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Response of the Government of Canada to the Report of the 2024 Judicial Compensation and Benefits Commission

This is the Response of the Government of Canada to the Report of the 7th Judicial Compensation and Benefits Commission dated July 11, 2025. The Government Response is issued pursuant to subsection 26(7) of the *Judges Act*.

The current Commission convened on October 11, 2024, and delivered its Report to the Minister of Justice on July 11, 2025. The Commission's Report contained three recommendations, which can be summarized as follows:

- that for future inquiries, the Commissioners be appointed with due diligence prior to the statutory start date of the Commission's inquiry
- that judicial salaries be increased by \$28,000 exclusive of statutory indexing
- that the associate judge salary be raised from 80% to 95% of a puisne judge salary

While the first recommendation is unrelated to compensation and benefits and thus falls outside the Commission's statutory mandate, the Government nevertheless accepts the observation and reaffirms its respect for the Commission process. The Government will continue to exercise all due diligence to comply with the statutory requirements applicable to successive commission inquiries.

The Government accepts the Commission's finding, implicit in its salary recommendations, that statutory indexing of judicial salaries based on the Industrial Aggregate Index (IAI) should continue as provided for in the

Judges Act for the next four years. However, the Government respectfully disagrees with the Commission's salary recommendations to provide salary increases that exceed annual statutory indexation.

Before outlining its reasons, the Government expresses its gratitude to the Chair of the Commission, Ms. Anne Giardini, O.C., O.B.C., K.C., and to the Commission's members, Mr. Graham Flack and Mr. Douglas Hodson, K.C., for their work and their commitment to this important constitutional process. The Commissioners held open hearings accessible to the public, received lengthy and detailed submissions raising a complex series of qualitative and quantitative considerations, and produced a detailed and thoughtful report, engaging with the evidence put before them.

While the Government ultimately disagrees with the Commission's recommendation to provide salary increases that exceed annual statutory indexation, this disagreement is not intended as criticism of the Commissioners and their process; rather, it reflects a significant deterioration in the Canadian financial outlook, and a carefully considered difference of perspective on the evidence presented to the Commission and how it should be weighed. As the Supreme Court of Canada has noted, a government's response to a judicial compensation commission report can rely on new facts or changes in circumstances that occur in the time between when a commission received evidence and issues its report, and when a government responds publicly. The Supreme Court also stated that it is open to governments to assign different weight to the evidence presented to a commission so long as it provides detailed reasons for doing so.¹

Background: Constitutional Principles and Legislative Framework

Every Government Response to a Commission report has included an overview of the context in which judicial compensation is established. The Government does so again here in recognition of the unique nature of the judicial compensation process, the important constitutional provisions and principles that underpin it, and the need for clarity in the public interest for a process that is, at heart, designed to ensure public confidence in the independence and impartiality of the judiciary.

At the federal level, section 100 of the *Constitution Act, 1867* requires that Parliament, rather than the Executive alone, fix the compensation and benefits of superior court judges. Compensation and benefits for these judges are established in the *Judges Act*; since 2014, the *Judges Act* also provides for the compensation and benefits of associate judges of the Federal Court and Tax Court of Canada, to whom the protections of judicial independence also apply.

In *Reference re Remuneration of the Judges of the Provincial Court of Prince Edward Island et al.*, [1997] 3 S.C.R. 3 (known as the *PEI Judges Reference*), the Supreme Court of Canada held that judicial independence requires:

- a prohibition on negotiations between the judiciary and the other branches of government over judicial compensation and benefits
- that judicial salaries not be allowed to fall below a certain constitutional minimum (as yet undefined in the case law)
- that the adequacy of judicial compensation and benefits must be regularly reviewed by an “independent, objective and effective” commission, and that the commission must consider any proposed changes to judicial compensation or benefits before they are implemented

Subsection 26(1) of the federal *Judges Act* provides for the establishment of the Judicial Compensation and Benefits Commission every four years. The Commission’s mandate is to inquire into and make recommendations regarding the “adequacy” of judicial compensation and benefits of all federally appointed judges and associate judges based on the following criteria (set out in subsection 26(1.1) of the Act):

- 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
- d. any other objective criteria that the Commission considers relevant

The Commission must report to the Minister of Justice within nine months of the start date of its inquiry (subsection 26(2)), and the Government must respond publicly to the Commission’s report and recommendations within

four months of the date on which the Minister of Justice receives the Report (subsection 26(7)).

In addition to the guidance in *PEI Judges Reference*, the Supreme Court of Canada also found in *Bodner v. Alberta et al.*, 2005 SCC 44, that a commission's recommendations are not binding, and that a government can reject or modify a recommendation so long as it provides cogent reasons for doing so. This requirement is made explicit in the test for what is now known as "*Bodner* review", that is, a review of a government response by a court because of a legal challenge to the response. At paragraph 31 of its decision in *Bodner*, the Supreme Court of Canada articulated the three steps of the test in the following terms:

1. Has the government articulated a legitimate reason for departing from the commission's recommendations?
2. Do the government's reasons rely upon a reasonable factual foundation? and
3. Viewed globally, has the commission process been respected and have the purposes of the commission – preserving judicial independence and depoliticizing the setting of judicial remuneration – been achieved?

The Court added at paragraph 39:

[A government] response can reweigh factors the commission has already considered as long as legitimate reasons are given for doing so. The focus is on whether the government has responded to the commission's recommendations with legitimate reasons that have a reasonable factual foundation.

Reasons for declining to implement the Commission's salary recommendations

The Government respectfully disagrees with some of the Commission's findings and declines to implement the Commission's salary recommendations. Its reasons are outlined below and focus on four main issues: (1) recent developments regarding the criterion of the prevailing economic conditions in Canada; (2) some of the Commission's conclusions regarding statutory indexing; (3) the treatment of the evidence before the

Commission concerning the criterion of the need to attract outstanding candidates to the judiciary; and (4) the treatment of the evidence before the Commission regarding the compensation of associate judges.

1. Recent developments concerning the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government

Regarding this first criterion, set out in paragraph 26(1.1)(a) of the *Judges Act*, the Commission noted that changes in the trade policies of the United States, Canada's largest trading partner, were creating uncertainty in economic forecasts. The Commission noted at paragraph 46:

A challenge facing the Commission is the uncertainty affecting economic conditions in Canada, depending on, among other factors, the level and permanence of trade measures threatened and ultimately adopted by the United States.

The Commission concluded at paragraphs 48-49:

The Commission must make its recommendations based on the evidence in front of us, not on an adverse scenario that could but has not yet crystallized. Taking into account the economic situation and forecasts as of the writing of this Report, the Commission concludes that there is not enough evidence to restrain us from making recommendations we think appropriate on salaries.

We recognize that it is possible that the situation could change materially between the time the Government receives this Report and the time it provides its reply. Should economic conditions change materially and if, for example, the Government were contemplating wage restraint for the broad public sector, then we believe it would be appropriate for the Government to refer the matter back to the Commission to allow the parties to make additional representations based on a materially changed situation. Such an approach was specifically contemplated by the Supreme Court of Canada in the *PEI Judges Reference*.

The Commission's findings raise two questions that this Response must address: (1) given the uncertainties identified by the Commission, how should this criterion be weighed in the context of this inquiry; and (2) should the Government have returned to the Commission before issuing this Response.

1.1 Given the uncertainties identified by the Commission, how should this criterion be weighed in the context of this inquiry?

Some degree of uncertainty inevitably arises when forecasting economic trends several years into the future and their impact on Canada's finances. As the Commission noted, much of this uncertainty stems from changes in the trade policies of Canada's largest trading partner, the United States. However, the imposition of new U.S. tariffs, along with ongoing uncertainty over future U.S. trade actions, has already weighed on the Canadian economy, particularly in tariff-exposed industries, leading to a material slowing in growth over the first half of this year as well as notable downward revisions to economic outlooks. Growth in the first half of 2025 nearly stalled, rising just 0.2 per cent annualized, down from 2.2 per cent in the second half of 2024. Trade uncertainty and new tariffs have also disrupted an already soft labour market. The economy has lost about 40,000 jobs and the unemployment rate has risen by 0.5 percentage points since January, sitting at 7.1 per cent as of August. Prior to the escalation of trade tensions, the unemployment rate was expected to decline gradually. Moreover, while growth is expected to recover gradually over time, economists expect the negative impact of trade actions and uncertainty to have a permanent negative impact on Canada's economic potential.

In addition, it has become clear over the last few months that significant pressure on Canada's finances also arises from changes in the defence policy of the United States, which have prompted the North Atlantic Treaty Organization (NATO), of which Canada is a member, to significantly increase the percentage of GDP (Gross Domestic Product) that NATO (North Atlantic Treaty Organization) members must commit to national defence. On June 9, 2025, Prime Minister Carney announced Canada's commitment to achieving NATO (North Atlantic Treaty Organization)'s 2% target in this fiscal year, resulting in \$9B additional investments. Further, on June 25, 2025, the Prime Minister announced that Canada has joined the Defence Investment Pledge, committing NATO (North Atlantic Treaty Organization) members to spend

5% of GDP (Gross Domestic Product) by 2035. Part of these additional expenditures include once-in-a-generation increases to the rates of pay for members of the Canadian Armed Forces, with the most significant increases to the starting pay for privates in the Regular Force. The service of the members of the Canadian Armed Forces uphold Canada's sovereignty, protect our security, and bolster our international alliances. In the words of the Prime Minister, their pay should reflect the weight of their responsibilities.

While updated projections of the government's total expenses for 2025-26 are not yet available, this represents additional expenditures for Canada in the tens of billions, which materially affects the fiscal position of the federal government. These expenditures are required for Canada to comply with its international obligations and commitments, and are necessary to protect Canadian security and sovereignty in an increasingly dangerous and divided world, characterized by more frequent and volatile global conflict. Practically speaking, given the current international environment, these expenditures cannot be characterized as entirely discretionary.

Accordingly, in the Government's view, recent developments affecting this criterion militate strongly in favour of Canada only incurring new fiscal obligations necessary to uphold and safeguard Canadian sovereignty. While this includes safeguarding the critical public institutions that underpin Canadian democracy, for the reasons outlined in detail below, the Government is of the view that, based on the evidence before this Commission, judicial salaries are adequate and, in any event, cannot be the source of new fiscal expenditure at a time of comprehensive expenditure review, including possible public sector job losses. Judicial salaries have experienced steady long-term growth, exceeding increases to the cost of living thanks to annual indexing based on the IAI (Industrial Aggregate Index), and they are likely to continue this trend over the next four years.

1.2 Should the Government have returned to the Commission before issuing this Response to give it a chance to address the developments set out above?

In the Government's view, this question should be answered in the negative. With respect, the Commission's suggestion that the parties return to address changing economic circumstances between the date of the

Commission's hearings and the date of the Government Response does not accord with the jurisprudence and the Commission's statutory framework.

While the jurisprudence contemplates the possibility of a judicial compensation commission being asked to consider proposed changes to judicial salaries or benefits between its regular inquiries, the Supreme Court in *Bodner* also expressly stated that "[i]f a new fact or circumstance arises after the release of the commission's report, the government may rely on that fact or circumstance in its reasons for varying the Commission's recommendations." ²

In addition, the *Judges Act* provides that the Commission can hold special *ad hoc* inquiries on proposed changes to judicial compensation and benefits between its regular inquiries, but these must be formally requested by the Minister of Justice. Moreover, once an *ad hoc* process is launched, all of the foregoing timelines apply. ³

The implications of both the jurisprudence and the federal Judicial Compensation and Benefits Commission's enabling provisions are clear: a Commission is not a form of standing public inquiry with ongoing jurisdiction to receive and consider submissions at any time. Submissions can only be made to, and received by, the Commission in the context of an inquiry. Commission inquiries can either be general (statutorily required once every four years) or *ad hoc* (triggered at the request of the Minister of Justice), but either way, they are formal processes composed of specific steps and that begin and end on set dates.

2. The Commission's conclusions on statutory indexation of judicial salaries

The Government accepts the Commission's finding that ~~IAI (Industrial Aggregate Index)~~ increases should not be subject to the possibility of a cap over the next four years, implicit in the Commission's recommendation for salary increases. However, the Government respectfully disagrees with the Commission's conclusions regarding ~~IAI (Industrial Aggregate Index)~~, which appear to have been a factor relied upon by the Commission to justify a judicial salary increase.

Section 25 of the *Judges Act* provides for statutory indexation of judicial salaries, increasing salaries every April 1st based on the IAI (Industrial Aggregate Index) of the previous year, up to a maximum of 7% in any given year. IAI (Industrial Aggregate Index) indexing is also applicable to the salaries of the Associate Judges.

In its submissions to this Commission, the Government had proposed capping increases based on IAI (Industrial Aggregate Index) to a maximum of 14% over the next four years. The Commission found that IAI (Industrial Aggregate Index) increases should not be subject to the possibility of a cap over the next four years that would be lower than the one already provided for by the *Judges Act*. This finding is implicit in the Commission's recommendation for salary increases exclusive of statutory indexing, and the Government accepts this finding. However, the Government disagrees with one aspect of the Commission's reasoning. The Commission stated at paragraph 53 of its Report:

In explicitly providing for a cap on the IAI (Industrial Aggregate Index) adjustment in the legislation, we believe that Parliament has set out a complete code for how to deal with exceptional increases in the IAI (Industrial Aggregate Index). Parliament saw benefits in setting an upper limit to the IAI (Industrial Aggregate Index) and turned its mind to what that upper limit should be. It is not for the Commission to alter the clear intent of Parliament on this question by substituting a different cap on the impact of the IAI (Industrial Aggregate Index) on judicial salaries.

The Government must respectfully disagree. The Commission's conclusion is not consistent with the Commission's statutory and constitutional mandate. Section 100 of the *Constitution Act, 1867* requires that Parliament fix judicial salaries, and the Supreme Court of Canada has found that the constitutional principle of judicial independence requires regular reviews of the adequacy of judicial salaries by a judicial compensation commission. Parliament having legislated on a given aspect of judicial compensation cannot take that aspect outside of the Commission's mandate and preclude it from being the subject of a Commission recommendation.

In the Government's view, the Commission's treatment of IAI (Industrial Aggregate Index) indexing as an unalterable measure solely intended to protect judicial salaries against erosion led it to disregard a critical feature of IAI (Industrial Aggregate Index) indexing. Whatever its original intent, it has in practice done more than just protect judicial salaries against erosion; it has in fact provided for increases to judicial salaries that in most years exceed increases to the cost of living.

While the Commission acknowledged this, it went on to effectively disregard it, as evidenced by its consideration of the fact that there had not been an increase to judicial salaries beyond statutory indexation since 2004 (paragraph 223), and that their salary recommendation must be "meaningful" to the judiciary (paragraph 224). Both findings were cited in support of the Commission's recommendation for a salary increase, and, in the Government's view, both stem from the Commission's mischaracterization of IAI (Industrial Aggregate Index) indexing. Moreover, these considerations are not relevant. They are out of step with the requirements of commission objectivity and independence, as well as with the underlying purposes of a judicial compensation commission process. As the Supreme Court of Canada explained in *Conférence des juges de paix magistrats du Québec v. Québec (A.G.)*, 2016 SCC 39, at paragraph 85:

[W]e emphasize that judicial independence exists for the benefit of the public, and does not serve as a means of labour arbitration to ensure better remuneration for judges. As this Court stated in *Ell*, at para. 29, judicial independence is "for the benefit of the judged, not the judges", as "[j]udicial independence serves not as an end in itself, but as a means to safeguard our constitutional order and to maintain public confidence in the administration of justice" (see also *Bodner*, at paras. 4 and 6). Consequently, "[t]he benefit that the members of those courts derive is purely secondary" (*PEI Judges Reference*, at para. 9).

3. The Commission's treatment of the evidence regarding the need to attract outstanding candidates to the judiciary

This criterion is set out in paragraph 26(1.1)(c) of the *Judges Act* and is meant to encourage judicial salaries to be set at a level that will attract outstanding candidates to the judiciary. Successive commissions have identified two

primary salary comparators for the federally appointed judiciary: (1) a private sector comparator focused on the incomes of private sector lawyers whose earnings lie at the higher end of the range; and (2) a public sector comparator focused on the salaries paid to federal Deputy Ministers – Level 3 (DM-3).

The Commission reaffirmed the importance of the private sector comparator as playing an important role in allowing a commission to compare judicial compensation with the incomes of senior members of the private bar, who are an important source of candidates for the bench (paragraphs 62-66). With the benefit of more detailed data on the incomes of private sector lawyers than was available to previous commissions, this Commission found a growing gap between the incomes of private sector lawyers and the judicial salary (paragraphs 131-132).

In relation to the public sector comparator, the Commission reaffirmed its importance, and that the approach past commissions have taken to this comparator should prevail (paragraphs 169-178, 206-207). The Commission reaffirmed that the appropriate public sector comparator is the DM-3, rather than the DM-4 as the judiciary had submitted. The Commission also reaffirmed the approach of past commissions for calculating the DM-3 as the mid-point of the DM-3 salary range plus one half of eligible performance pay. Finally, the Commission reaffirmed the approach of past commissions for comparing DM-3 compensation with judicial compensation, finding that the focus should be on rough equivalence. The Commission stated at paragraph 217:

The Commission agrees with previous commissions that there should be “rough equivalence” between judges’ salaries and the DM-3 comparator. This reflects the fact that both are paid from the public purse and both involve rewards of service to Canadians that go beyond financial remuneration.

The Commission concluded that “[a]s of April 1, 2025, judges were earning about 2.3% more than the DM-3 comparator — well within the 7.3% gap that the [2011-12] Levitt Commission said ‘tests the limits of rough equivalence’” (paragraph 178). For context, in 2011-12, judicial salaries were 7.3% behind the DM-3 comparator.

The Commission's recommended \$28,000 increase to judicial salaries (exclusive of statutory indexing) was intended to help close the gap with the private sector comparator – even though such an increase would bring judicial salaries closer to rough equivalence with DM-4s (which the Commission expressly rejected as an appropriate comparator) than with DM-3s.

To find on the one hand that there should be rough equivalence between the judicial salary and the DM-3 comparator, and on the other that the judicial salary should increase to a point well outside the range identified by previous commissions as testing the limits of rough equivalence is difficult to reconcile.

Moreover, the trend in judicial salary increases over the last 20 years suggests that caution is warranted. Although judicial salaries have not been increased exclusive of statutory indexing since 2006, they have nevertheless increased substantially since then. Due to annual indexing based on the IAI (Industrial Aggregate Index), which has provided salary increases that have exceeded increases to the cost of living in most years, judicial salaries have gone from being 7.3% behind the DM-3 at the time of the 2011 Levitt Commission to being 2.3% ahead today. As the data before this Commission suggest, there is every reason to assume that this trend will continue. If, as this Commission and its predecessors have found, rough equivalence should be maintained between judicial salaries and the DM-3, a salary increase exclusive of statutory indexing would seem unadvisable at this time.

3.1 Commission findings on judicial vacancies and other evidence said to demonstrate challenges in attracting private sector lawyers to the bench

The Commission's recommended salary increase was not solely premised on the gap that it identified between judicial salaries and the private sector comparator. It was also based on submissions and evidence that the Commission found demonstrated serious challenges in attracting private sector lawyers to the bench. The Government fundamentally disagrees with these findings.

3.1.1 Judicial vacancies

The Commission was presented with evidence, all drawn from public sources, that there had been a temporary increase in the number of judicial vacancies for a period of time that overlapped with part of the quadrennial

period under review. From approximately late-2021 to early 2024, the number of vacancies had been higher than historical averages. However, by the start of 2025, the number of vacancies was well below historic averages. The Commission nevertheless found that it demonstrated serious challenges in attracting qualified private sector candidates to apply for the bench. In doing so, the Commission failed to consider other explanations for increased numbers of vacancies – such as, for example, the election period in 2021, during and following which appointments could not be made; and the fact that the Government had funded the creation of over 100 new superior court judicial positions, most of which immediately appeared as vacancies in the statistical reports of the Office of the Commissioner for Federal Judicial Affairs.

In addition to not accounting for other explanations for the temporary trend, the Commission's finding was simply not consistent with the evidence before it. In the Government's view, this evidence, which included statistical data provided by the Office of the Commissioner for Federal Judicial Affairs, showed no shortage of applicants rated as recommended or highly recommended, something effectively acknowledged by the Commission at paragraph 163. It also showed that the proportion of applicants appointed from the private sector had recently risen, something acknowledged by the Commission at paragraph 164. Appointment announcements over the quadrennial period demonstrate that partners in private firms from large metropolitan centers, who are presumed to be the highest earners in private practice, continue to be appointed.

It was also inconsistent with the subsequent rapid fall in the vacancy rate. Since the qualifications of candidates for the bench take some time to assess, this trend strongly suggests that the higher vacancy rates at issue were unrelated to the availability of qualified candidates for the bench. The Commission acknowledged the rapid decline in vacancies, which was already well underway at the time it received submissions. However, it determined that what it characterized as a crisis in attracting qualified candidates remained unresolved (paragraphs 157, 163), even though the number of candidates evaluated as recommended or highly recommended was evidently more than sufficient to fill vacancies. In the Government's view, the Commission's Report does not satisfactorily address these contradictions.

Finally, the Government is also troubled by the Commission's reference to increased rates of appointment from members of equity-seeking groups, which it juxtaposed against a decrease in the percentage of appointments drawn from private practice (paragraph 161). The intent of this reference is not entirely clear. However, the Government takes the opportunity to emphasize unequivocally that it is deeply committed to continuing the strides made in achieving a more diverse superior court bench. This is a positive development that only enhances confidence in the judiciary.

3.1.2 The Commission's approach to perspectives offered by two Chief Justices

To strengthen its conclusion that the temporary spike in vacancies from 2021-2024 was due to the judicial salary being too low, the Commission relied heavily on the views of two federally appointed Chief Justices, one who provided a written statement before this Commission and one who had spoken before its predecessor. Both provided a similar perspective, affirming that unnamed private sector lawyers, whom they considered highly qualified for the bench, had told them they were deterred from applying by the low level of the judicial salary. The Commission found these perspectives compelling and placed significant weight on them, finding that they constituted key evidence of challenges in attracting qualified private sector candidates to the bench (paragraphs 153-156, 158). Further, the Commission appears to have relied primarily on these personal accounts to refute objective statistical evidence from the Office of the Commissioner for Federal Judicial Affairs suggesting that there were more than enough candidates to fill vacancies (paragraph 165).

With greatest respect for both the Commission and the Chief Justices concerned, the Government fundamentally disagrees with the Commission's approach to these types of statements or testimonials. There was no objective evidence before the Commission linking these anecdotal accounts and the now fully remedied 2021-2024 spike in judicial vacancies, which have been filled by outstanding candidates drawn from a broad spectrum of practice areas, with the majority still being drawn from private practice.

In addition, in the Government's view, these types of accounts are potentially problematic in the context of a process whose hallmarks must, according to the Supreme Court of Canada, include independence and objectivity. Courts have generally found these elements to require certain

statutory and procedural safeguards that are met by this Commission's process and enabling statute. Nevertheless, in the Government's view, the Commission's approach runs the risk of undermining perceptions of whether these criteria are met. The Commission relied on subjective accounts from directly affected individuals, with no details such as the sources of information or statistical analyses. Both elements were evident in the information provided by the Commissioner for Federal Judicial Affairs. This can only risk undermining perceptions of the process' objectivity and independence in the mind of the reasonable and reasonably informed observer. It also disregards the independent Judicial Advisory Committees (JACs), which are integral to the judicial appointments process; it is the JAC (Judicial Advisory Committee)s' role, rather than that of members of the judiciary, to receive applications and assess judicial candidates' qualifications.

To be clear, the credibility of those who provided these accounts is not at issue. If factors like objectivity and independence are to be assessed from the perspective of the reasonable and reasonably informed member of the public, as the courts have suggested, no amount of personal credibility on the part of the individuals providing such accounts can overcome the shortcomings inherent in the Commission's approach.

4. The Commission's treatment of the evidence regarding the compensation of associate judges

Associate judges are judicial officers appointed to the Federal Court and Tax Court of Canada whose role is primarily focused on case management – on helping the parties to a matter resolve preliminary issues, including by issuing orders and decisions, with a view to getting a matter ready for a hearing on the merits by a full judge. They are currently paid 80% of the salary of a federally appointed puisne judge.

The Commission recommended that associate judges be paid 95% of a judicial salary based on:

- accounts from the Chief Justice of the Federal Court to the effect that attracting qualified candidates to apply to become associate judges is challenging, and that recent appointments of associate judges as full judges of the Court are likely due to the lower salary for associate judges (paragraphs 234-238)

- increases in the responsibilities of associate judges (paragraph 239)
- the rate of pay for associate judges in the provincial superior courts and the disparity with the federal judicial salary (paragraph 240)

The Government respectfully disagrees with the Commission's approach to the evidence before it, as well as with the perspective on the office of associate judge that appears to underpin its approach. Associate judges (comparable to judicial officers that also have titles such as case management judges and case masters) exist in most jurisdictions, including in the provincial superior courts, where their appointment and compensation are the responsibility of the province. As the objective evidence before the Commission indicated, in no jurisdiction is that percentage equal to 95% of a superior court judge's salary; they ranged from 62.5% in Quebec to 90.7% in British Columbia. Of particular note is Ontario, which has seen fit to set the salary of its associate judges at the same rate as that of their federally appointed counterparts.

The Government must also respectfully disagree that the appointment of several associate judges of the Federal Court as judges indicates that the salary is too low. The office of associate judge is a junior judicial office. In the Government's view, the fact that several associate judges have been appointed judges of the Court does not support the proposition that the associate judge salary is too low. On the contrary, it indicates that candidates of the highest caliber are attracted to the office. Furthermore, if associate judges were paid as judges, or so close to it as to make little difference, this would raise the question: should the office of associate judge continue, or should the associate judges simply be appointed judges of the Court and the office discontinued?

Finally, with the greatest respect to the Chief Justice of the Federal Court, his testimony – that he believes the associate judge salary to be too low based on his attempts to persuade qualified candidates to apply to become associate judges – raises similar concerns as that of the Chief Justices referenced in 3.1.2 above. Such assertions cannot be effectively contextualized by reference to any type of objective data.

Conclusion

For the reasons outlined in this Response, the Government respectfully declines to implement the salary recommendations of the Commission, apart from the recommendation, implicit in the Commission's findings, that statutory indexing based on the Industrial Average continue for the quadrennial period without the 14% cumulative limit the Government proposed.

Annual statutory indexing using IAI (Industrial Aggregate Index) provides for increases to judicial salaries that in most years exceed increases to the cost of living; given their link to judicial salaries, the salaries of associate judges also benefit from IAI (Industrial Aggregate Index) adjustments. In other words, in most years, IAI (Industrial Aggregate Index) indexing provides for what can fairly be characterized as a raise. Once increases to the cost of living are factored in, this raise tends to be small in any given year. However, as the evidence before the Commission plainly demonstrated, these raises add up over time. Some 15 years ago, judicial salaries were over 7% behind the DM-3; today, they are just over 2% ahead. As the Commission found, judicial salaries remain within the range of rough equivalence with the DM-3, but this nevertheless represents a substantial increase over time. Based on the evidence before this Commission, there is no reason to believe that these increases will not continue.

Footnotes

- 1 *Bodner v. Alberta et al.*, 2005 SCC 44 at para. 39.
- 2 *Bodner* at para. 26.
- 3 The federal Commission has only held one *ad hoc* process on proposed amendments affecting pension accrual for judges who become the subject of recommendations for removal from office by the Canadian Judicial Council. The process was requested by the Minister of Justice by letter to the Commission dated May 31, 2019. The Commission reported on October 28, 2019, and the Government responded to the Commission's report on February 27, 2020.

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