

JUDICIAL COMPENSATION AND BENEFITS COMMISSION

FINAL SUBMISSIONS

of the

CANADIAN SUPERIOR COURTS JUDGES ASSOCIATION

and the

CANADIAN JUDICIAL COUNCIL

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March 31, 2004

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I. INTRODUCTION

1. The following submissions of the Canadian Superior Courts Judges Association (the “**Association**”) and the Canadian Judicial Council (the “**Council**”) constitute the final submissions of the judiciary to this Judicial Compensation and Benefits Commission (the “**Commission**”), except as concerns the Government of Canada’s proposal to provide a mechanism for the division of judicial annuity following conjugal breakdown.
2. The latter proposal has been the subject of extensive consultations between the Government and the judiciary since the public hearing before this Commission in early February 2004. These consultations are ongoing at the time of writing and the parties have therefore agreed to report to the Commission on this subject under separate cover.

II. JUDICIAL SALARIES

A. THE ECONOMIC CONDITIONS CRITERION OF S. 26(1.1)(a) OF THE *JUDGES ACT*

3. The Canadian economy is strong, Canada’s fiscal position is sound and continued economic growth is anticipated. Such is the evidence before the Commission.¹
4. In the federal Government’s budget presented on March 23, 2004, the Minister of Finance predicted a budgetary surplus of \$4 billion for fiscal years 2004-05 and 2005-06, thus allowing the Government to provide a contingency reserve of \$3 billion as well as an allocation for economic prudence of \$1 billion for *each* of these years.² That is a \$1 billion improvement over the projections made in *The*

¹ Submissions of the Association and Council dated December 15, 2003 (“**Judiciary’s First Written Submissions**”) at para. 34; Submissions of the Association and Council dated January 23, 2004 (“**Judiciary’s Second Written Submissions**”) at paras. 3-10; Transcript of the Commission’s Public Hearings of February 3, 2004 (“**Day One**”) and February 4, 2004 (“**Day Two**”), Day One at 45-48.

² *The Budget in Brief 2004*, extract from the Department of Finance’s website, attached hereto under Tab 1 at 7.

Economic and Fiscal Update of November 3, 2003 filed with the Submission of the Government of Canada dated December 15, 2003.³

5. The Minister of Finance anticipates real GDP to rise by 2.7% and 3.3% in 2004 and 2005 respectively, a significant improvement over the 1.7% GDP growth estimated for 2003. Furthermore, private-sector forecasts are even more optimistic. On March 24, 2004, the Royal Bank of Canada predicted that Canada's GDP would rise by 3.2% in 2004 and 3.6% in 2005.⁴
6. The only possible conclusion to be drawn from the evidence in respect of the economic conditions criterion of s. 26(1.1)(a) is that it does not stand in the way of a recommendation proposing that judicial salaries be increased, effective April 1, 2004, to a level that this Commission determines would otherwise be adequate, applying the relevant comparators in the light of the other s. 26(1.1) criteria.

B. THE COMPARATORS

1. The need to preserve and enhance available comparators

7. In the course of the public hearings, the Commission expressed concern at the limited number of comparators for judicial salaries. The Commission has also indicated that it is considering making recommendations to address the paucity of comprehensive information with respect to the comparators available to the Commission to assist with its deliberations, and it has invited the parties to comment on this situation.⁵

³ Department of Finance, *The Economic and Fiscal Update* (3 November 2003) at 95, Appendix 4 to the Submission of the Government of Canada dated December 15, 2003 ("Government's First Written Submissions").

⁴ *La Presse* (25 March 2004) at 6, attached hereto under Tab 2.

⁵ Letter dated February 17, 2004 from Mr. Roderick McLennan, Q.C. to Messrs. Pierre Bienvenu and Paul Vickery.

8. In their written submissions⁶ as well as in oral argument at the public hearings,⁷ the Association and Council have expressed serious concern with the Government's attempts to undermine the value of long-accepted comparators, including the incomes of private practitioners and the remuneration of the most senior deputy ministers in the federal Government. The Association and Council have argued that the parties should embrace and nurture these comparators so as to guard against a politicized and arbitrary process of judicial salary determination.⁸
9. The federal judiciary therefore shares the concern expressed by the Commission and acknowledges the difficulty with the position in which this Commission finds itself. The Association and Council make the following observations with a view to assisting the Commission in formulating appropriate recommendations in respect of this situation.
10. With respect to judges' salaries in other jurisdictions, the Association and Council cited in their first submissions the Drouin Commission's opinion that consideration of this comparator was dependent upon the availability of a comprehensive study taking into account such factors as the process for setting judicial salaries in other jurisdictions, the nature and extent of the responsibilities of the judges in jurisdictions said to be comparable to Canada, and the overall total compensation scheme applicable to judges in those jurisdictions.⁹ The Association and Council not having undertaken such a study, they did not seek to rely on this comparator for the purposes of this Commission. This comparator, however, remains relevant and may be useful in the future.

⁶ Judiciary's Second Written Submissions at paras. 11-15 and 17-34.

⁷ Day One at 11-13.

⁸ Judiciary's Second Written Submissions at para. 19; Day One at 12-13, 53.

⁹ Judiciary's First Written Submissions at para. 47.

11. As regards the incomes of lawyers in the private practice of law in Canada, long considered an important comparator in the fixing of judicial salaries, the Association and Council advised the Commission at the preliminary meeting of October 29, 2003, that they intended to provide the Commission with the same information and analyses on the subject as had been filed with the Drouin Commission. Regrettably, as the Commission now knows, significant problems were found in the data provided to the parties by CCRA, such that the Government of Canada itself stated that it has “reservations about the reliability of the raw data generated by CCRA”.¹⁰
12. The remaining comparator – the remuneration of the most senior level of deputy ministers– has, for many years, proven to be the most important and most reliable comparator. The Association and Council review below the reasons why, in the context of this Commission, this comparator should be relied upon and form the basis of the Commission’s salary recommendation. For present purposes, the Association and Council can only reiterate their profound disagreement with the Government of Canada’s attempts to undermine the value of this comparator.¹¹
13. The Association and Council submit that the proper course for this Commission to take in the present circumstances is to base its salary recommendations on the information available, and in light of the submissions made by the principal parties concerning the traditional comparators discussed before this Commission. If the Commission forms the opinion that the time has come to reconsider one or more of the traditional comparators, or to introduce new ones, fairness to the parties requires that this be noted in the Commission’s report and that the parties be offered an opportunity to reflect upon alternatives for consideration by the next Quadrennial Commission.

¹⁰ Government of Canada’s Reply Submission (Second Part) at para.12.

¹¹ *Supra* notes 6-8.

14. In order to prevent future Commissions from being faced with inadequate or unreliable information regarding one or more of the comparators discussed by the parties, the Association and Council submit that the Commission should recommend that Quadrennial Commissions be provided with sufficient resources to conduct surveys, at regular interval, not just of incomes in the private sector, but perhaps also of judicial salaries in other jurisdictions. A recommendation to that effect was made by the Drouin Commission,¹² but unfortunately was never implemented.
15. A recommendation should also be made that the principal parties work together from the outset of future Quadrennial Commissions in the procurement and analysis of private practitioners' income data from CCRA so as to avoid any apprehension of privileged access by one party to the data or the body producing the data.

2. Private-sector incomes

16. In their submissions dated February 27, 2004 regarding income trends in the private sector, the Association and Council stated that they would address in the judiciary's final submissions the use that can be made of the private-sector income data currently before the Commission.¹³
17. The report filed by Sack Goldblatt Mitchell on behalf of the Association and Council dated January 30, 2004 ("**First Sack Report**") concluded that between 1997 and 2004, the national average of lawyers' incomes within the comparator population and at the 75th percentile can be estimated to have increased by approximately 14%, to \$262,962.¹⁴ In the largest CMA, Toronto, the estimated

¹² *Drouin Report* (2000) at 116-117.

¹³ Submissions of the Canadian Superior Courts Judges Association and Canadian Judicial Council in Reply to the Government of Canada's Submissions and Report on Income Trends in the Private Sector, February 27, 2004 at para. 14.

¹⁴ First Sack Report at paras. 3 and 56.

increase is of 18%, to \$406,899, while other CMAs range between \$222,047 (in the case of the Quebec CMA) to \$397,813 (in the Calgary CMA).¹⁵ In light of the observation by Morneau Sobeco that an adjustment of 7.1% (instead of the 6.8 % used by Sack Goldblatt Mitchell) would be justified to project the 2000 salary data to April 1, 2004, each of these figures would need to be adjusted upward.¹⁶

18. Unfortunately, the data for the year 2000 was presented by CCRA in such a way that it could not be symmetrically compared with the 1997 data provided to the Drouin Commission. As for the data for the year 2001, the First and Second Sack Reports concluded that it was seriously flawed and contained “logical and other inconsistencies”,¹⁷ an opinion that appears to be shared by the Commission’s expert.¹⁸
19. The Government also filed two reports on this topic, the first on January 30, 2004 (“**Western’s First Report**”), the second on February 27, 2004 (“**Western’s Second Report**”).
20. Western’s First Report, in the opinion of the judiciary’s experts and, apparently, of the Commission’s expert as well,¹⁹ suffers from two serious deficiencies. First, the data relied upon, the year 2001 data, is unreliable. Secondly, even assuming reliability of the data, the analysis is flawed.²⁰ Western’s First Report asserted

¹⁵ First Sack Report at para. 56 and Table 7 at 27. Please note that Table 7 of the First Sack Report contains the following typographical error: the figure for “All Canada” under “Column C” should read “\$255,055”.

¹⁶ Letter dated March 24, 2004 from Mr. André Sauvé, of Morneau Sobeco, to the Commission (“**Morneau Sobeco’s Letter**”) at 7-8.

¹⁷ First Sack Report at para. 4 and Second Sack Report at para. 2.

¹⁸ See Morneau Sobeco’s Letter at 5: “... we find it difficult to attach more credibility to the 2001 results than to the 2000 and 1997 results”.

¹⁹ See Morneau Sobeco’s Letter which, on nearly all issues in dispute between the two principal parties’ respective experts, expresses agreement with the opinion of the judiciary’s experts.

²⁰ Reply to the Report of the Western Compensation and Benefits Consultants, dated February 27, 2004 (“**Second Sack Report**”) at para. 2.

that the 2001 data is reliable.²¹ Quite incoherently, this report was filed under cover of a Reply Submission (Second Part) from the Government stating that the data generated by CCRA is unreliable and of limited usefulness.²²

21. Western's Second Report simply repeated the flawed explanations offered in the first report for the discrepancy between the year 2001 data and the 1997 data relied upon by the Drouin Commission. Moreover, Western's Second Report continued unjustifiably to break with the methodology used by the Drouin Commission.
22. The two principal parties filed their most recent submissions on private-sector income concurrently, on February 27, 2004. Most of the methodological issues raised by the Government in its submission of February 27, 2004 have already been addressed in the Association and Council's Reply Submissions and the Second Sack Report of the same date, and are reviewed in Morneau Sobeco's Letter.
23. A salient feature that can be discerned from the evidence on the private-sector comparator is that, apart from the problems with the 2001 data, there is a general increase in private-sector income between 1997 and 2001. This indeed corresponds with the anecdotal knowledge of practitioners in the private sector.

3. The remuneration of the most senior level of deputy ministers

24. The remuneration of the most senior level of deputy ministers within the Government of Canada is a comparator whose relevance and value to the salary recommendation to be made by the Commission are unassailable. Moreover, it is a particularly important comparator where, as in the present circumstances and through no fault of the principal parties, the information concerning other traditional comparators is either unreliable or non-existent.

²¹ Western's First Report at 4.

²² Government of Canada's Reply Submission (Second Part) at para.12.

25. Much has been said about this comparator in the written submissions of the Association and Council and their counsel's oral argument at the hearing. The Association and Council incorporate these submissions by reference.²³ Only a few key points need to be emphasized:

- The Government of Canada has not even sought to argue that a change in circumstances would justify this Commission to place less reliance on this comparator than have past Commissions. In any event, there has been in the submission of the Association and Council no material change in circumstances since the Government of Canada, in a carefully considered position paper tabled before the Crawford Commission,²⁴ advocated the replacement of the so-called "1975 equivalence" standard (itself considered to provide parity with DM-3s)²⁵ in favour of the principle of rough equivalence to the DM-3 midpoint.
- Past Commissions have also noted, and the Government of Canada has pointed out, that rough parity between judges and top level public servants finds support in the comparative salary figures from a number of other common-law democracies.²⁶
- Before this Commission, the Government has endorsed the objective of rough equivalence with the DM-3 midpoint,²⁷ even though it has sought to

²³ Judiciary's First Written Submissions at paras. 55-70; Judiciary Second Written Submissions at paras. 17-34; Day One at 11-17, 24-25, 31-33, 36-38, 53-90, 95-98, 101-103, 112-123, 134-135; Day Two at 390-406.

²⁴ Department of Justice, *1975 Equivalence - An Explanation* (October 1992) ("**Government's Position Paper**").

²⁵ *Ibid.* at 5.

²⁶ See *Drouin Report* (2000) at 31-32; *Crawford Report* (1993) at 11; *Government's Position Paper* at 6.

²⁷ See Government's First Written Submissions at para. 40: "Since implementation of the Drouin Commission recommendations, judicial salaries have in fact maintained a rough equivalence to the DM-3 midpoint, as set out in Appendix 9 [*sic*; should be 11]". See also para. 42: "The Government recognizes that the \$2,000 annual increment recommended by the Drouin Commission has been effective in maintaining rough equivalency between judicial and DM-3 salaries ..." The judiciary has

relitigate the treatment of at-risk pay in calculating the remuneration of DM-3s. Indeed, the Government has not challenged directly the pedigree or relevance of the DM-3 comparator, which it had itself proposed in 1993.

- As noted by past Commissions, the principle of rough equivalence with the remuneration of DM-3s is a reflection of what the market expects to pay individuals of outstanding character and ability, attributes shared by these deputy ministers and judges. There are numerous signs that the remuneration of “top people”, whether in business, government, academia or the private practice of law, has indeed increased comparatively.
- To address a point raised by the Commission during the hearing,²⁸ the DM-3 position is not attained as a matter of course, after a given number of years of service, but only as a function of merit. In the words of Jacques Bourgault and Stéphane Dion:

Within the three deputy minister levels, the DM2 level is attained automatically after one year of service while the DM3 level is attained only by those whose performance is of very high quality or who are responsible for one of the most important departments.²⁹

26. Similarly, only some of the senior jurists who aspire to the Bench fall within the category of “outstanding” candidates contemplated by s. 29(1.1)(c). It would therefore be wholly inappropriate to compare judicial salaries with the DM-2 level or with the whole DM class. There is no uniformity of qualities and skills across the class and it would be untenable to compare superior court judges with a variegated class of public servants, some of whom have risen through the ranks

shown these assertions to be incorrect if the total remuneration of DM-3s is taken into account (as opposed to their base salary only): see Judiciary’s Second Written Submissions at paras. 24 and 27.

²⁸ Day One at 116ff.

²⁹ “How Should the Performance of Senior Officials be Appraised? The Response from Federal Deputy Ministers-Summary” (Canadian Centre for Management Development, 1993) at 1, attached hereto under Tab 3.

because of their superior capabilities, while others have been held back because of their limitations.

27. On a strict application of the traditional comparator, judicial salaries should be compared with the remuneration of DM-4s. However, given the recent creation of this position and the fact that this new level is in a state of transition, the Association and Council have stated that they are prepared to forego comparison with DM-4s for the time being, without prejudice to their right to invoke it in appearances before future Commissions.
28. The Government of Canada has proposed that judicial salaries be increased, as of April 1, 2004, to \$226,300, and that they be further increased by \$2,000 in each of the following three years (2005-06, 2006-07, 2007-08), in addition to annual indexing.³⁰
29. As stated in the Judiciary's First Written Submissions, a comparison with the midpoint of the remuneration of DM-3s justifies a judicial salary as of April 1, 2004, of \$253,880.³¹ The judiciary has calculated that in order for judicial salaries to keep pace with the remuneration of DM-3s, the subsequent annual increments should be of \$3,000, instead of \$2,000.
30. The principal parties' agreement that annual increases are a desirable feature of the salary recommendations to be made by this Commission is a tacit recognition of the fact that the statutory indexing provided in s. 25 of the *Judges Act* is insufficient for judicial salaries to track increases in the remuneration of DM-3s. For example, the percentage of the Industrial Aggregate applicable for the period commencing on April 1, 2004 is 1.3%.

³⁰ Government's First Written Submissions at para. 42.

³¹ See Judiciary's First Written Submissions at para. 29. See also footnote 12 of and Appendix A to the Judiciary's First Written Submissions.

31. It is noted that the amount of \$253,880 has been calculated using the midpoint of the base salary of DM-3s as of April 1, 2003 and average at-risk pay percentage for the period April 1, 2002 to March 31, 2003. It can be safely assumed that DM-3s will enjoy a further base salary increase as of April 1, 2004, and, therefore, that their remuneration will thereafter be higher than the judicial salary sought by the judiciary.
32. In response to a question posed by the Commission, the Government of Canada has stated that there is no “automatic” salary increase that will take effect on April 1, 2004 for DMs.³² While that may well be correct, experience shows that one can confidently assume that when the Government considers the recommendations to be issued by the Advisory Committee on Senior Level Retention and Compensation, following its meeting of January 30, 2004, DM-3s will in fact be awarded a salary increase as of April 1, 2004.³³
33. The Association and Council learned, by reading the Government’s letter of March 23, 2004 addressed to the Commission’s Executive Director, that on February 13 and March 9, 2004, the Commission sought information from the Government about individuals paid by the Government of Canada who might be considered to possess the same qualities as those expected of judges. It appears that among those individuals were possible appointees in the GCQ-10 category, the highest classification level of the quasi-judicial group of Governor-in-Council appointees.
34. The Government has advised that there are no administrative-tribunal positions classified at the GCQ-10 level, but that certain positions on certain administrative

³² Letter dated March 23, 2004 from Mr. Paul Vickery to Ms. Jeanne Ruest, attached hereto under Tab 4 at 1.

³³ See Judiciary’s First Written Submissions at Appendix A.

tribunals such as the CRTC, the Canadian Transportation Agency and the National Energy Board are classified at the GCQ-9 level.³⁴

35. The Association and Council do not know whether the Commission has sought information about these GCQ classifications with a view to considering these classifications as a possible new comparator for judicial salaries. Nor do the Association and Council know what information the Commission possesses concerning these GCQ classifications, regarding which neither of the principal parties adduced evidence or presented submissions to the Commission.
36. Be that as it may, the Association and Council submit that far more information would be needed about the profile of the individuals who occupy functions within these classifications for the Commission to place any reliance on their remuneration level or otherwise consider them as a possible comparator for judicial salaries.

C. CONCLUSION AS TO THE APPROPRIATE SALARY RECOMMENDATION

37. The Association and Council reiterate that it is the relevant comparators that should serve to determine adequate judicial salaries, not the reverse. This Commission must resist the Government's implied invitation to discard comparators that have served this process well merely because they support a salary increase that seems not to accord with the Government's opinion of adequacy at the present time.
38. No valid reason has been advanced to justify to the Commission why the relevance and value of the traditional comparators should be questioned, particularly the midpoint of the remuneration of the most senior level of deputy ministers. Moreover, there is at present no alternative to this comparator which enjoys the support of the principal parties, or which the latter have had an opportunity to examine and comment upon.

³⁴ Letter dated March 23, 2004 from Mr. Paul Vickery to Ms. Jeanne Ruest, Tab 4 at 5.

39. In the present circumstances, it is appropriate for this Commission to make a salary recommendation that will close the gap that persists between judicial salaries and the midpoint of the remuneration of DM-3s.

III. OTHER ITEMS

A. RELOCATION EXPENSES

40. In their initial Submissions, the Association and Council asked that judges be reimbursed for relocation expenses incurred prior to but in anticipation of retirement or resignation from office. An example was given where a judge would incur expenses two years prior to retirement, and therefore would not be eligible for reimbursement since the expenses have to be incurred after retirement.
41. The Government, in its Reply Submission, mistook the example to mean that the Association and Council were asking for a two-year window prior to retirement. What the Association and Council propose is a two-year window prior to eligibility for retirement. Accordingly, it is submitted that the Commission should recommend that the following be added as subsection 40(1.3) to the *Judges Act*:

Notwithstanding paragraphs 40 (1) (c) and (e), claims under these paragraphs for expenses made in anticipation of a relocation but prior to retirement or resignation from office shall be reimbursable by a removal allowance, provided that:

- (i) these anticipated expenses are incurred no earlier than two years prior to the judge becoming eligible to retire, and
- (ii) the removal allowance is claimed within two years of retirement.

B. RETIREMENT AGE OF JUDGES OF THE SUPREME COURT OF CANADA

42. In response to the Chairman's letter of February 17, 2004, the Association and Council stated their position on this subject, including the judiciary's response to the reasons advanced by the Government to oppose the recommendation sought by the Association and Council.³⁵

³⁵ Letter dated February 20, 2004 from Mr. Pierre Bienvenu to Mr. Roderick McLennan, Q.C.

C. COSTS

43. It was argued in the Judiciary's First Written Submissions³⁶ and insisted upon at the oral hearing³⁷ that it is unfair for the Government's costs for participating in the Commission's process to be defrayed by public funds in their entirety, while the judiciary would have to bear a full half of its costs.
44. It is necessary to emphasize the inequity created by the Government having at its disposal any number of lawyers, advisors, and experts, all to be paid from the public purse, while it argues that the judiciary should be contented with only 50% of its costs. It cannot be that a process intended to safeguard judicial independence be so skewed as far as the distribution of costs to be borne is concerned. The public is the beneficiary of judicial independence, yet the judiciary is being made to privately finance the process.
45. In order to illustrate the disparity between the resources of the Government and that of federally appointed judges, one need only consider that there were no less than six lawyers directly involved in this process on behalf of the Government (Paul Vickery, Linda Wall, Karen Cuddy, Monika Lozinska, Catherine McKinnon and Richard Ellis), while only three (L. Yves Fortier, Q.C., Pierre Bienvenu, and Azim Hussain) were directly involved on behalf of the judiciary.
46. The division of judicial pension upon conjugal breakdown offers a good example of an issue raised by the Government in the context of the quadrennial process, the consideration of which by the judiciary's legal counsel and pension experts benefits the Government yet is a source of significant costs to the judiciary.
47. The judiciary takes strong exception to the Government's argument that the Drouin Commission's formula of an 80% reimbursement would "afford the representatives of the judiciary a largely unchecked discretion in deciding what

³⁶ At paras. 109-114.

³⁷ Day 1 at 135-141.

costs would be incurred”.³⁸ Under s. 26.3(3) of the *Judges Act*, the amount of costs reimbursable to the judiciary is determined by a prothonotary of the Federal Court; the same mechanism can be used whether the reimbursable portion is 50% or 80%. In point of fact, it is the Government, not the judiciary, that enjoys a completely unchecked discretion in incurring costs in this process.

48. The Government pointed to the fact that the judiciary did not challenge the Government’s variance of the Drouin Commission recommendations.³⁹ There is absolutely no merit to this argument in view of the fact that the Drouin Commission’s recommendation on the issue of costs explicitly stated that it would apply “only to this quadrennial review” and that future Commissions would be free to determine the costs issue as they see fit.⁴⁰ The Government cannot seek to petrify its response to the Drouin Commission’s recommendation as to costs through a statutory amendment, and consider the matter closed simply because the judiciary did not challenge that amendment. Just as the recommendation was time-limited, so too were the Government’s response and variance of it.

The whole respectfully submitted.

Montréal, March 31, 2004.



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³⁸ Reply Submission of the Government of Canada dated January 23, 2004 at para. 73.

³⁹ *Ibid.*

⁴⁰ *Drouin Report* (2000) at 110.

TAB 1

The Budget in Brief 2004

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The Budget in Brief 2004

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Budget 2004—New Agenda for Achievement

Introduction

Canadians are united by a belief in equality of opportunity. It is a principle that defines us as a nation, a cause that unites us as a community and a goal that defines this government.

In the Speech from the Throne, the Government set out an ambitious agenda to improve the standard of living and quality of life of all Canadians. Its three themes are to strengthen Canada's social foundations, build a dynamic 21st century economy and restore Canada's influence in the world.

Just as Canadians are united by the belief in equality of opportunity, so too are the three themes of the Government's agenda. For it is by giving all Canadians the opportunity to succeed, to reach their potential, and to build a better life for themselves, their families and their communities that Canada will succeed and be a model for the world.

At the core of this budget is the recognition that to achieve our goal of better lives for all Canadians, our social and economic policies must be mutually reinforcing. Quite simply, there can be no strong economy without a secure society, and no secure society without a strong economy to support it. And underlying this must be the prudence of balanced budgets that comes with living within our means.

Therefore, this budget is built on the foundation of creating opportunity for individuals. It recognizes that opportunity has many dimensions and can be defined in many ways.

The measures in this budget have been designed to meet the test of what Canadians believe are our priorities as a nation. They focus on the importance of health care, learning, communities, the economy and our place in the world, each of which is crucial to the creation of opportunity for each and every Canadian. Each is a step down the path towards a Canada of opportunity and achievement.

This budget lays the foundation for that greater Canada, a nation

where individual opportunity translates into economic achievement and social justice.

Highlights

Economic Developments and Prospects

- During 2003 economic activity in Canada slowed because of a series of unforeseen shocks. As a result, real gross domestic product (GDP) expanded only 1.7 per cent for the year, well below the 3.2 per cent expected by private sector economists at the time of the 2003 budget.
- Nevertheless, strength in domestic demand through most of the year, supported by low interest rates, helped offset the weakness in exports.
- Canada's labour market strengthened in the latter part of 2003. Since December 2002 the economy has created 271,900 new jobs, all full-time.
- Solid domestic fundamentals, low interest rates and a more favourable global environment, particularly a stronger U.S. economy, are expected to support more robust Canadian economic growth this year.
- Private sector economists expect the Canadian economy to grow by an average of 2.7 per cent in 2004, significantly better than last year but still well below the 3.5 per cent forecast at the time of the 2003 budget.
- Private sector economists expect a further pickup in growth to 3.3 per cent in 2005.
- There are two main risks to the Canadian economic outlook:
 - The uncertainty surrounding the economic impact of the rapid rise of the Canadian dollar.
 - The sustainability of the U.S. economic recovery.

Sound Financial Management

- The seventh consecutive balanced budget is projected for 2003–04, the first time since Confederation, and balanced budgets or better are forecast for 2004–05 and 2005–06.
- The \$3-billion Contingency Reserve is maintained, and \$1 billion in economic prudence restored, for 2004–05 and 2005–06.
- The federal debt-to-GDP ratio is expected to fall to 42 per cent in 2003–04, down from its peak of 68.4 per cent in 1995–96. The ratio is forecast to decline to 38 per cent by 2005–06.
- To be in a better position to deal with pressures related to an aging population, the Government has set a new objective of reducing the federal debt-to-GDP ratio to 25 per cent within 10 years.
- In this budget program expenses are projected to grow an average of 4.4 per cent in 2004–05 and 2005–06, roughly in line with projected growth in the economy.

- As part of instituting a new management approach in government, the budget implements \$1 billion in annual reallocation from existing spending in 2004–05 and beyond to meet Budget 2003 commitments.
- As well, the Cabinet Committee on Expenditure Review is examining all programs to identify at least \$3 billion annually in savings within four years for reinvestment in the priorities of Canadians while improving government management.
- Furthermore, a new plan for better spending management and oversight is being introduced under the leadership of the President of the Treasury Board, which includes re-establishing the Office of the Comptroller General of Canada, strengthening departmental comptrollers and internal audits.
- The Government intends to sell its remaining shares in Petro-Canada in 2004–05.

Moving Forward on the Priorities of Canadians

The Importance of Health

- Confirmation of an additional \$2 billion for the provinces and territories for health, bringing to \$36.8 billion the funding provided under the February 2003 First Ministers' Accord on Health Care Renewal.
- Establishment of a new Canada Public Health Agency as a focal point for disease control and emergency response.
- Immediate funding of \$665 million in this fiscal year and over the next two years to improve Canada's readiness to deal with public health emergencies. This is in addition to the approximately \$400 million to be transferred from Health Canada to the new Canada Public Health Agency.
- Improved tax fairness for Canadians with disabilities and caregivers.
- Increased funding of \$30 million annually to support employment assistance programming delivered by provinces and territories for Canadians with disabilities.

The Importance of Learning

- Introduction of a new Canada Learning Bond, which will provide up to \$2,000 for children in low-income families born after 2003 for post-secondary education.
- Enhancement of the Canada Education Savings Grant matching rate for low- and middle-income families.
- Introduction of a new grant of up to \$3,000 for first-year, post-secondary dependent students from low-income families.
- Introduction of an up-front annual grant of up to \$2,000 for post-secondary students with disabilities.
- Increase in the ceiling for Canada Student Loans to \$210 a week

from \$165.

- Increase in the income thresholds used for determining eligibility for student loan interest relief.
- Increase in the maximum amount of debt reduction for students facing financial difficulty to \$26,000 from \$20,000.
- Extension of the education tax credit to employees who pursue career-related studies at their own expense.
- Investment of \$125 million over five years for the Aboriginal Human Resources Development Strategy.
- Doubling to \$50 million support for the Urban Aboriginal Strategy.

The Importance of Knowledge and Commercialization

- Annual increase of \$90 million to Canada's three federal granting councils.
- Increase of \$20 million annually to help offset the indirect costs of research by universities and research hospitals.
- An additional \$60 million to Genome Canada to strengthen its research.
- Additional funding to improve the capacity for commercialization at universities, hospitals and other research facilities.
- New funding of \$270 million set aside to enhance access to venture capital financing for companies turning promising research into new products and services.
- Acceleration by one year, from 2006 to 2005, of the increase in the small business deduction limit to \$300,000.
- Increase in the capital cost allowance rate for computer equipment to 45 per cent from 30 per cent, and in the rate for broadband, Internet and other data network infrastructure equipment to 30 per cent from 20 per cent.

The Importance of Communities

- \$7 billion in GST/HST relief for municipalities of all sizes over the next 10 years.
- Acceleration of the \$1-billion Municipal Rural Infrastructure Fund, with spending over the next 5 years instead of 10.
- A stronger voice for municipalities in the federal decisions that affect them.
- New funding of \$15 million a year in support of enhanced language training to reduce labour market barriers faced by immigrants.
- Increased funding for the Urban Aboriginal Strategy.

- Funding of \$4 billion over 10 years to clean up contaminated sites.
- New funding (\$1 billion over 7 years) to support the development and commercialization of new environmental technologies, reflecting the sale of Petro-Canada.
- More effective tax rules for registered charities and ongoing support for the Voluntary Sector Initiative.
- Increased support for community-based economic development and the social economy.

The Importance of Canada's Relationship to the World

- An additional \$250 million to cover the costs of Canada's participation in peacekeeping missions in Afghanistan and the fight against terrorism.
- An additional \$50 million for Canada's participation in the peacekeeping force in Haiti.
- Additional capital funding in 2005–06 to advance priority capital investments.
- Exemption from tax of the income earned by Canadian Forces personnel and police on high-risk international missions.
- Commitment of a further \$605 million to address security issues.
- A reduction in the Air Travellers Security Charge.
- An increase of \$248 million, or 8 per cent, in international assistance in 2005–06.

Table 1
Spending and Revenue Initiatives: 2004 Budget

	2003–04	2004–05	2005–06
	(millions of dollars)		
Importance of Health			
Canada Health and Social Transfer cash supplement	2,000		
Strengthening Canada's public health system	500	80	85
Inclusion of persons with disabilities		50.5	57.9
Total	2,500	131	143
Importance of Learning			
Caring for Canada's children		91	93
Helping families plan ahead for post-secondary education		105	302
Encouraging lifelong learning		25	40
Economic opportunities for Aboriginal Canadians		30	31
Total		251	466
Importance of Knowledge and			

Commercialization			
Building research foundations		170	115
Commercialization of research		20	20
Venture capital financing ¹		(255)	(15)
Investing in offshore development		7	7
Small business and entrepreneurship		1	24.5
Strengthening the Canadian tax advantage		95	200
Total		293	367
Importance of Communities			
New Deal for communities: first steps	100	605	655
The community-based and non-profit sector		15	15
Supporting the social economy		35	43
Environment and sustainable development		205	10
Other initiatives in support of communities		52.5	53
Total	100	913	776
Importance of Canada's Relationship to the World			
Defence		277	85
Security reserve		115	115
International assistance ²			248
Canada Corps		5	10
Total		397	458
Other			
Agriculture assistance	1,000		
Equalization and Territorial Formula Financing renewal		195	202
Other		37.5	100
Total	1,000	233	302
Total: spending and revenue initiatives	3,600	2,216	2,511
<i>of which:</i>			
Spending initiatives	3,500	1,486	1,621
Revenue initiatives	100	730	890

¹ Federal support will be in the form of an equity injection, i.e. the purchase of shares. As a result, there will be no budgetary impact.

² In the 2003 budget, the International Assistance Envelope was increased by 8 per cent in both 2003–04 and 2004–05.

Table 2
Summary Statement of Transactions
(Including March 2004 Budget Measures)

	Actual			
	2002–03	2003–04	2004–05	2005–06
	(billions of dollars)			
Budgetary transactions				
Budgetary revenues	177.6	181.1	187.2	195.8
Total expenses				

Program expenses	-133.3	-143.4	-147.9	-156.1
Public debt charges	-37.3	-35.8	-35.4	-35.7
Total expenses	-170.6	-179.2	-183.3	-191.8
Underlying budgetary surplus	7.0	1.9	4.0	4.0
Prudence				
Contingency Reserve		1.9	3.0	3.0
Economic prudence			1.0	1.0
Total		1.9	4.0	4.0
Budgetary balance	7.0	0.0	0.0	0.0
Federal debt (accumulated deficit)				
Balanced budget (no debt reduction)	510.6	510.6	510.6	510.6
Apply Contingency Reserve to debt	510.6	508.7	505.7	502.7
Non-budgetary transactions	0.7	2.0	-4.5	-4.0
Financial source/requirement	7.6	2.0	-4.5	-4.0
Per cent of GDP				
Budgetary revenues	15.4	14.9	14.8	14.7
Program expenses	11.5	11.8	11.7	11.7
Public debt charges	3.2	2.9	2.8	2.7
Budgetary balance	0.6	0.2	0.3	0.3
Federal debt (accumulated deficit)				
Balanced budget (no debt reduction)	44.2	42.0	40.4	38.4
Apply Contingency Reserve to debt	44.2	41.9	40.0	37.8
Other				
Public debt charges as a share of revenues	21.0	19.8	18.9	18.2
Annual per cent change				
Budgetary revenues	3.4	2.0	3.4	4.6
Program expenses	6.6	7.6	3.1	5.6
Total expenses	3.6	5.0	2.3	4.7

Note: Numbers may not add due to rounding.

Last Updated: 2004-03-23



TAB 2

La Presse (25 March 2004)

La Royale est nettement plus optimiste que Goodale

PRESSE CANADIENNE

TORONTO — La Banque Royale entrevoit l'avenir immédiat avec plus d'optimisme que le ministre fédéral des Finances, Ralph Goodale.

Dans ses prévisions rendues publiques hier, la plus importante banque canadienne estime que l'économie du pays va croître au rythme de 3,2 % en 2004, une performance nettement supérieure à celle de 2,7 % envisagée par le ministre des Finances dans son budget de la veille. Pour 2005, la Banque Royale prévoit une croissance de 3,6 %, par rapport à 3,3 % dans le cas de M. Goodale.

« L'an dernier, nous avons constaté tout le ressort de l'économie canadienne, qui a progressé de 1,7 % malgré plusieurs chocs négatifs », a expliqué John Anania, économiste en chef adjoint à la Banque Royale.

« Cette année, nous nous attendons à ce que l'économie progresse en profitant de certaines des possibilités que présentent une devise forte, de faibles taux d'intérêt et l'amélioration de l'économie mondiale. » Selon la Royale, la croissance dépendra entièrement de la demande intérieure.

Quant au commerce extérieur, il aura peu d'impact. Même si la forte demande en provenance des États-Unis devrait atténuer l'incidence de la montée du dollar canadien pour les exportateurs, la hausse des importations en provenance de pays à faibles coûts de production devrait se traduire par une plus vive concurrence pour les entreprises canadiennes.

La Banque Royale prévoit également que le dollar canadien poursuivra son ascension par rapport au billet vert américain, pour atteindre les 80 cents US d'ici la fin de 2004 et se maintenir à ce niveau pendant le reste de 2005. Les économistes de la Royale estiment de plus que la Ban-

que du Canada réduira à nouveau son taux d'intérêt directeur en 2004 pour soutenir l'économie intérieure, mais que des baisses subséquentes ne seront pas nécessaires en raison notamment du redémarrage des investissements industriels. La banque centrale a déjà réduit son taux directeur d'un quart de point, le 2 mars, pour le porter à 2,25 %. La prochaine annonce concernant les taux d'intérêt est prévue pour le 13 avril.

En ce qui concerne l'économie américaine, la Royale prévoit une croissance de 5,0 % en 2004 et de 3,5 % en 2005. Elle croit de plus que la Réserve fédérale va commencer à relever ses taux d'intérêt en septembre (son taux directeur se situe à 1,0 % depuis le mois de juin), à moins que le marché du travail ne demeure faible au printemps, dans lequel cas la hausse sera vraisemblablement reportée en 2005 en raison de la campagne présidentielle de novembre.

TAB 3

J. Bourgault & S. Dion, "How Should the Performance of Senior Officials be Appraised?
The Response from Federal Deputy Ministers-Summary"
(Canadian Centre for Management Development, 1993)

**HOW SHOULD THE PERFORMANCE
OF SENIOR OFFICIALS
BE APPRAISED?**

**THE RESPONSE
FROM FEDERAL DEPUTY MINISTERS**

*Jacques Bourgault
and
Stéphane Dion*

Summary



HOW SHOULD THE PERFORMANCE OF SENIOR OFFICIALS BE APPRAISED? THE RESPONSE FROM FEDERAL DEPUTY MINISTERS

by Jacques Bourgault and Stéphane Dion

Summary

INTRODUCTION

This study of the performance appraisal system for federal deputy ministers is based on semi-structured interviews with 21 deputy ministers held between January and April 1991. The study describes the present appraisal system and highlights the system's innovative characteristics. It also offers an analysis of the level of satisfaction among deputy ministers with the system's fairness and usefulness and concludes with 17 proposals which are intended to improve a system which is already viewed positively within the deputy minister community.

AN INNOVATIVE SYSTEM

The performance appraisal system for federal deputy ministers has been in existence since the early 1970s. No other central government has provided its most senior officials with as comprehensive a system of annual performance rating and corresponding financial bonuses. The Canadian appraisal system for federal deputy ministers is also innovative in that it relies on the opinions of both the deputy minister's peers and his or her superior, and that it implies, as well, an unusual exchange of information between ministers and deputy ministers.

Deputy ministers form a community of peers, although there is an implicit hierarchy in that some departments are more prestigious and more coveted than others.

Within the three deputy minister levels, the DM2 level is attained automatically after one year of service while the DM3 level is attained only by those whose performance is of very high quality or who are responsible for one of the most important departments.

The final decision on deputy ministers' ratings and bonuses is made by the Prime Minister on the recommendation of the Clerk of the Privy Council. DMs' peers participate in the process at an earlier stage through the Committee of Senior Officials (COSO) which provides the Clerk with opinions on the performance of each colleague. COSO is comprised of ex officio members who belong to COSO by virtue of the positions they occupy (the Clerk, the Associate Secretary to the Cabinet, the Chair of the Public Service Commission, the Secretary of the Treasury Board and the Under-Secretary of State for External Affairs) and non-permanent members selected by the Clerk for their competence, experience, and the language, department, etc. they represent. As membership on COSO is limited, the majority of DMs have not been invited to serve on this committee.

The appraisal system corresponds to the government's fiscal year. In April and May deputies are asked to provide a brief summary of their objectives for the next year and at year end they may write a two- or three-page self-assessment. In the last two months of the year the heads of the Privy Council Office, Public Service Commission, Treasury Board Secretariat and

the Office of the Comptroller General prepare written comments on the performance of each DM, and at this same time the Clerk of the Privy Council and the Associate Secretary to the Cabinet seek the opinion of each Minister on the performance of their respective deputies.

All of these documents and opinions are submitted to COSO, which meets in camera in April to assign one of five possible ratings to each DM: *outstanding, superior, fully satisfactory, satisfactory, or unsatisfactory*. The Clerk or the Associate Secretary informs each deputy minister of COSO's rating and the Clerk then transmits his or her opinions on these ratings to the Prime Minister, who makes the final decisions and has these communicated to DMs, in principle by July 1.

LEVEL OF SATISFACTION

Overall, deputy ministers are satisfied with the appraisal system. Of the 77 appraisals performed on the 21 deputies interviewed for this study, barely four cases of dissatisfaction were reported. Satisfaction with the ratings received is clearly quite high, although poor appraisals, not surprisingly, lower satisfaction with the system; among those who are satisfied, some admit that their positive opinion results solely from their having received good ratings.

Of the seven DMs who found the system "somewhat useful", five felt that the current process, despite its good points, needs improvement. The other two doubted the usefulness of any performance appraisal system for deputies while the one DM who found the system useless did so on the basis of inadequate feedback.

Satisfaction with COSO is high but not as high as it is with the overall system. There is considerable doubt whether COSO members have the ability to take proper account of the special characteristics of each

department. Two DMs would prefer to have colleagues who are not COSO members consulted during appraisals; however, several others felt that such a reform would make the process cumbersome.

There is a positive correlation between rank and COSO membership on the one hand, and satisfaction on the other: DM3s are more likely to be satisfied with their appraisals and with COSO than are DM2s. Similarly, former and current members of COSO indicate a higher level of satisfaction with past appraisals, the usefulness of the system and the role of COSO than do non-members.

Deputy ministers are very circumspect about guessing the reactions of their colleagues to the appraisal system; those who are themselves satisfied with the system may suspect that some of their peers are not, a perception that arises mainly from an assumption that their colleagues may have received ratings lower than their own.

Deputy ministers are not concerned with how their appraisal system is perceived outside their community. They believe that the Clerk of the Privy Council finds the system satisfactory and tend to think that Ministers share this view. They feel that other executives either have no opinion on the system or share the views of their respective DMs, while the lower ranks of the public service are most likely unaware of the system's existence.

In summary, most DMs are satisfied with their appraisal system although the level of satisfaction is linked to seniority and COSO membership. There is a false perception held by DMs that their colleagues are less satisfied than they themselves are. The two main grounds for dissatisfaction are the difficulty of recognizing the particular characteristics of each department and the quality of the feedback received.

THE SYSTEM'S FAIRNESS

The purpose of several questions was to measure whether deputy ministers consider their performance appraisal system fair and equitable. Ten aspects of the system were selected for specific comment, as follows:

Changes to Priorities

When asked whether changes to priorities that occur during the year could make the appraisal system unfair, deputy ministers responded that they believe COSO members are aware that priorities inevitably may change, and furthermore, that the self-appraisal allows each deputy to explain how the environment has changed over the year.

Confidentiality

Confidentiality has always been respected to the full satisfaction of deputy ministers. The only question giving rise to some uncertainty has to do with whether Ministers should be informed of their DM's appraisal. While two deputies said they always inform their Minister of the results, it is surprising that most do not know whether the Minister is informed or not and admit to giving little thought to the question. This may reflect the fact that the management of senior officials' careers is exclusively an administrative concern under the Whitehall model of government.

Consistency over Time

DMs believe there are few variations in the performance appraisal process over time and those that do occur are not viewed as making the system unfair.

Deputy Minister's Image

DMs do not have the impression that their performance appraisals are based on a comprehensive, ready-made image, whether good or poor.

Influence of COSO Members

Most DMs believe that COSO members do not abuse their position as appraisers in order to exercise undue pressure on their colleagues or on Ministers.

Consideration Given to Seniority

It is recognized that seniority will inevitably enter into the appraisal system, but that COSO members are properly aware of the risk that some DMs may be inclined to rest on their service records.

Influence of Minister

DMs believe that the opinions of their respective Ministers have considerable influence on their performance appraisals. They also agree that their Ministers' relative competence, flexibility and image have an impact on them and affect their ability to carry out their duties and appear at their best. While most DMs feel that COSO succeeds in giving appropriate weight to Ministers' opinions, some doubt remains: four deputies suggested that COSO is unable to distinguish between DMs' difficulties of their own making and those attributable to their Ministers.

Equality of Treatment

Although most deputies agree that everyone is judged according to the same rigorous standards, three DMs voiced concern that a difference in treatment is created because some DMs are closer than others to the Clerk or Associate Secretary. They feel that those who know the Clerk well and the inner workings of the PCO have more opportunity to appear at their best before the evaluation and to obtain better feedback afterwards.

Particular Characteristics of Departments

The concern most strongly expressed about the fairness of the system has to do with the consideration given to the particular

characteristics of each department, even though it is recognized that COSO has representation from different types of departments. One fear expressed is that the opinions of COSO members may be distorted by the relative significance of events affecting individual departments and even by inevitable departmental rivalries. The issue of proximity to the PCO is also important here. Because of the nature of their departments or because of immediate political pressures, some DMs are projected into the centre of action while others remain in the shadows. Deputy ministers are not unanimous as to how COSO should take this situation into consideration, nor are they certain of COSO's policy on this issue.

Self-Appraisals

Self-appraisal is a popular option among deputy ministers. Sixteen of the 21 DMs availed themselves of this opportunity in 1989/90. Despite this, there is doubt as to how much influence self-appraisals should have and whether they are worthwhile. In fact, because of COSO's time limitations, self-appraisals are not really discussed. As self-appraisal is perceived as a factor in fairness, it is felt that providing it as an option while not having it taken into consideration is certain to create dissatisfaction.

Conclusion

Although the general reaction is positive, some deputy ministers express doubts about the fairness of some aspects of the system. There is a clear correlation between the level of satisfaction on the one hand, and rank and COSO membership on the other: DM2s and non-COSO members are more likely to have doubts about the consideration given to the particular characteristics of each department, the equality of treatment and the fair assessment of the influence of the Minister. The more deputy ministers are integrated into the system, the fairer they find it.

Transparency of the system also influences deputies' perceptions of fairness. Those who claim the system lacks transparency and claim not to know how or by whom decisions are made are more likely to be dissatisfied with the degree of importance attached to self-appraisals, the consideration given to each department's particular characteristics and equality of treatment. The persistent feeling of being kept in the dark is due, in part, to the lack of effort by DMs themselves to seek information about the system. Essentially, however, the system's lack of transparency is due to the inadequacy of the feedback that deputies receive. Feedback considered inadequate creates a lack of transparency that, in turn, fosters an impression of unfairness.

THE SYSTEM'S USEFULNESS

To be useful, a performance appraisal system should improve performance. In the longer term, usefulness in career planning, concept of the work and training is also sought. The system's usefulness must also be judged in terms of its financial costs and its costs in terms of the time and energy required of appraisers and those being appraised. It is clear from the interviews that deputy ministers find their performance appraisal system useful, although there were some suggestions for improvement.

Ratings, Bonuses and Improving Performance

The ratings and bonuses attributed by the appraisal process are not a source of obvious dissatisfaction among deputy ministers. There has been some overuse of the best ratings, and along with their overuse there has been a change in the significance attributed to them. Of the five rating categories, DMs find only the *outstanding* and *superior* ratings acceptable. The search for a good rating remains a motivating force, regardless of how widely the best ratings are distributed. These symbolic rewards are

viewed as far more important by deputy ministers than the bonuses attached to them.

Career Planning

From the point of view of career planning, the performance appraisal system is considered useful. Seventeen of the deputy ministers feel that their past appraisals have had a positive impact on the subsequent evolution of their careers, although there is some desire that the link between appraisals and careers be made more explicit. Deputies would like to have the opportunity to discuss the future at their annual feedback meetings with the Clerk.

Concept of the Work

Deputy ministers are not unanimous about the usefulness of stating formal objectives: some consider them very useful, while others find them illusory. The statement of objectives should, in principle, be written in collaboration with the Minister; it is somewhat astonishing, therefore, that according to five DMs their Minister is not consulted in this process.

One deputy minister did stress that the statement of objectives offers the opportunity for DMs to note the particular characteristics of their department; however, a number find it difficult to state objectives that are both comprehensive in content and verifiable within one year.

One of the priorities of the performance appraisal system is to ensure that in all cases deputy ministers do not limit their vision to their own departments. The interviews make clear that the appraisal system is a major factor in making DMs aware of their collective responsibility toward their colleagues and the government. Reflecting the concerns of the central agencies, avoiding perpetual boundary wars with other departments, communicating information instead of managing in isolation, placing the broader interests of the government above one's department's, and fully integrating

oneself into the community of DMs are all conditions for obtaining a positive appraisal by COSO. As noted by two DMs, this level of solidarity may have a negative impact on creativity and innovation.

None of the deputy ministers mentioned service to the public as a criterion emphasized by the appraisal system. As well, management of human resources within departments is the criterion of which COSO appraisers were most likely to be unaware.

Training and Feedback

As noted previously, lack of adequate feedback is a major problem within the performance appraisal system. There is no correlation between seniority or COSO membership and satisfaction with feedback received. While more senior DMs noted an improvement in recent years, feedback has been a problem since the program's inception.

In practice, feedback is provided at the meeting with the Clerk or Associate Secretary. That this meeting does not always take place is a continuing source of frustration. When the meeting does occur, DMs feel that the Clerk and Associate Secretary are as open-minded as possible. Difficulties arise, though, from a variety of sources. Three DMs mentioned being inhibited by self-censorship, hesitating to confide in the Clerk, or to ask for advice or help for fear of appearing weak and incompetent. Two deputies felt the discussion was overly general and desired more information about the improvements central agencies wish to see or to have access to the agencies' written opinions on their performance. Two deputies would prefer more time being spent on discussing future objectives. Most deputy ministers feel that the final decision is made before the meeting, not after it. Finally, there is often a lengthy delay between the end of the appraisal period and the time deputies receive their feedback and final ratings. The

feedback meeting is supposed to occur in mid-May with ratings received by July 1. In fact, most DMs wait until the end of December before receiving their results, a delay that effectively blurs the link between performance and appraisal.

The delays in receiving feedback are reflective of the considerable time and effort the system demands of senior officials. The system's cumbersome nature could only be dramatically altered by the removal of COSO from the process. COSO, however, is perceived by deputy ministers as influential in the process (particularly through the presence of the heads of central agencies), although not quite as influential as the Clerk or individual Ministers. As well, it is perceived as a decision-making body and not simply as a screen. The elimination of COSO from the system is not proposed as a solution. Deputy ministers would like the system to allow the time and attention necessary for a fair and useful appraisal of their performance but are strongly resistant to making the process more unwieldy.

RECOMMENDATIONS

An analysis of DMs' responses to the appraisal system has led to a series of proposals which are intended to strengthen the system without adding to its complexity.

Diversity of Departments

It is important to develop and adhere to procedures that address one of the performance appraisal system's main weaknesses, its limited ability to take account of the diversity of departments, without making the system more cumbersome.

PROPOSAL 1: *That the statement of objectives and the self-appraisal remain optional and not become compulsory until their usefulness is more clearly felt.*

PROPOSAL 2: *That it be even more clearly specified that the statement of objectives and the self-appraisal be limited to two pages each if they are to be read.*

PROPOSAL 3: *That the statement of objectives and the self-appraisals be given directly to COSO members at their offices a few days before the appraisal meeting; if confidentiality requirements make this impossible, that the documents be presented orally by the Associate Secretary to the Cabinet during the meeting before each case is studied by COSO.*

PROPOSAL 4: *That the statement of objectives and the self-appraisal be discussed during the feedback meeting.*

Leadership and Human Resources Management

Seventeen of the 19 deputy ministers who were asked this question were favourable, on the whole, to adding review by subordinates to the appraisal process. This would give greater prominence to the system's ability to promote leadership and human resources management.

PROPOSAL 5: *That appraisal by immediate subordinates be tried out in a few departments whose DMs volunteer to test the project. The objective will be to verify whether it is appropriate to gather the opinions of Assistant DMs and Directors General on the performance of their respective DMs in order to add these opinions to the current sources of information used for the DMs annual appraisals.*

PROPOSAL 6: *That in order to examine the appropriateness of the reform, the opinions of Assistant DMs and Directors General should be gathered using a formal questionnaire which includes an explicit guarantee of confidentiality and is administered by the Privy Council Office.*

PROPOSAL 7: *That the questionnaire given to Assistant DMs and Directors General should deal exclusively with questions of leadership, internal communication and human resources management.*

PROPOSAL 8: *That each DM have the option of adding to the questionnaire to be given to their subordinates some questions that they feel reflect the particular characteristics of their department.*

PROPOSAL 9: *That each DM receive the results of the questionnaire in a statistical form that maintains confidentiality of the opinions expressed.*

Achieving the Objective of High Quality Feedback

Fifteen of 21 DMs are dissatisfied with the feedback they receive. The following proposals are intended to strengthen performance by improving the quality of the feedback given to deputy ministers.

PROPOSAL 10: *That once the rating has been attributed, a feedback meeting with the Clerk of the Privy Council or the Associate Secretary to the Cabinet be systematically arranged for each DM.*

PROPOSAL 11: *That the feedback meeting actually take place during the three months following the end of the appraisal year.*

PROPOSAL 12: *That the main objective of the feedback meeting be to use the appraisal of the year just ended to improve performance in future years.*

PROPOSAL 13: *That one part of the feedback meeting be devoted to an exchange of opinions on the DM's career and on how to make the best use of that person's skills.*

Other Proposals

PROPOSAL 14: *That the statement of objectives written by DMs be discussed with their respective Ministers.*

PROPOSAL 15: *That the term of office of non-permanent COSO members be limited to two years, unless there are considerations related to the exceptional experience or competence of certain members.*

PROPOSAL 16: *That a list of roles, qualities and special considerations be prepared and distributed to COSO members, to serve as a checklist during performance appraisals.*

PROPOSAL 17: *That the list of roles, qualities and special considerations be distributed to all DMs so that they will better understand the basis of their performance appraisal.*

TAB 4

Letter dated March 23, 2004 from Mr. Paul Vickery to Ms. Jeanne Ruest



Department of Justice
Canada
Bank of Canada Building
234 Wellington Street
10th Floor, East Tower, Rm. 1001
Ottawa, Ontario
K1A 0H8

Ministère de la Justice
Canada

Telephone: (613) 948-1483
Fax: (613) 941-5879

March 23, 2004

Our File Number: 2-351477

BY COURIER

Ms. Jeanne Ruest
Judicial Compensation & Benefits Commission
9th Floor – 99 Metcalfe Street
Ottawa, ON
K1A 1E3

Dear Ms. Ruest:

Re: Requests for Information by Quadrennial Commission on Judicial Compensation

Further to your email communication of March 9, 2004, please find below the Government's responses to Questions 1 through 5 posed by the Commission. A partial response is offered at this time in relation to Question 6. The Government is hopeful of completing its response to Question 6 in the near future, once it has received additional information and/or documents from the RCMP and the Canadian Forces.

1. DM-3s: It is our understanding that DM-3s will be receiving an increase in salary on April 1, 2004. The Commissioners ask:

(a) What is the amount of the increase?

There is no "automatic" salary increase that will take effect on April 1, 2004 for any level of Deputy Minister. (There is no statutory provision for Deputy Ministers similar to s. 25 of the *Judges Act*, which provides an "annual adjustment" [statutory indexing] to judicial salaries on April 1.)

The salaries of Executives and Deputy Ministers are established after the Government receives and considers the periodic reports of the Advisory Committee on Senior Level Retention and Compensation.

A meeting of the Advisory Committee on Senior Level Retention and Compensation was held on January 30, 2004. The possibility of awarding a salary range increase to senior public servants, including Deputy Ministers, was discussed. However, recommendations have yet to be formulated and submitted to the Government for consideration. It would be premature at this time to speculate as to what percentage increase, if any, would be approved by the Government.

Canada

- (b) What will be the new salary range? If DM-3 compensation is one of a number of comparators, this figure constitutes vital information...**

Please see the response to Question 1(a) above.

2. The March 1 to March 7 issue of the Hill Times contains an article on payments to be made to MP's pensions over 7 years. The article contains 2 paragraphs that raise questions for the Commissioners. The 7th paragraph states 'Mr. Desroches said the increase is due to a number of factors, perhaps the biggest being the regular salary boost MPs have enjoyed since they gave themselves a major pay hike in 2001. The legislation tied MPs salaries to that of the chief justice of the Supreme Court of Canada whose pay is adjusted yearly on April 1.' The Commissioners ask:

- (a) Which legislation are they referring to and which section(s) tie MPs' salary to the salary of the Chief Justice of the Supreme Court of Canada?**

In June 2001, Parliament passed Bill C-28, which amended portions of the *Parliament of Canada Act* (which establishes the salaries of Parliamentarians) and the *Salaries Act* (which establishes the additional salaries of the Prime Minister and other Ministers). Bill C-28 implemented the recommendations of the May 2001 report of the Commission to Review Allowances of Members of Parliament in the House of Commons (the "Lumley Report"). A copy of the Lumley Report is attached.

Section 54.1 of the *Parliament of Canada Act* establishes that, effective January 1, 2001, the "remuneration reference amount" is equal to the annual salary of the Chief Justice of Canada. Subsection 55(12) provides that, effective January 1, 2001 the annual sessional allowance for members of the Senate is 50% of the "remuneration reference amount" minus \$25,000 and the annual sessional allowance for members of the House of Commons is 50% of the "remuneration reference amount".

Sections 60-62 of the *Parliament of Canada Act* establish annual salaries for specific members of the House of Commons and Senate (such as the Speaker, chairs of committees, Parliamentary Secretary and Leader of the Opposition). Again, these are expressed as percentages of the "remuneration reference amount". These amounts are in addition to the annual sessional allowance referred to above.

Subsection 4(1) of the *Salaries Act* provides that, effective January 1, 2001, the annual salary of the Prime Minister is 50% of the "remuneration reference amount". Subsection 4(2) provides that, effective January 1, 2001, the annual salary of the listed Ministers is 24% of the "remuneration reference amount". These amounts are in addition to the annual sessional allowance referred to above.

(b) Does the legislation also tie the salary of the MPs to that of the PM of Canada?

As explained above, the salary of M.P.s and of the Prime Minister are calculated as a percentage of the salary of the Chief Justice of Canada.

(c) Are any other salaries tied to judicial salaries by legislation, and if so, which salaries and by which legislation?

The following individuals have their salaries linked to the salary of federally appointed judges:

- Auditor General – receives the same salary as a puisne judge of the Supreme Court of Canada (*Auditor General Act*, R.S.C. 1985, c.A-17, s. 4(1))
- Information Commissioner – receives the same salary as a puisne judge of the Federal Court of Canada (*Access to Information Act*, R.S.C. 1985, c. A-1, s. 55(2))
- Privacy Commissioner – receives the same salary as a puisne judge of the Federal Court of Canada (*Privacy Act*, R.S.C. 1985, c. P-21, s. 54(2))
- Official Languages Commissioner – receives the same salary as a judge of the Federal Court of Canada (*Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.),s. 50(2))
- Chief Electoral Officer – receives the same salary as a puisne judge of the Federal Court of Canada (*Canada Elections Act*, S.C. 2000, c. 9, s. 15(2))

(d) Are the salaries of the puisne judges of the Supreme Court of Canada tied to any other category of personnel paid by the government and on what statutory basis?

The salaries of the puisne judges of the Supreme Court of Canada are established through the Judicial Compensation and Benefits Commission process and are not tied to any other category of personnel paid by the government.

(e) Is the Prime Minister's salary tied to any other category of personnel and on what statutory basis?

The Prime Minister's salary is calculated only with reference to the salary of the Chief Justice of Canada.

- (f) The MPs base salary has increased by 104% over the last 4 years (from \$68,200 to \$139,200). What explains that increase if the salaries are tied to judicial salaries?**

The Lumley Report explains that as at May 2001, the basic salary of all Members of the House of Commons was \$109,500. This consisted of a sessional indemnity of \$69,100, plus a "tax free allowance" of \$22,800 -- which had an equivalent taxable value of \$40,400 (see p. 4). The Lumley Commission's view was that the "tax free allowance" was in fact a component of the base salary of M.P.s. It recommended that in the interest of transparency, the "tax free allowance" should be eliminated and an equivalent taxable amount be added to the sessional indemnity (see p. 13). Bill C-28 followed this approach. The increase noted in the question is therefore referable to the inclusion of the "tax free allowance" in the sessional indemnity as well as the linking of M.P.s salaries with that of the Chief Justice. Since January 2001, M.P.s salaries have increased as the salary of the Chief Justice of Canada has increased.

3. The same article lists a number of major spending increases for the coming year according to Treasury Board. One of these increases (middle of 4th column, page 19) indicates an amount of \$330 million for salary increases relating to the settlement of collective bargaining agreements, including for the salaries of judges, RCMP, and DND civil personnel. The Commissioners ask:

- (a) What portion of the \$330 million is ear-marked for judges' salaries?**

Officials of the Treasury Board Secretariat direct the Commissioners' attention to page 18-2 of the Main Estimates. (A copy of the Justice component of the Main Estimates is attached, including page 18-2.) Under Vote 20, the Commissioners will observe that the Commissioner for Federal Judicial Affairs, who administers the judges' salaries and benefits, has requested an additional \$11 million to cover increased costs between 2003-2004 and 2004-2005 for judges' salaries, allowances and annuities, annuities to spouses and children of judges, and lump sum payments to spouses of judges who die while in office.

Therefore, \$11 million of the \$330 million has been allocated for increased costs related to judicial compensation.

Treasury Board officials further advise that of the \$11 million, only \$5.8 million is the portion "ear-marked for judges' salaries". The \$5.8 million is the estimated amount required to increase judicial salaries on April 1, 2004 by the "annual adjustment" (statutory indexing) provided for under s. 25 of the *Judges Act*.

The Government advises that none of the \$11 million anticipates the recommendations that may be made by the current Quadrennial Commission.

4. In the information sent to us by Ms. Bougie's office through yours related to salaries of Governor in Council appointees, there appear to be no appointees in the GCQ 10 category, which is the top level of the quasi-judicial group of appointees, and therefore a possible comparator for judicial salaries. Mr. McLennan asks:

(a) Why are there no appointees in that category?

In 2000, a new position evaluation plan was developed specifically to evaluate the functions and responsibilities of over 120 positions in about 70 different agencies, boards and commissions. These include administrative tribunals exercising quasi-judicial functions.

The plan is a point-rating system, awarding points for Knowledge and Skills, Accountabilities and Obligations, and Working Environment and Conditions. The total of these points determines to which classification level the position will be assigned. There are 10 GC position classification levels.

GC 10 is the highest level and includes the position of President of the National Research Council of Canada and that of President of the Canadian Institute of Health Research.

Currently, the Chairperson position of the largest administrative tribunals, the Canadian-Radio-television and Telecommunications Commission, the Canadian Transportation Agency, the National Energy Board, the Office of the Commissioner of Competition and the Office of the Superintendent of Financial Institutions, are classified at the GC-9 level.

There are currently no administrative tribunal positions that are considered to comprise the necessary cumulative points to rate classification at the GC-10 level.

(b) What kind of position would be covered by a GCQ 10 classification? Does the Privy Council have a position (or a person) in mind for a GCQ 10?

As stated, there are currently no administrative tribunal positions which would warrant classification at the GC-10.

(c) Is the GCQ 10 level merely a catch basin for GCQ 9s that will eventually move to GCQ 10?

As noted above, all positions are evaluated against an established point-rating system. In order for current GC-9 positions to merit reclassification, additional requirements of knowledge and skills, accountabilities and obligations would need to be established, or relevant changes would need to be made to the current working environment and conditions.

5. The Stephenson Advisory Committee on Senior Level Retention and Compensation Sixth Report: May 2003. The Commissioners ask:

(a) Has there been an addition/update to the Stephenson Advisory Committee since May 2003?

There has been no addition or update to the Sixth Report of the Advisory Committee since it was released in May 2003.

(b) Is an addition expected in the next 60 days?

As previously stated, there was a meeting of the Advisory Committee on Senior Level Retention and Compensation on January 30, 2004. It is too early to confirm whether a seventh report will be available in that time frame. Much depends on the timeframe for finalizing the report and for Government to consider and, if appropriate, implement the Committee's recommendations.

6. Finally, the Commissioners were wondering whether you have received any information at all on the administration of spousal allowances for members of the RCMP and DND. You had indicated to the Commission that you would look into that issue and let us know what the situation is as to whether any spousal allowances are authorized for language training, job counseling etc. for spouses of relocated civil servants.

The National Joint Council Relocation-Integrated Relocation Program (IRP) governs the relocation of public service employees, including the Executive Group (EX) and Governor in Council (GIC) appointees. (A copy of the IRP is enclosed.) The IRP does not provide for a specific allowance for the spouse's employment-related expenses. However an employee/appointee may choose to use part of the available funds in their "customized" or "personalized" funding envelopes to pay for "spousal services".

Section 3.3 of the IRP defines reimbursable "spousal services" to be:

- Employment search
- Employment assistance
- Interview Travel
- Preparation of CV
- Photocopy and transmittal costs for transcripts of academic records

An individual who chooses to pay for spousal services out of their "customized" and/or "personalized" component sees a corresponding reduction in their funding envelope, with less funds available to access other relocation benefits.

The amount of money in the "customized" and "personalized" funding envelopes depends on the circumstances of the individual's move and on the individual's

classification. In the paragraphs below, the Government provides a brief overview of how funding under the IRP is structured.

The IRP is divided into three separate yet interdependent sets of entitlements: Core Component, Customized Component, and Personalized Component. A brief summary of each component is set out below:

- The Core Component provides 100% reimbursement by the employer of “core” moving expenses, such as the shipment of household goods.
- The Customized Component aids individuals in claiming other elements of a move that are not covered under the Core Component, such as bridge financing (An overview of the specific entitlements is set out in s. 3.2.2.2.). Funds available to access entitlements under the Customized Component are calculated according to the “35% factor”:
 - Real Estate Commission x 35% (or Renters’ allowance: \$1,000) +
 - Transportation cost (one way; kilometric rate; employee & dependents) x 35% +
 - Cost of shipping 1000 lbs. of household goods per qualifying room x 35%.
- The Personalized Component funds many entitlements identical to those available in Customized Component, as well as some additional enhancements, such as new home warranties. (An overview of the specific entitlements is set out in s. 3.2.3.2) The “funding envelope” for the Personalized Component is composed of the following:
 - “savings” or incentives generated or earned from the Core Component provisions (e.g. there is an Incentive for Staying over a Saturday Night during the employee’s House Hunting Trip [a core entitlement]; if the employee uses the incentive, the employee’s Personalized Fund is credited \$250) +
 - relocation allowances (if applicable) +
 - incidental allowances:
 - Employees below the level of EX receive a non-accountable incidental expenses allowance of \$650

- EX/GICs receive a taxable incidental allowance equivalent to four weeks of salary

With respect to relocation benefits available to members of the RCMP, the RCMP have their own program known as the RCMP-Integrated Relocation Program. The RCMP-IRP is identical to the federal public service IRP in relation to reimbursement of employment-related expenses for spouses. There is no specific entitlement for spousal services, but members of the RCMP may be able to access spousal services within their “customized” and “personalized” funding envelopes. (A copy of the RCMP-IRP has been requested, and the Government will forward a copy of the document to the Commission once it is received.)

With respect to the situation for the Canadian Forces, the Government does not have the necessary information to respond to the Commission at this time. The Government is seeking the information from Canadian Forces officials, and is hopeful of replying separately on the relocation program in place for the Forces in the near future.

To recap, there is no specific allowance under the IRP or the RCMP-IRP to pay for a spouse’s employment-related expenses upon relocation. However, individuals may be able to access funds in their “customized” or “personalized” funding envelopes to pay for such expenses. The ability to access funds for this purpose will depend on the amount of money in each funding envelope, and on the particular entitlements selected from the pool of possible relocation benefits.

Yours truly,



Paul Vickery
Senior General Counsel
Department of Justice Canada

Attch.

cc Pierre Bienvenu, Ogilvy Renault