

March 27, 2000

DELIVERED

The Honourable Anne McLellan
Minister of Justice and
Attorney General of Canada
c/o Department of Justice, Canada
East Memorial Building
284 Wellington Street
Room 2171
Ottawa, ON K1A 0H8

Dear Ms McLellan:

Re: Bill C-23, An Act to modernize the Statutes of Canada in relation to benefits and obligations (“Bill C-23”): Proposed Amendments to the Judges Act (Canada)

By letter dated February 10, 2000, Mr. David Sgayias, Counsel for the Government of Canada (the “Government”) on the quadrennial review of the Commission now in progress concerning judicial compensation and benefits (the “Quadrennial Review”), informed the Commission of the intended tabling by the Government of Bill C-23 for the purposes of effecting amendments to various federal statutes, including the *Judges Act* (Canada) (the “Act”) in relation to survivor annuity benefits. In the same letter, on behalf of the Government Mr. Sgayias requested the Commission’s advice and recommendations on Bill C-23 in relation to the amendments proposed therein to the *Act*. This request was repeated on February 14, 2000 during the course of a hearing before the Commission.

As a result of a letter dated March 22, 2000 from Mr. Sgayias, the Commissioners understand that the Standing Committee is likely to report Bill C-23 for third reading in the House of Commons on Wednesday, March 29, 2000. For this reason, the views of the Commission, as earlier requested, were sought at the earliest possible date.

The purpose of this letter, therefore, is to respond to this request from the Government.

In light of the Commission’s mandate and authority under the *Act*, and having regard to the issues raised before the Commission by various parties during the course of the current

Quadrennial Review, it is the Commission's view that it is proper and appropriate that its advice and recommendations be provided on those portions of Bill C-23 pertaining to proposed amendments to the *Act*. At the Commission's hearing on February 14, 2000 all parties in attendance agreed that the Commission's response should be provided in this regard.

To assist it in its consideration of Bill C-23, the Commission engaged the services of Professor Patrick Monahan of Osgoode Hall Law School, York University. The advice provided to the Commission by Professor Monahan is set out in a letter from him to the Chair of the Commission dated March 24, 2000, a copy of which is attached.

As appears from Bill C-23, the amendments proposed thereunder to be made to the *Act* concern annuity benefits for survivor partners of judges. Various parties to the Quadrennial Review, including the Government, requested the Commission to consider certain proposals concerning the suggested extension of survivor annuity benefits to unmarried conjugal partners of judges, together with related matters. The Commission understands that Bill C-23 is the Government's suggested legislative response to various of these proposals, among other matters.

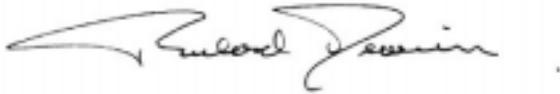
When the Commission learned of the introduction of Bill C-23, it was concerned to ascertain the position of the parties to the Quadrennial Review concerning the sufficiency and appropriateness of the provisions of Bill C-23 in relation to the *Act*, and having regard to the proposals made before the Commission concerning survivor annuity benefits. Accordingly, at its hearing on February 14, 2000, the Commission invited the comments of interested persons concerning the relevant provisions of Bill C-23. The Commission was informed that the amendments to the *Act* proposed in Bill C-23 were considered by the parties as timely and in accordance with the submissions made by relevant parties for changes to the survivor annuity provisions of the *Act*. In particular, all parties who appeared before the Commission and who commented on the proposed changes in Bill C-23 to extend survivor annuity benefits to common law and same-sex survivors, expressed their support for these changes. They also argued that passage of those portions of Bill C-23 intended to effect such an extension should not be delayed.

The Commission has considered the relevant provisions of Bill C-23, the submissions of the parties concerning survivor annuity benefits, the advice provided to the Commission by Professor Monahan, the positions of the parties concerning Bill C-23, and the recent relevant jurisprudence of the Supreme Court of Canada, and offers the following observations and recommendations:

- (i) the proposed amendments to the *Act* set out in Bill C-23 are important and timely to ensure that the provisions of the *Act* comply with the requirements of the Canadian *Charter of Rights and Freedoms* and with recent decisions of the Supreme Court of Canada concerning benefits and obligations in relation to same-sex and common-law relationship couples. In the Commission's view, passage should not be delayed of those portions of Bill C-23 intended to effect such amendments to the *Act*;

- (ii) the proposed amendments to the *Act* set out in Bill C-23 represent an appropriate response to those issues concerning survivor annuity benefits as raised before the Commission and pertaining to the availability of benefits to unmarried partners of the same or opposite sex; and
- (iii) the inclusion in Bill C-23 of apportionment rules, to apply in cases where there are competing claims concerning survivor annuities, is appropriate and, as set out in Bill C-23, provides a satisfactory basis for resolving any conflicts that might arise in circumstances where there is more than one survivor.

Our observations and recommendations in this regard are hereby respectfully submitted.

A handwritten signature in black ink, appearing to read "Richard Drouin". The signature is fluid and cursive, with a large initial "R" and "D".

(Mr.) Richard Drouin
Chair
Judicial Compensation & Benefits Commission

FOR THE COMMISSION