

**IN THE MATTER OF THE JUDGES ACT, R.S.C. 1985, c. J-1, as amended.**

**QUADRENNIAL JUDICIAL COMPENSATION  
AND BENEFITS COMMISSION**

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**REPLY SUBMISSIONS OF THE GOVERNMENT OF CANADA**

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## I. INTRODUCTION

1. The following submissions are made primarily in reply to the Joint Submission of the Canadian Superior Court Judges Association and the Canadian Judicial Council (“Joint Submission”), in addition to such other submissions as are specifically referred to below.
  
2. As a general observation, Government rejects the judiciary’s allegations and oblique inferences that the Government has failed to demonstrate a genuine commitment to the Quadrennial process, or to the important constitutional objectives that it is designed to serve. The Government has prepared for and entered this third Commission process demonstrating serious and sustained efforts to make this Commission process work in an objective and effective manner. We are confident that the significantly improved information base upon which this Commission will be able to undertake its analysis will result in sound and reasonable recommendations.
  
3. The Government does not intend to reiterate its key arguments and proposals. Rather the Government will address the following matters that have been raised by the Joint Submission:
  - The Commission’s lack of jurisdiction to consider process reforms;
  - The methodological and evidentiary weaknesses of the Joint Submission proposal for judicial salary increases, including the respective weight that should be given to the competing evidence with respect to comparative salary information;

- The reasons why the Commission should not accept the Joint Submission proposals with respect to (i) providing a Removal Allowance for all superior court judges retiring from the Bench; and (ii) increasing the Representational Allowances provided in ss. 27(6) of the *Judges Act*; as well as, (iii) the considerations that must be weighed in making a recommendation to confer the benefits provided in ss. 43(1) and (2) of the *Judges Act* on Senior Judges.
- The reasons why the Commission should not accept the proposal that the judiciary should be reimbursed for 100% of disbursements, or in the alternative that the costs for disbursements or preparation of the Navigant survey should be reimbursed at 100%.

4. In addition, this Reply will set out the reasons why the Government opposes the establishment of a salary differential between superior trial and appeal court judges.

These reasons have been advanced by previous Governments and found favour with all prior Commissions.

## II. PROCESS REFORM AND GOVERNMENT RESPONSE TO PREVIOUS COMMISSIONS

5. The Joint Submission devotes considerable time to what it characterizes as the failure of the Quadrennial Commission process, and specifically to criticisms of this Government's response to and implementation of the 2003 McLennan Commission Report and Recommendations. The judiciary asks the Commission to exhort the Government to take what can only be described as extraordinary steps in relation to the process for implementation of the Government Response.<sup>1</sup>
  
6. The Government submits that the Commission has no jurisdiction to consider or make recommendations. As the Supreme Court of Canada clearly indicated in the *PEI Judges Reference*, it is for government and the legislature to determine the institutional design, including procedure, preferably in consultation with the judiciary.<sup>2</sup> Indeed, by stopping short of actually seeking Commission recommendations in relation to process reform, the judiciary has effectively accepted the Government's position that this Commission has no mandate to make such recommendations, and that the Government would be under no legal obligation to respond to any recommendations should they be made.
  
7. Moreover, there is a more appropriate and effective route through which the judiciary can seek to advance its proposals. The Government has consistently indicated an openness to work with representatives of the judiciary in developing

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<sup>1</sup> *Joint Submission*, pp. 50-51, paras. 180-183.

<sup>2</sup> [1997] 3 S.C.R. 3 at para. 167. See *Reply Appendices*, Appendix 1.