JUDICIAL COMPENSATION AND BENEFITS COMMISSION

SUBMISSION

of the

CHIEF JUSTICE OF THE FEDERAL COURT

REGARDING SUPERNUMERARY STATUS FOR

THE PROTHONOTARIES OF THE FEDERAL COURT

March 11, 2016

On behalf of the Federal Court, I welcome this opportunity to make a submission to this Commission regarding an issue that concerns the prothonotaries of the Court, namely, supernumerary status.

For the reasons explained below, I submit that this issue is related to the Commission's consideration of the adequacy of prothonotaries' benefits generally, as contemplated by subsection 26(1) of the *Judges Act*. More specifically, it is related to the role of financial security of the judiciary in ensuring judicial independence and the ability of the Court to attract outstanding candidates, as contemplated by paragraphs 26(1.1)(b) and (c) of the *Judges Act*, respectively.

Background

The critical role that the prothonotaries play in the Court was described in my *Submissions to the Special Advisor on Federal Court Prothonotaries' Compensation*, dated April 19, 2013 and annexed to this submission. That role is also summarized at paragraphs 31-45 of the Prothonotaries' submissions[1] to this Commission, dated February 29, 2016.

The importance of the prothonotaries to the Court has increased in recent years, in part as a result of the high priority that the Court has placed on improving access to justice, including by making greater use of case management and mediation.

The Court's prothonotaries are assigned to be based in various locations across the country – there are two in Toronto, and one in each of Ottawa, Montreal and Vancouver. A sixth position, in Ottawa, has been vacant since April 2015, when one of the Court's prothonotaries retired.

It has been apparent to me for several years now that the Court requires two additional prothonotaries to handle its workload, which has substantially increased in recent years. In this latter regard, in 2002, the last full calendar year before the complement of prothonotaries on the Court was increased to six, there were 6,839 Judgments and Orders processed by the Registry, 448 directions processed, and 803 files prepared for hearing and heard in Court. In 2015, the corresponding figures were 9,222, 1,430 and 2,183, representing increases of approximately 35%, 220% and 170%, respectively.

[1] Submissions of the Prothonotaries of the Federal Court to the Judicial Compensation and Benefits Commission, February 29, 2016, http://www.quadcom.gc.ca/Media/Pdf/2016/soumissions-submissions-06.pdf .

In 2002, Leave for Judicial Review was granted in 650 applications. In 2015, the corresponding figure was 1,914, representing an increase of almost 200%.

During that same period, the total number of judges on the Court increased from 23 full time and four supernumerary judges to 35 full time and six supernumerary judges, representing an increase of approximately 50%.

At the same time that the size and the workload of the Court have continued to expand, the average level of complexity of cases has continued to increase. This has been particularly so in the areas of national security, intellectual property (especially involving pharmaceutical patents), immigration and disputes involving First Nations.

Providing the Court's prothonotaries with the ability to elect supernumerary or other part-time status would significantly assist the Court to deal with this increased workload and complexity of cases. It would also offer an alternative solution to the Court's need for additional prothonotaries, at least for the period that the current cohort of prothonotaries who may retire in the coming years avail themselves of the opportunity to work part-time. In brief, during that period, the Court would benefit from one or more full-time replacements for the part-time prothonotary or prothonotaries, as well as from the part-time individual(s).

Shortly prior to deciding to retire, the prothonotary who left the Court last year informed me that if she had the ability to elect supernumerary status, she would do so and then remain with the Court in that capacity for a number of additional years.

Two of the remaining prothonotaries on the Court have informed me that they intend to retire within the next two years, but may remain for longer if they are given the ability to elect supernumerary status, or an entitlement to an alternative arrangement similar to the Senior Judge Programs that have been established in most of the provinces. A third prothonotary is 67 years of age and has indicated to me that he expects to remain with the Court until he can retire at 75. However, he has added that he likely would elect to take supernumerary status three or so years before retirement, if that were possible.

The foregoing partially explains why the prothonotaries have made their own submissions on this issue to the Commission.

The departure of several of the Court's six prothonotaries within such a short period of time would have a substantial adverse impact on the Court's operations. Indeed, the present inability of the prothonotaries to elect supernumerary or other part-time status is currently having an adverse impact upon the Court. This is demonstrated by the fact that the prothonotary who retired last year would have remained with the Court for longer had she been able to elect part-time status. Based on the messages that have

been conveyed to me by the two prothonotaries who have informed me of their intention to retire within the coming two years, as described above, the Court is facing the very real prospect of this happening again.

Supernumerary and Part-time Status

Supernumerary status allows a judge who is eligible to retire and collect two thirds of his or her salary, to continue working part time (at least 50%) and collect 100% of his or her salary. In effect, when a judge elects supernumerary status, the public receives at least 50% of the judge's time in return for an additional one third of the judge's salary.

When the opportunity for judges to elect supernumerary status was introduced in 1971 the then Minister of Justice, testifying before the Standing Committee on Justice and Legal Affairs, explained the proposal in the following terms:

> *The advantages of the proposition before you, Mr. Chairman, are that the judges will be induced to vacate their ordinary judicial office, will be able, thereby, to create a vacancy for younger appointments, and yet the supernumerary judges will be available at all times; it will provide a larger proportion of younger judges and yet at the same time retain a pool of capable experienced judges at the disposal of the chief justice.*[2]

As with supernumerary status, the "Senior Judge Program" that exists in most provinces makes use of the services of retired provincial court ("PC") judges to supplement existing judicial resources. In brief, such programs allow the courts to continue to draw upon the services of senior PC judges to assist in a variety of situations, including when a sitting judge is on an extended leave such as a maternity or sick leave, or when a seasoned judge is required on a particularly difficult case.

Extending the opportunity to elect supernumerary or another form of part-time status to the Court's prothonotaries would provide a significant incentive for them to remain with the Court for a period of time after they otherwise may have retired. Among other things, this would provide the Court with the continued benefit of their substantial expertise and institutional knowledge. In addition to continuing to attend to their some of their own case management files or other assignments, they would provide invaluable assistance to newer prothonotaries as the latter learn the complexities of the position in their initial years with the Court. They would also continue to be available to share their unique and considerable experience with other members of the Court.

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[2] Report of the Judicial Compensation and Benefits Commission, May 31, 2000 at page 77.

In brief, providing this ability to the Court's prothonotaries would considerably reduce the significant disruption to the Court that otherwise would be associated with their departure upon ceasing full-time duties, and that has been experienced by the Court since the departure of a prothonotary last April. In this regard, it should be noted that in contrast to judges, who start and finish with the bulk of their assignments within a short period of time, prothonotaries each handle a large number of case managed files that typically require their attention over an extended period of time, as those files are prepared for trial.

The Link to the Financial Security of Prothonotaries

The link between the financial security of judicial officers and an entitlement (that had already been acquired) to elect supernumerary status upon working the required number of years was confirmed by the Supreme Court of Canada *in Makin v New Brunswick (Minister of Finance; Rice v New Brunswick*, [2002] 1 SCR 405, at paras 66 and 67. There, the Court characterized that entitlement in terms such as "a substantial benefit pertaining to economic security," a "clear economic benefit," and "an undeniable economic benefit."

It follows that it is squarely within the Commission's mandate to consider whether to recommend that the prothonotaries be entitled to elect either supernumerary status or another form of part-time status.

Indeed, the Commission should be aware that in the 2008 *Report of the Honourable George W. Adams, Q.C.*, Special Advisor on Federal Court Prothonotaries Compensation, the following recommendation was made (at p. 64):

> The Minister of Justice and the Chief Justice of the Federal Court, I recommend, should consider establishing the opportunity for prothonotaries upon retirement to elect supernumerary status. Such a program helps courts manage work load issues and permits the appropriate ongoing use of the expertise of older judicial officers.

The need to attract outstanding candidates to prothonotary positions

It is critically important for the Court to be able to attract outstanding candidates to become prothonotaries. However, I am concerned that the Court may be having difficulty doing so in some regions of the country.

Notwithstanding the fact that the Government of Canada substantially implemented the recommendations of the 2013 *Report of the Special Advisor on Federal Court Prothonotaries' Compensation*, the Federal Court did not attract a significant number of highly qualified candidates when it held a process during the fall of 2015 to establish a pre-cleared pool of candidates to staff future prothonotary positions in Montreal, Toronto and Vancouver. That process was held due to the Court's desire to minimize the delay that will be associated with replacing prothonotaries who are planning to or may retire in one or more of those cities in the coming years.

In my view, providing prothonotaries with the same ability as judges currently enjoy to elect supernumerary status, or to work part-time in some other capacity after working a minimum number of years, would significantly improve the Court's ability to attract outstanding candidates in those cities.

As noted in the *Submissions of the Government of Canada to this Commission*, at paragraph 93, the prospect of being able to continue to maintain a full salary with a reduced workload "is a significant inducement for attracting outstanding candidates from the private sector to the bench." As further noted in that submission, at paragraph 92:

> In addition to the significant economic and lifestyle advantages supernumerary status offers, supernumeraries can continue to enjoy the personal satisfaction of doing fulfilling work and contributing to the operations of their court. The relative attractiveness of this benefit is supported by the fact that approximately 89% of judges entitled to elect supernumerary status do so."

Recommendation:

I recommend extending to prothonotaries the opportunity to elect supernumerary status upon retirement. While judges are able to enjoy supernumerary status for up to 10 years, it is recommended that supernumerary status for prothonotaries be provided for a period of three years from the date of the election. On the recommendation of the Chief Justice, and subject to reappointment by the Governor in Council, the initial three-year term could be extended but would be limited to a maximum period of10 years, as is currently the case for judges.

This could be accomplished by amending the *Judges Act* to include a reference to s. 28 in subsection 2.1(1), and to include new subsections 2.1(3)(and (4), as set forth below:

> **Application to prothonotaries**
>
> **2.1 (1)** Subject to subsections (2), **(3) and (4),** sections 26 to 26.3, **28,** 34 and 39, paragraphs 40(1)(a) and (b), subsection 40(2), sections 41, 41.2 to 42, 43.1 to 56 and 57, paragraph 60(2)(b), subsections 63(1) and (2) and sections 64 to 66 also apply to a prothonotary of the Federal Court.

(2) Sections 41.2, 41.3, 42 and 43.1 to 52.22 do not apply to a prothonotary of the Federal Court who makes an election under the Economic Action Plan 2014 Act, No. 2 to continue to be deemed to be employed in the public service for the purposes of the *Public Service Superannuation Act*.

(3) A prothonotary shall be limited to a period of three years from the date of the election provided in section 28(1), subject to reappointment by the Governor in Council, on the recommendation of the Chief Justice, for a one-year term.

(4) There is no limit to the number of times a prothonotary can be reappointed under subsection (3), except that the supernumerary status shall in no case extend beyond a period of more than 10 years.

Conclusion

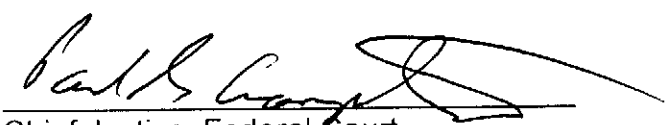
Supernumerary status is "a substantial benefit pertaining to economic security" (*Makin*, above, at paragraph 66).

The Federal Court has a strong interest in attracting the very best candidates to become prothonotaries. This interest has only increased as the role played by the Court's prothonotaries has become more important and, indeed, critical to its ability to facilitate access to justice by reducing the time and costs associated with Court proceedings, through case management and mediation.

The Court also has a strong interest in minimizing the disruption that will be associated with the retirement of its remaining prothonotaries, all of whom have a substantial level of experience and are therefore ideally positioned to train their full-time replacements over a transition period. Indeed, such a transition period would also benefit the other members of the Court, who would continue to benefit from the expertise of a prothonotary working part-time.

Equally importantly, this would permit the Court to benefit from the continued high level of expertise and wisdom of the part-time prothonotaries in case management, mediation and matters falling within their jurisdiction; as well as from the capacity of their full-time replacements.

March 11, 2016



Chief Justice, Federal Court

Annex

***Submissions of the Chief Justice of the Federal Court to the Special Advisor on Federal Court Prothonotaries' Compensation*, dated April 19, 2013**

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Federal Court

Cour fédérale

IN THE MATTER OF AN INQUIRY
BY THE SPECIAL ADVISOR ON
FEDERAL COURT PROTHONOTARIES' COMPENSATION

SUBMISSIONS OF THE CHIEF JUSTICE OF THE FEDERAL COURT

APRIL 19, 2013

On behalf of the Federal Court, I commend the Governor in Council [GIC] for establishing this independent review of the adequacy of the salary and benefits of Prothonotaries of the Federal Court. I also welcome the GIC's confirmation of its commitment to ensuring that these types of reviews are conducted on a periodic basis.

The Role of the Prothonotaries

The nature of the role and duties of Prothonotaries has been described in an agreed statement of facts filed jointly on behalf of the Prothonotaries and the Government of Canada.

In short, the Prothonotaries' functions are entirely judicial in nature. Their decisions are typically entitled to deference. Their cases are assigned through the Office of the Judicial Administrator in the same manner as the cases that are assigned to Judges. They have trial jurisdiction for monetary amounts equivalent to or greater than the small claims jurisdiction of the provincial judiciary. They routinely deal with sophisticated legal counsel in a wide variety of areas of the law. They participate in all of the Court's ceremonial special sittings and are members of many of the Court's committees. They have access to the same resources as Judges, including the Court's complement of law clerks. They attend many of the same internal and external education seminars as the Court's Judges. They wear robes that are very similar to those worn by the Court's Judges - only the colour of the trim differs. Their decisions often attract high profile media attention. Recent examples include:

- Bielli v. Attorney General of Canada, Marc Mayrand (Chief Electoral Officer of Canada) et al [a.k.a. the "Robo-calls" matter]
- Mohamed Zeki Mahjoub v. Minister of Public Safety et al.
- The Honourable Lori Douglas v. Attorney General of Canada
- Attorney General of Canada v. United States Steel Corporation
- Conrad Black v. The Advisory Council for the Order of Canada

- Kevin Page, Parliamentary Budget Officer v. Thomas Mulcair, Leader of the Opposition and the Attorney General of Canada, and the Speaker of the Senate of Canada and the Speaker of the House of Commons
- Hupacasath First Nation v. The Minister of Foreign Affairs Canada and AGC (a.k.a. the Chinese Investment Treaty case)
- Abdelrazik v. AGC and Cannon

The importance of the Prothonotaries to the Federal Court was succinctly described in the submissions made by my predecessor in connection with the 2007 review of the Prothonotaries' compensation [Initial Review]. For convenience, those submissions, which I endorse, are attached as Appendix 1.

By way of background, between 1985, when the first Prothonotary of the Court was appointed, and 2003 the number of Prothonotaries on the Court gradually increased. These increases reflected both the increased workload of the Court as a whole and the expanded range of responsibilities given to Prothonotaries, particularly in the wake of the major overhaul of the *Federal Courts Rules* in 1998, which introduced status review, case management and dispute resolution. To assist the Court with its increased case management workload, one supernumerary Judge was also primarily assigned to case management tasks from 2005 until his retirement in 2008.

Since 2007, the workload of the Court as a whole has continued to increase. To some extent, that is reflected by the 23% increase in the number of proceedings instituted annually since that time, from 31,254 to 38,438. However, what this figure fails to convey is that the average level of complexity of proceedings filed in the Court has also increased.

In large measure due to the efforts of the Prothonotaries, the Court has succeeded in achieving its goal, announced on May 1, 2009, of ensuring that patent infringement actions are tried within 24 months of their commencement.

The Prothonotaries have also played an increasingly important role in helping to settle or mediate disputes, in assisting to streamline the number of issues in dispute and in reducing the length of trials before the Court. This has been critical in making more scarce judicial resources available to the public.

While the total number of full time and supernumerary Judges has continued to increase over the years, the total number of Prothonotaries has remained at six since 2003. Notwithstanding this, the scope and volume of their work within the Court has increased.

The Prothonotaries' Judicial Independence

The Prothonotaries are judicial officers whose judicial independence is of fundamental importance to the Federal Court as a whole. Any compromising of their independence compromises the judicial independence of the Federal Court as an institution.

In *Valente v The Queen*, [1985] 2 SCR 673, the Supreme Court of Canada identified the three core characteristics of judicial independence as being 1) security of tenure, 2) financial security, and 3) administrative independence. Among other things, the Court discussed judicial independence in the context of the relationship of the judiciary to others, particularly the executive branch of government (pp. 685 and 687).

The mandate of the Special Advisor, as set forth in section 4 of the Schedule to Order in Council PC.2012-991, dated July 20, 2012, is virtually identical to the mandate that was established in connection with the Initial Review. That mandate focuses primarily on the financial security prong of judicial independence. In this regard, paragraph 4(2)(d) of that Schedule requires that consideration be given to "the role of financial security in ensuring the Prothonotaries' independence".

However, paragraph 4(2)(f) requires a consideration of "any other objective criteria that the Special Advisor considers relevant." The administrative independence of the Prothonotaries may be considered relevant in this respect. If the Special Advisor ultimately decides to make any recommendations in respect of the administrative

independence of the Prothonotaries, it would be helpful if those recommendations were as specific as possible, to reduce the scope for subsequent uncertainty, in the event that such recommendations are accepted by the Government.

Periodic Nature of Review

The Government has confirmed its commitment to reviewing the adequacy of the Prothonotaries' salary and benefits on a periodic basis. However, uncertainty remains regarding the timing of future reviews. This uncertainty has consumed a significant amount of energy and time within the Court.

The present review was initiated on July 20, 2012, slightly beyond the 3-5 year period established in *Reference re: Remuneration of Judges of the Provincial Court (P.E.I.)*, [1997], 3 S.C.R., 3, at paragraph 174. It was launched after much time and effort was spent discussing the constitutional need for the review to take place. This time was diverted away from serving the public.

In the interest of preventing similar diversions of time and effort in the future, it would be helpful if a recommendation could be made for future reviews to be held at fixed intervals, perhaps contemporaneously with or shortly following the Quadrennial Commission process that has been established to review the compensation of judges.

The Need to Attract Outstanding Candidates

The Court has begun to take steps towards initiating a process to establish a pool of qualified candidates for the position of Prothonotary. This pool will include candidates for positions in Montreal, Toronto, Ottawa and Vancouver.

Among other things, the Court will be seeking to attract candidates who have at least 10 years of litigation experience, an in-depth knowledge of substantive areas of the law within the Federal Court's jurisdiction, and the skills necessary to mediate and case manage difficult disputes.

However, the prospects for attracting such candidates are diminished by virtue of the substantial gap that exists between the compensation earned by Prothonotaries at the present time and the compensation earned by other judicial officers. This is likely to be a particular issue for potential candidates from the private sector, who, for the most part, currently earn substantially more than Prothonotaries. The fact that Prothonotaries may be remunerated at a level commensurate with quasi-judicial decision-makers in the public service or on administrative tribunals may not be considered to be particularly relevant by such candidates.

I recognize that the last three Prothonotaries to be recruited to the Court were from major private sector law firms. However, my understanding is that, at the time those individuals were recruited, they were aware that efforts were being taken to establish an independent review process complying with the Government's constitutional obligations, and they were optimistic that those efforts would, at least in some measure, improve the Prothonotaries' salary and benefits. In the absence of a meaningful change in the Prothonotaries' salary and benefits as a result of this review, there would be little basis for similar optimism going forward.

Finally, to attract candidates who have the level of seniority and experience that the Court will be seeking, the pension benefits of Prothonotaries must be based on realistic assumptions regarding the length of time that persons appointed to that position will remain in that position. It is not realistic to base pension benefit calculations on the assumption that the average Prothonotary will be able to maintain the required level of performance for 35 years, having regard to (i) the fact that such persons likely will already have been practising law for at least 10 years, (ii) the high level of performance and stamina required to effectively fulfill the functions of the position, and (iii) the significant pressures associated with the position.

Costs of Review

The Prothonotaries are required to participate in these independent reviews, as they are the only mechanism by which they can have any input into their salaries and benefits. As with federally appointed Judges and Military Judges, to effectively participate in these reviews, the Prothonotaries need legal counsel.

As with the Initial Review, the Minister of Justice authorized the Chief Administrator to make an *ex gratia* payment not to exceed $50,000 to reimburse the Prothonotaries for their legal representation costs incurred in relation to this review.

Once again, this left the Prothonotaries in a position where they were required to undertake most of the research and drafting of their submissions to the Special Advisor. Given the complexity of the issues involved, and having regard to the importance of this review to the Court as a whole, this necessitated that significant time be made available in some of their schedules for this purpose. To achieve this, many of their assignments had to be shifted to several judges of the Court, whose assignments in turn had to be postponed to enable them to attend to the work of the prothonotaries in question.

In short, the amount of reimbursement authorized to be made to the Prothonotaries for legal costs incurred in connection with these periodic reviews of their compensation can have a significant impact on both the Court and the public.

It would be helpful for the Special Advisor to recommend that this fact be taken into account in determining the amount of such reimbursement to be authorized in connection with future periodic reviews of the Prothonotaries' salary and benefits.

Conclusion

The Prothonotaries are judicial officers of the Court. Their contribution to the Court is important, substantial and growing.

While I prefer to refrain from making submissions regarding what levels of salary and benefits would be adequate to constitutionally protect their judicial independence, I consider it to be appropriate to note that the matters that are the subject of this review have been "a continuing concern of the Prothonotaries, since at least the decision in *Reference re P.E.I. Judges* in 1997" (*Aalto v Canada*, 2009 FC 861, at paragraph 9(i)).

As the years have passed without any satisfactory resolution of these matters, the morale of the Prothonotaries has deteriorated and the Court as a whole has become increasingly affected. The situation has reached the point where a satisfactory resolution of these matters has become a high priority and an urgent concern for the Court. In this context, it bears underscoring the Federal Court of Appeal's observation that "[t]he current arrangements for [the Prothonotaries'] pensions and disability entitlement call for particularly prompt attention" (*Aalto v. Canada*, 2010 FCA 195, at paragraph29).

APPENDIX 1

IN THE MATTER OF AN INQUIRY BY THE SPECIAL ADVISOR ON

FEDERAL COURT PROTHONOTARIES' COMPENSATION

SUBMISSIONS OF THE CHIEF JUSTICE OF THE FEDERAL COURT

FEBRUARY 1, 2008

[1] The Chief Justice of the Federal Court welcomes this first, comprehensive and independent review of the salaries and other benefits of prothonotaries. The institutional judicial independence of prothonotaries is of importance to the Federal Court as a whole.

[2] The office of prothonotary was established in 1971 by the enactment of section 12 of the *Federal Court Act*, R.S.C. 1985 c. F-7. While section 12 has remained virtually unchanged, the role and jurisdiction of prothonotaries have evolved significantly. Today their work, which is judicial, is essential to the efficient management and timely disposition of proceedings before the Federal Court.

[3] Pursuant to the *Federal Courts Rules*, SOR/98-106 as amended, prothonotaries have both procedural and substantive jurisdiction. They preside over motions within their jurisdiction and trials where the monetary relief sought does not exceed $50,000, exclusive of interest and costs. There has been a preliminary discussion within the Court about the possibility of increasing their trial jurisdiction to some greater amount.

[4] Currently, prothonotaries case manage over 85% of specially managed proceedings before the Court. They determine virtually all interlocutory motions in those cases. The rate of appeal from decisions of prothonotaries is statistically insignificant.

[5] The following are practical examples of how prothonotaries contribute to the timeliness of the Federal Court:

- They case manage complex *Patented Medicines (Notice of Compliance)* proceedings before the Court. These have tripled since 2002. Aggressive and timely case management is necessary to ensure that the case can be heard and determined by the judge within the 24-month period required by the regulations. In fact, prothonotaries have jurisdiction to dismiss such proceedings summarily on the merits taking into account factual and expert evidence.

- The prothonotaries are also a necessary part of the Court's effort, working closely with the intellectual property bar, to set trial dates in patent and other infringement actions early in the life of the proceeding. The goal of this initiative is to ensure that, where possible, infringement actions are tried within 24 months of their commencement. Timely and intensive case management is essential to the attainment of this goal.

- Effective case management by prothonotaries has removed a substantial portion of a judge's work in motions court. The typical motions day for a judge is limited to Anton Piller proceedings, infrequent appeals from orders of prothonotaries and simple motions for summary judgment. This has enabled the motions judge to deal with the ever increasing number of motions to stay deportation orders.

[6] Prothonotaries have developed a substantial expertise in alternative dispute resolution. Their work as mediators and early neutral evaluators facilitates the resolution of cases that otherwise would have required a full hearing.

[7] The depth of knowledge and expertise of the prothonotaries contribute significantly to securing the most expeditious and least expensive determination of proceedings before the Federal Court.

[8] The Federal Court is pleased that the institutional independence of the prothonotaries will be enhanced by this process. Of particular interest to the Court are the recommendations that the Special Advisor may make concerning the necessary statutory amendments to reflect the status of the prothonotaries as associate judges. Here, the concern is to include prothonotaries as part of the constitution of the Federal Court within the meaning of section 5.1 of the *Federal Courts Act*. Also in making recommendations concerning the remuneration and pension benefits, the Special Advisor may wish to consider a form of supernumerary status for prothonotaries.

[9] The ability to attract outstanding candidates to the office of prothonotary is of great importance to the Court. Compensation for prothonotaries must be competitive to make certain that individuals of outstanding talent from across the legal profession continue to submit their candidacy. There should be a regular review of the compensation and benefits of prothonotaries to ensure that they remain competitive and to safeguard the institutional independence of the office.

February 1, 2008

Chief Justice, Federal Court