

**JUDICIAL COMPENSATION AND BENEFITS COMMISSION**

**SUBMISSIONS**

**of the**

**CANADIAN SUPERIOR COURTS JUDGES ASSOCIATION**

**and the**

**CANADIAN JUDICIAL COUNCIL**

**IN REPLY**

**to the**

**GOVERNMENT OF CANADA'S**

**SUBMISSIONS and REPORT**

**on**

**INCOME TRENDS IN THE PRIVATE SECTOR**

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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**”) are in reply to the Reply Submission (Second Part) of the Government of Canada (the “**Government**”) and the Report on the Earnings of Self-Employed Lawyers prepared by Western Compensation and Benefits Consultants and filed on behalf of the Government on January 30, 2004.

## **II. ASSESSING THE DATA**

### **A. THE PARTIES’ POSITION AS TO THE RELIABILITY OF THE DATA**

2. The Government has taken the position at paras. 12-14 of its Reply Submission (Second Part) that the data generated by the Canada Customs and Revenue Agency (“**CCRA**”) for the tax year 2001 is unreliable and of limited usefulness. The Government states, at para. 12 of its Reply Submission (Second Part), that it “has reservations about the reliability of the raw data generated by CCRA”. It goes on to say that “what has become clear is that the CCRA data currently available may be of limited usefulness to the Commission’s inquiry” (para. 13) and that “little weight can be placed upon comparisons to earnings of self-employed lawyers” (para.14).
3. For their part, the Government’s experts state at page 4 of their report that, in their opinion, the 2001 CCRA data is reliable: “We have concluded that the 2001 taxation data is reliable based on our own internal tests, the information received from CCRA and the explanations offered on the previous 1997 data”.
4. The Association and Council submitted, based on their experts’ Report on the Incomes of Canadian Lawyers Based on Income Tax Data, dated January 30,

2004 (the “**First Sack Report**”), that while the 2000 CCRA data<sup>1</sup> was generally consistent with the 1997 data relied upon by the Drouin Commission and therefore could be relied upon, the 2001 CCRA data was totally unreliable.

#### **B. ASSESSING THE 2001 DATA**

5. As elaborated in the accompanying “Reply to the Report of the Western Compensation and Benefits Consultants” by Sack Goldblatt Mitchell dated February 27, 2004 (the “**Second Sack Report**”), the Association and Council continue to assert that the 2001 data relied upon by the Government’s experts is unreliable.
6. However, as discussed in the Second Sack Report, some coherence can be derived from the data by adding the group of 7,198 lawyers whose income was omitted from consideration by the Government’s experts on the ground that their professional income ostensibly was not stated to come from the practice of law.
7. The Association and Council’s experts explain in the Second Sack Report both why it would seem erroneous to omit these lawyers and why, when one adds these lawyers to the 2001 data, a far more coherent picture emerges.
8. When data for this group of 7,198 lawyers is added to the 2001 data, the latter is consistent with the 2000 data, and a continued increase in private-sector legal incomes can be observed.

#### **III. THE METHODOLOGY USED BY THE GOVERNMENT’S EXPERT**

9. At para. 12 of its Reply Submission (Second Part) the Government has stated, incoherently it is submitted, that while the 2001 data is unreliable, the new analytic approach of its expert is appropriate and sound. The Association and Council dispute this and warn that adopting this new analytic approach will make

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<sup>1</sup> That is, the “2000 (March 2003) data” as defined by Sack Goldblatt Mitchell in the First Sack Report, paras. 32-33.

it impossible to compare the more recent data with the Drouin Commission's assessment of this issue.

10. Moreover, as shown in the Second Sack Report, the report of the Government's expert suffers from serious methodological problems. The failure to use the \$50,000 threshold, the failure to use the age 44-56 comparator group, and the weighting used for the analysis of the value of the judicial annuity are all methodological problems that undermine the Government's expert's report.
11. Another general observation to be made is that the methodology of the Government's expert would make it impossible for the Commission and the parties to compare the more recent data with the data analyzed in the Drouin Commission since the latter used the \$50,000 threshold and the age 44-56 comparator group. It would be a significant loss and an unwarranted break in continuity to change the methodology without any convincing reason to do so.
12. A further issue of methodology is the fact that the 2001 data, even if it were reliable, is rather obsolete for the determination of salaries in 2004. If anything, it speaks to the need to have salaries that are higher than those of the relevant group in the 2001 data.

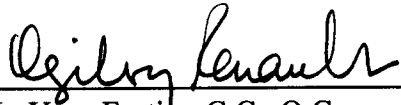
#### **IV. CONCLUSION**

13. Based on the First and Second Sack Reports, it can be concluded that there has been a significant increase in legal incomes in the private sector from 1997 to 2000, and likely an even greater increase in 2001.
14. The Association and Council will address in their Final Submissions, due March 26, 2004, the use that can be made of the private sector income data currently before the Commission, as well as the recommendations that the Commission

ought to make in view of the substantive and procedural problems encountered with the private sector comparator in the context of this Commission's inquiry.

The whole respectfully submitted.

Montréal, February 27, 2004.



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