reimbursement is based on the previous year's fee guide. As regards dental coverage, the judiciary is in no different position than the OIC Executive group. There is parity between the two groups, but both are disadvantaged when analogous outside comparators are considered.

The simple fact is that if one examines the dental plans available in industry to senior employees, it will be found that the benefit available to judges and to the senior OIC Executives is not satisfactory. It is urged that this Commission recommend meaningful improvement. One important improvement to consider would be to extend coverage to retired judges.

We ask the Commission to recommend that the Dental Plan available to judges be improved to be made comparable private to sector plans.

We further ask that it be recommended that coverage under the Dental Plan be extended to retired judges.

Summary of Conclusions and Recommendations

The benefits currently enjoyed by judges, when compared with the plan of senior public servants and Order in Council Executive appointees, are inadequate in several respects. Moreover, there is no sound justification for treating judges differently than the senior executives.

We therefore ask the Commission to recommend:

1. That federally appointed judges be included in the Government's Order in Council Executive Plan.

2. That federally appointed judges be included in the Government's Order in Council Executive plan so that the basic life insurance benefits currently enjoyed by members of the Order in Council Executive Plan be extended to the judges with no reduction in the benefit until retirement and, thereafter, reductions as follows:

   (a) First year after retirement – No reduction;

   (b) Second year after retirement – 75% of final salary;

   (c) Third year after retirement – 50% of adjusted salary;

   (d) Fourth year after retirement and for the remainder of the beneficiary's life – 25% of annual salary.

3. That judges have the option of purchasing, at their own expense, supplementary life insurance coverage equal to one, two or three time annual salary subject to evidence of insurability.

4. That for life insurance purposes generally, the judges be treated as part of the Order in Council Executive group.

5. That the health benefit currently enjoyed by the judges be upgraded to the government-paid $150 per day hospital benefit which is provided to members of the Order in Council Executive Plan.

6. That the families of judges who die by reason of, or in the performance of, their judicial duties be provided for to the same extent as families of Order in Council Executives.

7. That the Dental Plan available to judges be improved to be made comparable to private sector plans.

8. That coverage under the Dental Plan be extended to retired judges.

SECTION VI

SUMMARY OF RECOMMENDATIONS

SALARIES

1. That, in order to re-establish parity of judicial remuneration with the mid-point salary level of DM-3's, and to better reflect current remuneration earned by preeminent members of the Bar in private practice, the base salary of judges effective April 1, 2000, be set at $225,000.

2. To prevent further erosion in the adequacy of judicial remuneration, the $225,000 recommended base salary be supplemented by staged increases, in addition to the indexing provided for by the *Judges Act*, over the remaining incumbency of the present Quadrennial Commission, which would at least reflect further increases in DM-3 remuneration.

RETIREMENT BENEFITS

Recommendations to Remedy Equity Issues

3. Amend the *Judges Act* to bring it into conformity with existing law insofar as spousal benefits are concerned with respect to both common law and same sex marriages.

4. That a judge be entitled to retire at any age after 15 years of service, on a full annuity of 2/3 salary payable either at age 60 or when the judge would be entitled to retire on a Rule of 80 basis, whichever comes first.

5. That a judge be entitled to elect supernumerary status after 15 years of service and upon attaining age 55, such right to subsist for 10 years.

6. That contributions to retirement benefits after 15 years of judicial service be eliminated.

7. That the right to contribute to an RRSP be reinstated after 15 years of judicial service.

8. That long service be recognized through an increase in the annuity for a full time judge for every year worked past 15 years of service (or part thereof) by an additional 2.2 % of salary; and for a supernumerary judge, by an additional 1.1% of salary.

9. That judges have the right to elect for early retirement at any age, after 10 years of judicial service, on a prorated reduced annuity as follows:

   d) the prorated annuity be payable at age 60;

   e) the amount of the annuity be based upon a *pro rata* share of the full annuity of 2/3 salary, calculated as the number of years of judicial service (or part thereof) divided by 15;

   f) the amount of the prorated annuity be tied to the salary in effect at the time of commencement of payment; and,

   d) in the alternative to payment at age 60, judges should be entitled to elect to receive their prorated annuity immediately on a discounted basis, the rate of discount not to exceed 3% for each year in advance of age 60.

10. That the Rule of 80 be amended to delete the requirement for a minimum of 15 years of judicial service by adopting the unrestricted Rule of 80.

11. That a judge who has reached the age of 65 and who has 10 years of judicial service be entitled to retire on a prorated reduced annuity based upon years of service.

12. That the prorated annuity of judges who retire after a period of service beyond the age of 65 be calculated on the basis of a rate of 1/10 of the 2/3 annuity for those years, rather than the normal basis of 1/15.

13. Provide to single judges a benefit in an amount equal to the actuarial equivalent of a spousal annuity, calculated as follows:

    a. Where the single judge dies in office, a payment to the judge's estate of the death benefit received by spouses and payment of the actuarial equivalent of a spousal pension, calculated assuming the deceased judge had been married to a person of the same age.

    b. Where a single judge retires, an entitlement to his or her earned annuity and, in addition, he or she would be entitled, at his or her election, to one of the following:

        (i) an increase in annuity to be actuarially calculated to represent the equivalent value of a spousal annuity, or

        (ii) a guarantee of annuity payments for 15 years or age 85, whichever comes first. In the event that the judge dies during the guarantee period, then a lump sum payment equivalent to the present value of the amount

owing for the balance of the guarantee period will be paid to the judge's estate.

In addition, all judges would have the right to elect the single judge option rather than the spousal annuity providing the judge has the consent of his or her spouse.

14. Repeal subsection 44(3) of the *Judges Act*.

Recommendations to Remedy Current Inadequacies

15. That the surviving spouse annuity be increased to an amount equal to 40% of the judge's salary, if the judge dies while in office, or to an amount equal to 60% of the annuity payable if the judge dies after retirement.

16. That the *Judges Act* be amended to provide that the annuity of a retired judge and all benefits flowing therefrom be tied to and based upon the higher of the current judicial salary being paid, or the salary of the deceased or retired judge, duly indexed since the date of death or retirement, depending upon which is the higher.
All existing annuities should be adjusted accordingly.

17. That the *Judges Act* be amended to provide judges with a joint life annuity option.

INCIDENTAL AND NORTHERN ALLOWANCES

Incidental Allowances

18. That the *Judges Act* be amended to increase the incidental allowance to at least $5,000, subject to annual indexing.

Northern Allowance

19. That the *Judges Act* be amended to increase the northern allowance substantially, to a figure in the range of $16,000 to $20,000.

INSURANCE AND RELATED BENEFITS

20. That federally appointed judges be included in the Government's Order in Council Executive Plan.

21. That federally appointed judges be included in the Government's Order in Council Executive plan so that the basic life insurance benefits currently enjoyed by members of the Order in Council Executive Plan be extended to the judges with no reduction in the benefit until retirement and, thereafter, reductions as follows:

    (a) First year after retirement – No reduction;

    (b) Second year after retirement – 75% of final salary;

    (c) Third year after retirement – 50% of adjusted salary;

    (d) Fourth year after retirement and for the remainder of the beneficiary's life – 25% of annual salary.

22. That judges have the option of purchasing, at their own expense, supplementary life insurance coverage equal to one, two or three time annual salary subject to evidence of insurability.

23. That, for life insurance purposes generally, the judges be treated as part of the Order in Council Executive group.

24. That the health benefit currently enjoyed by the judges be upgraded to the government-paid $150 per day hospital benefit which is provided to members of the Order in Council Executive Plan.

25. That the families of judges who die by reason of, or in the performance of, their judicial duties be provided for to the same extent as families of Order in Council executives.

26. That the Dental Plan available to judges be improved to be made comparable to private sector plans.

27. That coverage under the Dental Plan be extended to retired judges.