



Blake, Cassels & Graydon LLP  
Barristers & Solicitors  
Patent & Trade-mark Agents  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto ON M5L 1A9 Canada  
Tel: 416-863-2400 Fax: 416-863-2653

March 12, 2012

**Catherine Beagan Flood**  
Dir: 416-863-2269  
cbe@blakes.com

VIA EMAIL

Reference: 100716/16

Ms. Suzanne Labbé  
Executive Director  
Judicial Compensation and Benefits Commission  
99 Metcalfe Street, 8th floor  
Ottawa, ON K1A 1E3

Dear Ms. Labbé:

**Re: 2012 Quadrennial Commission on Judicial Compensation**

Madame Labbé,

This letter provides the Government of Canada's responses to the remaining requests for information made by the Commission at the public hearings held on February 20 and 27, 2012 or by email.

Cost Estimates

Please find attached an Excel spreadsheet setting out the requested estimates of the current cost of judicial compensation and of the cost of the recommendations made by the Block Commission. In preparing these estimates, we grouped some of the Block Commission recommendations together where they were closely related. If the Commission would prefer any reorganization, we would be pleased to provide any further estimates that would be of assistance.

Chief Justice of the Court Martial Appeal Court

The Commission asked whether the question of a salary differential for the Chief Justice of the Court Martial Appeal Court of Canada was ever raised in previous commissions and if not, do the parties wish to make any submission on this question.

The primary appointment of the current Chief Justice of the Court Martial Appeal Court of Canada is as a puisne judge of the Federal Court. The issue of trial judges performing appellate functions was raised before the Block Commission as a reason not to recommend a salary differential for appellate judges. The Court Martial Appeal Court was given as one such example. As Mr. Biennu noted at the February 27 hearing, the Block Commission concluded (at para 166):

166. Our attention was drawn to the composition of certain Canadian courts, in particular the courts of appeal of the territories and the Court Martial Appeal Court. In the case of the territorial courts, although these courts are permanent courts of appeal and perform functions analogous to the provincial courts of appeal, the unique confluence of remote locations and the much smaller populations that these courts serve has necessitated more

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flexibility of composition. Appointments to the territorial courts of appeal are made from among the judges of the supreme courts of the territories and from the judges of the courts of appeal of various provinces. The Court Martial Appeal Court presents a similar challenge: its membership is made up of "designated judges" from among the judges of the Federal Court of Appeal, Federal Court and from superior courts of criminal jurisdiction. An appeal could therefore be heard by a judge of the Federal Court of Appeal alongside a judge of the Federal Court and a judge of the Quebec Superior Court. It could be said of these courts that *ad hoc* sittings by trial judges on appeals are a permanent feature of the way they function. We would however distinguish between appointment to a court of appeal on what is effectively a part-time basis, as occurs in the above examples, and full-time appointment to a provincial court of appeal. In both of the above examples, the salaries of the judges sitting on territorial appeal courts and on the Court Martial Appeal Court (including that of its Chief Justice) are determined with reference to their primary appointments; this should continue to be the case following the implementation of a differential in favour of full-time appellate judges. Should the nature of appointments to any of these courts change in the future, so that appointment to either a territorial court of appeal or to the Court Martial Appeal Court could be said to be a judge's primary appointment, it would be necessary for the scope of application of the salary differential in favour of appellate judges to be adjusted accordingly.

The Government submits that payment of the Chief Justice of the Court Martial Appeal Court of Canada in accordance with his primary appointment (as a Judge of the Federal Court), continues to be appropriate. The Government notes that pursuant to s. 27(6) of the *Judges Act*, he receives the same representational allowance as chief justices of the courts of appeal of the territories, to provide for additional expenses he may have by reason of his role as a chief justice.

#### Deputy Ministers

Finally, with respect to the responsibilities of deputy ministers, in addition to the letter provided to you on Friday, March 10, 2012 by the Privy Council Office, please note that the Performance Management Program Guidelines at Tabs 23 (English) and 24 (French) of the Joint Book of Documents also discuss the commitments and expectations for deputy ministers and associate deputy ministers.

We believe that this responds to all of the outstanding requests. If the Commission has any follow-up questions, or further requests for information, we would be pleased to be of assistance.

Yours very truly,

Catherine Beagan Flood

CBE/lpi

c: Pierre Bienvenu  
Azim Hussain

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## Current Costs and the Costs of Implementing the Recommendations of the Block Commission

### Current Cash Costs as Determined by OSFI

	2012-13	2013-14	2014-15	2015-16	Total
Salary	\$315.51M	\$315.51M	\$315.51M	\$315.51M	\$1,262.04M
Pension <sup>1</sup>	-\$11.79M	-\$2.31M	\$7.49M	\$17.75M	\$11.14M
Insurance <sup>2</sup>	\$3.47M	\$3.47M	\$3.47M	\$3.47M	\$13.88M
<b>Total<sup>3</sup></b>	<b>\$307.19M</b>	<b>\$316.67M</b>	<b>\$326.47M</b>	<b>\$336.73M</b>	<b>\$1,287.06M</b>

### Actuarial Liability of Current Annuity Plan as Determined by OSFI

Pension Liability <sup>4</sup>	<b>\$2,304.0M</b>
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<sup>1</sup> Pension contributions are expected to exceed additional pension payments in the first two years. The long-term cost of the current annuity plan is expressed in the accrual costing as an actuarial liability. In its March 2010 report, OSFI projected expenditures in pension benefits to retired or disabled judges as \$114.2M in 2011-12, \$120.7M in 2012-13, \$127.7M in 2013-14 and \$135.2M in 2014-15.

<sup>2</sup> Insurance costs under s. 41.2(1) of the Judges Act are assumed by OSFI to be 1.1% of salary.

<sup>3</sup> Excludes the cost of incidental, removal, education and conference allowances, the maternity and parental pay benefit, the supernumerary election option, vacation and sick leave benefits.

<sup>4</sup> Defined as the sum of (1) the value of future benefits in respect of previous service of judges and (2) for pensioners and survivors, the value of all future benefits.

**Current Cost of Representational Allowances**

		2012-13	2013-14	2014-15	2015-16	N	Total
Supreme Court of Canada	Chief Justice	\$18,500	\$18,500	\$18,500	\$18,500	1	\$74,000
	Puisne	\$10,000	\$10,000	\$10,000	\$10,000	8	\$320,000
CJ of the FCA, CMAC or a Province		\$12,500	\$12,500	\$12,500	\$12,500	12	\$600,000
Other CJ/Assoc./Senior Judge		\$10,000	\$10,000	\$10,000	\$10,000	26	\$1,040,000
Ontario Regional Senior Judge		\$5,000	\$5,000	\$5,000	\$5,000	8	\$160,000
						<b>Total:</b>	<b>\$2.19M</b>

## Recommendation #1

### Block Commission Recommendation on Puisne Trial Judge Salaries\*

		2011-12	2012-13	2013-14	2014-15	2015-16
Supreme Court of Canada	Chief Justice	\$361,300	\$379,000	\$396,400	\$415,400	\$435,700
	Puisne	\$334,500	\$350,800	\$366,900	\$384,500	\$403,300
Appellate Courts	Chief/Assoc.	\$308,200	\$323,300	\$338,100	\$354,300	\$371,600
	Puisne	\$281,100	\$294,800	\$308,300	\$323,000	\$338,800
Trial Courts	Chief/Assoc.	\$308,200	\$323,300	\$338,100	\$354,300	\$371,600
	Puisne	\$281,100	\$294,800	\$308,300	\$323,000	\$338,800

Annual Increase	4.9%	4.6%	4.8%	4.9%
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\* Under the Block Commission Recommendation #1, puisne trial/appellate judges were to receive a salary of \$264,300 in the first year, followed by annual increments of 2% plus IAI (not compounded). The increase in the first year would have been 4.9%. Accordingly, here the existing 2011-12 salaries are all increased by 4.9%, then by 2% plus IAI as forecasted by OSFI. This scheme retains existing differentials.

### Cash Costs over 2011-12 Salary as Determined by OSFI

	2012-13	2013-14	2014-15	2015-16	Total
Salary	\$15.37M	\$30.52M	\$47.03M	\$64.76M	\$157.68M
Pension <sup>1</sup>	-\$0.58M	-\$0.70M	-\$0.39M	\$0.56M	-\$1.11M
Insurance <sup>2</sup>	\$0.17M	\$0.34M	\$0.52M	\$0.71M	\$1.74M
Total	\$14.96M	\$30.16M	\$47.16M	\$66.03M	\$158.31M

### Accrual Costs over 2011-12 Salary as Determined by OSFI

Increase in Pension Liability <sup>3</sup>	\$194.0M
Additional Payments Required <sup>4</sup>	\$22.0M

<sup>1</sup> Additional pension contributions are expected to exceed additional pension payments in the first three years. The long-term cost of higher annuities associated with higher salaries is expressed in the accrual costing as an actuarial liability.

<sup>2</sup> Insurance costs under s. 41.2(1) of the Judges Act are assumed by OSFI to be 1.1% of salary.

<sup>3</sup> Defined as the sum of (1) the value of future benefits in respect of previous service of judges and (2) for pensioners and survivors, the value of all future benefits.

<sup>4</sup> Defined as the additional annual payments that would have to be made over 12 years to amortize the increase in liabilities.

## Recommendations #3 and 4

### Block Commission Recommendations on Salary Differentials\*

		2011-12	2012-13	2013-14	2014-15	2015-16
Supreme Court of Canada	Chief Justice	\$361,300	\$390,200	\$408,100	\$427,600	\$448,500
	Puisne	\$334,500	\$361,200	\$377,800	\$395,900	\$415,200
Appellate Courts	Chief/Assoc.	\$308,200	\$332,900	\$348,200	\$364,900	\$382,700
	Puisne	\$281,100	\$303,600	\$317,500	\$332,700	\$349,000
Trial Courts	Chief/Assoc.	\$308,200	\$323,300	\$338,100	\$354,300	\$371,600
	Puisne	\$281,100	\$294,800	\$308,300	\$323,000	\$338,800

Annual Increase	4.9%	4.6%	4.8%	4.9%
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\* Under the Block Commission Recommendation #3, a salary differential was to be paid the puisne judges appointed to provincial courts of appeal and to the Federal Court of Appeal. Recommendation #4 set out how the existing differentials were to be continued. The salary differentials of the Chief Justice of Canada, justices of the Supreme Court of Canada, chief justices and associate chief justices of courts of appeal were to be established in relation to the salaries of puisne judges appointed to courts of appeal. The salary differential for chief justices and associate chief justices of the trial courts were to be established in relation to the salaries of puisne judges appointed to the trial courts.

**Cash Costs over 2011-12 Salary as Determined by OSFI**

	2012-13	2013-14	2014-15	2015-16	Total
Salary	\$16.89M	\$32.11M	\$48.71M	\$66.57M	\$164.28M
Pension <sup>1</sup>	-\$0.64M	-\$0.70M	-\$0.34M	\$0.66M	-\$1.02M
Insurance <sup>2</sup>	\$0.19M	\$0.35M	\$0.54M	\$0.73M	\$1.81M
Total	\$16.44M	\$31.76M	\$48.91M	\$67.96M	\$165.07M

**Accrual Costs over 2011-12 Salary as Determined by OSFI**

Increase in Pension Liability <sup>3</sup>	\$200.4M
Additional Payments Required <sup>4</sup>	\$22.7M

<sup>1</sup> Additional pension contributions are expected to exceed additional pension payments in the first three years. The long-term cost of higher annuities associated with higher salaries is expressed in the accrual costing as an actuarial liability.

<sup>2</sup> Insurance costs under s. 41.2(1) of the Judges Act are assumed by OSFI to be 1.1% of salary.

<sup>3</sup> Defined as the sum of (1) the value of future benefits in respect of previous service of judges and (2) for pensioners and survivors, the value of all future benefits.

<sup>4</sup> Defined as the additional annual payments that would have to be made over 12 years to amortize the increase in liabilities.



## Recommendations #5 and 6

### Block Commission Recommendations on Senior Judge Annuities\*

	Salary	Annuity				Total
	2011-12	2012-13	2013-14	2014-15	2015-16	
Senior Judge	\$308,200	\$205,467	\$209,576	\$213,768	\$218,043	\$846,853
Puisne Judge	\$281,100	\$187,400	\$191,148	\$194,971	\$198,870	\$772,389
Difference		\$18,067	\$18,428	\$18,797	\$19,172	\$74,464
Re 2011-12 Puisne Salary		6.4%	6.6%	6.7%	6.8%	26.5%

CPI Forecast:	2%	2%	2%
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\* The Block Commission recommended that senior judges of the territorial courts who elect supernumerary status (Recommendation #5) or elect to perform the duties of a puisne judge (Recommendation #6) should receive an annuity upon retirement based on the salary of a senior judge. This table expresses the cost of implementing these recommendations as a percentage of a puisne judge's 2011-12 salary over four years for a single judge since it is difficult to anticipate the volume of such elections. The calculation factors in OSFI's forecast of CPI by which annuities are indexed. Changes in the CPI have a marginal effect on the cost.

## Recommendation #7

### Block Commission Recommendation on Appellate Annuities\*

	Salary	Annuity				Total
	2011-12	2012-13	2013-14	2014-15	2015-16	
Appellate Puisne**	\$289,500	\$193,000	\$196,860	\$200,797	\$204,813	\$795,470
Trial Puisne	\$281,100	\$187,400	\$191,148	\$194,971	\$198,870	\$772,389
Difference		\$5,600	\$5,712	\$5,826	\$5,943	\$23,081
Re 2011-12 Puisne Salary		2.0%	2.0%	2.1%	2.1%	8.2%

CPI Forecast:	2%	2%	2%
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\* The Block Commission recommended that judges appointed to a court of appeal who subsequently accept appointment to a trial court should receive an annuity upon retirement based on the salary of an appeal court judge (Recommendation #7). This table expresses the cost of implementing this recommendation as a percentage of a trial court judge's 2011-12 salary over four years for a single judge since it is difficult to anticipate the volume of such appointments. The calculation factors in OSFI's forecast of CPI by which annuities are indexed. Changes in the CPI have a marginal effect on the cost.

\*\* This recommendation presumes acceptance of the appellate differential as set out in Recommendation #3. Accordingly, the puisne appellate salary for 2011 is calculated as 3% above the salary of a puisne trial judge.

## Recommendations #9 and 10

### Block Commission Recommendations on Representational Allowances\*

		2011-12	2012-13	2013-14	2014-15	2015-16	N	Over Four Years		Re 2011-12 Salary	
								Per Judge	Net		
Supreme Court of Canada	Chief Justice	\$18,500	\$22,500	\$22,500	\$22,500	\$22,500	1	\$16,000	\$16,000	4.4%	\$361,300
	Puisne	\$10,000	\$12,000	\$12,000	\$12,000	\$12,000	8	\$8,000	\$64,000	2.4%	\$334,500
CJ of the FCA, CMAC or a Province		\$12,500	\$15,000	\$15,000	\$15,000	\$15,000	12	\$10,000	\$120,000	3.2%	\$308,200
Other CJ/Assoc./Senior Judge		\$10,000	\$12,000	\$12,000	\$12,000	\$12,000	26	\$8,000	\$208,000	2.6%	\$308,200
Ontario Regional Senior Judge**		\$5,000	\$6,000	\$6,000	\$6,000	\$6,000	9	\$4,000	\$36,000	1.4%	\$281,100
								Total:	\$0.44M		

\* Dollar amounts set out in Recommendation #9 of the Block Commission Report, as requested in paragraph 44 of the Reply Submission of the Association and Council.

\*\* Includes the senior family law judge in Ontario as set out in Recommendation #10 of the Block Commission Report.