

**2020 Judicial Compensation
and Benefits Commission**

**Public (Virtual) Hearing:
May 10 and 11, 2021**

**Jacques Chamberland, J.A.
Court of Appeal of Quebec**

PRESENTATION NOTES

(1) My appearance before you today is backed by the unanimous support of my 32 colleagues at the Court of Appeal of Quebec, including that of Chief Justice Savard. Their names are set out in an appendix to my letter dated March 10, 2021.

(2) In 2008, the Commission, chaired by Sheila Block, addressed the question of whether appellate judges should receive a higher salary than their colleagues appointed to trial courts, answering in the affirmative (based on the “adequacy” of salaries criterion in s. 26(1) of the *Judges Act*) and establishing the salary differential at 3% (appellate judges had requested 6.7%).

Pages 40-56; paragraphs 125-171.

(3) In 2012, the Commission, chaired by Brian Levitt, came to the same conclusion.

Pages 23-25; paragraphs 62-68.

(4) In 2015, the Commission, chaired by Gil Rémillard, concluded that both prior Commissions had been mistaken and that appellate judges were not entitled to higher salaries than trial court judges.

Pages 24-28; paragraphs 86-109 (paragraph 106 being central to the Commission’s reasoning).

(5) This is an unfortunate error that must be corrected.

(6) The question as to whether appellate judges should receive a higher salary than trial judges is a question of principle that the Block Commission decided after an in-depth analysis of the arguments raised by all of the interested parties.

(7) When questions of principle are decided, they must be decided once and for all, unless there is a significant change in circumstances.

No change in the situation of appellate courts in Canada, let alone a significant change, has occurred since the Block Commission decided the issue nearly 13 years ago.

The position of appellate tribunals in Canada’s court hierarchy is the same: trial courts, appellate courts, SCC.

The role and responsibilities of appellate courts are the same: to remedy errors made by trial courts and to speak the law.

(8) The Commission is an institution whose existence is established by the *Judges Act*.

Commissioners change, but the institution does not.

In this context of continuity, the Commission must follow its own decisions.

This is, with the utmost respect, what the Rémillard Commission should have done.

I believe that the integrity and credibility of the Commission process depends, at least partially, on it.

(9) I have read the paragraphs of the reply submissions of the Government relevant to this question of a salary differential between appellate and trial court judges, as well as Justice Gordon L. Campbell's letter.

In French, page 24, paragraph 67; in English, page 21, paragraph 67.

As agreed yesterday, I will now say a few words in that regard.

(10) First, the Government and Justice Campbell do not address the problem raised in our request: the Rémillard Commission did what it should not have done, that is, revisit the merits of a question of principle that had already been decided by the Block Commission (and confirmed by the Levitt Commission), namely, whether appellate judges should receive a higher salary than trial judges in order for that salary to be "adequate" within the meaning of s. 26(1) of the *Judges Act* (Block Commission's report, paragraph 147 *in fine*, 149 to 156).

The Rémillard Commission acted as if it were sitting in appeal from that decision, which is not its role.

(11) Second, paragraph 69 – The reference to the financial security of appellate judges is unfortunate. When appellate judges ask for a higher salary than trial judges, they do not do so in order to ensure their financial security, but, rather, in

order for their salary to reflect their position within the judicial hierarchy, as well as their roles and responsibilities in relation to those of trial judges (a relevant objective criterion within the meaning of s. 26(1.1)(d) of the *Judges Act*).

(12) Third, paragraph 70 – Here, the Government intimates that the request to abide by the 2008 decision of the Block Commission has the support of only 32 of Canada’s 177 appellate judges. In other words, no other Canadian appellate judge supports this request—a request, it bears reminding, that has the support of all of Quebec’s appellate judges, without exception.

This is quite simply a ridiculous suggestion, just as it would be ridiculous for me to suggest that all Canadian appellate judges support the request because all Quebec’s appellate judges do so.

The truth is that we don’t know.

The truth is also that the numbers don’t matter. Our request is meant to appeal to your intellect, not your calculator.

Moreover, it is also true that this is the same type of argument that the Government has raised, in one form or another, from the very beginning, even in 2008 (when we had the express support of approximately 70% of the appellate judges) and in 2011 (approximately 50%), an argument that both the Block and Levitt Commissions dismissed.

Ultimately, the truth is that this argument is nothing but a smokescreen. At the end of the day, the real question is whether the appellate judges are right in faulting the Rémillard Commission for having revisited a question of principle that had already been decided by the Block Commission (and confirmed by the Levitt Commission), in accordance with the criteria of section 26 of the *Judges Act*:

- i) an “objective criteria (...) relevant”, that is the role and responsibilities of Appellate judges (26(1.1)(d)); and
- ii) the “adequacy” of their salary to reflect this reality (26(1))¹.

¹ In this context, as I mentioned in the afternoon, the support for the concept of a salary differential may well fluctuate over time without ever amounting to a “significant change in the circumstances” to justify revisiting the decision taken in 2008 (and 2012).

(13) Fourth, paragraph 74 – Two comments: (1) the Government's arguments address the merits of the question, which is irrelevant here (just as it was irrelevant before the Rémillard Commission... and this is exactly the trap into which that Commission fell); (2) these are the same arguments that the Government has been making since the time of the very first Commission, arguments that the Block Commission dismissed after its detailed analysis thereof.

(14) For all these reasons, the appellate judges respectfully ask that you:

- (1) include in your report the recommendations of the Block Commission (May 2008) and the Levitt Commission (May 2012) pertaining to a salary differential (of 3%) between appellate judges and trial judges; and
- (2) recommend that the principle of such a 3% salary differential be established retroactively to April 1, 2016, the start date of the period subject to the Rémillard Commission's review.

Thank you.