

***Military Judges
Compensation
Committee***



***Comité d'examen
de la rémunération
des juges militaires***

Report of the Military Judges Compensation Committee

February 2019

~~February 22, 2019~~

The Honourable Harjit Singh Sajjan MP
Minister of National Defence
National Defence Headquarters
Major-General George R. Pearkes Building
101 Colonel By Drive
Ottawa, ON K1A 0K2

Dear Minister Sajjan:

Pursuant to section 165.33 and 165.34 of the *National Defense Act*, I am pleased to submit the report of the fifth Military Judges Compensation Committee inquiring into the adequacy of salaries and benefits payable to military judges.

Yours very truly,



Hon. Jean-Louis Baudouin, Chairperson

cc. Hon. Michel Bastarache, C.C., Q.C., member
James Edward Lockyer, Q.C, member

Report of the Military Judges Compensation Committee 2018

INTRODUCTION

The process for reviewing the remuneration of military judges was established in sections 165.33 and following of the *National Defence Act*, R.S.C. 1985, c. N-5. The Military Judges Compensation Committee must determine the adequacy of judges' remuneration for the 2015 to 2019 period. This is the sixth report dealing with this subject. The Committee's work was delayed because its members could not be appointed in a timely fashion because of the October 2015 election. Indeed, the Committee was established more than two years behind schedule. Additional delays were caused by the lack of availability of the lawyers working on this matter and the need to obtain the translation of the report. This Committee's report is therefore being issued close to when a new committee will need to be established. The members of the Committee were appointed for two years, and they see their mandate as ending upon delivery of this report.

The Committee received abundant documentation and factums of excellent quality. The Committee held one day of hearings, on September 18, 2018, and heard from a single witness. The Committee wishes to thank the lawyers on this file for their professionalism and their contribution to its work.

I. The Committee's role

The Committee's previous reports clearly explain that the current process is grounded in judicial independence and the need to depoliticize the determination of compensation of military judges. Since the decision in *R v. Lauzon* (1998), CMAC-415, an independent committee has also been required for the military court. The *National Defence Act* has since been amended. As held by the Supreme Court of Canada, recommendations must in all cases be objective and fair, and guided by the public interest. The independence of the military court also obviously implies the Committee not being supervised by the leadership and management of the Canadian Forces.

An independent judiciary is characterized by three elements: security of tenure, administrative independence and financial security. Under the *National Defence Act*, a military judge holds office during good behaviour and may be removed by the Governor in Council for cause on the recommendation of the Military Judges Inquiry Committee. Military judges remain in office until the age of 60, which is the age of mandatory retirement, or until they ask to be released from the Canadian Forces. As stated by the Government of Canada in its factum, administrative independence has to do with the court's capacity to manage the administrative aspects related to cases before the judges. This administrative independence is partly ensured by the powers granted to the chief military judge. In turn, financial security means ensuring that judges receive sufficient compensation for the judiciary to attract outstanding candidates and to ensure that they carry out their judicial duties free of influence. Subsection 165.34(2) of the *National Defence Act*

provides that the Committee must inquire into the adequacy of the remuneration of military judges. Under subsection (2), the Committee must consider a number of factors in this inquiry, namely, the prevailing economic conditions in Canada, including increases in the cost of living, and the overall economic and current financial position of the federal government; the role of financial security of the judiciary in ensuring judicial independence; the need to attract outstanding candidates to the judiciary; and any other objective criteria that the Committee considers relevant. The Committee must therefore carry out its own analysis of the compensation based on these criteria to determine whether the remuneration is adequate. While the Committee is not bound by decisions made by previous committees, these decisions are part of the context in which the Committee's inquiry is performed.

It is relevant to mention that the 2012 Military Judges' Compensation Committee report concluded that the compensation of military judges at that time was inadequate. After setting out each of the relevant criteria to be taken into consideration and its position on each of these, the majority of the 2012 Committee recommended to the government that the remuneration of military judges be increased incrementally in each of the four years covered by its mandate in such a way that at the end of that term this remuneration would be equivalent to that of other federally appointed judges. However, Commissioner Norman Sterling dissented, believing that the then remuneration of military judges was adequate and sufficient to maintain judicial independence. In its response to the recommendations made in the Committee's 2012 report, the government refused the majority's recommendation, and any pay increases other than annual indexing and the compensation to off-set the elimination of further accrual of severance pay benefits. As mentioned previously, this Committee is therefore not starting from scratch and should not disregard previous Committee reports and recommendations. Such reports are part of the background informing the new Committee. It is clear, however, that should the Committee consider that the previous Committee was not permitted to achieve the establishment of adequate compensation, it can proceed *de novo*, as affirmed by the Supreme Court in *Bodner v. Alberta*, 2005 SCC 44. The Committee does not agree that the remuneration awarded by the government in response to the 2012 report is adequate. The Committee therefore decided to develop its position on the basis of the recent and current situation, including the changes in jurisdiction of military judges. As noted by the members of the 2012 Committee, adequacy is obviously hard to define. Previous committees have tried to give content to the statutory criteria to be considered. Four specific criteria are identified in the legislation, but importantly, the law provides that the Committee must also consider "any other objective criteria that it believes to be relevant". In this category, we have heard submissions on workload, travel obligations, specialized training, salaries of other members of the Canadian Forces, salaries of lawyers, and, more forcefully, the fact that appointed candidates have chosen to work in the military context.

II. The criteria to be considered

A. *Economic criterion*

Counsel for the judges argued that this criterion is used to determine whether there are any impediments to the government's ability to pay judges adequate remuneration. According to the military judges, there are no economic factors that would prevent this Committee from recommending an increase in the remuneration of military judges to, for example, bring their remuneration on a par with that of other federal judges as of April 1, 2015. The economy is thriving and on solid ground, and the outlook is positive. According to the military judges, the data from the Bank of Canada's January 2018 Monetary Policy Report leave no doubt that the salaries proposed by the military judges would not jeopardize the government's other commitments. The budget and economic plans of action the Government of Canada has tabled before the House of Commons are ample proof of this. The military judges further argue that the consideration of economic factors must also take into account the increase in the cost of living, and they suggest a corresponding increase in pay, in addition to any adjustments that should be made to their base salary to reflect other relevant factors. According to the military judges, this would protect their remuneration from the erosion of their purchasing power by inflation.

For their part, counsel for the Government of Canada believe that the prevailing economic conditions are stable and therefore favour preserving the status quo, through an annual increase based on the Industrial Aggregate Index (IAI). The principal driver of economic growth is household consumption, which is declining however, partially as a result of the combination of higher interest rates and the waning impacts of recent fiscal policy measures. In any event, economists predict that real gross domestic product will grow by an average of 2% for the 2017 to 2022 period even if the budget deficit remains high. The budget deficit for the 2016–2017 fiscal year was 17.8 billion dollars, and the 2018 budget continues to anticipate deficits without any indication of when there will be a balanced budget. In general, the evidence filed establishes that the economic criterion does not have a noteworthy effect on the determination of adequate remuneration. The Government of Canada therefore proposes a simple, albeit significant, increase to the current base salary.

B. *Financial security*

With respect to the role of financial security in ensuring judicial independence, the Supreme Court established that judicial salaries should not fall below the minimum level required to maintain and ensure public confidence in the judiciary. Counsel for the military judges explained that the role and responsibilities of judges are *sui generis*. The judiciary occupies a unique position in our society, and this uniqueness must be taken into consideration in all its forms. The Committee's job is therefore to examine the adequate level of judicial salaries by considering the particular nature of the role and duties judges take on.

For their part, counsel for the Government of Canada agree that military judges cannot be paid so little as to cause a reasonable and informed person to perceive the Canadian military justice system as not being independent. They also submit that the Supreme Court has recognized that the risk of manipulation and interference could also arise from inappropriately large periodic increases in judicial salaries. Indeed, a salary that is too high could be as risky as a salary that is too low; this is therefore another factor the Committee should consider. The Committee understands that the government seems to be saying that a large increase could be seen as an example of favouritism or as a benefit related to the exercise of such a function, which would be another form of manipulation. The Committee does not see this as a risk if the increase is recommended by an independent, neutral body with a view to correcting a situation that is deemed to be unacceptable. There is a difference between granting a regular annual increase and making an adjustment. At issue here is an adjustment arising from the finding that the current salaries are not adequate. In the Supreme Court's decision accepting that salaries at Canada Post had to be adjusted to implement wage equity between women and men, the impact of a one-off, greater than normal increase was never discussed: see *Public Alliance of Canada v. Canada Post Corporation*, [2011] 3 SCR 572.

According to the Government of Canada, the assessment of what is adequate must be based on an objective assessment of the level of remuneration that would allow a reasonable and informed person to conclude that the judiciary is independent and not susceptible to political pressure through economic manipulation. The government considers that a reasonable and informed person would know that, in 2017, the average salary of a salaried Canadian was approximately \$50,759. In these circumstances, it submits that a reasonable and informed person would conclude that the current remuneration of military judges (which corresponds to approximately five times the average salary) is more than adequate to ensure judicial independence. In any event, it argues that military judges are clearly not being paid at such a low rate that they could be perceived as being susceptible to political pressure through economic manipulation. Ultimately, the government believes that its proposed 16% increase as of September 1, 2015, followed by an annual indexation, will preserve the independence of military judges and public confidence in the judiciary. The Committee does not see the relevance of the reference to Canadians' average salary in determining the salary adjustment that is required. In its view, the current salary is inadequate but it was never determined based on the average salary of Canadians. The Committee does not believe this to be a reasonable indicator. Rather, the Committee's critical and contextual analysis must consider arguments on the candidate pool, the level of specialization, comparisons with the salaries of other judges, and other factors discussed below. The Committee agrees that a reasonable and informed person would not consider the salary proposed by the government to be lower than the minimum required to satisfy the independence test. However, the Committee cannot be satisfied based on this criteria alone. In fact, there are many other factors and principles at issue to be considered, including that of fairness in how federal judges are remunerated.

C. Attracting outstanding candidates

According to counsel for the judges, judges' remuneration must attract outstanding candidates, be they from the regular or the reserve force, to the military judiciary. While this is not the only determinative factor, according to counsel for the judges, one of the means of attracting the highest number of eligible candidates is pay. The existence of a correlation between the ability to attract talented people and adequate remuneration is self-evident. Remuneration should not be an obstacle to attracting the most deserving military lawyers or outstanding lawyers practicing law as civilians and carrying out duties other than practicing military law. To demonstrate the importance of this argument, the judges explained that for the 2011 competition, two candidates came from the reserve force, while there were no applicants from the reserve force for the last competition, in 2015. According to the judges, there is therefore little interest in a military judge position on the part of military lawyers and even less so on the part of reservists, demonstrating that remuneration seems to be an important factor. The judges wanted to compare the salaries of military judges with those of lawyers in private practice and asked André Sauvé, an expert actuary in remuneration and benefits, to set out the remuneration of lawyers making up the base recruitment pool for the judiciary, guided by the approach followed by other judges' compensation committees to date. Mr. Sauvé started by identifying two target groups formed by the pool of private practice lawyers: lawyers between 35 and 46 and 47 and 54 years of age and reporting an annual income of less than \$60,000 and/or less than \$80,000 in 2014. Taking lawyers between 35 and 54 years of age is important and historically consistent with the appointment age of military judges. The decision to consider lawyers who declared an income of more than \$60,000 aims to exclude from the recruitment pool part-time lawyers who, for various reasons, including life choices that are incompatible with the position, are unlikely to be valid candidates. For the comparison, Mr. Sauvé recommended taking the remuneration of lawyers in the 75th percentile of the comparison groups. His study reveals that, even if one considers the value of the pension plan, military judges are paid substantially less than private practice lawyers who could be part of the recruitment pool.

For their part, counsel for the government believe that the current salary of military judges attracts outstanding candidates. To that effect, they cite the conclusions of the 2008 Committee.

They agree with the principle that the remuneration of military judges must be such that it attracts outstanding candidates to apply for the military judiciary and reflects the nature and status of the office. They point out, however, that this Committee has also recognized that salary is not the sole factor in attracting outstanding candidates to the judiciary in general or to the military judiciary in particular. According to counsel for the government, in reality an examination of the pool from which military judges are selected, and the salaries received by that pool of candidates prior to their appointment to the bench, does not establish that the current compensation of military judges discourages outstanding candidates from applying to the military judiciary. They submit that the specialization of and the

eligibility requirements for the military judiciary have the effect of significantly narrowing the pool of eligible candidates. Consequently, only the remuneration of eligible candidates is relevant in assessing the criterion of the capacity to attract outstanding candidates to the military judiciary. Since the salary of a lawyer in private practice who has not been an officer in the Canadian Forces for at least 10 years is of no interest for the present exercise, the government notes that, as of January 1, 2018, 74 military lawyers in the regular force and 30 military lawyers in the reserve force met the eligibility criteria to apply. These numbers are stable year after year. The government notes that all eligible candidates are below the current salary for military judges and submits that the government's proposed salary represents a difference of \$59,254, \$104,686 and \$125,242, respectively, with the salaries of colonels, lieutenant-colonels and majors. This applies to 30 military lawyers of the reserve force who are eligible to apply and who hold ranks from captain to colonel. The government does not have any information about their remuneration from other sources. In conclusion, the government submits that it is important to note that there has been no difficulty in attracting outstanding military officers to apply to the position of military judge.

The government's principal argument is based on the fact that the recruitment pool for positions within the military judiciary is limited to Canadian Forces officers. This would mean that there are two uniquely situated federal judiciaries, which would militate against closing the wage gap, as sought by the judges. All parties agree that a person's decision to embark on a judicial career is not principally or exclusively dependent on remuneration. However, it is clear that the level of remuneration can attract outstanding candidates. The salary must not be such that it discourages potential candidates. This is difficult to measure because there are so many variables that will influence candidates differently (such as the need for frequent travel). In the 2012 Committee report, the Committee explained that the government had noted that reserve officers not living in the national capital might not want to move there and might therefore not wish to become military judges. The Committee rejected this argument by explaining that many courts impose an Ottawa residency requirement and that a candidate's decision to apply for an appointment has more to do with the desire to become a judge, not with taking on a military career. This Committee questions the government's argument that a reduced pool justifies a lower salary even if the qualifications and duties of the position are the same as those of all other federally appointed judges. The Committee is of the view that, among the criteria to be considered, it has to attach greater importance to the nature and function of a judge than to the pool of candidates. In effect, the same problem arose when it was determined that a judge in Prince Edward Island has been paid the same salary as a judge in Ontario albeit their very different workloads.

D. Other relevant objective criteria

According to the military judges, the first additional criterion to be considered is that of the remuneration paid to others. Counsel for the judges started by referring to the military hierarchy and the salaries paid for the various ranks in the armed

forces. He presented a table of monthly rates for March 2017 and noted that certain specialist officers received a higher rate of pay. The conclusion of this analysis is that remuneration is not uniform for all specializations and professionals within the Canadian Forces, regardless of the rank of the specialist or professional. Noting the relative value of this comparison, the judges submit that in *Reference re Remuneration of Judges of the Prov. Court of P.E.I.*, [1997] 3 S.C.R. 3, the Supreme Court reiterated that the judiciary must be isolated and appear to be isolated from political debates on remuneration paid from public funds. If the remuneration of federal judges should not be linked to the salaries of public servants, it seems clear, according to the judges, that the salaries of military judges should also not be linked to those of Canadian army officers. The judges add that, based on the information available to them, the government is paying a similar salary to the Judge Advocate General (JAG) as to the judges of the superior courts. They note that, by reason of their particular status, two general officers, the Judge Advocate General and the Chief of the Defence Staff (CDS), are paid independently of the salary grid for Canadian army officers. The judges submit that, based on the government's reasoning, the salaries of military judges should, at least, be identical to those of these two general officers to recognize the fundamental value, authority and unique character of military justice.

However, according to the government, it must be clear that the military justice system is separate and distinct from the civil justice system and has its own legal characteristics. The government notes that the military justice system is made up of two types of court: summary trial and courts martial. Most simple disciplinary matters are dealt with at the unit level by summary trial. Summary trials are presided over by commanding officers, delegated officers or superior commanders, while courts martial are presided over by military judges. There are two types of courts martial: general and standing courts martial. All of this demonstrates that courts martial follow procedures that are similar to those in civilian and criminal courts. Courts martial apply the military code of discipline and have powers, rights and privileges with respect to the attendance, swearing and examination of witnesses. Their powers, rights and privileges with respect to the production and inspection of documents, the enforcement of their orders, and all other matters necessary or proper for the due exercise of their jurisdiction are the same as those of the civilian courts. Courts martial also have the same powers, rights and privileges, including the power to punish for contempt, as are vested in a superior court of criminal jurisdiction. Both the accused and the Minister of National Defence can appeal court martial decisions before the Court Martial Appeal Court, a civilian court composed of judges of the Federal Court and judges of a superior court. As noted by the government, the military courts lack the jurisdiction to dispose of the offences of murder or manslaughter, or any offence under any of sections 180 to 283 of the *Criminal Code* when they are committed in Canada, and military judges can also accomplish other functions. In carrying out their responsibilities, military judges travel throughout Canada and, on occasion, abroad to preside over courts martial wherever Canadian Forces members are located. Between April 1, 2015, and March 31, 2016, military judges presided over 47 courts martial, including 36 that did not require holding a trial. This number was

56 for the April 1, 2016, to March 31, 2017, fiscal year, with 39 of the 56 courts martial not requiring a full trial. During the April 2016 to March 2017 fiscal year, the average number of sitting days for each of the four military judges was 3.80 days per court martial. This means that each military judge sat approximately 53 days during the 2016–2017 year, the equivalent of 4.43 days per month. This data was supplied and interpreted by the government to demonstrate that the workload of military judges is less than that of judges in the federal superior courts. However, the workload argument was already made in 2012 and rejected by the Committee; we are of the same view. Workload varies based on province, and specialization has nothing to do with the qualifications judges require or the fact that their positions are permanent.

The government then presented its arguments concerning the comparison to be made with the provincial courts. Also mentioning the responsibilities of prothonotaries, counsel for the government concluded that there are important distinctions between the role and responsibilities of military judges and those of other actors in the Canadian judicial system. They note, in particular, that military judges do not possess any powers of review or appeal, rather they preside over discrete courts martial proceedings where they deal with service offences as defined in the *National Defence Act*, which includes offences under the *National Defence Act*, the *Criminal Code*, or any other act of Parliament when committed by a person subject to the *Code of Service Discipline*; military judges also do not have any jurisdiction over civil matters. The government is therefore of the view that workload and the nature of the matters dealt with by different actors in the judicial system are relevant criteria to be considered by this Committee in determining what constitutes adequate remuneration for military judges. The government is submitting that salary should not solely be dictated by membership of the federal judiciary. Rather, it is arguing that a salary is consideration for the work that is actually carried out; this is why the workload of different judges and prothonotaries, without this being determinative, should be considered in assessing what remuneration is adequate for military judges. According to the government, the Supreme Court refused to benchmark the salaries of the judges of the New Brunswick Provincial Court against that of superior court judges based on the very different considerations at play in the setting of judicial salaries in the federal context. In particular, the Court held that the salaries of superior court judges are fixed having regard to the large and varied pool of candidates from the wide geographical scope from which the judges are drawn, and that these salaries are fixed at a level which does not have a chilling effect on recruitment in the largest metropolitan areas of the country. According to the government, the same reasoning applies to establishing the remuneration of military judges. However, in the Committee's opinion, the very limited recruitment pool is not comparable to that of federally appointed or provincial court judges. The Committee can therefore not accept this reasoning. As mentioned earlier, the pool of candidates in each province varies tremendously. The criteria used to determine the salaries of provincial court judges also vary from one province to the other. It would be extremely difficult, not to say virtually impossible, to justify choosing one province over another to carry out a valid benchmarking. If the Government of Canada is

fine with equal remuneration for judges working in different provinces or for specialized courts, it is difficult to understand why, as a matter of principle, it would be any different for the military court.

III. The government's proposal

The government proposes setting the salary of military judges at \$267,000 as of September 1, 2015, which represents an adjustment of 16%. In its submissions, the government explains that the level of compensation of federally appointed *puisne* judges was \$308,600 as of April 1, 2015. This salary was increased by 1.7% on April 1, 2016. The government also provides a list of salaries of provincial court judges in 2016, the weighted average being \$263,927. The government then explains that the salary of prothonotaries is 80% of the remuneration of Federal Court judges, or \$251,280. With respect to public servants in general, the government notes that the economic increase for the following two fiscal years was 1.25%. Government lawyers received an increase of 2.25% in 2016–2017, and 1.25% in the following year. Regarding the salaries of military lawyers, captains and majors saw an increase of 0.5% in 2014–2015 and 2015–2016; lieutenant-colonels and colonels obtained the same 0.5% increases. In 2016-17, captains and majors obtained no increase while lieutenant-colonels and colonels received 10.68%. In the government's opinion, therefore, the adjustment to judges' remuneration should take into consideration the increases granted within the federal government, including the increases given to officers who may apply to the federal judiciary. The government submits that military judges' salaries cannot be determined in reference to any single comparator; however, it insists on the fact that the pool of prospective eligible candidates is an appropriate comparator as it provides a benchmark linking applicants' interest and their salary at the time they apply.

The government therefore concludes that its proposed salary adjustment is reasonable and takes into consideration all of the criteria set out in the *National Defence Act*. The stability of the Canadian economy, the fact that the judges' current salaries do not jeopardize their judicial independence and the fact that the military judiciary is able to attract outstanding candidates establish that the current remuneration of judges is adequate. Moreover, an examination of the role, responsibilities and remuneration of the identified comparator groups reveals that the proposed salary increase is in the public interest. It cements the unique role of military judges within the Canadian judiciary and preserves a certain consistency with the remuneration of other members of the judiciary.

IV. The judges' proposal

To begin with, the military judges insist that they are very much a part of the federal judiciary. They believe this to be one of the essential and fundamental criteria to be considered by the Committee. They ask that the Committee consider the grounds raised by the government to refuse to implement the recommendations of the 2012 Committee, which essentially relied on the government's assessment of

the exceptional economic circumstances prevailing at the time as well as the Committee's choice of a single remuneration comparator in its analysis. The military judges note that, in its response, the government also argued that the Committee had not, in its view, sufficiently explained its recommendations. The judges profoundly disagree with the government's criticisms and implore this Committee to draft its recommendations in such a way as to avoid any ambiguity and any similar potential red herrings.

The military judges submit that the remuneration of military judges must be set by considering the remuneration of other actors in the federal justice system. Their salaries should be set at the same level as those of other federally appointed judges. They believe that the salaries of federally appointed judges are the most appropriate comparator for fixing their salaries. The military judges have described their jurisdiction, role and responsibilities in great detail, and submit that the role of military judge is easily comparable to that of other federally appointed judges. They state that this argument was even accepted by the federal government in its 2012 factum. The military judges submit that, in addition to fulfilling the same responsibilities, they follow the same training as other federally appointed judges, through the National Judicial Institute. In addition, they attend many conferences and workshops, be it as participants or panelists, and they are sought after because of their expertise, be it by the Canadian Judicial Council on issues involving instructions to jurors or within the Judges Section of the Canadian Bar Association. They refer to the 2012 report, at page 10, which reads as follows: "It is quite stunning to realize that only four of more than a thousand judges are singled out for much lesser remuneration if one accepts that they are indeed just as qualified as the others and paid from the same source. In our opinion, the fundamental issue in these proceedings is to determine if military judges share the qualifications and functions of other superior court judges and should for that reason receive similar remuneration. The rationale for keeping military judges from full participation in the Canadian Justice System has not been explained to our satisfaction". Ultimately, the military judges submit that a 31% gap between salaries can be neither explained nor justified in consideration of the criteria the Committee must consider under subsection 165.34(2) of the *National Defence Act*.

V. Recommendations

The Committee has considered all the parties' arguments and has carefully reviewed all of the adduced documents. It has heard both parties' submissions and from the judges' witness. The Committee has read the reports of previous committees. In the end, its role is to decide by applying all of the statutory criteria.

First, the Committee considers that the economic conditions are not an obstacle to setting adequate remuneration; this was admitted by the government. Second, regarding the role of financial security in preserving judicial independence, the Committee recognizes that the salary proposed by the government is sufficient to guarantee judicial independence. The Committee finds, however, that we should not be satisfied with this minimum requirement and that it is impossible to set

adequate remuneration on the basis of this standard alone. The Committee is convinced that any candidate is first and foremost motivated by the desire to become a judge and, therefore, by the role itself. Third, with respect to the need to attract outstanding officers to the military judiciary, while it is obvious that salary is not the determining factor, it should also not discourage outstanding candidates. The Committee agrees that the government's proposal would be satisfactory. However, it would be inappropriate to decide on what is adequate on this criteria alone. When one considers appointments to the superior courts, the salaries offered do not necessarily discourage outstanding candidates, but their level does not seem to be set with a view to attracting candidates because there are already enough candidates. It has already been established that many candidates will earn much more than what they earned previously. There is no need to make a distinction for military judges. Our finding on this criteria is simply to accept that an adequate salary is one that allows for reasonable and stable recruitment.

Fourth, the Committee believes that military judges' salaries should be increased with a view to equating their salaries with those of other federally appointed judges. Upon review of all the criteria, the Committee finds that there is nothing to justify paying military judges less when they have equivalent training to other federal judges and carry out similar duties. The fact that the judges carry out their duties in a military context is not sufficient in and of itself to overcome the fact that their role is that of judge. Nor should the military court be treated differently from any other specialized court (like the Tax Court for example). The salaries and the benefits of other members of the Canadian Forces should not affect military judges' salaries given that judges carry out unique responsibilities that are distinct from the responsibilities of other Canadian Forces members.


The Committee therefore proposes adjusting military judges' salaries to the same level as the salaries of other federally appointed judges as of September 1, 2015. Once this basic adjustment has been made, they should be indexed as of April 1, 2016, and annually thereafter based on the Industrial Aggregate of Canada and a formula similar to the one provided in subsection 25(2) of the *Judges Act*, R.S.C. 1985, c. J-1.

A few other allowances and benefits were discussed, including the civilian clothing allowance. In the interest of fairness, the government proposed incorporating an equivalent amount to the civilian clothing allowance in the remuneration of all military judges. Another issue was the remuneration of Class A and B reserve military judges. The appointment of reserve force officers to the military judges panel allows such officers to sit as judges on a part-time or ad hoc basis. The government proposes establishing their salaries in the same way as the salaries of other reserve members but in accordance with the salary of a military judge. The government also proposes that these amounts be indexed annually in the same manner and at the same time as the remuneration of regular force military judges. The Committee agrees to endorse these two recommendations. The additional indemnity for the chief judge should not be changed.

The final issue was the incidental expenses allowance. The Committee finds that this allowance should be the same as that granted to other superior court judges as of September 1, 2018.



Hon. Michel Bastarache, C.C., Q.C.



Hon. Jean-Louis Baudouin, Chairperson



James Edward Lockyer, Q.C

List of Participants at the Committee's Public Hearing of September 14, 2018**Alexander Pless****Alexander Gay****Lyne Prince**

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