

## **Government's Proposed Reconsidered Response to the Report of the 2013 Judges Compensation Commission**

**October 23, 2017**

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This is the government's proposed Response to the Report of the 2013 Judges Compensation Commission (the "Commission Report"). The Legislature previously responded to the Commission Report in March of 2014, but following direction from the British Columbia Court of Appeal the Commission Report must be reconsidered.

The 2013 Judges Compensation Commission (the "2013 Commission") was an independent commission mandated by the *Judicial Compensation Act* to report on and make recommendations respecting Provincial Court judges' remuneration, allowances and benefits. The recommendations of the 2013 Commission cover the period from April 1, 2014 to March 31, 2017.

### **Independence of the Judiciary**

It is a fundamental principle of the Canadian constitution that the courts must be independent of government and private actors. The government re-emphasizes its respect for and its commitment to the principle of judicial independence, both in its substance and its spirit.

The Supreme Court of Canada has recognized three essential conditions for judicial independence: security of tenure, financial security and administrative independence. Each of these components has been the subject of careful analysis by that court.

The Supreme Court of Canada has affirmed, as a constitutional requirement for financial security, that judges' remuneration must not become the subject of negotiation between the judiciary and government. Instead, it must be established through a process that incorporates an independent, objective and effective judicial compensation commission that reports and makes recommendations on judicial remuneration.<sup>1</sup>

More recently, the Supreme Court of Canada has provided further guidance on the tests a government must meet if it wishes to reject recommendations from a judicial compensation commission:

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<sup>1</sup> *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island* [1997] S.C.R. 319 (hereinafter referred to as the "PEI Reference Case")

[A Commission's] recommendations must be given weight, but the government retains the power to depart from the recommendations as long as it justifies its decision with rational reasons in its response to the recommendations. Reasons that are complete and that deal with the Commission's recommendations in a meaningful way will meet the standard of rationality. The reasons must also rely upon a reasonable factual foundation. If different weights are given to relevant factors, this difference must be justified. The use of a particular comparator must also be explained. If it is called upon to justify its decision in a court of law, the government may not advance reasons other than those mentioned in its response, though it may provide more detailed information with regard to the factual foundation it has relied upon.

The government's response is subject to a limited form of judicial review by the superior courts. The reviewing court is not asked to determine the adequacy of judicial remuneration but must focus on the government's response and on whether the purpose of the Commission process has been achieved.<sup>2</sup>

### **Provincial Court Judges**

Provincial Court judges are appointed under the *Provincial Court Act* and hold office to age 75. The Provincial Court of British Columbia's jurisdiction, at the time of the Commission Report, included criminal law, family law matters, child protection, traffic and bylaw cases, and small claims cases up to a maximum of \$25,000.

As of June 30, 2013, the Provincial Court was comprised of 107 full-time judges and 47 senior judges who work part-time. The Court serves 87 locations across the Province.

The 2013 Commission stated that it was impressed with and convinced of the quality of the work performed by judges of the Provincial Court. The Commission observed that the Provincial Court has been called the "People's Court" because most citizens who come into contact with the justice system only experience it through the Provincial Court. The Commission also observed that the Court has undertaken a number of initiatives in recent years to enhance its efficiency and effectiveness, and that these initiatives reflect innovation, flexibility and hard work of Provincial Court judges in meeting the needs of the justice system. The government agrees with these observations and recognizes the invaluable work of the Provincial Court.

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<sup>2</sup> *Provincial Court Judges' Assn. of New Brunswick v. New Brunswick (Minister of Justice); et al*, [2005] 2 S.C.R. 286, (commonly referred to as the "Bodner" decision).

## The Process for Determining Judicial Compensation in British Columbia

The process for setting the remuneration, allowances and benefits of Provincial Court judges is governed by both the common law referred to above and by statute. The statutory framework is set out in the British Columbia *Judicial Compensation Act* (“the Act”).

In accordance with section 2 of the Act, the members of the Commission were appointed on or before March 1, 2013. The members were Simon Margolis, QC (Chairperson), Robin McFee QC, Randy Kaardal QC, Roy Stuart, and Kirsten Tisdale.

The Commission’s responsibility pursuant to section 5(1) of the Act was to report on and make recommendations respecting the remuneration, allowances and benefits of judges for the fiscal years 2014/15, 2015/16, and 2016/17. The Act, as it was during the time the Commission was in operation,<sup>3</sup> required the Commission to consider several factors before making its recommendations:

5. (5) In preparing a report, a Commission must consider all of the following:
  - (a) the current financial position of the government;
  - (b) the need to provide reasonable compensation to the judges or judicial justices;
  - (c) the need to maintain a strong court by attracting qualified applicants;
  - (d) the laws of British Columbia;
  - (e) any other matter the Commission considers relevant.

Section 6(2) provides that the Legislative Assembly may, by resolution passed within 16 sitting days after the date on which the report is laid before it:

- (a) reject one or more of the recommendations made in the report as being unfair or unreasonable, and
- (b) set the remuneration, allowances and benefits that are to be substituted for the remuneration, allowances or benefits proposed by the rejected recommendations.

The Act further specifies that, if a recommendation is not rejected by the Legislative Assembly within the time limit, the judges are entitled to receive the remuneration, allowances and benefits proposed by that recommendation.

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<sup>3</sup> The statutory factors, along with several other provisions in the Act, were amended by the Legislature in 2015.

This proposed response provides government's reasons for the rejections and substitutions it recommends to the Legislative Assembly.

The Legislative Assembly must consider the Commission Report in the context of the Act as it then was, judicial independence and the Legislature's responsibility to deal with matters of the public interest broadly understood. This includes responsible fiscal management of public funds. It is government's task to balance the competing interests and demands for public funds, to set policy and priorities having regard to government's financial commitments as a whole and to present its spending proposals to the Legislative Assembly for approval.

The Commission Report makes eight recommendations respecting judges' remuneration, benefits and allowances. As set out in the motion accompanying this response, government proposes that:

- two recommendations be rejected and substitutions made;
- one recommendation be accepted in part; and
- the remaining five recommendations be accepted.

In accordance with section 6 (2) of the Act, where the recommendations of the Commission Report are rejected, the rejection is on the basis that the recommendations are unfair or unreasonable, or both, with reasons provided below.

### **The Context for the Reconsideration of the 2013 Commission Report**

This reconsideration was ordered by the BCCA in its decision of February 7, 2017 in *Provincial Court Judges' Association of British Columbia v. British Columbia (Attorney General)*, 2017 BCCA 63 ("PCJA 2017"). The decision set aside the Legislature's original response, which was approved by unanimous resolution on March 24, 2014 and which accepted several of the Commission's recommendations but rejected recommendations respecting salary, pension accrual rate and the retroactive application of a recommendation respecting re-enrollment in the pension plan of two judges over the age of 71.

The court's decision to order that the Commission Report be reconsidered has its origins in previous litigation which occurred respecting the report of the 2010 Commission. The Court of Appeal's earlier decision in *Provincial Court Judges' Association of British Columbia v. British Columbia (Attorney General)*, 2015 BCCA 136 ("PCJA 2015")<sup>4</sup> resulted in retroactive changes to

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<sup>4</sup> Government sought leave to appeal the decision to the Supreme Court of Canada, but leave was denied.

judges' salaries and pension benefits for the years immediately prior to the 2013 Commission's mandate. Because the decision in PCJA 2015 came after the 2013 Commission made its recommendations, those recommendations were made without knowing the salary and pension accrual rate that would ultimately stand as the baseline or starting point for the 2013 Commission's work. The Legislature was likewise unaware of this when it originally considered the Report of the 2013 Commission.

The table below sets out the sequence of events surrounding the 2010 and 2013 Commissions, the Legislature's responses and resulting litigation.

### Chronology of Events

March 12, 2013	Legislative Assembly approves reconsidered response to 2010 Commission report. Judicial review follows.
March to September 2013	2013 Commission process and presentation of final report to Attorney General.
March 3, 2014	BC Supreme Court upholds Legislature's response to 2010 Commission.
March 24, 2014	Legislative Assembly response and resolution respecting 2013 Commission recommendations. Judicial review follows.
March 27, 2015	<i>Provincial Court Judges 2015</i> : BC Court of Appeal rules 2-1 against Legislature's response to 2010 Commission and issues declaration that judges are entitled to salaries and benefits recommended by 2010 Commission. The most significant of those recommendations were a salary increase in fiscal year 2013/14 of 4.9% and an increase to judges' pension accrual rate from 3% to 3.5%.
July 29, 2016	BC Supreme Court finds Legislative Assembly's response to 2013 Commission does not meet constitutional test and orders reconsideration.
February 7, 2017	<i>Provincial Court Judges 2017</i> : BC Court of Appeal orders reconsideration of Legislative Assembly response to 2013 Commission but sets aside the BC Supreme Court's order that the reconsideration be undertaken in accordance with that court's reasons.

The 2013 Commission and the Legislature believed that salaries for 2013/14 were \$234,605 and that the pension accrual rate was 3%. The effect of PCJA 2015 was to retroactively alter judges' salaries for the 2013/14 fiscal year: instead of the 1.5% increase approved by the Legislative Assembly, the court declared that the judges were entitled to a 4.9% increase resulting in a salary of \$242,464 for that year. PCJA 2015 also resulted in an increase to the accrual rate for judges' pensions from 3% to 3.5% for the three years of the 2010 Commission's mandate as well as affecting other benefits.

In *PCJA 2017* the Court said at paragraph 4:

.... I consider *Provincial Court Judges 2015* so altered the legal foundation for the Legislative Assembly's resolution that, without fault to the parties or the Legislative Assembly, the resolution [of March 24, 2014] is fatally flawed as being based on an incorrect legal premise of the salaries and benefits applicable at the time the resolution was passed. In that circumstance and the Legislative Assembly never having had the opportunity to consider the issue of Provincial Court judges emoluments in the context of that court ordered framework, it would be wrong for us to pronounce on a resolution that takes as its base point for discussion a state of affairs that has been erased by court order. The situation calls for an order remitting the matter to the Legislative Assembly for fresh consideration knowing the effect of *Provincial Court Judges 2015*.

The 2013 Commission's recommendations and the Legislature's response both contemplated moderate increases to judges' salaries. Of particular concern to the court in 2017 was the fact that judges' salaries and pension accrual rates were instead reduced from 2013/14 to 2014/15 due to the effect of PCJA 2015.

The court in 2017 did not make any findings on the adequacy or legitimacy of the reasons supporting the Legislature's response.<sup>5</sup> It said: "It is for the Legislative Assembly, armed with the new 2011-2014 salary grid and benefits, to consider the discussion of the issues and conclusions in the 2013 Commission's report."

Another important factor governing this reconsideration is the direction from the BCCA in *PCJA 2015* that a reconsideration of a commission report may not be based on facts and circumstances that have occurred since the initial response of the Legislature – otherwise, a potentially lengthy intervening time period could distort the process and risk creating a disconnection between the evidence heard and findings made by a commission and the

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<sup>5</sup> The court set aside the lower court's order that the reconsideration take place in accordance with that court's reasons.

Legislature's response to the commission's report. A reconsideration is to proceed based on the facts and circumstances known to the Legislature at the time it first responded to the commission report. In this case, that means the facts and circumstances known to the Legislature as of March 2014, altered only by the direction from the BCCA in PCJA 2017 to take into consideration the retroactive changes to judges' compensation resulting from the previous litigation.

## **A. Commission Recommendations and Government's Proposed Responses**

### **Salary Recommendations**

The Commission made the following recommendations respecting the salaries of judges:

1. Salaries for judges with administrative responsibilities:
  - a. Chief Judge: 112% of the salary of a puisne judge;
  - b. Associate Chief Judge: 108% of the salary of a puisne judge;
  - c. Regional Administrative Judge: 106% of the salary of a puisne judge.
2. Salary for puisne judges:
  - a. in fiscal year 2014/15: \$241,500;
  - b. in fiscal year 2015/16: increase of 1.5% to \$245,122;
  - c. in fiscal year 2016/17: increase of 2% to \$250,024.

### **Proposed Responses to Commission Salary Recommendations**

Government proposes that salary recommendation 1 be accepted.

Government proposes that recommendation 2 be rejected as unfair or unreasonable because the 2013 Commission, through no fault of its own, could not consider the impact of *PCJA 2015* and its recommendations would therefore result in a reduction to judges' salaries. The impact of *PCJA 2015* must be considered in light of the content of the Commission Report, and the cost of salary increases within the context of government's program of fiscal restraint as it stood when the Legislature first considered the Commission Report.

Government proposes that the following salary increases be substituted:

- a. the salary for puisne judges in fiscal year 2014/15 be \$244,889;
- b. the salary for puisne judges in fiscal year 2015/16 be \$248,562; and
- c. the salary for puisne judges in fiscal year 2016/17 be \$252,290.

The proposed salaries would provide a cumulative \$9,826 or 4.05% increase to the judiciary from the \$242,464 base salary for 2013/14.

Raising judges' salaries by the percentage increases contained in the 2013 Commission Report would result in a final salary of \$258,303 for a cumulative increase of \$15,839 or 6.53%. It is not known whether the 2013 Commission would have recommended the same percentage increases had it known the new, higher starting point for judges' salaries resulting from PCJA 2015.

The salaries proposed by government would result in an estimated total fiscal impact of \$4.212 million, including employer-paid benefits and the flow-through of salary adjustments accepted in recommendation 1, over the three years covered by the Commission Report. By contrast, raising judges' salaries by the percentage increases proposed by the Commission and using the new starting point, would result in an estimated total fiscal impact of \$6.291 million over the three years covered by the Report, which is more than \$2 million higher than government's proposed response.

These fiscal impacts occur in the context of the higher base salary for the 2013/14 fiscal year that was declared by the BCCA in its decision in PCJA 2015. As a result of that decision, the salary for 2013/14 became \$242,464 rather than the \$234,605 approved by the Legislature.

Although Government's proposed response in this reconsideration includes the same percentage increases as the first response brought forward in March 2014 (see below), the fiscal impact is greater because those increases are occurring on a higher base salary – that higher base salary compounds through succeeding years.

The proposed response takes into account the objectives and considerations of the 2013 Commission set out at page 47 of its report. In summary, the Commission found:

- B.C. judges' salaries should not be pegged to any comparator, but ought to be in the 3<sup>rd</sup> to 4<sup>th</sup> range amongst salaries of provincial court judges in Canada;
- British Columbia had a "cautious but positive economic outlook" at the time the Commission held its hearings;
- There was no recruitment problem for the court, but the gap in salaries between provincial court and superior court judges should not become so great that the ability to recruit highly qualified judges to the provincial court is compromised in the future;
- a modest increase in salary is appropriate to the dignity of the position and in keeping with judges' reasonable compensation and the need to ensure a strong court.



The proposed response exceeds the salaries recommended by the 2013 Commission and ensures that there are no reductions in judges' salaries in any year. The proposed response also accords with the "cautious but positive outlook" identified by the Commission by recognizing that fiscal restraint was a key component of government's overall fiscal plan at the time the Commission deliberated and at the time the Legislature initially responded to the Commission Report.

Restraint measures in place in March 2014 continued the expenditure reduction measures first implemented in October 2012: these measures included a freeze on hiring (except for critical operational positions), a salary freeze for all management employees in government, and further spending controls on administrative and discretionary expenditures. The 2014/15 budget (released on February 18, 2014) included further restraint measures such as controls on travel, office equipment, and other discretionary spending (e.g. grants), and identified \$76M in savings to be achieved in 2014/15. These expenditure management initiatives were instrumental in meeting annual expense growth projections over the fiscal plan period that, with moderate annual revenue growth, would allow government to maintain balanced budgets going forward.

At the time of the 2013 Commission, the salaries of judges in other provincial courts across Canada had not all been established. The Commission believed its recommended salaries would place British Columbia's judges fourth among its provincial counterparts based on data available for 2012/2013 and partial data available for 2013/2014. The proposed response, by increasing those salaries, creates greater certainty in that regard. The gap between B.C. judges and superior court justices as it was known to the Commission would be reduced from 18.3% to 17.2% in 2014/15.

The substituted salaries proposed by government would increase judges' salaries by the same percentages as those in the Legislative Assembly's first response, but starting from the higher base salary declared by the BCCA in *PCJA 2015*. The salaries approved by the Assembly in its first response to the 2013 Commission Report in March 2014 were as follows:

2014/15: \$236,950  
2015/16: \$240,504  
2016/17: \$244,112

In summary, the proposed response balances the retroactive change to judges' salaries for the 2013/14 year resulting from *PCJA 2015* with the findings and recommendations of the Commission, the fiscal context at the time the Commission and Legislature first considered judges' compensation, and the cost of the salary increases considered in the context of the government's program of restraint.

## Commission Benefits Recommendations

The Commission made the following recommendations respecting benefits for Provincial Court Judges:

3. Increase in the pension accrual rate from 3.0% to 3.25%, effective April 1, 2014.
4. Government take reasonable steps to avoid the double taxation of judges on the non-registered component of their pension contributions.
5. Effective April 1, 2014, government rectify the inconsistency that requires Provincial Court Judges who work full-time past the age of 71 to collect both pension and full-time pay, by doing the following:
  - a. Seek any necessary approval from the Canada Revenue Agency;
  - b. Amend the *Judicial Compensation Act* to defer the date upon which judges retire for pension purposes until the date upon which judges retire from full-time work;
  - c. Ensure that judges are allowed to make pension contributions and that government continues to make pension contributions until a judge's date of retirement from full-time work; and
  - d. Amend the *Judicial Compensation Act* to ensure that any judge who is receiving pension benefits and full-time salary as of April 1, 2014 has the option to elect back into the pension program on terms that are actuarially sound, placing the judge, the pension plan, and the government in the same position they would have been in had the judge never elected to take his or her pension. Such terms would include the following:
    - i. The return of pension payments to the plan by the judge;
    - ii. The making of back-payments for contributions by both the judge and government; and
    - iii. The making of all appropriate interest payments on pension payments or contributions by the judge and government.
6. Government implement expeditiously the 2010 Commission's recommendation to provide cost-neutral life insurance to judges age 71-75.
7. The Senior Judges Program not be extended to allow senior judges to sit for 10 years.
8. The government pay 100% of the reasonable costs of the Association for participating in the Commission process.

## **Proposed Responses to Benefits Recommendations**

That recommendations 4, 6, 7, and 8 be accepted.

That recommendation 5 be accepted in part.

That recommendation 3 be rejected.

The proposed responses to the benefits recommendations are the same as those in the first response of March 2014. There is no fiscal impact as a result of the accepted recommendations beyond the requirement for government to make employer contributions to the pension plan on behalf of judges who continue to sit full-time past age 71 and remain members of the plan – at the time of the 2013 Commission there were two such judges. The one-time payment of costs to the Provincial Court Judges Association was made in 2014.

The recommendations that were accepted have already been acted upon, and upon reconsideration there is no reason to reject them now.

The reasons for the proposed responses that constitute rejection or partial acceptance are found below.

### **Rejection of Recommendation 3**

Government proposes that Recommendation 3, which recommends a pension accrual rate for judges of 3.25% annually, should be rejected as unfair or unreasonable for the reasons set out below. Instead, government proposes that the pension accrual rate should be 3%.

At the time it considered this issue, the 2013 Commission assumed the pension accrual rate was 3%. Subsequently, the PCJA 2015 decision resulted in the retroactive imposition of a 3.5% accrual rate for the three years of the 2010 Commission's mandate in accordance with the 2010 Commission's recommendation. Accordingly, the 2013 Commission's recommendation for a 3.25% accrual rate reflects a reduction in the accrual rate whereas the Commission thought it was recommending an increase.

The Commission recommended the rate of 3.25% based in part on the notion that this would permit a judge appointed at the average appointment age (53) and who had no previous pensionable service to attain their full pension by working to age 75 if they so choose. The Commission also found that a rate of 3.25% is reasonable considering the "close comparators of other judges and the need to maintain a strong court". The Commission further concluded that the cost of the increase is reasonable in relation to the financial position of government.

The Commission rejected the 3.5% rate proposed by the judges' association and previously recommended by the 2010 Commission. The 2013 Commission noted that both the financial position of government and the pension climate had changed since 2010. The Commission noted that the economic recovery had not been as robust as predicted in 2010, and that in the changing landscape of pension plans most people no longer enjoy "defined benefit" pension plans and the segment of the population that does is decreasing. The Commission further found that the 2010 Commission did not appear to consider that extending judges' membership in the plan to age 75 (as the 2010 Commission recommended) would improve the opportunity for judges to earn the maximum pension if they chose to continue working full-time to 75.

The 2013 Commission further found that judges' pensions, while similar in structure to close comparator groups, are quite distinct and quite generous when compared to the pension situations of most British Columbians. Provincial Court Judges are members of the Public Service Pension Plan. Under the current pension contribution formula in the Act, 24% of the necessary contributions come from judges and 76% from government. The Commission noted that the 3% accrual rate in effect at the time of the Commission's work is higher than the 2% accrual rate for public sector employee pensions and is similar to accrual rates for provincial court judges in most other provinces.

Further, the Commission stated that it was not convinced that the disparity in pensions between the provincial and superior courts was affecting the current quality of judicial applications, although it noted that it could become a problem in the future and that it is appropriate to be mindful of the gap in total compensation.

The comparatively generous nature of judges' pensions reflects the fact that judges without prior pensionable service commence contributions to the pension plan relatively late in their careers. However, judges who were formerly in public service, such as crown counsel, bring their accumulated years of service in the Public Service Pension Plan with them when they are appointed to the bench.

Government believes that in a time of fiscal restraint, when judges' pensions are recognized as comparatively generous, and when no one else paid out of the public purse is receiving increases to their pension benefits, the 3.25% accrual rate should be regarded as unfair or unreasonable in view of the following additional considerations:

- The estimated cost to government of the recommendation compared to government's proposed response is approximately \$2 million over the three years addressed in the report. Fiscal restraint results in balanced budgets by many cumulative acts of expenditure management, and a savings of \$2 million is important in that regard.

- Government does not agree that a rate of 3.25% is necessary to “maintain a strong court”, as the Commission did not find that the 3% accrual rate has been negatively impacting recruitment or otherwise impairing the strength of the court.
- The 2013 Commission found that the disparity in pensions between Provincial Court Judges and Supreme Court Justices is not so great that it is currently affecting the quality of applications for judicial appointment. While the Commission noted this “could” become a problem in the future, this possibility does not justify the recommendation over the three years of the Commission’s mandate at a time when fiscal restraint continued to be a key component of government’s fiscal plan. In addition, the government’s proposed salary substitutions addressed above result in a smaller gap between the remuneration levels of the two courts than the Commission anticipated when it made its recommendations.
- While government recognizes that the comparatively generous nature of the 3% accrual rate reflects the fact that many judges begin contributions relatively late in their careers, government does not support making the accrual rate 3.25% so as to ensure that a judge appointed at the average age of 53 with no prior pensionable service will receive a maximum pension if he or she works to age 75. This is not necessary to ensure a strong court or to remedy a current recruitment problem, and is unreasonable at a time of broad fiscal restraint.
- Further, it is assumed that retirement savings is something that individuals should be engaged in throughout their working careers. The public sector pension plans are not intended to provide the only source of retirement income to individuals.

Concerning the Commission’s observation that the “cost of the increase is reasonable in relation to the financial position of government”, this conclusion was not explained.

Government’s view is that in reaching this conclusion the Commission gave insufficient weight to the government’s program of restraint, instead placing greater focus on the government’s ability to pay for the cost.

Further, the recommended response:

- is consistent with the Commission’s findings that the current pension plan for judges, while similar in structure to other provincial courts, is distinct and quite generous when compared to the pension situations of most British Columbians;
- recognizes that fiscal restraint was a key component of government’s overall fiscal plan for the years covered by the 2013 Commission report;
- recognizes that the 3% accrual rate is similar to that for pensions of provincial court judges in most other provinces; and

- recognizes that the salaries proposed in this response, being higher than those recommended by the Commission, will serve to increase the value of judges' pensions.

Government has considered the fact that its proposed rate of 3% is lower than the 3.5% declared by the court in PCJA 2015 and therefore in the three years of the 2013 Commission's mandate the accrual rate will decline as compared to the three years of the 2010 Commission's mandate. Notwithstanding this fact, Government does not agree with a 3.25% or 3.5% accrual rate for the reasons give above. Further, Government does not view this issue the same way it views the prospect of a year-over-year salary decline. Salaries may be expected to increase with regularity, barring economic or other circumstances which might justify salary freezes broadly amongst those who are paid from the public purse. The same cannot be said for pension accrual rates, which are a structural element of a pension plan.

#### **Partial Rejection of Recommendation 5 (Retroactivity of Pension Reinstatement)**

Government proposes that Recommendation 5(d), to the extent to which it would apply retroactively, should be rejected as unreasonable.

Specifically, the requirement for retroactive adjustments so that two judges identified during the Commission process may repay the pensions they have received and that government and the affected judges should make any back-contributions and interest adjustments for the applicable period should be rejected for the following reasons:

- The Commission report named the two judges, and as a matter of policy it is not advisable to stipulate specific benefits for specific judges even though the fiscal impact is not a factor;
- In any event, Government has received advice that the federal *Income Tax Act* does not allow for retroactive adjustment of T4s or repayment of the tax paid on the pensions received.

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