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Backgrounder: Additional Judges for Provincial Superior Courts and the Specific Claims Tribunal

This Bill amends paragraph 24(3)(b) of the *Judges Act* to create the authority to appoint twenty (20) new judges to the provincial and territorial superior trial courts. The Bill will allow the Federal Government to achieve two important objectives. First, it provides for the allocation of new judges among superior trial courts across Canada to respond to a clear and pressing need to address backlogs and delays in these courts. Secondly, the Bill will allow for the assignment of superior court judges to the new Specific Claims Tribunal, which the *Specific Claims Tribunal Act*, introduced yesterday in the House of Commons by Minister of Indian Affairs and Northern Development Chuck Strahl, proposes to establish.

Addressing existing pressures in provincial superior courts

To support their requests for additional superior court judges, provincial and territorial governments have provided the federal government with detailed proposals containing statistical data and information on relevant geographical and cultural factors that impact judicial resource needs. The federal government's analysis of this information supports the provincial and territorial governments' claims that there has been a significant increase in superior court workload and that the workload surpasses the current capacity of these courts.

In particular, superior courts in Ontario, Quebec, Newfoundland and Labrador, Nova Scotia, New Brunswick and Nunavut are experiencing serious and growing backlogs and delays. Nunavut in particular faces severe challenges in providing access to justice for its aboriginal communities. The remaining provinces are experiencing significant strains, particularly in the family branches of their courts, as a result of population growth and the impact of enhanced child protection laws.

Ensuring effective functioning of the Specific Claims Tribunal

The Specific Claims Tribunal will have the authority to make binding decisions where specific claims brought forward by First Nations are rejected for negotiation, or where negotiations fail. Based on the federal government's analysis of the specific claims workload, it has been estimated that the new Tribunal will require the equivalent of six full-time judges to manage approximately 40 claims per year. These claims are dispersed across the country, with the greatest number arising in British Columbia and some of the most complex cases originating in Ontario and Quebec.

It is anticipated that six new judges will be appointed to the superior courts of these provinces in proportion to their respective share of the specific claims caseload. It is intended that this infusion of new judicial resources will allow a number of the superior courts to free up their experienced judges so they may be appointed to a Specific Claims Tribunal roster. The roster will consist of up to 18 judges, who will be appointed as tribunal members by the Governor-in-Council on the recommendation of the Minister of Justice. These judges would be assigned, likely on a part-time basis, to specific claims matters by the Tribunal Chair in consultation with the Chief Justices of the affected courts.

Improved access to justice

There is currently no authority under the *Judges Act* to appoint new judges to any of the provincial

superior trial courts. The amendment will provide the government with the flexibility to:

- respond to objectively substantiated requests for new provincial superior trial court judges; and
- address the new demands of the Specific Claims Tribunal.

Final decisions regarding the allocation of these judges will be made following consultations with the provincial and territorial governments and the Chief Justices of their superior trial courts.

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Department of Justice Canada
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