SUBMISSION

of the

CANADIAN SUPERIOR COURTS JUDGES ASSOCIATION

and the

CANADIAN JUDICIAL COUNCIL

to the

JUDICIAL COMPENSATION AND BENEFITS COMMISSION

December 20, 2011

Pierre Bienvenu, Ad. E.
Azim Hussain
Norton Rose OR LLP

TABLE OF CONTENTS

OVERVIEW

1. On May 31, 2008, the Judicial Compensation and Benefits Commission (the "**Commission**") chaired by Ms. Sheila Block (the "**Block Commission**") issued its report (the "**Block Report**") in which it made recommendations regarding the salary of federally appointed puisne judges, a salary differential for appellate judges, and various other issues.

2. The Minister of Justice failed to respond to the Block Report by the statutory deadline of November 30, 2008 and, instead, on February 11, 2009, simply declined to implement any of the Block Commission's recommendations on the ground of the general economic crisis at that time. The Minister went on to state that in the event that economic circumstances were to improve before the next Commission such as to justify salary enhancements, such circumstances could be taken into account by the Commission. Since then, the Block Commission's recommendations remain unimplemented.

3. **The Canadian Superior Courts Judges Association (the "Association") and the Canadian Judicial Council (the "Council"), on behalf of federally appointed judges, submit that the present Commission should endorse and adopt as its own each of the recommendations made by the Block Commission, including the recommendations regarding salary.**

4. For the reasons set out in these submissions, the Association and Council submit that an endorsement of the Block Commission's recommendations and a recommendation calling for their prompt implementation are appropriate in light of the criteria set out in the *Judges Act*.

5. The submissions of the Association and Council are organized as follows: in the Introduction, the respective objects of the Association and the Council are described, notably in connection with the process for the determination of judicial compensation and benefits; in the Background section, a brief history of the Commission is recounted; the section entitled "The Commission's Mandate" is self-explanatory; and in the Issues section, the Association and the Council discuss both process and substantive issues and

set out the reasons supporting their position calling for the implementation of the Block Commission's recommendations on a prospective basis, as of April 1, 2012.

I. INTRODUCTION

6. These submissions to the Commission are made on behalf of the Association and the Council.

7. The Association is successor to the Canadian Judges Conference, which was founded in 1979 and incorporated in 1986. Its objects include:

(i) the advancement and maintenance of the judiciary as a separate and independent branch of government;

(ii) liaison with the Council to improve the administration of justice and to complement its functions through conferences and various educational programs;

(iii) taking such actions and making such representations as may be appropriate in order to assure that the salaries and other benefits guaranteed by section 100 of the *Constitution Act, 1867*,[1] and provided by the *Judges Act*[2] are maintained at levels and in a manner which is fair and reasonable and which reflect the importance of a competent and dedicated judiciary;

(iv) seeking to achieve a better public understanding of the role of the judiciary in the administration of justice;

(v) monitoring and, where appropriate, seeking to enhance the level of support services made available to the judiciary in cooperation with the Council; and

---

[1] Reproduced in the Joint Book of Documents ("**JBD**") prepared with the Government.

[2] R.S. 1985, c. J-1, as amended.

(vi) addressing the needs and concerns of supernumerary and retired judges.

8. As of November 2011, 1016 (or 91%) of Canada's approximately 1117 federally appointed judges are members of the Association.

9. In furtherance of the Association's objects that relate to judicial salaries and other benefits, a Compensation Committee was established to study and make recommendations to the Association's Executive Committee and Board of Directors in respect of issues regarding judicial compensation.

10. The Council was established by Parliament in 1971. It consists of the Chief Justice of Canada and the Chief Justices and Associate Chief Justices of the provincial and territorial superior courts, the Federal Court of Appeal, the Federal Court, the Tax Court of Canada and the Court Martial Appeal Court of Canada.

11. The objects of the Council are to promote and improve efficiency, uniformity and quality of judicial service in superior courts.[3] As part of its mandate, the Council has established a Judicial Salaries and Benefits Committee.

12. The Council and the Association have made joint submissions, written and oral, to each of the five Triennial Commissions (1982-1996) and to the three Quadrennial Judicial Compensation and Benefits Commissions (the "**Drouin Commission**", the "**McLennan Commission**", and the Block Commission). The Drouin Commission issued its report (the "**Drouin Report**") on May 31, 2000. The McLennan Commission issued its report (the "**McLennan Report**") on May 31, 2004. The Block Report was issued on May 30, 2008.

13. The Association and the Council have worked closely together in preparing these submissions on behalf of federally appointed judges. The recommendations sought from this Commission by the federal judiciary have been approved by the Compensation Committee, the Executive Committee and the Directors of the Association, and by the Executive Committee of the Council.

---

[3] The objects of the Council are set out in s. 60 of the *Judges Act.*

II. BACKGROUND

A. Judicial Independence and Judicial Compensation

14. Judicial independence is a fundamental principle of our democracy and legal tradition. This principle, whose historical origins can be traced back to the *Act of Settlement, 1701*,[4] is incorporated in the Constitution of Canada through the preamble and the judicature sections of the *Constitution Act, 1867* and section 11(d) of the *Canadian Charter of Rights and Freedoms*.[5]

15. Judicial independence and judicial compensation are inextricably bound to each other. In *Valente v. The Queen*,[6] *Reference Re Provincial Court Judges*[7] ("***PEI Reference***"), and more recently in *Bodner v. Alberta*[8] ("***Bodner***"), the Supreme Court of Canada confirmed that financial security, both in its individual and institutional dimensions, is, with security of tenure and administrative independence, one of the three core characteristics of judicial independence.[9]

16. It is important to keep in mind that financial security through adequate judicial compensation ultimately benefits the public, as emphasized by Chief Justice Lamer in the *PEI Reference*:

> I want to make it very clear that the guarantee of a minimum salary is not meant for the benefit of the judiciary. Rather, financial security is a means to the end of judicial independence, and is therefore for the benefit of the public.[10]

---

4 (U.K.), 12-13. Will. III, c. 2.

5 For ease of reference, these provisions of the Constitution of Canada are reproduced in the JBD.

6 [1985] 2 S.C.R. 673

7 [1997] 3 S.C.R. 3.

8 [2005] 2 S.C.R. 286.

9 *Valente*, *supra* at para. 40; *PEI Reference*, *supra* at paras. 115-122; *Bodner* at paras. 7-8.

10 *PEI Reference*, *supra* at para. 193.

17. Under s. 100 of the *Constitution Act, 1867*, the Parliament of Canada has the duty to fix the compensation of federally appointed judges. Section 100 provides as follows:

> The Salaries, Allowances, and Pensions of the Judges of the Superior, District, and County Courts (except the Courts of Probate in Nova Scotia and New Brunswick), and of the Admiralty Courts in Cases where the Judges thereof are for the Time being paid by Salary, shall be fixed and provided by the Parliament of Canada.

18. The Triennial Commission chaired by David W. Scott, Q.C. (the "**Scott Commission**") observed in its 1996 report that judges are in a unique position in their remuneration being the subject of an obligation imposed on Parliament by the Constitution. The Scott Commission explained the value of this responsibility:

> Western democracies rooted in English constitutional tradition have been at pains to ensure that judicial independence, which ensures accountability on the part of the executive branch of Government, is uncontaminated by uncertainty (and thus preoccupation) on the part of the judges with their economic security. Under our Constitution the obligation is upon Parliament to "fix and provide" the salaries and benefits of judges. It is implicit in this constitutional imperative that the process be undertaken in an environment in which judicial independence is enhanced and the consequences of dependency eliminated.[11]

19. The process for determining judicial compensation, which is now provided in the *Judges Act*, has changed over time.

20. Prior to 1981, advisory committees reviewed judges' compensation and made recommendations to the Government.[12] As noted by the Drouin Commission, this process was unsatisfactory because the advisory committee recommendations "generally were unimplemented or ignored", and "the process merely amounted to petitioning the government to fulfill its constitutional obligations."[13]

---

[11] Scott Report (1996) at 6.

[12] Two advisory committees were chaired by Irwin Dorfman, Q.C. (report issued on November 22, 1978) and Jean de Grandpré (report issued on December 21, 1981) respectively.

[13] Drouin Report (2000) at 2.

21. In 1982, the Triennial Commission process was established. Under s. 19.3 of the *Judges Act* as it read at the time, the Triennial Commission was required to inquire into the adequacy of judicial compensation and to make recommendations to the Minister of Justice. The objective of the Triennial Commission process was to depoliticize the determination of judicial salaries and benefits in order to preserve judicial independence. However, there was no obligation on the part of the Government under that process to respond or act upon the recommendations made by Triennial Commissions.

22. No one disputes that the Triennial Commission process was a failure. The salary recommendations of the five Triennial Commissions were generally ignored, left unimplemented and often became the subject of a politicized debate.[14]

23. In light of the treatment afforded by the Government of Canada to the McLennan and Block Reports, described below, it is relevant to cite what the Scott Commission said in 1996, in the twilight of the Triennial Commission process:

> The purpose of the Commission was to ensure that, through the creation of a body which would be independent both of the judiciary and Government, Parliament would be presented with an objective and fair set of recommendations dictated by the public interest, having the effect of maintaining the independence of the judiciary while at the same time attracting those pre-eminently suited for judicial office. The theory was that, by way of such recommendations, emanating from regularly convened independent commissions, the process would be de-politicized and judicial independence would be thus maintained.
>
> While the idea was sound, the underlying assumptions appear to have been naïve. The result has been a failure in practice to meet the desired objectives. Since the first Triennial, there have been four Commissions (Lang (1983), Guthrie (1986), Courtois (1989) and Crawford (1992)). In spite of extensive inquiries and exhaustive research in each case, recommendations as to the establishment of judicial salaries and other benefits have fallen

---

[14] The reports of the Triennial Commissions were as follows: Lang Report (1983), Guthrie Report (1987), Courtois Report (1990), Crawford Report (1993), and Scott Report (1996); all are reproduced in the JBD.

> almost totally upon deaf ears. The reasons for this state of affairs have been largely political.[15]

24. Previously, the Crawford Commission in 1993 had lamented Government delays in acting upon recommendations made by the Commission:

> The respect shown for the concept of judicial independence in the design of the Triennial Commission process has been tainted by the business-as-usual attitude of successive Governments once the Commission reports have been presented to Ministers of Justice and tabled in Parliament. This failure to act with reasonable promptness cannot but lead to the entire review process losing credibility. This Commission notes, for example, that the legislation (Bill C-50) comprising the Government's response to the 1989 Commission on Judges' Salaries and Benefits (the Courtois Commission), was not introduced in Parliament until December 1991, and that by the end of the mandate of the current Commission, this relatively uncomplicated legislation had not yet been enacted.[16]

25. The regrettable state of affairs of this important process was commented upon by former Chief Justice Lamer in 1994, in an address to the Council of the Canadian Bar Association, when he said that the Triennial Commission "looks good on paper, but it has one problem. It doesn't work. Why? Because the Executive and Parliament have never given it a fair chance."[17]

B. The *PEI Reference*

26. In 1997, the Supreme Court of Canada in the *PEI Reference* explained that the Constitution requires the existence of a body such as a commission that is interposed between the judiciary and the other branches of the state. The constitutional function of this body is to depoliticize the process of determining changes to or freezes in judicial compensation.

---

[15] Scott Report (1996) at 7.

[16] Crawford Report (1993) at 7.

[17] The Honourable Chief Justice Lamer, "Remarks by the Rt. Honourable Antonio Lamer, P.C., Chief Justice of Canada, to the Council of the Canadian Bar Association Annual Meeting" (20 August 1994) at 9 [unpublished], reproduced in the JBD.

27. This objective is achieved by entrusting that body with the specific task of issuing a report on the salaries and benefits of judges to the executive and the legislature. The Court said that the body must be independent, objective, and effective in order to be constitutional.[18] Any changes to judicial salaries without prior recourse to this body would be unconstitutional.[19]

28. The existence of this body also ensures that the judiciary does not find itself in a position of having to negotiate its salary directly with the government, something that is fundamentally at odds with judicial independence.[20]

29. A necessary component of the effectiveness of this body is the timely implementation of its recommendations, or a prompt response from the government in question providing legitimate reasons for a refusal to implement.[21]

C. The Quadrennial Commission Process and the First Quadrennial Commission

30. Acting upon the constitutional imperative enunciated by the Supreme Court of Canada in the *PEI Reference*, Parliament amended the *Judges Act* in 1998 and established the Quadrennial Commission. A key aspect of these amendments was the requirement that the Minister of Justice respond to the recommendations of the Quadrennial Commission within six (6) months of receiving them. Since the mandate of the Commission begins on September 1, and since it must issue its report within nine (9) months from the start of its mandate, the deadline for the issuance of the Minister's response is the end of November of the subsequent year.

31. The first Quadrennial Commission was chaired by Mr. Richard Drouin, QC, in 1999. The other members were Ms. Eleanore Cronk (now of the Ontario Court of Appeal) and Mr. Fred Gorbet. The Drouin Report was issued on May 31, 2000. It was an impressive,

---

[18] *PEI Reference*, *supra* at para. 169-175; see also *Bodner*, *supra* at para. 16.

[19] *PEI Reference*, *supra* at para. 147.

[20] *PEI Reference*, *supra* at para. 186.

[21] *PEI Reference*, *supra* at para. 179-180.

well-reasoned report by any standard. The Drouin Commission took note that the Triennial Commissions had failed despite the goal of depoliticizing the process.[22]

32. The Government's response to the Drouin Report marked an improvement as compared to previous Government responses to Triennial Commission reports. On December 13, 2000, the Government responded to the Drouin Report pursuant to s. 26(7) of the *Judges Act*. The Government accepted all but two of the Drouin Commission's recommendations,[23] and amendments to the *Judges Act* implementing the Government's Response were adopted expeditiously, in June 2001.

D. The McLennan Commission

33. The second Quadrennial Commission, the McLennan Commission, was established in September 2003. It was chaired by Roderick McLennan, Q.C., and its two members were Gretta Chambers, C.C. and Earl Cherniak, Q.C. As required by the *Judges Act*, the Commission issued its report on May 31, 2004.

---

[22] Drouin Report (2000) at 2.

[23] The two exceptions were eligibility for supernumerary status and reimbursement of costs of the judiciary before the Quadrennial Commission. Supernumerary judges are judges who are eligible to retire but choose instead to continue sitting. Their workload is determined in consultation with their respective chief justices. Sometimes the workload is full-time, and often is nearly so. In no event is it less than 50% of a full-time workload. The Drouin Commission had recommended that, effective April 1, 2000, judges have the right to elect supernumerary status for a period not exceeding ten years upon attaining eligibility for a full pension (Recommendation 8). In her response to the Drouin Report, the Minister indicated that the Government was not prepared to accept Recommendation 8 at that time. The reasons given included the need to consult the provinces and territories, the fact that the Supreme Court of Canada would soon consider, in *Mackin v. New Brunswick (Minister of Finance); Rice v. New Brunswick*, [2002] 1 S.C.R. 405, important constitutional issues relating to the status of supernumerary judges, and, more generally, the need for better information concerning the contribution of supernumerary judges. The judgment of the Supreme Court of Canada in *Mackin* was released on February 14, 2002. As for the intended consultations with the provincial and territorial governments, it was expected that they would be carried out in a timely fashion. In the event, it was only on August 19, 2003, that the judiciary was advised that the Government had decided to accept Recommendation 8. Moreover, the Government took the position that the necessary amendments to the *Judges Act* would only be made as part of the overall package of amendments that would follow the Government's response to the report of the subsequent commission, the McLennan Commission. Those amendments were only made in December 2006, six and a half (6½) years after the Drouin Commission's recommendation. In the meantime, judges who were eligible for this recommendation were deprived of its benefit. It is worth noting that, unlike a delay in the implementation of a salary recommendation, the delay in implementing Recommendation 8 could not be, and was not, remedied retroactively.

34. The principal issue of contention between the judiciary and the Government before the McLennan Commission was the determination of the amount of judicial salary. When the McLennan Commission began its inquiry, the salary of a puisne judge was $216,600.

35. The Association and Council submitted to the Commission, based on the level of remuneration of traditional comparators, as applied in the Drouin Report, that the salary of a puisne judge should be increased to $253,880 as of April 1, 2004, plus annual salary increments of $3,000 in 2005, 2006 and 2007, in addition to indexation for cost of living. For its part, the Government proposed an increase to $226,300 as of April 1, 2004, inclusive of indexation for cost of living for 2004, plus annual salary increments of $2,000 in 2005, 2006 and 2007, in addition to statutory indexation for cost of living for 2005, 2006 and 2007. As the McLennan Commission observed, when the $2,000 annual salary increments contemplated by the Government are taken into account, the Government's proposal represented an increase of 7.25% over those years, in addition to indexation for cost of living in 2005, 2006 and 2007.[24]

36. The McLennan Commission recommended an increase for the salary of puisne judges to $240,000 as of April 1, 2004, inclusive of indexation for cost of living in that year, plus the cost-of-living indexing effective April 1 in each of the next three years, as already provided for in the *Judges Act*. The Commission did not recommend annual salary increments, as proposed by the Government and supported by the Association and Council, in addition to the annual cost-of-living indexation already provided for in the *Judges Act*.

37. The Commission's recommendation represented a one-time 10.8% increase for the four-year period commencing April 1, 2004, in addition to cost-of-living indexation in the years 2005, 2006 and 2007, as compared to the 7.25% increase proposed by the Government.

---

[24] McLennan Report (2004) at 23.

1. The Government's response to the McLennan Report

38. The Government's response to, and delayed partial implementation of the McLennan Report was a source of grave concern for the judiciary. As elaborated below, the Association and Council were concerned that politicization was creeping into the process yet again, and was undermining the nascent and still fragile Quadrennial Commission process, much as the Triennial Commission process was undermined and ultimately came to fail.

39. On November 20, 2004, the Minister of Justice issued the Government's response (the "**First Response**") to the McLennan Report, as required by s. 26(7) of the *Judges Act*.[25] The First Response accepted all but one[26] of the recommendations of the McLennan Commission.

40. With respect to judicial salary, the Minister stated in the First Response that the McLennan Commission had "engaged in a careful balancing of all the [statutory] factors"[27] and provided "thorough and thoughtful"[28] explanations for its conclusions. The Minister noted that the salary increase recommended by the McLennan Commission "appears reasonable".[29]

41. On May 20, 2005, the Government introduced Bill C-51 to implement its acceptance of the McLennan Commission's recommendations, notably its salary recommendation. The Bill passed first reading and was supposed to be referred to committee after second reading. However, the Bill died on the order paper when Parliament was dissolved on November 29, 2005.

---

[25] The full text of the *Response of the Government of Canada to the Report of the 2003 Judicial Compensation and Benefits Commission* (November 20, 2004) is reproduced in the JBD.

[26] The Government refused to accept the McLennan Commission's recommendation that the judiciary be reimbursed for 100% of its disbursements and 66% of its legal fees. Instead, the Government's First Response proposed that the reimbursement be a total of 66% for all costs.

[27] First Response at 3.

[28] First Response at 2.

[29] First Response at 4.

2. The newly elected Government's second response to the McLennan Report

42. A new Government was elected on January 23, 2006. Shortly after the new Government came to power, the then Minister of Justice purported to issue a second response to the McLennan Report on May 29, 2006 (the "**Second Response**").[30] On May 31, 2006, the Government tabled Bill C-17 in the House of Commons, which would implement the recommendations of the McLennan Report only to the extent that they were accepted in the Second Response.

43. The Second Response contradicted the First Response. The Government no longer accepted the salary recommendation set out in the McLennan Report. In its Second Response, the Government proposed an increase to judicial salaries of 7.25% as of April 1, 2004.[31] There was no mention of the fact that this increase was the exact percentage increase that the Government had proposed in its submission to the McLennan Commission in 2003-2004. In effect, the Government's Second Response unilaterally imposed what the Government had proposed in the first place, as if the Commission process had been of no consequence.

44. The Second Response stated that the McLennan Commission's recommendations must be analyzed in light of the mandate and priorities upon which the Government had recently been elected.[32] A summary list of the new Government's budget priorities and measures of "fiscal responsibility" was given in the Second Response.[33] It further stated that Canadians expect that expenditures from the public purse should be reasonable and generally proportional to these economic pressures and priorities, and that the McLennan Commission's salary recommendation did not pay heed to this reality.[34]

---

[30] The full text of the *Response of the Government of Canada to the Report of the 2003 Judicial Compensation and Benefits Commission* (May 29, 2006) is reproduced in the JBD.

[31] Second Response at 2.

[32] Second Response at 4, 6.

[33] Second Response at 6.

[34] Second Response at 7.

45. Significantly, the Government did not attempt to argue that the economic conditions in Canada were not as strong as when the First Response had been made. In fact, the Second Response was delivered at a time when economic conditions in Canada were very strong, with a real economic growth of 2.8% for 2006[35] and the Government having a budgetary surplus of $4.7 billion[36] in the first quarter of 2006 and of $13.2 billion for the fiscal year 2005-2006.[37]

46. On June 2, 2006, counsel for the Association wrote to the Minister of Justice to protest the issuance of the Second Response and to invite the Government to reconsider the position adopted in the Second Response.[38] The Association also expressed the hope that Bill C-17 would be amended in the committee stage.

47. The Association's letter also made the point that the so-called reasons put forward in the Second Response were not "legitimate reasons" for departing from the Commission's salary recommendation, as required by the relevant constitutional jurisprudence.[39]

48. On July 31, 2006, the Minister of Justice responded by simply stating that the Government had regard for the principles set out in the *PEI Reference* and *Bodner* in developing its Second Response.[40] The Minister omitted to respond to the Association's

---

[35] Statistics Canada, Catalogue # 13-016-X, Economic accounts key indicators, Canada, at 22. The indicator is the real gross domestic product (GDP).

[36] Department of Finance Canada, "The Fiscal Monitor", January to March 2006. The budgetary surplus was $1.7 billion in January 2006 and $4.1 billion in February 2006. In March 2006, there was a budgetary deficit of $1.1 billion.

[37] Department of Finance Canada, "Fiscal Reference Tables", October 2011.

[38] The Association's letter of June 2, 2006 is reproduced in the JBD.

[39] The Supreme Court in the *PEI Reference*, *supra* at para. 183 spoke of the need for the government to provide a "legitimate reason" for refusing to accept commission recommendations. The Supreme Court had occasion to elaborate on that requirement in *Bodner*, *supra* at paras. 23-27.

[40] The Minister's letter of July 31, 2006 is reproduced in the JBD. The statement in *Bodner, supra* that the process appears to be working satisfactorily at the federal level (para. 12), requires context. *Bodner* addressed the nascent commissions in four provinces, set up in response to the *PEI Reference*, *supra*. It was decided at a point in time (July 2005) after the Government's First Response to the McLennan Report had been given, and before the Second Response (May 2006). Accordingly, it was possible at that time for the Supreme Court to point to the Quadrennial Commission process for federally appointed judges as appearing to be working satisfactorily. Subsequent events proved otherwise.

point that the Second Response was statutorily and constitutionally invalid as a question of process, and constitutionally invalid as a question of substance.

49. The Second Response was implemented through Bill C-17,[41] which received Royal Assent on December 14, 2006.[42] Puisne judges' salary was fixed retroactively at $232,300 as of April 1, 2004, rather than at $240,000 had the McLennan Commission's recommendation and the First Response been implemented. At the beginning of the following Quadrennial Commission cycle, the salary for puisne judges, statutorily indexed for cost-of-living adjustments, was $252,000 as of April 1, 2007, rather than $262,240 had the McLennan Commission's recommendation and the First Response been implemented.

3. The inconsistency of the Second Response with applicable constitutional principles

50. The *Judges Act* does not contemplate multiple government responses. The Association and Council are firmly of the view that multiple responses undermine the cardinal constitutional requirement of effectiveness and are inconsistent with the Supreme Court's rationale for requiring of government that it formally respond, with diligence, to a Commission report. While the original Response was issued under, in accordance with, and within the time-limit set out in the *Judges Act*, the Second Response has no status whatsoever under the *Judges Act*[43] or the constitutional process expounded in the *PEI Reference*.

---

[41] *An Act to amend the Judges Act and certain other Acts in relation to courts*, S.C. 2006, c. 11.

[42] The fact that the majority opposition parties did not amend Bill C-17 cannot be taken as Parliamentary acceptance of the way in which the Government conducted itself. Opposing Bill C-17 or proposing to amend it with the risk of defeating it carried with it the probability of the proverbial Pyrrhic victory: the Bill would have been defeated, thereby communicating Parliament's displeasure with the conduct of the Government, but the judiciary would be left with the status quo, which was even less than what the newly elected Government was prepared to accept in its Second Response. This would have been particularly unfair to judges eligible to elect supernumerary status pursuant to a recommendation from the Drouin Report in 2000 that had yet to be implemented. The dilemma was set out in Senator Jaffer's speeches in the Senate on December 6 and December 13, 2006, see JBD.

[43] Section 26(7) of the *Judges Act* provides: "The Minister of Justice shall respond to a report of the Commission within six months after receiving it." The statute makes no allowance for a further report. The Block

51. The Second Response, by a newly elected government, also served to politicize the Quadrennial Commission process since such a response was sought to be justified on the basis of the new Government's priorities. The Association and Council submit that the Second Response was, in essence, the expression of a newly elected Government's disagreement, for political reasons, with a previous government's formal response to the McLennan Report.[44]

52. The Association and Council further submit that the inordinate delay of 2½ years between the issuance of the McLennan Report and the implementation of the flawed Second Response undermined the effectiveness of the process, in addition to depriving members of the judiciary of the time value of the salary increase that the Government finally accepted and the actual time lost for those judges who would have been able to elect supernumerary status earlier had the Government implemented that recommendation more promptly.

53. The Association and Council submitted these concerns to the Block Commission, which agreed that they were well placed. The Block Report states in this regard:

> 42. Without commenting on the substance of the second Government response, we wish to express our concern with the issuance of more than one response in principle. As the Association and Council note, such a practice is not provided for under the current process. Not only does the issuance of a second response not conform to the current process, it also has significant Constitutional implications.
>
> 43. Apart from concerns about whether a second response may have the effect, real or perceived, of threatening the apolitical nature of the Commission process, it also has the very real effect of introducing an additional step and therefore additional delay in a process that imposes strict timelines on all parties involved. In this case, the second response was issued 18 months after the first

---

Commission expressed serious concern about the issuance of more than one response, see Block Report at paras 42-45.

[44] The Block Commission correctly observed that judicial independence cannot be seen as just another government priority, and that there was no statutory justification for increases in judicial compensation to be measured against the "expenditure priority that the Government has accorded to attracting and retaining professionals of similarly high qualities and capacity within the federal public sector." (Block Report at para 58)

response, and 18 months after the expiry of the legislative deadline for responding to a Commission report under the *Judges Act*. Although the Government tabled draft legislation almost immediately after issuing the second response, this still resulted in an additional four-month delay which could have been avoided had the new Government moved to re-introduce legislation reflecting the first response upon being elected.

44. The Commission acknowledges the potential challenges of advancing a legislative agenda faced by a minority government. This does increase the possibility that legislation tabled to enact the Government responses to Commission recommendations could die on the order table, as occurred in November 2005. Should this occur again in the future, we submit that the integrity of the Commission process is only maintained if the newly elected Government proceeds with the process of implementation, even where the election has resulted in a change of Government. Any deviation from the process as currently outlined raises questions about whether a Commission's recommendations have had a meaningful effect on the legislative outcome and risks undermining the integrity of the Commission process.

45. While the Commission's effectiveness is most important in the context of the preservation of judicial independence, on a related note, the perceived effectiveness of the Commission is likely to influence the ability of the parties to convince nominees to accept appointment to future Commissions. Advisory committees, Triennial Commissions and Quadrennial Commissions have been populated by individuals who considered it an honour to serve the public interest in this capacity; the current Commission is no exception. However, continuing to attract suitable members for future Commissions will depend to a large extent on the ability to assure them that they will be participating in a process that is independent, objective and effective.[45]

E. The Block Commission

54. The third Quadrennial Commission, the Block Commission, was established in October 2007. It was chaired by Sheila Block, and its two members were Paul Tellier, C.C., Q.C. and Wayne McCutcheon. The Commission issued its report on May 30, 2008.

---

[45] Block Report at paras 42-45. See also the evidence of Mr. E. Cherniak, QC to the House of Commons Standing Committee on Justice and Human Rights (Meeting No. 24, October 24, 2006), 39th Parliament, 1st Session, JBD.

55. Apart from process issues related to the serious concerns expressed by the judiciary with the Government's lack of solicitude for the Quadrennial Commission process, as exemplified by its tabling of the Second Response, the principal issue before the Block Commission was the determination of the judicial salary for the puisne judges. The Commission also made a number of other substantive recommendations.

1. Salary and other substantive recommendations

56. As already mentioned, when the Block Commission began its inquiry, the salary of a puisne judge was $252,000. The Association and Council proposed a salary increase of 3.5% as of April 1, 2008, and 2% for 2009, 2010, and 2011, in addition to the statutory indexation (Industrial Aggregate Index, or "**IAI**") for cost of living provided for under the *Judges Act.*[46] Under this proposal, the salary of puisne judges at the end of the Block Commission's mandate, *i.e.* as of April 1, 2011, would have been $302,800. The actual salary of puisne judges since April 1, 2011, is $281,100.

57. The Government proposed a salary increase of 4.9% as of April 1, 2008, inclusive of statutory indexation, which was 3.2% on that date, for a proposed net increase of 1.7%. For the subsequent years, it proposed nothing except to leave the existing statutory indexation in place. Statutory indexation was 2.8% on April 1, 2009, 1.6% on April 1, 2010, and 3.6% on April 1, 2011. Under the Government's proposal, the salary of puisne judges would thus have been $286,000 as of April 1, 2011.

58. The Government's proposed increase as of April 1, 2008, of 4.9% inclusive of IAI, must necessarily be interpreted to mean that the Government was of the view that, as of April 1, 2008, some kind of increase was indeed appropriate, even though it was not of the same order of magnitude as that proposed by the Association and Council.

59. The Block Commission reviewed the various comparators proposed by the parties, ultimately deciding that DM-3s and lawyers in private practice were the appropriate comparator groups to arrive at recommendations on judicial salaries. The Block

---

[46] Statutory indexation under the *Judges Act*, it is noted, exists to protect judicial salaries against erosion from cost-of-living increases, not to enhance judicial salaries.

Commission rejected the Government's position that the most relevant comparator group was all of the strata among the most senior federal public servants, namely EX 1-5, DM 1-4, and Senior LA (lawyer cadre).

60. The Block Commission also rejected as unhelpful the Government's attempt to use the pre-appointment income data of judges as support for the argument that current judicial salaries are not a disincentive to attracting significant numbers of judges who enjoyed high pre-appointment incomes. The judiciary had objected to the collection and use of this data because of concerns for individual privacy and the unreliability of the data.

61. The Block Commission came to the conclusion that the appropriate comparator among senior deputy ministers, namely DM-3s and DM-4s, was the midpoint of the DM-3 salary range plus one-half of the maximum performance pay[47] for which DM-3s are eligible. As for lawyers in private practice, the Block Commission noted that there was no certainty that the Government would continue to be successful in attracting outstanding judicial candidates from the senior Bar in Canada if the income spread between lawyers in private practice and judges were to increase markedly.

62. Using the comparator of the midpoint of the DM-3 salary range[48] plus one-half of eligible performance pay, the Block Commission noted that the resulting figure for DM-3s was $276,632 for the 2007-2008 fiscal year. The salary of puisne judges was $252,000 in that year, or 91% of the DM-3 comparator.[49]

63. To achieve "rough equivalence" with the DM-3 salary range midpoint plus one-half eligible performance pay, the Block Commission recommended an increase of 4.9%,

---

[47] In its most recent report of July 2011, the Advisory Committee on Senior Level Retention and Compensation, chaired by Carol Stephenson (the "**Stephenson Committee**"), used the expression "performance pay" as a synonym for at-risk pay, although the Government continues to refer to the variable part of the compensation paid to DMs, including bonuses, as "at-risk pay".

[48] "Midpoint" should not be confused with median. The midpoint figure is simply the halfway point of the theoretical salary range, whereas the median figure would be the actual salary of the person falling in the middle of the range of persons arranged from lowest to highest.

[49] Block Report at para. 119.

inclusive of statutory indexation, for a salary of $264,300 effective April 1, 2008, and an increase of 2% for each of 2009, 2010, and 2011, in addition to statutory indexation.

64. If the Block Commission's recommendation had been implemented, the salary for puisne judges in the 2011-2012 fiscal year would have been $302,800, a figure roughly equivalent to the figure of $303,249.50, which is the midpoint of the DM-3 salary range plus one-half of eligible performance pay for 2011-2012. The actual salary of puisne judges for 2011-2012 is $281,100. For comparison purposes, the overall *average* DM-3 compensation for the 2010-2011 fiscal year was $331,557.

65. In addition to its salary recommendation, the Block Commission made recommendations regarding the retirement annuity of senior judges of the territorial courts, representational allowances, and an appellate differential. The list of the salary and other recommendations made by the Block Commission is reproduced for convenience in Appendix "A" to this submission.

2. Observations and recommendations as to process

66. The Block Commission made a number of important observations relating to process, an overriding one being that Quadrennial Commissions should serve as the guardian of the Quadrennial Commission process. The Block Commission expressed the view that process-related issues should be the subject neither of direct discussions between the Government and the judiciary, which are inadvisable, nor of litigation before the courts, if at all possible, the latter being an option that must be "carefully weighed".[50] The Block Commission added:

> 37. The parties nevertheless require access to a forum where concerns related to process can legitimately be raised. It is our view that Quadrennial Commissions, by virtue of their independence and objectivity, are well-placed to serve as that forum and to offer constructive comments on process issues as they arise. While the structure and mandate of the Commission are outlined in statute, any question of process that affects the independence, objectivity or effectiveness of the Commission is

[50] Block Report at para. 33ff.

> properly within its mandate. It is entirely appropriate and arguably imperative that the Commission serve as guardian of the Quadrennial Commission process and actively safeguard these Constitutional requirements.

67. In addition to its concerns with the issuance of the Second Response, another important observation contained in the Block Report concerns the need to respect, and reflect in the future submissions of the parties, the consensus that has emerged around particular issues during a previous Commission inquiry.[51] The Block Commission gave as an example of such an issue the relevance of DM-3 as a comparator. The judiciary follows this recommendation in its present submission on that issue as well as on such issues as the relevant calculations for the use of the DM-3 comparator and the reimbursement of the judiciary's costs, among others.

3. The Government's response to the Block Report

68. Under the *Judges Act*, the Minister of Justice was required to respond to the Block Report by November 30, 2008, six months after receiving it. This statutory deadline came and went without a response being made by the Minister, as required by the Act.[52]

69. On February 11, 2009, well beyond the strict statutory deadline, the Minister of Justice issued a response declining to implement, at that time, any of the recommendations made by the Block Commission. Importantly, the Minister's response did not reject any of the Commission's recommendations. Rather, the Minister invoked the economic crisis that began in late 2008 as the reason for the Government's decision.

70. The Association issued a press release on February 11, 2009, stating that federally appointed judges recognized that the Canadian economy was facing unprecedented challenges calling for various temporary measures. However, it emphasized that the applicable constitutional principles would require that the Block Commission's recommendations be reconsidered once the economic situation improved. The

---

[51] Block Report at paras. 21, 201.

[52] *Judges Act*, s. 26(7).

Association also expressed its deep concern about the violation by the Minister of Justice of the statutory deadline for issuing his response to the Block Report.

III. THE COMMISSION'S MANDATE

71. The mandate of the Commission is set out in section 26 of the *Judges Act*, which reads, in part, as follows:

> Commission
>
> 26(1) The Judicial Compensation and Benefits Commission is hereby established to inquire into the adequacy of the salaries and other amounts payable under this Act and into the adequacy of judges' benefits generally.
>
> Factors to be considered
>
> (1.1) In conducting its inquiry, the Commission shall consider
>
> (a) the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government;
>
> (b) the role of financial security of the judiciary in ensuring judicial independence;
>
> (c) the need to attract outstanding candidates to the judiciary; and
>
> (d) any other objective criteria that the Commission considers relevant.

72. The *Judges Act* does not equate "adequacy" of judicial salaries and benefits with the minimum necessary to guarantee the financial security of judges. Rather, the Commission must inquire into the adequacy of salaries and benefits with the dual purpose of ensuring public confidence in the independence of the judiciary and attracting outstanding candidates to the Bench.

73. The Drouin Commission said the following about the relationship between judicial compensation and the role of the judiciary in modern Canadian society:

> In response to the *Charter of Rights and Freedoms* (the "*Charter*"), and the growing complexity of our social and economic relationships, the Judiciary is playing an increasingly public role in key decisions that affect us all. Moreover, the

> characteristics of the Judiciary have changed and continue to shift: judges are being appointed at a younger age, and more females are being appointed to the Bench. The caseload of judges has grown, as more cases move to the higher courts for determination. Many of these cases are high profile and controversial. They capture the public interest and become the focus of media attention. Judicial decisions often generate considerable political debate. The reality of these trends must be recognized when considering the salary and benefits that are adequate to secure judicial independence and attract outstanding candidates to the Bench.[53]

IV. ISSUES

74. The Association and Council set out below the issues that they submit for this Quadrennial Commission's consideration. The recommendations sought by the judiciary are provided at the end of the discussion for each of those issues, and repeated *in seriatim* for convenience at the end of these submissions.

A. PROCESS ISSUES

75. As already mentioned, the Block Commission concluded not only that the Quadrennial Commission has jurisdiction to deal with concerns raised by the parties in respect of the Commission process, but indeed that it is "arguably imperative that the Commission serve as guardian of the Quadrennial Commission process and actively safeguard these Constitutional requirements."[54]

76. As already mentioned, the Block Commission commented that the issuance of a second response to a Commission report does not conform to the process and has significant constitutional implications. A troubling aspect of the Government's conduct in relation to the Commission process is the Minister of Justice's failure to respect the statutory deadline for the filing of his Response to the Block Report itself.

77. There can be no doubt that the requirement that there be a formal governmental response to a Commission report is a fundamental feature of the constitutional scheme articulated

---

[53] Drouin Report (2000) at 10.

[54] Block Report at para. 37.

by the Supreme Court of Canada in the *PEI Reference*. Nor can it be disputed that the Minister is obliged to respond within 6 months after receiving a Commission report. The language of s. 26(7) of the *Judges Act* could hardly be clearer:

> The Minister of Justice shall respond to a report of the Commission within six months after receiving it.
>
> Le ministre donne suite au rapport de la Commission au plus tard six mois après l'avoir reçu.

78. The Minister did not respond to the Block Commission within the time limit set out in the *Judges Act*. He did not provide an explanation, within the time limit set out in the *Act*, for his failure to discharge this statutory duty in a timely manner. It is only subsequently, within his untimely Response of February 11, 2009 itself, that the Minister stated that "the Government's Response has been delayed to allow the Government to consider the [Block] Commission's Report in light of significant changes to a key criterion in relation to which the Commission developed its recommendations: *the prevailing economic conditions in Canada, including the cost of living, and the overall economic and financial position of the federal government*".

79. The Association and Council urge this Commission to reiterate the importance of respecting all aspects of the Commission process, as mandated by sections 26 to 26.3 of the *Judges Act*, whether they be substantive or procedural. Respect by both principal parties for all aspects of the Commission process is required to preserve confidence in and maintain the effectiveness of the process.

Recommendation sought:

The Commission reiterates the importance of respecting all aspects of the Commission process in order to preserve confidence in and maintain the effectiveness of the Commission process.

B. SUBSTANTIVE ISSUES

Overview

80. **The Association and Council seek an endorsement, and a recommendation urging immediate implementation on a prospective basis, of each one of the Block Commission's recommendations, *mutatis mutandi*.**

81. The Association and Council acknowledge that for this Commission to endorse the recommendations of the Block Commission and recommend their immediate implementation it has to satisfy itself that they continue to be consistent with the criteria of s. 26(1.1) of the *Judges Act*. The judiciary submits that they are, for the reasons set out in this section.

1. Puisne Judges' Salary

82. Specifically with respect to the salary of puisne judges, the Association and Council seek a recommendation urging immediate implementation of the Block Commission's recommendation on the salary of federally appointed puisne judges.

83. The Association and Council are therefore seeking, over the mandate of this Commission, phased salary increases of 4.9% as of April 1, 2012, inclusive of statutory indexing, and 2% as of each of April 1, 2013, 2014, and 2015, exclusive of statutory indexing. It is submitted that the immediate implementation of the Block Commission's salary recommendation for puisne judges is appropriate to achieve rough equivalence with the primary comparator group, the DM-3s.

a) The *Judges Act* criteria

84. In inquiring about the adequacy of judicial salaries, the Commission must consider a number of criteria set out in s. 26(1.1)(a) to (d) of the *Judges Act*. Each of those criteria is addressed below.

i) The economic conditions in Canada and the financial position of the federal Government

85. The first statutory criterion to be considered pursuant to subsection 26(1.1)(a) of the *Judges Act* is "the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government".

86. Fall 2008 marked the beginning of a significant recessionary period in the world economy. As part of its response to the world economic crisis that began in Fall 2008, Parliament passed in early 2009 the *Expenditure Restraint Act* (the "**Restraint Act**"),[55] which limited the salary increases in the federal public sector until the 2010-2011 fiscal year.[56] The Summary within the *Budget Implementation Act*, of which the Restraint Act was a part, stated that: "The purpose of that Act is to put in place a reasonable and an affordable approach to compensation across the federal public sector in support of responsible fiscal management in a difficult economic environment."

87. The Restraint Act applied broadly within the federal public sector, including members of Parliament, significant segments of federal employees, and appointees of the Governor in Council (which would include deputy ministers). Judges were excluded from the Act.

88. Under the Restraint Act, salary increases were limited to 1.5% annually between 2008 and 2011. However, it is noted that "incremental and merit increases" were excluded[57] from this restriction and that the overall average "performance pay" or "at-risk" pay awarded for DM-3s between the fiscal years 2008-2009 and 2009-2010 went from $64,670 to $66,183, an increase of 2.3%.[58] The average "at risk" pay for DM-3s in the

---

[55] Enacted as part of the *Budget Implementation Act*, S.C. 2009, c. 2, s. 393.

[56] *Expenditure Restraint Act*, s. 16.

[57] See s. 10 of the Restraint Act, entitled "Incremental and merit increases" and including "merit or performance increases, in-range increases, performance bonuses or similar forms of compensation."

[58] This increase in performance pay was noted in public debate. See *e.g.* B. Curry, "Performance pay for senior bureaucrats up sharply, even as bonuses are slashed" (13 August 2010) *The Globe and Mail*.

fiscal year 2010-2011 was reduced to $60,371. However, this reduction was almost completely offset by a corresponding increase in base salary.[59]

89. It is generally recognized that Canada weathered the global recession better than most industrialized countries. Among the G-7 countries, the GDP contraction at the bottom of the last recession (2009) was less pronounced in Canada[60] and the recovery in 2010 was one of the most vigorous[61] after Japan and Germany. Furthermore, during this period, Canada's economy was the only one that regained all of the output and the job lost during the recession.[62] This led the Royal Bank of Canada to qualify Canada's economy in June 2011[63] as the "star performer" of four major economies (Canada, United States, United Kingdom, Euro Zone). Similarly, in its "Financial System Review" of June 2011, the Bank of Canada said:

> Despite the challenging international environment, the Canadian financial system remains healthy. For example, asset quality at Canada's major banks has improved further in recent months. Moreover, the aggregate financial position of the domestic non-financial corporate sector is solid, with corporate leverage remaining at low levels.[64]

90. Since July 2011, the global economy has slowed. Financial market volatility has increased particularly with the European sovereign debt crisis and the uneven U.S. recovery. Consequently, in October 2011, the Bank of Canada has diminished its growth outlook for the Canadian economy. As shown in Table 1, the main part of its revision

---

[59] See JBD (DM-3 compensation information).

[60] According to OECD Economic Outlook database, the change in real GDP from 2008 to 2009 was -2.5% in Canada, compared to -2.6% in United States, -2.7% in France, -4.7% in Germany, -4.9% in United Kingdom, -5.2% in Italy and -6.3% in Japan.

[61] According to OECD Economic Outlook database, the change in real GDP from 2009 to 2010 was 3.1% in Canada, compared to 4% in Japan, 3.5% in Germany, 2.9% in United States, 1.4% in France, 1.3% in United Kingdom and 1.2% in Italy.

[62] Royal Bank of Canada, Economic and Financial Market Outlook, June 2011.

Department of Finance Canada, "Update of Economic and Fiscal Projections", November 8, 2011.

[63] Royal Bank of Canada, Economic and Financial Market Outlook, June 2011

[64] Bank of Canada, "Financial System Review", June 2011, at 1.

concerns 2011 and 2012, with a slower growth than the one previously projected and a lower inflation rate in 2012.

91. Despite the existence of downside risks[65] affecting the Canadian economy, the Bank of Canada believes that the euro-area crisis will be contained.[66] Moreover, after this period, Canadian growth should rebound at a stronger rate than the one initially anticipated and the Canadian economy is expected to return to full capacity by 2013 with a real GDP growth of 2.9%. Lower growth is also projected for the United States in the near term but likewise with a rebound in 2013.

[table appears on next page]

[65] The three main downside risks identified by the Bank of Canada relate to the failure to contain the crisis in Europe, the potential of a U.S. recession which would have material consequences for exports, growth and inflation in Canada, and a sharper than expected deceleration in household spending. Bank of Canada, "Monetary Policy Report", October 2011, at 33.

[66] Bank of Canada, "Monetary Policy Report", October 2011, at 17.

Table 1
Bank of Canada -Summary of the base-case projection for Canada[67]

	2011	2012	2013
Real GDP Growth (%)			
October 2011	2.1	1.9	2.9
July 2011	2.8	2.6	2.1
April 2011	2.9	2.6	2.1
January 2011	2.4	2.8	-
Consumer Price Index (4 Quarters Average)			
October 2011	2.9	1.4	1.9
July 2011	2.9	2.1	2
April 2011	2.5	2.1	2
January 2011	2.1	1.9	-
US Real GDP Growth (%)			
October 2011	1.7	1.7	3.3
July 2011	2.4	3.2	3.3
April 2011	3	3.2	3.3
January 2011	3.3	3.2	-

Source: Bank of Canada, Monetary Policy Report Summary, October 2001, July 2011, April 2011, January 2011.

[67] A "base-case" scenario or projection is formulated from the assumptions that managers or forecasters deem most likely to occur. The results or projections for a base case are better than those of the most conservative or pessimistic case but worse than those of the most aggressive or optimistic case.

.

92. Financial conditions in Canada have tightened slightly since July 2011. Nevertheless, the Bank of Canada believes that the aggregate supply and price of credit to businesses and households continue to have a very stimulating effect, providing important support to economic expansion.[68] Business fixed investment is still expected to grow solidly. Household expenditures will also grow but relatively modestly, hampered by an elevated level of household debt and the weakening of consumer confidence in the uncertain global environment.

93. The outlook for Canada for 2011 and 2012 has also been revised downward by the main private sector forecasters, by a similar magnitude as the forecasts of the Bank of Canada. However, some are more optimistic, believing that the Obama Jobs Plan will be a factor supporting U.S. growth next year,[69] that business investment in Canada should remain robust as commodity prices are expected to remain elevated[70] and that low interest rates will also support business spending.[71]

94. In light of these recent economic projections, the Government has revised its own economic and fiscal projections, increasing the adjustment for risk in the near term. As a result, the deficit is anticipated to shrink gradually by 90% from 2001-2011 to 2015-2016, from $33.4 billion to $3.4 billion (see Table 2). The Government remains on track to eliminate the deficit over the medium term, with a delay in balancing the budget by one year (2016-2017). If the savings targeted by the deficit reduction action plan materialize as expected, the budgetary balance should be reached by 2015-2016,[72] one year ahead.

[table appears on next page]

---

[68] Bank of Canada, “Monetary Policy Report”, October 2011, at 24.

[69] Royal Bank of Canada, “Economic and Financial Market Update”, November 2011.
International Monetary Fund, “Regional Economic Outlook – Western Hemisphere” October 11, 2011.
Scotiabank Group, “Global Forecast Update”, November 3, 2011.

[70] Bank of Montreal, “North American Outlook - Modest Growth, Elevated Risks”, November 8, 2011.

[71] Bank of Montreal, “North American Outlook - Modest Growth, Elevated Risks”, November 8, 2011.

[72] Department of Finance Canada, "Update of Economic and Fiscal Projections", November 8, 2011, at 41.

Table 2
Summary of the budgetary balance[1] and of the federal debt as forecasted by the Department of Finance Canada 2010-2011 to 2016-2017

Fiscal years	Budgetary Balance (Billions $)	Federal Debt (Billions $)	In % of GDP	
			Budgetary Balance	Federal Debt
2010-2011	-33.4	550.3	-2.1%	33.9%
2011-2012	-31.0	585.2	-1.8%	34.6%
2012-2013	-27.4	612.7	-1.6%	35.0%
2013-2014	-17.0	629.7	-0.9%	34.2%
2014-2015	-7.5	637.2	-0.4%	32.9%
2015-2016	-3.4	640.6	-0.2%	31.7%
2016-2017	0.5	640.0	0.0%	30.3%

Note: (1) The budgetary balance includes the cost of measures announced in the update of November 8, 2011 and excludes the savings targeted by the deficit reduction action plan.
Source: Department of Finance Canada, "Update of Economic and Fiscal Projections", November 8, 2011, at 41.

95. Expressed in relation to the size of the economy, the budgetary deficit represents 2.1% of the GDP in 2010-2011: this ratio should decrease to 0.4% and 0.2% respectively in 2013-2014 and 2014-2015. The federal debt, also measured in relation to the size of the economy, is also projected to decline steadily from 2012-2013 onward. By 2016-2017, the debt-to-GDP ratio is projected to fall to 30.3%, less than half of its peak of 68.4% in 1995-1996.

96. Canada has an enviable fiscal position[73] with low debt levels, and projected to remain low over the coming years. Over the period of 2011-2016, the IMF projects that Canada will maintain a low and declining debt-to-GDP ratio far below those of other G-7 nations.[74] Furthermore, with Germany, Canada is the only country returning to a balanced budget by 2016.[75]

---

[73] Department of Finance Canada, "Quarterly financial report for the Quarter ended June 30,2011", Section 3.

[74] See Table reproduced in Appendix "B".

97. In sum, the economic conditions criterion set out in s. 26(1.1)(a) does not present an obstacle to this Commission recommending an increase in judicial salaries that is otherwise justified, applying the comparators developed to assist in the determination of judicial salaries.

ii) The role of financial security in ensuring judicial independence

98. The second criterion to be considered by the Commission is "the role of financial security of the judiciary in ensuring judicial independence". In relation to this factor, the Drouin Commission stated:

> We strongly affirm the importance of an independent judiciary, and we recognize the role that financial security plays as a fundamental component of independence as set out in the second enumerated factor under subsection 26(1.1).[76]

99. In the *PEI Reference* case, Chief Justice Lamer sought to demonstrate the link between financial security for judges and the concept of the separation of powers. He said:

> What is at issue here is the character of the relationships between the legislature and the executive on the one hand, and the judiciary on the other. These relationships should be depoliticized. [...]
>
> […]
>
> The depoliticized relationships I have been describing create difficult problems when it comes to judicial remuneration. On the one hand, remuneration from the public purse is an inherently political concern, in the sense that it implicates general public policy. [...]
>
> On the other hand, the fact remains that judges, although they must ultimately be paid from public monies, are not civil servants. Civil servants are part of the executive; judges, by definition, are independent of the executive. The three core characteristics of judicial independence - security of tenure, financial security, and administrative independence - are a reflection of that fundamental distinction, because they provide a range of protections to

---

[75] See Table reproduced in Appendix "C".

[76] Drouin Report (2000) at 8.

> members of the judiciary to which civil servants are not constitutionally entitled.[77]

100. The role and responsibilities of judges are *sui generis*, as the Government acknowledged in its submissions to the Drouin Commission.[78] Indeed, judges occupy a unique position in our society and that uniqueness in all of its manifestations must be taken into account by the Commission. Those manifestations include the following :

(i) Federally appointed judges are the only persons in Canadian society whose compensation, by constitutional requirement, must be set by Parliament. Once a judge accepts appointment, he or she becomes dependent on Parliament in respect of salaries and benefits.

(ii) Judges are prohibited from negotiating any part of their compensation arrangement with the party who pays their salaries, a restriction that applies to no other person or class of persons in Canada.

(iii) Judges are prohibited by the *Judges Act*[79]- with good reason - from engaging in any other occupation or business beyond their judicial duties. It follows that judges cannot supplement their income by embarking upon other endeavours.

(iv) Judges must divest themselves of any commercial endeavour that may involve litigious rights. This is a significant sacrifice that other members of society are not called upon to make.

(v) Judges' compensation cannot be tied to performance or determined by commonly used incentives such as bonuses, stock options, at-risk pay, etc.

---

[77] *PEI Reference Case*, *supra* at paras. 140, 142, 143 [emphasis in original].

[78] As cited in the Drouin Report (2000) at 13.

[79] *Judges Act*, s. 57(1)

(vi) Finally, there is no concept of promotion or merit in the discharge of judicial duties and there is no marketplace by which to measure the performance or compensation of individual judges.

101. In light of the constitutional role of the judiciary as an independent branch of government and the framework applicable to the fixing of judicial compensation, it would be wrong in principle to consider the expenditure on judicial salaries as being simply one of many competing priorities on the public purse, as the Government attempted to cast the issue before the Block Commission.

102. The Block Commission rejected such a characterization and expressed its agreement with the submission made on behalf of the Canadian Bar Association to the effect that judicial independence is not a mere government priority, competing with other government priorities, but rather a constitutional imperative. Were the Commission to consider judicial salaries on the same footing with other government priorities, it would be placed in a highly politicized process. As the Block Commission concluded:

> 57. We agree with the views expressed by the Canadian Bar Association. The Government's contention that the Commission must consider the economic and social priorities of the Government's mandate in recommending judicial compensation would add a constitutionally questionable political dimension to the inquiry, one that would not be acceptable to the Supreme Court, which has warned that commissions must make their recommendations on the basis of "objective criteria, not political expediencies". […]
>
> 58. With regard to the Government's contention that any increases in judicial compensation must be reasonable and justifiable in light of the expenditure priority that the Government has accorded to attracting and retaining professionals of similarly high qualities and capacity within the federal public sector, we find no such requirement in the statutory criteria that the Commission must consider. In fact, were the Commission required to justify compensation increases in this way, it would make the Commission accountable to the Government and allow the Government to set the standard against which increases must be measured. This would be an infringement on the Commission's independence. Since the maintenance of the financial security of the judiciary requires that judicial salaries be modified only following recourse to an independent commission, any measure

> that would have the effect of threatening or diminishing the Commission's independence would conflict with this constitutional requirement. [80]

iii) The need to attract outstanding candidates to the judiciary

103. It is axiomatic that there is a correlation between the ability to attract talented individuals and adequate compensation. The Block Commission recognized this when it stated:

> It is not sufficient to establish judicial compensation only in consideration of what remuneration would be acceptable to many in the legal profession. It is also necessary to take into account the level of remuneration required to ensure that the most senior members of the Bar will not be deterred from seeking a judicial appointment. To do otherwise would be a disservice to Canadians who expect nothing less than excellence from our judicial system - excellence which must continue to be reflected in the calibre of judicial appointments made to our courts.[81]

104. The connection between talent and adequate compensation was the impetus for the Government's decision to strike the first Advisory Committee on Senior Level Retention and Compensation, which reported in 1998 (the "**Strong Committee**"). The Strong Committee had this to say about the correlation between compensation and the calibre of candidates:

> In our view, compensation policy should be designed to attract and retain the appropriate calibre of employees to achieve an organization's objectives. Such compensation policy needs to be internally equitable, to be responsive to the economic and social environment, and to encourage and reward outstanding performance. Salary is usually the major driver of such policy. Salary depends upon responsibility, individual performance and comparability with relevant markets. Typically, standard practices and techniques are used to evaluate each of these objectively and transparently.[82]

---

[80] Block Report at paras. 57-58.

[81] Block Report at para. 76.

[82] Advisory Committee on Senior Level Retention and Compensation, *First Report: January 1998* at 7, reproduced in the JBD.

105. While adequate compensation is required to attract outstanding candidates to the Bench, there are particularities in the setting of judicial compensation that the Commission must take into account. In the words of the McLennan Commission:

> The considerations that go into the setting of judicial compensation and benefits are unique, in that so much of the usual process of determining compensation does not apply. Judges cannot speak out and bargain in the usual way. Compensation incentives usual in the private sector, such as bonuses, profit sharing, stock options, at-risk pay, recruitment and performance bonuses, together with the prospect of promotion, do not apply in the judicial context, although many of these financial incentives are increasingly common in the public sector.[83]

106. The need to attract outstanding candidates to the Bench, coupled with the fact that appointees predominantly come from private practice, explain the importance of self-employed lawyers' income in the determination of judicial salaries. The McLennan Commission made the point succinctly when it said that "it is in the public interest that senior members of the Bar should be attracted to the bench, and senior members of the Bar are, as a general rule, among the highest earners in private practice."[84]

iv) Other objective criteria

107. Among the "other objective criteria" that past Commissions have considered in their determination of judicial salaries is the evolution of the role and responsibilities of Canadian judges in the past 25 years. The following observations of the Drouin Commission are still apposite today:

> There are increasing, and ever-shifting, demands placed upon the Judiciary. As a result of the introduction of the *Charter*, the growth in litigation in Canada, the complexity of the matters which actually proceed before the courts, and intensified public scrutiny of judicial decisions, the process and requirements of "judging" have become more onerous at both the trial and appellate levels.[85]

---

[83] McLennan Report (2004) at 5.

[84] McLennan Report (2004) at 32.

[85] Drouin Report (2000) at 17.

108. Judicial decisions at all levels are becoming increasingly complex and continue to be the focus of attention by the media and the public. Judges are repeatedly called upon to adjudicate on sensitive and contentious matters of a socio-political nature, a trend that has been accentuated by the continued willingness of Parliament and the provincial legislatures to leave many controversial issues for determination by the courts. Vivid illustrations of this phenomenon can be found in the role played by courts in respect of the many difficult social and political issues confronting Canadian society today.

109. Globalization and technological innovations have also contributed to a greater complexity and volume of legal issues confronted by the judiciary, from e-discovery to multi-jurisdictional class actions to criminal trials involving complex evidence of encrypted communications between accused persons.

b) The comparators

110. In considering the adequacy of judicial salaries, including in light of the statutory criteria just reviewed, two principal comparators have traditionally been relied upon by the judiciary and the Government, and by past commissions. They are:

(i) the remuneration of the most senior level of deputy ministers within the federal Government; and

(ii) the incomes of senior lawyers in the private practice of law in Canada.

i) The most senior deputy ministers: DM-3s and DM-4s

111. From at least the advent of the Triennial Commission process to the most recent Quadrennial Commission, judicial salaries have been compared with the remuneration of the most senior level of deputy ministers within the Government.[86]

112. With time, what started as a benchmark matured into the principle that there should be a rough equivalence between the salaries of federally appointed puisne judges and the

---

[86] See Lang Report (1983) at 6.

midpoint of the remuneration of DM-3s, until recently the most senior level of deputy ministers within the federal Government.

113. Until the Crawford Commission reported on March 31, 1993, continual reference was made to the 1975 amendments to the *Judges Act* which had made the salary level of puisne judges roughly equivalent with the midpoint salary of the most senior level of deputy ministers. That rough equivalence was then adjusted regularly for inflation. Triennial Commissions prior to the Crawford Commission referred to that exercise as "1975 equivalency", and each of them successively recommended salary increases for judges as a function of the 1975 level, adjusted for inflation.

114. Before the Crawford Commission, in 1993, it was the Government that argued in support of direct equivalency with the most senior level of deputy ministers as opposed to the application of the "1975 equivalency", which entailed going back to the 1975 DM midpoint and adjusting for inflation in the years since that point.[87] Thus, it is the Government itself that submitted as a comparator direct equivalency with the most senior level of deputy ministers.

115. The Crawford Commission accepted that submission and found that the concept of "1975 equivalency" was no longer a particularly helpful benchmark as a determinant of judges' salaries. Instead, the Crawford Commission preferred to refer directly to a rough equivalence with the midpoint of the salary range of the most senior level of federal public servant, the DM-3.[88]

116. As mentioned earlier, it is important to note that the midpoint is the half-way point of a theoretical salary range, not the median figure of the actual salary paid. Given that the upper and lower limits of the salary range for each of the DMs are theoretical limits rather than actual pay levels received, the Association and Council had taken the position that it is more accurate to rely upon the average compensation of senior deputy ministers,

---

[87] As cited in the Drouin Report (2000) at 28.

[88] Crawford Report (1993) at 11.

now that such averages are available, since those figures reflect actual remuneration paid on average.

117. However, the Block Commission decided to use the midpoint rather than averages on the ground that the former provided an "objective, consistent measure of year over year changes in DM-3 compensation policy."[89] In the present submission, the Association and Council have used this measure in their comparisons with DM-3 compensation, all the while noting that there is a significant disparity between the midpoint and actual average figures over the years.[90]

118. Past Commissions were of course fully appreciative of the fact that use of the DM-3 comparator for the purpose of setting judges' salaries does not amount to equating judges to public servants.[91] As noted by the Crawford Commission, rough parity of this nature between judges and top level public servants finds support in the comparative salary figures from a number of other common law democracies.[92]

119. While making clear that no one comparator should be determinative, the Drouin Commission endorsed the principle of a relationship between judicial salaries and the remuneration of DM-3s. It stated:

> While we agree that the DM-3 comparator should not be determinative of our recommendations concerning judicial salaries, in our view, it is an appropriate and useful comparator at this time. More particularly, we have concluded that the important aspect of the DM-3 comparator, for the purposes of our inquiry, is the maintenance of a relationship between judges' salaries and the remuneration of those senior federal public servants whose skills, experience and levels of responsibilities most closely parallel those of the Judiciary. We agree with the substance of the observation by

---

[89] Block Report at para. 106.

[90] For example, for the 2010-2011 fiscal year, the overall average compensation for DM-3s was $331,557, whereas the midpoint and half eligible at-risk was $297,948. If DM-3 compensation continues to be at the upper end of the salary range and eligible at-risk percentage, future Quadrennial Commissions will likely decide to revisit the Block Commission's use of the midpoint figure rather than the average.

[91] See *e.g.* Crawford Report (1993) at 11.

[92] Crawford Report (1993) at 11.

> both the Courtois and Scott Commissions (1990 and 1996) that the relationship between the remuneration of DM-3s and judges should be maintained, not as a precise measure of "value" but as a reflection of "what the marketplace expects to pay individuals of outstanding character and ability, which are attributes shared by deputy ministers and judges." [93]

120. In the time period between the report of the Drouin Commission in 2000 and the beginning of the mandate of the McLennan Commission in 2003, the Government created a category above the DM-3. The DM-4 category was created as a consequence of a recommendation of the Strong Committee in its third report, dated December 2000.[94] It is interesting to note that one of the factors behind the recommendation of the Strong Committee was the need to "[send] an important message in terms of the government's willingness to attract and retain qualified and experienced staff."[95]

121. At the time of the McLennan and Block Commissions, it was understood that there were only two DM-4s, the Clerk of the Privy Council and the Deputy Minister of Finance. The Association and Council have been informed by the Government that there are now three incumbents in the DM-4 category, the identity of their respective departments being now confidential on the ground that it would identify the particular individuals. The Government has advised that, in general, DM classification is personal to the incumbent and based on merit, and that it is not linked to particular departments.

122. The Block Commission concluded that there was no justification "at this time" to use DM-4s as a comparator given the use of that level for "exceptional circumstances and positions of particularly large scope."[96] The Association and Council have accordingly put aside the DM-4s in their analysis, even though future developments might warrant revisiting this specific comparator.

---

[93] Drouin Report (2000) at 30-31.

[94] Advisory Committee on Senior Level Retention and Compensation, *Third Report: December 2000* at 41, reproduced in the JBD.

[95] *Ibid.*

[96] Block Report at para. 105.

123. Before the Block Commission, the Government argued for a much wider public-sector comparator than DM-3s. The Government's desire to extend the comparator to lower levels of public servants misconceives the nature of the comparator. The cogency of the DM-3 comparator is that it relates judicial salaries to the highest level of salary in the executive branch (leaving aside the DM-4s, discussed above) and creates parity between the branches of Government.

124. Puisne judges do not proceed through a hierarchy of ever greater responsibility. Every judge from the moment he or she is appointed holds the same office and constitutes a manifestation of that office, complete in himself or herself. Contrary to the increasing responsibilities represented by the DM-1 to DM-4 ladder, there is no correlation between seniority and the nature of matters assigned to judges.

125. Judges do not graduate from minor interlocutory procedural motions to complex constitutional challenges over many years. Rather, the same judge might hear both kinds of cases within the first years of appointment. Accordingly, it is important to keep in mind the numerous observations on the *sui generis* nature of the judiciary in past Triennial and Quadrennial Commission reports, and of the symbolic and historical importance of the comparison with senior deputy ministers.

126. The Block Commission was definitive about the need to maintain rough equivalence between the compensation of DM-3s and that of puisne judges, and it went as far as to issue a formal recommendation that the Commission and parties should consider the issue of DM-3 comparison to be settled. Reproduced below are key extracts of the Block Report dealing with the DM-3 comparator:

> 103. The DM-3 level, as can be seen, has been a comparator for nearly every previous commission, and we believe, like the Courtois Commission, that this "reflects what the marketplace expects to pay individuals of outstanding character and ability, which are attributes shared by deputy ministers and judges". The EX/DM community proposed by the Government as a comparator would be a significant departure from the DM-3 comparator used by previous commissions. The salary increases provided to the EX/DM community may provide an indication of the "priority the Government accords to compensate senior professionals of high ability who have chosen service in the public interest over the

> private sector", but it does not provide the single, consistent benchmark that is provided by the DM-3 level and the remuneration associated with that level.
>
> […]
>
> 106. We also used the mid-point of the DM-3 salary range because it is an objective, consistent measure of year over year changes in DM-3 compensation policy. Average salary and performance pay may be used to demonstrate that judges' salaries do retain a relationship to actual compensation of DM-3s. However, average salary and performance pay are not particularly helpful in establishing trends in the relativity of judges' salaries to the cash compensation of DM-3s. They do not provide a consistent reflection of year over year changes in compensation. The DM-3 population is very small, varying between eight and ten people over the past few years, and average salaries and performance pay fluctuate from year to year. A person who has been promoted recently has a lower salary than one who has been in a position for many years. Turnover could cause significant changes in the averages over time. Similarly, a few very high performers or low performers in a year could significantly affect the average performance pay.
>
> […]
>
> 201. A review of the reports of the various Triennial Commissions and of the Drouin and McLennan Commissions shows that there has been considerable variety in the nature of the questions raised before Commissions. Some issues however, have been raised repeatedly. Where consensus has emerged around a particular issue during a previous Commission inquiry, such as the relevance of the DM-3 as a comparator, "in the absence of demonstrated change", we suggest that such a consensus be recognized by subsequent Commissions and arguably reflected in the approach taken to the question in the submissions of the parties.
>
> Recommendation 14
>
> The Commission recommends that:
>
> Where consensus has emerged around a particular issue during a previous Commission inquiry, in the absence of demonstrated change, such consensus be taken into account by the Commission and reflected in the submissions of the parties.

127. As stated above and by many successive compensation commissions, comparison between the remuneration of the most senior deputy ministers and that of judges should

continue, not because it is a precise measure of "value", but as a reflection of what the marketplace expects to pay individuals of outstanding character and ability, which are attributes shared by senior deputy ministers and judges. Just as the senior deputy ministers are outstanding professionals who must execute with excellence heavy responsibilities regarding the conduct of the affairs of the executive branch, judges are appointed because of their outstanding performance as lawyers and because they must impartially and independently adjudicate disputes that have significant ramifications in the public and private spheres.

128. Another quite distinct reason to rely on this comparator is the fact that it reflects a strong consensus in the reports of compensation commissions for nearly forty years. Consistent with the Block Recommendation 14 cited above, it should for that reason alone be reflected in the submission of the parties and taken into account by this Commission.

- ***At-risk pay of DM-3s and DM-4s***

129. A variable component described as "at-risk pay" or "performance pay" has become a significant component of the remuneration of DMs (and certain other Governor-in-Council appointees). That component arose out of the 1998 recommendations of the Strong Committee, which described "at-risk" pay as "a component of compensation that is …integral to the total package".[97]

130. The Association and Council have consistently taken the position before the Drouin, McLennan, and Block Commissions that at-risk-pay, for the purpose of making comparison with judicial salaries, should be considered an integral part of the compensation of DMs. All three Commissions agreed.

131. The Drouin Commission rejected the notion, put forward by the Government, that when considering the DM-3 comparator regard should be had only to the midpoint of the base salary range of DM-3s, without regard to at-risk awards. The McLennan Commission

---

[97] Advisory Committee on Senior Level Retention and Compensation, *First Report: January 1998* at 20, reproduced in the JBD [emphasis added].

also concluded that this component "cannot be ignored" [98] and indeed took it into account in its analysis.[99]

132. Similarly, the Block Commission took at-risk pay into account, referring to performance pay as an "integral component" of the total compensation of deputy ministers, noting that it has been growing over the years, and that DM-3s on average have received more than one-half of the performance pay for which they were eligible.[100] Consonant with its use of the midpoint of the DM-3 salary range, the Block Commission used one-half of the eligible performance pay for DM-3s in its analysis.

133. The inclusion of at-risk pay in the compensation of DMs for the purpose of comparing it to judicial salaries is a question around which a consensus has emerged which should be reflected in the submission of the parties. The judiciary does so in the present submissions.

- ***Current compensation levels of DM-3s***

134. The table below provides compensation information for the DM-3s from 2007 to 2011, along the parameters recommended by the Block Commission as the points of comparison for judicial compensation.

[table appears on next page]

---

[98] McLennan Report (2004) at 27.

[99] McLennan Report (2004) at 28-31.

[100] Block Report at para. 108.

Table 3
DM-3 compensation 2007 – 2011

Date	Salary Range	Midpoint Salary	Eligible At Risk Pay as a Percentage of Salary	One-Half Eligible At Risk Pay	Total Midpoint Compensation of DM-3s (as per Block Commission)	Judicial Salary of Puisne Judges	Total Average Compensation of DM-3s
April 1, 2007	$223,600 $263,000	$243,300	27.4%	$33,332.10	**$276,632.10**	**$252,000**	$315,233
April 1, 2008	$228,000 $268,300	$248,150	33.0%	$40,944.75	**$289,094.75**	**$260,000**	$326,580
April 1, 2009	$231,500 $272,400	$251,950	33.0%	$41,571.75	**$293,521.75**	**$267,200**	$331,866
April 1, 2010	$235,000 $276,500	$255,750	33.0%	$42,198.75	**$297,948.75**	**$271,400**	$331,557
April 1, 2011	$239,200 $281,400	$260,300	33.0%	$42,949.50	**$303,249.50**	**$281,100**	n/a

135. The Stephenson Committee in its July 2011 report recommended an increase in total compensation of 1.8% through adjustments to at-risk pay for DM-3s for 2011-12, and an increase of 2.2% for 2012-13. The Government responded by saying that it would be increasing base pay by 1.75% for 2011-12 and 1.5% for 2012-13. The maximum at-risk pay for 2011-12 is 33%.[101]

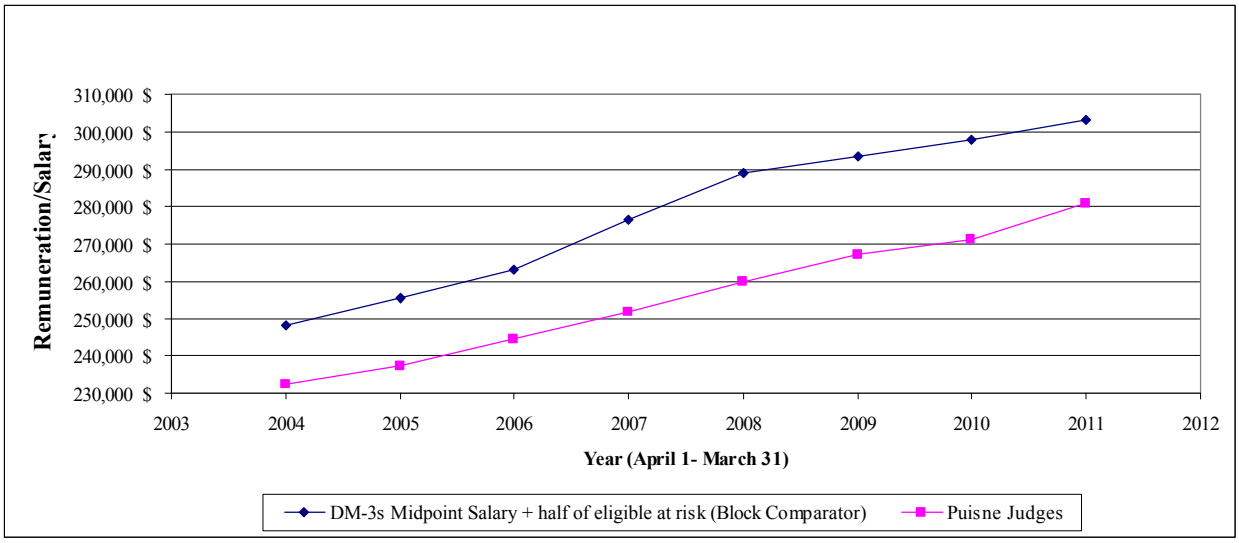
[101] Treasury Board of Canada Secretariat, "Information Notice: Changes to Executive Level Total Compensation" dated July 29, 2011, reproduced in the JBD.

- ***Comparison with judicial salaries***

136. The current salary of a puisne judge, in effect between April 1, 2011 and March 31, 2012, is **$281,100**. The midpoint for the DM-3 salary range for the 2011-2012 fiscal year is $260,300; one-half of eligible at-risk is 16.5%, or $42,949.50; the total of the midpoint and one-half eligible at-risk for the 2011-2012 fiscal year for DM-3s is therefore **$303,249.50**.

137. The graph below shows the gap between the actual salary of puisne judges and the midpoint of DM-3 compensation (including one-half of eligible at-risk).

Graph A
DM-3s midpoint salaries plus half eligible "at risk" pay vs.
Puisne judges (actual salary)

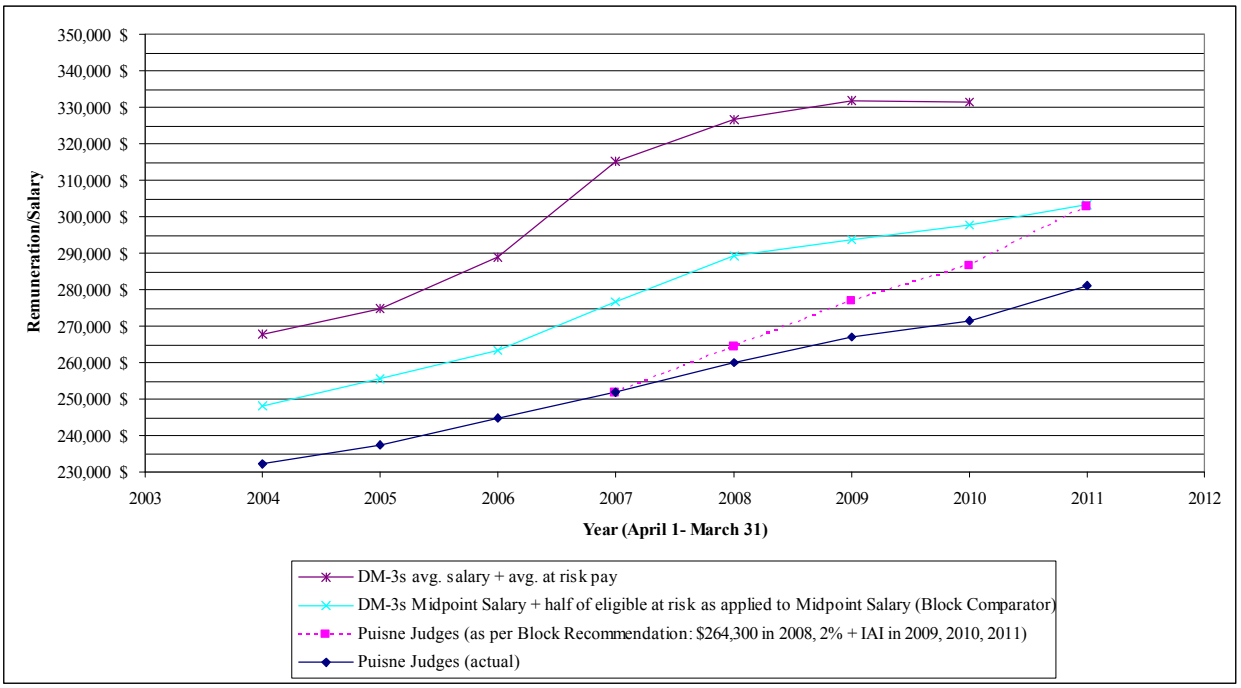


As illustrated above, the gap between judicial remuneration and that of the most senior deputy ministers is persisting. The longer this situation is allowed to persist, the more difficult it will be to narrow the gap.

138. The following graph shows the disparities when average compensation of DM-3s is taken into account:

[graph appears on next page]

Graph B
Comparison of DM-3s salaries with "at risk" pay
vs. Puisne Judges salaries



139. As can be seen in this graph, the salary recommendation of the Block Commission, had it been implemented, would have effectively closed the gap between judicial salaries and the DM-3 comparator, as calculated by the Block Commission, even though judicial salaries would have remained well below the average compensation actually received by DM-3s.

140. The Block Commission considered the issue of the DM-3 comparator to be settled. It should no longer be necessary to explain why the comparison with the DM-3s is a principled one and why the comparison is of central importance. The present Commission should rely on the rationale that led the Block Commission to make its salary recommendation as support for its endorsement of this recommendation.

ii) Self-employed lawyers' income

- Introduction

141. The incomes of private practitioners have been considered by all judicial compensation commissions as an important comparator in the setting of adequate judicial salaries. As

noted earlier in these submissions, this comparator has particular relevance in view of the third criterion provided in subsection 26(1.1) of the *Judges Act*, namely, "the need to attract outstanding candidates to the judiciary".

142. Lawyers in private practice have long been the primary source of candidates to the Bench. The Drouin Commission noted that in the years 1990 to 1999, 73% of those appointed to the Bench came from the private Bar, a proportion that increases to 82% if judges elevated from the provincial or territorial Bench are excluded from the calculation.[102] As the McLennan Commission reported in May 2004, based on information from the Judicial Appointments Secretariat of the Office of the Commissioner for Federal Judicial Affairs ("**OCFJA**"), approximately 73% of appointees during the period from January 1, 1997 to March 30, 2004 came from private practice.[103] For the period April 1, 2004 to March 31, 2007, the period at issue before the Block Commission, a majority of around 78% continued to be appointed from private practice. This proportion increases to 84% if judges elevated from the provincial/territorial Bench and masters are excluded from the pool.[104]

143. Based on the data provided for the period of April 1, 2007 to March 31, 2011 by the OCFJA, around 70% of appointees came from private practice during that period,[105] 80% if judges elevated from the provincial/territorial Bench, masters, and members of administrative tribunals are excluded from the pool.[106] As can be seen, judges have been,

---

[102] Drouin Report (2000) at 36-37.

[103] See McLennan Report (2004) at 17, Table 2.

[104] Information provided to Justice Canada and the Association by the OCFJA, Tables 7 and 8: "Appointees in Private Practice, Predominant Area of Practice, April 1, 2004 to March 31, 2007" and "Appointees Not in Private Practice, Predominant Area of Practice, April 1, 2004 to March 31, 2007", reproduced in the JBD.

[105] One appointee was an in-house counsel in the private sector and therefore strictly speaking would not fall within the category of private practice. Another in-house counsel was classified as being in the public sector since that appointee was an in-house lawyer at a Crown corporation..

[106] For the 2007-2011 period, there were 23 provincial/territorial judges, 2 masters, and 3 members of administrative tribunals appointed.

and should continue to be, appointed in the main from the private practice of law in Canada.[107]

144. Among the judges appointed between April 1, 2004 and March 31, 2007, 67% came from the ten largest urban centres,[108] and among those appointed between April 1, 2007 and March 31, 2011, 60% came from the ten largest urban centres.[109] In order to ensure that outstanding candidates from the private Bar will continue to seek judicial appointments, judicial salaries must be fixed taking into account the higher level of earnings that such practitioners enjoy as well as the higher cost of living that prevails in such centres.

145. The McLennan Commission found that the income of self-employed lawyers in the larger Canadian cities exceeded the current level of judicial compensation, even when the value of the judicial annuity is factored in.[110] Observing that many appointees come from higher-income brackets, the McLennan Commission expressed the view that it is important "to establish a salary level that does not discourage members of that group from considering judicial office."[111]

146. The *Judges Act* speaks of the need to attract "outstanding" candidates to the judiciary. Accordingly, it has long been acknowledged that what matters is not to count the numbers of applications for appointment but, rather, to create conditions that will encourage applications from outstanding candidates. The Association and Council

---

[107] The Block Commission took note of the shift in the provenance of American appointees when judicial salaries were allowed to lag behind lawyer compensation in the private sector. The majority of appointees in the U.S. now comes from the public sector even though in the 1950s a majority came from the private sector (Block Report at paras 71-72); see also American College of Trial Lawyers, "Judicial Compensation: Our Federal Judges Must Be Fairly Paid", March 2007, at 1. Online:http://www.actl.com

[108] The following are the 10 largest Census Metropolitan Areas, according to the 2006 census: Toronto, Montreal, Vancouver, Ottawa-Gatineau, Calgary, Edmonton, Quebec City, Winnipeg, Hamilton, and London. See Table 4, "Place of Practice/Employment at Time of Appointment, City/Province/Territory, April 1, 2004 to March 31, 2007", provided by the OCFJA, and reproduced in the JBD.

[109] Data received from the OCFJA.

[110] McLennan Report (2004) at 48. The McLennan Commission estimated, based on the advice of its experts, that the value of the government-paid portion of the judicial annuity could be set at 22.5% of salary (see McLennan Report (2004) at 58).

[111] McLennan Report (2004) at 49.

submit that Quadrennial Commissions must be forward-looking in establishing judicial salaries so as to ensure that outstanding candidates will be willing to seek judicial appointment throughout the four-year period covered by a Commission's salary recommendations.

147. Income is of course not the only measure of the quality of candidates from the Bar. It is also clear that the judicial annuity is a substantial benefit to judges which is not enjoyed by private practitioners. In addition, as the Lang Commission noted some twenty-four years ago, there is real value to be placed upon the opportunity for public service which is offered to members of the judiciary.[112] Nevertheless, judicial compensation, including judicial annuities, remains a factor of significant importance in the need to attract outstanding candidates to the judiciary.

148. In sum, the income level of senior lawyers in the private practice of law in Canada should continue to serve as a comparator by this Commission, and judicial salaries must be at a level sufficient to ensure that outstanding practitioners will continue to be prepared to consider judicial appointment.

- ***The 2006-2010 CRA data***

149. As in the past, the Canada Revenue Agency ("**CRA**") was mandated by the Government and the judiciary to assemble a database consisting of the 2006 to 2010 tax returns of self-employed individuals who identified themselves as lawyers on forms T2032, "Statement of Professional Activities", or T2124, "Statement of Business Activities".[113] This database was then used to generate statistics based on specific parameters.

150. CRA was asked by the Association and Council to produce data of net professional income of all self-employed lawyers in Canada for the years 2006 to 2010, according to

---

[112] See Lang Report (1983) at 2-3.

[113] According to the methodology used by CRA, filers who incorrectly filed a business income tax return form instead of a professional form were re-assigned to a professional income return form.

parameters that past Commissions[114] have determined should be used in order to capture the relevant comparator group in the private sector. These parameters are:

a) between the ages of 44-56,[115]

b) lawyers with an annual net professional income of or over $60,000 ("low-income exclusion of $60,000");

d) income at the 75th percentile of the income distribution for a given category.

151. It is also important to look at income levels in the Census Metropolitan Areas ("**CMAs**") since that is where the majority of judges come from. Indeed, over the last fourteen years, 60.5%[116] of appointees came from one of the 10 largest CMAs in Canada.

152. The following Table 4 presents the results for both the whole country and the top ten CMAs, using the 75th percentile of income of self-employed lawyers aged between 44 and 56 with an annual net professional income of $60,000 or higher. In 2010, the net professional income for self-employed lawyers at the 75th percentile in the ten largest CMAs reached $468,261. This is 18.5% more than the 75th percentile income for self-employed lawyers in Canada, estimated at $395,274.

[table appears on next page]

---

[114] See *e.g.* McLennan Report (2004) at 43.

[115] The 44-56 age group is the one from which the majority of lawyers were appointed as judges during the period from January 1, 1997 to March 31, 2011. According to the data provided by the OCFJA, and calculated by Justice Canada, 74.4% of appointees belonged to this age group at the time of their appointment.

[116] From the data provided by the OCFJA and calculated by Justice Canada, out of 745 appointees between January 1, 1997 to March 31, 2011, 451 or 60.5% were living in one of the ten following CMAs: Calgary, Edmonton, Hamilton, London, Montréal, Ottawa –Gatineau, Québec City, Toronto, Vancouver and Winnipeg.

Table 4
Net professional income of all self-employed lawyers at the 75th percentile
(Net professional income ≥ $60 000, Age group – 44-56)
Canada and top ten CMAs, 2006 to 2010[117]

	Canada	Top ten CMAs
2006	$343,985	$414,078
2007	$368,458	$451,031
2008	$366,577	$446,370
2009	$380,087	$452,906
2010	$395,274	$468,261

153. All CRA data about self-employed lawyers' income must be approached by taking into account the prevalence of income splitting among private practitioners in Canada. As explained in an expert report by Gilles Veillette, CA and Jean-Luc Beauregard, CA from Deloitte which was filed before the Block Commission, as much as $60,000 of a self-employed lawyer's income could be directed to the lawyer's family members using this method.[118]

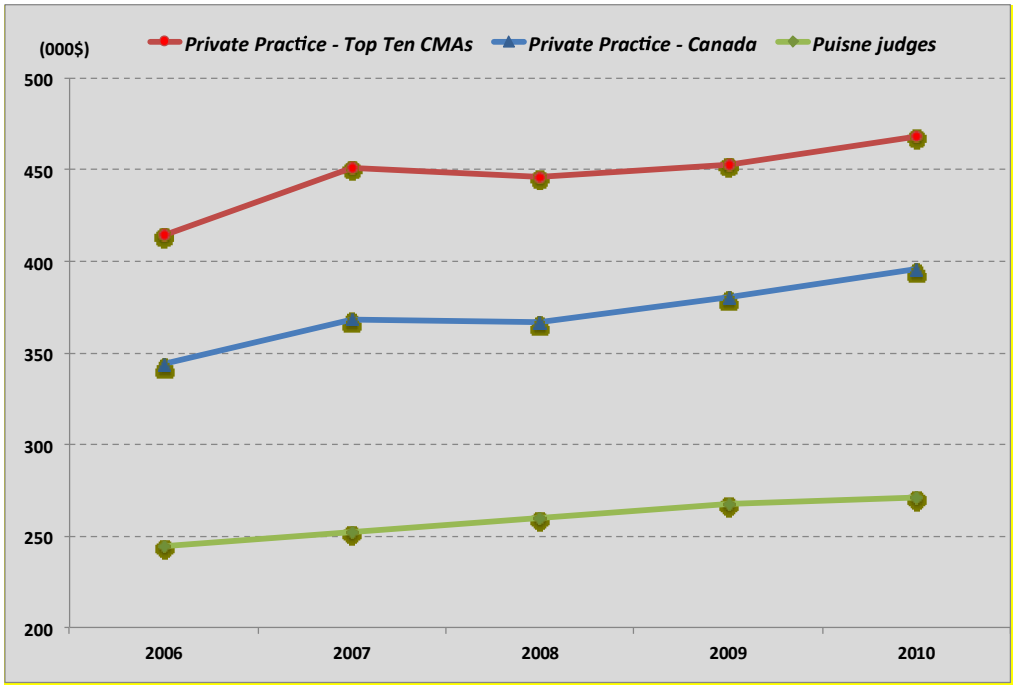
154. The following graph compares the trends of the net professional income of self-employed lawyers at the 75th percentile for Canada and for the top ten CMAs with the trend of salary levels of puisne judges over the period 2006-2010:

[graph appears on next page]

[117] Source: Statistics compiled by CRA, December 2011.

[118] For convenience, this report is reproduced in the JBD.

Graph C
Trends of self-employed lawyers income in Canada and top 10 CMAs vs salary of puisne judges - 2006-2010
(Net professional income at 75th percentile, ≥ $60,000, age group 44-56)



155. As can be seen from the above graph, the salary levels of puisne judges over the years have lagged behind the income of self-employed lawyers across Canada and in the major urban areas, even more significantly than as shown in Graph C if one takes into account the prevalence of income splitting among private practitioners.

156. Table 5 below shows the difference between the salary of puisne judges and the 75th percentile income for self-employed lawyers in private practice. From 2006 to 2010, the gap between the two groups has increased. The gap between the salary of puisne judges and the 75th percentile income of lawyers in private practice in Canada increased from 28.9% in 2006 to 31.3% in 2010. The gap between the salary of pusine judges and the 75th percentile income of lawyers in the top ten CMAs was even greater, increasing from 40.9% in 2006 to 42% in 2010.

[table appears on next page]

Table 5
Comparison of salary of puisne judges
with net professional income of self-employed lawyers at the 75th percentile
(Net professional income ≥ $60 000, Age group – 44-56)
Canada and Top 10 CMAs, 2006 to 2010

	75th Percentile Income		Salary of Puisne Judges		
	Canada	Top ten CMAs	$	% Difference from	
				Canada	Top ten CMAs
2006	$343,985	$414,078	$244,700	-28.9%	-40.9%
2007	$368,458	$451,031	$252,000	-31.6%	-44.1%
2008	$366,577	$446,370	$260,000	-29.1%	-41.8%
2009	$380,087	$452,906	$267,200	-29.7%	-41.0%
2010	$395,274	$468,261	$271,400	-31.3%	-42.0%

157. The above observation is valid even when the value of the judicial annuity is taken into account.[119] Table 6 below shows that even with an annuity value of 22.5%, the compensation of puisne judges is 15.9% less than the 75th percentile income for lawyers in private practice in Canada, and 29% less than lawyers in private practice in the top ten CMAs. Once again, the gap is even greater if income splitting is considered.

[table appears on next page]

[119] The actuarial expert retained by the McLennan Commission concluded that the value of the judicial annuity is 22.5% of salary (McLennan Report at 58). The Block Commission omitted mentioning this in discussing the Government's proposed figure of 24.6 % (Block Report at para 113).

Table 6
Comparison of salary of puisne judges with judicial annuity of 22.5% with net professional income of self-employed lawyers at the 75th percentile
(Net professional income ≥ $60 000, Age group – 44-56)
Canada and Top 10 CMAs, 2006 to 2010

	75th Percentile Income		Salary of Puisne Judges + value of judicial annuity of 22.5%		
	Canada	Top 10 CMAs	$	% Difference from	
				Canada	Top 10 CMAs
2006	$343,985	$414,078	$299,758	-12.9%	-27.6%
2007	$368,458	$451,031	$308,700	-16.2%	-31.6%
2008	$366,577	$446,370	$318,500	-13.1%	-28.6%
2009	$380,087	$452,906	$327,320	-13.9%	-27.7%
2010	$395,274	$468,261	$332,465	-15.9%	-29.0%

158. This remuneration differential can have serious implications for future success in attracting outstanding candidates to the Bench, one of the criteria set out in s. 26(1.1) of the *Judges Act*. As the Block Commission commented,

> there is no certainty that if the income spread between lawyers in private practice and judges were to increase markedly that the Government would continue to be successful in attracting outstanding candidates to the Bench from amongst the senior members of the Bar in Canada.[120]

c) Salary increases sought by the judiciary

159. **For the reasons set out below, the Association and Council seek the adoption by this Commission of the Block Commission's salary recommendation for puisne judges as of April 1, 2012, and urge this Commission to recommend that it be implemented, on a prospective basis, effective April 1, 2012 and thereafter. Accordingly, the**

[120] Block Report at para. 116.

judiciary seeks the following salary increases: 4.9% as of April 1, 2012, inclusive of statutory indexing, and 2.0% as of each of April 1, 2013, 2014, and 2015, the latter three years exclusive of statutory indexing.

160. There has been no increase to the salary of puisne judges since April 1, 2004, exclusive of statutory indexing. The current salary of puisne judges is $281,100. As of April 1, 2012, it is estimated that it will be $287,200 by virtue of statutory indexing currently estimated at 2.2%.[121] If the proposed 4.9% increase is implemented, total remuneration would be $294,800 as of April 1, 2012. As of April 1, 2011, one year earlier, the midpoint of the DM-3 salary range plus half eligible at-risk was $303,249.50. In the 2010-2011 fiscal year, the overall average DM-3 compensation was $331,557. Accordingly, the increases sought by the Association and Council will not eliminate the gap between puisne judges and DM-3s, but will serve to reduce it.

161. The CRA data regarding self-employed lawyers canvassed above amply support the recommendations sought by the Association and Council.

162. The Government, through the Minister's response in 2009 to the Block Report, declined to implement the Block Commission's recommendations at that time on the basis that "significant deterioration of economic conditions in Canada and the financial position of the Government" made it "unreasonable" to implement the recommendations. Importantly, none of the recommendations was otherwise rejected. The Government's response specifically left open the implementation of the Block Commission's recommendations, even before the appointment of the members of the next Commission, should economic circumstances improve.

163. The economic conditions in Canada have improved and the outlook is better now than what it was in February 2009, the time of the Minister's response. Aside from invoking economic circumstances, the Government presented no substantive objection to the Block Commission's recommendations.

---

[121] This figure is based on current IAI projections by the Office of the Superintendent of Financial Institutions.

164. Since economic conditions have improved in comparison with the situation at the time of the Government's response, the Association and Council ask that the Block Commission's recommendations be adopted by this Commission as its own recommendations. As stated above, the prevailing economic conditions in Canada do not present an obstacle to the implementation of the recommendations of the Block Commission.

165. The compensation of DM-3s has continued to increase despite the legislative restraints in force since 2009. Both the Government and the Stephenson Committee considered it appropriate to continue to increase the compensation level of these senior members of the federal public service through performance pay, in spite of the challenging economic circumstances that Canada was facing.

166. In 2009-2010, the overall average at-risk pay for DM-3s was $66,183, up from $64,670 the previous year. In 2010-2011 overall average at-risk pay went down to $60,371 but was almost completely offset by an increase in the average base salary for DM-3s, from $265,683 in 2009-2010 to $271,186 in 2010-2011.[122]

167. Regarding self-employed lawyers, as seen above, there remains a significant gap with the salary of puisne judges. For the Bench to continue to be attractive for outstanding candidates, the gap between the income of self-employed lawyers and puisne judges should not be allowed to persist.

168. The following table illustrates the impact on federally appointed judges of the non-implementation of the Block Commission's salary recommendation as of April 2008:

[table appears on next page]

[122] $66,183 - $60,371 = $5,812, versus $271,186 - $265,683 = $5,503.

Table 7
Impact of non-implementation of Block Commission salary recommendations as of April 2008

Year	Block Commission recommendation[123]	Actual salaries of puisne judges	Annual difference between Block Commission recommendation and actual salaries
April 1, 2008	$264,300	$260,000	$4,300
April 1, 2009	$276,900	$267,200	$9,700
April 1, 2010	$286,800	$271,400	$15,400
April 1, 2011	$302,800	$281,100	$21,700
Total loss 2008-2011			$51,100 per judge

169. The Association and Council submit that the criteria under s. 26(1.1) of the *Judges Act* justify an implementation, albeit delayed for four years, of the Block Commission's salary recommendation as of April 1, 2012. The analysis, conclusions, and recommendations of the Block Commission are as valid now as when they were made. Accordingly, the salary for a puisne judge as of April 1, 2012 should be $294,800.

Recommendation sought:

The salary of puisne judges should be increased by 4.9% (inclusive of statutory indexing) as of April 1, 2012, resulting in a salary of $294,800. Thereafter, the salary of puisne judges should be increased by 2.0% (exclusive of statutory indexing) as of each of April 1, 2013, 2014, and 2015.

[123] The calculation does not take into account the appellate differential.

2. Salary differentials among judges

170. The Block Commission recommended salary differentials between puisne judges, chief justices and associate chief justices, puisne judges of the Supreme Court of Canada, and the Chief Justice of Canada, as well as between puisne appellate judges and puisne trial judges. Consistent with the principled approach set out in these submissions, the Association and the Council submit that this Commission should adopt and call for prompt implementation of the following recommendations of the Block Commission:

Recommendations sought

A salary differential should be paid to puisne judges appointed to provincial courts of appeal and to the Federal Court of Appeal, and the salary of puisne judges appointed to these courts should be set at 3% more than the salary of puisne judges of provincial superior courts and the Federal Court effective April 1, 2012.

Salary differentials should continue to be paid to the Chief Justice of Canada, the puisne judges of the Supreme Court of Canada, the chief justices and associate chief justices of the trial courts and courts of appeal. The salary differential for the chief justices and associate chief justices of the trial courts should be established in relation to the salary of the puisne judges appointed to the trial courts. The salary differential for the chief justices and associate chief justices of the courts of appeal should be established in relation to the salary of the puisne judges appointed to the courts of appeal. The salary differential of the Chief Justice of Canada and the puisne judges of the Supreme Court of Canada should be established in relation to the salaries of puisne judges appointed to the courts of appeal.

3. Other substantive recommendations

171. Appendix "A" sets out all of the recommendations made by the Block Commission, including those unrelated to salary.

172. All of these recommendations were carefully considered by the Block Commission, are supported by compelling reasons, remain appropriate, and are consistent with the criteria of s. 26(1.1) of the *Judges Act*. None was specifically rejected by the Government in its response. For the same reasons as set out above, the Association and Council submit that

those recommendations should be endorsed by this Commission, and recommended for prompt implementation.

Recommendations sought

The *Judges Act* be amended so that senior judges of the territorial courts who elect supernumerary status receive the same treatment with regard to their retirement annuities as do chief justices who elect supernumerary status.

Should measures be taken by the territorial governments to allow a senior judge, not yet entitled to elect supernumerary status, to elect to cease to perform his or her duties as a senior judge and to perform only the duties of a puisne judge and receive the salary of a puisne judge, the *Judges Act* be amended so that the retirement annuity of a former senior judge is based on the salary of a senior judge.

The *Judges Act* be amended so that a judge appointed to a court of appeal who subsequently accepts appointment to a trial court, and receives the salary of a trial court judge, receives a retirement annuity based on the salary of his or her former position as a judge of a court of appeal.

Effective April 1, 2012, representational allowances be increased to $22,500 for the Chief Justice of Canada, $15,000 for the Chief Justice of the Federal Court of Appeal and the chief justices of the provinces, $12,000 for puisne judges of the Supreme Court of Canada, $12,000 for other chief justices and associate chief justices and senior judges, and $6,000 for Ontario regional senior judges.

The senior family law judge in Ontario be paid the same representational allowance as the other regional senior judges in the province.

The Commission endorses and urges the parties to take account of Recommendations 12 to 15 of the Block Commission.

C. COSTS

173. Under s. 26.3(2) of the *Judges Act*, the judiciary is entitled to reimbursement of two-thirds of the costs arising from its participation in the Commission's inquiry. The Block Commission recommended that this remain unchanged. Accordingly, the Association and Council does not at this time seek to change this provision.

Recommendations sought

The provisions in the *Judges Act* relating to the reimbursement of the judiciary's costs for participating in the Quadrennial Commission process remain unchanged.

V. SUMMARY OF RECOMMENDATIONS SOUGHT

174. The following is a summary of the recommendations sought by the judiciary:

1. **The Commission reiterates the importance of respecting all aspects of the Commission process in order to preserve confidence in and maintain the effectiveness of the Commission process.**

2. **The salary of puisne judges should be increased by 4.9% (inclusive of statutory indexing) as of April 1, 2012, resulting in a salary of $294,800. Thereafter, the salary of puisne judges should be increased by 2.0% (exclusive of statutory indexing) as of each of April 1, 2013, 2014, and 2015.**

3. **A salary differential should be paid to puisne judges appointed to provincial courts of appeal and to the Federal Court of Appeal, and the salary of puisne judges appointed to these courts should be set at 3% more than the salary of puisne judges of provincial superior courts and the Federal Court effective April 1, 2012.**

4. **Salary differentials should continue to be paid to the Chief Justice of Canada, the puisne judges of the Supreme Court of Canada, the chief justices and associate chief justices of the trial courts and courts of appeal. The salary differential for the chief justices and associate chief justices of the trial courts should be established in relation to the salary of the puisne judges appointed to the trial courts. The salary differential for the chief justices and associate chief justices of the courts of appeal should be established in relation to the salary of the puisne judges appointed to the courts of appeal. The salary differential of the Chief Justice of Canada and the puisne judges of the Supreme Court of Canada should be established in relation to the salaries of puisne judges appointed to the courts of appeal.**

5. **The *Judges Act* be amended so that senior judges of the territorial courts who elect supernumerary status receive the same treatment with regard to their retirement annuities as do chief justices who elect supernumerary status.**

6. **Should measures be taken by the territorial governments to allow a senior judge, not yet entitled to elect supernumerary status, to elect to cease to perform his or her duties as a senior judge and to perform only the duties of a puisne judge and receive the salary of a puisne judge, the *Judges Act* be amended so that the retirement annuity of a former senior judge is based on the salary of a senior judge.**

7. **The *Judges Act* be amended so that a judge appointed to a court of appeal who subsequently accepts appointment to a trial court, and receives the salary of a trial court judge, receives a retirement annuity based on the salary of his or her former position as a judge of a court of appeal.**

8. **Effective April 1, 2012, representational allowances be increased to $22,500 for the Chief Justice of Canada, $15,000 for the Chief Justice of the Federal Court of Appeal and the chief justices of the provinces, $12,000 for puisne judges of the Supreme Court of Canada, $12,000 for other chief justices and associate chief justices and senior judges, and $6,000 for Ontario regional senior judges.**

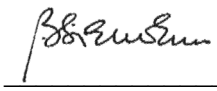
9. **The senior family law judge in Ontario be paid the same representational allowance as the other regional senior judges in the province.**

10. **The Commission endorses and urges the parties to take account of Recommendations 12 to 15 of the Block Commission.**

11. **The provisions in the *Judges Act* relating to the reimbursement of the judiciary's costs for participating in the Quadrennial Commission process remain unchanged.**

The whole respectfully submitted on behalf of the
Canadian Superior Courts Judges Association and the Canadian Judicial Council

Montréal, December 20, 2011



Pierre Bienvenu, Ad. E.
Azim Hussain
Norton Rose OR LLP
1 Place Ville Marie
Suite 2500
Montréal, Québec H3B 1R1

APPENDIX "A"

Recommendations made by the Block Commission

Recommendation 1

The Commission recommends that:

The salary of *puisne* judges should be set at $264,300 effective April 1, 2008, inclusive of statutory indexing effective that date; and

The salary of *puisne* judges should be increased by statutory indexing effective April 1, 2009, 2010 and 2011 plus an additional 2% effective each of those dates, not compounded (*i.e.*, the previous year's salary should be multiplied by the sum of the statutory indexing and 2%).

Recommendation 2

The Commission recommends that:

Interest should not be paid on retroactive salary adjustments to federally-appointed judges.

Recommendation 3

The Commission recommends that:

A salary differential should be paid to *puisne* judges appointed to provincial courts of appeal and to the Federal Court of Appeal, and that the salary of *puisne* judges appointed to these courts should be set at $272,200 effective April 1, 2008, inclusive of statutory indexing effective that date.

Recommendation 4

The Commission recommends that:

Salary differentials should continue to be paid to the Chief Justice of Canada, the justices of the Supreme Court of Canada, the chief justices and associate chief justices of the trial courts and courts of appeal;

The salary differential for the chief justices and associate chief justices of the trial courts should be established in relation to the salary of the *puisne* judges appointed to the trial courts;

The salary differential for the chief justices and associate chief justices of the courts of appeal should be established in relation to the salary of the *puisne* judges appointed to the courts of appeal;

The salary differential of the Chief Justice of Canada and the justices of the Supreme Court of Canada should be established in relation to the salaries of *puisne* judges appointed to the courts of appeal; and

The salaries should be set as of April 1, 2008 inclusive of statutory indexing, at the following levels:

Supreme Court of Canada

Chief Justice of Canada	$349,800
Justices	$323,800

Federal Court of Appeal and Courts of Appeal

Chief Justices	$298,300
Associate Chief Justices	$298,300

Federal Court, Tax Court and Trial Courts

Chief Justices	$289,700
Associate Chief Justices	$289,700

Recommendation 5

The Commission recommends that:

The *Judges Act* be amended so that senior judges of the territorial courts who elect supernumerary status receive the same treatment with regard to their retirement annuities as do chief justices who elect supernumerary status.

Recommendation 6

The Commission recommends that:

Should measures be taken by the territorial governments to allow a senior judge, not yet entitled to elect supernumerary status, to elect to cease to perform his or her duties as a senior judge and to perform only the duties of a *puisne* judge and receive the salary of a *puisne* judge, that the *Judges Act* be amended so that the retirement annuity of a former senior judge is based on the salary of a senior judge.

Recommendation 7

The Commission recommends that:

The *Judges Act* be amended so that a judge appointed to a court of appeal who subsequently accepts appointment to a trial court, and receives the salary of a trial court

judge, receives a retirement annuity based on the salary of his or her former position as a judge of a court of appeal.

Recommendation 8

The Commission recommends that:

A retirement removal allowance should not be paid to judges of the provincial superior courts and courts of appeal.

Recommendation 9

The Commission recommends that:

Effective April 1, 2008, representational allowances be increased to $22,500 for the Chief Justice of Canada, $15,000 for the Chief Justice of the Federal Court of Appeal and the chief justices of the provinces, $12,000 for *puisne* judges of the Supreme Court of Canada, $12,000 for other chief justices and associate chief justices and senior judges, and $6,000 for Ontario regional senior judges.

Recommendation 10

The Commission recommends that:

The senior family law judge in Ontario be paid the same representational allowance as the other regional senior judges in the province.

Recommendation 11

The Commission recommends that:

The provisions in the *Judges Act* relating to the reimbursement of the judiciary's costs for participating in the Quadrennial Commission process remain unchanged.

Recommendation 12

The Commission recommends that:

Should a future Commission not include a member with experience in the area of compensation, the Commission strongly consider engaging external expert assistance in this area.

Recommendation 13

The Commission recommends that:

While continuity of Commission staffing cannot always be ensured, processes be established to allow for the efficient transfer of institutional knowledge between departing and incoming Commission staff.

Recommendation 14

The Commission recommends that:

Where consensus has emerged around a particular issue during a previous Commission inquiry, in the absence of demonstrated change, such Consensus be taken into account by the Commission and reflected in the submissions of the parties.

Recommendation 15

The Commission recommends that:

The parties consider ways of streamlining the materials produced for future Commissions and, where production of a data set and accompanying analysis is warranted, that such work be undertaken cooperatively.

APPENDIX "B"

General Government Net Debt (% of GDP)

	2010	2011	2012	2013	2014	2015	2016
Canada	32.2%	35.1%	36.3%	36.3%	35.5%	34.4%	33.0 %
France	76.0%	79.2%	81.1%	81.8%	81.3%	80.1%	78.3 %
Germany	53.8%	54.7%	54.7%	53.9%	52.6%	52.6%	52.6 %
Italy	99.6%	100.6 %	100.4 %	100.2 %	100.0 %	99.5%	98.9 %
Japan	117.5 %	127.8 %	135.1 %	142.4 %	149.6 %	156.8%	163.9 %
United Kingdom	69.4%	75.1%	78.6%	79.5%	78.7%	76.5%	73.5 %
United States	64.8%	72.4%	76.7%	79.3%	81.3%	83.4%	85.7 %

Source: IMF, "Fiscal Monitor April 2011", p128.

APPENDIX "C"

General Government Balance (% of GDP)

	2010	2011	2012	2013	2014	2015	2016
Canada	-5.5%	-4.6%	-2.8%	-1.6%	-0.7%	-0.2%	0.0%
France	-7.0%	-5.8%	-4.9%	-4.0%	-3.0%	-2.2%	-1.5%
Germany	-3.3%	-2.3%	-1.5%	-1.0%	-0.4%	-0.1%	0.0%
Italy	-4.5%	-4.3%	-3.5%	-3.3%	-3.2%	-3.1%	-2.9%
Japan	-9.5%	-10.0%	-8.4%	-7.8%	-7.4%	-7.4%	-7.4%
United Kingdom	-10.4%	-8.6%	-6.9%	-5.0%	-3.4%	-2.3%	-1.3%
United States	-10.6%	-10.8%	-7.5%	-5.7%	-5.2%	-5.5%	-6.0%

Source: IMF, "Fiscal Monitor April 2011", p121.