Court File No.

FEDERAL COURT

BETWEEN:

CANADIAN SUPERIOR COURTS JUDGES ASSOCIATION

Applicant

And

ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of the hearing will be as requested by the applicant. The applicant requests that this application be heard at Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitors WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

December 3, 2025 Issued by: _____

Address of the local office: 90 Sparks Street, 5th floor, Ottawa, Ontario, K1A 0H9

TO: **Registry**
Federal Court
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AND TO: **Minister of Justice and Attorney General of Canada**
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Respondent

APPLICATION

1. Judicial independence is a cornerstone of Canadian democracy and lies at the heart of the present application. If the principles established by the Supreme Court of Canada for the determination of judicial salaries are not respected, the constitutional guarantee of judicial independence is undermined.

2. On November 3, 2025, the Government of Canada rejected a unanimous recommendation by the Judicial Compensation and Benefits Commission (the "**Commission**") to increase the compensation of federally appointed judges (the "**Response**"). This was the culmination of a constitutionally mandated process designed to ensure respect for judicial independence and the separation of powers by depoliticizing decisions about judicial remuneration.

3. Under this process, an independent Commission must, at regular intervals, inquire into the adequacy of judicial compensation and make recommendations in respect of salaries and benefits. Although the Commission's recommendations are not binding, they must nevertheless have a *meaningful effect* on the process of determining judicial remuneration. Accordingly, the Government's response to a Commission recommendation must demonstrate engagement with the Commission's analysis and must reflect respect for the Commission process. The Government's Response did neither.

4. In this case, the Commission undertook a comprehensive inquiry marked by newly available evidence regarding the income of lawyers in private practice. This new data filled an evidentiary gap that, for more than 20 years, past Commissions had identified and repeatedly called upon the parties to address. It revealed a significant disparity between judicial salaries and the income levels of self-employed lawyers.

5. After carefully weighing this data, as well as other evidence relating to the challenge of attracting meritorious candidates from private practice to the bench, the 2024 Giardini Commission concluded that judicial salaries should be raised to safeguard Canada's ability to attract outstanding candidates to the judiciary.

6. Remarkably, the Government's Response is virtually silent on this critical new evidence underpinning the Commission's salary recommendation.

7. Instead, the Government substitutes its own view for that of the Commission, summarily declaring that judicial salaries are "adequate", without engaging with the core of the Commission's reasoning. In so doing, the Government disregards the rigorous analysis conducted by the Commission and thus subverts the constitutionally mandated process necessary to safeguard judicial independence. For this reason alone, the Response cannot stand.

8. In these circumstances, the Government's reference to changed economic conditions to justify its wholesale rejection of the Commission's recommendation does not pass constitutional muster. The Response wrongly relies on facts that the Government should have placed before the Commission and on general statements of economic policy that do not take account of the constitutionally recognized distinctive nature of the judicial office.

9. While a decision to depart from a Commission's recommendation is owed deference, this is only the case if that decision is adequately justified and demonstrates a genuine engagement with the Commission process. That is not the case here. To the contrary, the Response undermines the integrity of the Commission process itself.

10. Through the present Application for Judicial Review, brought pursuant to ss. 18(1) and 18.1 of the *Federal Courts Act*, RSC 1985, c. F-7, the Canadian Superior Court Judges Association asks this Court to: declare that the Government's Response fails to meet applicable constitutional standards, set aside the Response, and remit the matter to the Government for reconsideration.

THE APPLICANT APPLIES FOR:

a. an Order declaring that the Response fails to meet applicable constitutional standards;

b. an Order setting aside the Response;

c. an Order remitting the matter to the Government for reconsideration;

d. costs of this application on a party-and-party or solicitor-client basis, at this Court's discretion; and

e. such further and other relief as counsel may advise and/or this Honourable Court may deem just.

THE GROUNDS OF THE APPLICATION ARE:

I. Background

A. The Constitutional and Statutory Scheme Governing the Compensation of Federally Appointed Judges

11. In *Reference re Remuneration of the Judges of the Provincial Court of Prince Edward Island et al.*, [1997] 3 S.C.R. 3, the Supreme Court held that the Constitution requires that judicial remuneration be reviewed by an "independent, effective, and objective" commission interposed between the judiciary and the other branches of the State. The role of such a commission is to issue recommendations regarding judicial compensation. While such recommendations are not binding, they cannot be set aside lightly; if a government departs from them, it must adequately justify that decision.

12. Acting upon these constitutional imperatives, Parliament amended the *Judges Act* in 1998 and established the Judicial Compensation and Benefits Commission, which it mandated to inquire into and make recommendations regarding the adequacy of the compensation of federally appointed judges (the "**Judiciary**").

13. In conducting its inquiry, which the Commission does every four years, the *Judges Act* directs it to consider:

> (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; and
>
> (d) any other objective criteria that the Commission considers relevant.

14. The Commission must submit a report containing its recommendations to the Minister of Justice within nine months after the date of commencement of its inquiry.

The Minister must then table a copy of the report in each House of Parliament and issue a formal response within four months.

15. Over the last 20 years, the Commission has only once recommended that judicial salaries be increased beyond the annual statutory adjustment based on the Industrial Aggregate Index ("**IAI**"). That recommendation was also rejected by the Government.

B. The Canadian Superior Courts Judges Association

16. The Canadian Superior Courts Judges Association (the "**Association**" or the "**Applicant**") represents approximately 1,400 judges, sitting and retired, who serve on the superior courts and courts of appeal of each province and territory, as well as on the Federal Court of Canada, the Federal Court of Appeal and the Tax Court of Canada.

17. The purposes of the Association include the advancement and maintenance of the Judiciary as a separate and independent branch of government. In that context, the Association makes such representations as may be appropriate to the Commission to ensure that the salaries and other benefits guaranteed by s. 100 of the *Constitution Act, 1867*, and set by the *Judges Act*, are maintained at levels that reflect the importance of a competent and dedicated Judiciary.

C. Background to the 2024 Commission Inquiry

18. Since the first inquiry in 2000, every Commission has considered two key comparators when evaluating the adequacy of judicial salaries:

a. the private sector comparator, representing the income levels of self-employed lawyers; and

b. the public sector comparator, representing the compensation of senior deputy ministers at the DM-3 level.

19. The private sector comparator primarily underpins the assessment of the third statutory criterion, "the need to attract outstanding candidates to the judiciary." Its purpose is to ensure that judicial salaries do not deter outstanding candidates from private practice from seeking a judicial appointment.

20. However, for more than 20 years, past Commissions have worked with incomplete data regarding the private sector comparator: they only had access to income reported by *unincorporated* self-employed lawyers provided by the Canada Revenue Agency ("**CRA**"), without any information about the growing and significant number of lawyers who receive professional income through a professional legal corporation ("**PLC**"). Successive Commissions repeatedly expressed concern about this evidentiary gap, the consequence of which was "inescapable": the CRA data presented to Commissions was under-reporting the income of private sector lawyers.

21. Recognizing the seriousness of this problem, the 2021 Turcotte Commission formally recommended that the Government and the Judiciary provide "adequate and appropriate additional data," including the income reported through PLCs, to the subsequent Commission. In its 2021 Response, the Government agreed that such data was "germane to the Commission's statutory mandate" and committed to act on the recommendation.

22. Between 2022 and 2024, the Government and the Judiciary undertook substantial and coordinated efforts to obtain such data, working with experts, the CRA, and Statistics Canada. They were ultimately able to present, for the first time, data about the income of private sector lawyers working through PLCs to the 2024 Commission.

23. The newly available data validated long-held concerns that past Commissions had significantly underestimated the earnings of lawyers in private practice and therefore assessed the adequacy of judicial compensation using an inaccurate and understated comparator.

D. The 2024 Giardini Commission Inquiry and Report

24. Pursuant to s. 26(2) of the *Judges Act*, the Commission's inquiry should have commenced on June 1, 2024. However, the Governor in Council failed to appoint the members of the Commission in time to comply with this statutory start date. The Commissioners were appointed more than three months late on October 11, 2024, and they commenced their inquiry as soon as they were appointed.

25. Relying on the newly available private sector data, the Judiciary sought a recommendation that the base salary of puisne judges be correctively raised to reduce the significant gap between judicial salaries and the income levels of self-employed lawyers.

26. Already pointing to the "uncertain economic context," the Government proposed to the Commission that base judicial salaries remain unchanged.

27. Over the course of its comprehensive inquiry, the Commission received submissions and evidence from the Association, the Canadian Judicial Council, the Government, the Associate Judges of the Federal Court, the Canadian Bar Association, the Barreau du Québec, prominent members of the Judiciary, as well as experts in compensation, pensions, tax and economics.

28. The Commission reviewed more than 300 pages of written submissions and 172 exhibits totaling more than 7,300 pages, including expert analyses of the newly available income data, detailed economic evidence from the Assistant Deputy Minister of Finance, and an expert report from a renowned economist regarding the prevailing economic conditions in Canada.

29. Public hearings were held in Ottawa on February 20 and 21, 2025.

30. Following the hearings, the Commission sought supplemental submissions and evidence to assist it in its inquiry.

31. On April 28, 2025, the Government submitted additional information that it considered relevant to the Commission's deliberations, namely the IAI adjustment for 2025 and the resulting judicial salaries as of April 1, 2025.

32. On July 11, 2025, the Commission issued a 67-page Report and Recommendations (the "**Report**"), containing three recommendations:

a. that for future inquiries, the Commissioners be appointed with due diligence prior to the statutory start date of the Commission's inquiry;

b. that judicial salaries be increased in the amount of $28,000, exclusive of statutory indexing; and

c. that associate judges' salaries be raised from 80% to 95% of a puisne judge's salary.

33. Notably, the Commission concluded that judicial salaries required a corrective increase principally to address "the large differential that the new PLC data has disclosed between judicial salaries and the earnings of potential applicants from the private sector" (para. 228).

E. The Response

34. On November 3, 2025, the Government of Canada issued its Response declining to implement the Commission's recommendation regarding judicial salaries.

35. The Government provided three reasons for doing so: "(1) recent developments regarding the criterion of the prevailing economic conditions in Canada; (2) some of the Commission's conclusions regarding statutory indexing; and (3) the treatment of the evidence before the Commission concerning the criterion of the need to attract outstanding candidates to the judiciary."

36. Nowhere in its Response does the Government address or engage with the private sector comparator or the Commission's central finding regarding the significant gap revealed by the newly available data.

II. Grounds for Judicial Review

37. The Response fails to comply with the constitutional standards set out in *Bodner v. Alberta et al.*, 2005 SCC 44 ("***Bodner***") and warrants this Court's intervention because:

a. None of the three reasons given by the Government are legitimate reasons based on a reasonable factual foundation; and

b. When viewed globally, the Government's conduct and its Response do not demonstrate meaningful engagement with the Commission process or respect for the constitutional objectives it serves.

38. The Response should therefore be set aside and remitted to the Government for reconsideration.

A. Illegitimate Redetermination of the Commission's Central Finding

39. The Government criticizes the Commission for its "treatment of the evidence regarding the need to attract outstanding candidates to the judiciary." The Government concludes that the evidence before the Commission does not show a risk that outstanding private sector lawyers will be discouraged from applying to the bench. In doing so, the Government illegitimately redetermines an issue on which the Commission unanimously and cogently expressed itself.

40. The overriding flaw with this reason is what is *missing* from the Response. There is no engagement with the central evidentiary basis for the Commission's analysis of the need to attract outstanding candidates to the judiciary: the significant gap between judicial salaries and the private sector comparator, as revealed by the newly available PLC income data. This evidence was the core justification for the Commission's salary recommendation.

41. As noted, the Response is virtually silent on the private sector comparator and the Commission's critical concern about the impact of that data. This alone is sufficient to render the Response constitutionally defective according to the specific directives of *Bodner*.

42. But the Government's omission is even more serious given the broader historical context. For more than two decades, successive commissions identified the absence of PLC data as an important impediment to their ability to conduct their constitutional and statutory mandate. The 2021 Turcotte Commission expressly requested this data; the Government acknowledged its relevance; and the parties devoted significant efforts to obtaining it.

43. The Government's decision to then ignore the data that finally addressed this longstanding evidentiary gap demonstrates a failure to engage with the core issue before the Commission and undermines the Commission's process. This failure is dispositive of this stated reason to reject the Commission's salary recommendation.

44. Further, the reasons that *are* set out in the Response are in themselves defective.

45. With respect to the public sector comparator traditionally reviewed by the Commission, the Government faults the Commission for issuing a salary recommendation that exceeds a 7.3% "rough equivalence" benchmark. This is a misstatement of the Commission's reasons. The Commission held that the application of the "rough equivalence" standard "should not be done in a formulaic manner." Rather than applying an immutable mathematical benchmark of 7.3%, it concluded that the limits of rough equivalence must be determined "in the context of the evidentiary record and the issues before the Commission," which, in this case, included consideration of the private sector comparator that the Government chose to ignore. Through its cherry picking of the Report, the Government fails to meaningfully engage with the Commission's actual reasoning.

46. As for the evidence about the difficulty of filling judicial vacancies and the challenge of attracting highly qualified private sector lawyers to the judiciary, the Government simply reiterates the submissions it made before the Commission and dismisses the evidence of two Chief Justices, despite having chosen not to challenge or test this evidence before the Commission.

47. Ultimately, the Government ignores the Commission's central justification for its recommendation, reiterates submissions presented to the Commission, and only selectively engages with the Commission's analysis. Such reasoning falls fatally short of the meaningful engagement that is required and is a bald redetermination of an issue decided by the Commission. It cannot constitute a legitimate or rational basis under *Bodner* scrutiny.

B. Improper and Unjustified Reliance on Recent Economic Developments

48. In principle, the Government may rely on economic deterioration that occurs after the Commission issues its Report as grounds to refuse a recommendation to increase judicial salaries, but only if its decision is based on a reasonable factual foundation and is justified in a manner that demonstrates respect for the Commission's constitutionally mandated process and for the unique nature of the judicial office.

49. Here, the Government's purported reliance on economic conditions to justify a wholesale rejection of the Commission's salary recommendation does not meet this standard.

50. As a starting point, the Commission and the parties were already well aware of the challenging and evolving economic context. Indeed, the parties expressly agreed that the Commission could seek additional submissions if significant economic changes occurred after the hearing. The Commission did in fact review evidence of economic developments after the hearing (notably the impact of U.S. tariffs and Canadian economic forecasts) and still concluded that prevailing economic conditions did *not* prevent it from recommending an appropriate salary increase.

51. The Response nonetheless invokes several circumstances that arose *before* the Commission issued its Report. These are not "new facts or circumstances" within the meaning of *Bodner*. The Government cannot withhold evidence it considers determinative regarding material changes arising before the issuance of the Report – including, crucially, the decision to increase national defence spending – and then attempt to rely on that evidence as a justification for rejecting the Commission's recommendation. Permitting such conduct would be contrary to procedural fairness and would undermine both the effectiveness and the legitimacy of the Commission process.

52. Furthermore, invoking *some* change in economic circumstances does not alone justify a complete rejection of the Commission's salary recommendation, especially considering that the Government has repeatedly invoked economic uncertainty before successive Commissions to argue for judicial salary restraint.

53. The Government was required to explain why the circumstances it invokes are material and would justify a complete rejection of the Commission's salary recommendation. It has not done so.

54. The Response invokes fiscal restraint selectively: the Government has not imposed across-the-board wage restraint measures for persons paid from public funds. To the contrary, the Government refers to and relies on the fact that other public sector

employees will receive salary increases, and it then subsequently announced its intention to implement separate measures to attract a high-performing public service.

55. In that context, the Response does not address why judicial salaries as opposed to other sources of spending should be subject to restraint, despite the Government's recognition that the courts are among the "critical public institutions that underpin Canadian democracy". It authoritatively asserts that such salaries "cannot be the source of new fiscal expenditure at a time of comprehensive expenditure review," which is a bare conclusion without any justification.

56. It was at the very least incumbent on the Government to *explain* its differential treatment of the judiciary, who are not a class of civil servant. No explanation is provided beyond the Government's bald statement that judicial salaries are "adequate", reflecting the Government's unabashed and improper substitution of its own view for that of the independent Commission.

C. Distortion of the Commission's Conclusions Regarding Statutory Indexing

57. Finally, the Government asserts that the Commission "mischaracterized" the IAI indexation as an "unalterable measure", and as a mechanism "solely intended to protect judicial salaries against erosion."

58. This is a distortion of the Commission's reasons, based on incorrect premises that reflect a failure to meaningfully engage with the Commission's actual analysis, notably:

a. The Commission expressly acknowledged that there could be situations when an increase lower than the IAI would be justified; and

b. The Commission recognized that IAI indexation had exceeded inflation and the cost of living.

59. The Commission was entitled to consider that there has been no increase to judicial salaries beyond statutory indexation since 2004, and that its salary recommendation had to be "meaningful" to address the challenges in attracting outstanding candidates from all sectors. Both elements relate to the *Judges Act*'s

requirement that the Commission consider the need to attract outstanding candidates to the judiciary.

60. In effect, the Response on this point amounts to an assertion that statutory indexing alone guarantees the adequacy of judicial salaries. If accepted, this position would render the entire Commission process redundant and deprive its recommendations of the "meaningful effect" required by the Constitution. It is illustrative of the Government's disregard for the constitutional role fulfilled by the Commission.

D. The Global Perspective

61. Viewed globally, the Government's conduct and its Response demonstrate that the Government has failed to engage meaningfully with the Commission's constitutionally mandated process.

62. First, that process had no meaningful influence on the Government's position. Apart from its proposed cap on the IAI, the Government ultimately implemented the same position it advanced before the Commission by rejecting the salary recommendation entirely. Courts have recognized that such an occurrence calls into serious question the effectiveness of the Commission process.

63. Second, multiple deficiencies with the Government's reasons illustrate a general lack of respect for the Commission's role. Most notably, the Response's failure to address the Commission's key justification for its recommendation – the private sector comparator and the gap revealed by the newly available PLC data – also impacts the validity of the Response under the global perspective. Considering the significance of this evidence, past commissions' insistence on its necessity, the Government's recognition of its relevance, and the considerable time and resources spent over two years to obtain this data, the Government's omission is striking and indicative of a fundamental lack of engagement with the process.

64. This conclusion is reinforced by the Government's broader conduct before the Commission which, together with the deficiencies of the Response, raises more fundamental concerns about the integrity and effectiveness of the Commission process – concerns that the Commission itself has raised in the past. It is unclear why the

Judiciary would continue to devote years of effort and significant resources gathering evidence and presenting detailed submissions if the Commission's recommendations have no meaningful impact on the determination of judicial salaries. It is likewise unclear who would agree to serve as a commissioner and undertake the difficult task of reviewing that evidence and submissions in these circumstances.

65. Permitting the Response to stand would signal that governments may treat the constitutionally required Commission process as a mere procedural formality, undermining the Commission's essential role in safeguarding judicial independence.

66. Consequently, the present Application for Judicial Review should be allowed, and the Response should be set aside and remitted to the Government for reconsideration.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

a. An affidavit or affidavits, with exhibits in support, to be affirmed and filed in accordance with the *Federal Courts Rules*;

b. All materials filed before the Commission;

c. Transcripts of the February 20 and 21, 2025 hearing before the Commission;

d. The Commission's Report dated July 11, 2025;

e. The Government's Response dated November 3, 2025;

f. Such further and other evidence as counsel may advise and/or this Court may permit.

67. The Applicant requests pursuant to Rule 317(2) of the *Federal Courts Rules*, SOR/98-106, that the Respondent send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Respondent, if any, to the extent that any such materials may be disclosed in accordance with applicable law, to the Applicant and the Registry:

All materials considered by the Government or the Minister of Justice in coming to the Response, including but not limited to all records containing information related to the Response.

THE FOLLOWING CONSTITUTIONAL AND LEGISLATIVE PROVISIONS will be relied upon in support of this Application:

a. *Constitution Act, 1867*, 30 & 31 Vict, c. 3;

b. *Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

c. *Federal Courts Act*, R.S.C. 1985, c. F-7;

d. *Federal Courts Rules*, SOR/98-106;

e. *Judges Act*, RSC 1985, c. J-1;

f. *Interpretation Act*, RSC 1985, c I-21; and

g. such further and other constitutional and legislative provisions as counsel may advise and/or this Court may permit.

(Signature next page)

MONTRÉAL, December 3, 2025

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