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Mr. Azim Hussain
c/o Norton Rose Canada LLP
Suite 2500
1 Place Ville Marie
Montréal, Québec H3B 1R1
CANADA

Dear Mr. Hussain,

RE: Submission to the Judicial Compensation and Benefits Commission

You have asked us to comment on the section in Mr. Pannu's report of January 25, 2012 (Annex A to the Reply of the Government of Canada) regarding the reduction of the sample size of self-employed lawyers through the application of filters and exclusions. Please find our response to your request below.

From the perspective of a compensation analysis, the sample sizes being extracted from the CRA data universe are significantly larger than those we are accustomed to working with. Compensation professionals rarely have the luxury of such large sample groups. When a market analysis is conducted for specific management or executive jobs, twenty to thirty observations are rarely exceeded for any given position and this is due to three factors: selections that are made of incumbents matched to organization size, the inability to match to the position being targeted for comparison, and the samples used in compensation analysis are voluntary and as a result targeted to the position(s) under review.

While Mr. Pannu's report assumes that a large sample size is inherently preferable, efforts are regularly made in compensation analysis to match the positions appropriately, not randomly. If this reduces the sample size, compensation professionals are prepared to forego magnitude for data validity. Mr. Pannu's broad sample approach is analogous to difficulties that can be introduced into an analysis when, as in the following example, a sample is defined based on "title matching" alone. Consider a case where both one of the five major Chartered Banks in Canada and a small privately owned company with \$20 million in revenue employ an executive with the title of Chief Financial Officer. It is not appropriate to use the compensation of the small company executive as a data point when assessing the market competitiveness of the top finance executive of a major Chartered Bank. They may both be highly qualified accountants, but what is the likelihood the small company executive will become the Chief Financial Officer of the major Chartered Bank? To continue with our example, if you were to refine the sample of Chief Financial Officers to include only executives who worked in the

financial services sector, and whose employers had assets similar in magnitude to those of the major Chartered Bank, you would more realistically define the profile of the salary market from which the major Chartered Bank would seek to compete for talent for the Chief Financial Officer role.

The same logic must hold true for the lawyers group. While it is true that limiting the CRA data sample to self-employed lawyers in the age range of 44 to 56 does reduce the available sample size, the positive result is a significant increase in the *relevancy* of the sample under consideration. We note from tab 6(i) of the Joint Book of Documents that between January 1997 and March 2011, the majority (74.4%) of appointed judges were between the ages of 44 and 56, while only 5.2% of appointed judges were younger than age 44, and 20.4% were older than age 56. The Association and Council, based on the approach of past Commissions, are advocating a best practice among compensation professionals of matching the profile of the sample used to determine pay for a job to the profile of incumbents who realistically have the skills required to competently perform the job under consideration; in this case the job of an appointed judge. By doing so the size of the sample is reduced for accuracy's sake.

The difference between 15,650 and 7,080 lawyers in the data pool is in our professional opinion immaterial. This sample size is still extremely large by any standard of compensation analysis. Even if one further reduces the sample when only considering the lawyers from the 10 largest CMAs, this remaining sample is still perfectly adequate, as this action still yields a 1:4 ratio relative to the complete pool. This ratio exceeds the sample ratios that are found in many published salary surveys that are used by compensation professionals in a wide variety of industry sectors to assess competitive pay for jobs in their organizations.

We trust these comments will be of assistance.

Yours sincerely,

A handwritten signature in black ink that reads "Larry Moate". The signature is written in a cursive, slightly slanted style.

Larry Moate
Senior Consultant and Principal