



Quebec Court of Appeal

THE HONOURABLE JACQUES CHAMBERLAND

March 10, 2021

By email

English version

Mtre Martine Turcotte, Chair
Mr. Peter Griffin, Commissioner
Ms. Margaret Bloodworth, Commissioner

RE: 2020 Judicial Compensation and Benefits Commission
Request regarding a salary differential between
appellate judges and trial judges

Dear Madam Chair:
Dear Madam Commissioner:
Dear Mr. Commissioner:

I have been a judge of the Court of Appeal of Quebec since June 1993 and will soon be retiring, on October 11, 2021.

I am writing to you on my own behalf, but I know that a number of Canadian appellate judges share my point of view.¹

I ask you to include in the conclusions of your report the recommendation of the *Block Commission* (May 2008, recommendation 3) and the *Levitt Commission* (recommendation 2) pertaining to a salary differential (of 3%) between appellate judges and trial judges.

The principle for such a salary differential stems from the existence of a hierarchy within Canadian courts, a hierarchy which is already reflected in the higher salary paid to justices of the Supreme Court of Canada and which, logically, should also be reflected in the salary paid to appellate judges compared with that paid to trial judges.

In 2008, all the recommendations made by the *Block Commission*, including recommendation 3 regarding a salary differential, were rejected by the government due to the severe economic crisis prevailing in Canada at the time.

¹ Annexed hereto is a list (in alphabetical order) of my colleagues at the Court of Appeal of Quebec who unanimously approve of this submission.

In 2012, the government of the day, relying on the same arguments it had asserted unsuccessfully before the *Levitt Commission* in order to object to the request of appellate judges, once again refused to act upon the recommendation for a salary differential in their favour.

In 2016, the *Rémillard Commission*, rather than simply taking up the principle of a salary differential which had been acknowledged by the two previous commissions, as Canadian appellate judges were asking it to do, unfortunately allowed itself to be drawn into a new analysis of the merits of the issue, ultimately concluding, on the basis of the very same arguments that the *Block Commission* and the *Levitt Commission* had rejected, that appellate judges were not entitled to such a salary differential.

The *Rémillard Commission* thereby inappropriately revisited a question of principle that had already been decided and, with the stroke of a pen, thus deprived appellate judges of a right that had been recognized in 2008, and once again in 2012, after a very long process.

This is an unfortunate error that must be rectified.

I also ask you to 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.

The situation in which Canadian appellate judges find themselves is all the more disappointing in that they pursued the issue of recognition of the principle of a salary differential without the support, expertise and resources of the Canadian Superior Courts Judges Association (of which they are members), the Association having always taken a position of neutrality on this issue, for reasons of its own which I do not question here.

I would nonetheless point out that the Association (and the Canadian Judicial Council) had requested that the *Levitt Commission* adopt the *Block Commission's* recommendation regarding the establishment of a 3% salary differential between puisne appellate judges and puisne trial judges, and that it recommend its implementation without delay (*2011 Joint Submission*, para. 170).

The whole respectfully submitted,

Jacques Chamberland, J.A.

- c.c:
- The Right Honourable Richard Wagner, P.C., Chief Justice of Canada and Chair of the Canadian Judicial Council
 - The Honourable Manon Savard, Chief Justice of Quebec
 - The Honourable Thomas E. Cyr, President of the Canadian Superior Courts Judges Association

Les juges Frédéric BACHAND
Christine BAUDOIN
Michel BEAUPRÉ
Dominique BÉLANGER
Marie-France BICH
Jean BOUCHARD
Geneviève COTNAM
Guy COURNOYER
François DOYON
Julie DUTIL
Lucie FOURNIER
Suzanne GAGNÉ
Guy GAGNON
Stephen W. HAMILTON
Patrick HEALY
Allan R. HILTON
Marie-Josée HOGUE
Sophie LAVALLÉE
Jacques J. LEVESQUE
Robert M. MAINVILLE
Geneviève MARCOTTE
Benoît MOORE
Yves-Marie MORISSETTE
François PELLETIER
Jocelyn F. RANCOURT
Louis ROCHETTE
Simon RUEL
Stéphane SANSFAÇON
Manon SAVARD, juge en chef du Québec
Mark SCHRAGER
France THIBAUT
Martin VAUCLAIR

Le 10 mars 2021