Kevin R. Aalto, Roza Aronovitch, Roger R. Lafrenière, Martha Milczynski, Richard Morneau and **Mireille Tabib** (*Applicants*)

v.

Attorney General of Canada (*Respondent*)

INDEXED AS: AALTO v. CANADA (ATTORNEY GENERAL) (F.C.)

Federal Court, MacKay D.J.—Toronto, July 8 and 9; Ottawa, August 28, 2009.

Constitutional Law — Fundamental Principles — Judicial independence — Judicial review of Minister of Justice's decision rejecting recommendations of Special Advisor on adequacy of salary, benefits of prothonotaries — Minister's response basing rejection on deterioration of global economic situation, adverse effects on Government's financial position, concerns with assumptions underpinning Special Advisor's recommendations — Remuneration for judicial officers determined following independent, effective commission process — Government may depart from recommendations if decision to do so justified on rational, legitimate grounds — Here, extraordinary economic circumstances providing reasonable basis for decision not to accept Special Advisor's recommendations — Otherwise, response not meeting accepted test for rational, legitimate response to recommendations — Response making no reference to Special Advisor's recommendations, not meeting constitutional requirements of process for establishing judicial remuneration — Application dismissed.

This was an application by the prothonotaries of the Federal Court for judicial review of the decision of the Minister of Justice (*Response of the Minister of Justice to the Report of the Special Advisor on Federal Court Prothonotaries' Compensation*), on behalf of the Government of Canada, to reject all of the recommendations of the Special Advisor concerning the adequacy of salary and benefits of prothonotaries. Until 2007, their compensation and benefits were matters dealt with by the Privy Council Office. It has been a continuing concern of the prothonotaries to have these determined after an independent commission and response process that demonstrates recognition of judicial independence. The first action to provide that process led to the Special Advisor's Report in 2008, which the Minister found generally unacceptable. His response bases the virtual rejection of all recommendations on two grounds: (1) the deterioration of the global economic situation and the significant adverse effects on Government's financial position, and (2) concerns with some assumptions underpinning the Special Advisor's recommendations in relation to salary, pensions and other benefits enhancements.

Held, the application should be dismissed.

Prothonotaries are judicial officers sharing judicial independence in their work as judges do. They are to have their remuneration determined following an independent, objective and effective commission process that has a meaningful effect upon judicial remuneration. To be effective, this process requires a fair, open, objective assessment and a reasonable response addressed to the recommendations made. The Government may depart

from the recommendations if it justifies its decision on rational, legitimate grounds. Ultimately, the reviewing court must determine whether, if viewed globally, the commission process has been effective and the setting of judicial remuneration has been depoliticized, bearing in mind that the process is flexible and that the recommendations are not binding.

The discretion to manage economic and fiscal policy, including wage restraints, is within the Government's constitutional authority. Absent any serious *Canadian Charter of Rights and Freedoms* issue, the Court defers to the determination of the Government. Here, the extraordinary economic circumstances (the deterioration of economic conditions and of public finance after the report of the Special Advisor was presented) relied upon by the Government provided a reasonable basis for the decision not to accept the recommendations of the Special Advisor. That finding precluded the Court from granting the application. Otherwise, the response did not meet the accepted test for a rational or legitimate response to those recommendations. The decision to reject the Special Advisor's recommendations was made without reference to the reasons for the recommendations or the recommendations themselves.

The response set out additional considerations directed to the recommendations. In relation to salary, the response did not explain why the Special Advisor was wrong to reject the Government's position that public service comparators should be used for assessing salary levels. To complain that the Special Advisor did not accept its preference was not a reasoned response to the recommendations. The response did not suggest any modification of the salary recommendations. Rather, it underlined the view that prothonotaries' salary should remain unchanged. As for prothonotaries' pensions, while there may have been reasons why the detailed recommendations for a pension arrangement were not acceptable, the response went no further than to reject them without serious consideration, even in principle. The rejection could hardly be taken as being rationally related to the recommendations in the special circumstances of this case.

If the test set out in *Bodner v. Alberta*, 2005 SCC 44 were to be applied, the primary basis of the response was without reference to the recommendations. The recommendations were given no weight, had no meaningful effect upon the outcome, and were not appropriately responded to by reasonably complete reasons. The response did not meet the standard of rationality, either on the ground of deteriorating economic conditions or on the additional grounds relating to specific recommendations, and did not respect the purposes or the constitutional requirements of the process for establishing judicial remuneration. The dismissal of the present application did not constitute recognition of the commission and response process as one that met constitutional requirements. While the response was not set aside, it was not acceptable as a continuing basis for remuneration. The constitutional obligation of Government to ensure an appropriate process for establishing salary and benefits for the Federal Court prothonotaries remained.

STATUTES AND REGULATIONS CITED

Canadian Charter of Rights and Freedoms, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44], s. 1.

Expenditure Restraint Act, S.C. 2009, c. 2, **s. 393**, ss. 5, 13(4), 16.

Federal Court Act, R.S.C. 1970 (2nd Supp.), c. 10.

Federal Courts Act, R.S.C., 1985, c. F-7, ss. 1 (as am. by S.C. 2002, c. 8, s. 14), 12 (as am. *idem*, s. 20; 2003, c. 22, ss. 225(E), 263; 2006, c. 11, s. 23).

Federal Courts Rules, SOR/98-106, r. 1 (as am. by SOR/2004-283, s. 2).

Judges Act, R.S.C., 1985, c. J-1.

Order in Council P.C. 2007-1015.

Order in Council P.C. 2009-0986.

Public Service Employment Act, S.C. 2003, c. 22, **ss. 12, 13**, s. 127.1(1)(*c*) (as enacted by S.C. 2006, c. 9, s. 106).

Public Service Superannuation Act, R.S.C., 1985, c. P-36.

CASES CITED

FOLLOWED:

Newfoundland (Treasury Board) v. N.A.P.E., 2004 SCC 66, [2004] 3 S.C.R. 381, 242 Nfld. & P.E.I.R. 113, 244 D.L.R. (4th) 294.

APPLIED:

Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island; Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island; R. v. Campbell; R. v. Ekmecic; R. v. Wickman; Manitoba Provincial Judges Assn. v. Manitoba (Minister of Justice), [1997] 3 S.C.R. 3, (1997), 206 A.R. 1, 156 Nfld. & P.E.I.R. 1; *Provincial Court Judges' Assn. of New Brunswick v. New Brunswick (Minister of Justice); Ontario Judges' Assn. v. Ontario (Management Board); Bodner v. Alberta; Conférence des juges du Québec v. Québec (Attorney General); Minc v. Quebec (Attorney General)*, 2005 SCC 44, [2005] 2 S.C.R. 286, 367 A.R. 300, 288 N.B.R. (2d) 202.

AUTHORS CITED

Canada. Special Advisor on Federal Court Prothonotaries' Compensation. *Report of the Honourable George W. Adams, Q.C.*, May 30, 2008, online: <http://www.prothocomp.gc.ca/report_special_advisor_e.pdf>.

Department of Finance Canada. *Budget 2009 – Canada's Economic Action Plan*. January 27, 2009, online: <http://www.budget.gc.ca/2009/pdf/budget-planbugetaire-eng.pdf>.

Department of Justice Canada. *Response of the Government of Canada to the Report of the 2007 Judicial Compensation and Benefits Commission*. February 11, 2009, online: <http://www.justice.gc.ca/eng/dept-min/pub/res-rep/comm2007.html>.

Department of Justice Canada. *Response of the Minister of Justice to the Report of the Special Advisor on Federal Court Prothonotaries' Compensation*. June 25, 2009, online: <http://www.justice.gc.ca/eng/dept-min/pub/res-rep/prot.html>.

APPLICATION by the prothonotaries of the Federal Court for judicial review of the decision of the Minister of Justice to reject all of the recommendations of the Special Advisor concerning the

adequacy of salary and benefits of prothonotaries. Application dismissed.

APPEARANCES

Andrew K. Lokan for applicants.

Catherine Beagan Flood and *Bryn Gray* for respondent.

SOLICITORS OF RECORD

Paliare Roland Rosenberg Rothstein LLP, Toronto, for applicants.

Blake, Cassels & Graydon LLP, Toronto, for respondent.

The following are the reasons for order rendered in English by:

[1] MACKAY D.J.: By this application the prothonotaries of the Federal Court request judicial review of the decision, by the response of the Minister of Justice of Canada dated February 11, 2009 (*Response of the Minister of Justice to the Report of the Special Advisor on Federal Court Prothonotaries' Compensation*, Department of Justice Canada, http://www.justice.gc.ca/eng/dept-min/pub/res-rep/prot.html, June 25, 2009 [response]), on behalf of the Government of Canada, in relation to recommendations of a special advisor concerning the adequacy of salary and benefits of the prothonotaries, whether current or past. That response rejected virtually all of the recommendations made in the Report of the Special Advisor [Special Advisor on Federal Court Prothonotaries' Compensation. *Report of the Honourable George W. Adams, Q.C.*, May 30, 2008, online: <http://www.prothocomp.gc.ca/report_special_advisor_e.pdf>].

[2] The circumstances are extraordinary. Before setting out reasons in full, I here set out a summary of my principal conclusions. First, the application for judicial review is dismissed since the primary reason given in the response is reasonable in regard to the extraordinary circumstances, that is, the significant changes in economic conditions generally and in the adverse effects on public finances of the Government of Canada which became apparent after the Report of the Special Advisor was submitted to the Minister on May 30, 2008. The decision of Government and the actions taken to deal with these changes were legitimate in that they were consistent with the law and constitutional authority of the Government. There is no basis for this Court to set aside the Minister's response. That determination does not resolve the issue raised and argued before me about the acceptance of the response in relation to the recommendations of the Advisor.

[3] My second conclusion is reached with respect for the difficulties facing Government in extraordinary circumstances and in the circumstances of the response here being made in relation to the first process initiated to properly determine remuneration for Federal Court prothonotaries in accord with the law. My conclusion is that the response does not meet constitutional requirements for appropriate recognition of judicial independence established by the Supreme Court of Canada in

the *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*; *Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island; R. v. Campbell; R. v. Ekmecic; R. v. Wickman; Manitoba Provincial Judges Assn. v. Manitoba (Minister of Justice)*, [1997] 3 S.C.R. 3 (*Reference re P.E.I. Judges*) and in *Provincial Court Judges' Assn. of New Brunswick v. New Brunswick (Minister of Justice); Ontario Judges' Assn. v. Ontario (Management Board); Bodner v. Alberta; Conférence des juges du Québec v. Quebec (Attorney General); Minc v. Quebec (Attorney General)*, 2005 SCC 44, [2005] 2 S.C.R. 286 (referred to in the text of reasons as *Bodner*). The response and its reasons do not respond appropriately to the recommendations of the Special Advisor. Viewed globally the response does not demonstrate respect for the "commission process" and the purposes of that process to preserve judicial independence and depoliticize the setting of judicial remuneration. It is my conclusion that those purposes have not been achieved by the commission process and response in this case.

[4] While the significance of my conclusions is initially a matter for the parties, the public interest is also affected. Some principle implications are suggested in the "Conclusions and Implications", at paragraphs 54 to 59 of these reasons. In effect the response is not set aside, but it is not acceptable as a continuing basis of the remuneration of prothonotaries. The responsibility for accomplishing that continues as it existed on May 30, 2008, and before that.

The background

[5] Provision for the appointment of the Special Advisor to the Minister was made by Order in Council P.C. 2007-1015, dated June 21, 2007. By its preamble, that order acknowledges that "the adequacy of the salary and benefits of prothonotaries of the Federal Court have not been comprehensively considered to date", and "the Governor in Council deems it necessary that there be a special advisor to the Minister of Justice to undertake an external review of and advise on, the adequacy of the salary and the benefits" of those prothonotaries.

[6] Following the appointment of the Special Advisor (by agreement between the parties the Honourable George W. Adams was named Special Advisor in August 2007 to act pursuant to P.C. 2007-1015 enacted under the *Public Service Employment Act*, S.C. 2003, c. 22, **ss. 12, 13**, paragraph 127.1(1)(*c*) (as enacted by S.C. 2006, c. 9, s. 106), the parties to this application made a number of written submissions to him. Their counsel were heard and submissions were made by the Chief Justice of the Federal Court, the then-Acting Chief Administrator of the Courts Administration Service, and representatives of other interested parties. The Advisor reported to the Minister on May 30, 2008, in accord with his terms of reference. By those terms he was directed to consider:

a. the nature and duties of a prothonotary;

b. the salary and the benefits of appropriate comparator groups;

c. the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government;

d. the role of financial security in ensuring the independence of prothonotaries;

e. the need to attract outstanding candidates to the office of Federal Court prothonotary; and

f. any other objective criteria that the Special Advisor considers relevant (P.C. 2007-1015, dated June 21, 2007, subsection 4(1)).

[7] The office was created by the *Federal Court Act* in 1971 [R.S.C. 1970 (2nd Supp.), c. 10] and prothonotaries have served as judicial officers of the Federal Court, appointed by the Governor General in Council now pursuant to section 12 [as am. by S.C. 2002, c. 8, s. 20; 2003, c. 22, ss. 225(E), 263; 2006, c. 11, s. 23] of the *Federal Courts Act*, R.S.C., 1985, c. F-7 [s. 1 (as am. by S.C. 2002, c. 8, s. 14)] as amended, to serve during good behaviour until age 75. It is common ground between the parties that they make a most important contribution to the work of the Federal Court, that they are judicial officers sharing judicial independence in their work as judges do, and as has been recognized for other judicial officers of other courts in Canada in the jurisprudence evolving after the *Reference re P.E.I. Judges*, in particular in *Bodner*.

[8] The prothonotaries' role in the Federal Court has expanded, particularly in the last dozen years or so, in both substantive and procedural matters, as a result of changes in the Court's Rules [*Federal Courts Rules*, SOR/98-106, r. 1 (as am. by SOR/2004-283, s. 2)] to provide more efficient and effective judicial oversight of dealing with the variety of claims and applications, many of them complex, before the Court. Much of the Court's work involves causes and claims for relief against the Government of Canada, ministers or other officers of government, or in the judicial administration of regulatory policies enacted by Parliament. In this work prothonotaries are regularly engaged in hearing motions or with other case management proceedings, or in trials, in the variety of causes before the Court.

[9] The history of discussions between representatives of the prothonotaries and of the Government in recent years provides two quite different perspectives of past understandings and misunderstandings. Rationalizing these perspectives is not necessary for purposes of assessing the response of the Minister, though a few key elements or results of the background provide necessary context. These include:

(i) A continuing concern of the prothonotaries, since at least the decision in the *Reference re P.E.I. Judges* in 1997, has been to have their compensation and benefits, until 2007 matters mainly dealt with by the Privy Council Office, determined after an independent commission and response process that demonstrates recognition of judicial independence for the prothonotaries.

(ii) The first action to provide that process was P.C. 2007-1015, leading to the Special Advisor's Report in 2008, which the Minister by his response in 2009 found generally unacceptable.

(iii) At the time of the Report the primary remuneration of prothonotaries, salary and pension, was as follows:

(a) Salary was set at 69 percent of the salary payable under the *Judges Act* [R.S.C., 1985, c. J-1] to puisne judges of the Federal Court. That proportionate salary was determined by the Governor General in Council in 2001 as a result of negotiations between representatives of the prothonotaries and of the Government of Canada. Since then salaries of judges have increased

following reports of successive quadrennial commissions on judges' compensation, and by reason of annual adjustments provided to judges, under the *Judges Act*, both of which were extended proportionately to the prothonotaries. (Parenthetically, I note that the most recent Quadrennial Commission on Judge's compensation reported to the Minister on May 30, 2008. As in the case of the Report of the Special Advisor of concern in this case, the response of the Minister virtually rejected all recommendations in the report of the Quadrennial Commission on similar grounds of serious economic uncertainty arising after that Commission had reported.) (See *Response of the Government of Canada to the Report of the 2007 Judicial Compensation and Benefits Commission*, February 11, 2009, http://canada.justice.gc.ca/eng/dept-min-pub/res-rep/comm2007.html.)

(b) Pensions for prothonotaries are established by subsection 12(5) of the *Federal Courts Act*, which deems them to be employed in the public service for purposes of the *Public Service Superannuation Act* [R.S.C., 1985, c. P-36 (PSSA)]. They have no annuity as judges do, there is no recognition of commencing their work at mid-career age and experience and no provision is made for continuing participation in the public service pension arrangement to age 75 as is the case for judges under the arrangements for their annuities.

[10] In 2001, the salary determined for prothonotaries (in an amount later translated as 69 percent of a Federal Court Judge's salary) resulted in a dollar amount reasonably comparable to the average paid to masters and provincial judges in the courts of the provinces. In 2008, that was no longer the case for the prothonotaries' salary then ranked very near the bottom of the list of salaries of judicial officers across Canada, other than those of federally appointed judges. In the latter year the pension arrangements for the prothonotaries did not compare favourably with their counterparts in provincial courts and their appointment at mid-professional career with only limited years for participation in Canada's public service pension plan left them less well provided for on retirement than most of their counterparts.

[11] Insurance coverage for any long-term sickness or disability after age 65 was not a program available for participating prothonotaries as it is for judges and for many provincial judicial officers. A program to address prothonotaries' concerns was recommended.

[12] The Special Advisor's Report was delivered as directed, on May 30, 2008. It included a number of specific recommendations and some other proposals for consideration. These are summarized in Annex A (attached here, reproduced from the Minister's response as a summary satisfactory for our purposes.

[13] The Minister's response of February 11, 2009, is the essential focus of this judicial review and it will be examined in some detail. It may be summarized as basing the virtual rejection of all recommendations on two general but distinct grounds. The parties differed in their assessments of these two grounds. The first, described in the response as the "overarching consideration" (Minister's response, page 3, 2nd full paragraph), was the deterioration of the global economic situation and the significant adverse effects on the financial position of the Government of Canada "after the Special Advisor concluded his inquiry and submitted his recommendations to the Minister on May 30, 2008" (Minister's response, page 2, paragraphs 1–2). The second basis for the response was concerns of the Government with "some of the assumptions that underpin the Special Advisor's

recommendations, in particular in relation to salary" (Minister's response, page 3, paragraph 2) but also in relation to pensions or other benefit enhancements proposed by the Report (Minister's response, page 4, last paragraph).

General principles here applicable

[14] General principles stated in the *Reference re P.E.I. Judges* as elaborated in jurisprudence thereafter evolving, particularly in *Bodner*, consider the commission and response process of concern in this case. They include the following:

a. Judicial officers, assured of judicial independence by the common law and the Constitution, are to have remuneration for their work determined following a "commission process" that is independent, objective and effective, one that has a meaningful effect upon judicial remuneration. In my view, the jurisprudence is clear, the commission process, to be effective, requires a fair, open, objective, assessment and a reasonable response addressed to the recommendations made.

b. That does not require that the commission's recommendations be binding. Rather, Government may depart from the recommendations if it justifies its decision on rational, legitimate grounds that are complete, tailored to the recommendations, and based on factual foundations.

c. Judicial review of the Government's response depends upon a three-fold test:

> (i) Has Government articulated a legitimate reason for departing from the commission's recommendations?
>
> (ii) Are the stated reasons for the response based upon a reasonable factual foundation?
>
> (iii) Viewed globally, has the commission process been respected and have its purposes been achieved. Those purposes are to preserve judicial independence and depoliticize the setting of judicial remuneration (*Bodner*, above, at paragraph 31). The last phrase, depoliticizing the decision, serves to preserve judicial independence by restricting unilateral decisions by Government on remuneration for judges and judicial officers.

[15] In assessing the Minister's response, particularly its factual foundation, the Court must give due deference to the role of the Minister, of Government, and consider whether on the evidence before the Court it was rational for there to be reliance on the factual bases for the decision taken. Again in the final stage of its review of the response, the Court must give due deference to the Minister's decision, bearing in mind that the commission process is flexible and the recommendations of the commission are not binding. Ultimately, the reviewing court must determine whether, "[i]f viewed globally it appears that the commission process has been effective and that the setting of judicial remuneration has been 'depoliticized'." If so the Government's choice should stand (*Bodner*, above, at paragraphs 28–40).

Review of the response in this case

[16] As earlier noted, the Minister's response specifies that it is based on two distinct factual

grounds. Since those are essentially unrelated, I propose to review them separately and then to assess the response, viewing these bases together, and as *Bodner* directs, "globally" in light of the purposes of the commission and response process for determining judicial remuneration.

A. The reliance on deteriorating economic conditions

[17] As noted by the response a key criterion governing the mandate of the Special Advisor was "the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government." Submissions were made to the Special Advisor in regard to this criterion and he commented in his report on those circumstances based on the submissions made to him. Those submissions, made in the spring of 2008, did not highlight the serious economic difficulties that soon were seen to be facing Canada. The economic circumstances and the financial position relied upon in the response, however, are specific ally related to the significant deterioration in the global economic situation and the Government's economic and financial position "after the Special Advisor concluded his inquiry and submitted his recommendations to the Minister of Justice on May 30, 2008". The reliance upon deteriorating economic conditions, without reference to the specific recommendations, cannot be, indeed it does not purport to be, a response to the recommendations made by the Special Advisor.

[18] The response relies upon *Budget 2009 – Canada's Economic Action Plan* (Canada's Economic Action Plan, Budget 2009, Department of Finance Canada, tabled in the House of Commons, January 27, 2009), which, *inter alia*, referred to the introduction of legislation to ensure predictability of federal public sector wages during this difficult economic period. That legislation, later enacted as the *Expenditure Restraint Act*, S.C. 2009, c. 2., **s. 393**, in force on assent March 12, 2009, provided for annual wage increases, for the federal public administration generally, of 2.3 percent in 2007–2008 and 1.5 percent for the following three years (*Expenditure Restraint Act*, section 16). Exemptions from those limitations were made under the Act for certain groups of public servants and for others whose salary increases, in excess of the restraint limits, had been settled before the wage restraints were announced. The applicants before me suggested that some thousands of public servants were ultimately exempt from the statutory wage restraints.

[19] Among those exempt (*Expenditure Restraint Act*, section 5, subsection 13(4)) from the general restraint were judges paid a salary under the *Judges Act*, and prothonotaries appointed under section 12 of the *Federal Courts Act*. Salary indexing for judges under the *Judges Act* provides for annual judicial salary adjustments by the industrial aggregate, a measure of wages over time compiled by Statistics Canada. The adjustments paid for years commencing 2007–2008, 2008–2009 and 2009–2010 were said before me to be respectively 3 percent, 3.2 percent and 2.8 percent, and that expected to be paid in 2010–2011 has been forecast at 2.8 percent. So long as the salaries of prothonotaries are proportionately related to judges of the Federal Court, as they have been, and are continuing to be by the Minister's response, annual salary adjustments above those fixed for public servants generally will have been payable to prothonotaries, for the period 2007 to 2011. As a result, federally appointed judges, and the applicant prothonotaries would have annual increases restrained, but at rates slightly above those payable to public servants generally.

[20] In commenting on the effects of deteriorating economic conditions and public finances the response of the Minister makes the following comments:

The Government accepts that compensation of judges — and judicial officers such as prothonotaries — is subject to certain unique requirements that do not apply with respect to others paid from the public purse. In particular, it is necessary to ensure that judicial compensation does not fall below the 'minimum' required to protect financial security, including through erosion of compensation levels over time. The purpose of this minimum is to avoid the perception that judges might be susceptible to political pressure through economic manipulation as witnessed in many other countries. [Minister's response, page 2, 3rd last paragraph.]

. . .

This is not the time for the kind of major enhancements contemplated by the Special Advisor's Report. Indeed, exempting prothonotaries from across-the-board public sector restraint measures would more likely undermine than enhance the public's perception of their judicial independence and impartiality. [Minister's response, page 2, last paragraph.]

In support of this view, the response refers to comments of Chief Justice Lamer in *Reference re P.E.I. Judges* where statutory compensation restraints for provincial judges, comparable to those applicable to public servants generally, were upheld as applicable and not enactments compromising judicial independence (above, at paragraphs 156, 158). With respect, in my view the Minister's response in referring to a quoted comment by Chief Justice Lamer puts an unwarranted gloss on the Supreme Court's comment as "[having] established that it is to ensure continued public confidence in the judicial officers that their remuneration should be subject to measures affecting salaries of all others paid from the public purse" (Minister's response, page 2, paragraph 3).

Accordingly, the Government is of the view that prothonotaries' salaries should continue to be fixed at 69% of the Federal Court judge's salary. Their financial security will continue to be protected by annual adjustments equivalent to superior court judges in Canada, a benefit to which few, if any, Canadians could aspire in these difficult economic times. Similarly, the Government is not prepared to implement enhancements to the prothonotaries' pension arrangements or other benefits at this time. [Minister's response, at page 3, paragraph 1.]

[21] The repeated references in the response, particularly in dealing with deteriorating economic conditions and public finances, underline that those circumstances are extraordinary. It is not unfair to infer that in better economic times the response of Government might be different. There is, however, no time and no undertaking specified for future reconsideration by Government.

[22] The applicants acknowledge, in written submissions and oral representations to this Court, that the economic conditions are indeed extraordinary, e.g. (applicant's memorandum of fact and law, paragraph 34):

There is no dispute that the economy has deteriorated significantly since the Adams Report was released. The Prothonotaries accept that in an appropriate case, economic conditions might justify a departure from the commission process.

[23] Yet, the applicants urge that in this case, the evidence before the Court does not here establish the factual bases to support the Government's action. It is said Government provided no information demonstrating the cost of implementing the recommendations, that there is no clear undertaking that the refusal of the recommendations is temporary, and Government's reliance on the necessity of comparable treatment of all or nearly all persons paid from public funds is not supported by evidence that comparable treatment was applied. Indeed, the exemptions from compensation restraints under

the *Expenditure Restraint Act*, applicable to a substantial number of people, appear to belie the possibility of uniformly comparable treatment of all those paid from public funds.

[24] Yet, this Court may not require evidence of a particular kind, and is not to assess the wisdom or effectiveness of the application of public policy by the Government of Canada in the circumstances of this case. That is not the function of the Court. Rather, the task before me is to assess whether evidence produced by Government in support of the reasons set out in the Minister's response provide a rational, in the sense of reasonable, basis for the response and departure from the recommendations.

[25] There is evidence to support the basis for the Minister's response with reference to the deterioration of economic conditions and of public finance after the report of the Special Advisor was presented. The response refers to the document *Budget 2009 – Canada's Economic Action Plan* of January 27, 2009. The significance of the deteriorating circumstances leading to that Budget are described in considerable detail, both for the global situation and for that facing Canada, in an affidavit filed in this case on behalf of the Government by Benoît Robidoux, General Director, Economic and Fiscal Policy Branch, Department of Finance Canada. There is no contrary evidence. That affidavit dated May 13, 2009, in my opinion, clearly establishes a reasonable basis for the actions of Government, in its lawful discretion, to manage economic and fiscal policy, including wage restraints, in extraordinary economic times. That discretion is clearly within Government's constitutional authority. As for its choices made to meet extraordinary conditions, absent any serious Charter issues [*Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44]], the Court defers to the determinations of Government. That is not to ignore other constitutional responsibilities of Government, even if it is left to the Government to determine generally when other responsibilities are to be met.

[26] In my view, there is evidence of a factual basis to support the Government's departure from the recommendations, that is, the extraordinary deterioration of economic conditions and of public finance. In *Bodner*, it is suggested that if new facts or circumstances arise after the release of a compensation commission's report the Government may rely on that in its reasons for varying the commission's recommendations. In this case the extraordinary economic circumstances relied upon by Government provide a reasonable basis for the first ground of its response and its actions in not accepting the recommendations of the Special Advisor.

[27] That finding precludes this Court from granting the application sought. I do not set aside the Minister's response. Yet that does not mean that the response meets the accepted test for a rational or legitimate response to the recommendations made by the Special Advisor. In adopting the decision to reject, not merely to modify, the Advisor's recommendation, for extraordinary economic reasons, the Minister's response is made without reference to the reasons for or to the recommendations themselves.

B. Additional considerations

[28] I turn then to assess the additional considerations set out in the response, which are directed to the recommendations. The response notes that the Government is mindful that the *Reference re*

P.E.I. Judges, which established the process, apart from the current state of the economy would require a rational justification for failure to fully implement the recommendations of the Special Advisor. It then turns to the Government's concerns with some of the assumptions underpinning those recommendations, in particular in relation to salary. I consider first the comments concerning salary and pension recommendation, then I turn to other matters raised.

Salary

[29] In relation to the salary recommendations the response takes the amount recommended, at 80 percent of a Federal Court Judge's salary, and calculates the amount this would be for most of the prothonotaries if it were to be retroactive, as recommended, to April 1, 2004. The calculation is not characterized by the response for any particular purpose (Minister's response, page 3, paragraph 3). If it was intended to suggest the calculated cumulative salary increase over five years would be unwarranted, that could only be based on the assumption that the salaries actually paid were appropriately determined by an acceptable process. They were not. They were the result of negotiations between representatives of the parties in 2001.

[30] The Special Advisor's reasoning in relation to salary comparators is said to be "problematic". It is true that the Advisor accepted the prothonotaries' position that provincial courts masters and judges were the most relevant historical comparators for assessing prothonotaries' salary levels. That was based on the evidence before him. The response then comments that, "[n]otably he relied on masters in only three of Canada's 13 provinces and territories." With respect, in part that is true but it is an incomplete representation of the recommendation on salaries, which notes, first the average of all known salaries for provincial and territorial court judges and masters across Canada, and then the average of salaries of the masters in the three provinces where their work is comparable to that of Federal Court prothonotaries. Those two comparators were said to be respectively 79 percent and 79.4 percent of a Federal Court Judge's salary in 2007 (Report of the Special Advisor, pages 56–57).

[31] The response notes that the Advisor rejected the Government's position that federal public service comparators should be preferred, in particular salaries for members of administrative tribunals at the GCQ-5 and GCQ-6 levels. This was argued before the Special Advisor whose report includes his appraisal of those suggested as primary comparators of salary levels from an administrative system of Government as manager of public employees, the Hay system for classification of public servants. That system had been used unilaterally by Government itself as a comparator for prothonotaries, without any consultation with prothonotaries, and while under that system they would have been classified within the GFQ-5 group, they were actually paid as though they were in the GFQ-6 group. The expert produced to testify before the Special Advisor about the system apparently relied upon scant government information about the office of prothonotary. The Government's response does not explain why the reasons of the Special Advisor not to accept its preference for public service comparators were in error. To complain that the Advisor did not accept its preference for comparators is not a reasoned response to the recommendations (*Bodner*, above, at paragraph 23).

[32] In another reiteration of a preference expressed unsuccessfully by Government to the Special Advisor, the response notes concern with the validity of salaries of provincial masters as comparators because there was no evidence of a basis, other than administrative efficiency and

convenience, for the linkage of masters' salaries to those of provincial judges. The response asserts that "he [the Advisor] finds that masters would not have been able to independently assert this parity argument since they could not and do not equate their work to that of judges in the superior courts" (Minister's response, page 3, last paragraph). With respect, the "finding" referred to is merely a descriptive statement in the Advisor's Report concerning possible comparators, not repeated in his recommendations on salary. In my view this consideration is not a response to the recommendations on salary. The response does not explain why the linkage of salary levels between provincial court judges and masters is relevant to the issue of comparators here. At most it seems a complaint that the Advisor did not accept the argument advanced and the position preferred by Government.

[33] The final comment of the response concerning the recommendations on salary is that the Advisor misconstrued the Government's position regarding the requirement of ensuring that salaries do not fall below a minimum (Minister's response, page 4, 1st full paragraph). It is not clear what the significance of this comment is. Even if that criticism about the Advisor's interpretation of the submissions to him were warranted, it is not a response to the recommendations about salary, which do not refer to the matter of a minimum salary. Moreover, aside from that criticism, the minimum salary amount for prothonotaries has not been an issue before me, it does not appear to have been an issue between the parties before the Special Advisor, and it is not expressed as an aspect of the final recommendations on salary. It was argued before me that if the Advisor misunderstood the Government's position he must then have interpreted that to be specifying a minimum salary, above which his recommendation should fall. But that is sheer speculation and has no basis in his report or recommendations.

[34] The response concludes its discussion of the Advisor's salary recommendations, referring to "these cumulative flaws in both assumptions and logic", concluding that "the Government would not in any event be prepared to accept his salary recommendation" (Minister's response, page 4, 2nd full paragraph). It does not suggest any modification of that recommendation, rather the response underlines the view of Government that "prothonotaries' salary should continue to be fixed at 69 percent of a Federal Court judge's salary" (Minister's response, page 3, paragraph 1), that is, it should remain unchanged.

Pensions

[35] The response notes that the Advisor relied on judicial annuities, not civil service pension plans, as proper comparators to consider prothonotaries' pensions. It adds that the Advisor's recommendation on pensions seeks to combine in one plan the most generous elements of each of the provincial and territorial judicial pension arrangements. Further, it states that, "[e]ven in a period of economic stability and growth, it would be unreasonable for the Government to accept a pension recommendation that seeks to combine in one plan the most generous elements of each of the provincial and territorial judicial pension arrangements" (Minister's response, page 4, 3rd last paragraph).

[36] The Minister's response, not in its text but in footnote 17, includes, for the first time, a variation of the framework for prothonotaries' pensions, in the following terms (at page 6):

Using the more reasonable average age of appointment of the six existing prothonotaries (45 years of age)

results in an accrual period of 23.3 years with an accrual rate of 3%. Indeed, an accrual rate of 3% is applied in a number of jurisdictions with benefits based on three years best average salary rather than the final year as recommended.

In my opinion, the manner of the presentation of this variation does not mean that Government was proposing this as a serious modification of the Special Advisor's recommendations on pensions. It cannot be considered as a rational response to those recommendations.

[37] The final reason in the response for rejecting the pension recommendations of the Special Advisor was that he incorrectly assumed his recommended enhancements could be easily implemented through the existing public service plan, which is described as a significant underestimate of the technical complexity and cost associated with implementation within the PSSA scheme. The essence of the recommendation of the Advisor is that there be an appropriate retirement arrangement for the office of prothonotary, with certain features. Apart from the detailed features he notes, such an arrangement is in place in six provinces for provincial judges and masters. He does suggest that arrangements "can be implemented through the existing PSSP (registered plan) with a supplementary RCA to top up the difference" as is already in place, he suggests, for federal deputy ministers (Report of the Special Advisor at page 62). The latter exceptional arrangement, if it exists, is not disputed by the response.

[38] There may well be reasons why the detailed recommendations for a pension arrangement were not acceptable, but the response goes no further than to reject the recommendation without serious consideration for any of it, even in principle. The rejection itself can hardly be taken as rationally related to the recommendations in the special circumstances of this case where never before have pensions for prothonotaries been considered in the process of commission recommendation and response required if judicial independence is to be recognized.

[39] Curiously, after referring generally to the reasons given in relation to salary proposals, the response states "Government has concluded that it would not be reasonable to contemplate implementing major pension or other benefit enhancements in the current economic situation. Rather the Government will take the opportunity to consider how the current pension arrangements might be modified to reflect the particular circumstances of prothonotaries as judicial officers, including the admittedly unique demographics of mid-career, life-time appointments" (Minister's response, page 4, last paragraph).

[40] There is no explanation why only now, in 2009, is the opportunity to be taken to account of the particular circumstances of prothonotaries in reviewing pension arrangements. No review has taken place. I may infer too much, but now, 12 years after the decision in *Reference re P.E.I. Judges*, and with the evolving jurisprudence since, the law officers of the Crown surely cannot be proposing to unilaterally review prothonotaries' pension arrangements and consider changes to be implemented, except in a response to recommendations of an open, fair and effective commission and response process.

Other benefit enhancements

[41] I have noted that the response stated it is not timely to implement other benefit enhancements.

These were subjects of specific comment or recommendations by the Special Advisor. They are dealt with in the response, but only in footnote 18 in the following terms (at page 7):

> More specifically the Government is not prepared to implement the Special Advisor's recommendations to extend long-term disability benefits and to provide an annual tax-free allowance of $3,000 to prothonotaries. Nor is the Government prepared to make an *ex gratia* payment to the former prothonotary and the two survivors of deceased prothonotaries. However, the Government will extend vacation entitlements to 6 weeks to all prothonotaries on the basis that they all should receive the same level of benefits immediately without executive discretion.

(The background to the decision to extend vacation entitlements to 6 weeks for all prothonotaries, as I understand it, was that prior to June 2009 most but not all prothonotaries had 6 weeks or longer annual vacation. The change, by Order in Council [P.C. 2009-0986] in June 2009 provides a standard six-week vacation for all prothonotaries.)

Other matters

[42] Other matters raised by the Advisor's Report are commented upon in the Minister's response. One of those concerns the status of prothonotaries. As I read the Advisor's Report he makes no clear recommendation for changes. Rather he recommends that the Minister of Justice and the Chief Justice of the Federal Court should consider (a) establishing an opportunity for prothonotaries to elect supernumerary status, and (b) taking necessary steps to reflect their status as associate judges. The second matter dealt with concerns administration of leave and travel arrangements and a comment that "temporary funding of four of six prothonotary positions … needs to change" (Report, above, at page 65). I assume that comment is the basis for the Minister's negative reference about transfer of responsibilities for administration of compensation of prothonotaries within the federal fiscal and budgetary process.

[43] For both of these matters the response is that each was beyond the mandate of the Special Advisor and the Government is under no obligation to respond to these recommendations. That is a response, but there were no clear recommendations made on these other matters, except to consider them. The response indicates a necessity for representatives of the parties to be clear in advance about the issues to be considered by any future independent commission.

[44] The response rejects a recommendation that there be full reimbursement of all legal fees and disbursements incurred by prothonotaries, because Government has declined to pay more than 2/3 of costs incurred by federally appointed judges for representations to the quadrennial commissions on judges' compensation. As we have seen in footnote 18 of the response, it rejects, without explanation, recommendations concerning a non-taxable allowance, an available sickness and LTD [long-term disability] insurance coverage, and *ex gratia* payments to widows of, and to a former prothonotary.

[45] The response makes no comment or reference to a recommendation that periodic review of prothonotaries' remuneration ought to track the time frames of the quadrennial commission process for federally appointed judges. Perhaps the lack of a response to this was mere oversight. I have noted that on the date of the response, the Minister responded to the latest Quadrennial Commission Report on Judicial Compensation and Benefits, rejecting all of that Commission's recommendations

on economic grounds similar to those relied on in the response concerning prothonotaries. However, in that case, in relation to federally appointed judges, it is specifically stated that "in the event that the current economic circumstances improve before the next Judicial Compensation and Benefits Commission is established so as to justify salary enhancements, such circumstance could be taken into account by the Commission." (*Response of the Government of Canada to the Report of the 2007 Judicial Compensation and Benefits Commission*, above, at page 2, last paragraph).

[46] While no comparable commitment is made in the response to the recommendation for periodic compensation reviews for prothonotaries, I do note that in oral submissions at the hearing before me counsel for the Minister commented that the response did not need to say anything about periodic review because "it's understood that will occur. Once we have accepted that the *Reference re P.E.I. Judges* applies and that prothonotaries are judicial officers, it is out [the Government's] constitutional obligation to ensure periodic review of their compensation and benefits" (transcript, July 9, 2009, page 114, at lines 7–17; page 116, at lines 14–16). That last comment does explicitly acknowledge the constitutional obligation of the Crown to support the public interest in judicial independence by the process of periodic review of judicial remuneration for prothonotaries, as established in *Reference re P.E.I. Judges* and *Bodner*, and acknowledged in P.C. 2007-1015 and in the Minister's response.

[47] With reference to costs the Government notes that it has already paid prothonotaries on an *ex gratia* basis $50 000 to support their participation in the process which is said, with no evidence to support this, to be an amount that exceeds 2/3 of their total representational costs.

C. Applying the test of *Bodner*

[48] In reviewing the response of the Minister I consider the following:

The *Reference re P.E.I. Judges* and evolving jurisprudence requires that compensation for judicial officers be determined after a process including assessment by an independent, open and effective commission and a response, by the government agency concerned, that is rational, legitimate and that appropriately recognizes judicial independence of the judicial officers concerned. The commission process is not effective if it has no influence on the compensation that results. A response by Government as a result of negotiations between judicial officers and Government does not meet requirements for recognition of judicial independence. The reasons set out in the response for not accepting a commission's recommendations are rational in the sense here intended, if they are complete and set out how and why the recommendations are not accepted by Government, and if they are legitimate in the sense of meeting requirements of the law and the Constitution. Finally the reasons are to be assessed globally with a view to determining whether the purposes of the process of an independent commission, and response, are met.

[49] In dealing with the Government's response to the recommendations of an independent commission, in *Bodner* the Supreme Court commented, in part (at paragraphs 25–26):

> The government can reject or vary the commission's recommendations, provided that legitimate reasons are given. Reasons that are complete and that deal with the commission's recommendations in a meaningful way will meet the standard of rationality. Legitimate reasons must be compatible with the common law and the Constitution. The government must deal with the issues at stake in good faith. Bald expressions of rejection or

disapproval are inadequate. Instead, the reasons must show that the commission's recommendations have been taken into account and must be based on facts and sound reasoning. They must state in what respect and to what extent they depart from the recommendations, articulating the grounds for rejection or variation. The reasons should reveal a consideration of the judicial office and an intention to deal with it appropriately. They must preclude any suggestion of attempting to manipulate the judiciary. The reasons must reflect the underlying public interest in having a commission process, being the depoliticization of the remuneration process and the need to preserve judicial independence.

The reasons must also rely upon a reasonable factual foundation. If different weights are given to relevant factors, this difference must be justified. Comparisons with public servants or with the private sector may be legitimate, but the use of a particular comparator must be explained. If a new fact or circumstance arises after the release of the commission's report, the government may rely on that fact or circumstance in its reasons for varying the commission's recommendations. It is also permissible for the government to analyse the impact of the recommendations and to verify the accuracy of information in the commission's report.

[50] I have already concluded that in one respect the response in this case was reasonable, but that it was without reference to the recommendations, rather it was based on the facts of deteriorating economic conditions globally, and financial circumstances of the Government of Canada. The response and the actions to which it was related, in particular the determination to manage public finances, including general public service wage restraints, was legitimate for Government (i.e. it was lawful and within the constitutional authority of Government).

[51] In *Newfoundland (Treasury Board) v. N.A.P.E.*, 2004 SCC 66, [2004] 3 S.C.R. 381, provincial legislation enacted to meet a serious fiscal crisis, which infringed Charter rights against discriminatory treatment, was applicable, saved in the circumstances under section 1 of the Charter. I note later that section of the Charter was argued briefly by counsel for the Minister before me as a basis to support government action in this case but that argument was not joined, or disputed, by the applicants. In my view, *N.A.P.E.* supports the view that Government's actions in this case, including the response, were constitutional. Judicial deference to that action precludes intervention by this Court, in the extraordinary economic circumstances of this case.

[52] At the same time, if the test as set out in *Bodner* is applied, I conclude that the primary basis of the response, that is, deterioration of the economic situation and of public finances after the Report of the Special Advisor was submitted, was without reference to the Advisor's recommendations. The recommendations were given no weight, they had no meaningful effect upon the outcome, they were not appropriately responded to by reasonably complete reasons dealing with them. In my opinion, the response does not meet the standard of rationality, either on the "overarching" ground of deteriorating economic conditions, or on the additional grounds set out in relation to specific recommendations. In neither case does the response deal appropriately with the reasons underlying the recommendations. Unless the response does this, it is not rational in the sense intended in *Bodner*.

[53] In *Bodner*, in review of the response of the Government of Quebec to recommendations made by a provincial committee on judicial compensation and pensions, the Supreme Court upheld the decision of the Quebec Court of Appeal which quashed the Government's response. The Supreme Court commented in part (at paragraph 160):

[The Government's] position is tainted by a refusal to consider the issues relating to judicial compensation on

their merits and a desire to keep them within the general parameters of its public sector labour relations policy.

The circumstances in this case are not similar to those considered in *Bodner* concerning the issues there raised in the appeals from Quebec. Yet I come to generally similar conclusions as were there reached. The commission and response process here followed did not have meaningful effect upon the outcome following the response.

Conclusions and implications

[54] The reasons here set forth in the response were not rational with reference to the recommendations of the Special Advisor. That judgment is equally applicable to the reasonable basis supporting Government's decision and action to deal with extraordinary economic conditions and deteriorating public finances after May 30, 2008, and to the additional considerations raised in the response. If neither the overarching ground nor the additional grounds for the response deal appropriately with the recommendations of the Special Advisor, then viewed globally, the reasons expressed in the response do not respect the purposes of the process for establishing judicial remuneration, as established by the *Reference re P.E.I. Judges* and as elaborated by *Bodner*.

[55] Let me be clear that the response in this case does not evidence any improper political purpose or intent to manipulate or influence the judicial officers concerned. Nevertheless, even though the proper process is expressly acknowledged in the Minister's response, that process has not been accomplished in this case in a manner that preserves judicial independence and depoliticizes the establishment of prothonotaries' remuneration. In my opinion, the response does not meet the constitutional requirements of the commission and response process for establishing compensation for judicial officers, here the prothonotaries, established by the *Reference re P.E.I. Judges* and *Bodner*.

[56] In our democracy the rule of law is a basic pillar. It rests upon judicial independence. That is why that independence is a basic public value. It is secured by essential support for courts and judicial work and by appropriate remuneration for all judicial officers. The value of judicial independence is a matter of concern for all, not least for the Minister of Justice and Attorney General of Canada and for all law officers of the Crown. They have the responsibility and the ability to meet their lawful concerns in this and in all respects. Government always has a number of constitutional obligations to meet under our law. It may be difficult to meet them all at one time, but it is not for this Court at this time to direct the manner or timing for those requirements to be met. That is a continuing responsibility of Government to which the Court must ordinarily defer.

[57] The extraordinary economic circumstances with which Government now copes are unlikely to continue indefinitely. It cannot be forgotten that it is now 12 years since the requirements of the lawful process for considering the appropriate remuneration for prothonotaries were established by the *Reference re P.E.I. Judges*. Reconsideration could be initiated by re-examining the recommendations already made by the Special Advisor's Report of May 30, 2008, which might expedite reconsideration when the time for that is ripe. If that is not appropriate a new commission process will be required.

[58] An order goes dismissing the application for judicial review. No other order or directions to

the applicants or to the respondents is made except concerning costs.

[59] For the record I note that counsel for the parties before me made submissions on two other matters about which I make no determination since neither affects the result. The applicants' claim that the Minister was in breach of the law by failing to respond in no later than six months after the Special Advisor's report was submitted, as P.C. 2007-1015 provided, does not affect the order dismissing this application. The respondent Minister's reliance, if it should prove necessary, upon section 1 of the Charter to support the decision in this case, was simply not an issue argued for the applicants and is not here determined.

Costs

[60] The matter of costs as discussed in the Advisor's Report and the Minister's response is not one for this Court to review.

[61] I consider that success in this matter is divided for dismissal of the application does not constitute recognition of the commission and response process here reviewed as one that met constitutional requirements. The constitutional obligation of Government to ensure an appropriate process for establishing salary and benefits for the prothonotaries of the Federal Court remains, just as it was when the Special Advisor reported to the Minister on May 30, 2008.

[62] Costs of the parties in this application, now dismissed, I leave for them to resolve, and if no other resolution is made between them within 14 days of my order, then each shall bear their own costs.

ANNEX A

RECOMMENDATIONS OF THE SPECIAL ADVISOR ON FEDERAL COURT PROTHONOTARIES' COMPENSATION

Salary

Salary be set for April 1, 2007, at 80% of a (puisne) Federal Court judge's salary of $252,000 at $201,600 and adjusted at that rate thereafter. Adjustment be retroactive to April 1, 2004.

Pension

An appropriate retirement arrangement having:

- an accrual rate of 3.3% per year of service;
- applied to the final year of earnings;
- to age 75, for a maximum benefit of 70%;
- contributions at 7%;
- benefit to be indexed to CPI;

- not integrated with CPP/QPP;

- current entitlements should be grand-fathered with *Public Service Superannuation Act* so that in conjunction with a supplementary RCA due difference is topped up. Proposal for full retroactivity so all service counted at 3.5%.

Retired Prothonotaries or widows

Correlative enhancements for retired prothonotaries or widows, or alternatively an appropriate sized *ex gratia* payment.

Sickness and disability

Elimination of 13-week waiting period (automatic salary protection); extension of benefits to age 75, or alternatively that LTD be replaced by an annuity amounting to 70% of salary to age 75.

Supernumerary Status

Consideration be given to establishing opportunity to elect supernumerary status.

Associate Judges

Consideration be given to taking the steps necessary to reflect the status of the prothonotaries as associate judges.

Vacation Entitlement, Other Leaves, Travel, etc

- harmonization of vacation entitlement to 6 weeks currently afforded to Federal Court judges;

- leave and travel arrangements to be administered in same way as for judges as proposed by Courts Administration Service submission;

- application of public service Values and Ethics Code problematic;

- appropriate judicial complaint and discipline mechanism; and

- temporary funding of positions as described by CAS needs to change.

Allowances

Non-taxable allowance of $3,000.

Interest and Costs

Full reimbursements of all legal fees and costs ("in accordance with case law"). No interest.

Periodic Review

Subsequent reviews to track the timeframes of the quadrennial commission process.