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CABINET DU PRÉSIDENT

December 15, 2003

Mr. Roderick A. McLennan, Q.C.
Chair, Judicial Compensation and Benefits Commission
99 Metcalfe Street
Ottawa ON K1A 1E3

Dear Mr. McLennan:

The Canadian Bar Association welcomes the opportunity to express its views to the Commission in its current review of judges' salaries and benefits.

The Canadian Bar Association is a national association representing over 38,000 jurists, including lawyers, notaries, law teachers and students across Canada. The CBA's primary objectives include improvement in the law and in the administration of justice.

The CBA remains committed to protecting the independence of the judiciary from the executive and legislative branches. That independence is a cornerstone of our system and, by extension, of our democracy itself. The CBA also recognizes the pivotal role that the process for determining judicial compensation and benefits can have in fostering or eroding that independence. With this in mind, our submission to the Judicial Compensation and Benefits Commission identified several issues relating to judges salaries and annuities, including the danger of politicizing the process. We are now submitting additional general comments, and hope to be able to examine other submissions made to the Commission to determine if we will make further submissions on specific issues.

The process for determining benefits and compensation

The CBA continues to be concerned about the process for determining salaries and other benefits. In our 2000 submission, we discussed the requirement in section 26 of the *Judges Act* that the report be reviewed by Parliamentary Committees. Section 26(6.2) permits these committees to conduct inquiries or public hearings in respect of the report. The committees then report their findings to their respective Houses.

As submitted in 2000, the CBA again urges the Commission to remind Parliament that the Constitution requires the setting of judicial salaries to be objective, dispassionate and rational. The intention behind establishing judicial compensation commissions is to provide an effective and non-partisan method of reviewing and setting judicial remuneration. Our previous submission supported the Scott Commission's view that Parliamentary Committee review of the Commission's recommendations generally increases rather than decreases the likelihood of politicizing judicial compensation issues. We stated:

Now that politicians' attacks on judges have become an unfortunate part of the political landscape, Committee hearings could become a forum for those who have an axe to grind with respect to particular judicial decisions or with the judiciary generally. In particular, we are concerned that some will feel the need to make direct links between judicial decisions, either specifically or generally, and compensation issues. We believe the Commission should caution Parliament that its consideration of the Commission's report involves special constitutional considerations, which risk being endangered by a politicized approach and by making any links between judges' remuneration and the decisions they make.

If anything, the continuing political criticisms of judgments rendered on politically divisive issues has heightened our belief in the danger of politicizing the compensation process.

The information base for determining appropriate compensation and benefits levels

It is not the intention of the CBA to recommend actual salary levels for judges. Our main concern is to ensure that the process for determining salary levels takes into account the appropriate comparables and factors. In addition, in our view, the compensation afforded judges must, ultimately, be reasonable, fair, and sufficient to attract and retain highly qualified judges, who are able to remain free of any extraneous influences. It is, therefore, important that the Commission seek out adequate information about the salaries of those groups from which judges would normally be drawn (e.g. senior private sector and government practitioners, law deans and professors, and in-house counsel).

Beyond strict salary and benefit comparisons, it is also necessary to ensure the recruitment and retention of the best candidates for the Bench. This may require salaries and benefits beyond those that would appear warranted by a strict comparison with private and public sector professionals. The comparative workload of private practitioners, and the increasing complexity of judges' work, should also be taken into account. The security of tenure and retirement options afforded judges are pertinent. Past compensation levels are also relevant.

Benefits

We understand that the Commission may deal with the division of annuities on marriage breakdown. We have no specific recommendation at this point, other than that a judge should be accorded the same treatment as someone not on the bench in respect of family law matters. In addition, we recommend there should be explicit provisions in the *Judges Act* to address these matters.

These are our initial comments. We hope to review other submissions made to this Commission, and we may then offer additional comments.

Thank you again for seeking the views of the CBA.

Yours sincerely,



F. William Johnson, Q.C.
President,
Canadian Bar Association

(Original copy signed by Trevor Rajah for Rosemary Sc ott)

Rosemary Scott
Chair,
Judicial Compensation and Benefits Committee