

**Canadian Superior Courts Judges Association  
and the Canadian Judicial Council**

**REPORT  
ON THE INCOMES OF CANADIAN LAWYERS  
BASED ON INCOME TAX DATA**

**to the**

**JUDICIAL COMPENSATION AND BENEFITS COMMISSION  
2003**

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## **I. SUMMARY**

1. In October 2003, the Department of Justice (“Justice”) provided the Canadian Superior Courts Judges Association and the Canadian Judicial Council (“the Association”) with Canadian Customs and Revenue Agency (“CCRA”) data regarding the incomes of self-employed lawyers for calendar year 2000. It is our understanding that Justice obtained this data from CCRA in March 2003. Subsequently, we asked for additional data, and were provided with some of the additional data we requested in January of 2004.

2. The Drouin Commission considered extensively similar data provided to it for the Tax Year 1997, and found that the appropriate comparator population among the self-employed private sector lawyers reported in the data was lawyers ages 44-56, earning more than \$50,000, at the 75<sup>th</sup> percentile. The Drouin Commission found that in 1997 the income for lawyers in this group at the 75<sup>th</sup> percentile, for all of Canada, was \$230,000. Further, the Drouin Commission found that this figure was dramatically higher within the seven large census metropolitan areas, which contain more than 60% of the lawyers in the data, and just under half of judicial appointments.

3. As a result of several problems with the data, and the unavailability of data that is analogous to that which was provided to the Drouin Commission, we are unable to completely duplicate the analysis conducted by the Drouin Commission. However, working within the restrictions of the data available, and applying reasonable assumptions to account for inflation, we conclude that between 1997 and 2004, lawyers’ incomes within

the comparator population and at the 75<sup>th</sup> percentile can be estimated to have increased by approximately 14% across Canada, to \$262, 962. Further, we conclude that lawyers incomes within the seven largest CMAs continue to be dramatically higher than the national average.

4. Throughout this Report, we have relied on the income tax data for the Year 2000 provided to Justice in March 2003. This data is generally consistent with the data provided to the Drouin Commission, and is also generally consistent with other data provided by CCRA to the parties and others. On the other hand, the data provided to us by CCRA in January 2004, as well as the data provided to Justice for the tax year 2001 contains logical and other inconsistencies, both internal and in comparison with the data provided in March 2003. Consequently, we have found that the January 2004 and tax year 2001 data are not reliable.

## **II. INTRODUCTION**

5. The purpose of this report is to provide information to the Judicial Compensation and Benefits Commission about the incomes of self-employed lawyers since the year 1997, in respect of which the Drouin Commission had made certain findings. In order to do so, we relied on income tax data for lawyers, which CCRA provided to Justice in 2003, and which Justice provided to us. In addition, some additional data in respect of year 2000 was subsequently provided to us by CCRA, at our request. In January 2004, but significantly less than we had requested.

6. We were also provided with information concerning the year 2001 by CCRA. However, we have found that information unreliable and inconsistent with the data received for the year 2000 and with other data received from CCRA in the past. For this reason, this report does not contain any findings or conclusions in respect to the year 2001 data. We were advised by counsel to the Association that Justice intended to rely on the 2001 data in making submissions to the Commission, and that the Association would be given an opportunity to comment on these submissions.

7. Our experience in this matter derives from the fact that we authored a Report on the 1997 Income Tax data dated January 31, 2000, which was submitted and referred to in the Drouin Commission Report. Prior to our work in respect of the Drouin Commission, we acted as counsel for what is now the Ontario Conference of Judges in proceedings before the Ontario 4<sup>th</sup> Triennial Provincial Judges Remuneration Commission, which reported in 1999. We again acted as counsel for the Conference in respect of the 5<sup>th</sup> Ontario Commission. During both of these Ontario Commission processes, we obtained and were extensively involved in analyzing data from CCRA regarding lawyers incomes in Ontario. We were also extensively involved with obtaining and analyzing CCRA data respecting lawyers in Ontario in our representation of the Association of Law Officers of the Crown in interest arbitration proceedings with the Government of Ontario in 2000.

### III. BACKGROUND TO THE REPORT

#### A. Source of the Data

8. The source of this data are income tax returns filed with CCRA. Exhibits 1 and 2 deal with year 2000 tax data. Additional year 2000 tax data was provided to us in January 2004 and is set out in Exhibit 3.

9. The year 2000 data, provided to Justice by CCRA in March 2003, is divided into two parts:

- a) data which excludes “zero filers” (Exhibit 1); and
- b) data which includes “zero filers” (Exhibit 2).

10. It is our understanding that “Zero filers” are those lawyers who file a tax return who report zero net income from the practice of law. It is our understanding from CCRA that on review of the “zero filers”, they have concluded that these are “not lawyers”, and they should not be included. We have also concluded from the data that the 1997 data submitted to the Drouin Commission likely included “zero filers”; however, these filers would have been excluded from the comparator population<sup>1</sup> targeted in our Report and ultimately by the Drouin Commission, because of the income threshold which excluded all lawyers earning less than \$50,000.

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<sup>1</sup> This term is defined below in subheading G.

**B. Geographic Area: Data Obtained for the Drouin Report**

11. For the Drouin Commission, CCRA provided data for Canada as a whole as well as for each province. In addition, data was sought for a group of large Metropolitan areas (so-called CMAs, an acronym which stands for Census Metropolitan Area)<sup>2</sup> where a large majority of Canadian lawyers live. The seven largest CMAs were selected as these had 45% of Canada's population and over 60% of the lawyers reported in the CCRA 1997 data. These seven CMAs accounted for 52% of the judicial appointments made from 1989 - 1999. The CMAs were: Toronto, Montreal, Vancouver, Ottawa-Hull, Edmonton, Calgary, and Quebec City.

12. The data obtained for the Drouin Commission was based on the address contained in the individual tax return. While CCRA does not know if the addresses used by tax filers are home addresses or business addresses, it believes that most tax payers use home addresses.<sup>3</sup> Since there was no way to ascertain precisely the incomes of lawyers who work in a particular city (because some lawyers who work in a city may live outside it), it was decided to obtain data for the larger CMAs. Obtaining the data by CMA means that it likely includes virtually all the lawyers who live and work in the CMA.

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<sup>2</sup> Statistics Canada defines a CMA as a very large urban area (the urban core) together with adjacent urban and rural areas (urban and rural fringes) that have a high degree of social and economic integration with the urban core. A CMA has an urban core population of at least 100,000 based on the previous census.

<sup>3</sup> See correspondence between Sack Goldblatt Mitchell and CCRA, dated January 14, 28, and 31, 2000, Exhibit 5.

13. Data was also obtained for individual cities, but these are clearly not as helpful or representative as the more comprehensive data from the CMA's, primarily because the lawyers who work in a city are not likely to be coextensive with the lawyers who live there.

**C. Geographic Area: The 2004 Commission**

14. It is our understanding that the facts set out in paragraphs 11, 12 and 13 generally apply to this Commission, except as distinguished below.

15. Unfortunately, the geographic presentation of the year 2000 tax data prepared by CCRA for Justice in March 2003 (Exhibits 1 and 2) was not the same as the data prepared for the Drouin Commission. In particular, in respect of CMA data for tax year 1997, we sought data for the "City of Toronto", "City of Montreal", etc., and also, the "Toronto CMA", "Montreal CMA", etc. For tax year 2000, either CCRA presented or Justice requested data for "Toronto", "Montreal", and "Metropolitan Toronto" and "Metropolitan Montreal", etc. As a result, there was not complete symmetry between the data sets presented in the 1997 data and those presented in the 2000 data. In fact, "Toronto" in the 2000 CCRA data means the old City of Toronto, not the new City of Toronto, and not the old Municipality of



Metropolitan Toronto.<sup>4</sup> Despite CCRA's claim that "Toronto plus Metropolitan Toronto" equates to the "Toronto CMA", it appears to us that this is not the case.<sup>5</sup>

#### **D. Treatment of Data by CCRA for the Drouin Commission**

16. For the Drouin Commission, in order to protect tax filer confidentiality, CCRA applied a number of rules, which accounted for the blank cells in the data submitted. Essentially, data that referred to less than 10 tax filers was suppressed, but was included in totals and subtotals.<sup>6</sup>

17. All remaining counts were rounded to the nearest multiple of 10. For example, 104 was rounded to 100 and 105 to 110. Where tiles resulted in less than 10 tax filers per "tile", all of the breakdown was suppressed, although the total figures for the location were kept.<sup>7</sup>

18. In the tables, the words "number of cases" means number of self-employed lawyers in that location.<sup>8</sup>

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<sup>4</sup> See email from CCRA to Sack Goldblatt Mitchell, January 21, 2004, Exhibit 6.

<sup>5</sup> Below we discuss the CCRA data provided to the Government of Ontario and the Ontario Conference of Judges for tax year 2000 which suggest that there were a larger number of filers in the Toronto CMA.

<sup>6</sup> See correspondence from CCRA to Sack Goldblatt Mitchell dated January 14, 2000, Exhibit 5.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

**E. Treatment of Data by CCRA for the 2004 Commission**

19. In the tax year 2000 data that CCRA prepared for Justice, we are not aware of what rule was applied to protect tax filer confidentiality, and we do not believe, although we are not certain, that rounding was used.<sup>9</sup>

**F. Net Professional Income**

20. In the data prepared for both the Drouin Commission and the 2004 Commission, "Net professional income" reported by CCRA includes income from self-employment as a lawyer only, to the exclusion of other income. Furthermore, this figure represents net professional income before deduction of other items for income tax purposes.<sup>10</sup>

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<sup>9</sup> In correspondence dated January 14 to Ogilvy Renault, CCRA states: "We excluded all cases where cross-referencing tables may disclose individual lawyers in order to maintain tax payer confidentiality", Exhibit 7.

<sup>10</sup> Correspondence from CCRA dated January 31, 2000 at Exhibit 5, and correspondence from CCRA dated March 7 and 10, 2003, at Exhibit 8.

## **G. Comparator Population**

21. The concept of the comparator population of private sector lawyers involves determining the pool of private sector lawyers which reasonably reflects the pool of possible candidates to the bench. Not all lawyers are eligible for appointment to the bench, or work full-time, or for other reasons are truly part of the real population of lawyers from which candidates to the bench would come. To find a comparator population, therefore, we adjust the private sector lawyer population by age and income as set out below.

## **H. Data By Age - Drouin Commission**

22. In respect of the Drouin Commission, our request for data was specifically for all self-employed lawyers ages 44-56. The reason was that between 1989 and 1999, approximately 69% of the Judges appointed were in that age strata.<sup>11</sup> The average age of the Judges appointed as of that time had been approximately 50.

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<sup>11</sup> The names and ages at appointment of judges appointed since 1989 was compiled for the Drouin Commission by the office of the Chief Judges' Administration, Office of the Commissioner for Federal Judicial Affairs, and submitted to the Drouin Commission, Exhibit 9.

**I. Data by Age - 2004 Commission**

23. The year 2000 CCRA data prepared for Justice and for us was also in respect of lawyers ages 44-56. It is our understanding that over 84% of Judges appointed between 1997-2003 have been in this age category.<sup>12</sup>

**J. Partner/Associate Status**

24. By definition, all the data submitted by CCRA are for partners, since all are self-employed. None of the CCRA data is for employed lawyers.

**K. Part-Time Exclusion - the Drouin Commission**

25. For the Drouin Commission we stated that in order for the CCRA data to be relevant for purposes of appropriate comparison, a method must be found to exclude Part-Time lawyers. Since the CCRA data itself would not distinguish between full-time and Part-Time lawyers, an income exclusion must be used as a proxy for Part-Time status.

26. In order to avoid controversy, a very conservative figure of \$50,000 of annual net income was chosen as the line below which persons are deemed to be part-time. For example, if one assumed that full-time practitioners ages 44-56 docket on average 1,400

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<sup>12</sup> See Table 1, "Appointees Age at date of Appointments, January 1, 1997 to November 14, 2003" at Exhibit 10.

billable hours per year, bill \$150 per hour<sup>13</sup> and that overhead is approximately 50% of billings<sup>14</sup>, average annual income would be \$105,000. In that light, an exclusion of those lawyers with an income below \$50,000 appears as a conservative proxy for part-timers.<sup>15</sup> Indeed, assuming overhead of 50%, and an average billing rate of \$150 for lawyers ages 44-56, an income of \$50,000 is reached after approximately 665 hours. Full-time lawyers are very likely to earn far more than \$50,000, even with low billing rates.

27. A significant part of the debate before the Drouin Commission, (which included letters from Hay Consulting concerning the Sack Goldblatt Mitchell Report, detailed submissions of the Association and the Government on the matter, and independent advice from the Commission's own experts, Morneau Sobeco),<sup>16</sup> focused on the validity of this threshold as a proxy to exclude not only part-timers, but those who were not genuinely part of the pool of candidates for the bench. In respect of the \$50,000 threshold, the Drouin Commission found:

"In the Commission's view there may be many explanations, in addition to Part-Time employment, for income of less than \$50,000 by members of the private bar. These include life-style decisions to moderate work commitments, new practices that are not yet fully established, and less successful or profitable practices. In this connection, it is important to recall that lawyers are not eligible for appointment to the Bench for ten years following their call to the bar. It can be expected that income levels for new lawyers, generally, will be lower than for more experienced lawyers

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<sup>13</sup> An extremely low assumption.

<sup>14</sup> A commonly accepted standard in private practice.

<sup>15</sup> CCRA was asked to provide data with a \$40,000, \$50,000, and \$60,000 exclusion. The \$50,000 exclusion was selected.

<sup>16</sup> Commission Report, p. 37-38

and that, absent income-limiting choices by practitioners, income will increase with seniority, experience and increased profile at the bar; ...”<sup>17</sup>

28. As will be seen below in paragraph 24, the findings of the Commission with respect to the incomes of lawyers relied on and applied the \$50,000 threshold.

#### **L. Part-Time Exclusion: 2004 Commission**

29. CCRA provided Justice with data for the tax year 2000 with a \$40,000, \$50,000 and \$60,000 threshold exclusion, as was the case with the data that was before the Drouin Commission. As noted above, however, unlike with previous data, CCRA indicated that it differentiated between databases which contained filers who reported “zero income” and those who did not. It is our conclusion that there were likely several thousand filers included in the “gross” 1997 Drouin data who actually reported zero income, and who, upon closer examination, would also prove to be not lawyers, for the reasons set out in paragraph 5 above. If this was the case, as we believe it must have been, it confirms that the use of a threshold was necessary to exclude these “zero filers”.

30. Below, in our analysis, we use the \$50,000 threshold as was done before the Drouin Commission, but we also observe that it is reasonable to increase the threshold to account for inflation from the period 1997 - 2000.

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<sup>17</sup> Commission Report, p. 39

**M. Drouin Commission Findings**

31. In summary, on the issue of private sector comparables, the Drouin Commission found as follows:<sup>18</sup>

- (i) It accepted the appropriateness of focusing on self-employed lawyers between the ages of 44 and 56, because that represented approximately 69% of the judges appointed from 1989 to 1999.
- (ii) In its analysis it relied on the “comparator population” from which judges were appointed, i.e., lawyers ages 44-56 earning above \$50,000 per annum.
- (iii) The Commission, in choosing a comparator population of lawyers ages 44-56 earning above \$50,000, targeted an income range at the 75<sup>th</sup> percentile.<sup>19</sup>

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<sup>18</sup> Commission Report, p. 38-39

<sup>19</sup> Commission Report, p. 40 .The Judges had argued for a higher percentile - essentially the 83<sup>rd</sup> percentile or the mid-point of the top third of lawyers in the comparator population.

- (iv) The Commission found the following incomes for lawyers in the 75<sup>th</sup> percentile in 1997 in the comparator population.<sup>20</sup>

Alberta	\$283,000
British Columbia	\$236,000
Manitoba	\$176,000
New Brunswick	\$177,000
Newfoundland	\$222,000
Nova Scotia	\$191,000
Ontario	\$260,000
Prince Edward Island	\$179,000
Quebec	\$209,000
Saskatchewan	\$163,000
CANADA	\$230,000

- (v) The Commission found that incomes at the 75<sup>th</sup> percentile in the seven largest Metropolitan areas in the comparator population (census metropolitan areas based on the Canadian census or “CMAs”) were as follows:<sup>21</sup>

Toronto	\$343,000
Montreal	\$248,000
Vancouver	\$266,000
Ottawa-Hull	\$198,000
Edmonton	\$163,000
Calgary	\$375,000
Quebec City	\$204,000

- (vi) The Commission found that the average income in the seven CMAs at the 75<sup>th</sup> percentile was \$284,000 and outside of the seven CMAs it was \$158,000.<sup>22</sup>

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<sup>20</sup> Commission Report, p. 40.

<sup>21</sup> Commission Report, p. 41.

<sup>22</sup> Commission Report, p.41.



- (vii) The Commission considered the effect of the value of judicial annuity, and the ongoing use of uniform salary scales across the country,<sup>23</sup> and concluded that while judicial salaries would not be set according to the most lucrative legal services market, they could not be set at a level which would have a chilling effect on recruitment or which would serve as a disincentive to outstanding candidates in large metropolitan areas, including those with the highest private practitioner incomes, or which set a level that resulted in unfairness to current and future judges residing in large urban areas.<sup>24</sup>

#### **IV. ANALYSIS OF YEAR 2000 TAX DATA**

##### **A. The March 2003 Data Provided By CCRA to Justice**

32. We turn first to examine the original year 2000 tax data provided by CCRA to Justice in March 2003. Unfortunately, the data for the tax year 2000 was not presented in the fashion that the Drouin Commission had determined was appropriate and important for its purposes, as set out above. For example, one could not determine from this CCRA 2000 data the income levels for some or all of the CMAs because the geographic areas were described differently. Nor could one identify the precise 75<sup>th</sup> percentile for each province, for the seven largest CMAs, or the CMAs combined in the precise way that the Drouin

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<sup>23</sup> Commission Report, pp. 44-46.

<sup>24</sup> Commission Report, p. 46.

Commission had set out based on the additional material supplied by CCRA to Morneau Sobeco.

33. While there are difficulties with the year 2000 (March 2003) data, which we discuss below, the data was, nonetheless, in part, verifiable. It is for this reason that we have elected to rely on this data from among the various data produced by CCRA for this Commission. The reason it was partially verifiable is that in 2003, CCRA had also prepared data both for the Ontario Conference of Judges and for the Government of Ontario, which was used in the proceedings before the 5<sup>th</sup> Triennial Provincial Judges Remuneration Commission. Indeed, the data provided by CCRA to the Government of Ontario (set out at Exhibit 11) was dated March 10, 2003, and was therefore provided within days of the data prepared and sent to Justice.<sup>25</sup>

34. Table 1 below compares the year 2000 data provided to the Government of Ontario in March 2003, and the year 2000 data provided to Justice in March 2003.

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<sup>25</sup> The explanatory note from CCRA accompanying the year 2000 (March 2003) data is dated March 7, 2003, Exhibit 8.

**Table 1**

**Ontario, All Ages, 12 Tile Data for Tax Year 2000**

Tile	MBS (March 2003) <sup>1</sup>		CCRA (March 2003) <sup>2</sup>		Percentage change	
	Number of filers***	Average income	Number of filers	Average income	In number of filers	In income
1	769	-\$4,486	769	-\$4,498	0.0%	0.3%
2	768	\$21,552	769	\$21,541	0.1%	-0.1%
3	768	\$38,455	769	\$38,396	0.1%	-0.2%
4	769	\$52,739	769	\$52,677	0.0%	-0.1%
5	767	\$66,842	769	\$66,787	0.3%	-0.1%
6	768	\$82,057	769	\$82,017	0.1%	0.0%
7	768	\$100,781	769	\$100,738	0.1%	0.0%
8	768	\$126,820	769	\$126,801	0.1%	0.0%
9	768	\$162,162	769	\$162,184	0.1%	0.0%
10	768	\$219,207	769	\$219,164	0.1%	0.0%
11	768	\$318,345	769	\$318,176	0.1%	-0.1%
12	805	\$620,844	805	\$620,844	0.0%	0.0%
Total	9,254	\$152,306	9,264	\$152,247	0.1%	0.0%

<sup>1</sup> Data provided by CCRA to the Management Board Secretariat in March 2003, used in submissions to the Davie Commission (the 5<sup>th</sup> Triennial Provincial Judges Commission). Ontario Lawyers Survey (Survey #2), All Ages, 2000 Tax Year: See Exhibit 11.

<sup>2</sup> Exhibit 1.

35. As can be seen, the total number of filers only differs by 10, and the average income in the 12<sup>th</sup> tile is precisely the same. In all the other tiles, the differences in average income are minute. In essence, both sets of data are virtually identical.

36. The Table above is for lawyers of all ages in Ontario, and does not set out age 44-56 incomes or the 75<sup>th</sup> percentile figures. However, those figures are a subset of the data in Table 1 and are derived from that data.

37. The two sets of data compared in Table 1 are clearly from the identical data set. Both were prepared in identical 12 tile formats: one was presented to the Government of Ontario and the other to the Government of Canada. At the same time, the Government of Ontario requested other information from the same data set in a 20-tile format, also set out in Exhibit 11. An examination of this data, which indeed was for lawyers ages 44-56, income >\$50,000, also demonstrates that it is precisely the same database as that prepared for the Government of Canada in March 2003, even though the Ontario data was presented in 20 tiles and the Canada data was presented in 12 tiles. In fact, it can be seen in Table 2 below that the number of filers and average incomes for all of Ontario were the same in both data sets.

**TABLE 2<sup>26</sup>**

<b>Tax Year 2000 (March 2003) Ontario Ages &gt; 44 and Ages &lt; 56</b>				
	<b>MBS March 2003</b>		<b>CCRA 2000 (March 2003)</b>	
	<b>Filers</b>	<b>Average Income</b>	<b>Filers</b>	<b>Average Income</b>
All incomes	4470	\$176,449	4471	\$176,407
Incomes > \$40,000	3704	\$209,607	3704	\$209,607
Incomes > \$50,000	3486	\$219,914	3486	\$219,914
Incomes > \$60,000	3225	\$233,263	3225	\$233,263

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<sup>26</sup> Comparison of data in 20 tiles provided by the Management Board Secretariat in March 2003, Ontario Lawyers' Survey (Survey #1) to data in 12 tiles provided to Justice in March 2003 at Exhibit 11 and Exhibit 1, Tab C, p. 16.

38. The accuracy of the data supplied to the Government of Ontario relied upon in Tables 1 and 2 above is substantiated by correspondence from Mr. John Cox, Manager, Informatics Sector, Statistics Division, CCRA, at the time. A copy of his letter describing the data provided to the Government of Ontario (MBS) at the time is set out at Exhibit 8.

39. Having determined that the tax year 2000 (March 2003) data is at least consistent with the Ontario data prepared for the Government of Ontario, we can then use this data to analyze lawyer incomes. Even though the year 2000 data presented to Justice and the Government of Ontario in March 2003 did not contain the precise 75<sup>th</sup> percentile, we are advised by our statistical advisors<sup>27</sup> that the 75<sup>th</sup> percentile can be calculated to a degree of approximation that is statistically acceptable. Thus, by averaging the 9<sup>th</sup> and 10<sup>th</sup> percentiles which span the 66<sup>th</sup> to the 83<sup>rd</sup> percentiles, one can approximate the 75<sup>th</sup> percentile. Similarly, one can do the same with the CCRA data from 1997 which was submitted to the Drouin Commission by us<sup>28</sup>. (This is essentially the same data which was later refined by the Morneau Sobeco analysis and produced in the Drouin Report).

40. Table 3 below compares the 1997 data submitted to the Drouin Commission (Exhibit 12) with the year 2000 (March 2003) data prepared by CCRA for Justice.

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<sup>27</sup> Corbin Partners Inc.

<sup>28</sup> For example, in Ontario, the Morneau Sobeco data showed that the 75<sup>th</sup> percentile was \$260,000 in 1997. Using an average calculation from the 12 tile CCRA data submitted by Sack Goldblatt Mitchell for 1997, the 75<sup>th</sup> percentile is calculated at \$258,185, Exhibit 12

**Table 3**

**75<sup>th</sup> percentile income, ages 44-56, after \$50k exclusion,  
Data for Years 1997 and 2000**

	CCRA 1997 DATA <sup>1</sup>		CCRA 2000 (March 2003) <sup>2</sup>		1997 to 2000 percentage change	
	Calculated 75 <sup>th</sup> percentile income	Number of filers	Calculated 75 <sup>th</sup> percentile income	Number of filers	In income	In number of filers
All Canada	\$230,244	7,830	\$238,816	7,144	3.7%	-8.8%
Newfoundland	\$222,360	100	\$229,205	96	3.1%	-4.0%
PEI	N/A	30	N/A	27	-	-10.0%
Nova Scotia	\$189,178	270	\$158,243	224	-16.4%	-17.0%
New Brunswick	\$186,212	170	\$178,838	145	-3.9%	-14.7%
Quebec	\$209,685	1,540	\$202,972	1,598	-3.2%	3.8%
Ontario	\$258,185	3,670	\$276,152	3,486	7.0%	-5.0%
Manitoba	\$181,639	260	\$188,481	229	3.8%	-11.9%
Saskatchewan	\$167,086	210	\$159,994	187	-4.2%	-11.0%
Alberta	\$277,668	500	\$255,118	501	-8.1%	0.2%
BC	\$234,685	1,060	\$201,543	633	-14.1%	-40.3%

<sup>1</sup> Exhibit 12

<sup>2</sup> Exhibit 1

41. Based on this data, it can be seen that overall for Canada, incomes increased by 3.7% at the 75<sup>th</sup> percentile from 1997 to 2000.

42. From Table 4 below, based on the same data as Table 3, it can also be shown that for the top earners in the top third of lawyers for Canada ages 44-56 >\$50,000, incomes increased at a faster rate from 1997 to 2000, rising from \$342,281 in the CCRA 1997 data submitted to the Drouin Commission, to \$365,353 in the CCRA 2000 (March 2003) data, or an increase of approximately 6.7%. Moreover from Table 4 below it can also be seen

that according to the CCRA data, employing the \$50,000 income exclusion<sup>29</sup>, the average income for all lawyers in Canada ages 44-56 was \$181,499 in 1997 and \$190,361 in 2000, or an increase of 4.9%.

**TABLE 4<sup>30</sup>**

**Canada  
Lawyers Ages 44-56, after \$50,000 exclusion**

	<b>CCRA 1997 Data</b>	<b>CCRA 2000 March 2003</b>	<b>% change</b>
<b>Average</b>	<b>\$181,499</b>	<b>\$190,361</b>	<b>4.9%</b>
<b>Average in Top 3<sup>rd</sup></b>	<b>\$342,281</b>	<b>\$365,353</b>	<b>6.7%</b>

43. In our understanding, it was important to the recommendations of the Drouin Commission that the significantly higher incomes earned by many lawyers in some Canadian CMAs, such as Montreal, Toronto, Vancouver and Calgary, not operate as a deterrent to lawyers in those communities being willing to accept appointments to the bench. Explicitly, the Drouin Commission recognized the importance of not creating a chill or making it unattractive for lawyers in large metropolitan areas to be appointed to the bench and recognized the need to set judicial salaries at a level that does not result in unfairness to current and future judges in those communities.<sup>31</sup>

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<sup>29</sup> It should be noted that because the income exclusion renders the inclusion or exclusion of filers with zero and negative incomes irrelevant, changes in methodology over the years with respect to including or excluding these filers will not distort the actual changes in income reported.

<sup>30</sup> From Exhibits 12 and 1.

<sup>31</sup> Drouin Commission Report, p.46.

44. The year 2000 (March 2003) data confirms the importance of the seven largest CMAs, in terms of the number of lawyers in those communities. Indeed, according to the CCRA year 2000 (March 2003) data, more than 60% of all lawyers continue to reside in the seven largest CMAs. Moreover, 47% of judicial appointments between 1997-2003 resided in these seven largest CMAs.<sup>32</sup>

45. The data for the seven largest CMAs is set out in Table 5 below:

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<sup>32</sup> See Tables 7 and 8 "City/Province/Territory of Practice at Time of Appointment", Exhibit 10.



**Table 5**

**75<sup>th</sup> percentile income, ages 44-56, after \$50k exclusion,  
Data for the Years 1997 and 2000**

	CCRA 1997 <sup>1</sup>		CCRA 2000 (March 2003) <sup>2</sup>		1997 to 2000 percentage change	
	Calculated 75 <sup>th</sup> percentile income	Number of filers	Calculated 75 <sup>th</sup> percentile income	Number of filers	In income	In number of filers
Toronto CMA	\$345,319	2,030	\$369,536	1,990	7.0%	-2.0%
Montreal CMA	\$244,247	900	\$252,571	922	3.4%	2.4%
Vancouver CMA	\$264,686	770	\$230,482	457	-12.9%	-40.6%
Ottawa-Hull CMA	\$196,286	350	\$225,949	341	15.1%	-2.6%
Edmonton CMA <sup>3</sup>	\$177,225	160	\$164,522	146	-7.2%	-8.8%
Calgary CMA <sup>3</sup>	\$365,876	290	\$361,284	269	-1.3%	-7.2%
Quebec CMA <sup>3</sup>	\$197,922	230	\$201,658	164	1.9%	-28.7%

<sup>1</sup> From Exhibit 12

<sup>2</sup> From Exhibit 1

<sup>3</sup> As a result of the division of CMAs into City Centres and surrounding areas, for the Edmonton, Calgary and Quebec CMAs, income at the 75<sup>th</sup> percentile has been concealed by CCRA for either the city or the metropolitan area. This is because there are very few filers outside the city centre in Edmonton or Calgary, or outside of Metropolitan Quebec. The CMA figures in this Table are based on available data which should not be significantly affected by the small number of filers for whom data is not available.

46. The Drouin Commission was able to identify income at the 75<sup>th</sup> percentile for the seven large CMAs combined, and to contrast this figure with income at the 75<sup>th</sup> percentile outside of the seven large CMAs. Income at the 75<sup>th</sup> percentile within the seven largest CMAs at the 75<sup>th</sup> percentile was \$284,000, compared to \$158,000 outside the seven large CMAs.<sup>33</sup> In the Toronto CMA, which comprised 42% of the seven largest CMA populations, income at the 75<sup>th</sup> percentile was \$343,000.<sup>34</sup> In Calgary, which comprised

<sup>33</sup> Commission Report, p. 41.

<sup>34</sup> Appendix 4 to the Commission Report.

approximately 8.3% of the seven largest populations, the income was \$375,000.<sup>35</sup> In other words, the Drouin Commission identified a large disparity between incomes within and outside of the seven large CMAs. Unfortunately, we are not able to duplicate these calculations, as CCRA has not provided incomes for the seven large CMAs combined, notwithstanding our request. However, based on the information set out in Table 5 above, it is clear that this pattern of disparity continues, and that the order of magnitude is approximately the same in 2000 as it was in 1997.

**B. Adjusting the Threshold for the Year 2000 (March 2003) Tax Data**

47. As was seen above, the Drouin Commission used data that incorporated the \$50,000 threshold. The question arises as to whether the threshold ought to be indexed to account for increases in lawyer incomes by reason of inflation. If the threshold is not adjusted over time, its value as an appropriate threshold would diminish as inflation continues. Like other fixed thresholds in the *Income Tax Act* or elsewhere there is a strong argument to be made that the threshold ought to be adjusted upwards over the years to account for inflation. For this purpose, it would be appropriate to use the Industrial Aggregate, which is the same index used to increase the salaries of judges for the purpose of accounting for inflation. Accordingly, the actual threshold to be utilized in 2004 should

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<sup>35</sup> Ibid.

be \$53,122 to account for the increases in the Industrial Aggregate between 1997 and 2000.<sup>36</sup>

48. For the reasons set out above, we asked CCRA to adjust the year 2000 (March 2003) data prepared for Justice to account for a higher threshold. In January 2004, CCRA prepared for the Association data based on the \$50,000 threshold, as well as the new proposed threshold of \$53,122. For reasons which will be set out below, we cannot accept as reliable the actual data prepared by CCRA in January 2004. However, we observe that the effect of increasing the threshold would be to increase average incomes by a magnitude of 3.1%, which is the difference shown in the January 2004 data for the whole of Canada between the use of a \$50,000 threshold and a \$53,122 threshold at the 75<sup>th</sup> percentile. This calculated difference in the use of these two thresholds is also generally consistent with the order of magnitude differences in the effect of using different thresholds as calculated in the year 2000 (March 2003) data, which contains data for the three different thresholds of \$40,000, \$50,000 and \$60,000. Therefore, subject to our reservations concerning this data, we have used the percentage difference between the two thresholds at the 75<sup>th</sup> percentile in the year 2000 (January 2004) data as the best available information. This calculation is shown in Table 6 below.

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<sup>36</sup> The Department of Justice, while disagreeing with the need to increase the threshold, does agree with the calculation.

Table 6

**Canada 2000  
Lawyers Ages 44-56, 20 Tiles**

	<b>CCRA 2000 (Jan/04) &gt;\$50,000</b>	<b>CCRA 2000 (Jan/04)<sup>37</sup> &gt;\$53,122</b>	<b>% Change</b>
75 <sup>th</sup> Percentile	\$222,882	\$229,799	3.1

49. Accordingly, in our view, there is a strong argument to be made that the actual figures in the year 2000 (March 2003) data for Canada, the provinces and the CMAs should be increased by a further 3.1% to account for an inflation-adjusted threshold. This would increase all the figures up by 3.1%. The results are summarized in Table 7 below.

**C. Industrial Aggregate Increase 2001-2004  
Projecting the Year 2000 (March 2003) data to 2004**

50. When the Commission seeks to ascertain the income level of lawyers across Canada for the purposes of taking that data into account in the determination of judicial compensation for the period 2004-2008, it may well wish to know what lawyer incomes are likely to be today, as opposed what they were in 2000.

51. The income of lawyers in the period from 2000 through to 2004 can properly be assumed to have grown. It is reasonable to assume that lawyers' incomes, at the least, kept pace with inflation as calculated by the Industrial Aggregate. In this regard it is

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<sup>37</sup> Note that CCRA has mislabeled the January 2004 table displaying incomes with the \$53,122 threshold in 20 tiles as "Tax Year 2001". It should read "Tax Year 2000", Exhibit 3.

necessary to calculate how the year 2000 incomes increased for the period from January 2001 through to April 1, 2004 in order to project the average income for lawyers at the time that the new salaries for judges will become effective. The projected Industrial Aggregate increase for this period is 6.8%, as set out in Exhibit 13. The results of this calculation are also set out in Table 7 below. Calculations resulting from an increase for inflation without an increased threshold are also provided.

**Table 7**

**75<sup>th</sup> Percentile, Ages 44-56, after \$50,000 Exclusion Data for 2000 Tax Year (March 2003) Adjusted for Increased Thresholds and In Inflation**

	CCRA Tax Year (March 2003) <sup>2</sup>			
	Column A	Column B	Column C	Column D
	Calculated 75 <sup>th</sup> Percentile Income from Exhibit 1	Column A Plus 3.1% to Account for Increased Threshold	Column A Adjusted for Inflation to April 2004 (6.8%) w/o Adjustment for Increased Threshold	Column B Plus 6.8%
All Canada	\$238,816	\$246,219	\$250,055	\$262,962
Newfoundland	\$229,205	\$236,310	\$244,791	\$252,379
PEI	N/A	N/A	N/A	N/A
Nova Scotia	\$158,243	\$163,149	\$169,004	\$174,243
New Brunswick	\$178,838	\$184,382	\$190,999	\$196,920
Quebec	\$202,972	\$209,264	\$216,774	\$223,494
Ontario	\$276,152	\$284,713	\$294,930	\$304,973
Manitoba	\$188,481	\$194,324	\$201,298	\$207,538
Saskatchewan	\$159,994	\$164,954	\$170,874	\$176,171
Alberta	\$255,118	\$263,027	\$272,466	\$280,913
BC	\$201,543	\$207,791	\$215,248	\$221,921
Toronto CMA	\$369,536	\$380,992	\$394,664	\$406,899
Montreal CMA	\$252,571	\$260,401	\$269,746	\$278,108
Vancouver CMA	\$230,482	\$237,627	\$246,155	\$253,786
Ottawa-Hull CMA	\$225,949	\$232,953	\$241,314	\$248,794
Edmonton CMA <sup>1</sup>	\$164,522	\$169,622	\$175,709	\$181,156
Calgary CMA <sup>1</sup>	\$361,284	\$372,484	\$385,851	\$397,813
Quebec CMA <sup>1</sup>	\$201,658	\$207,909	\$215,371	\$222,047

<sup>1</sup> As a result of the division of CMAs into City Centres and surrounding areas, for the Edmonton, Calgary and Quebec CMAs, income at the 75<sup>th</sup> percentile has been omitted by CCRA for either the city or the metropolitan area. This is because there are very few filers outside the city centre in Edmonton or Calgary, or outside of Metropolitan Quebec. The CMA figures in this Table are based on available data which should not be significantly affected by the small number of filers for whom data is not available.

52. Table 7 calculates in Column A the 75<sup>th</sup> percentile income numbers already set out in Tables 3 and 5. Column 2 increases these amounts to account for the estimated increase arising from the use of an inflation-adjusted threshold of \$53,122, instead of \$50,000. Column C increases the column A amount to account for the inflation increase in lawyers' salaries from 2001 through April 2004. This is estimated at 6.8%. Finally, column D increases the column A amounts both by 3.1% and by 6.8% to give an estimate of what lawyers' incomes at the 75<sup>th</sup> percentile are likely to be as of April 2004.

**D. Some issues related to the Year 2000 (March 2003 data)**

53. While the year 2000, (March 2003) data provided to Justice for all of Ontario is identical to the data supplied to the Government of Ontario, there are other aspects of the data that do raise some questions. For example, the total number of filers in British Columbia ages 44-56 earning >\$50,000 is down by 40% as compared to the 1997 data, and the number of filers in New Brunswick is 15% below the number of filers recorded in the Drouin Report for that province.

54. Moreover, there is an inconsistency with the number of filers in the Toronto CMA, which raises some question about the precision of the CMA data in 2000. While as shown above in Tables 1 and 2, the data for the entire Province of Ontario prepared by CCA for Justice and for the Government of Ontario in March 2003 is identical, the data for Toronto is different. CCRA provided the Government of Ontario with a calculation of the number

of filers in what was described as, "GTA2", which was the equivalent of the "Toronto CMA". CCRA has stated in correspondence with Sack Goldblatt Mitchell at Exhibit 6, that in its data prepared for Justice one could calculate the "Toronto CMA" figure by adding the "Toronto plus Metropolitan Toronto" categories. However, this does not reconcile with the data given to the Government of Ontario, and in virtually every case, the number of filers and the amount of income in the categories "Toronto plus Metropolitan Toronto" is less than the number of filers and income in the "GTA2" category prepared for the Government of Ontario.

55. Furthermore, the year 2000 (March 2003) data is presented in different ways, and accordingly, the same categories of data appear in more than one place. Here, unfortunately, there are inconsistencies, and data which of necessity ought to be in all respects, identical, is different. While these differences are relatively minor, CCRA has not been able to explain why they appear. For example, as set out in our correspondence with Justice dated November 14, 2003 at Exhibit 14, it can be seen that while two tables from the same data set, i.e., tax year 2000 (March 2003) including lawyers with zero income, both include figures for lawyers of all ages and all income, the numbers are different. At the 9<sup>th</sup> tile, for example, the first reports an income of \$95,683 for all of Canada, whereas the second reports an income of \$97,874 for all of Canada. Similarly, in Ontario, for lawyers ages 44-56 without an income exclusion, in the 12<sup>th</sup> tile, Exhibit 1, Tab A, p. 2 reports \$697,422, while Exhibit 1, Tab B, p. 16 reports \$698,018. There are many such examples, although the discrepancies are generally very small.

**E. Conclusions on the Year 2000 (March 2003) data**

56. Notwithstanding these concerns, however, in our view the general pattern of incomes, as shown in the 1997 Drouin data continued in 2000. The data shows increases in incomes in the comparator population at the 75<sup>th</sup> percentile, at the average, in the top third and in the seven largest CMAs. Comparing the figures derived in Table 7 above, accounting for an increased threshold and inflation, we see that income at the 75<sup>th</sup> percentile for all of Canada has increased from \$230,244 in 1997 to an estimated \$262,962 in the year 2004, or an increase of 14%. In the largest CMA, Toronto, the increase is from \$345,319 in 1997 to an estimated \$406,899 in 2004, or an increase of 18%. Clearly, the same pattern of incomes which influenced the Drouin Commission still obtains inasmuch as incomes in the seven largest CMAs with 60% of all lawyers and the source of almost half of judicial appointments are much higher than in the rest of the country. This is especially so in the largest CMAs.

**V. The CCRA Year 2000 (January 2004) Data**

57. The January 2004 version of the year 2000 data from CCRA is set out in Exhibit 3. The differences at the 75<sup>th</sup> percentile between the March 2003 and January 2004 versions of the same data is set out below in Table 8.



**Table 8**

**75<sup>th</sup> percentile income, ages 44-56, after \$50k exclusion Data for 2000**

	CCRA 2000 (March 2003) <sup>1</sup>		CCRA 2000, (January 2004) <sup>2</sup>		Percentage change	
	Calculated 75 <sup>th</sup> percentile income	Number of filers	75 <sup>th</sup> percentile income	Number of filers	In income	In number of filers
All Canada	\$238,816	7,144	\$222,882	7,780	-6.7%	8.9%
Newfoundland	\$229,205	96	N/A	94	-	-2.1%
PEI	N/A	27	N/A	30	-	11.1%
Nova Scotia	\$158,243	224	\$145,019	223	-8.4%	-0.4%
New Brunswick	\$178,838	145	N/A	149	-	2.8%
Quebec	\$202,972	1,598	\$201,148	1,661	-0.9%	3.9%
Ontario	\$276,152	3,486	\$265,196	3,683	-4.0%	5.7%
Manitoba	\$188,481	229	\$183,851	242	-2.5%	5.7%
Saskatchewan	\$159,994	187	\$155,608	230	-2.7%	23.0%
Alberta	\$255,118	501	\$225,734	549	-11.5%	9.6%
BC	\$201,543	633	\$230,495	896	14.4%	41.5%
Toronto CMA	\$369,536	1,990	\$354,725	2,071	-4.0%	4.1%
Montreal CMA	\$252,571	922	\$247,024	955	-2.2%	3.6%
Vancouver CMA	\$230,482	457	\$248,713	681	7.9%	49.0%
Ottawa-Hull CMA	\$225,949	341	\$221,083	383	-2.2%	12.3%
Edmonton CMA	N/A	166	N/A	168	-	1.2%
Calgary CMA	N/A	273	\$332,636	310	-	13.6%
Quebec CMA	N/A	208	\$198,706	209	-	0.5%

<sup>1</sup> Exhibit 1.

<sup>2</sup> Exhibit 3.

58. At first glance it is observed that the number of filers for the same tax year shows an increase of 8.9% in the January 2004 data, while the income of all filers declined by 6.7%. Indeed, between the two sets of data there are declines in income for every province for which there is data, except B.C.

59. An examination of the data in Table 8 demonstrates the difficulties with the changes in the data, which undermine the credibility of the January 2004 data. Below we illustrate a number of examples.

60. In Nova Scotia, the number of filers decreased by only one, and yet there is a decrease in income of \$1,595,126. It should be noted as set out in Exhibit 3 that the average of the top 12<sup>th</sup> tile (91.3-99.99 percentile) in Nova Scotia is \$374,614. It is not logical or likely that only this extremely high income earner in Nova Scotia would have been removed.

61. In Newfoundland there are two fewer filers, and yet the income decreased by \$1,064,531, suggesting an average income of \$532,239 for the two filers removed. The average income in the top 12<sup>th</sup> tile in the CCRA 2000 (March 2003) data for Newfoundland is \$367,810 which is significantly less than the average income of the two filers removed. Again the reduction of the two filers resulting in such a large decrease in income seems unlikely.

62. Table 9 compares the tax year 2000 (January 2004) data for the Toronto CMA with year 2000 (March 2003) Toronto CMA data (called GTA 2) prepared by CCRA for the Government of Ontario.

A. Column A in Table 9 below is the year 2000 Data provided by CCRA to the Management Board Secretariat on March 10, 2003, presented in 20 tiles and used in submissions to the Davie Commission.

B. Column B in Table 9 below is year 2000 Data provided by CCRA to Sack Goldblatt Mitchell in January 2004, presented in 20 tiles.

**Table 9 –Toronto CMA**

**Based on age 44-56 after exclusion of those earning less than \$50k for the Year 2000**

	Toronto CMA Income			Toronto CMA number of filers		
	MBS, March 2003 <sup>1</sup>	CCRA, January 2004 <sup>2</sup>	Percentage difference	MBS, March 2003	CCRA, January 2004	Percentage difference
	A	B		A	B	
<b>Tile 1</b>	\$54,297	\$54,501	0.4%	104	N/A	-
<b>Tile 2</b>	\$62,690	\$64,197	2.4%	103	N/A	-
<b>Tile 3</b>	\$72,783	\$74,291	2.1%	104	N/A	-
<b>Tile 4</b>	\$83,213	\$85,572	2.8%	103	N/A	-
<b>Tile 5</b>	\$93,394	\$96,954	3.8%	104	N/A	-
<b>Tile 6</b>	\$104,760	\$108,677	3.7%	103	N/A	-
<b>Tile 7</b>	\$119,429	\$122,101	2.2%	104	N/A	-
<b>Tile 8</b>	\$136,244	\$137,587	1.0%	103	N/A	-
<b>Tile 9</b>	\$153,609	\$156,639	2.0%	104	N/A	-
<b>Tile 10</b>	\$173,814	\$181,662	4.5%	103	N/A	-
<b>Tile 11</b>	\$195,853	\$207,783	6.1%	103	N/A	-
<b>Tile 12</b>	\$228,879	\$232,669	1.7%	104	N/A	-
<b>Tile 13</b>	\$260,526	\$258,555	-0.8%	103	N/A	-
<b>Tile 14</b>	\$294,795	\$290,812	-1.4%	104	N/A	-
<b>Tile 15</b>	\$333,830	\$332,739	-0.3%	103	N/A	-
<b>Tile 16</b>	\$385,727	\$382,752	-0.8%	104	N/A	-
<b>Tile 17</b>	\$459,232	\$444,647	-3.2%	103	N/A	-
<b>Tile 18</b>	\$549,717	\$527,410	-4.1%	104	N/A	-
<b>Tile 19</b>	\$672,971	\$632,609	-6.0%	103	N/A	-
<b>Tile 20</b>	\$984,269	\$919,730	-6.6%	103	N/A	-
<b>Total</b>	\$270,766	\$265,081	-2.1%	2069	2071	0%

<sup>1</sup> Data provided by CCRA to the Management Board Secretariat on March 10, 2003. Ontario Lawyers Survey (Survey #1) (AGE >=44 and age <=56) and income >=\$50,000, 2000 tax year, Exhibit 11.

<sup>2</sup> Data provided by CCRA to Sack Goldblatt Mitchell in January 2004, presented in 20 tiles, Exhibit 3.

63. Table 9 compares (A) and (B) for the Toronto Census Metropolitan Area ("Toronto CMA"). (A) and (B) appear to be from the same database because the number of filers for the Toronto CMA only has a difference of two filers.

64. However the two sets of data not only have certain differences, they are logically inconsistent, and contain logical impossibilities.

65. For example, the total number of filers in column A is two people fewer than in column B -- 2069 versus 2071. Yet the total amount of compensation represented by the 2069 individuals is eleven million dollars MORE than the total amount represented by the 2071 individuals. (This figure was obtained by multiplying the average income by the number of people in each case.) In other words, after adding two people, the total compensation decreased by over \$11 million. This is only possible if the two individuals who were added had large negative incomes — of approximately negative five and one half million dollars each. Obviously this is logically impossible, in a table of data that excludes filers with incomes below \$50,000.

66. Comparing the entries for columns A and B, the table contains a range of differences for each group of five percentiles (called Tile 1 through Tile 20). The differences between them range from .4% to as much as 6.6%, and by absolute compensation amounts, as much as \$64,000. The difference of two individuals between the data sets (2069 for one and 2071 for the other) could not cause so many significant changes in every tile. For example, If the two individuals were relatively low income

earners (around \$50,000), then they would have been added to Tile 1, and the income of every tile above them should have been smaller. But that is not the case. Increases occur until Tile 13 and then decreases commence. If the two added individuals had incomes that brought them into the middle of the group, the direction of the changes within the group could occur as shown on the Table, changing from one direction at Tile 13 to the opposite direction. However, if this had occurred, this could only amount at most a \$600,000 difference for the two additional filers, but this cannot account for an \$11 million difference.

67. Table 10 shows the same comparison as Table 9, but for all of Ontario.

**Table 10 –Ontario**

**Based on age 44-56 after exclusion of those earning less than \$50k for the Year 2000**

	Ontario Income			Ontario number of filers		
	MBS, March 2003 <sup>1</sup>	CCRA, January 2004 <sup>2</sup>	Percentage difference	MBS, March 2003	CCRA, January 2004	Percentage difference
<b>Tile 1</b>	\$53,339	\$53,227	-0.2%	175	N/A	-
<b>Tile 2</b>	\$59,944	\$59,388	-0.9%	174	N/A	-
<b>Tile 3</b>	\$66,839	\$65,997	-1.3%	174	N/A	-
<b>Tile 4</b>	\$74,244	\$72,544	-2.3%	175	N/A	-
<b>Tile 5</b>	\$82,002	\$79,988	-2.5%	174	N/A	-
<b>Tile 6</b>	\$90,027	\$88,087	-2.2%	174	N/A	-
<b>Tile 7</b>	\$98,713	\$96,331	-2.4%	175	N/A	-
<b>Tile 8</b>	\$108,473	\$105,792	-2.5%	174	N/A	-
<b>Tile 9</b>	\$120,563	\$116,880	-3.1%	174	N/A	-
<b>Tile 10</b>	\$134,323	\$130,412	-2.9%	174	N/A	-
<b>Tile 11</b>	\$149,257	\$144,968	-2.9%	175	N/A	-
<b>Tile 12</b>	\$168,176	\$163,342	-2.9%	174	N/A	-
<b>Tile 13</b>	\$189,506	\$184,448	-2.7%	174	N/A	-
<b>Tile 14</b>	\$219,805	\$212,827	-3.2%	175	N/A	-
<b>Tile 15</b>	\$255,107	\$248,185	-2.7%	174	N/A	-
<b>Tile 16</b>	\$297,252	\$286,693	-3.6%	174	N/A	-
<b>Tile 17</b>	\$350,216	\$335,209	-4.3%	175	N/A	-
<b>Tile 18</b>	\$436,035	\$413,742	-5.1%	174	N/A	-
<b>Tile 19</b>	\$566,672	\$542,061	-4.3%	174	N/A	-
<b>Tile 20</b>	\$879,928	\$835,023	-5.1%	174	N/A	-
<b>Total</b>	\$219,914	\$211,683	-3.7%	3,486	3,683	6%

<sup>1</sup> Data provided by CCRA to the Management Board Secretariat on March 10, 2003. Ontario Lawyers Survey (Survey #1) (AGE >=44 and age <=56) and income >=\$50,000, 2000 tax year.

<sup>2</sup> Data provided by CCRA to Sack Goldblatt Mitchell in January 2004, presented in 20 tiles.

68. The data in Table10 is superficially more consistent than the data in Table 9 because while it shows lower incomes, there are also 197 new filers reported. It is not logically impossible that the new filers reflected in the January 2004 data had lower incomes than the filers in the March 2003 data, but what appears to be so unlikely as to

be virtually impossible is that all the new filers in the January 2004 data were such low income earners.

69. As can be seen above, the number of filers is 3683 in the January 2004 data for Ontario and 3486 in the March 2003 data, or a difference of 197 additional filers. However, the total income difference between the two sets of filers is \$13,011,812. When one divides that difference in total income between 197 additional filers, this amounts to an average of \$66,050. It is difficult to accept that such a substantial proportion of the new filers are such low income earners in the low bottom tiles, and yet all are above \$50,000 (which they must be in order to even be eligible for inclusion in the table). It is very difficult, if not virtually impossible, to imagine a distribution of these 197 filers that puts them all above \$50,000 and yet with an average income of \$66,000. Indeed, if one even assumed that only 12% of the 197 earned the Ontario 1997 average as set out in the CCRA 1997 data of \$200,565, it would be logically impossible for the remaining 88% to all earn more than \$50,000. Given that the criteria for inclusion in the group in the first place is earning more than \$50,000, this would not be possible.

70. For all of these reasons, we are unable to give credence to the January 2004 data, and to its results, which show lower income levels for Canada, and especially for Ontario, in comparison with the March 2003 data.

## VI. Year 2001 Tax Data

71. In October 2003 we were presented with CCRA preliminary data for tax year 2001. In November 2003, we received additional year 2001 data, which CCRA had provided to Justice at some earlier unspecified time. In correspondence, Justice explained that it had withheld the year 2001 data because it suspected it was in error.<sup>40</sup> Justice later stated that it was satisfied with this data.<sup>41</sup>

72. The 2001 data was radically and, in our view, inexplicably different, not only from the 2000 data (both March 2003 and January 2004), but from the 1997 data presented to the Drouin Commission, as well as other data that had been prepared in previous years by CCRA and presented to successive Ontario Judicial Remuneration Commissions with respect to the incomes of lawyers in Ontario. Within the comparator population that had been employed by the Drouin Commission, the year 2001 data purported to show average incomes across Canada for lawyers that were approximately \$89,000 below 1997 levels, or 39% lower, and an even greater percentage lower than the year 2000 income data, which CCRA itself had previously prepared for Justice in March 2003.

73. In conference calls with CCRA and Justice on November 8, 13 and 18, and December 3, 2003, we attempted to clarify the differences and the basis for the differences

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<sup>40</sup> See email from Justice to Sack Goldblatt Mitchell dated November 18, 2003, Exhibit 15.

<sup>41</sup> See email from Justice to Ogilvy Renault dated November 25, 2003, Exhibit 16.



in the data between 1997, 2000 and 2001. This was followed up by a meeting which took place in Ottawa on December 10, 2003.

74. Since the meeting in December, CCRA has attempted to account for the differences between the 2000 and 2001 data. In our view, these explanations are not at all satisfactory. We have come to the conclusion that the 2001 data is unreliable both in its own right and especially in light of the 2000 and other data previously prepared by CCRA. We have been advised that in the event that the Government of Canada were to seek to rely on the 2001 data, the Federal Judiciary would be offered an opportunity to respond appropriately, and as a result, we defer our further comments on this data.

## **VII. A Note on the Process**

75. We would be remiss if we did not indicate a profound concern with respect to the process followed in obtaining data for this Commission. Our instructions were that instead of seeking data directly from CCRA, as we had done in 1997, we should work with the Government of Canada and adopt a co-operative approach in obtaining data jointly.<sup>42</sup> However, when we approached Justice for that purpose in October 2003, Justice had already received data from CCRA as early as March 2003. Moreover, it became clear that Justice had been working together with CCRA over a period of time not only with respect to a number of further data requests, but also on issues with the data that Justice had

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<sup>42</sup> See letter from counsel for the Association to counsel for Justice dated October 22, 2003, Exhibit 17.

identified. We attempted to seek information about past discussions and exchanges of information between CCRA and Justice, but never felt that we were fully informed. The impression we were left with is that we were not a full partner with Justice in its dealings with CCRA. In addition, many of our questions to CCRA remain unanswered or unsatisfactorily answered.

76. Because we were not a full partner in the process of obtaining data and information concerning this data or in the discussion of data issues over this prolonged period of time, we feel that we were placed in a disadvantageous position. This is particularly the case in view of the obvious problems involved with the data, and since there may well be a controversy with respect to the accuracy and reliability of the data which Justice and CCRA had been, together, working on, adjusting and refining. Certainly it would have been preferable if we had had an opportunity to be involved throughout, or if we had been allowed to review the correspondence and materials that had been exchanged between CCRA and the Department of Justice.