

**JUDICIAL COMPENSATION AND BENEFITS COMMISSION**

**SUPPLEMENTAL BOOK OF EXHIBITS AND DOCUMENTS**

**of the**

**CANADIAN SUPERIOR COURTS JUDGES ASSOCIATION**

**and the**

**CANADIAN JUDICIAL COUNCIL**

January 24, 2025

Pierre Bienvenu, Ad. E.  
Jean-Michel Boudreau  
Étienne Morin-Lévesque  
IMK LLP / s.e.n.c.r.l.

**imk**  
avocats • advocates

| TAB # | DESCRIPTION   |
|-------|---|
|       | <b>REPORTS PREPARED IN THE CONTEXT OF THIS COMMISSION</b>   |
| A.    | Professor Douglas E. Hyatt, Reply to the Government’s Submission to the Judicial Compensation and Benefits Commission, January 24, 2025 |
| B.    | Ernst & Young, “Value of the Judicial Annuity – Review of the Eckler Report,” January 21, 2025  |
| C.    | Ernst & Young, Review of the Eckler Report, January 24, 2025  |
|       | <b>QUADRENNIAL COMMISSION AND PARLIAMENTARY PROCEEDINGS</b>   |
| 1.    | Submissions of the Government of Canada to the Block Commission, December 14, 2007  |
| 2.    | Submissions of the Government of Canada to the Levitt Commission, December 23, 2011   |
| 3.    | Submissions of the Government of Canada to the Rémillard Commission, February 29, 2016  |
| 4.    | Judicial Compensation and Benefits Commission Hearings, Transcript of the May 10, 2021 hearing  |
|       | <b>VARIA</b>  |
| 5.    | Report of the Military Judges Compensation Committee, January 31, 2024  |
| 6.    | Statistics Canada, “partners_cma_2018_2022_NEW”   |

# D. E. Hyatt Litigation Economics Inc.

---

116 Sherwood Avenue  
Toronto, ON M4P 2A7

January 24, 2025

Mr. Jean-Michel Boudreau and Mr. Étienne Morin-Lévesque  
IMK s.e.n.c.r.l./LLP  
Place Alexis Nihon, Tour 2  
3500, boulevard De. Maisonneuve Ouest  
Montréal (Québec)  
H3Z 3C1

Dear Counsel,

Re: Judicial Compensation and Benefits Commission

I enclose my reply to the Government's submissions to the Judicial Compensation and Benefits Commission.

Yours truly,



Douglas E. Hyatt  
Professor Emeritus

January 24, 2025

Reply to the Government's Submissions to the Judicial Compensation and Benefits  
Commission

Prepared for Mr. Jean-Michel Boudreau and Mr. Étienne Morin-Lévesque  
of IMK s.e.n.c.r.l./LLP

by

D.E. Hyatt Litigation Economics Inc<sup>\*</sup>

<sup>\*</sup> Professor Douglas E. Hyatt

I am a Professor Emeritus in the Joseph L. Rotman School of Management and the Centre for Industrial Relations, both of the University of Toronto. I was the Academic Director of Professional MBA Programs at the Rotman School of Management and was the Associate Chair of Economics for Management Studies in the Division of Management at the University of Toronto at Scarborough. I have a B.A. degree (economics), an M.A. degree (economics), and a Ph.D. (industrial relations), all from the University of Toronto.

I have been asked to comment and, as appropriate, reply to the *Submissions of the Government of Canada to the 2024 Judicial Compensation and Benefits Commission* (December 20, 2024). In particular, I address the issues of (i) the Government's characterization of judicial salary adjustments based upon the IAI as "generous", (ii) the Government's proposed cap on cumulative IAI adjustments over the next quadrennial cycle, and (iii) the Government of Canada's perspective on its debt and budget deficits.

To address these issues, I have relied upon my general knowledge of economics and economic statistics.

### ***Characterization of Annual Salary Adjustments Based Upon the IAI as "Generous"***

1. At pages 11 and 12 of its submissions, the Government states as follows:

*"29. The yearly indexing of the salary in line with IAI has consistently resulted in generous increases to judicial salary in the last 20 years. This is most apparent when comparing the trajectory of judicial salary since the advent of the IAI indexing to the trajectory of the salary increases that would have resulted from the use of another metric. For example, indexing with the CPI would have resulted in a judicial salary in 2024 of \$354,700, which is \$42,000 less than the current judicial salary in 2024 based on the IAI."*

2. The Government's assessment of what constitutes "... *generous increases to judicial salary ...*" is annual wage increases equal to the average increase experienced across all working Canadians. The Government then demonstrates that if judicial salaries had been adjusted according to the annual percentage change in the CPI, which has traditionally increased at a rate slower than the IAI, judicial salaries would now be lower than they are.

- 2.1 Annual changes in the IAI reflect changes in general price inflation and changes in productivity. Increases in productivity occur when workers produce more output, and/or output of higher value, per unit of time (for example, per hour). "Real" wage increases occur when the value of the output produced by workers, due to productivity improvements, increases

at a rate faster than price inflation. In this way, real wage increases are a measure of improvements in the standard of living because they allow the purchases and savings of workers to more than simply keep pace with general price increases.

- 2.2 The Government identifies no economic principle, and I am aware of no economic principle, that would support a definition of real wage increases that mirror those experienced, on average, by all working Canadians, as “generous”.
- 2.3 Further, it merits emphasis that the IAI does not, by definition, increase in every year, at a rate faster than the CPI. It is possible, as has been experienced in some previous years by the judiciary, that the percentage increase in the IAI is less than that of the CPI.

### ***A Cap on Cumulative Salary Adjustments based on the IAI***

3. At page 13 of its submissions, the Government advances the following arguments in support of an altered cap on judicial salary adjustments based on the IAI.

*“33. The implementation of an indexation cap allows for predictable and stable increases to judicial salaries in line with the IAI as provided by the Judges Act while also ensuring that these increases do not inadvertently soar beyond what was envisioned at the time of the Commission’s report. If the IAI is significantly higher than what is projected at the time of the Commission’s report, then the resulting salary increases cannot be said to reflect what was deemed to be necessary to ensure judicial independence.*

*34. The implementation of an indexation cap also guarantees that increases are reasonable in light of the critical factors mentioned above, notably Canada’s uncertain fiscal conditions, the geopolitical volatility, and the struggles of Canadians with recent high inflation and elevated costs of living. For context, 14% of the judicial salary at the beginning of the quadrennial cycle was \$53,718, which is approximately 80% of the average yearly Canadian salary as of September 2024. In 2024, this same percentage equals approximately 83% of the average yearly Canadian salary.”*

4. Judicial salary adjustments based upon the IAI reflect the average wage increases of all working Canadians. Consequently, salary adjustments that are not fully reflective of changes in the IAI, as would be the case if the cumulative increase in the IAI exceeds the arbitrary cap suggested by the Government, serves only to disadvantage the judiciary relative to all working Canadians.
  - 4.1 I note, for perspective, that the Canadian personal income tax system is indexed to inflation. That is, if wages increase at a rate faster than general price inflation (i.e., the real wages increase), Government personal income tax receipts also increase at a rate faster than inflation. This means that when the IAI increases at a rate faster than inflation, this increase provides the source of funds to the Government to allow the judiciary to share in the improved standard of living enjoyed by the average working Canadian.
5. The Government asserts at paragraph 33 of its submissions that, *“If the IAI is significantly higher than what is projected at the time of the Commission’s report, then the resulting salary increases cannot be said to reflect what was deemed to be necessary to ensure judicial independence.”* Here, the Government suggests that the judiciary should be excluded from the same faster than anticipated real wage increases, due to unforeseen positive developments in the Canadian economy over the next four years, that are enjoyed by the average working Canadian.
6. The Government’s assertion at paragraph 34 of its submissions that, *“The implementation of an indexation cap also guarantees that increases are reasonable in light of the critical factors mentioned above, notably Canada’s uncertain fiscal conditions, the geopolitical volatility, and the struggles of Canadians with recent high inflation and elevated costs of living,”* fails to acknowledge that unforeseen negative (and positive) developments that impact the broad economic landscape also impact the wages of average Canadians. Negative developments tend to depress real wage growth and positive developments tend to accelerate real wage growth. Alternatively stated, unforeseen developments in the broader economy will result in wage adjustments which, in turn, will impact the IAI Adjustment provided for in the *Judges Act*. The IAI is not independent of general economic conditions, unforeseen or otherwise.

**The Government of Canada’s Perspective on its Debt and Budget Deficits**

7. At page 9 of its submissions, the Government states:

*“22. In the 2024 Budget, the Government forecasted a budgetary deficit of \$40 billion in 2023-24. The forecast of the Government’s budgetary balance was that this deficit would progressively improve to reach a deficit of \$20.0 billion by 2028–2029.”*

7.1 The Government notes at footnote 26 that, *“In the Fall Economic Statement, the Government revised the deficit forecast to \$23 billion by 2029.”*

8. The Government of Canada has provided its own perspectives on its debt and budget deficits in the *2024 Fall Economic Statement*.

9. In the *2024 Fall Economic Statement*, the Government of Canada reiterated that its fiscal anchor remains the debt-to-GDP ratio, and not debt or deficits alone. Under the section heading, *“Canada’s Responsible Economic Plan<sup>1</sup>”*, the Government of Canada observes:

*“An important fiscal sustainability metric—and the government’s fiscal anchor—is to maintain a declining federal debt-to-GDP ratio. The 2024 Fall Economic Statement respects this anchor, with a debt-to-GDP ratio projected to decline in each and every year of the forecast horizon, from 41.9 per cent in 2024-25, down to 38.6 per cent in 2029-30.”*

10. The fiscal sustainability measure preferred by the Government of Canada highlights that debt levels alone do not define fiscal sustainability. Rather, the proper metric is the growth of debt relative to the growth of national income (GDP).

11. The Government of Canada emphasizes the general policies of continued spending and economic growth initiatives it is undertaking to support GDP growth and to reduce the debt-to-GDP ratio, as follows.<sup>2</sup>

*“The 2024 Fall Economic Statement upholds the government’s commitment to responsible fiscal management, through targeted investments that will provide short-term relief, while laying the groundwork for a more productive economy in the years to come. With new measures in the 2024 Fall Economic Statement, policy actions taken since Budget 2024, and*

---

<sup>1</sup> See *2024 Fall Economic Statement*, at page 35.

<sup>2</sup> See *2024 Fall Economic Statement*, at page 35.



*incorporating the results of the September 2024 survey of private sector economists, a deficit of \$48.3 billion, or 1.6 per cent of GDP, is projected in 2024-25. In 2026-27, the deficit is expected to fall below 1 per cent of GDP, fulfilling the government's ongoing fiscal objective. By the end of the forecast horizon in 2029-30, a smaller deficit of \$23 billion, or 0.6 per cent of GDP, is projected."*

12. The budget deficit for the fiscal year 2023-2024 which, as noted in my previous report, was anticipated by some private forecasters including PEAP, did not alter the debt-to-GDP ratio, "*the most important metric*", anticipated in the 2024 Budget. The Government offers the following assessment of the 2023-2024 budget deficit:

*"In 2023-24, the government is projected to record significant unexpected expenses related to Indigenous contingent liabilities. Absent these expenses, and allowances for COVID-19 pandemic supports, the 2023-24 budgetary deficit would have been approximately \$40.8 billion, compared to the Budget 2024 projection of \$40 billion. However, the higher-than-anticipated provisions for these two categories add accounting charges of \$21.1 billion. The federal debt-to-GDP ratio in 2023-24—the most important metric—is 42.1 per cent, as forecast in Budget 2024."*



---

Douglas E. Hyatt

# Value of the Judicial Annuity - Review of Eckler Report

Prepared for the Judicial  
Compensation and Benefits  
Commission

January 21, 2025



January 21, 2025

## Table of Contents

|   |   |
|---|---|
| Background .....                                | 3 |
| Eckler's Valuation of the Judicial Annuity..... | 3 |
| Calculation Method.....                         | 3 |
| Choice of Data on Age Distribution .....        | 4 |
| Assumption-Setting Approach .....               | 4 |

January 21, 2025

Jean-Michel Boudreau  
Managing Partner  
IMK s.e.n.c.r.l./LLP  
3500 Boul de Maisonneuve Ouest  
Montreal QC H3Z 3C1

January 21, 2025

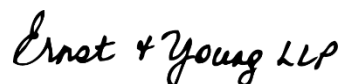
## Value of the Judicial Annuity

Dear M<sup>e</sup> Boudreau,

We have been engaged by IMK LLP ("IMK") in your capacity as counsel to the Canadian Superior Courts Judges Association and the Canadian Judicial Council (the "Judiciary") in connection with the inquiry of the seventh Judicial Compensation and Benefits Commission (the "Commission"), which commenced on October 11, 2024.

As per your request, we have reviewed the report entitled "Judicial Compensation and Pension Review" dated December 17, 2024, prepared by Eckler Canada for the Department of Justice (the "Eckler Report"). Eckler estimated the value of the judicial annuity to be 44.1% (including the value of the disability benefit). The Eckler Report does not disclose the actuarial calculation method and assumption-setting approach at a level of detail that would permit us to provide a detailed response, or that would be typically found in an actuarial report. We requested additional information and obtained some clarification from Eckler in an email dated January 20, 2025. Nevertheless, based on the information provided, we have observed a number of important deviations from the approach used and accepted by the prior Commission. Our response below summarizes areas where we disagree with the determination of the value of the judicial annuity presented in the Eckler Report.

Yours sincerely,



Carol Wong  
Partner\*

Sze-King Fong  
Senior Manager

\* Carol Wong is a limited partner of Ernst & Young LP, which provides services to Ernst & Young LLP

January 21, 2025

## Background

EY has been engaged by IMK to assist in their representation of the Judiciary during the inquiry of the Judicial Compensation and Benefits Commission. This report has been prepared for IMK. The purpose of this report is to comment on the valuation of the judicial annuity set forth in the Eckler Report.

We understand that as an expert, we are to provide an opinion that is independent, objective and related to matters within our area of expertise. We are Fellows of the Canadian Institute of Actuaries and of the Society of Actuaries and have experience in pension actuarial calculations.

The intended users of this report are IMK, the Commission, and the various parties appearing before the Commission. The report should not be provided to any party who is not an intended user. The results and analysis within this report should not be relied upon by any party other than an intended user.

## Eckler's Valuation of the Judicial Annuity

In our opinion, Eckler's actuarial calculation method, choice of data concerning the age of judges, and assumption-setting approach are inconsistent with the methodology adopted by the prior Commission. In our opinion, the approach adopted by Eckler in these areas is not suited to the purpose of valuing the judicial annuity.

### Calculation Method

#### Actuarial Methodology

In their report, Eckler indicate that their results are based on the assumptions disclosed in the 2022 OCA Report<sup>1</sup>. Upon further inquiry<sup>2</sup>, Eckler confirms that they used the same *methodology* as that disclosed in the OCA Report - a modified Project Unit Credit methodology. In our opinion, that actuarial calculation methodology is inconsistent with the one adopted by the prior Commission (Turcotte).

In our initial report, we determined that the value of the judicial annuity is 28% of a judge's base salary. In making that determination, we used an actuarial methodology that is consistent with the one used and accepted by the prior Commission - the Entry Age Normal methodology. The details of this actuarial methodology are summarized on page 8 of our initial report. The advantage of this methodology for the purpose of estimating the value of the judicial annuity is that it provides for a consistent value of the judicial annuity over the entirety of a judge's career, which is useful in the context of the Commission's mandate.

#### Disability Benefits

The Eckler Report ascribes a total value of 44.1% of salary to the judicial annuity. To arrive at this number, Eckler add the value of the disability benefit (5.6%) to their estimation of the pension value (38.5%). However, it is our understanding that the sixth Judicial Compensation and Benefits Commission (Turcotte) accepted a valuation that did *not* include the value of the disability benefit, as was done by prior Commissions. Mr. Newell, the Judiciary's expert at the time, had computed the value of the judicial annuity without the inclusion of the disability benefit. The methodology employed by Mr. Newell conforms with the view accepted by Mr. Sauvé, who served as expert for the Levitt Commission, and expressed by

---

<sup>1</sup> Eckler Report page 12 states: "The values [...] are based on the assumptions disclosed in the 13th Actuarial Report on the Pension Plan for Federally Appointed Judges as at March 31, 2022..."

<sup>2</sup> Provided in an email dated January 20, 2025 from Sarah-Dawn Norris, Senior Counsel of the Government of Canada

January 21, 2025

Mr. Fitzgerald, who was acting as expert for the Judiciary before the same Commission, that the valuation of the disability benefits is part of a much broader exercise.

In sum, we agree with the approach adopted by past Commissions of excluding the valuation of the disability benefit from the valuation of the judicial annuity.

## Choice of Data on Age Distribution

The Eckler Report states that age distribution data as at March 31, 2024, provided by the Department of Justice Canada, was used to determine the net value of the judicial annuity at each age range. The full dataset includes personnel data of over 10,500 judges with judicial appointments since 1910. Eckler state that their overall analysis included all federal judges appointed before April 1, 2024, who are currently active, have a full workload and make contributions to their pension plan<sup>3</sup>. However, it remains unclear whether this subset of data was used for the purpose of determining the value of the judicial annuity.

Regardless of whether the full dataset or a subset of data was used, the reference to data on the age of *all* judges is inconsistent with the approach adopted in the prior Commission (Turcotte). In our analysis, as well as in prior Commission (Turcotte), the value of the judicial annuity was determined using a new judge's age at appointment, not the data on the age of all existing judges. This inconsistency impacts the value of the judicial annuity estimated by Eckler.

Our understanding is that the value of the judicial annuity estimated in the Eckler Report is based on the actual age of the existing judges in the data, rather than at each age at appointment. Hence, rather than presenting the value of the judicial annuity for a newly appointed judge, a relevant measure when looking to attract outstanding candidates to the judiciary, these results tell us what the value of a judicial annuity may be to an existing judge who has already worked for a number of years.

For the purposes of assessing the value of the judicial annuity to potential new judges, it is most appropriate to perform calculations based on the age of appointment.

As noted, the use of data on existing judges is inconsistent with the approach accepted by prior Commission (Turcotte). As shown in Mr. Newell's letter at the last Commission, his results are presented based on age at appointment and used in his calculations of the value of the judicial annuity at each age. Our calculated value of 28% is also based on age at appointment, consistent with the approach taken in the prior Commission (Turcotte).

## Assumption-Setting Approach

Eckler's valuation of the judicial annuity is said to be based upon the assumptions of the most recent actuarial valuation report issued by the Office of the Chief Actuary, as at March 31, 2022 (the "2022 OCA Report").

It is important to understand that the purpose of the OCA report is very different from the purpose of the Commission. OCA prepares this valuation report under the Public Sector Accounting Standards (PSAS) rules. PSAS rules are created to fairly and accurately present the costs of pension obligations to the government. This is a very different purpose than determining the value of the judicial annuity to an individual, as a component of that judge's compensation package.

---

<sup>3</sup> Eckler Report page 9 states: "Analysis of current judicial compensation included all federally appointed judges appointed before April 1, 2024, who are currently active (i.e., full workload and making contributions to their pension plan)."

January 21, 2025

Because the purpose of the 2022 OCA Report is to determine the cost of the judges pension plan *to the government*, certain assumptions, especially the discount rate used for that purpose, may not be relevant when determining the value of the judicial annuity to a judge.

#### Discount Rate Assumption

A key assumption of any actuarial calculation is typically the discount rate. Eckler used a discount rate of 3.6%, which is the single-equivalent average discount rate disclosed in the 2022 OCA Report<sup>4</sup>. We note that this equivalent flat discount rate assumption was selected by the OCA to satisfy the PSAS requirements, which are meant to determine the cost of providing these benefits to the Government of Canada, to be disclosed in the Public Accounts (government's financial reporting). Under PSAS, the discount rate is set as the Government's expected cost of borrowing, which is based on Government bond yields (the Government can borrow monies by issuing bonds and the interest/yields on such bonds would constitute the Government's cost of borrowing). The rationale behind this discount rate setting methodology lies in the purpose of a PSAS valuation: to determine the cost to the government of providing this benefit. As the OCA's assumption setting approach is specific to the Government's financial reporting requirements (accounting purposes), the basis used by the OCA to determine the discount rate assumption is not relevant to determining the value of the judicial annuity for the purposes of the Commission.

In contrast, the discount rate used in our report is determined for the purpose of estimating the value of the judicial annuity to a judge, as a component of their total compensation package. The approach we have taken is consistent with that adopted by the prior Commission (Turcotte), and the level of the discount rate has been updated to reflect the relatively higher interest environment at the time of the current Commission. More specifically, as described in our initial report, we have estimated the discount rate as a reasonable expected rate of return on a balanced portfolio of assets that any prudent investor planning for their retirement may invest in. In other words, this approach estimates the value of an annuity by determining the amount of assets that, if provided to an individual, could be reasonably expected to generate a comparable stream of income through investment in a balanced portfolio. This is a common and accepted approach to estimate such value.

In contrast, Eckler's choice to set the discount rate assumption equal to that used in the 2022 OCA Report is inconsistent with what was done for the prior Commission (Turcotte).

#### Change From Prior Commission

The prior Commission (Turcotte) adopted a value of 34.1% for the judicial annuity, a number that was derived using a discount rate of 5.0%. That discount rate was supported by the market conditions at the time of the last Commission, when, for example and as noted in our initial report, long-term government bonds yielded 1.45% as of January 1, 2020. These yields are currently significantly higher, at 3.27% at the beginning of 2024 and 3.37% at the end of 2024. In a higher interest rate environment, investors typically also anticipate higher equity returns, as they seek greater compensation for holding riskier assets compared to the returns from government bonds. This additional return is commonly referred to as the "equity risk premium". As a result, we adopted a 6.0% discount rate in our report for the current Commission, reflecting the expectation that a balanced portfolio will yield higher returns in a higher interest rate environment. In reflecting the higher interest rate environment, the use of a **higher** discount rate results in a **lower** value of the judicial annuity.

Therefore, Eckler's position that the estimated value of the judicial annuity should *increase* (38.5%) relative to the value adopted by the prior Commission (34.1%), is inconsistent with the prevailing market

---

<sup>4</sup> The 2022 OCA Report uses a graded discount rate assumption of 3.1% in 2024 increasing to a long-term ultimate rate of 4.0% in 2034 and thereafter. The 2022 OCA Report notes that for the purposes of calculating the pension plan's liability at 31 March 2022, the variable interest rates is equivalent to using a flat discount rate of 3.6%. [Pension Plan for Federally Appointed Judges as at 31 March 2022](#)

January 21, 2025

conditions. To the contrary, one would expect that given the current higher interest rate environment, the value of the judicial annuity should *decrease* from the 34.1% value determined at the prior Commission.



## **EY | Building a better working world**

**EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.**

**Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.**

**Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.**

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via [ey.com/privacy](https://ey.com/privacy). EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit [ey.com](https://ey.com).

© 2025 Ernst & Young LLP. All Rights Reserved.  
A member firm of Ernst & Young Global Limited.

This publication contains information in summary form, current as of the date of publication, and is intended for general guidance only. It should not be regarded as comprehensive or a substitute for professional advice. Before taking any particular course of action, contact Ernst & Young or another professional advisor to discuss these matters in the context of your particular circumstances. We accept no responsibility for any loss or damage occasioned by your reliance on information contained in this publication.

**[ey.com/ca](https://ey.com/ca)**

# Review of the Eckler Report

Prepared for the Judicial Compensation  
and Benefits Commission

January 24, 2025



## Table of Contents

|  |    |
|--|----|
| Background.....  | 3  |
| 1. Eckler’s Analysis of Income of Professional Law Corporations .....    | 3  |
| a) Analysis of PLC data .....  | 3  |
| b) Reference to the PLC Owners Data File.....                            | 4  |
| c) Use of the PLC’s Declared Dividends to Approximate Lawyer Income..... | 5  |
| d) Improper and Inaccurate Comparator Derived from StatsCan Data.....    | 6  |
| 2. Difference Between Mean and Median in PLC Partner Data .....          | 6  |
| 3. Criticism Relative to the Use of Filters on Compensation Data.....    | 7  |
| a) Applying a Minimum salary Cut-Off.....                                | 8  |
| b) Applying an Age Parameter to the Compensation Data.....               | 8  |
| c) Market Positioning and Percentile .....                               | 9  |
| 4. Other Inaccurate Compensation Comparisons .....                       | 9  |
| a) Inaccurate Comparators.....   | 9  |
| b) Comparing Relevant Data Across Various Years .....                    | 10 |
| c) Errors in the Year of Reference .....                                 | 10 |
| 5. Appendix: References.....   | 11 |

24 January 2025

Jean-Michel Boudreau  
Managing Partner  
IMK s.e.n.c.r.l./LLP  
3500 Boul de Maisonneuve Ouest  
Montreal QC H3Z 3C1

January 24, 2025

## Judicial Compensation Review

Dear M<sup>e</sup> Boudreau,


We have been engaged by IMK LLP (“IMK”), in your capacity as counsel to the Canadian Superior Courts Judges Association and the Canadian Judicial Council (the “Judiciary”) in connection with the inquiry of the seventh Judicial Compensation and Benefits Commission (the “Commission”), which commenced on October 11, 2024.

As per your request, we reviewed the report entitled “Judicial Compensation and Pension Review” dated December 17, 2024, prepared by Eckler Canada (the “Eckler Report”) as well as the submissions to the Commission filed on December 20, 2024 by the Government of Canada (the “Government Submissions”).

The Eckler Report and the Government Submissions raise three main areas of concern that significantly impact their analysis and conclusions. The first relates to Eckler’s interpretation of the data, in particular data related to Professional Law Corporations (“PLCs”). The second relates to Eckler’s exclusion of data related to incorporated lawyers from their main analysis and conclusions. Finally, we comment on the lack of consistency compared to prior Commissions in the application of data filters, as well as the issue of inconsistent compensation comparisons across various years and statistical data points.

Our comments below summarize the areas where we disagree with the approach, analysis and data used in the Eckler Report and the Government Submissions.

Yours sincerely



Uros Karadzic Partner\*

Marvin Reyes  
Compensation Consulting  
Leader

\* Uros Karadzic is a limited partner of Ernst & Young LP, which provides services to Ernst & Young LLP

## Background

EY has been engaged by IMK in connection with their representation of the Judiciary in the inquiry of the Judicial Compensation and Benefits Commission. This report has been prepared for IMK. The purpose of this report is to comment on the compensation review and analysis presented in the Eckler Report.

The intended users of this report are IMK, the Commission, and the various parties appearing before the Commission. The report should not be provided to any party who is not an intended user. The results and analysis within this report should not be relied upon by any party other than an intended user.

### 1. Eckler's Analysis of Income of Professional Law Corporations

In our opinion, Eckler's analysis of data on Professional Law Corporations contains several critical misinterpretations:

- ▶ Eckler's categorization of PLC data, which includes *unincorporated* individual partners, fails to accurately reflect the financial realities of incorporated lawyers. We also note that Eckler does not include the compensation data related to *incorporated* lawyers in their Self-Employed Lawyers category, which forms part of their main analysis and conclusions (pages 4-5 of Eckler Report).
- ▶ The "PLC Owners" data file used by Eckler contains information on the PLCs' net income, dividends, and retained earnings, rather than the financial details of individual shareholders, leading to inaccuracies in Eckler's conclusions.
- ▶ Eckler's method of estimating individual lawyer income by combining net income and dividends constitutes an improper method and results in an inaccurate determination of earnings.

#### a) Analysis of PLC data

In the analysis of the income earned by Professional Law Corporations, starting on page 34 of the Eckler Report, Eckler discusses two types of partners: type 1 partners being individuals, and type 2 partners being corporations.

However, Type 1 partners (i.e. *unincorporated* individual partners) are then included in the analysis and presented as part of PLC data. By definition, a PLC is a corporation, which is why it is erroneous to include *unincorporated* individual partners in the analysis of PLC data.

This distinction is crucial because the financial and operational characteristics of incorporated lawyers differ significantly from those who are unincorporated. Therefore, it is fundamentally incorrect for Eckler to examine the income of individual, unincorporated partners and present this information as representative of PLC data. Such a misinterpretation leads to erroneous conclusions because the data sets are not comparable and do not reflect the financial realities of *incorporated* legal professionals.

Incorporated lawyers benefit from the ability to retain earnings within the corporation, reinvest in the business, and manage their income through dividends and salaries. Unincorporated partners, however, receive their share of profits directly and are taxed on that income. Furthermore, it is generally the higher-earning partners who opt to incorporate. Capturing the data related to incorporated partners is an important additional component of the evidence made available to the current Commission. The goal of including this important set of data is to more accurately and fairly present the earnings of self-employed lawyers in the private sector. The Eckler Report, in its summary and key recommendations (at pages 4-5) does not, in fact, include the data for *incorporated* lawyers in the Self-Employed Lawyers category.

In addition, we note that the Eckler Report references an outdated StatsCan file in a number of tables. On October 10, 2024, StatsCan provided the parties with an updated dataset on partners. This new dataset contained revised, and significantly increased, count numbers for the income data provided on partners.

Pages 36 to 38 of the Eckler Report display median and 75<sup>th</sup> percentile income data for type 1 partners (*unincorporated* individuals), from 2018 through 2022, by CMA. Readers of the Eckler Report should be made aware that the Count column in these tables references an outdated file and presents numbers that are much lower than the actual counts. In other words, the sample size of the StatsCan data on partners is in reality much greater than reported by Eckler. For example, the individual (unincorporated) partner count for Montreal in 2018 is reported by Eckler as 80 (page 36), whereas the actual count is 1,250.

## **b) Reference to the PLC Owners Data File**

The Eckler Report refers extensively to the “PLC Owners” data file (at pages 34, 35, 40, 41 and 48) and draws conclusions based on the assumption that this financial information pertains to *shareholders* of PLCs, as opposed to the PLC itself. This is incorrect and therefore produces inaccurate analysis and conclusions.

As explained in our initial report and in StatsCan’s letter accompanying the data<sup>1</sup> (the “StatsCan Letter”), StatsCan has provided two datasets, one based on corporate T2 filings (PLC(T2)), and the other based on T5013 filings (Partnership(T5013)).

The “PLC Owners” file, which is part of the PLC(T2) dataset, contains detailed information on the net income, declared dividends and retained earnings of the PLC itself, rather than the individual shareholders. The reason that the data file is called “PLC Owners” is because the data is broken down based on the age of the shareholders. For instance, concerning net income, the StatsCan Letter specifies: “summary of PLCs’ net income across the owners’ three age groups (35-46, 47-54, 55-69)”. Thus, the data provided is the net income of the corporation, not the net income of the owner (shareholder). Similarly, the declared dividends are those declared by the corporation. Finally, the retained earnings, which have no meaning for an individual taxpayer, are those retained by the corporation year after year<sup>2</sup>.

The distinction between corporation and owner is significant because the financial metrics of a corporation can differ greatly from those of its shareholders, affecting the accuracy and relevance of any analysis conducted. The income received by a corporation (i.e. money coming into a PLC) from its business operations is not necessarily distributed in total to shareholders (i.e. money coming out of a PLC). First, the corporation needs to cover its operating, ancillary and tax expenses. Only then can we arrive at the net income for the corporation. A portion of that net income may be retained for reinvestment in the business. How much is retained depends on the governance strategy specific to that entity and its circumstances in any given year.

In order to accurately determine the earnings related to the practice of law of a shareholder of a PLC, more information including how many shareholders there are in a PLC, how each shareholder contributes to income from legal activities, and the policies by which these PLCs distribute profits to the shareholders would be needed.

When discussing the compensation of *incorporated* lawyers in its Submissions, the Government also references the PLC Owners data file (paras 108 and 109), presenting data on the median and 75<sup>th</sup> percentile incomes. Again, those figures were extracted from the StatsCan dataset that provides data on legal corporations (T2). As explained above and in our initial report, that dataset is not useful to determine the total compensation received by incorporated self-employed lawyers, for several reasons:

- ▶ The dataset is overinclusive because it includes all corporations with NAICS code 541110; it is not limited to professional law corporations owned by only one lawyer, but also includes corporations that

---

<sup>1</sup> Letter of June 2024 titled “Tables for DoJ and Quadrennial Commission”.

<sup>2</sup> The StatsCan Letter provides the following formula for retained earnings : retained earnings (re) = [retained earnings/deficit at start of fiscal period] + [Net income/loss after taxes and extraordinary items ] – [dividends declared].

are held by multiple shareholders. StatsCan noted that “about 76% of PLCs have one owner, 20% have two owners, 2.2% have three owners, etc”<sup>3</sup>. The dataset does not allow one to isolate the numbers for the PLCs with only one owner.

- ▶ The dataset does not contain the key data point (*gross income*) that would allow for proper comparison. As noted above, the dataset only contains the *net income* of the corporation and therefore is not representative of the total revenue of an incorporated individual lawyer (the shareholder of the PLC) derived from the practice of law. For law firms with multiple owners operating as a corporation, the total net income of the entire firm does not provide insight into the compensation of individual lawyers.
- ▶ The dataset does not include information on expenses, in particular salaries, which might have allowed one to calculate the gross income and approximate the compensation of the owner of the corporation.

### **c) Use of the PLC’s Declared Dividends to Approximate Lawyer Income**

Eckler attempts to approximate individual lawyer income using the net income of the PLC plus the dividends distributed. In addition to the observation above that the net income of a PLC is not the same as the earnings of the shareholders of the PLC, this approach is fundamentally flawed for several additional reasons.

Net income is the profit a corporation makes after paying all its expenses, including salaries, rent, utilities, and taxes. Dividends, on the other hand, are payments made to shareholders from the corporation’s net income (profits). These dividends are given out after the corporation has paid its taxes and other expenses.

When Eckler adds the net income and the dividends to estimate individual lawyer income, they are essentially double counting the same money, as net income already includes the money that could be paid out as dividends. Eckler’s approach of estimating lawyer compensation by adding dividends to net profits does not align with the correct interpretation of the dataset and corporate accounting principles, leading to a flawed analysis and erroneous conclusions concerning the total compensation of incorporated lawyers.

Eckler’s focus on a PLC’s net income to assess lawyer compensation is also conceptually flawed and underestimates the lawyer’s income because the *net income*, by definition, is *net* of salaries, other expenses and taxes. It is the gross amount of all these items that more accurately represents earnings from the practice of law. It is for this very reason that the parties had specified, in their letter to StatsCan, that the relevant figure was the *income flowing into the corporation (gross income)*<sup>4</sup>.

For example, let’s consider a lawyer who incorporated a PLC and who has earned \$1,000,000 through the practice of law in a given year. She may choose to pay herself a salary of \$300,000, and must pay taxes of \$200,000 (illustrative amounts only). This means that the PLC has a net income of \$500,000. She may further choose to pay herself a dividend in the amount of \$150,000 out of that net income, with the remaining \$350,000 representing retained earnings. Following Eckler’s approach, her income would be estimated as the net income of \$500,000 plus dividends of \$150,000 for a total of \$650,000 (see Table 1 below). But in reality, her income from practicing law is \$1,000,000, and it is the latter amount that has relevance as the private practice comparator.

---

<sup>3</sup> StatsCan Email dated October 1, 2024.

<sup>4</sup> StatsCan - Letter of Agreement between The Minister of Innovation, Science and Economic Development, designated as the Minister for the purpose of the Statistics Act, IS Reference Code: 300296530.

**Table 1: Example of Net Income Calculation of An Incorporated Lawyer**

| <u>Category</u>  | <u>Amount (\$)</u> |
|--|--------------------|
| <b>Corporate Finance (PLC)</b>                                     |                    |
| <b>Gross PLC Income</b>  | 1,000,000          |
| <b>Expenses:</b>   |                    |
| • Salary Paid  | (300,000)          |
| • Corporate taxes and employer contributions                       | (200,000)          |
| • Total  | (500,000)          |
| <b>Net Income of PLC</b><br><i>(Gross Income - Total Expenses)</i> | 500,000            |
| <b>Treatment of Net Income</b>                                     |                    |
| • Dividends  | (150,000)          |
| • Retained Earnings  | 350,000            |
| <b>Lawyer Income</b>   |                    |
| <b>Eckler Income Estimate</b><br><i>(Net income + Dividends)</i>   | 650,000            |
| <b>Actual Income from Law Practice</b>                             | <b>1,000,000</b>   |

Therefore, to get a true picture of an incorporated lawyer's earnings, one must look at the total revenue (gross income) and profitability of the PLC.

#### **d) Improper and Inaccurate Comparator Derived from StatsCan Data**

The misinterpretation of the StatsCan data leads Eckler to present an inaccurate, and therefore, improper comparator in its executive summary and conclusions (pages 4 and 48). In both tables, the Eckler Report contains a “comparator” identified as “Professional Law Corporations (2023, Partner Type 1, P75)”. The report explains this metric in the footnotes, according to which, the \$696,000 figure is the sum of:

- \$496,000: the net income of Partners Type 1 in 2022 (not 2023) at the 75<sup>th</sup> percentile, not filtered by age or low-income (these are unincorporated individuals, not PLCs)
- \$200,000: 75<sup>th</sup> percentile of dividends declared by PLCs, filtered for ages 47-54, in 2021 (these are PLCs, not individuals).

The Eckler Report presents the “total compensation” of unincorporated partners by adding their net income to the dividend of PLCs from a different year. It is illogical to add these two figures, which represent unrelated populations. In addition, as explained above, the result is not relevant to assess the income *going into* a PLC.

## **2. Difference Between Mean and Median in PLC Partner Data**

Observing a difference between a mean and median, as noted in paragraphs 105 and 106 of the Government Submissions, is a common feature of all real-world compensation data. This pattern is also observed in the CRA data for *unincorporated* self-employed lawyers. In fact, the StatsCan PLC partner data is less impacted by higher earners than said CRA data. This is shown in the table 2 below, where the ratio of mean-to-median is lower for



the StatsCan PLC partner data (less than 1.6) than it is for the CRA data for unincorporated self-employed lawyers (greater than 1.7).

**Table 2: Comparison of Mean and Median Between StatsCan (incorporated) and CRA data (unincorporated)**

| StatsCan PLC Partner Data <sup>5</sup> |             |               |         | CRA Data for Self-Employed Lawyers <sup>6</sup> |               |         |
|--|-------------|---------------|---------|---|---------------|---------|
| Year                                   | Mean Income | Median Income | Ratio 1 | Mean Income                                     | Median Income | Ratio 2 |
| 2019                                   | \$560,000   | \$382,000     | 1.47    | \$240,770                                       | \$141,240     | 1.70    |
| 2020                                   | \$622,000   | \$423,000     | 1.47    | \$261,570                                       | \$147,490     | 1.77    |
| 2021                                   | \$732,000   | \$468,000     | 1.56    | \$295,650                                       | \$162,630     | 1.82    |
| 2022                                   | \$658,000   | \$441,000     | 1.49    | \$282,200                                       | \$160,145     | 1.76    |

Note:

- ▶ “Ratio 1” and “Ratio 2” are calculated by dividing the mean income with the median income for the respective data

In the context of attracting outstanding lawyers to the federally appointed judiciary, this differential is an important signal that outstanding lawyers are differentially rewarded. This underscores the need to consider compensation at the 75<sup>th</sup> percentile, as has been the practice before prior Commissions. It is also worth noting that the use of 75th percentile as a data comparator is less affected by high income values and provides a more stable measure of the upper quartile of the distribution.

### 3. Criticism Relative to the Use of Filters on Compensation Data

In its submissions, the Government claims that applying filters to the compensation data would be inadequate since it would be “statistically and logically inaccurate to base the Commission’s analysis and recommendations on the net income of so few self-employed lawyers.” Eckler also states that “the All-Canada data cut be used instead of looking at the specific salary exclusion cuts or the age range cuts” (page 5).

While including a broad range of data points in a data source is always ideal for making informed decisions on competitive pay, it is equally important to ensure that the data is relevant to the specific talent pool. Including irrelevant data points can significantly impact the overall outcome of the analysis, leading to inaccurate conclusions about competitive pay. For instance, data for lawyers of different experience, namely those too early in their career to be eligible for appointment, can skew the results, making it difficult to draw meaningful insights. Conversely, having fewer but highly relevant data points that accurately represent the market from which judicial talent is sourced provides a more precise and reliable basis for determining competitive salaries. This focused approach ensures that the analysis reflects the true compensation landscape for judges. Therefore, the exclusion of certain salaries may be warranted, but only for specific and appropriate reasons. By carefully filtering out irrelevant data points, the analysis can provide a more precise and meaningful assessment of the compensation of actual candidates for the judiciary.

This approach is aligned with the principles of conducting effective market compensation reviews which relies on ensuring that the market data used for comparisons accurately reflects the sources from which talent is attracted and the destinations to which talent is lost. This involves carefully selecting relevant data that mirrors the specific talent pool, while excluding potential outliers that could impact the analysis.

<sup>5</sup> Excel file “partners\_cma\_2018\_2022\_NEW- corporations\_canada\_all\_ni” by Statistics Canada.

<sup>6</sup> Excel files “net\_prov\_20tiles\_5age\_2019a to 2022a - All Age” by Canada Revenue Agency

Within the context of the Commission, the application of filters does more than guarantee alignment between market data used and the talent pool – it also ensures the consistent use of comparators over time. This consistency in the use of filters by successive Commissions enhances the credibility of the benchmarking process and facilitates the identification of trends.

### **a) Applying a Minimum salary Cut-Off**

While applying a minimum salary cut-off filter to the data reduces the number of data points for self-employed lawyers, this type of filter is crucial to consider relevant data points when assessing the adequacy of judicial salaries. Taking into consideration the minimum 10 years of experience for judicial roles necessitates ensuring that the data source excludes data points reflecting talent with insufficient years of experience. This is because more years of experience typically translates to higher pay. This type of income filter is standard in compensation benchmarking when it is relevant to select data that mirrors the specific talent pool.

In fact, a higher income cut-off would better reflect the actual earnings and professional achievements of experienced lawyers. For example, the Robert Half Guide reports that the salary of first-year associates at the 75<sup>th</sup> percentile across Canada is \$120,250. Therefore, given the minimum of 10 years of experience for judicial appointment, a more meaningful low-income threshold could easily be set above \$120,000. However, considering the previous minimum income thresholds used by prior Commissions, in order to preserve consistency, we maintain our opinion that \$90,000 is justified based on economic trends and compensation rates, as detailed in our initial report.

By not applying a low-income cut-off or appropriate age ranges, the dataset becomes overinclusive, as it brings in lawyers who are too early in their legal careers and do not meet the minimum requirements to become a judge, or at the other end, lawyers past the age when lawyers are typically appointed (i.e. lawyers who are not part of the talent pool from which judges are sourced). This inclusion of non-comparable compensation values undermines the integrity of the analysis.

Overall, applying a filter on the lower income cut-off is essential to remove irrelevant data points that could skew the analysis. By focusing on compensation data that accurately represents individuals with at least 10 years of experience, the analysis will provide a more accurate and meaningful assessment of the private sector comparator for judicial salaries, ensuring that the results are reflective of the appropriate talent pool.

### **b) Applying an Age Parameter to the Compensation Data**

In certain circumstances, such as the present case, filtering on age is not only relevant but critical, for a couple of reasons. Firstly, it ensures that the analysis takes into consideration the minimum years required in the legal profession before one can become a judge, typically reflecting a substantial period of professional experience. Secondly, it aligns with the historical data showing that the majority of judicial appointees fall within a certain age range, usually between 44-56 years old. The focus on this age group helps capture the most relevant segment of the talent pool. Therefore, the proportion of lawyers outside this age bracket is irrelevant to the objective of identifying the appropriate talent pool for judicial positions.

By focusing on the age range of 44 to 56 (which represents 70.4% of judicial appointments from 2011 to 2020), one eliminates potential outliers at the bottom and top of the judicial candidate pool and focuses on the age range where most candidates are typically appointed.

The CRA dataset provides information concerning the net income of unincorporated self-employed lawyers above \$90,000<sup>7</sup>. Key data includes the “count” and “75th percentile” for the age groups 35-69 and 44-56. The count indicates that for ages 44 to 56, there are approximately 2,980 to 5,560 remaining data points from 2019 to 2023, even when filters for both age and income are applied. This number of data points is more than sufficient to draw appropriate compensation conclusions. Typically, when performing benchmarking, having a robust number of observations is crucial to ensure the reliability of the analysis. In certain instances, such as

---

<sup>7</sup> Excel files “net90k\_cma\_10tiles\_5age” series (2019-2023) by Canada Revenue Agency.

when performing custom compensation surveys, having 15 or 20 data points is typically considered sufficient. The number of data points available in this dataset (which are in the thousands) provides a meaningful and reliable basis for drawing accurate compensation benchmarking conclusions.

### c) Market Positioning and Percentile

The Government submits that the 50<sup>th</sup> percentile should be used rather than the long-established 75<sup>th</sup> percentile when assessing the data. However, the 75<sup>th</sup> percentile tends to be the minimum target where the objective is to focus on outstanding candidates. In fact, a higher percentile would have been justified, but our report to the current Commission relied on this measure since it has been accepted and used by prior Commissions.

We observed that the Government refers to the median, mean, and 75<sup>th</sup> percentile in an inconsistent manner throughout its Submissions. For instance, at paragraph 56, the Government uses the median, likely because it shows a much lower value compared to the mean or the 75<sup>th</sup> percentile. Similarly, the Eckler Report refers to the “average income including dividends for PLC owners in the 47-54 age group,” as opposed to the 75<sup>th</sup> percentile generally used in its analysis (page 41). This selective use of statistical measures can lead to distorted interpretations and does not provide a consistent view of the data. Consistency in the use of statistical measures is crucial for accurate and fair compensation comparisons. Each measure — mean, median, and 75<sup>th</sup> percentile — provides different insights into the data distribution. The mean represents the average value and is more sensitive to extreme values, the median represents the middle value and is more robust to outliers, and the 75<sup>th</sup> percentile represents the upper quartile and is less affected by extreme values compared to the mean.

## 4. Other Inaccurate Compensation Comparisons

### a) Inaccurate Comparators

In its executive summary and conclusion, the Eckler Report presents seven “comparators,” which it intends to measure against the salary of puisne judges. These seven comparators are:

1. Self-Employed Lawyers
2. DM-3 Total Average Compensation
3. DM-3 Block Comparator
4. Government Agency Appointees
5. Professional Law Corporations
6. Deans of Law Schools
7. Top Legal Jobs in Corporations

The presentation of seven comparators, rather than the two traditional comparators examined by past Commissions, raises concerns regarding consistency over time. As mentioned, the consistent use of comparators by successive Commissions enhances the credibility of the benchmarking process and facilitates the identification of trends.

It is important to make certain clarifications about some of the comparators presented by Eckler:

- **Comparator #1 (“Self-Employed Lawyers”):** This comparator exclusively presents data on *unincorporated* self-employed lawyers (without filters on age and low income). In our opinion, to accurately represent the income of self-employed lawyers, it is crucial to integrate data on both *unincorporated* and *incorporated* self-employed lawyers into a single comparator.
- **Comparators #2 and #3:** These relate to the public sector comparator examined by past Commissions.
- **Comparators #4 (Government Agency Appointees), #6 (Deans of Law Schools) and #7 (Top Legal Jobs in Corporations):** These are unrelated to the two traditional comparators examined by past Commissions.
- **Comparator #5 (Professional Law Corporations):** Contrary to its name, this comparator primarily relies on data on the net income of unincorporated partners. In addition, the income of unincorporated

partners is already reported in the traditional dataset from the CRA on unincorporated self-employed lawyers. Finally, as explained in the sections above, this comparator does not reflect the actual income of lawyers practicing through a PLC.

Eckler then gives equal weight to the seven comparators, to the exclusion of the Block Comparator, to calculate the median, the average and the 75<sup>th</sup> percentile (at pages 5 and 50):

*If all comparator salaries excluding the Block Comparator are given an equal weighting, the median salary amongst the comparators is \$357,138, the 75th percentile is \$410,175, and the average is \$370,563. The median total compensation is \$460,920, the 75th percentile is \$634,311, and the average is \$486,068. We note that the salary for puisne judges is above the median and average of the comparator data and that the total compensation of puisne judges is close to the 75th percentile of the aggregate comparator data.*

In our view, this approach is inappropriate and contrary to the practice of past Commissions, which examined two traditional comparators, not seven. In addition, to give equal weight to two “comparators” such as self-employed lawyers and law school deans introduces further variability and dilutes the focus on the most pertinent benchmarks.

## **b) Comparing Relevant Data Across Various Years**

It is important to highlight that the Eckler Report (at pages 3 and 4) compares judicial salaries for 2024 with comparators from previous years, specifically 2023 and 2022. The principles applied when conducting effective market compensation reviews emphasize the importance of comparing data from the same point in time, such as the same year, to ensure accuracy and relevance. Comparing compensation data from different points in time can lead to inaccurate conclusions, as compensation typically increases over time due to factors like inflation, market demand, and cost of living adjustments. When data from different years is compared, the numbers do not align, and the analysis fails to provide a true reflection of competitive pay.

## **c) Errors in the Year of Reference**

We noted that the Eckler Report sometimes presents a comparator as being from a given year but then references data from a different year. For example:

- At page 4 of its report, Eckler presents data on “Professional Law Corporations” in 2023. However, the data sourced is from both 2021 and 2022 (see page 40).
- At page 32 of its report, Eckler presents data on DM-3 total average compensation in 2023-2024. However, the figures in the report are from the years 2022-2023.
- A page 35 of its report, Eckler presents a table with data for 2018 to 2022, but the table only contains data up to 2021.
- At page 41 of its report, Eckler “adjusts” judicial compensation to 2020, for a total compensation of “\$570,511.” However, this figure is likely from another year. In 2020, the salary of puisne judges was \$338,800. Even when it is grossed up to account for Eckler’s valuation of the judicial annuity, the result is \$488,210, not \$570,511.

## **5. Appendix: References**

1. "Judicial Compensation and Pension Review" by Eckler Ltd., December 17, 2024.
2. "Tables for DoJ and Quadrennial Commission" from Statistics Canada, June 2024.
3. Email from Statistics Canada, October 1, 2024.
4. Letter of Agreement with Statistics Canada, with effective date June 19, 2024.
5. Reports requested from the CRA by one or both parties.
6. Reports requested from the Statistics Canada on Professional Legal Corporations.

## EY | Building a better working world

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via [ey.com/privacy](https://ey.com/privacy). EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit [ey.com](https://ey.com).

© 2025 Ernst & Young LLP. All Rights Reserved.  
A member firm of Ernst & Young Global Limited.

This publication contains information in summary form, current as of the date of publication, and is intended for general guidance only. It should not be regarded as comprehensive or a substitute for professional advice. Before taking any particular course of action, contact Ernst & Young or another professional advisor to discuss these matters in the context of your particular circumstances. We accept no responsibility for any loss or damage occasioned by your reliance on information contained in this publication.

[ey.com/ca](https://ey.com/ca)

**IN THE MATTER OF THE JUDGES ACT, R.S.C. 1985, c. J-1, as amended.**

**2007 JUDICIAL COMPENSATION  
AND BENEFITS COMMISSION**

---

**SUBMISSION OF THE GOVERNMENT OF CANADA**

---

**ATTORNEY GENERAL OF CANADA**

Department of Justice  
234 Wellington Street  
East Tower  
Ottawa, Ontario  
K1A 0H8

**Per: Donald J. Rennie  
Michael H. Morris**

Tel.: (613) 957-4841 (DJR)  
Fax: (613) 941-1972  
email: donald.rennie@justice.gc.ca

Tel.: (416) 973-9704 (MHM)  
Fax: (416) 952-0298  
Email: michael.morris@justice.gc.ca

Counsel for the Government of Canada

## TABLE OF CONTENTS

|   | PAGE |
|---|------|
| <b>PART I - INTRODUCTION AND OVERVIEW</b>   | 1    |
| <b>PART II - COMMISSION MANDATE</b>   | 4    |
| <b>PART III - CURRENT ENTITLEMENTS</b>  | 6    |
| <b>PART IV - ANALYSIS</b>   | 8    |
| (a) Prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government   | 8    |
| (b) The role of financial security of the judiciary in ensuring judicial independence   | 11   |
| (c) The need to attract outstanding candidates to the judiciary   | 12   |
| (i) Attraction and Retention  | 14   |
| (ii) Benefits other than Salary   | 15   |
| (iii) Compensation Comparators  | 17   |
| A. <i>Public Sector Compensation Trends</i>   | 18   |
| B. <i>Private Sector Compensation Trends</i>  | 21   |
| (d) Any other objective criteria that the Commission considers relevant   | 25   |
| <b>PART V - GOVERNMENT PROPOSAL</b>   | 27   |
| <b>PART VI -</b>  | 29   |
| <b>ANNEX A - Critique of Use of the 75<sup>th</sup> Percentile Incomes of Private Practice Lawyers Aged 44-56 from Major Cities with a \$60K Low-Income Threshold as a Reference Point for Establishing Judicial Salaries</b> | 30   |



## PART I - INTRODUCTION AND OVERVIEW

1. The importance of an impartial and independent judiciary in securing the rule of law is universally recognized as essential to maintaining a free and democratic society. Canada enjoys an international reputation as having a judiciary whose quality and commitment is unparalleled, and whose independence is secured constitutionally and statutorily.
2. The Government of Canada recognizes the importance of ensuring an adequate level of compensation, not only to ensure the financial security of the superior court judiciary but, as importantly, to maintain its high level of excellence.
3. The Government of Canada is committed to the Judicial Compensation and Benefits Commission process (the "Quadrennial Commission" process), mandated by the Supreme Court of Canada and established under the *Judges Act*, the underlying purpose of which is to maintain the public confidence in the impartiality of the judiciary by ensuring that the courts are protected from perceived political interference through economic manipulation.
4. It is well understood by the Government and the judiciary that the Quadrennial Commission process is unique in that its fundamental purpose is to serve the public interest by upholding judicial independence. Both the Government and the judiciary (the "principal parties") have recognized and accepted their shared responsibility to

ensure that the Commission is able to fulfill its mandate in the most effective manner.

This commitment is reflected in the collaborative manner in which preparations for this Commission have been undertaken by the principal parties.

5. The 1999 and 2003 Commissions and the principal parties have had to grapple with the inadequacies and inconsistencies in the evidence available. In particular, concern had been repeatedly expressed about the lack of a common reliable set of data in relation to the incomes of self-employed lawyers, who constitute an important source of appointments to the superior court Bench.
6. As discussed more fully below, in preparation for this Commission, the Government shared with the judiciary a wide range of information related to compensation of its most senior cadre. The principal parties agreed to work together to develop a common set of data generated by the Canada Revenue Agency (the "CRA") upon which to base their respective submissions. It is the parties' hope that the resulting data will help to avoid the controversy and considerable frustration experienced in earlier Commission processes.
7. The Government is confident that the constructive approach taken by the parties, particularly in the development of improved evidence, will assist the Commission in the fulfillment of its mandate.

8. However, as important as the efforts are to improve the quality and reliability of the evidence before it, and as previous Commissions have observed, the assessment of the adequacy of judicial compensation is not and cannot be a formulaic exercise of mathematical analysis. It is in the end an exercise of informed judgment in relation to all of the statutory criteria established by Parliament in subsection 26(1.1) of the *Judges Act*.

9. The Government's submission is premised on three main arguments. First, adequacy of judicial compensation must be considered in light of the range of demands on the public purse. Second, it should be roughly proportional to overall compensation trends required to attract and retain other professionals of the highest capacity and caliber who choose to work in the public sector and contribute to the public interest. Third, tangible remuneration, including salaries, annuity, and other benefits are not the sole, or indeed the predominant, reason why outstanding candidates seek judicial office. The intangible benefits of judicial office can be as important in the decision to go to the bench. These include the desire to make a contribution to public life, the challenge and inherent interest of the work, including the opportunity to directly influence the development of the law, not to mention the recognition, status and quality of life associated with service on the Bench. These considerations underpin the Government's key submission that judicial compensation and in particular salary trends should track those of the most senior cadres of federal public officials whose compensation is based on the same broad considerations.

## PART II - COMMISSION MANDATE

10. Section 26 of the *Judges Act*<sup>1</sup> establishes the “Quadrennial” Judicial Compensation and Benefits Commission. The Commission’s task is to inquire into the adequacy of judicial salaries and benefits for superior court judges and report its recommendations.
11. Superior court judges are those judges appointed and paid by the federal Government. They sit on the Supreme Court of Canada, Federal Court of Appeal, Federal Court, Tax Court of Canada, and the superior trial and appellate courts in every province/territory. There are approximately 1,047 superior court judges<sup>2</sup>, of whom 1,003 are *puisne* judges.<sup>3</sup>
12. The *Judges Act* provides statutory criteria to guide the Commission in making its inquiry. Subsection 26(1.1) directs the Commission to consider the following factors in its inquiry:
- (a) the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government;
  - (b) the role of financial security of the judiciary in ensuring judicial independence;

---

<sup>1</sup> R.S.C. 1985, c. J-1, as amended (<http://laws.justice.gc.ca/en/index.html?noCookie>). See Appendix 1.

<sup>2</sup> Number of judges on the Bench as of December 1, 2007, based on information provided by the Office of the Commissioner for Federal Judicial Affairs.

<sup>3</sup> A *puisne* judge is a judge not designated a Chief Justice, an Associate Chief Justice, or a judge of the Supreme Court of Canada.

- (c) the need to attract outstanding candidates to the judiciary; and
- (d) any other objective criteria that the Commission considers relevant.

13. These statutory criteria provide the analytical framework within which the adequacy of judicial salaries and benefits are to be assessed. The constitutional principles identified in *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3 (“*P.E.I. Judges Reference*”)<sup>4</sup> inform the interpretation and application of the statutory criteria.

---

<sup>4</sup> <http://scc.lexum.umontreal.ca/en/1997/1997rcs3-3/1997rcs3-3.html>

### PART III - CURRENT ENTITLEMENTS

14. As of April 1, 2007, *puisne* judges receive a salary \$252,000.<sup>5</sup> All judicial salaries are indexed automatically pursuant to section 25 of the *Judges Act*. Based on the Industrial Aggregate (IA), which is a measure of average weekly earnings (AWE), an indexation increase is applied on April 1 of each year.<sup>6</sup>
15. All judges are also entitled to a broad array of benefits including an incidental allowance, health and dental benefits, life insurance, and considerable retirement benefits and options.<sup>7</sup>

---

<sup>5</sup> Chief Justices/Associate Chief Justices/Senior Judges, Supreme Court of Canada judges, and the Chief Justice of Canada receive salaries of \$276,200, \$299,800 and \$323,800, respectively (a proportionate increase at each level of 9.6%, 8.5%, and 8.0%, respectively).

<sup>6</sup> Judicial salaries are increased by the percentage change in the IA from one year to the next year. For example, the AWE reported for 2005 was \$725.41 and for 2006 was \$747.08. The percentage change between the two figures, 3.0%, is the IA. Applying this 3.0% on April 1, 2007 raised the salary of a *puisne* judge from \$244,700 to \$252,000.

<sup>7</sup> Under the *Judges Act*, superior court judges' benefits include:

- Incidental allowance of \$5000 per year (s. 27(1)) (Federal Court and Tax Court judges receive an additional \$2000 per year, s. 27(3));
- Insurance comparable to that available under the Public Service Management Insurance to executives, including life insurance, supplementary life insurance, post-retirement life insurance, dependants' insurance; and accidental death and dismemberment insurance (s. 41.2);
- Coverage under the Public Service Health Care Plan, the Public Service Dental Care Plan and after retirement coverage under Public Service Health Care Plan and the Pensioners' Dental Services Plan (s. 41.3);
- An annuity at two thirds salary (s. 42(1)):
  - after fifteen years in office when combined age and number of years in judicial office is not less than eighty
  - if afflicted with a permanent infirmity
  - at age of retirement after ten years in judicial office (pro-rated if less than 10 years)
- Early retirement option at fifty-five and 10 years in office (s. 43.1)
- Survivor's annuity equal to one-third of a judicial salary (s. 44) with option to elect for enhanced annuity (s. 44.01); dependent's annuity (s. 47); option to elect an optional survivor annuity (s. 44.2) if relationship commences after the judges' retirement.
- Option to elect supernumerary status (s. 28, s. 29)

16. The task for this Commission is to assess the adequacy of the judicial salary and benefits in light of the statutory criteria set out in subsection 26(1.1). The Government will address each criterion in turn.

**PART IV - ANALYSIS****(a) Prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government**

17. Canada's economic position as well as the Government's financial position are important contextual elements in the determination of the "adequacy" of judicial compensation. The Government accepts that the nature of the judicial office and function imposes unique considerations in terms of claims on public resources. However, the first criterion is premised on the recognition that judges are paid from the public purse which is subject to many competing and legitimate demands outlined below.
18. The 2003 Commission suggested that this criterion required it to ask "...whether the state of economic affairs in Canada would or should inhibit or restrain us from making the recommendations we would otherwise consider appropriate."<sup>8</sup> The Government does not agree with this approach. Rather, in the Government's view, the Commission must undertake its analysis in light of Canada's economic position and the overall state of the Government's finances and economic and social priorities of its mandate. Secondly, any increases in judicial compensation must be reasonable and justifiable in light of the expenditure priority that the Government has accorded to attracting and retaining professionals of similarly high, indeed outstanding, qualities and capacity within the federal public sector.

---

<sup>8</sup> *Judicial Compensation and Benefits Commission Report (Report)*, May 31, 2004, p. 9. (<http://www.quadcom.gc.ca/rpt/report.20040531.html>). See Appendix 2.



19. On October 30, 2007 the Minister of Finance tabled the Government's Economic Statement<sup>9</sup> in the House of Commons setting out the Government of Canada's assessment of the current state of the Canadian economy and the current and future position of the Government of Canada, and includes economic forecasts based on the average of private sector forecasts surveyed by the Department of Finance in October 2007.
20. The Economic Statement demonstrates the continued robustness of the Canadian economy, but also notes that recent turbulence in global financial markets, stemming largely from developments in the U.S. housing sector and mortgage markets, and the rapid appreciation of the Canadian dollar have led to increased uncertainty regarding the near-term growth in Canada and abroad.
21. Reflecting these developments private sector forecasters expect real economic (GDP) growth to moderate from 2.8% in 2006 to 2.5 % in 2007 and 2.4% in 2008. In the longer-term growth is forecast at 2.7%, 2.9% and 3.1% for 2009 to 2012 respectively. Inflation (based on the Consumer Price Index) increased by 2.0 % in 2006 and is projected to increase by 2.3 % in 2007 and 2.2 % in 2008. However, the GST reduction effective January 1, 2008 is likely to result in a downward revision of this projection. Inflation for 2009 to 2012 is forecast at 2.0%.<sup>10</sup>

---

<sup>9</sup> Economic Statement, tabled in the House of Commons by the Honourable Jim Flaherty, October 30, 2007 ([http://www.fin.gc.ca/budtoce/2007/ec07\\_e.html](http://www.fin.gc.ca/budtoce/2007/ec07_e.html)). See Appendix 3.

<sup>10</sup> Letter from Mr. Paul Rochon, Assistant Deputy Minister, Economic and Fiscal Policy Branch, Department of Finance, dated December 11, 2007. See Appendix 4.

22. To off-set the potential downside risks to the economy described in paragraph 20 above, the Government is taking measures which include improving Canada's business tax advantage to bolster confidence and encourage investment, and reducing personal taxes. The Government also remains committed to reducing the federal debt by \$10 billion in 2007-08, and \$3 billion in 2008-09 and each year thereafter. These tax and debt reductions illustrate the range of demands on the fiscal framework.
23. After taking into account the tax and debt reductions that the Government sees as strategically important to secure Canada's continuing prosperity, the Government's planning surplus is forecast at \$1.6 billion, \$1.4 billion, \$1.3 billion and \$4.5 billion for 2007-08 to 2010-11 respectively.<sup>11</sup> This is the amount available to fund any and all new government priorities and unexpected liabilities, based on current information. From the planning surplus, the Government must determine its priorities from among many competing demands, including increases to judicial compensation.
24. In addition to debt reduction the key priorities of the Government are outlined in the March 2007 Budget, and include: strengthening the federation by restoring the fiscal balance to permit provinces and territories to better provide services and infrastructure, providing tax relief for working families, preserving the environment, improving health care, supporting Canadian troops and supporting Canadian farmers. These priorities demonstrate the breadth of demands on the planning surplus.

---

<sup>11</sup> Economic Statement, *supra*, at page 47.

25. In sum, while Canada's economic fundamentals are strong, there are potential downside risks to which the Government must remain attentive. To this end, the Government continues its unflinching commitment to overall fiscal responsibility in order to ensure our future economic health and prosperity. Within this context, the adequacy of the judicial salary must be analyzed.

**(b) The role of financial security of the judiciary in ensuring judicial independence**

26. In assessing the "adequacy" of the judicial compensation, it is necessary to consider if the compensation is adequate to secure the financial security of the judiciary.

27. The *P.E.I. Judges Reference* identifies three components of financial security:

- (1) the requirement of an independent, objective and effective commission;
- (2) the avoidance of negotiations between the judiciary and the executive; and,
- (3) the requirement that judicial salaries not fall below a minimum level.<sup>12</sup>

28. While the first two components of financial security relate to process, the third component of financial security is substantive. Judicial salaries must not fall below a minimum level in order to protect the judiciary from interference through economic manipulation. Public confidence in the administration of justice is preserved when judicial salaries are adequate, because the public remains confident that the judiciary

---

<sup>12</sup> [1997] 3 S.C.R. 3 at paras. 131-135. See Appendix 5.

is not adjudicating cases in a particular way in order to secure a higher salary from the executive or legislature or to receive benefits from one of the litigants.<sup>13</sup>

29. A *puisne* judge salary rose 41% between March 31, 2000 and April 1, 2007, rising from \$178,100 to its current level of \$252,000.<sup>14</sup> There can be no serious suggestion that judicial salaries have fallen below an acceptable minimum.

30. Indeed annual statutory indexing, which has provided a cumulative increase of 10.4%<sup>15</sup> since 2003, and the statutory requirement for a quadrennial review of compensation, operate to ensure that such a possibility is avoided.

**(c) The need to attract outstanding candidates to the judiciary**

31. The Government recognizes the important public interest in continuing to attract outstanding candidates to the judiciary. The pool of potential candidates from which the judiciary is drawn consists of a specialized group of professionals who typically enjoy a much higher income than the average Canadian.

32. The demographic information obtained from the Commissioner for Federal

---

<sup>13</sup> *P.E.I. Judges Reference*, [1997] 3 S.C.R. 3 at para. 193. See Appendix 5.

<sup>14</sup> Salary Increases between March 31, 2000 and April 1, 2007, prepared by the Department of Justice. See Appendix 6.

<sup>15</sup> *Ibid.* The increase of 7.25% in 2004 was inclusive of indexing. The 10.4% figure assumes that 1.3% of the 2004 increase was attributable to the IA.

Judicial Affairs<sup>16</sup> demonstrates that an appointment to the Bench is highly attractive to the full range of outstanding candidates, that is, those who have been recommended by Judicial Appointments Advisory Committees for appointment to judicial office. By way of illustration, of the 141 appointments between April 1 2004 and March 31 2007, 78% of new judges came from private practice, representing a wide range in terms of area of practice and size of firm. Among the 22% coming from outside private practice, 32% of new judges were in some form of government service,<sup>17</sup> 32% were provincial court judges or superior court masters, and 16% of new judges were from academia. These new judges came from all regions in Canada, rural and urban, ranged in age from 41 to 65, and 34% were female.<sup>18</sup>

33. There is no difficulty in attracting private practice self-employed lawyers to the Bench at the current salary levels. A significant number of appointees had been private practice self-employed lawyers prior to their appointments (78%), signalling the high desirability of a judicial appointment for this segment of the legal profession.
34. In light of the demographic information demonstrating the range of practice settings, age at appointment, and regional distribution of the appointees to the Bench, the Government does not agree that the comparator for the judges should be defined

---

<sup>16</sup> Tables for period of April 1, 2004 to March 31, 2007 concerning appointees' age at appointment; gender; size of firm; place of practice/employment by city, province, territory; private practice in main cities; predominate area of practice; private practice predominate area of practice; non-private practice predominate area of practice; information linked by judge. Prepared by the Office of the Commissioner for Federal Judicial Affairs. See Appendix 7.

<sup>17</sup> This includes prosecutors and legal aid lawyers, as well as a member of a tribunal and a complaints resolution manager.

<sup>18</sup> See Appendix 7.

as the highest earning self-employed lawyers, located in the major cities, between the ages of 44 to 56. The issue of the comparators will be addressed separately below.

(i) Attraction and Retention

35. The statistical information from the Commissioner for Federal Judicial Affairs<sup>19</sup> demonstrates that there is no deficit of qualified candidates for the Bench.
36. From June 2003 to October 31, 2007, of the 2,491 applications were received, 983 candidates were recommended by the Judicial Appointments Advisory Committees (JAAC). Provincial/territorial judges who apply are deemed qualified without assessment by the JAAC. There have been 203 applications from provincial/territorial judges.<sup>20</sup>
37. Since 2003, 229 judges have been appointed from a pool of 1,186 recommended candidates,<sup>21</sup> a ratio of five to one. This qualified pool of applicants/appointees demonstrates that outstanding candidates are attracted to the superior courts at the current compensation levels.
38. Similarly, there can be no suggestion that the current levels of judicial

---

<sup>19</sup> Advisory Committees on Judicial Appointments, January 1, 2003 to October 31, 2007, prepared by the Office of the Commissioner for Federal Judicial Affairs. See Appendix 8.

<sup>20</sup> *Ibid.* Under the Federal Judicial Appointments Process, provincial and territorial court judges who apply for appointment to the superior court are deemed qualified and not assessed by Judicial Advisory Appointments Committees (JAACs). The number of such applicants is determined by subtracting from the total number of applications received, those assessed by the JAACs (2491 – (983 + 1305) = 203).

<sup>21</sup> 983 recommended candidates + 203 provincial/territorial court judges = pool of 1,186.

compensation are causing a retention problem. Between 1997 and November 23, 2007, a mere eight judges elected to retire from judicial office before they were eligible to receive an annuity benefit. Even assuming some judges decide to take early retirement because of dissatisfaction with compensation (and there are many other possible reasons for electing early retirement), during this period only 12 judges opted for the pro-rated, early retirement annuity.<sup>22</sup> The high retention of superior court judges further supports the attractiveness of the current judicial salary and other benefits.

(ii) Benefits other than Salary

39. It is indisputable that the judicial annuity is a significant incentive to those considering applying for judicial appointment. The judicial annuity is equal to two-thirds of the judge's salary for life. A judicial annuity equal to two-thirds of \$252,000 would be \$168,000.
40. Most judges retire under the rule provided in paragraph 42(1)(a) of the *Judges Act*, which states that a judge may retire with a full annuity when, with a minimum of 15 years in judicial office, the judge's age and years of service total at least eighty. For example, a judge appointed at age 50 could retire with a full annuity at age 65.<sup>23</sup>

---

<sup>22</sup> Retirements from 1997 through November 23, 2007, prepared by the Department of Justice based on information provided by the Office of the Commissioner for Federal Judicial Affairs. See Appendix 9.

<sup>23</sup> s. 42, *Judges Act*. See Appendix 1.

41. Most of the judicial annuity is government-funded, with judges contributing 7% of their salary to the annuity benefit.<sup>24</sup>
42. The average value of the government-paid portion of the judicial annuity (not including disability benefits) is 24.6% of salary.<sup>25</sup> Accordingly, if the value of the annuity is taken into account, the current judicial salary for a *puisne* judge of \$252,000 would equate to \$313,992. This value of the judicial annuity is in addition to the other significant elements of the compensation and benefits which accompany judicial office, noted earlier at paragraph 15.
43. The value of the security that is provided by the annuity entitlement should not be under-estimated. A judge who becomes disabled at any time, even the day after appointment, is immediately entitled to an annuity of two thirds the judicial salary, for life. The partner of a judge who dies at any time, even the day after appointment, is entitled to half of that pension, for life.
44. A further incentive that is unique to judicial office is the ability of a superior court judge to elect supernumerary status upon attaining eligibility for retirement. A judge who elects this status continues to receive a full salary but carries a reduced workload, generally understood to be half that of a regular judge. The attractiveness that the flexibility this arrangement permits a judge at the latter part of his or her

---

<sup>24</sup> s. 50, *Judges Act*. See Appendix 1.

<sup>25</sup> *Report on the Earnings of Self-employed Lawyers for the Department of Justice Canada in Preparation for the 2007 Judicial Compensation and Benefits Commission*, Haripaul Pannu, (Pannu Report) at p. 11. See Appendix 10.



career to continue at full salary but to “ramp down”, is demonstrated by the fact that the historical rate of supernumerary election is 85% for those judges reaching eligibility, and 93% of those who do elect, do it within a year of becoming eligible.<sup>26</sup>

(iii) Compensation Comparators

45. The evidence clearly indicates that there is currently no difficulty in either attracting or retaining judges at the current compensation level. At the same time, the Government recognizes that it is appropriate to have regard to compensation trends in other relevant comparator groups. Successive judicial compensation commissions have grappled with the challenge of finding appropriate “comparator” positions against which the judicial salary can be assessed, given the *sui generis* nature of judicial office, with its unique functions and constitutional status.
46. Because of the lack of direct comparators, Commissions have historically been required to consider the relevance and weight to be accorded to a broad array of information, particularly in relation to the remuneration of senior officials and lawyers in the federal public service, as well as private-sector lawyers. These comparator groups will be considered in sequence. The Government is of the view that public sector comparators are more relevant than the private sector comparators.

---

<sup>26</sup> Based on an examination of the full historical record up until December 2002. The eligibility requirements for supernumerary status were modified (to allow for election on attaining “modified rule of 80” for a maximum period of 10 years) by *An Act to amend the Judges Act and certain other Acts in relations to courts*, (Royal Assent December 14, 2006). There is insufficient data as of yet to determine whether the election rates would be affected by the new eligibility rules.

This is because increases to judicial compensation should be roughly proportional to overall compensation trends required to attract and retain senior professionals of the highest capacity and caliber who choose to work in the public sector and contribute to the public interest.

*A. Public Sector Compensation Trends*

47. In the Government's view, the most relevant public sector comparator group is that of the most senior federal public servants (EX 1-5; DM 1-4; Senior LA [lawyer cadre]). While the 1999 Drouin Commission and earlier Triennial Commissions had historically relied on the DM-3 salary midpoint as a comparator, the 2003 Commission noted that many officials in this broad spectrum of senior government officials, and not just those at the DM-3 level, potentially have a level of experience and capacity comparable to that of candidates for appointment to the Bench.<sup>27</sup>
48. The Government agrees that comparability to this broader spectrum of senior officials is merited because these executives share capacity, skills and abilities comparable to judges, as well as a commitment to making a contribution to public life. Of equal force, reference to the senior executive cadre is merited because the financial position of the Government is reflected in part in the salaries it is prepared to pay its most senior employees.

---

<sup>27</sup> Report, pp. 28-29. See Appendix 2.

49. With respect to salary increases, senior officials within the EX/DM community have received annual increases over the past four years of 2.5% (2004-05), 3.0% (2005-06), 2.5% (2006-07) and 2.1% (2007-08).<sup>28</sup> These percentage increases are important, because they provide an indication of the financial capacity of the Government to compensate and the priority the Government accords to compensate senior professionals of high ability who have chosen service in the public interest over the private sector.
50. It is clear that the current judicial salary of \$252,000 compares very favourably to salaries earned by EXs<sup>29</sup> and DMs<sup>30</sup>. As of April 1, 2007, the weighted mid-point salary of EX-1 to EX-5 is \$115,129. The weighted salary mid-point for DM-1 to DM-4 is \$212,186; for DM-2 to DM-4 is \$225,348; and, for DM-3 to DM-4 is \$248,150.<sup>31</sup>
51. The EX/DM salary increases relied on do not include an at-risk pay component.<sup>32</sup> Past Quadrennial Commissions appear to have taken average at-risk pay into account

---

<sup>28</sup> Executive Group Rates of Pay and Population Count, April 2004 to April 2007, prepared by Executive Management Policies Directorate, Canada Public Service Agency, July 19, 2007. See Appendix 11.

Regarding negotiated annual increases in the federal public service, see Appendix 12.

<sup>29</sup> For EX salary ranges, see Appendix 11.

<sup>30</sup> Income Information Regarding Deputy Ministers, At-risk Pay for DMs, Deputy Ministers (DM-3) Summary of Benefits, prepared by Senior Personnel and Special Projects, Privy Council Office, October 2007. See Appendix 13.

<sup>31</sup> 2007-08 Executive and Deputy Minister Salary Ranges, prepared by the Department of Justice. See Appendix 14.

<sup>32</sup> 2007 – 2008 Performance Management Program Guidelines, Senior Personnel and Special Projects Secretariat, Privy Council Office, November 2007. Page 6 of the *Guidelines* defines “at-risk pay” and “bonus”, the lump-sum awards which are dependent upon performance. See Appendix 15.

in calculating the DM-3 salary mid-point. The Government takes issue with this approach as there are clear distinctions between deputy ministers and superior court judges which make it inappropriate to include at-risk pay in the public sector salary comparator:

- First, deputy ministers are appointed at pleasure; they do not have security of tenure. By contrast, superior court judges have the highest guarantee of security of tenure. Under the Constitution, a superior court judge holds office during good behaviour and may only be removed by the Governor General upon the advice of the Senate and House of Commons.<sup>33</sup> This unequalled security of tenure is one of the undisputed benefits of judicial office, and must be accorded significant weight in making comparisons between judicial and deputy minister compensation.
- Second, while judges' salaries receive automatic indexation on their salaries, deputy ministers do not. The annual Industrial Aggregate adjustment delivers a generous salary increase, and its value in according a real salary increase every year should not be overlooked.
- Third, the at-risk portion of a deputy minister's salary is dependant upon the achievement of specific organization commitments. This amount is a lump sum which is assessed and re-earned annually, and is at-risk. By comparison, superior court judges receive a guaranteed salary which is not dependant upon the attainment of performance objectives.

---

<sup>33</sup> *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.), s. 99. See Appendix 16.

52. In the Government's view, pay dependent upon annual assessed performance should not enter into the comparison. An annual performance pay award is a concept foreign to judicial salaries, since it would be at odds with the principle of judicial independence.
53. Evidence respecting public sector lawyers'<sup>34</sup> salaries is also relevant as these lawyers form a significant component of appointments to the Bench. Concerning appointment of federal Government lawyers to the superior courts since 2004, the pre-appointment salary of these judges ranged from between \$92,255 - \$117,620 (Senior Counsel salary range) to \$137,600 - \$167,800 (Chief Legal Counsel salary range).<sup>35</sup> To the extent that provincial/territorial Crown lawyers have also been appointed to the Bench, there is significant diversity in these pre-appointment salary ranges. For example, the CC-3 lawyer level in Ontario carries a salary range of \$106,253 to \$174,000, while the Legal Officer 4 level in Alberta carries a salary range of \$139,512 to \$153,444.<sup>36</sup>

### ***B. Private Sector Compensation Trends***

54. As indicated in the Introduction, the 2003 Commission expressed frustration with the lack of reliable data in relation to private sector legal income. In response to these

---

<sup>34</sup> Public sector lawyers refer to those lawyers' in government service. It includes prosecutors, legal aid lawyers, a member of a tribunal, and a complaints resolution manager. It does not include provincial court judges. (See Table 8, Appointees Not in Private Practice, Predominate Area of Practice, April 1, 2004 to March 31, 2007 at Appendix 7.)

<sup>35</sup> LA Law Group Salary Ranges, prepared by the Department of Justice based on information on Treasury Board Secretariat website ([http://www.tbs-sct.gc.ca/pubs\\_pol/hrpubs/RatesofPay/rapaceexunem2\\_e.asp#\\_Toc476385565](http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/RatesofPay/rapaceexunem2_e.asp#_Toc476385565)). See Appendix 17.

<sup>36</sup> Provincial and Territorial Lawyer Salary Ranges, prepared by the Department of Justice. See Appendix 18.

concerns, significant efforts by the principal parties have been made to improve the quality of the data and information upon which the Commission will be asked to make its recommendations.

55. The Government is confident that this data will provide the Commission with a resource upon which to rely in undertaking its analysis and making its recommendations. A description of the Master File Database created by CRA officials to provide a broad and reliable data set is attached at Appendix 19<sup>37</sup>.
56. Past Quadrennial Commissions adopted a methodology to analyze income tax data of private practice lawyers that identified as the comparison point the 75<sup>th</sup> percentile income of self-employed lawyers in major cities between the ages of 44 and 56, after excluding lawyers earning below a specified amount. (The “income threshold” used by Drouin Commission excluded lawyers earning less than \$50,000, while the McLennan Commission excluded lawyers earning less than \$60,000).
57. The Government does not agree with this approach because the resulting comparator does not reflect the true pool from which appointments are made. It has the effect of distorting the true picture of judicial appointments by ignoring two out of three appointees who tend to have considerably lower incomes. As Annex A to this submission illustrates, after all the “filters” (selection criteria) are applied, the

---

<sup>37</sup> *Masterfile on Incomes of Self-employed Lawyers, Terms, Definitions, Methodology and Documentation*, Canada Revenue Agency. See Appendix 19.

methodology in effect isolates as the comparator group the top one-twelfth of lawyers in the pool (one-quarter of the top one-third of the true pool).

58. A critical issue for the Government is the choice of methodology for assessing the relevant comparative information.

59. The Government has retained the actuary and compensation expert, Haripaul Pannu, who supported the Government in its 2003 submission. Mr. Pannu reviewed the data CRA produced on the incomes of self-employed lawyers for 2002 through 2005 and satisfied himself of the internal consistency and reliability of the data for use in the context of judicial salaries. His report is attached as Appendix 10.<sup>38</sup>

60. Mr. Pannu sets out a methodology to analyze the lawyer income data in relation to the true pool from which judges are drawn. This methodology is to be preferred because it reflects the diversity of all self-employed legal professionals who are appointed to the Bench. It avoids distorting the true picture of appointments because it does not assume that all appointees are high income earners between the ages of 44 to 56 practicing law in Canada's largest cities.

61. Mr. Pannu analyzes the whole range of incomes. By contrast, the 2003 Commission did not look at lawyers earning \$60,000 or less. In the Government's view, incomes of lawyers earning less than \$60,000 should not be excluded from the

---

<sup>38</sup> *Report on the Earnings of Self-employed Lawyers for the Department of Justice Canada in Preparation for the 2007 Judicial Compensation and Benefits Commission*, Haripaul Pannu, (Pannu Report).

analysis because there is no evidence to support the assumption that a lawyer earning at this level could not be appointed to the Bench.

62. Mr. Pannu also considers the full age range of appointees to the Bench, consistent with the demographic information which demonstrated that appointees have ranged in age from 41 to 65 years. Mr. Pannu assigns lawyers' incomes in a given age bracket (e.g. 44 to 48) a weight in the analysis that corresponds to the proportion of lawyers appointed from that age bracket to the Bench (an age-weighted analysis).
  63. Mr. Pannu states that income at the 65<sup>th</sup> and 75<sup>th</sup> percentiles are commonly relied on by compensation professionals as a benchmark for an attractive compensation level.
  64. Following this methodology, Mr. Pannu has determined that the age-weighted income of self-employed lawyers in 2005 (most recent tax data year) is \$181,278 at the 65<sup>th</sup> percentile and \$248,916 at the 75<sup>th</sup> percentile. The judicial salary, as it stood in 2005, of \$237,400 compares favourably to these benchmarks.
  65. As stated earlier, the judicial annuity has a value of 24.6% of salary. Thus the 2005 judicial salary of \$237,400 would correspond to a self-employed income of \$295,777. In sum, Government submits that the current judicial salary and benefits is clearly attractive in relation to compensation trends in the private sector for self-employed lawyers.
-



**(d) Any other objective criteria that the Commission considers relevant**

66. As previously mentioned, it is important to recognize that judicial candidates should not be regarded as being exclusively, or even primarily, motivated by considerations of salary. In assessing the “adequacy” of the judicial salary, the Government submits that the Commission must weigh in the balance both the tangible and intangible benefits of judicial office.
67. A survey undertaken in Great Britain confirms the importance of considerations other than salary in the decision to seek judicial office. The survey, entitled “Survey of Pre-appointment Earnings of Recently Appointed Judges and Earnings of Experienced Barristers”, canvassed the factors which influenced acceptance of judicial appointment.<sup>39</sup> The three most common reasons judges listed as to why they had accepted a judicial appointment were: the challenge/to achieve ambitions; interesting work/greater job satisfaction; and to contribute to society and the development of the law.
68. There is little question that Canadian judges, like their British counterparts are equally motivated by non-compensatory incentives, including a desire to make a contribution to the public life of the nation, a wish to attain what many see as the natural culmination of a career in law and to shape its development, an unparalleled

---

<sup>39</sup> Office of Manpower Economics, *Survey of Pre-appointment Earnings of Recently Appointed Judges and Earnings of Experienced Barristers*, Report by Ipsos Public Affairs, June 2005. (<http://www.ome.uk.com/review.cfm?body=4&page=2&all#documents>). See Appendix 20.

security of tenure, and the recognition, status and quality of life associated with service on the Bench.

**PART V - GOVERNMENT PROPOSAL**

69. After considering all the factors under subsection 26(1.1) of the *Judges Act*, the existing level of salaries and benefits, coupled with automatic annual adjustments, are more than adequate. That said, it is reasonable for judges to expect that salaries should increase at a level generally consistent with overall compensation trends that is roughly proportional to overall compensation trends in the federal public sector. As explained, these increases reflect the priority that the Government accords to the public interest in attracting and retaining professionals of the highest capacity and caliber who choose to work in the public sector and contribute to the public interest.
70. Over the past four years, the annual salary increases to the EX/DM community, exclusive of performance pay, have ranged between 2.1% to 3.0%, for an average annual increase of 2.5%. Accordingly, the Government proposes an increase of 4.9% in the first year (2008-09), inclusive of indexation under the Industrial Aggregate (projected to be 2.4% on April 1, 2008).
71. An increase of 4.9% will raise a *puisne* judge salary to \$264,300. This will result in a 48% increase since the first Quadrennial Commission cycle began. The Government further proposes the continuation of annual indexing in the following three years (2009-10 to 2011-12). The Industrial Aggregate annual adjustments are projected to be 2.6% in 2009-10, 2.8% in 2010-11 and 3.0% in 2011-12.<sup>40</sup> The

---

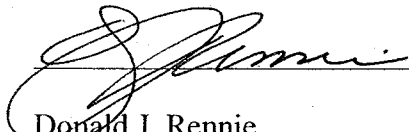
<sup>40</sup> Industrial Aggregate projections provided by the Office of the Chief Actuary, Office of the Superintendent of Financial Institutions.

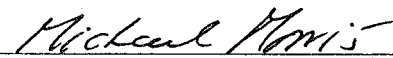
overall cost of the Government proposal from the years 2008-09 to 2011-12 is approximately \$29.6 million.

**PART VI**

ALL OF WHICH is respectfully submitted.

DATED at Ottawa, this 14<sup>th</sup> day of December, 2007.

  
\_\_\_\_\_  
Donald J. Rennie

  
\_\_\_\_\_

Michael Morris

Counsel for the Attorney General of Canada

## ANNEX A

**Critique of Use of the 75<sup>th</sup> Percentile Incomes of Private Practice Lawyers Aged 44-56 from Major Cities with a \$60K Low-Income Threshold as a Reference Point for Establishing Judicial Salaries**

Past Quadrennial Commissions have considered a methodology which uses as a reference point the 75<sup>th</sup> percentile income among private practice lawyers between the ages of 44 and 56 in major cities, after having applied a low-income threshold (most recently \$60,000). While the rationale behind this approach may appear reasonable at first glance, it has the net effect of ignoring the circumstances of almost 70% of appointees. And the one-third who remain in the reference group have considerably higher incomes than those who have been filtered out by this procedure.

According to statistics provided by the Office of the Commissioner for Federal Judicial Affairs<sup>41</sup>, 78% of judges appointed between April 2004 and the end of March 2007 came from private practice, 67% were in the 44-56 age category, and 64% lived in one of Canada's ten largest Census Metropolitan Areas. However, only 33% satisfied all three criteria; 67% fell outside this focus. Furthermore, as each successive criterion is applied, the income distribution of the remaining group shifts up.

The data generated by CRA<sup>42</sup> on the incomes of self-employed lawyers clearly demonstrate that those between the ages of 44 and 56 have higher incomes than those outside that range. Lawyers in large cities also tend to have much higher incomes.

In sum, the methodology that focuses on the incomes of self-employed lawyers between 44 and 56 from large cities shrinks the comparator group to the 33% of lawyers who have the highest incomes and ignores the 67% of appointments that are made outside that ambit. This methodology obviously distorts the true picture of judicial appointments by ignoring two out of three appointees who tend to have considerably lower incomes. Finally, by taking the 75<sup>th</sup> percentile of the rarified one-third of lawyers remaining after all the selection criteria are applied, the methodology in effect refers to the top one-twelfth of lawyers of the pool (one-quarter of the top one-third of the true pool).

---

<sup>41</sup> See Appendix 7.

<sup>42</sup> CRA Data Tables, prepared by the Canada Revenue Agency. See Appendix 21.

**IN THE MATTER OF THE *JUDGES ACT*, R.S.C. 1985, c. J-1, as amended**

**2011 JUDICIAL COMPENSATION  
AND BENEFITS COMMISSION**

---

**SUBMISSION OF THE GOVERNMENT OF CANADA**

---

**BLAKE, CASSELS & GRAYDON LLP**  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto, ON M5L 1A9

**Catherine Beagan Flood** (LSUC#: 43013U)  
Tel: 416-863-2269  
Fax: 416-863-2653  
Email: [cbe@blakes.com](mailto:cbe@blakes.com)

**Counsel for the Government of Canada**

## TABLE OF CONTENTS

|  |           |
|--|-----------|
| <b>PART I - INTRODUCTION AND OVERVIEW .....</b>  | <b>1</b>  |
| A. Overview of the Government's Salary Proposal.....   | 1         |
| B. The Commission's December 8, 2011 Notice .....  | 6         |
| <b>PART II - BACKGROUND .....</b>  | <b>7</b>  |
| A. Current Compensation .....  | 7         |
| B. The Mandate of the Commission .....   | 7         |
| <b>PART III - JUDGES ACT MANDATORY CRITERIA .....</b>  | <b>11</b> |
| A. The prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government ..... | 11        |
| 1. Background: The Global Recession and Recent Judicial Compensation .....   | 11        |
| 2. Current Economic and Fiscal Conditions .....  | 15        |
| B. The role of financial security of the judiciary in ensuring judicial independence .....   | 18        |
| C. The need to attract outstanding candidates to the judiciary .....   | 20        |
| 1. The Judicial Salary is Adequate to Attract Outstanding Candidates from Multiple Sources .....   | 20        |
| 2. The Judicial Salary is Adequate to Attract Private Sector Lawyers .....   | 22        |
| a) Relevant Percentile of Private Sector Lawyers' Incomes, Age-Weighting and Location.....   | 23        |
| b) Annuity .....   | 26        |
| c) Supernumerary Status .....  | 28        |
| d) Private Sector Compensation Trends .....  | 30        |
| e) Demographic Data .....  | 31        |
| f) Application and Resignation Statistics.....   | 33        |
| g) Conclusion .....  | 34        |
| D. Other objective criteria that the Commission considers relevant .....   | 35        |
| 1. There is no consensus of past Commissions regarding a formulaic DM-3 comparator .....   | 35        |
| 2. If this Commission considers DM-3 salaries, it should consider all deputy minister salaries.....  | 36        |
| 3. Deputy Minister Performance Pay is Provided for Reasons Not Relevant to the Judicial Context .....  | 40        |



**TABLE OF CONTENTS  
(CONTINUED)**

|                  |  |           |
|------------------|--|-----------|
| <b>PART IV -</b> | <b>ADDITIONAL INFORMATION REQUESTED IN NOTICE.....</b> | <b>43</b> |
| <b>PART V -</b>  | <b>CONCLUSION .....</b>                                | <b>44</b> |

## **PART I - INTRODUCTION AND OVERVIEW**

### **A. Overview of the Government’s Salary Proposal**

1. The constitutional role of this Quadrennial Judicial Compensation and Benefits Commission is to ensure that Canada’s federally-appointed judiciary are, and are reasonably perceived by the public to be, independent.<sup>1</sup> The purpose of its recommendations is to ensure “public confidence in the justice system.”<sup>2</sup>

2. The statutory role of this Commission is to make recommendations regarding the “adequacy of the salaries” and benefits of judges, when considered in light of the following statutory criteria:<sup>3</sup>

(a) the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government;

(b) the role of financial security of the judiciary in ensuring judicial independence;

(c) the need to attract outstanding candidates to the judiciary; and

(d) any other objective criteria that the Commission considers relevant.

3. The genesis of this Commission was the 1997 decision of the Supreme Court of Canada in the *PEI Judges Reference*.<sup>4</sup> That case arose in the context of several provincial governments reducing salaries of provincially-appointed judges due to fiscal restraints that resulted in public sector wage freezes and reductions. The Supreme Court held that “as a general constitutional principle, the salaries of provincial court judges can be reduced, increased, or frozen, either as part of an overall economic measure which affects the salaries of all or some persons who are

---

<sup>1</sup> *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island; Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3 (the “*PEI Judges Reference*”), at para. 112. The *PEI Judges Reference* was included in the index of background documents previously provided to the Commission.

In light of the Block Commission’s recommendation that the documentation provided to the Commission be less voluminous, the parties also intend to file a Joint Book of Documents shortly after their opening submissions are filed, to avoid duplication. However, the Government would be pleased to provide any data or documents cited herein that would be of assistance to counsel for the judiciary or the Commission prior to filing of the Joint Book of Documents.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Judges Act*, R.S.C. 1985, c. J-1, s. 26.

<sup>4</sup> *Supra.*

remunerated from public funds, or as part of a measure which is directed at provincial court judges as a class.”<sup>5</sup> However, a freeze or change to judicial remuneration requires “prior recourse to a special process, which is independent, effective, and objective, for determining judicial remuneration, to avoid the possibility of, or the appearance of, political interference through economic manipulation,” which is the role of this Commission.<sup>6</sup>

4. An appearance of political interference through economic manipulation may be created either by judges being treated less well than others paid from the public purse, or by judges appearing to receive preferential treatment as compared to others paid from the public purse. Given that the *PEI Judges Reference* arose at a time of general expenditure restraints due to difficult fiscal circumstances, the Supreme Court specifically addressed the potential risks to public perception of judicial independence in such circumstances. The Court held:<sup>7</sup>

In my opinion, the risk of political interference through economic manipulation is clearly greater when judges are treated differently from other persons paid from the public purse. This is why we focussed on discriminatory measures in Beauregard. As Professor Renke, *supra*, has stated in the context of current appeals (at p. 19):

. . . if judges were spared compensation decreases affecting other public sector groups, a reasonable person might well conclude that the judges had engaged in some behind-the-scenes lobbying. The judges’ exemption could be thought to be the result of secret deals, or secret commitments to favour the government. An exemption of judges from across-the-board pay cuts is as likely to generate suspicions concerning judicial independence as the reduction of judicial compensation in the context of general public sector reductions. [emphasis added]

5. Measures that are “designed to effectuate the government’s overall fiscal priorities” and thus “aimed at furthering some sort of larger public interest” can be applied to the judiciary.<sup>8</sup> Indeed, the Supreme Court has held that exemption from such measures risks undermining public confidence in the independence of the judiciary. Chief Justice Lamer warned: “Nothing would be more damaging to the reputation of the judiciary and the administration of justice than

---

<sup>5</sup> *Ibid.* at para. 133; see also para. 147.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.* at para. 158.

<sup>8</sup> *Ibid.* at para. 184.

a perception that judges were not shouldering their share of the burden in difficult economic times.”<sup>9</sup>

6. The global economy has recently experienced the deepest and most synchronized recession since the Great Depression. That recession has had a seriously detrimental effect on Canada’s finances. Global recovery from the recession has been slow. Recently, the global economic situation has deteriorated, particularly as a result of the sovereign debt and banking crisis in Europe and concerns over the sustainability of the U.S. fiscal situation.

7. In 2009, the Government exempted judges from wage restraint measures that were applied generally to the public sector due to the recession. However, the effects of the recession have been deeper and more protracted than expected at that time. The Government is of the view that continued exemption of the judiciary from the fiscal measures applying to others who are paid from the public purse is not sustainable or fair, and would be inconsistent with the guidance provided in the *PEI Judges Reference*.

8. Accordingly, to maintain public confidence in the judiciary and ensure that increases in judicial salaries reflect the constraint on public sector spending, the Government proposes that salary increases as a result of statutory indexation in s. 25 of the *Judges Act* be capped at a maximum of 1.5% annually for the quadrennial period.<sup>10</sup> The Government notes that the adequacy of the resulting salary will be reviewed again by the 2015 Quadrennial Commission.

---

<sup>9</sup> *Ibid.* at para. 196.

<sup>10</sup> Indexation under the *Judges Act* is based on the “Industrial Aggregate” index (“IAI”) published by Statistics Canada: *Judges Act*, s. 25. The IAI is the percentage change in average weekly earnings (“AWE”) across all industries, including overtime, as calculated by Statistics Canada on the basis of monthly labour income surveys of employers. IAI is applied to judicial salaries on a fiscal-year basis, so it is the change in AWE over the most recently available 12-month period, which is the previous calendar year. That is, the IAI increase applied on April 1, 2012 will be the increase in the AWE over the course of 2011.

The IAI projections of Canada’s Chief Actuary that would be applied to judicial salaries for 2012-16 are 2.2%; 2.6%; 2.8% and 2.9% respectively: Letter from M. Mercier, Office of the Chief Actuary, Office of the Superintendent of Financial Institutions, dated December 8, 2011 (to be included in the Joint Book of Documents to be submitted by the parties).

The most recent projections of IAI by the Department of Finance are 2.4% for 2011 (applied to judges in 2012) and 1.3% for 2012 (applied to judges in 2013): Letter from B. Robidoux, Assistant Deputy Minister, Economic and Fiscal Policy Branch, Department of Finance, dated December 16, 2011 (“Department of Finance Letter”), Annex D to this submission.

9. The Government submits that this annual increase of up to 1.5% (a net increase of up to 6.1%) is adequate to meet the requirements of s. 26 of the *Judges Act*. With respect to the mandatory criteria:

10. *The prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government* (s. 26(1.1)(a)): The global economy has slowed recently and uncertainty over the outlook has risen considerably. The key near-term risks are the sovereign debt and banking crisis in Europe, as well as the possibility of a further slowdown in the U.S. economy. The Canadian economy has performed relatively better but is not immune from these developments, and like other countries has been impacted through stock market declines and reduced business and consumer confidence. Private sector economists have revised down their outlook for Canadian economic growth since the 2011 budget, particularly for 2011 and 2012. The deterioration of the global economic situation has also begun to be felt in Canadian employment, which by November 2011 had dipped to its lowest level since May 2011. Weakness in our trading partners has also meant that Canada's exports remain below pre-recession levels. Budgetary deficits are projected throughout the quadrennial period. The Government has undertaken a comprehensive review of government spending to identify spending reductions of at least \$4 billion by 2014-15, the results of which will be announced in Budget 2012. Constraints on the Government's ability to spend necessarily inform its approach to public sector wage increases. The Government submits that it would be inconsistent with the guidance provided by the Supreme Court of Canada in the *PEI Judges Reference* for judges to be exempt from any constraint on wage increases as compared to others paid with public funds.<sup>11</sup>

11. *The role of financial security of the judiciary in ensuring judicial independence* (s. 26(1.1)(b)): Judicial salaries are already well above the level at which the public could reasonably be concerned that judges are vulnerable to economic pressure due to lack of financial security.

---

Under the Government's proposal, if IAI turns out to be 1.5% or less in a particular year (as the Department of Finance predicts for 2013), that IAI amount would apply under s. 25 of the *Judges Act*, as usual. If IAI is more than 1.5%, the salary increase would be capped at 1.5%.

<sup>11</sup> *PEI Judges Reference, supra* at para. 156.

12. *The need to attract outstanding candidates to the judiciary* (s. 26(1.1)(c)): There is no difficulty attracting outstanding candidates to the judiciary at current salary levels.

13. The Government submits that where:

- (a) the country faces difficult economic and fiscal conditions;
- (b) wage increases of up to 1.5% annually were applied to individuals paid from the public purse other than judges in 2008-11, pursuant to the *Expenditure Restraint Act*,<sup>12</sup>
- (c) economic increases of 1.5% annually are being provided to executives and deputy ministers for 2011-13;<sup>13</sup>
- (d) economic increases of 1.5% annually have been negotiated with the largest public sector unions for 2011-14;<sup>14</sup> and
- (e) judicial salaries are already at a level that preserves financial security and successful recruitment;

the current judicial salary plus an annual increase of up to 1.5% for the next four years, until the commencement of the next Quadrennial Commission, is adequate.

14. If this Commission recommends a 1.5% cap on indexation in such circumstances, a reasonable and informed person would not conclude that the Government is exerting political pressure through economic manipulation of the judiciary.<sup>15</sup> Rather, a reasonable and informed

---

<sup>12</sup> *Expenditure Restraint Act*, S.C. 2009, c. 2, s. 393 (“ERA”), online: <http://laws.justice.gc.ca/eng/acts/E-15.5/page-14.html#h-9>.

<sup>13</sup> Treasury Board of Canada Secretariat, “Information Notice: Changes to Executive Level Total Compensation” online: <http://www.tbs-sct.gc.ca/hrh/110729in-bi-eng.asp>; an additional .25% was provided for 2011-12 as a result of savings resulting from elimination of accumulation of severance pay for resignation or retirement.

<sup>14</sup> As a result of elimination of accumulation of severance pay for resignation or retirement, a top-up of .25% in 2011-12 and .5% in 2013-14 was also included in the overall wage increases in these settlements (that is, the total wage increases are 1.75% for 2011-12; 1.5% for 2012-13 and 2.0% for 2013-14, of which 1.5% annually is the economic increase): *Ibid.*; Public Service Alliance of Canada, “Treasury Board bargaining” (6 April 2011), online: <http://www.psc-afpc.com/news/2011/bargaining/20110406-e.shtml>; Professional Institute of the Public Service of Canada, “Understanding Severance Pay” <http://www.pipsc.ca/portal/page/portal/website/news/magazine/spring2011/4>.

<sup>15</sup> Compare *PEI Judges Reference*, *supra* at para. 170.

person<sup>16</sup> would conclude that judicial salaries are subject to the same constraints on spending that apply throughout the public sector, and that the temporary measures being proposed by the Government do not threaten judicial independence.<sup>17</sup>

**B. The Commission's December 8, 2011 Notice**

15. The Government acknowledges the Commission's Notice of December 8, 2011, which is attached hereto as Annex A. In that Notice, the Commission has declared its intention to adopt the mid-point of the DM-3 salary range, plus one-half of maximum performance pay "as a comparator that meets the section 26(1.1) criteria," unless "there has been a change in facts or circumstance which justify a rehearing of the question." Second, the Commission has indicated that it also intends to adopt recommendations 2, 3, 5, 6, 7, 10 and 11 of the 2007 Judicial Compensation and Benefits Commission (the "Block Commission") and the portion of recommendation 4 which relates to salary differentials, in the absence of a change of facts or circumstance.<sup>18</sup> Third, in relation to former recommendations 1, 4 and 9, the Commission requests submissions "as to what those amounts should be currently based on the reasoning enunciated in those Recommendations." Finally, the Commission asks for submissions on whether it is "necessary or advisable" for it to "turn its mind to the timeliness and substance" of the Government's 2009 response to the Block Commission Report.

16. By letter dated December 13, 2011, the Government responded to the Notice. A copy of that letter is attached hereto as Annex B. For the reasons set out in its letter, the Government respectfully submits that the approach set out in the Notice is not open to the Commission. Rather, the Commission is constitutionally and statutorily required to conduct an inquiry in which submissions on all the criteria set out in s. 26 of the *Judges Act* are made and heard publicly and are considered independently and objectively by this Commission. This Commission must make its own assessment of the evidence and submissions received during its inquiry, and cannot simply follow the recommendations of a prior Commission without making

---

<sup>16</sup> For the reasonable and informed person test, see *ibid.*, at para. 113.

<sup>17</sup> Compare *ibid.*, at para. 156.

<sup>18</sup> Report of the Third Quadrennial Judicial Compensation and Benefits Commission, dated May 30, 2008 ("Block Commission Report").

that assessment.<sup>19</sup> In light of this duty, these representations set out evidence and submissions regarding all the issues raised by s. 26 of the *Judges Act*, rather than being limited to submissions on changes of fact or circumstance since the Block Commission.

## **PART II - BACKGROUND**

### **A. Current Compensation**

17. At the request of the Commission, the Government and the judiciary have jointly prepared a background note on the current compensation of judges and the evolution of their salaries since the commencement of the first Quadrennial Commission. A copy of that note is attached hereto as Annex C.

### **B. The Mandate of the Commission**

18. This Commission has both a constitutional and a statutory mandate.

19. The constitutional purpose of this Commission is to preserve the independence of the federally-appointed judiciary. Judicial independence is a fundamental tenet of the Constitution of Canada and was described by Chief Justice Dickson as the “lifeblood of constitutionalism in democratic societies.”<sup>20</sup> Its protection is important not only to preserve impartiality in deciding individual cases but also to maintain the integrity of the judiciary in its role as guardian of the Constitution and to uphold public confidence in the administration of justice.

20. There are three essential conditions of judicial independence: security of tenure, administrative independence and financial security. The achievement of judicial independence is assessed by considering whether a “reasonable and informed person” would perceive that the court enjoys these three objective conditions of independence.<sup>21</sup>

---

<sup>19</sup> Indeed, both the Block and McLennan Commissions specifically found that they were not bound by the conclusions of previous Commissions: Block Commission Report, at para. 21; Report of the Second Quadrennial Judicial Compensation and Benefits Commission, dated May 31, 2004 (“McLennan Commission Report”), at p. 8.

<sup>20</sup> *Beauregard v. Canada*, [1986] 2 S.C.R. 56 at 70, online: <http://scc.lexum.org/en/1986/1986scr2-56/1986scr2-56.html>; see also: *Ell v. Alberta*, [2003] 1 S.C.R. 857 at para. 21, online: <http://scc.lexum.org/en/2003/2003scc35/2003scc35.html>; *PEI Judges Reference*, *supra* at paras. 112 & 138; Block Commission Report, at paras. 2-5.

<sup>21</sup> *PEI Judges Reference*, *supra* at paras. 112-115; see also Block Commission Report, at paras. 6-9.



21. Financial security prevents “political interference through economic manipulation” of the judiciary.<sup>22</sup> In the *PEI Judges Reference*, the Supreme Court held that financial security has three components:<sup>23</sup>

(a) First, governments can increase, freeze or reduce judicial salaries and/or benefits, “either as part of an overall economic measure which affects the salaries of all or some persons who are remunerated from public funds, or as part of a measure directed at [judges] as a class.” However, such changes or freezes to judicial remuneration require prior recourse to an independent, objective, effective judicial remuneration commission.

(b) Second, negotiations between members of the judiciary or their representative organizations and members of the executive or legislature regarding remuneration are prohibited.

(c) Third, the salaries paid to members of the judiciary must not be so low that judges could reasonably be perceived to be susceptible to political pressure through economic manipulation.

22. The Supreme Court described the “constitutional function performed by” this Commission and its provincial counterparts as being to “serve as an institutional sieve, to prevent the setting or freezing of judicial remuneration from being used as a means to exert political pressure through the economic manipulation of the judiciary.”<sup>24</sup> This Commission will have achieved its constitutional mandate if a reasonable and informed person would perceive that the setting of judicial compensation has been depoliticized.<sup>25</sup> The Supreme Court has held that a

---

<sup>22</sup> *PEI Judges Reference*, *supra*. at para. 131.

<sup>23</sup> *Ibid.* at paras. 131-37; see also *Mackin v. New Brunswick (Minister of Finance)*; *Rice v. New Brunswick*, [2002] 1 S.C.R. 405 at paras. 54-60 (*Mackin* was included in the index of background documents previously provided to the Commission) and *Valente v. The Queen*, [1985] 2 S.C.R. 673 at 704, online: <http://scc.lexum.org/en/1985/1985scr2-673/1985scr2-673.html>; Block Commission Report, at para. 10.

<sup>24</sup> *PEI Judges Reference*, *supra*. at para. 170; see also Block Commission Report, at para. 12.

<sup>25</sup> See e.g. *Mackin*, *supra* at para. 69: “In short, I consider that the opinion stated by this Court in the *Provincial Court Judges Reference*, *supra*, requires that any change made to the remuneration conditions of judges at any given time must necessarily pass through the institutional filter of an independent, effective and objective body so that the relationship between the judiciary, on the one hand, and the executive and legislative branches, on the other, remain depoliticized as far as possible. That is a structural requirement of the Canadian Constitution resulting from the separation of powers and the rule of law” [emphasis added].

See also *Provincial Court Judges' Assn. of New Brunswick v. New Brunswick (Minister of Justice)*; *Ontario Judges' Assn. v. Ontario (Management Board)*; *Bodner v. Alberta*; *Conférence des juges du Québec v. Québec (Attorney General)*; *Minc v. Québec (Attorney General)*, 2005 SCC 44, [2005] 2 S.C.R. 286 (“*Bodner*”) at para. 67:

judicial compensation commission will have had a “meaningful effect” as required by the Constitution if it is a “public and open process of recommendation and response.”<sup>26</sup>

23. This Commission’s recommendations are not binding. However, the Government can only vary or decline to follow them for legitimate reasons that are supported by a reasonable factual foundation, and in a manner that shows respect for this Commission’s process and achieves its purposes of “preserving judicial independence and depoliticizing the setting of judicial remuneration.”<sup>27</sup>

24. Accordingly, this Commission plays a crucial constitutional role in safeguarding the independence of Canada’s federally-appointed judges.

25. The Supreme Court provided the following guidelines for compensation commissions in its 2005 decision in *Bodner*:<sup>28</sup>

The *Reference* laid the groundwork to ensure that provincial court judges are independent from governments by precluding salary negotiations between them and avoiding any arbitrary interference with judges’ remuneration. The commission process is an “institutional sieve” (*Reference*, at paras. 170, 185 and 189) — a structural separation between the government and the judiciary. The process is neither adjudicative interest arbitration nor judicial decision making. Its focus is on identifying the appropriate level of remuneration for the judicial office in question. All relevant issues may be addressed. The process is flexible and its purpose is not simply to “update” the previous commission’s report. However, in the absence of reasons to the contrary, the starting point should be the date of the previous commission’s report.

Each commission must make its assessment in its own context. However, this rule does not mean that each new compensation commission operates in a void, disregarding the work and recommendations of its predecessors. The reports of previous commissions and their outcomes form part of the background and context that a new compensation committee should consider. A new commission may very well decide that, in the circumstances, its predecessors conducted a

---

“the Commission’s purpose is to depoliticize the remuneration process and to avoid direct confrontation between the Government and the judiciary.” *Bodner* was included in the index of background documents previously provided to the Commission.

<sup>26</sup> *Bodner*, *ibid.* at para. 19; see also para. 63 (“The objective of an open and transparent public process”).

<sup>27</sup> *Ibid.* at para. 31.

<sup>28</sup> *Ibid.* at paras. 14-15, 17; see also Block Commission Report, at paras. 14 and 21; McLennan Commission Report, at p. 3 (Commission to be guided by its perception of the public interest).

thorough review of judicial compensation and that, in the absence of demonstrated change, only minor adjustments are necessary. If on the other hand, it considers that previous reports failed to set compensation and benefits at the appropriate level due to particular circumstances, the new commission may legitimately go beyond the findings of the previous commission, and after a careful review, make its own recommendations on that basis.

...

The commission must objectively consider the submissions of all parties and any relevant factors identified in the enabling statute and regulations. Its recommendations must result from a fair and objective hearing. Its report must explain and justify its position.

26. To satisfy the requirements of the *PEI Judges Reference* with respect to an independent, objective and effective Commission, the Government enacted s. 26 of the *Judges Act* to establish the Quadrennial Commission. The *Judges Act* requires this Commission “to inquire into the adequacy of the salaries and other amounts payable under this Act and into the adequacy of judges’ benefits generally,” which are to be assessed pursuant to the considerations set out in s. 26(1.1) of the Act.<sup>29</sup> As the McLennan Commission observed, “Section 26 calls on us to make recommendations as to what compensation would be ‘adequate’ to fulfill the goals established by the legislation.”<sup>30</sup> Accordingly, this Commission will have satisfied both its constitutional and statutory mandates if it recommends salaries that are adequate in light of the s. 26(1.1) criteria, through an independent, objective and effective process.<sup>31</sup>

27. The Government further relies upon its December 13, 2011 letter (Annex B) with respect to the mandate of this Commission.

---

<sup>29</sup> Block Commission Report, at paras. 17-20.

<sup>30</sup> McLennan Commission Report, at p. 9.

<sup>31</sup> Block Commission Report, at para. 15.

**PART III - JUDGES ACT MANDATORY CRITERIA**

**A. The prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government**

**1. Background: The Global Recession and Recent Judicial Compensation**

28. For the reasons set out in the Government's December 13, 2011 letter, this Commission has no jurisdiction to review the Government's response to the Block Commission Report. However, that report and response do form part of the background for this Commission. As set out below, there was a dramatic change in economic facts and circumstances after the Block Commission Report was delivered.

29. The parties' submissions to the Block Commission with respect to economic conditions were based upon the Economic Statement tabled by the Minister of Finance on October 30, 2007.<sup>32</sup> At that time, the Canadian economy appeared to be robust. On May 30, 2008, the Block Commission recommended a salary increase of 4.9% for *puisne* judges for 2008-2009 (inclusive of annual indexing), and an additional 2% plus statutory indexing for each of the following three years of its mandate.

30. The global economy and Canada's financial position deteriorated rapidly after the Block Commission Report was received. In Canada, growth declined in the latter half of 2008, resulting in an overall growth rate of 0.5 per cent for the year, the weakest annual growth rate in 17 years.<sup>33</sup>

31. On November 27, 2008, (three days before the Minister of Justice's response to the Block Commission Report was due) the Minister of Finance announced that the Government intended to take steps to protect Canada's fiscal position by introducing legislation to limit public sector wage increases.

32. Given the announcement of the public sector wage legislation, the Minister of Justice determined that he would not be able to meet the deadline of December 1, 2008 to respond to the

---

<sup>32</sup> *Ibid.* at paras. 51 and 54.

<sup>33</sup> Affidavit of Benoit Robidoux sworn May 13, 2009, filed in the *Aalto* case ("Robidoux Affidavit"), at para. 26 (to be included in the Joint Book of Documents).

Block Commission Report. He decided that it would be appropriate to delay his response, to consider the Block Commission Report in light of the significant changes that had occurred in the prevailing economic conditions and the financial position of the federal government.<sup>34</sup>

33. The 2009 Budget, which was tabled on January 27, 2009, announced \$40 billion in federal tax and spending measures to stimulate the economy.<sup>35</sup> These significant fiscal stimulus measures, combined with weaker government revenues, had a large negative impact on the federal government's financial position. The 2009 Budget projected significant deficits for the first time since 1996-1997, including \$1.1 billion in 2008-9, \$33.7 billion in 2009-10, \$29.8 billion in 2010-11, \$13.0 billion in 2011-12, and \$7.3 billion in 2012-13.<sup>36</sup>

34. On February 6, 2009, the Government introduced the legislation implementing the public sector wage controls, the *Expenditure Restraint Act* (the "ERA").<sup>37</sup> The ERA did not apply to judges.<sup>38</sup>

35. Five days later, the Minister of Justice delivered the Response to the Block Commission Report (the "2009 Response"). In light of the changed economic circumstances, the Government declined to implement the Commission's recommendations. With reference to the ERA, the Government stated:

In the Government's view, the public would reasonably expect that judges should be subject to similar restraint measures. The Supreme Court of Canada has established that it is to ensure continued public confidence in the judiciary that judicial remuneration should be subject to measures affecting the salaries of all others paid from the public purse. In *Reference re Remuneration of Judges of the Provincial Court (P.E.I.)*, Chief Justice Lamer observed that equality of treatment "helps to sustain the perception of judicial independence precisely because judges are not being singled out for preferential treatment".<sup>39</sup> He explained:<sup>40</sup>

---

<sup>34</sup> Response of the Government of Canada to the Report of the 2007 Judicial Compensation and Benefits Commission, February 11, 2009, at p. 1, online: <http://www.quadcom.gc.ca/archives/2007/Media/Pdf/2009/GovernmentResponseFull.pdf>. The Response was included in the index of background documents previously provided to the Commission.

<sup>35</sup> Block Commission Report, at para. 32.

<sup>36</sup> Robidoux Affidavit., at para. 33.

<sup>37</sup> *Supra*.

<sup>38</sup> *Ibid.*, s. 13(4).

<sup>39</sup> *PEI Judges Reference, supra* at para. 156 [footnote in original].

*In my opinion, the risk of political interference through economic manipulation is clearly greater when judges are treated differently from other persons paid from the public purse. This is why we focussed on discriminatory measures in Beauregard. As Professor Renke, supra, has stated in the context of current appeals (at p. 19):*

*. . . if judges were spared compensation decreases affecting other public sector groups, a reasonable person might well conclude that the judges had engaged in some behind-the-scenes lobbying. The judges' exemption could be thought to be the result of secret deals, or secret commitments to favour the government. An exemption of judges from across-the-board pay cuts is as likely to generate suspicions concerning judicial independence as the reduction of judicial compensation in the context of general public sector reductions.*

36. A similar response was given by the Government to the recommendations of the Special Advisor on Federal Court Prothonotaries' Compensation.<sup>41</sup> The Report of the Special Advisor had been released the same day as the Block Commission Report (May 30, 2008). The Government responded to both reports on the same day (February 11, 2009). In litigation brought by the Federal Court Prothonotaries challenging the Government's response to the Special Advisor's Report, the Federal Court found that there were "significant changes in economic conditions generally and in the adverse effects on public finances of the Government of Canada which became apparent after the Report of the Special Advisor was submitted to the Minister on May 30, 2008."<sup>42</sup> The Government's response was ultimately upheld by the Federal Court of Appeal as being constitutional in light of "the deteriorating state of the global economic situation and its impact on the finances of the Government of Canada."<sup>43</sup> Leave to appeal that decision to the Supreme Court of Canada was denied.

---

<sup>40</sup> *Ibid.*, at para. 158 [footnote in original].

<sup>41</sup> "Response of the Minister of Justice to the Report of the Special Advisor on Federal Court Prothonotaries' Compensation," February 11, 2009, online: <http://www.justice.gc.ca/eng/dept-min/pub/res-rep/>

<sup>42</sup> *Aalto v. Canada (Attorney General)*, 2009 FC 861, [2010] 3 FCR 312 at para. 2 (online: <http://decisions.fct-cf.gc.ca/en/2009/2009fc861/2009fc861.html>), aff'd 2010 FCA 195 (online: <http://decisions.fca-caf.gc.ca/en/2010/2010fca195/2010fca195.html>); leave to appeal to S.C.C. denied March 17, 2011 (online: <http://www.scc-csc.gc.ca/case-dossier/cms-sgd/dock-regi-eng.aspx?cas=33868>).

<sup>43</sup> *Ibid.* (F.C.A.), at paras. 11-12.

37. The effect of the Government's 2009 Response maintaining judges' IAI increases was that judges' annual salary increases exceeded the public sector wage increases in the ERA. From 2006 to 2011, judges' salaries increased by 50% more than others paid from the public purse (a net increase of 14.5% as compared to 9.6%):<sup>44</sup>

| <b>Year</b> | <b>Public Servants</b> | <b>Judges</b> | <b><i>Puisne</i> Judges' Salaries</b> |
|-------------|------------------------|---------------|---------------------------------------|
| 2006-07     | 2.5%                   | 3.1%          | \$244,700                             |
| 2007-08     | 2.3%                   | 3.0%          | \$252,000                             |
| 2008-09     | 1.5%                   | 3.2%          | \$260,000                             |
| 2009-10     | 1.5%                   | 2.8%          | \$267,200                             |
| 2010-11     | 1.5%                   | 1.6%          | \$271,400                             |

38. In the first year following the ERA (2011-12), public sector wage increases of 1.75% applied as a result of agreements reached with some of the largest public sector unions<sup>45</sup> (.25% of which is with respect to elimination of severance pay accumulation for resignation or retirement).<sup>46</sup> The same 1.75% increase was also applied to public sector executives and deputy ministers (whose salaries are not negotiated, and for whom severance pay accumulation was also eliminated).<sup>47</sup> In contrast, the IAI applied to judicial salaries was 3.6%, resulting in the current *puisne* judge salary of \$281,100.<sup>48</sup>

39. During this period of restraint, the global economy experienced the deepest and most synchronized recession since the Great Depression.<sup>49</sup> It was even more severe and protracted than the Government expected at the time of its 2009 Response. As demonstrated in the

---

<sup>44</sup> Compare ERA, s. 16 to the description of judges' compensation and benefits at Annex C.

<sup>45</sup> Data provided by Treasury Board, to be included in Joint Book of Documents.

<sup>46</sup> Treasury Board of Canada Secretariat, "Information Notice: Changes to Executive Level Total Compensation" online: <http://www.tbs-sct.gc.ca/hrh/110729in-bi-eng.asp>; Public Service Alliance of Canada, "Treasury Board bargaining" (6 April 2011), online: <http://www.psac-afpc.com/news/2011/bargaining/20110406-e.shtml>; Professional Institute of the Public Service of Canada, "Understanding Severance Pay" <http://www.pipsc.ca/portal/page/portal/website/news/magazine/spring2011/4>.

<sup>47</sup> Treasury Board of Canada Secretariat, "Information Notice: Changes to Executive Level Total Compensation" online: <http://www.tbs-sct.gc.ca/hrh/110729in-bi-eng.asp>.

<sup>48</sup> See the description of judges' compensation and benefits at Annex C.

<sup>49</sup> Robidoux Affidavit, at para. 7.

following chart, deficits in 2010-13 were or are expected to be a cumulative \$41.7 billion more than was anticipated at the time of the 2009 Response:<sup>50</sup>

| <b>Year</b>  | <b>Deficit Projected in 2009</b> | <b>Actual or Currently Projected Deficit</b> | <b>Difference</b>     |
|--------------|----------------------------------|--|-----------------------|
| 2010-11      | \$29.8 billion                   | \$33.4 billion                               | \$3.6 billion         |
| 2011-12      | \$13 billion                     | \$31 billion                                 | \$18 billion          |
| 2012-13      | \$7.3 billion                    | \$27.4 billion                               | \$20.1 billion        |
| <b>Total</b> |                                  |  | <b>\$41.7 billion</b> |

## **2. Current Economic and Fiscal Conditions**

40. The Canadian economy remains very fragile. As a trading nation, Canada is inevitably detrimentally affected by the current global economic turmoil, particularly the challenges faced by the U.S. and Europe. The global economic situation and outlook have deteriorated recently, and uncertainty over the outlook has risen, largely reflecting the negative impacts of the sovereign debt and banking crisis in Europe, and concerns over the health of the U.S. recovery and the country's fiscal sustainability.<sup>51</sup>

41. In its September 2011 *World Economic Outlook*, the International Monetary Fund ("IMF") found: "The global economy is in a dangerous new phase. Global activity has weakened and become more uneven, confidence has fallen sharply recently, and downside risks are growing."<sup>52</sup> Assuming that "European policymakers contain the crisis in the euro area periphery, that U.S. policymakers strike a judicious balance between support for the economy and medium-term fiscal consolidation, and that volatility in global financial markets does not escalate," the IMF would still project "anemic" growth of real GDP in advanced economies of

---

<sup>50</sup> Compare Robidoux Affidavit., at para. 33, with the Department of Finance Letter (Annex D).

<sup>51</sup> Department of Finance Letter (Annex D).

<sup>52</sup> International Monetary Fund, *World Economic Outlook, September 2011: Slowing Growth, Rising Risks* at p. xv online: <http://www.imf.org/external/pubs/ft/weo/2011/02/pdf/text.pdf>.



about 1.5% for 2011 and 2% for 2012. Its projections for Canada are 2.1% for 2011 and 1.9% for 2012.<sup>53</sup>

42. Uncertainty regarding the global economy has shaken consumer and business confidence and resulted in sharp declines in equity values worldwide. As a result of ongoing weak external demand and a relatively high Canadian dollar, Canadian exports remain well below pre-recession levels.<sup>54</sup> The deterioration of the global economic situation has also begun to be felt in Canadian employment, which by November 2011 had dipped to its lowest level since May 2011.<sup>55</sup>

43. On November 8, 2011, the Minister of Finance released an Update of Economic and Fiscal Projections (“Fall Update”).<sup>56</sup> Due to slowing of the global economy and increasing uncertainty about the short-term outlook, reflecting the negative impacts of the European debt crisis and concerns over the United States’ fiscal situation, private sector economists have revised their outlook for Canadian economic growth significantly downward. Real gross domestic product growth is now expected to be a modest 2.2% in 2011 and 2.1% in 2012, compared to projections of 2.9% for 2011 and 2.8% for 2012 made 6 months earlier for purposes of the 2011 Budget.<sup>57</sup> The global economic situation continues to evolve, creating a period of great uncertainty for the Canadian economy.

44. The Fall Update projected budgetary deficits of \$33.4 billion for 2010-11, \$31 billion for 2011-12, \$27.4 billion for 2012-13, \$17 billion in 2013-14, \$7.5 billion in 2014-15, and \$3.4 billion in 2015-16.<sup>58</sup> To restrain public sector spending, the Government has frozen the operating budgets of departments at their 2010-11 levels for two additional years.<sup>59</sup> The Government has further targeted reductions in expenses through a strategic and operating review of direct program spending of at least \$1 billion in 2012-13, \$2 billion in 2013-14 and \$4 billion

---

<sup>53</sup> *Ibid.* at pp. xv and 75.

<sup>54</sup> Department of Finance Letter (Annex D).

<sup>55</sup> Statistics Canada, CANSIM, V2062811: “Employment in Canada (seasonally adjusted)” (2 December 2011).

<sup>56</sup> Department of Finance Canada, Update of Economic and Fiscal Projections (November 8, 2011) online: <http://www.fin.gc.ca/efp-pef/2011/index-eng.asp> (“Fall Economic Update”).

<sup>57</sup> *Ibid.* and Department of Finance Letter (Annex D).

<sup>58</sup> *Ibid.*

<sup>59</sup> Budget 2011, tabled in the House of Commons by the Honourable James M. Flaherty, P.C., M.P. Minister of Finance on June 6, 2011, at p. 179, online: <http://www.budget.gc.ca/2011/home-accueil-eng.html>.

annually starting in 2014-16.<sup>60</sup> If these savings targets are met, the projections become deficits of \$26.4 billion in 2012-13, \$15 billion in 2013-14, \$3.5 billion in 2014-15 and a surplus of \$0.6 billion in 2015-16.

45. Wage increases negotiated with some of the largest public sector unions have seen annual economic increases of 1.5% from 2011-12 to 2013-14, and an additional 0.25% in 2011-12 and 0.50% in 2013-14 in respect of the elimination of the accrual of severance benefits for resignation and retirement (that is, a total wage increase of 1.75% for 2011-12; 1.5% for 2012-13 and 2.0% for 2013-14).<sup>61</sup> The same 1.75% and 1.5% increases for 2011-12 and 2012-13 have also been provided to public sector executives and deputy ministers, whose wages are not negotiated by the unions and who were also subject to elimination of severance pay accumulation. Because departmental operating budgets are frozen, these increases to base pay must be absorbed within current budgets for 2011-12 and 2012-13.<sup>62</sup>

46. The salaries and allowances of the Prime Minister, Ministers, Members of Parliament and Senators have been frozen for 2010-11, 2011-12 and 2012-13.<sup>63</sup>

47. The Supreme Court of Canada has held, in the foundational *PEI Judges Reference* decision that established this Commission: “Nothing could be more damaging to the reputation of the judiciary and the administration of justice than a perception that judges were not shouldering their share of the burden in difficult economic times.”<sup>64</sup> Accordingly, adequacy of salaries pursuant to s. 26 of the *Judges Act* must be assessed in light of the fact that others paid from the public purse have faced wage restraints not imposed on judges for the last five years, and continue to expect similar annual wage increases during this period of economic and fiscal vulnerability.

---

<sup>60</sup> Fall Economic Update, *supra* and Department of Finance Letter (Annex D).

<sup>61</sup> Data provided by Treasury Board of Canada Secretariat (to be included in Joint Book of Documents); see also Treasury Board of Canada Secretariat, “Information Notice: Changes to Executive Level Total Compensation” online: <http://www.tbs-sct.gc.ca/hrh/110729in-bi-eng.asp>; Public Service Alliance of Canada, “Treasury Board bargaining” (6 April 2011), online: <http://www.psac-afpc.com/news/2011/bargaining/20110406-e.shtml>; Professional Institute of the Public Service of Canada, “Understanding Severance Pay” <http://www.pipsc.ca/portal/page/portal/website/news/magazine/spring2011/4>.

<sup>62</sup> *Ibid.*

<sup>63</sup> *ERA*, s. 55(2).

<sup>64</sup> *PEI Judges Reference*, *supra* at para. 196; see also *Aalto*, *supra* at paras. 11-13.

48. For the reasons set out in Annex B to this submission, this Commission cannot limit its inquiry to whether there has been a change in facts or circumstances since the Block Commission Report. In any event, there clearly was a significant deterioration in the Canadian economy after the release of that report, and the current uncertain economic outlook, the deficit situation of the Government, and the resulting tight constraints on expenditures from the public purse constitute markedly changed circumstances for this Commission's inquiry as compared to the circumstances prevailing at the time of the Block Commission. This Commission is constitutionally and statutorily bound to consider the adequacy of judicial remuneration in light of current economic and fiscal conditions.<sup>65</sup>

**B. The role of financial security of the judiciary in ensuring judicial independence**

49. As discussed above, financial security is a core characteristic of judicial independence.<sup>66</sup> It has two dimensions: individual and collective.<sup>67</sup> Financial security of individual judges is guaranteed by the constitutional requirement that their salaries be established by law.<sup>68</sup> The Supreme Court has held that the collective or institutional financial security of the judiciary has three components:

(a) As a general constitutional principle, judicial salaries can be reduced, increased, or frozen, either as part of an overall economic measure which affects the salaries of all or some persons who are remunerated from public funds, or as part of a measure which is directed at judges as a class. However, any changes to or freezes in judicial remuneration require prior recourse to this Commission, which must be independent, effective, and objective, to avoid the possibility of, or the appearance of, political interference through economic manipulation.<sup>69</sup>

---

<sup>65</sup> See McLennan Commission Report, at p. 9: "The consideration to be applied is whether economic conditions dictate restraint from expenditures out of the public purse." See also *Bodner, supra* at paras. 96 and 98 (fiscal restraint and reductions in other expenditures are reasonable considerations in setting judicial compensation).

<sup>66</sup> *PEI Judges Reference, supra* at para. 115.

<sup>67</sup> *Ibid.* at para. 121.

<sup>68</sup> *Ibid.* at para. 116; *Valente, supra* at p. 706; *Constitution Act, 1867*, s. 100, online: [http://laws-lois.justice.gc.ca/eng/Const/PRINT\\_E.PDF](http://laws-lois.justice.gc.ca/eng/Const/PRINT_E.PDF).

<sup>69</sup> *PEI Judges Reference, supra* at para. 133.

(b) Negotiations between the judiciary and executive or representatives of Parliament about compensation are prohibited.<sup>70</sup>

(c) Judges cannot be paid so little as to cause a reasonable and informed person to perceive that Canada's judiciary is not independent. The Supreme Court provided the following guidance on this component of financial security in the *PEI Judges Reference*:<sup>71</sup>

any reductions to judicial remuneration, including *de facto* reductions through the erosion of judicial salaries by inflation, cannot take those salaries below a basic minimum level of remuneration which is required for the office of a judge. Public confidence in the independence of the judiciary would be undermined if judges were paid at such a low rate that they could be perceived as susceptible to political pressure through economic manipulation, as is witnessed in many countries. [emphasis added]

50. All of these components of collective financial security are currently satisfied, and the Government's compensation proposal is consistent with them.

51. First, this Commission has been appointed to consider and provide independent and objective recommendations regarding the Government's proposal to increase judges' salaries by up to 6.1% over the next four years. The parties have respected the Commission's independence and have endeavoured to provide relevant data, working jointly where possible.

52. Second, the Government and judiciary have not engaged in any negotiations regarding judicial salary or benefits.

53. Third, the lowest salary of federally-appointed judges is currently \$281,100. Given that the average salary of an employed Canadian is less than \$46,000,<sup>72</sup> judges are clearly not being paid "at such a low rate that they could be perceived as susceptible to political pressure through economic manipulation."<sup>73</sup> In light of the fact that the judicial salary is currently well above the level at which the public would reasonably fear that the judiciary is institutionally vulnerable to economic manipulation, there is no reasonable prospect of inflation taking judicial salaries

---

<sup>70</sup> *Ibid.* at para. 134.

<sup>71</sup> *Ibid.* at para. 135.

<sup>72</sup> Statistics Canada "Earnings, average weekly, by industry, monthly," AWE for August 2011, online: <http://www40.statcan.gc.ca/101/cst01/labor93a-eng.htm>.

<sup>73</sup> *PEI Judges Reference, supra* at para. 135.

“below a basic minimum level of remuneration which is required for the office of a judge.”<sup>74</sup> Current projections of CPI are modest.<sup>75</sup> They are only slightly above the 1.5% cap on indexation proposed by the Government. Indeed, it appears that IAI may be less than CPI in some years, regardless of the cap.<sup>76</sup>

### **C. The need to attract outstanding candidates to the judiciary**

54. Canada has an outstanding judiciary. The Government, and all Canadians, have an interest in ensuring that there is a sufficient pool of lawyers who meet the high standards set by the current Bench and who are willing to accept judicial appointment. If there were persuasive evidence of a problem recruiting exemplary judges, that would be of grave concern to the Government. For the reasons set out below, there is no evidence that Canada currently faces such difficulties.

#### **1. The Judicial Salary is Adequate to Attract Outstanding Candidates from Multiple Sources**

55. The pre-appointment background of Canada’s exemplary, federally-appointed judges includes private and public sector law practices, academia and the provincially-appointed judiciary. These sources of outstanding candidates represent a broad spectrum of salaries.

56. While it may be appropriate in many industries to assume that the brightest, most capable individuals are also the most highly-paid, such an assumption does not hold true for the legal profession. Many of the best lawyers and most outstanding potential judges choose to work in the public sector. For example, 4 of the 9 current Supreme Court of Canada judges were in the public sector (including academia) at the time of their initial appointment to the Bench.<sup>77</sup> There can be no doubt that former public sector lawyers and law professors who are appointed to the

---

<sup>74</sup> *Ibid.*

<sup>75</sup> For 2012-16, current projections of CPI are 2% annually: See “Department of Finance Letter” (Annex D). CPI measures the percentage change in the cost of a fixed basket of commodities of unchanging or equivalent quantity and quality, averaged across Canada. The eight major components of the CPI basket are: food, shelter, household operations and furnishings, clothing and footwear, transportation, health and personal care, recreation, education and reading, and alcoholic beverages and tobacco products.

<sup>76</sup> See “Department of Finance Letter” (Annex D) (IAI projection for 2012, applied to judges in 2013, is 1.3%).

<sup>77</sup> Profiles available online: <http://www.scc-csc.gc.ca/court-cour/index-eng.asp>. Statistics regarding the percentage of judges from the private and public sectors are discussed at paras. 94-97 below.

Bench are as outstanding as their private sector colleagues, and are equally capable of rising to the top of the judiciary.

57. Moreover, to ensure that the Canadian judiciary is diverse and is experienced in the areas of law that most frequently result in litigation, the Government appoints a significant number of lawyers who practice in less remunerative fields, including Crown attorneys, criminal defence lawyers and family lawyers. A highly-paid “rainmaker” who develops a great deal of business for a national law firm, but no longer has a significant substantive legal practice, may be poorly suited to the Bench, particularly when compared with a lower-salaried Crown attorney or defence lawyer who is in court on a regular basis. Accordingly, pre-appointment income does not accurately reflect whether a lawyer is an outstanding candidate for judicial appointment. As the Block Commission noted: “The issue is not how to attract the highest earners; the issue is how to attract outstanding candidates. It is important that there be a mix of appointees from private and public practice, from large and small firms and from large and small centres.”<sup>78</sup>

58. The lowest judicial salary of \$281,100 is significantly higher than federal public sector lawyers’ salaries. The salary for Chief Legal Counsel/Assistant Deputy Attorney General, the highest Law Cadre Group rank in the public service, is a maximum of \$195,700, with maximum performance pay of 20%.<sup>79</sup>

59. The current *puisne* judge salary also exceeds that of any professor at the Osgoode Hall Law School or the University of Toronto Law School, two of the largest law schools in Canada, in the 2011 list published pursuant to the Ontario *Public Sector Salary Disclosure Act*.<sup>80</sup>

60. The 2010 *puisne* judge salary was also higher than the 2010 income of approximately 73% of self-employed private sector lawyers aged 35-69, even without the value of the judicial

---

<sup>78</sup> Block Commission Report, at para. 116.

<sup>79</sup> Please see “Senior Law Group and Law Cadre Group Salary Ranges” for additional information regarding salaries of federal lawyers (to be included in the Joint Book of Documents).

<sup>80</sup> Online at: <http://www.fin.gov.on.ca/en/publications/salarydisclosure/2011/univer11b.html> The salary of the Vice-President Academic & Provost of York University, who is currently a member of Osgoode Hall Law School’s faculty, is higher than the *puisne* judge salary.

annuity being taken into account.<sup>81</sup> As discussed below, the judicial annuity is a significant component of judicial remuneration that should be considered by this Commission in any comparison with private sector salaries. The 2010 *puisne* judge salary plus the value of the judicial annuity was higher than the 2010 income of approximately 82% of self-employed private sector lawyers aged 35-69.

61. Accordingly, the judicial salary is already more than adequate to attract outstanding judicial appointees from all of the sources of candidates.

## **2. The Judicial Salary is Adequate to Attract Private Sector Lawyers**

62. In particular, the judicial salary compares favourably to that of self-employed lawyers (equity partners or sole practitioners) in the private sector.

63. Previous Quadrennial Commissions have had difficulty assessing private sector salaries, due either to concerns about the reliability of the data filed, or disagreement among the parties regarding whether survey or income tax data should be used.<sup>82</sup> For this Commission, the parties have worked jointly with the Canada Revenue Agency (“CRA”), in an open and transparent manner, to set agreed parameters for creation of a database of self-employed lawyers’ incomes in 2006-2010.<sup>83</sup> Income tax forms now require different codes for lawyers than for notaries and other legal professionals, and CRA has limited its database of self-employed lawyers to tax filers who used the code for lawyers, or whom CRA has identified as a member of a law society.<sup>84</sup>

64. To the extent that a change of facts or circumstance is relevant, the Government submits that the availability of jointly-prepared, reliable private sector lawyers’ income data is such a

---

<sup>81</sup> Haripaul Pannu, Report on the Earnings of Self-Employed Lawyers for the Department of Justice Canada in Preparation for the 2011 Judicial Compensation and Benefits Commission, dated December 13, 2011 (“Pannu Report”), at p. 15 (Annex E).

<sup>82</sup> See e.g. Block Commission Report, at para. 112; McLennan Commission Report, at pp. 32-33.

<sup>83</sup> The reports prepared by the CRA for the parties will be included in the Joint Book of Documents.

<sup>84</sup> Canada Revenue Agency, Individual Statistics and Modelling Sector, “2011 Quadrennial Judicial Compensation and Benefits Commission Self-Employed Lawyers Master File Methodology,” September 2011; “2011 Quadrennial Judicial Compensation and Benefits Commission Self-Employed Lawyers Master File Methodology, 2010 Update” (November 2011); and Responses to Questions on the CRA Master File Methodology, December 12, 2011 (collectively, “CRA Methodology”) (to be included in the Joint Book of Documents).

change. The Block Commission did not engage in a thorough review of potential private sector comparators, as the parties disagreed on the data relevant to such an inquiry.

65. Now that there is a jointly-produced set of raw data, this Commission must consider which of the data points are relevant to its inquiry. In particular, three variables significantly affect potential private sector comparators: the percentile examined, age range, and residence. Further, given that self-employed lawyers must provide for their retirements with after-tax income, whereas the judicial annuity is primarily government-funded, a fair comparison of salaries must take the government-funded portion of the annuity into account.

*a) Relevant Percentile of Private Sector Lawyers' Incomes, Age-Weighting and Location*

66. Compensation benchmarking is commonly done based on median incomes (the 50<sup>th</sup> percentile). However, depending on supply/demand factors, economic conditions and an employer's ability to attract candidates, the 65<sup>th</sup> percentile is used to attract exceptional individuals. Depending on the same factors, the 75<sup>th</sup> percentile may be used to attract truly exceptional individuals to a position.<sup>85</sup>

67. The committee that recommends salaries for public sector executives benchmarks the lowest executive level (EX-1) at the median of what an executive with equivalent responsibilities would be earning in the Canadian labour market (the private and broader public sector). Salary ranges for all higher levels, including all deputy ministers, are set according to internal differentials, not comparisons to the market.<sup>86</sup> For example, as of December 2010, a DM-2 earned less than half of the median of what his or her counterparts in an equivalent job would make in the Canadian labour market.<sup>87</sup>

68. The Government submits that the 65<sup>th</sup> percentile of self-employed lawyers' incomes is the appropriate private sector comparator for judges, particularly in light of current economic conditions, the fact that there is an ample supply of outstanding lawyers who apply for judicial

---

<sup>85</sup> Pannu Report, at pp. 3, 5 (Annex E).

<sup>86</sup> See e.g. Seventh Report of the Advisory Committee on Senior Level Retention and Compensation (December 2004), at p. 4, online: <http://www.tbs-sct.gc.ca/hrh/adcm-eng.asp>.

<sup>87</sup> Fourteenth Report of the Advisory Committee on Senior Level Retention and Compensation (December 2004), at p. 4, online: <http://www.tbs-sct.gc.ca/hrh/adcm-eng.asp>.



appointment, and the fact that self-employed lawyers are already the highest-earning subset of outstanding candidates for judicial appointment.

69. The Government notes that while the McLennan Commission looked at the 75<sup>th</sup> percentile of private sector income, it appears to have done so in part because it considered the income data before it to be “probably conservative,” as it included the net income of notaries and paralegals, thereby reducing the averages (which is no longer the case), excluded lawyers who had established personal corporations and were thus reporting business rather than professional income (which is no longer the case), and included only net professional income from the practice of law (which is no longer the case).<sup>88</sup> Now that the data has been refined to report total net incomes of lawyers, the Government submits that the standard compensation benchmark for outstanding candidates — the 65<sup>th</sup> percentile — is the appropriate comparator.

70. The 65<sup>th</sup> percentile self-employed lawyer’s income in 2010 was \$204,159; whereas the judicial salary in that year was \$271,400.<sup>89</sup>

71. However, the Government acknowledges that in the private sector incomes vary with the lawyer’s age. Accordingly, its expert has age-weighted private sector incomes according to judges’ ages of appointment from January 1, 1997 to March 31, 2011. This gives a single point of income comparison for a private sector lawyer who is hypothetically considering accepting a judicial appointment. Age-weighting raises the 65<sup>th</sup> percentile income to \$218,500, still well below the judicial salary.<sup>90</sup>

72. Indeed, another important change of facts or circumstance in analyzing the private sector comparator is that ages of appointment have changed. In the past, the judiciary’s submissions focused on the incomes of private sector lawyers aged 44-56; however, that age bracket has become much less significant, as shown in the following chart of ages of appointment:<sup>91</sup>

---

<sup>88</sup> McLennan Commission Report, at pp. 42-43.

<sup>89</sup> Pannu Report, at p. 5 (Annex E).

<sup>90</sup> *Ibid.*, at p. 6.

<sup>91</sup> Data provided by the Commissioner for Federal Judicial Affairs (“CFJA”) (to be included in the Joint Book of Documents).

|                | <44 | 44-56 | >56 |
|----------------|-----|-------|-----|
| 1Jan97-31Mar04 | 5%  | 83%   | 11% |
| 1Apr04-31Mar07 | 7%  | 67%   | 26% |
| 1Apr07-31Mar11 | 4%  | 65%   | 31% |

73. Accordingly, the incomes of all private sector lawyers who are eligible for appointment should be considered, with appropriate weighting, rather than completely excluding the incomes of 35% of recent appointees by looking only at the 44-56 cadre.

74. Finally, there is no objective basis for excluding all lawyers with incomes of less than \$60,000 from the data analyzed. This is not an accepted approach in compensation benchmarking, and it distorts the compensation analysis.<sup>92</sup> The whole purpose of choosing a percentile above the median is to give less weight to lower-earning individuals within the data source. Applying a \$60,000 income exclusion and benchmarking to the 65<sup>th</sup> percentile of self-employed lawyers' incomes is really applying approximately the 73<sup>rd</sup> to 74<sup>th</sup> percentile.<sup>93</sup> Applying a \$60,000 income exclusion and benchmarking to the 75<sup>th</sup> percentile of self-employed lawyers' incomes is really applying approximately the 81<sup>st</sup> percentile.<sup>94</sup> The 81<sup>st</sup> percentile is higher than the benchmark used for even truly exceptional recruitment situations.<sup>95</sup> The Government encourages the Commission to consult with its expert on these matters.

75. The Government has also considered the fact that lawyers' salaries tend to be higher in certain urban centres than in other parts of Canada. However, as the Drouin Commission noted, it would not be "responsible to suggest that the salary level of the Judiciary should be set so as to match the income of the highest income earning lawyers in the largest urban centres in Canada."<sup>96</sup> In 2010, the judicial salary exceeded the total net income of 73% of self-employed lawyers across Canada. It also exceeded at least the 70<sup>th</sup> percentile salary in all major urban centers in Canada except Calgary and Toronto.<sup>97</sup>

---

<sup>92</sup> Pannu Report, at p. 7 (Annex E).

<sup>93</sup> *Ibid.*, at p. 7.

<sup>94</sup> *Ibid.*, at p. 8.

<sup>95</sup> *Ibid.*, at pp. 3, 5.

<sup>96</sup> First Report of the Judicial Compensation and Benefits Commission, May 31, 2000 ("Drouin Commission Report"), at p. 46; see also p. 9. The Drouin Commission was included in the index of background documents previously provided to the Commission.

<sup>97</sup> Pannu Report, at p. 15 (Annex E).

**b) Annuity**

76. In addition to a salary that competes with or exceeds the vast majority of private sector lawyers' salaries, a major compensation-related incentive for judicial appointment is the judicial annuity. A retired judge receives two-thirds of salary, based on his or her last year serving as a judge, for life (currently \$187,400 for a *puisne* judge).<sup>98</sup> Judges can retire with a full annuity when, with a minimum of 15 years in judicial office, the judge's age and years of service total at least 80. For example, a judge appointed at the average appointment age of 52 can retire with a full annuity at 67.<sup>99</sup>

77. The annuity includes a generous long-term disability benefit. A judge who becomes disabled is entitled to the full annuity for life, with no minimum service requirement (that is, the benefit is payable even if a judge becomes disabled on his or her first day on the Bench).

78. Moreover, the surviving spouse of a judge who passes away receives half of the annuity, for life, also with no minimum service requirement.

79. Most of the judicial annuity is paid for by the Government. Judges contribute 7% of their salary until they are eligible for retirement, and 1% thereafter.<sup>100</sup> In contrast, private sector lawyers must provide for their retirements and disability insurance with after-tax income.

80. The Government's expert has estimated the value of the government-paid portion of the retirement benefit of the judicial annuity to judges, by determining what a private sector firm would need to spend to fund an equivalent benefit. This is the same method that he used to value the judicial annuity for both the Block and McLennan Commissions, both of which were accepted.<sup>101</sup>

---

<sup>98</sup> The last year's salary upon which the annuity is based can be the full salary a judge receives while working fewer hours as a supernumerary judge, as discussed in paras. 86-90, *infra*.

<sup>99</sup> The average age of appointment is derived from data provided by the CFJA.

<sup>100</sup> *Judges Act*, s. 50. See the description of "Judges Contributions" in Annex C for further detail.

<sup>101</sup> McLennan Commission Report, at pp. 57-58 (the McLennan Commission's expert found Mr. Pannu's methods and assumptions to be "appropriate for compensation benchmarking purposes," but used a somewhat different range of appointment ages in its own evaluation, resulting in a slightly lower value.

81. Pension value varies considerably based on age of appointment; for example, it is worth 19.6% of salary to a judge appointed under the age of 44, but worth 41.3% to a judge appointed between the ages of 60 and 64. The weighted average based on age of appointment is 27.2%.<sup>102</sup>

82. As noted above, the judicial annuity is also a valuable disability benefit. The Government's expert valued the Government-paid portion of this benefit, using the same method applied to the retirement benefit. The disability value of the judicial annuity, based on a weighted average of ages of appointments, is 9.7% of a judges' salary.<sup>103</sup> This is important evidence that was not before the Block Commission.

83. The total value of the judicial annuity is thus 36.9%.<sup>104</sup> When the Government-paid portion of the judicial annuity is taken into account, the 2010 *puisne* judge salary was effectively \$371,547.<sup>105</sup> The 2010 judicial salary plus the value of the Government-paid portion of the judicial annuity in that year was more than the 2010 income of 82% of self-employed lawyers, who would need to save for retirement and pay for disability insurance out of that income.<sup>106</sup>

84. In addition, a self-employed lawyer who accepts a judicial appointment also gains an extensive group benefits plan, including life insurance, accidental death and dismemberment insurance, health care and dental service, with 100% of the premium paid by the Government.<sup>107</sup> That individual is likely to have been paying personally for such insurance or services while in private practice.<sup>108</sup>

---

<sup>102</sup> Pannu Report, at p. 13 (Annex E).

<sup>103</sup> *Ibid.*, at p. 14.

<sup>104</sup> The Office of the Chief Actuary of the Office of the Superintendent of Financial Institutions estimates the cost to Government of the judicial annuity (retirement and disability benefit) to be 1/3 of annual salary costs. That is, if pension costs were funded through the judges' years on the bench, the Government would be paying approximately \$33 for each \$100 of salary paid. This cost is projected to increase to 35% of payroll by 2015: Actuarial Plan Pension Plan for Federally Appointed Judges as at March 31, 2010, dated October 29, 2010, at p. 10, online: [http://www.osfi-bsif.gc.ca/app/DocRepository/1/eng/reports/oca/judges2010\\_e.pdf](http://www.osfi-bsif.gc.ca/app/DocRepository/1/eng/reports/oca/judges2010_e.pdf).

<sup>105</sup> Pannu Report, at p. 15 (Annex E).

<sup>106</sup> *Ibid.*

<sup>107</sup> See the description of judges' compensation and benefits at Annex C.

<sup>108</sup> Pannu Report, at p. 16 (Annex E).

85. Given all of these benefits, judicial compensation is already more than adequate to ensure that a reasonable, informed, outstanding private sector lawyer who wants to provide the valuable public service of serving as a judge would not be discouraged from doing so.<sup>109</sup>

*c) Supernumerary Status*

86. It is also significant when considering attraction of lawyers to the Bench that large private sector law firms frequently require retirement as equity partners at age 65 (although lawyers may continue as counsel or partners *emeritus*, generally for lower salaries, after reaching 65).<sup>110</sup> In contrast, the mandatory retirement age for a judge is 75, and 47% of judges have retired at that age.<sup>111</sup> The average age of retirement is 72.<sup>112</sup> Moreover, a judge can elect to become a supernumerary judge if: a) he or she is eligible to retire with a full annuity (when he or she has served for at least 15 years and his or her age plus years of service equal at least 80); or b) has served 10 years and attained the age of 70.<sup>113</sup> Supernumerary judges receive full salary, but are not expected to work full hours (typically, the expectation is 50% of a normal workload).

87. The supernumerary complement provides greater flexibility to the courts in assigning cases. The availability of the supernumerary election is also advantageous for the public purse, as supernumerary judges work approximately half-time for only 33% more than they would be paid if they retired.

88. However, in addition to these public benefits, the existence of supernumerary status is also an important benefit for individual judges. Unlike most private sector law firm partners, judges can work at full salary to age 75 and can “semi-retire” at full salary upon supernumerary eligibility. The Supreme Court of Canada has described the system of supernumerary judges as an “undeniable economic benefit” to the judiciary and to “eventual candidates for the position of judge in the court. In other words, this type of benefit was certainly taken into consideration

---

<sup>109</sup> Compare McLennan Commission Report, at p. 13.

<sup>110</sup> See, e.g. Kevin Marron, “Just saying ‘no’ to retirement” (April 2011) *Canadian Lawyer*, online: <http://www.canadianlawyermag.com/just-saying-no-to-retirement.html>; Sandra Rubin, “Faskens Case Prompts Boomer Turf Wars”, *Lexpert*, online: <http://www.lexpert.ca/globe/article.php?id=2016>.

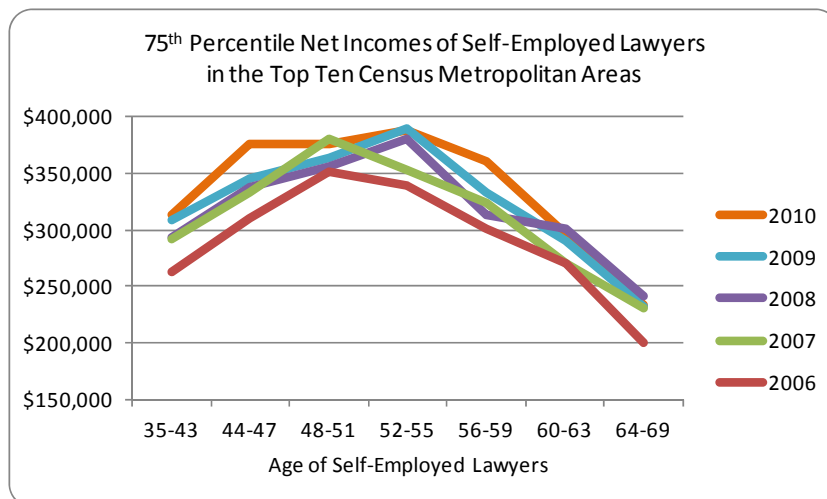
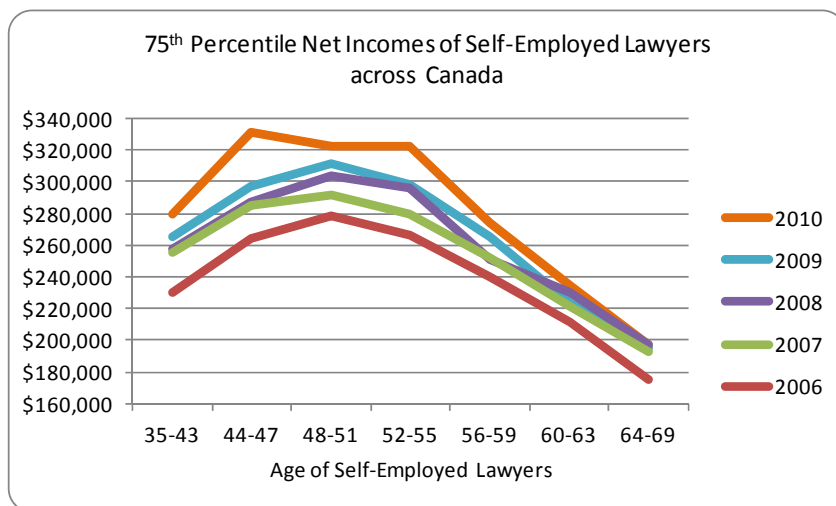
<sup>111</sup> Retirements since 1997. Retirement data provided by the CFJA.

<sup>112</sup> Retirement data provided by the CFJA. The average retirement age since 1997 is 71.9, excluding deaths and retirements due to disability.

<sup>113</sup> See the description of judges’ compensation and benefits at Annex C.

both by sitting judges and by candidates for the office of judge in planning their economic and financial affairs.”<sup>114</sup>

89. The availability of a high salary to age 75 is a significant inducement for outstanding candidates for appointment, particularly in light of the fact that private sector salaries, on average, decrease precipitously in a lawyer’s early to mid-50s, as demonstrated in the following charts derived from the CRA self-employed lawyer data; whereas a judge’s salary increases every year:<sup>115</sup>



<sup>114</sup> Mackin, *supra* at para. 67, online: <http://scc.lexum.org/en/2002/2002scc13/2002scc13.html>.

<sup>115</sup> The 75<sup>th</sup> percentile is used in these charts as it is the closest percentile to judges’ salaries; that is, as noted above, the judicial salary in 2010 (without the judicial annuity) was equivalent to approximately the 73<sup>rd</sup> percentile of private sector lawyers’ incomes.

90. These graphs actually understate the decrease in income at older ages in the private sector, as CRA has excluded all lawyers who receive more in CPP/QPP benefits than in income from the data provided for this Commission.<sup>116</sup> As a result, only higher-earning, older lawyers were included in the data and in the charts above.

**d) Private Sector Compensation Trends**

91. The Block Commission warned: “there is no certainty that if the income spread between lawyers in private practice and judges were to increase markedly that the Government would continue to be successful in attracting outstanding candidates to the Bench from amongst the senior members of the Bar in Canada.”<sup>117</sup>

92. Such a divergence in lawyers’ and judges’ income trends has not occurred. The current judicial salary compares favourably to judicial salaries found adequate to attract outstanding candidates by past Commissions. The following chart compares CRA private sector data from 2002 to 2010 with the judicial salary. The 2002 and 2003 judicial salaries were recommended by the Drouin Commission and implemented without variation by the Government. There can be no question as to their adequacy.<sup>118</sup>

|                                   | 2002      | 2003      | 2004      | 2005      | 2006      | 2007      | 2008      | 2009      | 2010      | 2011      |
|-----------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Judge Salary + Annuity            | \$287,764 | \$296,525 | \$318,019 | \$325,001 | \$334,994 | \$344,988 | \$355,940 | \$365,797 | \$371,547 | \$384,826 |
| Judge Salary                      | \$210,200 | \$216,600 | \$232,300 | \$237,400 | \$244,700 | \$252,000 | \$260,000 | \$267,200 | \$271,400 | \$281,100 |
| Canada, All Ages, 75th Percentile | \$198,950 | \$207,429 | \$229,797 | \$233,932 | \$242,006 | \$257,762 | \$264,550 | \$266,210 | \$278,526 |           |

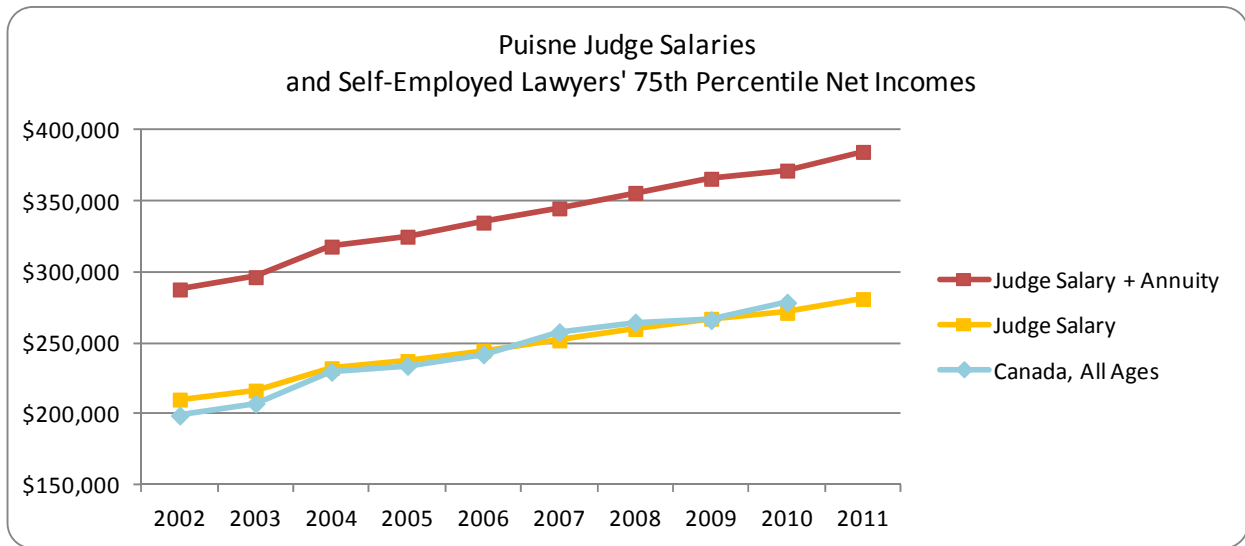
93. As the following chart demonstrates, judicial salaries have kept pace with those of potential private sector appointees over the past decade:<sup>119</sup>

<sup>116</sup> CRA Methodology, *supra*.

<sup>117</sup> Block Commission Report, at p. 37.

<sup>118</sup> The annuity value in the first row of this chart is calculated as 36.9%: Pannu Report, at pp. 13-14 (Annex E). The CRA data in the bottom row of this chart is from the CRA reports relating to lawyers aged 35-69. The 75th percentile is used as it is currently the closest percentile to judges’ salaries; however, as discussed above, the 65<sup>th</sup> percentile would be the appropriate comparator for a benchmarking analysis.

<sup>119</sup> Annuity value calculated as 36.9%: Pannu Report, at pp. 13-14 (Annex E).



*e) Demographic Data*

94. Recent demographic data regarding judicial appointees confirms that private sector lawyers continue to be attracted to judicial positions.<sup>120</sup> The percentage of judges appointed from the private sector in 2007-11 was 71%, which is consistent with past appointment data (73% from January 1, 1997 to March 31, 2007).

95. It is noteworthy that former provincial and territorial court judges and masters are classified as “public” even if they were in private practice prior to their provincial appointments. Of the 69 “public sector” appointees in 2007-11, 28 were provincial or territorial judges or masters. Accordingly, the number of appointees whose law practice prior to any judicial appointment was in the private sector is likely to be higher than 71% (that is, it is very unlikely that all of the provincial and territorial judges had previously been public sector lawyers).

96. It is significant that the provinces with higher private sector salaries also have a high proportion of private sector appointments. For example, 77% of Ontario appointees were in the private sector, as were 83% of Quebec appointees. There is no evidence of difficulty attracting outstanding private sector candidates in provinces with higher law firm salaries.

<sup>120</sup> This demographic data was provided by the CFJA to both the Government and the associations representing the judiciary (tables to be included in the Joint Book of Documents).



97. Indeed, the overall rate of lawyers' applications for judicial positions by jurisdiction is consistent with the percentage of the national judicial complement in each jurisdiction, and is generally consistent with the percentage of self-employed lawyers in each province or territory, as reported by CRA, as is illustrated by the following chart:

|                         | Lawyer Applicants for Appointment <sup>121</sup> |     | Current Judicial Complement <sup>122</sup> |     | 2010 CRA Income Data (All ages, no threshold) |      |                        |
|-------------------------|--|-----|--|-----|---|------|------------------------|
|                         | N  | %   | N  | %   | N   | %    | P <sub>75</sub> Income |
| Alberta                 | 169  | 9%  | 78   | 10% | 1,360   | 6%   | \$301,632              |
| British Columbia        | 214  | 11% | 103  | 13% | 2,120   | 10%  | \$237,711              |
| Manitoba                | 68   | 4%  | 43   | 5%  | 560   | 3%   | \$186,403              |
| New Brunswick           | 78   | 4%  | 31   | 4%  | 320   | 2%   | \$151,208              |
| Newfoundland & Labrador | 34   | 2%  | 27   | 3%  | 200   | 1%   | \$216,436              |
| Nova Scotia             | 95   | 5%  | 43   | 5%  | 410   | 2%   | \$170,761              |
| Ontario                 | 761  | 39% | 264  | 33% | 10,760  | 51%  | \$348,692              |
| Prince Edward Island    | 12   | 1%  | 8  | 1%  | 40  | 0.2% | \$191,166              |
| Québec                  | 433  | 22% | 165  | 20% | 4,920   | 23%  | \$223,120              |
| Saskatchewan            | 69   | 4%  | 40   | 5%  | 300   | 1%   | \$188,990              |
| Territories             | 60   | 3%  | 10   | 1%  | 40  | 0.2% | \$166,595              |
| Canada                  | 1,993  |     | 812  |     | 21,120  |      | \$278,526              |

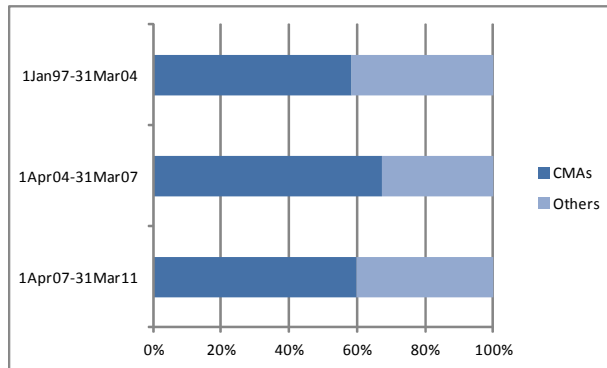
98. Of the appointees from the private sector for whom law firm size information was available, 38% practiced in firms that had more than 60 lawyers nationally, and 30% were from firms with more than 100 lawyers.<sup>123</sup>

99. The proportion of appointees from Canada's major cities (the "Census Metropolitan Areas") has also remained relatively consistent over time:

<sup>121</sup>These numbers exclude applicants who were or are provincial, territorial or Tax Court of Canada judges.

<sup>122</sup> These numbers exclude the Supreme Court of Canada, the Federal Court of Appeal, the Federal Court and the Tax Court of Canada. They include vacancies but exclude supernumerary judges.

<sup>123</sup> Data provided by CFJA, "Table 3: Size of Firm for Appointees at the Date of Appointment April 1, 2007 to March 31, 2011" (to be included in Joint Book of Documents). For past Quadrennial Commissions, the CFJA did not identify the national firm size of appointees, so that column was not included in past tables.



100. In light of the foregoing demographic information, there is no evidence of a problem recruiting judges from any segment of the legal community, including from the private sector in the provinces with higher private sector lawyers' salaries, from CMAs or from large firms.

101. In the absence of such evidence, the Government respectfully submits that there is no objective basis for recommending increases to judicial salaries above the Government's proposal in order to recruit outstanding candidates to the judiciary.

*f) Application and Resignation Statistics*

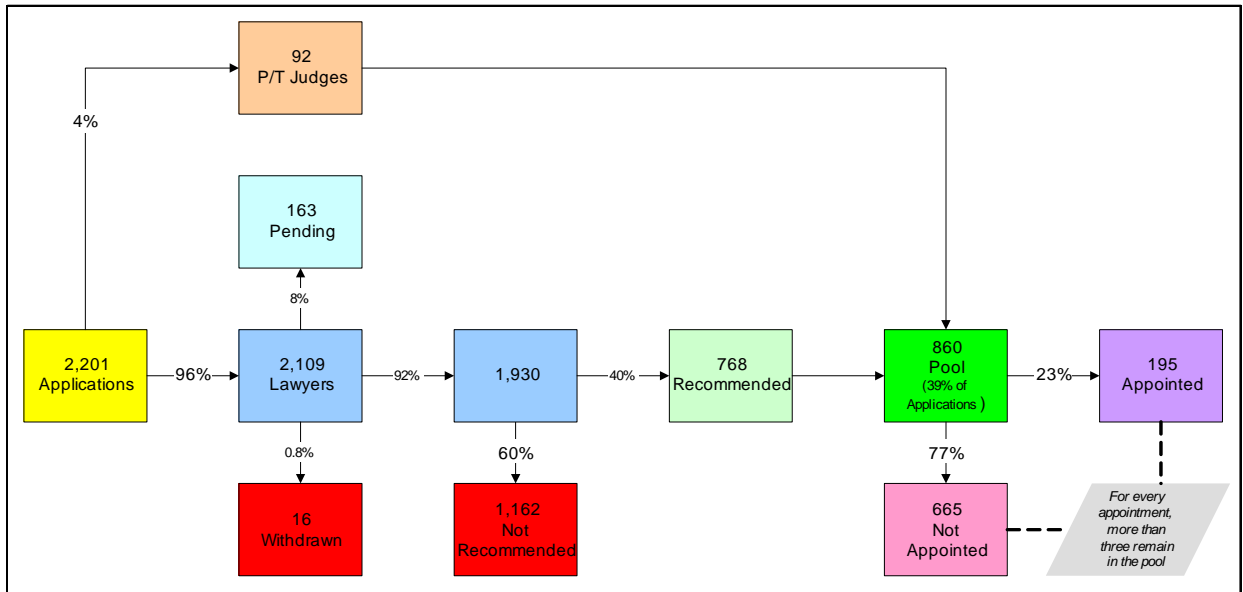
102. Statistics relating to applications for judicial appointment and resignations from judicial office further confirm that the judicial salary is adequate for recruitment.

103. As the following table demonstrates, there is an ample pool of qualified applicants for the Bench. For every judge appointed, there are 3.3 recommended applicants remaining in the pool:<sup>124</sup>

---

<sup>124</sup> As set out in the chart, 2109 lawyers applied for consideration for appointment. Their applications are assessed by a Judicial Appointment Committee. There were also 92 provincial and territorial judges who applied for federal appointments. Existing judges' applications are not reviewed by the Judicial Appointment Committee; their applications are effectively automatically recommended.

During its preparations for this Commission, the Government realized that the number of provincial and territorial judge applications reported in its 2007 submissions was incorrect; the statistics provided by the CFJA at that time did not identify provincial/territorial judge or "pending" applications, and the Government incorrectly inferred that all applicants who were neither recommended nor "not recommended" must be provincial/territorial judges who were not assessed by the committee. The CFJA provided more detailed statistics to the Government and judiciary for this Commission. Accordingly, the current statistics cannot be compared directly to paragraphs 36 and 37 and the accompanying footnotes of the Government's 2007 opening submission.



104. Similarly, statistics relating to retirement from judicial office demonstrate that there is no compensation-related retention problem. There have only been 4 judges who have elected to resign from the bench (for any reason other than disability), prior to eligibility for early retirement, since 2007.<sup>125</sup>

**g) Conclusion**

105. In light of the foregoing, there is ample evidence that the current judicial salary, with the proposed increase of up to 6.1% over the current quadrennial period, is adequate to attract outstanding candidates, including private sector lawyers. One of the constitutional requirements for this Commission is that it be objective.<sup>126</sup> The Government respectfully submits that the objective evidence demonstrates that its salary proposal meets the test of “adequacy” to be applied by this Commission.

<sup>125</sup> Retirements from 1 Jan 97 though 13 Apr 11 (to be included in the Joint Book of Documents). Judges who resign prior to eligibility for early retirement receive a return of their pension contributions.

<sup>126</sup> *PEI Judges Reference*, *supra* at para. 133.

**D. Other objective criteria that the Commission considers relevant**

**1. There is no consensus of past Commissions regarding a formulaic DM-3 comparator**

106. Recommendation 14 of the Block Commission states that where “consensus has emerged” with respect to a particular issue, in the absence of demonstrated change “such Consensus should be taken into account by the Commission.”<sup>127</sup> This Commission has interpreted that recommendation as mandating it to apply the mid-point of the DM-3 salary range, plus one-half of maximum performance pay as a comparator, unless a change of fact or circumstance is established.

107. With respect, there is no consensus that the mid-point of the DM-3 salary range plus one-half of maximum performance pay is an appropriate comparator.<sup>128</sup> Indeed, the 2004 McLennan Commission specifically rejected a focus on DM-3s alone, and concluded that performance pay is based on considerations not relevant to the judicial context.<sup>129</sup> The last two Commissions specifically disagreed regarding the comparator being proposed in the Notice. There is no consensus.

108. Past Quadrennial and Triennial Commissions have considered “rough equivalence” to the salaries earned by DM-3s, but Commissions have differed significantly in the weight, if any, placed on the “DM-3 comparator.” For example, the McLennan Commission noted: “During the period 1975 to 1992, it appears that judges’ salaries, with the exception of 1975 and 1986, were below the DM-3 midpoint and generally below the minimum of the DM-3 salary scale.” The McLennan Commission further pointed out that the Scott Commission had concluded: “A strong case can be made that the comparison between DM-3’s and judges’ compensation is both imprecise and inappropriate.”<sup>130</sup>

109. There is also no consensus that a single benchmark should be used. As the McLennan Commission noted: “it would be counter-productive to fix judicial salaries as having a pre-

---

<sup>127</sup> Block Commission Report, at p. 78.

<sup>128</sup> See also the Government’s submissions in Annex B.

<sup>129</sup> McLennan Commission Report, at pp. 27-28.

<sup>130</sup> *Ibid.*, at p. 25.

determined relationship to other salaries, whether those of senior civil servants or senior legal practitioners. ... Were it otherwise, there would be no need to address this subject every four years, as contemplated by the *Judges Act*.”<sup>131</sup> Similarly, the Drouin Commission concluded: “the unique position of the Judiciary in Canada strongly militates against a formulaic approach to the determination of an adequate salary.”<sup>132</sup> With respect, the Government submits that to treat the mid-point of the DM-3 salary range plus one-half of maximum performance pay as a formulaic benchmark is wrong in law and in principle.

**2. If this Commission considers DM-3 salaries, it should consider all deputy minister salaries**

110. All Commissions have acknowledged that no direct comparison can be made between judges and senior public servants.<sup>133</sup> The work done by judges and DM-3s is not similar.<sup>134</sup> Deputy Ministers are not generally potential candidates for judicial appointment. Deputy Ministers are not constitutionally required to be independent. Rather, the only rationale given for considering DM-3 salaries has been as a reflection of “what the marketplace expects to pay individuals of outstanding character and ability, which are qualities shared by deputy ministers and judges.”<sup>135</sup> As the McLennan Commission pointed out, this phrase, used by the Courtois, Scott and Drouin Commissions refers to “deputy ministers,” not DM-3s and is clearly true of all levels of deputy ministers.<sup>136</sup> Indeed, other senior public servants who do not have the deputy minister title are also “individuals of outstanding character and ability.” The Government submits that if this Commission decides to consider senior public servants’ salaries, it should follow the McLennan Commission’s approach of considering all deputy ministers, rather than focusing solely on the salaries of the 13 DM-3s.

---

<sup>131</sup> McLennan Commission Report, at p. 8.

<sup>132</sup> Drouin Commission Report, at pp. 9-10.

<sup>133</sup> See e.g. McLennan Commission Report, at pp. 25-26.

<sup>134</sup> *Ibid.* at p. 25.

<sup>135</sup> *Ibid.*; Block Commission Report, at para. 103; Drouin Commission Report, at p. 31; Report and Recommendations of the 1995 Commission Judges' Salaries and Benefits, September 30, 1996 (“Scott Commission Report”), at p. 13; Report and Recommendations of the 1989 Commission on Judges' Salaries and Benefits, March 5, 1990 (“Courtois Commission Report”), at p. 10. The reports of the Courtois, Scott and other “Triennial Commissions” were provided to the Commission on CD-ROM on November 22, 2011.

<sup>136</sup> McLennan Commission Report, at p. 28.

111. The McLennan Commission observed that the large majority of senior public servants who reach the DM-3 level have come up from the DM-1 and DM-2 levels.<sup>137</sup> That remains the case; of the 30 DM-3s currently serving or that have served in that position since 2000, 27 (90%) had been DM-2s.<sup>138</sup> The McLennan Commission also relied upon the fact that the significant majority of DM-1s and DM-2s are similar in age to judges on their appointment.<sup>139</sup> That also remains the case. The average age of judges on appointment is 52. The average age of an associate deputy minister (DM-1) is 54.4, and that of deputy ministers is 53.9.<sup>140</sup>

112. The McLennan Commission placed particular emphasis on the fact that all deputy ministers have levels of experience comparable to judges. As of October 21, 2011, the average level of experience of DM-1s was 27.1 years, the average level of experience of DM-2s was 27.4 years and the average for DM-3s was 29 years.<sup>141</sup> Overall, 86% of all deputy ministers had more than 20 years' experience.<sup>142</sup> All deputy ministers "are public servants of long experience and demonstrable ability."<sup>143</sup>

113. The McLennan Commission found:<sup>144</sup>

Since many, if not most, of those who reach the DM-1 and DM-2 levels have the qualities of character and ability that qualify them for promotion to DM-3, were openings available, there seems to us to be no good reason to exclude them from consideration. This is especially so given the importance that is accorded to the DM-3 comparison and the fact that, at present, there are only nine people who hold that rank, a very small sample upon which to base the remuneration of more than 1,100 federally appointed judges. Another consideration that influences our thinking was the difference in the pension available to those at the DM levels compared with the judicial annuity, which we will discuss in the next chapter. We are also cognizant of the fact that deputy ministers do not have the security of tenure accorded *puisne* judges.

---

<sup>137</sup> *Ibid.*

<sup>138</sup> Data supplied by the Senior Personnel and Public Service Renewal section of the Privy Council Office as of June 22, 2011.

<sup>139</sup> McLennan Commission Report, at p. 29.

<sup>140</sup> Clerk of the Privy Council and Secretary to the Cabinet, *Eighteenth Annual Report to the Prime Minister on the Public Service of Canada for the year ending March 31, 2011*, online: <http://www.clerk.gc.ca/eng/feature.asp?pageId=275>.

<sup>141</sup> Data provided by Privy Council Office as of October 21, 2011.

<sup>142</sup> *Ibid.*

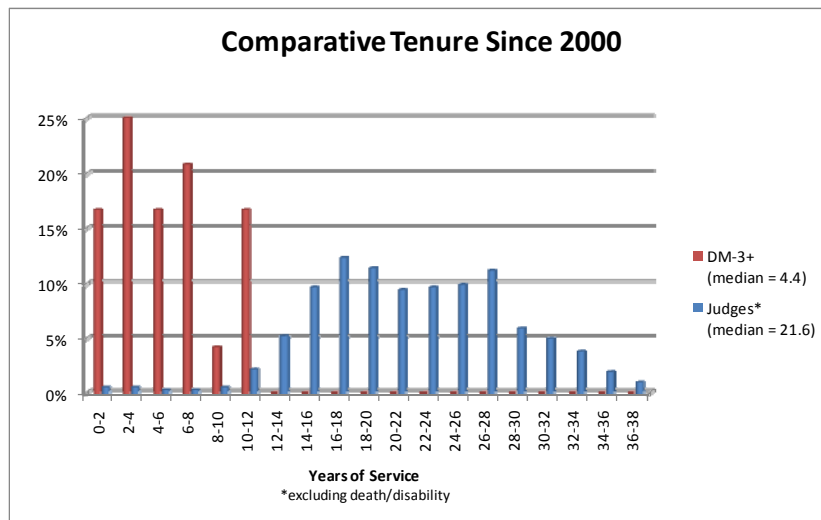
<sup>143</sup> McLennan Commission Report, at p. 28.

<sup>144</sup> *Ibid.* at p. 29.

114. With respect to security of tenure, deputy ministers serve at the pleasure of the Governor in Council; whereas pursuant to s. 99 of the *Constitution Act, 1867*, judges can only be removed from office on address of the Senate and the House of Commons, to preserve their independence. Among the 24 individuals who have served as a DM-3 and whose tenure as a DM-3 or higher ended between 2000 and 2011, the median tenure at the rank of DM-3 or higher was 4.4 years.<sup>145</sup> Even the maximum tenure was less than 12 years.

115. In contrast, the 424 judges who retired between 2000 and 2011 had spent a median of 21.6 years as a judge, with the maximum tenure close to 38 years.<sup>146</sup> Indeed, only 4% retired with less than 12 years of service, which was the maximum DM-3 tenure.<sup>147</sup>

116. Graphically, judicial and DM-3 tenure compare as follows:<sup>148</sup>



<sup>145</sup> This calculation includes time as a DM-4 and time in “step down” positions where a DM-3 is given an assignment as an advisor, head of a board or international posting, usually just prior to retirement, at his or her previous DM-3 salary (but not the same level of benefits and not necessarily with the same level, if any, performance pay). Data supplied by the Senior Personnel and Public Service Renewal section of the Privy Council Office as of June 22, 2011.

<sup>146</sup> Judges who passed away while in office, or retired by reason of a disability, have been excluded from this calculation. The calculation of years of service includes those as a supernumerary judge. Data derived from the Judicial Personnel System database of the Office of the Commissioner for Federal Judicial Affairs as of April 13, 2011.

<sup>147</sup> It is noteworthy that deputy ministers’ pensions are based on their best 5 consecutive years of service, so most DM-3s will not receive a pension based solely on compensation while at DM-3 or higher levels. Deputy Minister (DM-3) Summary of Benefits, prepared by Department of Justice based on data supplied by the Senior Personnel and Public Service Renewal section of the Privy Council Office as of June 22, 2011 (to be included in the Joint Book of Documents).

<sup>148</sup> Additional comparison charts will be included in the Joint Book of Documents.

117. This comparison of tenure is evidence that was not before the Block Commission.

118. The Advisory Committee on Senior Level Retention and Compensation (the “Stephenson Committee”) can recommend economic increases for deputy ministers.<sup>149</sup> Even though such increases reflect a percentage increase in base salary, a deputy minister who fails to meet expectations is not normally given the economic increase.<sup>150</sup>

119. While the IAI adjustment increased judicial salaries by 3.6% in 2011-12, deputy ministers’ base pay for 2011-12 increased 1.75% compared to 2010-11, which includes .25% relating to elimination of severance pay accumulation.<sup>151</sup> Deputy ministers’ base pay for 2011-12 will be as follows:<sup>152</sup>

---

<sup>149</sup> The Advisory Committee on Senior Level Retention and Compensation, composed of senior executives from the private and other public sectors, was established in 1997 to provide advice to the Government on compensation for public service executives and Governor in Council appointees. Its recommendations are not binding on the Government.

<sup>150</sup> Senior Personnel Secretariat, Privy Council Office, “Performance Management Program Guidelines for Deputy Ministers, Associate Deputy Ministers and Individuals Paid in the GX Salary Range” last updated October 2011 (“PMP Guidelines”), online: <http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=secretariats&sub=spsp-psps&doc=pmp-pgr/dm-sm/dm-sm-eng.htm>.

<sup>151</sup> Treasury Board of Canada Secretariat, “Information Notice: Changes to Executive Level Total Compensation” online: <http://www.tbs-sct.gc.ca/hrh/110729in-bi-eng.asp>.

<sup>152</sup> Data provided by Privy Council Office, “Landscape\_DM\_Income\_Info\_.doc (19Oct11)” (to be provided in Joint Book of Documents).



|                                 | Minimum   | Maximum   | Midpoint  | Population |
|---------------------------------|-----------|-----------|-----------|------------|
| DM-1                            | \$185,800 | \$218,500 | \$202,150 | 30         |
| DM-2                            | \$213,700 | \$251,300 | \$232,500 | 38         |
| DM-3                            | \$239,200 | \$281,400 | \$260,300 | 13         |
| DM-4                            | \$267,900 | \$315,100 | \$291,500 | 3          |
| Weighted Midpoint: DM-1 to DM-4 |           |           | \$228,070 |            |
| Weighted Midpoint: DM-2 to DM-4 |           |           | \$242,470 |            |

120. These salaries will increase by 1.5% in 2012-13,<sup>153</sup> the same increase being proposed for judges.

121. The Government submits that in light of the small number of DM-3s (13 compared to 1,117 judges), their short tenure (4.4 compared to 21.6 years), and the fact that the entire deputy minister population has a level of experience comparable to judges, if this Commission considers a public sector comparator, it should consider all deputy ministers and not only DM-3s. The judicial salary is consistent with both judges and deputy ministers being paid as “individuals of outstanding character and ability.”

### **3. Deputy Minister Performance Pay is Provided for Reasons Not Relevant to the Judicial Context**

122. Since 1998, deputy ministers, associate deputy ministers and certain other Governor in Council appointees have been eligible to potentially receive “performance pay” measured against agreed targets and the achievement of business plans. As the McLennan Commission noted, it is apparent from a review of the reports of the predecessors to the Stephenson Committee: “that this is so in part because of the executive market pressures that exist to attract and retain talented people in the public service, as compared to the income levels available to such people in the private sector, and in part as an incentive to reward the attaining of preset and measurable annual goals of achievement. Those considerations are not relevant to the judicial context.”<sup>154</sup>

123. Performance pay has two elements - a potential variable amount (at-risk pay) which is re-assessed each year and a potential bonus for performance that surpasses expectations. As of

<sup>153</sup> Treasury Board of Canada Secretariat, “Information Notice: Changes to Executive Level Total Compensation” online: <http://www.tbs-sct.gc.ca/hrh/110729in-bi-eng.asp>.

<sup>154</sup> McLennan Commission Report, at p. 27.

2011, 60% of at-risk pay is based on results against individual commitments, and the remaining 40% is based on achievement of corporate commitments linked to the all-of-government spending review under which at least \$4 billion in annual savings is targeted, as discussed in paragraph 44 above.<sup>155</sup> The dependence of 40% of performance pay on achievement of the Government's deficit-reduction goals is yet another change in facts since the Block Commission.<sup>156</sup>

124. Deputy minister performance awards for 2011-12 will be assessed as follows:<sup>157</sup>

|                    | <b>Corporate Commitment</b>   | <b>Individual Commitment</b>   | <b>Economic Increase</b> | <b>In-Range Increase</b> |
|--------------------|---|--|--------------------------|--------------------------|
| <b>AT-RISK PAY</b> | Did not meet<br>X   | Did not meet<br>X  | X                        | X                        |
|                    | Unable to assess<br>X   | Unable to assess<br>X  | √                        | X                        |
|                    | Partially Achieved<br>√DM-1/GX: up to 4%<br>√DM-2/3: up to 5%<br>√DM-4: up to 6%                            | Succeeded –<br>√DM-1/GX: up to 6%<br>√DM-2/3: up to 10%<br>√DM-4: up to 14%  | √                        | √                        |
|                    | Achieved<br>√DM-1/GX: up to 6%<br>√DM-2/3: up to 7.5%<br>√DM-4: up to 9%                                    | Succeeded<br>√DM-1GX: up to 9%<br>√DM-2/3: up to 12.5%<br>√DM-4: up to 16%   | √                        | √                        |
|                    | Fully Achieved<br>√DM-1/GX: up to 8%<br>√DM-2/3: up to 10%<br>√DM-4: up to 12%                              | Succeeded +<br>√DM-1/GX: up to 12%<br>√DM-2/3: up to 15%<br>√DM-4: up to 18% | √                        | √                        |
| <b>BONUS</b>       | Surpassed<br>√DM-1/GX: 20% + up to 6% bonus<br>√DM-2/3: 25% + up to 8% bonus<br>√DM-4: 30% + up to 9% bonus |  | √                        | √                        |

<sup>155</sup> PMP Guidelines, *supra*; Treasury Board of Canada Secretariat, "Information Notice: Changes to Executive Level Total Compensation," *supra*.

<sup>156</sup> 2007-2008 Performance Management Program Guidelines – Deputy Ministers, Associate Deputy Ministers and Individuals Paid in the GX Salary Range, November 2007, at p. 3 (emphasis in original) (to be included in the Joint Book of Documents. The same document was Appendix 15 of the Submission of the Government of Canada to the Block Commission).

<sup>157</sup> Privy Council Office, "Performance Awards for Deputy Ministers, Associate Deputy Ministers and People Paid in the GX Salary Range for 2011-12", online: <http://www.pco.gc.ca/index.asp?lang=eng&page=secretariats&sub=spsp-psps&doc=pmp-pgr/dm-sm/performance-rendement-eng.htm>.

125. As noted above, in 2004 the McLennan Commission concluded that the purposes of at-risk pay are not relevant in the judicial context.<sup>158</sup> That is even more true now that at-risk pay is tied to achievement of deficit-reduction targets. An incentive paid to the few deputy ministers who lead the public service to find means of reducing government expenses and balancing the federal budget is not an appropriate amount to include in a benchmark to potentially increase the salaries of 1,117 judges.

126. Moreover, the concept of a “bonus” has no place in judicial remuneration. The very notion of a discretionary bonus offends the constitutional principle that the judiciary not be beholden to the Executive nor swayed by favour.

127. For the reasons set out above, the Government submits that it is not necessary for this Commission to consider deputy minister compensation at all, much less deputy minister performance pay. Nevertheless, even if the Commission considers the midpoint of the at-risk pay available to a deputy minister who “succeeds” in his or her individual commitments (that is, the mid-point between maximum at-risk pay for “succeeded-” (10% for DM-3s, as shown in the chart at para. 124 above) and the maximum for “succeeded” (12.5% for DM-3s)), judicial salaries compare well to those amounts:<sup>159</sup>

|                        |           |
|------------------------|-----------|
| DM-1 Midpoint + 7.5%   | \$217,311 |
| DM-2 Midpoint + 11.25% | \$258,656 |
| DM-3 Midpoint + 11.25% | \$289,584 |
| DM4 Midpoint + 15%     | \$335,225 |
| Weighted DM-1 to DM4   | \$251,411 |
| Weighted DM-2 to DM4   | \$270,356 |

---

<sup>158</sup> McLennan Commission Report, at p. 27.

<sup>159</sup> These figures are for 2011-12. See para. 119, *supra*.

128. For the information of the Commission, the Government has also set out below the maximum available to a deputy minister who has “succeeded” in his or her individual commitments:<sup>160</sup>

|                       |           |
|-----------------------|-----------|
| DM-1 Midpoint + 9%    | \$220,344 |
| DM-2 Midpoint + 12.5% | \$261,563 |
| DM-3 Midpoint + 12.5% | \$292,838 |
| DM4 Midpoint + 16%    | \$338,140 |
| Weighted DM-1 to DM4  | \$254,417 |
| Weighted DM-2 to DM4  | \$273,346 |

129. Accordingly, even if performance pay is taken into account, the salary of a *puisne* judge is currently between that of a DM-2 and a DM-3 and the salary of a chief justice or associate chief justice exceeds that of a DM-3. The salary of a Supreme Court *puisne* judge is comparable to that of a DM-4, the apex of the judiciary and the public service respectively.

#### **PART IV - ADDITIONAL INFORMATION REQUESTED IN NOTICE**

130. With respect to the Commission’s request for submissions regarding whether there has been a change in facts or circumstances regarding Recommendations 5, 6, 7, 8, 9 and 10 of the Block Commission, as noted in Annex B, the Government understands, based on the meeting held with the Commission on November 15, 2011, that the judges’ associations are not seeking increased benefits during this Commission’s inquiry. The Government respectfully submits that the Commission has no objective basis upon which to recommend such increases. If the judges’ associations now seek increases to benefits as well as salaries, the Government will respond in its reply submissions.

131. Similarly, with respect to Recommendation 3, as noted in Annex B, the Government is not aware that an appellate differential is being requested during this Commission’s inquiry. If submissions are made seeking a differential, the Government will respond in its reply submissions.

---

<sup>160</sup> These figures are for 2011-12.

132. With respect to Recommendations 1 and 4, the Commission requested “that submissions be made as to what those amounts should be currently based on the reasoning enunciated in those Recommendations.” For the reasons set out above and in Annex B, the Government submits that Recommendations 1 and 4 should not be adopted by this Commission. However, if this Commission, like the Block Commission, were to recommend an increase of 4.9% (inclusive of the IAI increase) for the first year of its mandate, and a 2% increase in addition to IAI in the remaining 3 years, the resulting salaries would be:

| <b>Year Starting</b> | <b>Increase from Prior Year</b> | <b>Puisne Judge (1071 Judges)</b> | <b>Chief Justice/ACJ (37)</b> | <b>Supreme Court Puisne (8)</b> | <b>Chief Justice of Canada (1)</b> |
|----------------------|---------------------------------|-----------------------------------|-------------------------------|---------------------------------|------------------------------------|
| April 1, 2011        |                                 | \$281,100                         | \$308,200                     | \$334,500                       | \$361,300                          |
| April 1, 2012        | 4.9%                            | \$294,800                         | \$323,300                     | \$350,800                       | \$379,000                          |
| April 1, 2013        | 4.6%                            | \$308,300                         | \$338,100                     | \$366,900                       | \$396,400                          |
| April 1, 2014        | 4.8%                            | \$323,000                         | \$354,300                     | \$384,500                       | \$415,400                          |
| April 1, 2015        | 4.9%                            | \$338,800                         | \$371,600                     | \$403,300                       | \$435,700                          |

#### **PART V - CONCLUSION**

133. In conclusion, the Government submits that when the Commission considers the three mandatory *Judges Act* criteria (the economy, financial security and recruitment), the current judicial salary, increased by up to 1.5% annually for each of the next four years, is adequate. Even if this Commission determines that it should also review salaries of senior public servants, as a further objective criterion that the Commission finds relevant,<sup>161</sup> the judicial salary remains adequate.

134. The paramount consideration for this Commission, and for the Government, must be the public interest. Preservation of judicial independence is essential to the public interest. The Government submits that in current circumstances, public perception of independence is best preserved not through automatic increases but through temporary measures that a reasonable and informed member of the public would consider to be fair in light of overall economic measures that are being implemented in the public interest. The Government’s proposal of increases of up to 1.5% annually for the next four years is consistent with the Supreme Court’s admonition that:

---

<sup>161</sup> See *Judges Act*, s. 36(1.1)(d).

“Nothing would be more damaging to the reputation of the judiciary and the administration of justice than a perception that judges were not shouldering their share of the burden in difficult economic times.”<sup>162</sup> Accordingly, the Government respectfully submits that the Commission should recommend that the Government’s proposal be implemented.

ALL OF WHICH is respectfully submitted.

DATED at Toronto, this 23<sup>rd</sup> day of December, 2011.

---

Catherine Beagan Flood

Counsel for the Attorney General of Canada

---

<sup>162</sup> *PEI Judges Reference, supra* at para. 196.



# ANNEX A



***Judicial Compensation  
and Benefits Commission***



***Commission d'examen de la  
rémunération des juges***

99 Metcalfe Street  
Ottawa, Ontario K1A 1E3

**Chairperson/Président**  
Brian M. Levitt

**Members/Membres**  
Paul Tellier, P.C., C.C., Q.C./c.r.  
Mark L. Siegel

**Executive Director/Directrice exécutive**  
Suzanne Labbé

Tel./Tél. : 613-995-5300  
e-mail/courriel : info@quadcom.gc.ca

**NOTICE**

Recommendation 14 of the 2008 Judicial Compensation and Benefits Commission's Report stated, in effect, that the parties should not view the establishment of a new commission as an opportunity to reopen settled issues, absent a change in facts or circumstances which would justify reconsideration of the matter. This Commission has determined to adopt that principle and apply it rigorously, with the following implications:

- (a) With regard to the selection of the appropriate comparator, paragraphs 47 to 120 of the report of the previous Commission provide an exhaustive review of the relevant factors. That Commission concluded in paragraph 118 that "...the mid-point of the DM-3 salary range, plus one half of maximum performance pay..." is a comparator that meets the section 26(1.1) criteria of the *Judges Act* to which the Commission is directed by the statute to turn its mind. This Commission intends to regard that determination of the previous Commission as a settled matter of principle in the absence of submissions which convince this Commission that, since the previous Commission reported, there has been a change in facts or circumstance which justify a rehearing of the question.
- (b) This Commission has made the same determination with respect to Recommendations 2, 3, 5, 6, 7, 8, 10 and 11 of the report of the previous Commission as well as with respect to the portion of Recommendation 4 which relates to salary differentials.
- (c) With respect to Recommendations 1 and 9, and with respect to the portion of Recommendation 4 which fixes actual amounts, the Commission requests that submissions be made as to what those amounts should be currently based on the reasoning enunciated in those Recommendations.

The Commission has noted the time elapsed between the submission of the previous Commission's report and the Government's response thereto as well as the substance of that response. The Commission invites submissions providing guidance as to whether the relevant body of judge made law suggests that it is necessary or advisable for this Commission to turn its mind to the timeliness and substance of that response.

***Judicial Compensation  
and Benefits Commission***



***Commission d'examen de la  
rémunération des juges***

99 Metcalfe Street  
Ottawa, Ontario K1A 1E3

**Chairperson/Président**  
Brian M. Levitt

**Members/Membres**  
Paul Tellier, P.C., C.C., Q.C./c.r.  
Mark L. Siegel

**Executive Director/Directrice exécutive**  
Suzanne Labbé

Tel./Tél. : 613-995-5300  
e-mail/courriel : info@quadcom.gc.ca

**AVIS**

La Recommandation 14 du rapport 2008 de la Commission d'examen de la rémunération des juges précisait que les parties ne devaient pas voir dans l'établissement d'une nouvelle Commission une occasion de rouvrir des points sur lesquels une entente était intervenue, en l'absence d'un changement dans les faits ou les circonstances pouvant justifier un réexamen. La présente Commission a choisi d'adopter ce principe et de l'appliquer rigoureusement, avec les conséquences suivantes :

- (a) en ce qui concerne le choix d'un comparateur approprié, les paragraphes 47 à 120 du rapport de la précédente Commission fournissent un examen exhaustif des facteurs pertinents. Cette Commission concluait, au paragraphe 118 que « le point médian de l'échelle salariale DM-3, plus la moitié de la rémunération maximale au rendement... » est un comparateur qui satisfait au critère du paragraphe 26(1.1) auquel la Commission est tenue par la *Loi sur les juges*. La présente Commission entend considérer cette détermination faite par la Commission précédente comme une question réglée en principe, en l'absence de présentation pouvant convaincre la présente Commission qu'il s'est produit depuis le rapport de la précédente Commission, dans les faits ou les circonstances, des changements qui justifient un réexamen de la question;
- (b) la présente Commission fait la même détermination en ce qui concerne les Recommandations 2, 3, 5, 6, 7, 8, 10 et 11 du rapport de la Commission précédente et en ce qui concerne la partie de la Recommandation 4 portant sur les écarts de traitement;
- (c) en ce qui a trait aux Recommandations 1 et 9 et à la partie de la Recommandation 4 qui fixe les montants effectifs, la Commission demande que des mémoires lui soient présentés sur les éléments sur lesquels ces montants devraient être actuellement basés, selon le raisonnement énoncé dans ces recommandations.

La Commission a noté le délai écoulé entre le dépôt du rapport de la Commission précédente et la réponse du gouvernement à ce rapport, de même que la substance de cette réponse. La Commission invite les parties intéressées à lui présenter des mémoires à savoir si la jurisprudence porte à croire qu'il est nécessaire ou souhaitable que la présente Commission se penche sur la rapidité et la substance de cette réponse.

# ANNEX B



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

December 13, 2011

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**

This is further to the Notice issued by the Judicial Compensation and Benefits Commission on December 8, 2011.

The Notice indicates that the Commission has determined that in the absence of "a change in facts or circumstance," the Commission "intends to regard" a particular comparator, Recommendations 2, 3, 5, 6, 7, 8, 10, 11 and a portion of Recommendation 4 of the 2007 Judicial Compensation and Benefits Commission's Report "as a settled matter of principle." The Commission has also invited submissions regarding whether it is "necessary or advisable" for it to consider the timeliness and substance of the Government's 2009 Response to the 2007 Commission.

With respect, the Notice is not consistent with the Commission's constitutional or statutory mandate, or the principles of natural justice. The Commission has apparently met *ex parte*, deliberated, and determined the bulk of the issues that are the subject of its inquiry under s. 26 of the *Judges Act* prior to receiving and considering submissions from any party or from the public.

In *Provincial Court Judges' Assn. of New Brunswick v. New Brunswick (Minister of Justice)*; *Ontario Judges' Assn. v. Ontario (Management Board)*; *Bodner v. Alberta*; *Conférence des juges du Québec v. Québec (Attorney General)*; *Minc v. Québec (Attorney General)*, 2005 SCC 44, [2005] 2 S.C.R. 286 at para. 17 ("*Bodner*"), the Supreme Court of Canada provided the following guidance for judicial remuneration commissions:

The commission must objectively consider the submissions of all parties and any relevant factors identified in the enabling statute and regulations. Its recommendations must result from a fair and objective hearing. Its report must explain and justify its position. [emphasis added]

In the same decision (at para. 19), the Supreme Court held that a judicial compensation commission will have had a "meaningful effect" as required by the Constitution if it is a "public and open process of recommendation and response." The Notice does not reflect the process required by the Constitution.

22181613.3

MONTRÉAL OTTAWA TORONTO CALGARY VANCOUVER  
NEW YORK CHICAGO LONDON BAHRAIN AL-KHOBAR\* BEIJING SHANGHAI\* **blakes.com**  
\* Associated Office Blake, Cassels & Graydon LLP

In *Bodner*, the Supreme Court further held (at para. 14) that the purpose of a judicial compensation commission "is not simply to 'update' the previous commission's report." Rather, while a commission can consider the reports of previous commissions as part of the background and context for its inquiry, "Each commission must make its assessment in its own context." The 2007 Commission chose not to follow several of the recommendations of the 2004 Commission, including the 2004 Commission's determination that it is not appropriate to focus solely on the DM-3 comparator. Far from being "settled," or a matter of "consensus," prior Commissions' views regarding DM-3s as a potential comparator have varied widely, as have their views on several of the 2007 recommendations. If the 2007 Commission's intention in Recommendation 14 was to fetter the independence and objectivity of this Commission, it lacked the jurisdiction to do so. It would be an error of law for this Commission to fetter itself by following the recommendations of a prior Commission without making its own independent and objective assessment of all of the evidence and submissions presented by all participants in its public inquiry.

Indeed, at their initial meeting with the Commission on November 15, 2011, the principal parties advised the Commission that they were both of the view that, as a matter of law, this Commission must inquire into the adequacy of judicial salaries and "cannot just adopt what the previous Commission has done."

Moreover, the fact that the Commission has indicated that it intends to adopt non-salary related recommendations of the previous Commission (Recommendations 5, 6, 7, 8 and 10), despite having been advised by counsel for the judiciary on November 15 that only salaries would be in issue during this quadrennial period, is also inconsistent with the Commission's constitutional duty to proceed on an objective basis. Similarly, the Commission has indicated that unless there has been a change in facts or circumstances, it will recommend a salary differential for appellate judges (Recommendation 3 of the 2007 Commission), even though no party has given notice to the Government that such a differential will be requested.

Finally, with respect to the last paragraph of the Notice, the timing and substance of the Government's 2009 response is not a subject of this inquiry. This Commission was established under s. 26 of the *Judges Act* to "to inquire into the adequacy of the salaries and other amounts payable under this Act and into the adequacy of judges' benefits generally," for the period of April 1, 2012 to March 31, 2016. Its mandate is prospective.

The Supreme Court has determined in the *Ref re Remuneration of Judges of the Prov. Court of P.E.I.; Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I.*, [1997] 3 S.C.R. 3 (see e.g. paras. 133, 176-77) and *Bodner* (see e.g. paras. 21, 131) that the report of a judicial compensation commission is consultative: "the Constitution does not require that commission reports be binding, as decisions about the allocation of public resources belong to legislatures and to the executive" (*Bodner*, at para. 21). A commission's recommendations can be rejected by a government for legitimate reasons based on a reasonable factual foundation. Such a rejection is subject to a limited, deferential form of judicial review by the superior courts "which acknowledges both the government's unique position and accumulated expertise and its constitutional responsibility for management of the

province's financial affairs" (*Bodner*, para. 30). A government's response to a judicial compensation commission is clearly not subject to review by later remuneration commissions.

Indeed, at the same time that the Government responded to the 2007 Commission, it also responded to recommendations of a Special Advisor on Federal Court Prothonotaries' Compensation. While the federally-appointed judges did not seek judicial review of the Government's decision not to implement the 2007 Commission's recommendations, the prothonotaries did seek judicial review of the Government's decision not to implement the Special Advisor's recommendations, including the timing of the Government's response. The Federal Court of Appeal held that the Government's response was constitutional in light of "the deteriorating state of the global economic situation and its impact on the finances of the Government of Canada": *Aalto v. Canada (Attorney General)*, 2010 FCA 195 at para. 15. The Supreme Court denied leave to appeal that decision. This Commission has no mandate to revisit such matters.

In light of the foregoing, the Government's submissions to the Commission will not only address the issue of "change of facts or circumstance" referenced in the Notice, but will also address the legal errors in the Notice and will set out the evidence and submissions that the Government considers relevant to the full inquiry which the Commission is required to conduct. In fairness to the Canadian Superior Court Judges Association and Canadian Judicial Council, counsel for the Government advised counsel for the judges' associations on December 9, 2011 that the Government would be submitting this letter to the Commission and that the Government intends to address all the issues raised by s. 26 of the *Judges Act* in its submissions to the Commission.

While counsel intends to make every effort to incorporate all the changes to the Government's submissions that are necessitated by the December 8 Notice in time to meet the December 20 filing deadline, given the number of approvals and translation required for such amendments, the Government may need to seek an extension of time. The Government intends to advise the Commission and counsel for the judges' associations prior to December 20 if such an extension is needed.

Yours very truly,



Catherine Beagan Flood

CBE/lpi

cc: Pierre Blenvenu  
Azim Hussain

22181613.3

# ANNEX C

## JOINT BACKGROUND NOTE: JUDICIAL COMPENSATION

### A. Current Compensation

|   |  |
|---|--|
| <b>Salary</b>                             | <ul style="list-style-type: none"> <li>• Chief Justice of Canada: \$361,300;</li> <li>• Supreme Court of Canada <i>puisne</i> judge (8 judges): \$334,500;</li> <li>• Chief Justices and Associate Chief Justices (37 judges): \$308,200;</li> <li>• <i>Puisne</i> Judges (1071 judges): <sup>1</sup> \$281,100;</li> <li>• Statutory indexation based on Industrial Aggregate ("IAI").</li> </ul>   |
| <b>Incidental allowances</b>              | <ul style="list-style-type: none"> <li>• Incidental allowance of \$5,000 annually, accountable;</li> <li>• Additional \$12,000 (10 northern judges only<sup>2</sup>), non-accountable;</li> <li>• Additional \$2,000 (FCA, FC and TCC<sup>3</sup>), non-accountable.</li> </ul>  |
| <b>Representational allowance</b>         | <ul style="list-style-type: none"> <li>• Chief Justice of Canada: \$18,750;</li> <li>• SCC <i>puisne</i> judges: \$10,000;</li> <li>• CJ of the Federal Court of Appeal and each CJ of a province: \$12,500;</li> <li>• All other CJ's, ACJ's and Senior Judges: \$10,000;</li> <li>• Ontario regional senior judges (8): \$5,000.</li> </ul>  |
| <b>Removal Allowance</b>                  | <ul style="list-style-type: none"> <li>• Moving expenses, including house sale costs, on appointment for all judges required to relocate;</li> <li>• Also on retirement for judges of the SCC, FCA, FCC, TCC and the northern courts.</li> </ul>   |
| <b>Travel Expenses</b>                    | <ul style="list-style-type: none"> <li>• As administered by the Commissioner for Federal Judicial Affairs ("CFJA"), based on TBS Guidelines</li> </ul>   |
| <b>Education and Conference Allowance</b> | <ul style="list-style-type: none"> <li>• For conferences authorized by CJs and the Canadian Judicial Council ("CJC"); CJC policy encourages five educational days per year.</li> </ul>   |
| <b>Annuity</b>                            | <p><b>Retirement</b></p> <ul style="list-style-type: none"> <li>• Age 75 (70 for certain judges appointed prior to March 1, 1987); or</li> <li>• Age plus years of service of at least 80 years (minimum 15 years of service); or</li> <li>• 10 or more years of service, if a judge of the Supreme Court of Canada</li> </ul> <p><b>Retirement Annuity</b></p> <ul style="list-style-type: none"> <li>• 66 2/3% of salary at the time of retirement.</li> <li>• If less than 10 years of service, the pension is reduced by 1/10 for each year of service below 10 years.</li> </ul> <p><b>Early Retirement</b></p> <ul style="list-style-type: none"> <li>• Age 55 with 10 years of service.</li> </ul> <p><b>Early Retirement Reduction</b></p> |

<sup>1</sup> The number of *puisne* judges will fluctuate somewhat depending on the number of supernumerary judges.

<sup>2</sup> Bill C-31 provides for the establishment of 2 additional judicial positions in Nunavut, so when passed there will be a total of 12 judges in the northern superior courts.

<sup>3</sup> Federal Court of Appeal, Federal Court, and Tax Court of Canada.



|   |  |
|---|--|
|   | <ul style="list-style-type: none"> <li>• 5% per year that the pension commences before age 60</li> </ul> <p><b>Normal Form of Pension</b></p> <ul style="list-style-type: none"> <li>• Conjugal relationship: Joint life and 50% survivor pension.</li> </ul> <p><b>Cost-of-Living Adjustments</b></p> <ul style="list-style-type: none"> <li>• 100% of the Consumer Price Index ("CPI")</li> </ul> <p><b>Death Before Retirement</b></p> <ul style="list-style-type: none"> <li>• A lump sum equal to one-sixth of salary is paid to the surviving spouse or common-law partner or to the estate if there is no survivor.</li> <li>• Conjugal relationship: A pension is payable to the surviving spouse or common-law partner equal to one-third of the annual salary of the judge.</li> <li>• Dependents: A pension is payable to each surviving dependent equal to 20% of the surviving spouse's or common-law spouse's pension, with a reduction if there are more than four dependent children. The pension for a surviving dependent is doubled if that child is an orphan.</li> </ul> <p><b>Termination prior to retirement</b></p> <ul style="list-style-type: none"> <li>• Refund of contributions, with interest.</li> </ul> <p><b>Disability</b></p> <ul style="list-style-type: none"> <li>• Immediate unreduced pension.</li> </ul> <p><b>Judges' Contributions</b></p> <ul style="list-style-type: none"> <li>• For judges appointed before February 17, 1975: 1.5% of salary.</li> <li>• For judges appointed after February 16, 1975: 1% of salary to the Supplementary Retirement Benefits Account plus 6% of salary to the Consolidated Revenue Fund.</li> <li>• 6% contribution to Consolidated Revenue Fund ceases upon eligibility for full pension or election of supernumerary status.</li> </ul> <p><b>Division upon Conjugal Breakdown</b></p> <ul style="list-style-type: none"> <li>• Mechanism permits the division of the judicial annuity benefits deemed to accrue to a judge during a conjugal relationship up to a 50% limit upon breakdown of a judge's marriage or common-law relationship.</li> </ul> |
| <p><b>Option to elect supernumerary</b></p> | <ul style="list-style-type: none"> <li>• A judge who is eligible to retire with a full annuity or has attained the age of 70 with a minimum of 10 years service has the option to elect supernumerary status — which allows the judge to work on a reduced schedule, commonly understood to be approximately 50%, for a full salary.</li> </ul>  |
| <p><b>Long-Term Disability</b></p>          | <ul style="list-style-type: none"> <li>• Immediate annuity at 2/3 of salary upon permanent infirmity.</li> <li>• Benefit is indexed to full CPI.</li> </ul>  |
| <p><b>Basic Group Life</b></p>              | <ul style="list-style-type: none"> <li>• Offered under PSMIP (Public Service Management Insurance Plan)</li> <li>• 2 times adjusted annual salary as base coverage.</li> <li>• 100% government-paid premium.</li> <li>• Full coverage continues until retirement and reduces after the first year for a four-year period (i.e., 25% reduction per year) to a minimum of 25% gradually.</li> </ul>  |
| <p><b>Optional Life Insurance</b></p>       | <ul style="list-style-type: none"> <li>• Offered under PSMIP.</li> <li>• Coverage is 1 times annual salary.</li> <li>• 100% judge-paid premium.</li> <li>• Coverage reduces at age 66 by 10% to a minimum of 10% of adjusted annual salary.</li> </ul>   |

|   |   |
|---|---|
| <b>Accidental Death &amp; Dismemberment Insurance</b> | <ul style="list-style-type: none"> <li>• Included under PSMIP.</li> <li>• \$250,000 lump sum coverage.</li> <li>• 100% government-paid premium.</li> </ul>  |
| <b>Dependent Life Insurance (including AD&amp;D)</b>  | <ul style="list-style-type: none"> <li>• Included under PSMIP</li> <li>• \$5,000 coverage for spouse. If the death is accidental, \$5,000 additional coverage.</li> <li>• \$2,500 coverage for dependent child. If the death is accidental, \$2,500 additional coverage.</li> <li>• 100% government-paid premium.</li> </ul>  |
| <b>Sick Leave / Short-Term Disability</b>             | <ul style="list-style-type: none"> <li>• At the discretion of the Chief Justice.</li> </ul>   |
| <b>Maternity &amp; Parental Pay Benefit</b>           | <ul style="list-style-type: none"> <li>• Up to 6 month Leave of Absence with full pay subject to approval by the Chief Justice.</li> </ul>  |
| <b>Extended Health Care</b>                           | <ul style="list-style-type: none"> <li>• Annual deductible of \$60 for single and \$100 for family.</li> <li>• 100% government-paid premium for Hospital Level III coverage.</li> <li>• Up to \$220 / day reimbursement for semi-private/private hospital room and board coverage.</li> <li>• 80% reimbursement for drug expenses.</li> <li>• 80% reimbursement for vision care coverage up to \$275 every 2 years.</li> <li>• 80% reimbursement for hearing aid coverage up to \$1,000 every 5 years.</li> </ul> |
| <b>Dental Plan</b>                                    | <ul style="list-style-type: none"> <li>• Annual deductible of \$25 for single and \$50 for family.</li> <li>• 100% government-paid premium.</li> <li>• Reimbursement is based on previous year's dental fee guide.</li> <li>• 90% reimbursement for basic, preventive and minor restorative treatments.</li> <li>• 50% reimbursement for major procedures (\$1,700 annual maximum per person) and orthodontia treatments (\$2,500 lifetime maximum per person).</li> </ul>  |
| <b>Vacation</b>                                       | <ul style="list-style-type: none"> <li>• At the discretion of the Chief Justice; generally understood to be approx. 6 weeks.</li> </ul>   |

**B. History of *Puisne* Judge Salaries (1999-2012)**

The following chart sets out increases in *puisne* judge salaries since 1999 (the year before the first Quadrennial Commission recommendations were made):

| April 1 <sup>st</sup> | Salary           | Statutory Indexation | Net Increase |
|-----------------------|------------------|----------------------|--------------|
| 1999                  | \$178,100        | 1.35%                |              |
| <b>2000</b>           | <b>\$198,000</b> | <b>0.67%</b>         | <b>11.2%</b> |
| 2001                  | \$204,600        | 2.33%                | 3.3%         |
| 2002                  | \$210,200        | 1.76%                | 2.7%         |
| 2003                  | \$216,600        | 2.10%                | 3.0%         |
| <b>2004</b>           | <b>\$232,300</b> | <b>1.30%</b>         | <b>7.2%</b>  |
| 2005                  | \$237,400        | 2.20%                | 2.2%         |
| 2006                  | \$244,700        | 3.10%                | 3.1%         |
| 2007                  | \$252,000        | 3.00%                | 3.0%         |
| <b>2008</b>           | <b>\$260,000</b> | <b>3.20%</b>         | <b>3.2%</b>  |
| 2009                  | \$267,200        | 2.80%                | 2.8%         |
| 2010                  | \$271,400        | 1.60%                | 1.6%         |
| 2011                  | \$281,100        | 3.60%                | 3.6%         |

# ANNEX D



Department of Finance  
Canada

Ministère des Finances  
Canada

Assistant Deputy Minister

Sous-ministre adjoint

December 16, 2011

Ms. Catherine Beagan Flood  
Blake, Cassels & Graydon LLP  
Barristers & Solicitors  
199 Bay Street  
Suite 4000 Commerce Court West  
Toronto, Ontario  
M5L 1A9

Dear Ms. Beagan Flood:

I am writing in response to your letter of November 3 requesting input for the Government's submission to the Judicial Compensation and Benefits Commission. Much of the material below is drawn from the latest *Update of Economic and Fiscal Projections* (Update) released on November 8, 2011. The Update sets out the Government's assessment of the state of the Canadian economy and of the current and future financial position of the Federal Government.

**a) "the prevailing economic conditions in the Canadian economy generally**

The global economic situation and outlook have deteriorated recently, and uncertainty over the outlook has risen, largely reflecting the negative impacts of the sovereign debt and banking crisis in Europe and concerns over the sustainability of the U.S. fiscal situation. This uncertainty has shaken consumer and business confidence and resulted in sharp declines in equity values worldwide, since mid-year.

As a result of ongoing weak external demand and headwinds from a relatively high Canadian dollar, Canadian exports remain well below levels seen at the outset of the recession. External weakness has also begun to be felt in Canadian employment, which declined in October and November, and is now essentially unchanged since June 2011.

The economic forecasts presented in the Update represent the average forecast from the Department of Finance's September 2011 survey of private sector economists. Reflecting the deterioration in the global economic situation and outlook, private sector economists expect relatively modest Canadian real GDP growth of 2.2 per cent in 2011 and 2.1 per cent in 2012, down significantly from 2.9 and 2.8 per cent, respectively, in the 2011 budget. The economists

Canada

expect growth in the 2.5-per-cent range over the 2013-2016 period. The near term private sector outlook is in line with the current economic projection published by the International Monetary Fund (IMF). The IMF's fall 2011 *World Economic Outlook* projects Canadian real GDP growth of 2.1 per cent in 2011 and 1.9 per cent in 2012.

**b) "the current and projected increase in the cost of living (possibly in comparison to the indexation of judges' salaries by the Industrial Aggregate)"**

The Consumer Price Index (CPI), which is widely used to determine cost-of-living adjustments, increased by 1.8 per cent in 2010 and is projected to increase by 2.9 per cent in 2011 and 2.0 per cent in 2012, based on the average private sector forecast at the time of the Update.

**Table 1: Projected Increases in the Total Consumer Price Index**

| 2011 | 2012 | 2013 | 2014-2016 |
|------|------|------|-----------|
| 2.9  | 2.0  | 2.0  | 2.0       |

The Department has also produced forecasts of growth in average weekly earnings (i.e. the Industrial Aggregate excluding the unclassified) for 2011 and 2012, based on the economic outlook from the survey of private sector economists. For 2011 and 2012, growth in average weekly earnings is projected at 2.4 and 1.3 per cent, respectively, following growth of 3.5 per cent in 2010. This projection is in line with the average private sector forecast for the growth in the CPI.

**c) "the current financial position of the federal government."**

The audited financial statements of the Government of Canada for the fiscal year ended March 31, 2011 reported a budgetary deficit of \$33.4 billion for the fiscal year ended March 31, 2011, compared to a budgetary deficit of \$55.6 billion in 2009-10. The federal debt stood at \$550.3 billion at March 31, 2011, 33.9 per cent of GDP.

The fiscal projections outlined in the Update show that the Government remains on track to eliminate the federal deficit over the medium term. The government has announced in Budget 2011 a deficit reduction action plan that will achieve at least \$4 billion in ongoing annual savings by 2014-15. These savings will support the Government's commitment to return to budgetary balance over the medium term. In light of the uncertain global environment, meeting this commitment will require maintaining diligence over restraining growth in government expenditures.

|   | 2010-11       | 2011-12      | 2012-13      | 2013-14      | 2014-15     | 2015-16    | 2016-17    |
|---|---------------|--------------|--------------|--------------|-------------|------------|------------|
|   | (\$ billions) |              |              |              |             |            |            |
| 2011 Update –<br>budgetary<br>balance                           | -33.4         | -31.0        | -27.4        | -17.0        | -7.5        | -3.4       | 0.5        |
| Deficit reduction<br>action plan<br>targeted savings            |               |              | 1.0          | 2.0          | 4.0         | 4.0        | 4.0        |
| <b>Budgetary<br/>balance<br/>including<br/>targeted savings</b> | <b>-33.4</b>  | <b>-31.0</b> | <b>-26.4</b> | <b>-15.0</b> | <b>-3.5</b> | <b>0.6</b> | <b>4.5</b> |

I hope that this information will be useful to you in preparing the submission to the Commission. Should you require any more information, please do not hesitate to contact me.

Yours sincerely,



Benoît Robidoux  
Assistant Deputy Minister  
Economic and Fiscal Policy Branch

# ANNEX E



**REPORT ON THE EARNINGS OF  
SELF-EMPLOYED LAWYERS  
FOR THE  
DEPARTMENT OF JUSTICE CANADA  
IN PREPARATION FOR THE  
2011 JUDICIAL COMPENSATION AND  
BENEFITS COMMISSION**

**December 13, 2011**

## ***Table of Contents***

---

|   |                  |
|---|------------------|
| <b><i>Data.....</i></b>   | <b><i>2</i></b>  |
| <b><i>Process .....</i></b>                                     | <b><i>3</i></b>  |
| <b><i>Analysis .....</i></b>                                    | <b><i>4</i></b>  |
| <b><i>Salary Exclusion Impact.....</i></b>                      | <b><i>7</i></b>  |
| <b><i>Major Metropolitan Centers.....</i></b>                   | <b><i>9</i></b>  |
| <b><i>Judicial Annuity Scheme.....</i></b>                      | <b><i>11</i></b> |
| <b><i>Percentile Ranking of Judicial Compensation .....</i></b> | <b><i>15</i></b> |
| <b><i>Other Compensation Issues.....</i></b>                    | <b><i>16</i></b> |
| <b><i>Appendix A .....</i></b>                                  | <b><i>17</i></b> |
| <b><i>Appendix B .....</i></b>                                  | <b><i>18</i></b> |
| <b><i>Appendix C .....</i></b>                                  | <b><i>19</i></b> |
| <b><i>Appendix D .....</i></b>                                  | <b><i>20</i></b> |

Haripaul Pannu has been retained by the Department of Justice Canada to conduct an analysis of the net income of self-employed lawyers as reported by individuals who filed personal income taxes for the 2006 to 2010 tax years. The study will be used in preparation for the Judicial Compensation and Benefits Commission. The purpose of the study is to analyze the data and identify significant trends in the income of self-employed lawyers. This analysis will then be used to make comparisons of the income of federally appointed judges with the income of self-employed lawyers.

## **Data**

Data for the analysis of the earnings of self-employed lawyers was provided by the Department of Justice. The source of the data was the 2006 to 2010 personal taxation information of self-employed lawyers in Canada collected and supplied by Canada Revenue Agency ("CRA").

CRA extracted data from the T1 Data Mart and T1 Mini-Universe, which are CRA databases for capturing all filed individual tax returns. The T1 databases capture assessed individual tax data. This is taxation data that is the current or updated form of the initial assessed data. This means that CRA has validated and verified the quality, precision and integrity of the data.

The information was for self-employed lawyers as identified by the North American Industry Classification code for lawyers:

- who were between 35 and 69 years of age;
- with no duplicated records;
- excluding those filing from abroad;
- excluding those who claimed amounts for social assistance and employment insurance or whose CPP/QPP amounts exceeded the sum of their net professional and business incomes; and
- excluding those whose employment income exceeded the sum of their net professional income and net business income.

For the 2007 Commission, a study was conducted based on similar self-employed lawyers' income data but with 2001 to 2005 personal taxation information.

The data provided for this study is reliable for the purposes of analyzing the income of self-employed lawyers. I have conducted tests of the 2006 to 2010 data for the purposes of determining its reliability and comparability. I tested the internal consistency of the 2006 to 2010 data by examining the totals for Canada with the provincial totals and with the totals from the major urban centers. The net income across the age-bands was also reviewed for consistency.

## Report on the Earnings of Self-Employed Lawyers

---

The number of self-employed lawyers filing tax information is provided below:

### 2006 to 2010 Number of Self-Employed Lawyers

|                   | <u>2006</u> | <u>2007</u> | <u>2008</u> | <u>2009</u> | <u>2010</u> |
|-------------------|-------------|-------------|-------------|-------------|-------------|
| Number of Lawyers | 23,530      | 23,100      | 22,510      | 21,630      | 21,120      |

CRA was contacted to inquire about the decrease in the number of self-employed lawyers from 2006 to 2010. CRA has informed us that this is not an unusual situation and that there are several reasons that this could occur. The 2010 income data was filed in 2011 and may not include all self-employed lawyers who will file income tax information. In addition, CRA indicated that lawyers might be retiring at a faster rate than young people who are becoming lawyers.

I have concluded that the 2006 to 2010 taxation data is reliable based on my own internal tests and the information received from CRA.

A detailed summary of the data is included as Appendix D.

### **Process**

The process I have used in analysing the net income data is to focus on the entire range of available data. I do not propose to use one statistical value but to provide a range. In this way it can be determined which statistical value to best benchmark judicial salaries to self-employed lawyers. It is compensation study best practice to use the 50<sup>th</sup> percentile, 65<sup>th</sup> percentile or 75<sup>th</sup> percentile as benchmarks for which to recruit and retain exceptional individuals. The particular percentile used depends on supply / demand issues and economic factors. Further, as judges are appointed at various ages I have given more emphasis to the ages where the majority of judges are appointed, while still using the entire set of data available. As judges are appointed from across Canada, the incomes of self-employed lawyers should be looked at geographically to identify any income differences.

In addition, as the judicial annuity scheme's retirement benefit and disability benefit provided to judges is a significant and important portion of a judge's compensation, I have provided a separate analysis including these benefits as a part of the judge's compensation. In most cases, self-employed lawyers would have to use a portion of their income to fund for their retirement or potential disability. Thus to make the comparison more equitable between self-employed lawyers and judges, the judicial annuity scheme's retirement and disability benefits should be included as part of the judicial compensation.

**Analysis**

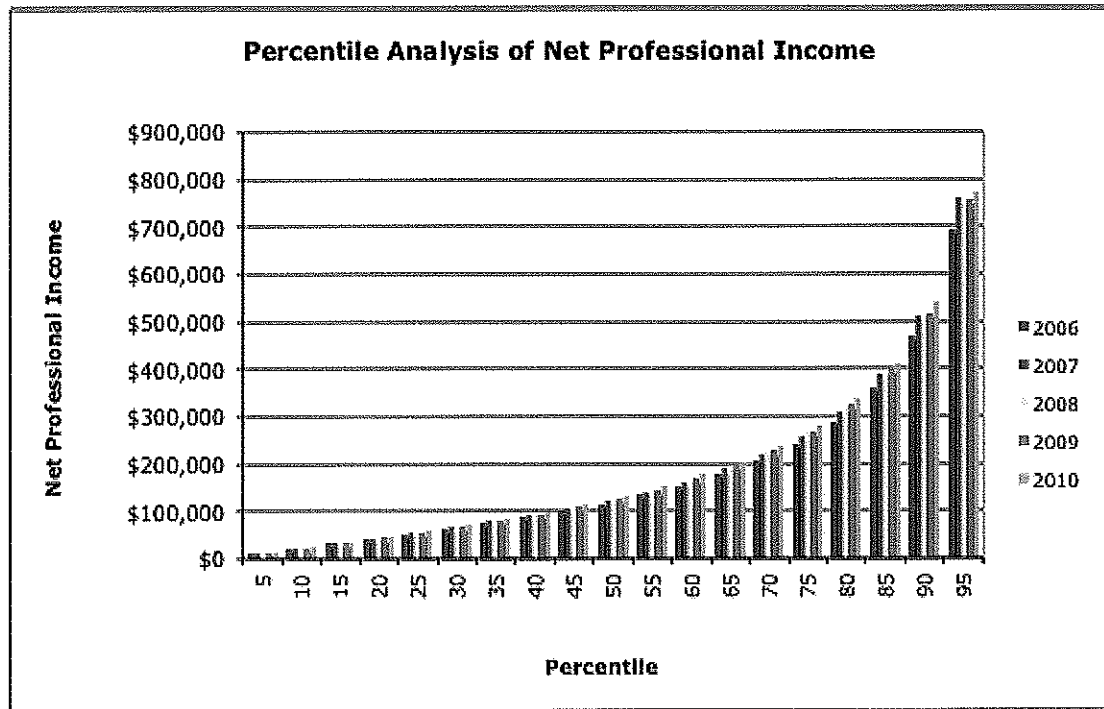
The analysis of the data is based on the percentile net income information for the 2006 to 2010 taxation years provided by CRA.

The range of income information for the years 2006 to 2010 is presented in the table below:

**Lowest and Highest Net Income Percentiles**

| <u>Year</u> | <u>Fifth Percentile<br/>Income</u> | <u>95<sup>th</sup> Percentile<br/>Income</u> |
|-------------|------------------------------------|--|
| 2006        | \$11,355                           | \$691,489                                    |
| 2007        | \$11,282                           | \$761,582                                    |
| 2008        | \$10,891                           | \$755,476                                    |
| 2009        | \$11,321                           | \$755,619                                    |
| 2010        | \$12,007                           | \$771,654                                    |

The shape of the distribution of net incomes over the whole group is markedly skewed to the right, as the following chart demonstrates in terms of the sharp rise in the net income for each percentile.



As the data is markedly skewed, an appropriate representation of the net incomes can be obtained by examining the median net income. The median is the middle point of the data. That is, half the data is larger than this amount and half the data is smaller than this amount. It is not impacted by the extreme values at either end of the tails.

**Median Net Income - 2006 to 2010 Taxation Years**

| <u>Year</u> | <u>Net Professional Income</u> |
|-------------|--------------------------------|
| 2006        | \$115,961                      |
| 2007        | \$121,884                      |
| 2008        | \$125,120                      |
| 2009        | \$125,588                      |
| 2010        | \$131,603                      |

It is a common practice in the compensation industry to target the 50<sup>th</sup> percentile as a benchmark in recruiting suitable individuals. However, it is reasonable to assume that judges' salaries should not be based on the median but rather the 65<sup>th</sup> percentile or the 75<sup>th</sup> percentile. It is a best practice in compensation studies to use the 65<sup>th</sup> percentile or 75<sup>th</sup> percentile as benchmarks in ensuring the recruitment and retention of exceptional individuals.

These statistics would provide a better representation of the most likely comparator group for judges. That is, those in the top third or quarter of the legal profession, assuming that incomes are a proxy for talent. The particular percentile used depends on supply / demand issues, economic conditions and the employer's ability to attract individuals.

**65<sup>th</sup> Percentile and 75<sup>th</sup> Percentile Net Professional Income**

| <u>Year</u> | <u>65<sup>th</sup> Percentile</u> | <u>75<sup>th</sup> Percentile</u> |
|-------------|-----------------------------------|-----------------------------------|
| 2006        | \$177,137                         | \$242,006                         |
| 2007        | \$188,204                         | \$257,762                         |
| 2008        | \$193,401                         | \$264,550                         |
| 2009        | \$196,790                         | \$266,210                         |
| 2010        | \$204,159                         | \$278,526                         |

The 65<sup>th</sup> percentile would be used in most cases in attracting exceptional individuals. Whereas, the 75<sup>th</sup> percentile would be used when trying to attract truly exceptional individuals.

A further refinement can be made by examining the income of self-employed lawyers by age bands. Data was provided for lawyers in the following age bands:

- under age 44
- age 44 to under age 48;
- age 48 to under age 52;
- age 52 to under age 56;
- age 56 to under age 60;
- age 60 to under age 64; and

Report on the Earnings of Self-Employed Lawyers

---

- older than age 64.

As judges are appointed to the bench at various ages, it would be appropriate to factor this into determining the income.

The approach I have used is to weight the income from the age bands by the proportion of judges that were appointed from that age band and then arrive at a single age-weighted income.

Information was obtained from the Department of Justice on the ages of appointment of federal judges. The information was for judges appointed to the bench from January 1, 1997 to March 31, 2011. This information is outlined in Appendix C.

Summarizing the information:

| <u>Age at Appointment</u> | <u>Appointments</u> | <u>Percentage</u> |
|---------------------------|---------------------|-------------------|
| Under 44                  | 39                  | 5.2%              |
| 44 to under 48            | 154                 | 20.7%             |
| 48 to under 52            | 179                 | 24.0%             |
| 52 to under 56            | 186                 | 25.0%             |
| 56 to under 60            | 126                 | 16.9%             |
| 60 to under 64            | 50                  | 6.7%              |
| 64 and over               | 11                  | 1.5%              |
| Total                     | 749                 | 100%              |

Therefore to obtain a weighted average for the income of all lawyers, the following formula was used:

$$\begin{aligned} \text{income}_{\text{all lawyers}} = & 5.2\% \times \text{income}_{\text{under 44}} + 20.7\% \times \text{income}_{44-47} + 24.0\% \times \text{income}_{48-51} \\ & + 25.0\% \times \text{income}_{52-55} + 16.9\% \times \text{income}_{56-59} + 6.7\% \times \text{income}_{60-63} \\ & + 1.5\% \text{ income}_{64 \text{ and over}} \end{aligned}$$

The results for the 65<sup>th</sup> percentile and 75<sup>th</sup> percentile are outlined below.

**65<sup>th</sup> Percentile Age-Weighted 2010 Income**

| <u>Age</u>   | <u>Weight</u> | <u>65<sup>th</sup> Percentile Income</u> | <u>Age-Weighted</u> |
|--|---------------|--|---------------------|
| Under 44   | 5.2%          | \$217,761                                | \$11,400            |
| 44 to under 48   | 20.7%         | \$237,941                                | \$49,185            |
| 48 to under 52   | 24.0%         | \$232,366                                | \$55,830            |
| 52 to under 56   | 25.0%         | \$224,524                                | \$56,056            |
| 56 to under 60   | 16.9%         | \$192,377                                | \$32,536            |
| 60 to under 64   | 6.7%          | \$168,422                                | \$11,303            |
| 64 and over  | 1.5%          | \$148,300                                | \$2,190             |
| <b>Age-Weighted 65<sup>th</sup> Percentile 2010 Income</b> |               |  | <b>\$218,500</b>    |

**75<sup>th</sup> Percentile Age-Weighted 2010 Income**

| <u>Age</u>   | <u>Weight</u> | <u>75<sup>th</sup> Percentile Income</u> | <u>Age-Weighted</u> |
|--|---------------|--|---------------------|
| Under 44   | 5.2%          | \$280,003                                | \$14,658            |
| 44 to under 48   | 20.7%         | \$331,799                                | \$68,587            |
| 48 to under 52   | 24.0%         | \$322,087                                | \$77,387            |
| 52 to under 56   | 25.0%         | \$322,894                                | \$80,615            |
| 56 to under 60   | 16.9%         | \$274,245                                | \$46,382            |
| 60 to under 64   | 6.7%          | \$235,071                                | \$15,777            |
| 64 and over  | 1.5%          | \$197,365                                | \$2,914             |
| <b>Age-Weighted 75<sup>th</sup> Percentile 2010 Income</b> |               |  | <b>\$306,320</b>    |

The 65<sup>th</sup> percentile income increases by 7.0% when an age-weighted income is used and the 75<sup>th</sup> percentile income increases by 10.0% when an age-weighted basis is used.

**Salary Exclusion Impact**

Previous Commissions have been presented with income information that had a salary exclusion applied (a \$60,000 salary exclusion was applied for both the 2003 and 2007 Commissions). The use of a salary exclusion is not a common practice in benchmarking salaries for comparative purposes. It is an unusual approach that distorts the results of the salary information. As incomes below \$60,000 are excluded, the range of incomes are compressed, resulting in higher percentile values than if no salary exclusion was applied.

The impact of using a salary exclusion is presented below with the corresponding percentile results if no salary exclusion was applied.

**Number of Self-Employed Lawyers With and Without Salary Exclusion**

| <u>Year</u> | <u>Without Salary Exclusion</u> | <u>With Salary Exclusion</u> | <u>Percentage Difference</u> |
|-------------|---------------------------------|------------------------------|------------------------------|
| 2006        | 23,530                          | 16,860                       | 28%                          |
| 2007        | 23,100                          | 16,790                       | 27%                          |
| 2008        | 22,510                          | 16,510                       | 27%                          |
| 2009        | 21,630                          | 15,870                       | 27%                          |
| 2010        | 21,120                          | 15,850                       | 26%                          |

**65<sup>th</sup> Percentile Net Income With \$60,000 Salary Exclusion**

| <u>Year</u> | <u>65<sup>th</sup> Percentile</u> | <u>Non-Exclusion Percentile*</u>     | <u>Approximate Non-Exclusion Percentile*</u> |
|-------------|-----------------------------------|--------------------------------------|--|
| 2006        | \$241,426                         | 70 <sup>th</sup> to 75 <sup>th</sup> | 74 <sup>th</sup>                             |
| 2007        | \$254,164                         | 70 <sup>th</sup> to 75 <sup>th</sup> | 74 <sup>th</sup>                             |
| 2008        | \$257,729                         | 70 <sup>th</sup> to 75 <sup>th</sup> | 74 <sup>th</sup>                             |
| 2009        | \$260,823                         | 70 <sup>th</sup> to 75 <sup>th</sup> | 74 <sup>th</sup>                             |
| 2010        | \$269,603                         | 70 <sup>th</sup> to 75 <sup>th</sup> | 73 <sup>th</sup>                             |

\*Non-age weighted percentile



**75<sup>th</sup> Percentile Net Income With \$60,000 Salary Exclusion**

| <u>Year</u> | <u>75<sup>th</sup><br/>Percentile</u> | <u>Non-Exclusion<br/>Percentile*</u> | <u>Approximate<br/>Non-Exclusion Percentile*</u> |
|-------------|---------------------------------------|--------------------------------------|--|
| 2006        | \$317,019                             | 80 <sup>th</sup> to 85 <sup>th</sup> | 82 <sup>nd</sup>                                 |
| 2007        | \$334,557                             | 80 <sup>th</sup> to 85 <sup>th</sup> | 81 <sup>st</sup>                                 |
| 2008        | \$338,278                             | 80 <sup>th</sup> to 85 <sup>th</sup> | 81 <sup>st</sup>                                 |
| 2009        | \$344,324                             | 80 <sup>th</sup> to 85 <sup>th</sup> | 81 <sup>st</sup>                                 |
| 2010        | \$356,169                             | 80 <sup>th</sup> to 85 <sup>th</sup> | 81 <sup>st</sup>                                 |

\*Non-age weighted percentile

It is not a normal practice to use salary exclusion for compensation benchmark purposes. The percentile information is distorted by the compression of data. The 65<sup>th</sup> percentile with salary exclusion is actually the 70<sup>th</sup> to 75 percentile without salary exclusion. Likewise, the 75<sup>th</sup> percentile with salary exclusion result is actually at the 80<sup>th</sup> to 85<sup>th</sup> percentile without salary exclusion.

A more standard approach is to use a fair percentile benchmark without salary exclusion.

### **Major Metropolitan Centers**

The above was an analysis of the income of self-employed lawyers over the entire country. However, we should also examine the distribution of such incomes in the major metropolitan centers ("CMA'S") in Canada to determine whether there are any centers where the net income is significantly different from the national number.

I have analyzed the incomes of self-employed lawyers for the major metropolitan centers in Canada and have outlined the 65<sup>th</sup> percentile and 75<sup>th</sup> percentile incomes. The results are presented below

#### **65<sup>th</sup> Percentile Income for Major Metropolitan Centers**

| <u>Metropolitan Area</u> | <u>Income</u> | <u>% Difference from Canada</u> |
|--------------------------|---------------|---------------------------------|
| Calgary                  | \$276,268     | 35%                             |
| Edmonton                 | \$223,978     | 10%                             |
| Hamilton                 | \$201,737     | (1)%                            |
| London                   | \$201,042     | (2)%                            |
| Montreal                 | \$191,026     | (6)%                            |
| Ottawa / Gatineau        | \$208,640     | 2%                              |
| Quebec City              | \$159,355     | (22)%                           |
| Toronto                  | \$334,234     | 64%                             |
| Vancouver                | \$215,716     | 6%                              |
| Winnipeg                 | \$143,466     | (30)%                           |
| All 10 CMA'S             | \$242,500     | 18%                             |
| All other regions        | \$136,619     | (33)%                           |
| All Canada               | \$204,159     |                                 |

**75<sup>th</sup> Percentile Income for Major Metropolitan Centers**

| <u>Metropolitan Area</u> | <u>Income</u> | <u>% Difference from Canada</u> |
|--------------------------|---------------|---------------------------------|
| Calgary                  | \$385,772     | 39%                             |
| Edmonton                 | \$280,760     | 1%                              |
| Hamilton                 | \$249,196     | (11)%                           |
| London                   | \$255,303     | (8)%                            |
| Montreal                 | \$262,818     | (6)%                            |
| Ottawa / Gatineau        | \$276,976     | (1)%                            |
| Quebec City              | \$204,830     | (26)%                           |
| Toronto                  | \$455,008     | 63%                             |
| Vancouver                | \$299,074     | 7%                              |
| Winnipeg                 | \$193,303     | (31)%                           |
| All 10 CMA'S             | \$337,761     | 21%                             |
| All other regions        | \$170,857     | (39)%                           |
| All Canada               | \$278,526     |                                 |

A comparison of the major metropolitan centers indicates that the 65<sup>th</sup> percentile figures for Calgary Edmonton, Ottawa / Gatineau, Toronto and Vancouver are higher than the national number and 75<sup>th</sup> percentile figures for Calgary, Edmonton, Toronto and Vancouver are higher than the national number.

### **Judicial Annuity Scheme**

The final part of my analysis is the impact of the judicial annuity on the judge's total compensation in comparison with the income of a self-employed lawyer. The judicial annuity is an important benefit available to judges. The magnitude of this benefit should not be overlooked when comparing judicial compensation with that of self-employed lawyers. In all likelihood, self-employed lawyers would have to save for their own retirement.

The judicial annuity scheme as it currently exists has the following provisions:

- an annuity of 2/3 of final year earnings is provided at retirement;
- a judge is eligible to retire with a full annuity when:
  - they have served at least 15 years and their combined age and service is at least 80;
  - they have attained age 75 and have at least 10 years of service;
  - they are a judge of the Supreme Court of Canada with at least 10 years of service; or
  - they become disabled
- if the judge is not eligible for a full annuity, the annuity is reduced as follows:
  - if the judge has less than 10 years of service and is 75, the annuity is reduced by 1/10 for each year of service below 10 years;
  - if the judge has less than 80 points (age plus service) and is retiring prior to age 75, a pro-rated annuity is provided with an additional reduction if the annuity is commencing prior to age 60 of 5% per year for each year prior to age 60.
- the annuity is payable for the life of the judge and if the judge has a spouse or common-law partner 50% of the annuity will be paid to the spouse or common-law partner for their lifetime on the death of the judge;
- the annuity is indexed at 100% of the increase in CPI; and
- judges contribute 7% of earnings each year towards the plan. The contributions drop to 1% of earnings when a judge is eligible for an unreduced annuity.

A detailed summary of the judicial annuity scheme is outlined in Appendix A.

#### **Retirement Benefit**

In order to compare the incomes of self-employed lawyers and judges, the value of the judicial annuity should be included as part of the overall compensation package of judges. One method to accomplish this is to determine the value of the judicial annuity as a percent of the judge's income and then gross-up the judicial income by that amount.

This method would represent the annual cost of providing the judicial annuity retirement benefit during a judge's appointment to the bench.

In particular, I calculated the value of the judicial annuity at appointment ages from 40 to 65, in 5-year increments. From this value, the impact of the judge's contributions was removed to reflect the portion that is not funded by the judge's own contributions. This value was then stated as a level percent of a judge's career income to reflect the average annual benefit.

It is important that the value not include the impact of the judge's contributions. This is a more representative value of the "additional benefit" judges receive from participating in the judicial annuity scheme. Likewise, self-employed lawyers would be able to deduct contributions to their personal RRSP's from income. Thus it is reasonable to exclude the judge's own contributions to the judicial annuity scheme from the pension value.

The method and assumptions used in determining the value of the judicial annuity are outlined in Appendix B.

The value of the judicial annuity as a level percent of a judge's career income is outlined below.

**Value of Judicial Annuity - Pension Value**

| <u>Appointment Age to Bench</u> | <u>Pension Value</u> |
|---------------------------------|----------------------|
| Under 44                        | 19.6%                |
| 44 to under 48                  | 21.2%                |
| 48 to under 52                  | 25.0%                |
| 52 to under 56                  | 27.3%                |
| 56 to under 60                  | 31.6%                |
| 60 to under 64                  | 41.3%                |
| 64 and over                     | 55.0%                |

To determine a single pension value applicable to all judges, I have calculated an age-weighted pension value. The age of appointment information was obtained from the Department of Justice, previously used in determining the age-weighted net income percentile value. Each pension value determined above was weighted by the proportion of judges who were appointed from that age band.

Therefore to obtain a weighted average of the pension value, the following formula was used:

$$\begin{aligned} \text{Pension Value} = & 5.2\% \times \text{pension value}_{\text{under 44}} + 20.7\% \times \text{pension value}_{44-47} \\ & + 24.0\% \times \text{pension value}_{48-51} + 25.0\% \times \text{pension value}_{52-55} \\ & + 16.9\% \times \text{pension value}_{56-59} + 6.7\% \times \text{pension value}_{60-63} \\ & + 1.5\% \times \text{pension value}_{64 \text{ and over}} \end{aligned}$$

The result of the pension value is outlined below.

**Weighted Average Value of Judicial Annuity Based on Age at Appointment**

| <u>Appointment<br/>Age to Bench</u> | <u>Percentage<br/>Appointment</u> | <u>Pension<br/>Value</u> | <u>Weighted Average<br/>Pension Value</u> |
|-------------------------------------|-----------------------------------|--------------------------|---|
| Under 44                            | 5.2%                              | 19.6%                    | 1.0%                                      |
| 44 to under 48                      | 20.7%                             | 21.2%                    | 4.4%                                      |
| 48 to under 52                      | 24.0%                             | 25.0%                    | 6.0%                                      |
| 52 to under 56                      | 25.0%                             | 27.3%                    | 6.8%                                      |
| 56 to under 60                      | 16.9%                             | 31.6%                    | 5.3%                                      |
| 60 to under 64                      | 6.7%                              | 41.3%                    | 2.8%                                      |
| 64 and over                         | 1.5%                              | 55.0%                    | 0.8%                                      |
| <b>Weighted Average</b>             |                                   |                          | <b>27.2%</b>                              |

Taking a weighted average of the pension value based on a judge's appointment age results in a pension value of 27.2%. This represents the cost to a private sector firm of providing a retirement benefit comparable to the judicial annuity.

**Disability Benefit**

The judicial annuity scheme also provides a disability benefit. The disability benefit is comprised of an annuity of 2/3 of a judge's annual earnings just prior to disability for the life of the judge. I have determined the value of the disability benefit, excluding the value of the retirement pension, which was calculated above.

The value would represent the annual cost for funding a disability benefit upon a judge's potential disability. That is, the cost of self-funding for providing this provision as part of the judicial annuity scheme.

The value of the disability benefit provision was calculated in 5-year increments, at appointment ages from 40 to 65. From this value, the impact of the judge's contributions was removed to reflect the portion that is not funded by the judge's own contributions. This value was then stated as a level percent of a judge's career income to reflect the average annual benefit.

It is important that the value not include the impact of the judge's contributions or the value of the retirement benefit. This is a more representative value of the "additional benefit" judges receive from having a disability benefit in the judicial annuity scheme.

The method and assumptions used in determining the value of the disability provision are outlined in Appendix B.

The value of the disability benefit as a level percent of a judge's career income is outlined below.

**Value of Disability Benefit**

| <u>Appointment Age to Bench</u> | <u>Disability Value</u> |
|---------------------------------|-------------------------|
| Under 44                        | 5.5%                    |
| 44 to under 48                  | 6.3%                    |
| 48 to under 52                  | 8.1%                    |
| 52 to under 56                  | 10.3%                   |
| 56 to under 60                  | 13.1%                   |
| 60 to under 64                  | 16.5%                   |
| 64 and over                     | 18.3%                   |

To determine a single disability value applicable to all judges, I have calculated an age-weighted disability value. Each disability benefit value determined above was weighted by the proportion of judges who were appointed from that age band.

Therefore to obtain a weighted average of the disability value, the following formula was used:  
 Disability Value = 5.2% x disability value<sub>under 44</sub> + 20.7% x disability value<sub>44-47</sub>  
 + 24.0% x disability value<sub>48-51</sub> + 25.0% x disability value<sub>52-55</sub>  
 + 16.9% x disability value<sub>56-59</sub> + 6.7% x disability value<sub>60-63</sub>  
 + 1.5% x disability value<sub>64 and over</sub>

The result of the disability value is outlined below.

**Weighted Average Value of the Disability Benefit Based on Age at Appointment**

| <u>Appointment Age to Bench</u> | <u>Percentage Appointment</u> | <u>Disability Value</u> | <u>Weighted Average Disability Value</u> |
|---------------------------------|-------------------------------|-------------------------|--|
| Under 44                        | 5.2%                          | 5.5%                    | 0.3%                                     |
| 44 to under 48                  | 20.7%                         | 6.3%                    | 1.3%                                     |
| 48 to under 52                  | 24.0%                         | 8.1%                    | 1.9%                                     |
| 52 to under 56                  | 25.0%                         | 10.3%                   | 2.6%                                     |
| 56 to under 60                  | 16.9%                         | 13.1%                   | 2.2%                                     |
| 60 to under 64                  | 6.7%                          | 16.5%                   | 1.1%                                     |
| 64 and over                     | 1.5%                          | 18.3%                   | 0.3%                                     |
| <b>Weighted Average</b>         |                               |                         | <b>9.7%</b>                              |

Taking a weighted average of the disability value based on a judge's appointment age results in a disability value of 9.7%. This represents the cost to a private sector firm of self-funding a disability benefit comparable to the judicial annuity.

**Grossed-up Income with Judicial Annuity Scheme**

Federally appointed judges received an income of \$271,400 per annum in 2010/2011. Taking into account the value of the retirement benefit and the disability benefit and grossing up the income to include this value increases judicial compensation to \$371,547 per annum (\$271,400 x (1 + 0.272 + 0.097)).

**Percentile Ranking of Judicial Compensation**

By combining the above analysis, I have determined the percentile ranking of the judicial salary both including and excluding the gross-up for the annuity scheme in relation to that of self-employed lawyers for each major urban center. That is, using the judges' 2010/2011 salary of \$271,400 per annum and incorporating the gross-up for the judicial annuity scheme (retirement benefit and disability benefit) by increasing the salary to \$371,547.

The following would be the percentile ranking of the corresponding salaries:

**Percentile Rankings of Judicial Compensation**

| <b>Metropolitan Area</b> | <b>Percentile Ranking*<br/>(excluding Judicial Annuity)</b> | <b>Percentile Ranking*<br/>(including Judicial Annuity)</b> |
|--------------------------|---|---|
| Calgary                  | 60 <sup>th</sup> to 65 <sup>th</sup>                        | 70 <sup>th</sup> to 75 <sup>th</sup>                        |
| Edmonton                 | 70 <sup>th</sup> to 75 <sup>th</sup>                        | 85 <sup>th</sup> to 90 <sup>th</sup>                        |
| Hamilton                 | 75 <sup>th</sup> to 80 <sup>th</sup>                        | 85 <sup>th</sup> to 90 <sup>th</sup>                        |
| London                   | 75 <sup>th</sup> to 80 <sup>th</sup>                        | 80 <sup>th</sup> to 85 <sup>th</sup>                        |
| Montreal                 | 75 <sup>th</sup> to 80 <sup>th</sup>                        | 85 <sup>th</sup> to 90 <sup>th</sup>                        |
| Ottawa / Gatineau        | 70 <sup>th</sup> to 75 <sup>th</sup>                        | 80 <sup>th</sup> to 85 <sup>th</sup>                        |
| Quebec                   | 85 <sup>th</sup> to 90 <sup>th</sup>                        | 90 <sup>th</sup> to 95 <sup>th</sup>                        |
| Toronto                  | 55 <sup>th</sup> to 60 <sup>th</sup>                        | 65 <sup>th</sup> to 70 <sup>th</sup>                        |
| Vancouver                | 70 <sup>th</sup> to 75 <sup>th</sup>                        | 80 <sup>th</sup> to 85 <sup>th</sup>                        |
| Winnipeg                 | 85 <sup>th</sup> to 90 <sup>th</sup>                        | 90 <sup>th</sup> to 95 <sup>th</sup>                        |
| All Canada               | 70 <sup>th</sup> to 75 <sup>th</sup>                        | 80 <sup>th</sup> to 85 <sup>th</sup>                        |

\*Percentile ranking with no salary exclusion

The judicial salary of \$271,400 per annum would place it in the 70<sup>th</sup> to 75<sup>th</sup> percentile nationally and the judicial salary would be in at least the 70<sup>th</sup> percentile in all major urban centers in Canada, except for Calgary (60<sup>th</sup> to 65<sup>th</sup>) and Toronto (55<sup>th</sup> to 60<sup>th</sup>). 73% of self-employed lawyers would have a net income lower than the judicial salary.

When the value of the judicial annuity is included as part of the judicial compensation the percentile ranking increases to over the 80<sup>th</sup> percentile, nationally and for all major urban centers except for Calgary and Toronto. 82% of self-employed lawyers would have a net income lower than the judicial salary including the judicial annuity.



### ***Other Compensation Issues***

One final aspect that should be considered when a comparison of compensation is done between self-employed lawyers and judges is the generous benefits package in addition to the judicial annuity that is provided to judges. In particular, the judges have:

- an extensive group benefits plan which includes:
  - basic life insurance, supplementary life insurance, post-retirement life insurance and dependents' life insurance;
  - accidental death and dismemberment insurance;
  - a health care plan;
  - a dental service plan

Most self-employed lawyers would have to provide for their own individual extended health/dental benefits; and

- the option to elect supernumerary status. Supernumerary judges are judges who are eligible to retire with a full annuity (have at least 15 years of service and whose combined age and number of years in judicial office is not less than 80 or who have attained the age of 70 and have at least 10 years of judicial service) and have elected supernumerary office, which permits them to work a reduced workload (commonly understood to be around 50%) for a full salary.

## **Appendix A**

### **Summary of the Plan Provisions of the Judicial Annuity Scheme**

|  |  |
|--|--|
| <b>Retirement</b>                      | Age 75 (70 for certain judges appointed prior to March 1, 1987);<br>or<br>Age plus years of service of at least 80 years (minimum 15 years<br>of service); or<br>10 or more years of service, if a judge of the Supreme Court of<br>Canada   |
| <b>Retirement Pension</b>              | 66 2/3% of salary at the time of retirement. If less than 10 years<br>of service, the pension is reduced by 1/10 for each year of<br>service below 10 years.   |
| <b>Early Retirement</b>                | Age 55 with 10 years of service.   |
| <b>Early Retirement Reduction</b>      | 5% per year that the pension commences before age 60   |
| <b>Normal Form of Pension</b>          | Conjugal relationship: Joint life and 50% survivor pension.<br>otherwise: Lifetime pension with no guarantee.  |
| <b>Cost-of-Living Adjustments</b>      | 100% of the Consumer Price Index   |
| <b>Death Before Retirement</b>         | A lump sum equal to one-sixth of salary is paid to the surviving<br>spouse or common-law partner or to the estate if there is no<br>survivor.<br><br>Conjugal relationship: A pension is payable to the surviving<br>spouse or common-law partner equal to one-third of the annual<br>salary of the judge.<br><br>Dependents: A pension is payable to each surviving dependent<br>equal to 20% of the surviving spouse's or common-law's<br>pension, with a reduction if there are more than four dependent<br>children. The pension for a surviving dependent is doubled if<br>that child is an orphan. |
| <b>Termination prior to retirement</b> | Refund of contributions, with interest.  |
| <b>Disability</b>                      | Immediate unreduced pension.   |
| <b>Employee Contributions</b>          | For judges appointed before February 17, 1975: 1.5% of salary.<br>For judges appointed after February 16, 1975: 1% of salary to<br>the Supplementary Retirement Benefits Account plus 6% of<br>salary to the Consolidated Revenue Fund if the judge is not<br>eligible for an unreduced pension.<br>Contributions cease when a judge elects supernumerary status   |

**Appendix B**

**Assumption and Methods Employed in Determining Judicial Annuity Scheme – Retirement Benefit and Disability Benefit**

|                                   |  |   |
|-----------------------------------|--|---|
| <b>Actuarial assumptions</b>      | Interest rate  | 5.75% per year  |
|                                   | Rate of future increase in income                      | 3.0% per year   |
|                                   | Consumer Price Index increase                          | 2% per year   |
|                                   | Post-retirement pension indexing                       | 100% of increase in Consumer Price Index  |
|                                   | Termination of employment or death prior to retirement | Nil   |
|                                   | Incidence of disability                                | Rates specified in the actuarial report on the Pension Plan for Federally Appointed Judges as at 31 March 2010 prepared by the Office of the Chief Actuary of the Office of the Superintendent of Financial Institutions (unisex 67% male, 33% female)                |
|                                   | Retirement age   | Retirement rates specified in the actuarial report on the Pension Plan for Federally Appointed Judges as at 31 March 2010 prepared by the Office of the Chief Actuary of the Office of the Superintendent of Financial Institutions                                   |
|                                   | Mortality after retirement                             | UP1994 mortality table projected to 2020 (unisex 67% male, 33% female)  |
|                                   | Disability mortality                                   | mortality after retirement multiplied by factors as outlined in the actuarial report on the Pension Plan for Federally Appointed Judges as at 31 March 2010 prepared by the Office of the Chief Actuary of the Office of the Superintendent of Financial Institutions |
|                                   | Relationship status at retirement                      | conjugal relationship, with spouse of opposite gender and same age as the member  |
| <b>Actuarial valuation method</b> |  | Projected Benefit   |

**Appendix C**

**Judicial Ages at Appointment from January 1, 1997 to March 31, 2011**

| <b><u>Appointment Age</u></b> | <b><u>Number</u></b> |
|-------------------------------|----------------------|
| 40 and under                  | 4                    |
| 41                            | 8                    |
| 42                            | 8                    |
| 43                            | 19                   |
| 44                            | 26                   |
| 45                            | 43                   |
| 46                            | 39                   |
| 47                            | 46                   |
| 48                            | 47                   |
| 49                            | 38                   |
| 50                            | 46                   |
| 51                            | 48                   |
| 52                            | 43                   |
| 53                            | 49                   |
| 54                            | 54                   |
| 55                            | 40                   |
| 56                            | 35                   |
| 57                            | 40                   |
| 58                            | 28                   |
| 59                            | 23                   |
| 60                            | 15                   |
| 61                            | 19                   |
| 62                            | 7                    |
| 63                            | 9                    |
| 64                            | 4                    |
| 65                            | 5                    |
| 66                            | 0                    |
| 67                            | 2                    |
| 68                            | 0                    |
|                               | <u>745</u>           |

**Gender of Judicial Appointments from January 1, 1997 to March 31, 2011**

| <b><u>Gender</u></b> | <b><u>Number</u></b> |
|----------------------|----------------------|
| Female               | 246                  |
| Male                 | <u>499</u>           |
|                      | 745                  |

**Appendix D**

**Self-Employed Lawyer Income Data**

**Percentile Analysis of Net Professional Income**

| <b>Percentile</b> | <b>2006</b>   | <b>2007</b>   | <b>2008</b>   | <b>2009</b>   | <b>2010</b>   |
|-------------------|---------------|---------------|---------------|---------------|---------------|
| <b>0</b>          | <\$0          | <\$0          | <\$0          | <\$0          | <\$0          |
| <b>5</b>          | \$11,355      | \$11,282      | \$10,891      | \$11,321      | \$12,007      |
| <b>10</b>         | \$21,794      | \$22,231      | \$22,018      | \$22,307      | \$23,786      |
| <b>15</b>         | \$32,214      | \$32,723      | \$32,880      | \$33,167      | \$35,377      |
| <b>20</b>         | \$41,980      | \$43,334      | \$43,973      | \$44,532      | \$46,308      |
| <b>25</b>         | \$52,581      | \$54,893      | \$55,562      | \$56,011      | \$57,770      |
| <b>30</b>         | \$63,429      | \$66,147      | \$68,000      | \$68,191      | \$70,608      |
| <b>35</b>         | \$75,089      | \$78,566      | \$80,370      | \$80,656      | \$83,537      |
| <b>40</b>         | \$87,727      | \$91,846      | \$93,481      | \$94,183      | \$97,317      |
| <b>45</b>         | \$100,943     | \$106,374     | \$108,181     | \$108,446     | \$112,770     |
| <b>50</b>         | \$115,961     | \$121,884     | \$125,120     | \$125,588     | \$131,603     |
| <b>55</b>         | \$133,916     | \$140,594     | \$144,840     | \$145,517     | \$153,373     |
| <b>60</b>         | \$153,572     | \$162,308     | \$165,843     | \$168,096     | \$176,278     |
| <b>65</b>         | \$177,137     | \$188,204     | \$193,401     | \$196,790     | \$204,159     |
| <b>70</b>         | \$206,992     | \$219,694     | \$225,377     | \$226,512     | \$236,213     |
| <b>75</b>         | \$242,006     | \$257,762     | \$264,550     | \$266,210     | \$278,526     |
| <b>80</b>         | \$289,090     | \$309,036     | \$316,196     | \$323,933     | \$338,059     |
| <b>85</b>         | \$357,438     | \$388,193     | \$390,634     | \$399,841     | \$411,533     |
| <b>90</b>         | \$468,307     | \$509,441     | \$512,768     | \$517,410     | \$539,417     |
| <b>95</b>         | \$691,489     | \$761,582     | \$755,476     | \$755,619     | \$771,654     |
| <b>100</b>        | >\$1M         | >\$1M         | >\$1M         | >\$1M         | >\$1M         |
| <b>Number</b>     | <b>23,530</b> | <b>23,100</b> | <b>22,510</b> | <b>21,630</b> | <b>21,120</b> |

**2010 Net Income Percentiles - By Age Bands**

| Percentile             | Under 44    | 44 to Under 48 | 48 to Under 52 | 52 to Under 56 | 56 to Under 60 | 60 to Under 64 | 64 and over |
|------------------------|-------------|----------------|----------------|----------------|----------------|----------------|-------------|
| 10                     | \$27,632    | \$26,763       | \$27,452       | \$25,366       | \$21,086       | \$20,059       | \$20,153    |
| 20                     | \$52,989    | \$52,606       | \$51,725       | \$49,680       | \$45,406       | \$39,765       | \$35,926    |
| 30                     | \$80,344    | \$79,199       | \$77,501       | \$76,856       | \$68,158       | \$60,684       | \$51,857    |
| 40                     | \$113,231   | \$112,062      | \$104,700      | \$103,846      | \$93,115       | \$84,739       | \$72,823    |
| 50                     | \$153,847   | \$155,741      | \$145,287      | \$140,423      | \$122,868      | \$111,160      | \$96,324    |
| 60                     | \$192,507   | \$207,712      | \$199,944      | \$189,681      | \$165,822      | \$145,961      | \$126,459   |
| 70                     | \$245,394   | \$273,187      | \$267,126      | \$265,764      | \$228,077      | \$197,673      | \$169,322   |
| 80                     | \$323,942   | \$380,568      | \$383,271      | \$390,535      | \$346,898      | \$282,599      | \$241,487   |
| 90                     | \$458,450   | \$594,329      | \$616,704      | \$659,667      | \$613,510      | \$495,964      | \$389,763   |
| 100                    | \$3,142,413 | \$3,367,690    | \$2,506,094    | \$4,263,588    | \$4,136,680    | \$6,663,873    | \$8,072,545 |
| <b>65th Percentile</b> | \$217,761   | \$237,941      | \$232,366      | \$224,524      | \$192,377      | \$168,422      | \$148,300   |
| <b>75th Percentile</b> | \$280,003   | \$331,799      | \$322,087      | \$322,894      | \$274,245      | \$235,071      | \$197,365   |

**Percentile Analysis of Net Professional Income - \$60,000 Salary Exclusion**

| Percentile    | 2006          | 2007          | 2008          | 2009          | 2010          |
|---------------|---------------|---------------|---------------|---------------|---------------|
| 0             | \$60,000      | \$60,000      | \$60,000      | \$60,000      | \$60,000      |
| 5             | \$67,704      | \$68,204      | \$68,774      | \$68,930      | \$69,553      |
| 10            | \$76,493      | \$77,294      | \$77,845      | \$78,043      | \$79,204      |
| 15            | \$85,302      | \$87,259      | \$87,079      | \$87,903      | \$89,187      |
| 20            | \$94,627      | \$97,309      | \$97,668      | \$97,769      | \$99,585      |
| 25            | \$104,445     | \$107,714     | \$108,219     | \$108,392     | \$110,671     |
| 30            | \$115,454     | \$118,792     | \$120,039     | \$120,482     | \$123,926     |
| 35            | \$128,125     | \$131,893     | \$133,711     | \$134,571     | \$139,384     |
| 40            | \$141,313     | \$146,368     | \$149,118     | \$149,757     | \$155,600     |
| 45            | \$156,156     | \$162,463     | \$164,233     | \$166,579     | \$172,477     |
| 50            | \$172,772     | \$180,875     | \$183,935     | \$186,380     | \$191,358     |
| 55            | \$192,668     | \$201,326     | \$205,307     | \$208,539     | \$214,529     |
| 60            | \$216,015     | \$226,085     | \$229,952     | \$231,148     | \$239,031     |
| 65            | \$241,426     | \$254,164     | \$257,729     | \$260,823     | \$269,603     |
| 70            | \$273,749     | \$289,962     | \$293,718     | \$298,715     | \$309,994     |
| 75            | \$317,019     | \$334,557     | \$338,278     | \$344,324     | \$356,169     |
| 80            | \$369,816     | \$397,279     | \$398,351     | \$406,338     | \$414,620     |
| 85            | \$447,847     | \$484,743     | \$483,245     | \$488,589     | \$506,807     |
| 90            | \$574,635     | \$622,329     | \$612,762     | \$620,988     | \$634,561     |
| 95            | \$802,060     | \$881,777     | \$876,543     | \$869,897     | \$897,393     |
| 100           | >\$1M         | >\$1M         | >\$1M         | >\$1M         | >\$1M         |
| <b>Number</b> | <b>16,860</b> | <b>16,790</b> | <b>16,510</b> | <b>15,870</b> | <b>15,650</b> |

## Report on the Earnings of Self-Employed Lawyers

### 2010 Percentile Analysis of Total Net Income - CMA's

| Percentile | CALGARY     | EDMONTON  | HAMILTON    | LONDON      | MONTRÉAL    | OTTAWA-GATINEAU | QUEBEC CITY | TORONTO     | VANCOUVER   | WINNIPEG    | All 10 CMA's | All Other Regions |
|------------|-------------|-----------|-------------|-------------|-------------|-----------------|-------------|-------------|-------------|-------------|--------------|-------------------|
| 5          | \$11,000    | \$16,992  | \$17,845    | \$17,511    | \$7,875     | \$15,843        | \$10,379    | \$18,907    | \$11,575    | \$10,009    | \$12,177     | \$11,883          |
| 10         | \$24,000    | \$36,588  | \$32,251    | \$32,629    | \$14,526    | \$31,685        | \$19,086    | \$32,546    | \$25,000    | \$26,286    | \$23,928     | \$23,461          |
| 15         | \$35,058    | \$55,667  | \$43,739    | \$48,761    | \$20,758    | \$44,262        | \$27,198    | \$47,512    | \$37,500    | \$36,319    | \$38,355     | \$32,288          |
| 20         | \$49,643    | \$73,366  | \$55,399    | \$59,538    | \$28,106    | \$54,992        | \$37,583    | \$64,193    | \$50,000    | \$48,359    | \$48,860     | \$41,565          |
| 25         | \$64,168    | \$91,148  | \$74,493    | \$72,782    | \$36,375    | \$68,409        | \$50,022    | \$79,580    | \$60,373    | \$55,382    | \$61,989     | \$50,470          |
| 30         | \$79,506    | \$101,853 | \$87,898    | \$86,765    | \$45,166    | \$78,387        | \$58,702    | \$97,278    | \$71,006    | \$66,788    | \$76,217     | \$58,708          |
| 35         | \$93,309    | \$114,390 | \$96,774    | \$103,215   | \$56,933    | \$92,117        | \$69,936    | \$116,523   | \$88,246    | \$74,874    | \$92,011     | \$68,830          |
| 40         | \$110,773   | \$125,851 | \$113,632   | \$117,190   | \$69,532    | \$109,699       | \$79,450    | \$141,053   | \$101,409   | \$84,171    | \$108,624    | \$78,521          |
| 45         | \$134,705   | \$142,849 | \$131,794   | \$128,695   | \$86,388    | \$127,034       | \$92,092    | \$168,271   | \$120,318   | \$91,520    | \$129,112    | \$86,993          |
| 50         | \$174,870   | \$164,571 | \$143,485   | \$145,874   | \$103,693   | \$145,674       | \$107,624   | \$202,584   | \$144,538   | \$100,027   | \$153,700    | \$98,536          |
| 55         | \$206,250   | \$178,539 | \$159,583   | \$162,251   | \$128,013   | \$160,828       | \$126,598   | \$238,507   | \$166,110   | \$111,798   | \$179,344    | \$109,395         |
| 60         | \$240,974   | \$202,279 | \$170,770   | \$179,932   | \$157,887   | \$186,860       | \$146,185   | \$281,452   | \$187,933   | \$126,053   | \$209,583    | \$121,458         |
| 65         | \$276,268   | \$223,978 | \$201,737   | \$201,042   | \$191,026   | \$208,640       | \$159,355   | \$334,234   | \$215,716   | \$143,466   | \$242,500    | \$136,619         |
| 70         | \$340,407   | \$247,471 | \$224,691   | \$219,088   | \$224,226   | \$239,530       | \$179,079   | \$385,542   | \$251,000   | \$163,013   | \$283,636    | \$153,342         |
| 75         | \$385,772   | \$280,760 | \$249,196   | \$255,303   | \$262,818   | \$276,976       | \$204,830   | \$455,008   | \$289,074   | \$193,303   | \$337,761    | \$170,857         |
| 80         | \$445,783   | \$306,923 | \$282,207   | \$292,995   | \$308,597   | \$334,665       | \$221,812   | \$543,455   | \$345,274   | \$216,545   | \$398,352    | \$189,319         |
| 85         | \$545,917   | \$366,754 | \$325,273   | \$375,816   | \$370,278   | \$386,345       | \$252,099   | \$655,960   | \$406,476   | \$237,026   | \$489,678    | \$219,782         |
| 90         | \$699,495   | \$421,662 | \$376,566   | \$490,189   | \$482,102   | \$464,706       | \$313,813   | \$828,018   | \$504,011   | \$284,543   | \$620,859    | \$261,487         |
| 95         | \$907,587   | \$499,164 | \$604,864   | \$615,697   | \$688,179   | \$607,409       | \$402,151   | \$1,151,175 | \$659,260   | \$377,275   | \$883,143    | \$344,329         |
| 100        | \$1,965,134 | \$867,942 | \$1,270,245 | \$4,136,680 | \$2,947,637 | \$1,779,077     | \$1,576,880 | \$6,663,873 | \$3,697,863 | \$1,018,003 | \$6,663,873  | \$8,072,545       |
| Number     | 703         | 507       | 416         | 425         | 3,301       | 1,018           | 619         | 6,735       | 1,566       | 498         | 15,778       | 5,331             |

**IN THE MATTER OF THE *JUDGES ACT*, RSC 1985, c J-1, as amended**

**2015 JUDICIAL COMPENSATION  
AND BENEFITS COMMISSION**

---

**SUBMISSIONS OF THE GOVERNMENT OF CANADA**

---

**Anne M. Turley**  
**Kirk G. Shannon**  
Department of Justice  
500-50 O'Connor Street  
Ottawa, ON K1A 0H8

Tel: 613-670-6291/613-670-6270  
Fax: 613-954-1920

Counsel for the Government of  
Canada



TABLE OF CONTENTS

|   | Page no. |
|---|----------|
| <b>I. Overview .....</b>  | <b>1</b> |
| <b>II. Commission Mandate .....</b>   | <b>2</b> |
| <b>III. Analysis of the Adequacy of Judicial Compensation .....</b>                   | <b>5</b> |
| A. Total Compensation is Adequate .....   | 5        |
| 1. Present Economic Situation Supports <i>Status Quo</i> .....                        | 6        |
| 2. Financial Security Respected .....   | 9        |
| 3. No Difficulty Attracting Outstanding Candidates .....                              | 9        |
| (a) Consider the Pools from which Judges Drawn .....                                  | 9        |
| (i) <i>Salary Adequate to Attract Outstanding Candidates from Public Sector</i> ..... | 12       |
| (ii) <i>Salary Adequate to Attract Outstanding Private Sector Lawyers</i> .....       | 14       |
| a. Proper Analysis of the CRA Data .....  | 14       |
| i. 65th Percentile is the Appropriate Comparator .....                                | 15       |
| ii. The Filters used by the Judiciary Skew the Results .....                          | 17       |
| a) Age-Weighting is More Appropriate .....  | 18       |
| b) No Objective Basis for Salary Exclusions .....                                     | 21       |
| c) Confining the Income Analysis to the<br>Top 10 CMAs Not Justified .....            | 22       |
| b. The Value of the Judicial Annuity Raises Total Compensation<br>Significantly ..... | 23       |
| c. Supernumerary Status – An Important Incentive .....                                | 25       |
| d. Other Generous Benefits Afforded to the Judiciary .....                            | 26       |
| (iii) <i>Pre-Appointment Income Study</i> .....                                       | 27       |
| 4. Benchmarking to DM-3 not Objective, Relevant or Justified .....                    | 27       |
| (a) Formulaic Linkage Inconsistent with Commission Mandate .....                      | 29       |
| (b) Comparability Issues .....  | 30       |
| (i) <i>Small Sample Size</i> .....  | 32       |
| (ii) <i>No Security of Tenure</i> .....   | 33       |
| (iii) <i>Significant Differences in Compensation Measures</i> .....                   | 34       |
| (c) Reliable Evidence Relating to Pre-appointment Salaries .....                      | 37       |
| (d) Consideration of General Trends More Appropriate and Relevant .....               | 37       |
| 5. Conclusion .....   | 41       |

- B. CPI – More Appropriate Statutory Indexation Measure.....41
- C. Prothonotaries’ Compensation and Representational Funding.....43
  - 1. Total Compensation is Adequate .....43
  - 2. Full Funding of Costs Not Justified .....44
- D. Step-Down Amendments.....45
- E. Future Studies .....46
  - 1. Pre-appointment Income Study.....46
  - 2. Quality of Life Study .....47
  
- IV. Conclusion .....48**

## **I. OVERVIEW**

1. An independent judiciary is the “lifeblood of constitutionalism in democratic societies”.<sup>1</sup> Canada is privileged to enjoy the benefits of an independent judiciary, and the Government of Canada is committed to continuing to uphold the three components of the constitutional principle of independence – security of tenure, administrative independence, and financial security.

2. The current remuneration of both the superior court judges and the Federal Court prothonotaries is entirely adequate to ensure that Canada continues to enjoy an independent judiciary, and that outstanding candidates continue to be attracted to judicial office. An objective analysis of the statutory criteria supports the conclusion that salaries need only be increased annually to allow for a cost of living adjustment until the next quadrennial review.

3. First, Canada’s economic position and the overall state of the Government’s finances militate against increasing judicial salaries any more than the cost of living at this time. Canada continues to face uncertain economic times.

4. Second, there can be no suggestion that the current judicial salary of \$308,600 and the prothonotary salary of \$234,500 have fallen below an acceptable minimum such that judicial independence has been interfered with or compromised. Indeed, taking into account the generous judicial annuity, which is valued at approximately 36.5% of the judicial salary, it increases their total compensation significantly to approximately \$421,239 for judges and approximately \$320,093 for prothonotaries.

5. Third, there is no evidence of any difficulty in recruiting outstanding candidates to either office. A comparison of judicial and prothonotary salaries to the income levels of lawyers in both public and private sectors, who would be eligible for both offices, demonstrates that the salaries are fully adequate to continue to attract outstanding

---

<sup>1</sup> *Beauregard v Canada*, [1986] 2 SCR 56, p 70, **Government’s Book of Documents, Tab 1**

candidates. In addition, the generous judicial annuity is a further incentive and attraction which cannot be underestimated.

6. Finally, the continued benchmarking to the DM-3 group has no basis in logic or statute. The *Judges Act* does not specifically contemplate consideration of a formulaic benchmark – that is, the “mid-point of a DM-3 salary plus one-half maximum performance pay”. Given the comparability issues at play, there is no principled basis upon which to narrow the inquiry in such a manner. To the extent that public sector compensation trends are relevant to ensure salary relativity, they are properly considered as a whole under the residual criterion – “other objective criteria that the Commission considers relevant”. Here, a review of the salaries of high-ranking federal public servants shows that the judicial salary is set at an appropriate level which recognizes the importance of judicial office, while at the same time not receiving preferential treatment as compared to other individuals paid from the public purse.

7. Furthermore, the more appropriate and relevant indexation factor is the Consumer Price Index (CPI). Based on CPI forecasts, judicial and prothonotary salaries would increase by 6.8% over the next four years to \$329,500 and \$250,400 respectively.

## **II. COMMISSION MANDATE**

8. The Commission’s mandate is informed by both constitutional principles and statutory provisions. The Supreme Court described the constitutional role of a judicial compensation commission in *PEI Reference*; its statutory mandate is defined in the *Judges Act*.

9. In *PEI Reference*, the Supreme Court likened judicial compensation commissions to “institutional sieve[s]” that would serve the constitutional function of preventing the “setting or freezing of judicial remuneration from being used as a means to exert political pressure through the economic manipulation of the judiciary”.<sup>2</sup> In this way, the

---

<sup>2</sup> *Ref re Remuneration of Judges of the Prov Court of PEI; Ref re Independence and Impartiality of Judges of the Prov Court of PEI*, [1997] 3 SCR 3, [*PEI Reference*], para 170, **Joint Book of Documents, Tab 25**

Commission's mandate includes the imperative to preserve the independence of the federally-appointed judiciary, in particular their financial security.

10. In response to the decision in *PEI Reference*, the *Judges Act* was amended in 1998 to establish a federal Judicial Compensation and Benefits Commission to inquire into the adequacy of the salaries and other amounts payable under the *Judges Act* and into the adequacy of judges' benefits generally.<sup>3</sup>

11. Subsection 26(1.1) mandates that the Commission conduct its inquiry with reference to the following prescribed criteria: (1) the prevailing economic conditions in Canada; (2) the role of financial security of the judiciary in ensuring judicial independence; (3) the need to attract outstanding candidates to the judiciary; and (4) any other objective criteria that the Commission considers relevant.<sup>4</sup>

12. Pursuant to recent amendments to the *Judges Act*, the adequacy of Federal Court prothonotaries' compensation is now also considered as part of the same Commission process.<sup>5</sup>

13. The statutory criteria provide the analytical framework for the Commission's inquiry and assessment of the adequacy of judicial compensation. In that regard, it is useful to examine Parliament's rationale for mandating these specific criteria. As recognized by the Supreme Court of Canada, legislative history is relevant and admissible as evidence of specific legislative intent.<sup>6</sup>

---

<sup>3</sup> *Judges Act*, RSC 1985, c J-1, s. 26(1), **Joint Book of Documents, Tab 24**

<sup>4</sup> *Ibid.*, s. 26(1.1)

<sup>5</sup> *Ibid.*, s. 2.1(1)

<sup>6</sup> *Rizzo & Rizzo Shoes Ltd (Re)* [1998] SCJ No 2, [1998] 1 SCR 27, paras 31-36, **Government's Book of Documents, Tab 2**; *Re Canada 3000 Inc* [2006] SCJ No 24, [2006] 1 SCR 865, para 57, **Government's Book of Documents, Tab 3**; *Quebec v CP Desjardins De Montmagny* [2009] 3 SCR 286, paras 12-14, **Government's Book of Documents, Tab 4**. See also: Ruth Sullivan, *Sullivan on the Construction of Statutes*, Sixth ed (Markham, Ontario: LexisNexis Canada Inc, 2014), pp 679-698, **Government's Book of Documents, Tab 5**

14. It is important to note that when the 1998 Bill was first introduced in the House of Commons, statutory criteria were not proposed.<sup>7</sup> However, when the Bill was considered by the Senate and the Senate Standing Committee on Legal and Constitutional Affairs, it was determined that the inclusion of express mandatory criteria was required to “help define and clarify the scope of the mandate” of the Commission’s inquiry.<sup>8</sup>

15. The Standing Senate Committee on Legal and Constitutional Affairs heard from numerous witnesses, including David Scott, the Chair of the 1995 Triennial Commission.<sup>9</sup> Following those hearings, the Senate proposed two amendments, which included adding the four statutory criteria to the *Judges Act*.<sup>10</sup>

16. The first two criteria were added in direct response to the Supreme Court’s decision in *PEI Reference*.<sup>11</sup>

17. According to Senator Joyal, who proposed the amendment to the Bill, the third criterion “the need to attract outstanding candidates” was added based on Mr. Scott’s testimony before the Senate committee.<sup>12</sup> He had spoken about a need to measure “how we compensate our judges against that body of people from which we are drawing to ensure that we are competitive”.<sup>13</sup> As was noted in the House of Commons, the Scott Commission

---

<sup>7</sup> *Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs*, Issue No 32, 1<sup>st</sup> Sess, 36<sup>th</sup> Parl, September 30, 1998 [Senate Committee September 30, 1998], pp 32:7-32:9, **Government’s Book of Documents, Tab 6**

<sup>8</sup> *House of Commons Debates*, 36<sup>th</sup> Parl, 1<sup>st</sup> Sess, No 151 (6 November 1998) [Hansard November 6, 1998], at 9944 (Eleni Bakopanos), **Government’s Book of Documents, Tab 7**. *Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs*, Issue No 37, 1<sup>st</sup> Sess, 36<sup>th</sup> Parl, October 22, 1998 [Senate Committee October 22, 1998], pp 37:20, **Government’s Book of Documents, Tab 8**

<sup>9</sup> Senate Committee September 30, 1998, *supra*, pp 32:3-32:23, **Government’s Book of Documents, Tab 6**

<sup>10</sup> Hansard November 6, 1998, *supra*, pp 9943-9944, **Government’s Book of Documents, Tab 7**; Senate Committee October 22, 1998, *supra*, pp 37:13-37:26, **Government’s Book of Documents, Tab 8**

<sup>11</sup> Senate Committee October 22, 1998, *ibid*, pp 37:18-37:21

<sup>12</sup> *Ibid*, at p 37:20

<sup>13</sup> Senate Committee September 30, 1998, *supra*, pp 32:18-32:19, **Government’s Book of Documents, Tab 6**

based its recommendations “on the relationship between judges’ salaries and those of lawyers in private practice, since this is the source of most candidates”.<sup>14</sup>

18. Of additional relevance from the Senate committee hearings is the dialogue between Senator Joyal and Mr. Scott about whether judicial salaries should be measured against public servants’ salaries. Mr. Scott testified that the United States was, in fact, eliminating that type of “lock-step arrangement” and that his Commission had debated whether they were bound by some public service compensation level.<sup>15</sup> Mr. Scott’s opinion was that if Parliament prescribed criteria tying judicial salaries to that of certain public servants, like deputy ministers, there would be no room for an independent Commission to make a recommendation.<sup>16</sup>

19. In the end result, a specific criterion that mandated consideration of public sector salaries was not added to the legislation. The fourth criterion, namely “any other objective criteria that the Commission considers relevant” was added to allow the Commission to consider other criteria “that are justified, ones that are measured on objective grounds”.<sup>17</sup>

### **III. ANALYSIS OF THE ADEQUACY OF JUDICIAL COMPENSATION**

#### **A. Total Compensation is Adequate**

20. In light of the statutory criteria set out in s. 26(1.1) of the *Judges Act*, the current level of judicial and prothonotary salaries and benefits, coupled with automatic annual adjustments in accordance with the CPI, fully meets the “adequacy” test to be applied by this Commission.

---

<sup>14</sup> Hansard November 6, 1998, *supra*, p 9947, **Government’s Book of Documents, Tab 7**. See also: *Proceedings of the House of Commons Standing Committee on Justice and Human Rights*, Issue No 70, 1<sup>st</sup> Sess, 36<sup>th</sup> Parl, May 13, 1998, pp 1555, 1600, 1615, 1620, **Government’s Book of Documents, Tab 9**

<sup>15</sup> Senate Committee September 30, 1998, *supra*, pp 32:9, 32:17, **Government’s Book of Documents, Tab 6**

<sup>16</sup> *Ibid*, pp 32:16-32:17

<sup>17</sup> Senate Committee October 22, 1998, *supra*, p 37:21, **Government’s Book of Documents, Tab 8**

21. The current salaries are \$308,600 and \$234,500 respectively. The value of the judicial annuity increases those salary levels by approximately 36.5%<sup>18</sup>, resulting in a net judicial salary of approximately \$421,239 and a prothonotary salary of approximately \$320,093.<sup>19</sup>

### 1. Present Economic Situation Supports *Status Quo*

22. Based on the prevailing economic conditions in Canada, nothing more than annual indexation adjustments are justified. This first statutory criterion mandates the Commission to consider “the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government”.<sup>20</sup>

23. The Canadian economy remains fragile. The most recent Update of Economic and Fiscal Projections sets out the Government’s assessment of the state of the Canadian economy and of the Government’s current and future financial position.

24. Since the previous Government’s budget of April 2015, Canada’s economic and fiscal outlook has deteriorated.<sup>21</sup> Crude oil price are approximately one-third of the price prevailing in mid-2014.<sup>22</sup> As a producer and net exporter of crude oil, Canada has seen these low prices result in sharp declines in capital investment in the energy sector, which contributed to the reduced real GDP over the first half of 2015. The real GDP declined by 0.8% in the first quarter and 0.5% in the second quarter and then increased by 2.3% in the

---

<sup>18</sup> This assumes that the age profile of prothonotaries at appointment is the same as that of judges. If prothonotaries are generally younger than judges at appointment, the average value of their annuity benefit would be lower than 36.5% and *vice versa*.

<sup>19</sup> Haripaul Pannu, Report on the Earnings of Self-Employed Lawyers for the Department of Justice Canada in Preparation for the 2015 Judicial Compensation and Benefits Commission dated February 25, 2016 [Pannu Report], p 13, **Government’s Book of Documents, Tab 10**

<sup>20</sup> *Judges Act, supra*, s 26(1.1)(a), **Joint Book of Documents, Tab 24**

<sup>21</sup> Department of Finance Canada, Update of Economic and Fiscal Projections 2015, November 20, 2015, online: <http://www.budget.gc.ca/efp-peb/2015/pub/toc-tdm-en.html>, p 14, **Government’s Book of Documents, Tab 11**. See also: Letter dated February 24, 2016 from the Assistant Deputy Minister of Finance, Department of Finance Canada, p 1, **Joint Book of Documents, Tab 9**; Department of Finance Canada, Backgrounder – Canadian Economic Outlook, February 22, 2016, online: [http://www.fin.gc.ca/n16/data/16-025\\_1-eng.asp](http://www.fin.gc.ca/n16/data/16-025_1-eng.asp), **Government’s Book of Documents, Tab 12**

<sup>22</sup> Crude oil (West Texas Intermediate (WTI)) closed at USD\$32.78 per barrel on February 26, 2016. Crude oil (WTI) closed at USD\$103.17 per barrel on June 5, 2014 (see online: <http://www.nasdaq.com/markets/crude-oil.aspx>).



third quarter.<sup>23</sup> At the time of Budget 2015, the first two quarters were expected to show real GDP growth of 1.2% and 1.5%, respectively.<sup>24</sup>

25. In his economic and fiscal update speech, the Minister of Finance said that it was “a challenging time for the global economy”.<sup>25</sup> Reflective of this, “global economic growth slowed in 2015 to its slowest pace since the end of the global recession in mid-2009”.<sup>26</sup> Forecasts for global growth have been revised down to 3.1% for 2015, 3.4% for 2016 and 3.6% in 2017<sup>27</sup> – rates that are “a far cry from headier pre-recession days”.<sup>28</sup>

26. Speaking about the impact on the Canadian economy, the Minister of Finance has said that it is “sluggish” and “growing far more slowly than previously forecasted”.<sup>29</sup> Economists are projecting “a modest growth outlook for Canada” – 1.7% for 2016.<sup>30</sup>

27. The CPI, which is widely used to determine cost-of-living adjustments, is projected to increase over the next four years as follows: 1.1% in 2015; 1.6% in 2016; 2.0% in 2017, and 2.0% in 2018 and 2019.<sup>31</sup>

---

<sup>23</sup> Letter dated February 24, 2016 from the Assistant Deputy Minister of Finance, Department of Finance Canada, *supra*, p 2, **Joint Book of Documents, Tab 9**

<sup>24</sup> *Ibid*, p 9

<sup>25</sup> Minister of Finance’s Economic and Fiscal Update Speech, November 20, 2015 [Minister of Finance’s November 2015 Speech], online: <http://www.fin.gc.ca/news-nouvelles/speeches-discours/2015/2015-11-20-eng.asp>, **Government’s Book of Documents, Tab 13**

<sup>26</sup> Letter dated February 24, 2016 from the Assistant Deputy Minister of Finance, Department of Finance Canada, *supra*, p 1, **Joint Book of Documents, Tab 9**

<sup>27</sup> International Monetary Fund, World Economic Outlook Update, January 19, 2016, online: <http://www.imf.org/external/pubs/ft/weo/2016/update/01/pdf/0116.pdf>, p 1 & 3, **Government’s Book of Documents, Tab 14**

<sup>28</sup> TD Economics, Quarterly Economic Forecast, December 17, 2015, online: [https://www.td.com/document/PDF/economics/qef/qefdec2015\\_canada.pdf](https://www.td.com/document/PDF/economics/qef/qefdec2015_canada.pdf), p 2, **Government’s Book of Documents, Tab 15**. See also: Department of Finance Canada, Update of Economic and Fiscal Projections 2015, *supra*, p 8, **Government’s Book of Documents, Tab 11**.

<sup>29</sup> Minister of Finance’s November 2015 Speech, *supra*, **Government’s Book of Documents, Tab 13**

<sup>30</sup> TD Economics, Quarterly Economic Forecast, December 17, 2015, *supra*, p 1, **Government’s Book of Documents, Tab 15**.

<sup>31</sup> Department of Finance Canada, Backgrounder – Canadian Economic Outlook, February 22, 2016, *supra*, **Government’s Book of Documents, Tab 12**; Letter from the Assistant Deputy Minister of Finance dated February 24, 2016, Department of Finance Canada, *supra*, p 1, **Joint Book of Documents, Tab 9**

28. Economic increases in the federal public sector since the last Quadrennial Commission were as follows: 2011-1.75%; 2012-1.5%; 2013-2.0%; 2014-1.5%. There have been no new agreements finalized since then.<sup>32</sup>

29. For the fiscal year that ended March 31, 2015, a budgetary surplus of \$1.9 billion was reported as compared to a budgetary deficit of \$5.2 billion the previous fiscal year. As of March 31, 2015, the federal debt stood at \$612.3 billion – 31.0% of GDP.<sup>33</sup>

30. Recent economic developments, however, are expected to push the Government back into a deficit, reducing the projected budgetary balance. It is expected to result in deficits of \$2.3 billion in 2015-16, \$18.4 billion in 2016-17 and \$15.5 billion in 2017-18.<sup>34</sup>

31. The Government will table a new Budget on March 22, 2016, which will provide further information on the current status of the economy. The new Budget may have an impact on this statutory criterion. The Government will, if necessary, make further representations to the Commission on the present state of the economy in its reply submissions.

32. As recognized by the Supreme Court, the guarantee of a minimum salary is not a device to shield the judiciary from the effects of deficit reduction:

Nothing would be more damaging to the reputation of the judiciary and the administration of justice than a perception that judges were not shouldering their share of the burden in difficult economic times.<sup>35</sup>

33. The critical factors mentioned above – (1) Canada’s weak economic and fiscal conditions; (2) the less optimistic outlook for growth; (3) the very low rate of inflation experienced in the past four years and as projected for the next four years; and (4) the low rate of wage growth experienced by other individuals paid from the federal public treasury

---

<sup>32</sup> *Ibid*; See also: Treasury Board of Canada, “Negotiated Pay Increase, Restructure & CPI Movement, March 17, 2014, Table 1- Summary, **Joint Book of Documents, Tab 18**

<sup>33</sup> Letter from the Assistant Deputy Minister of Finance dated February 24, 2016, Department of Finance Canada, *supra*, p 3, **Joint Book of Documents, Tab 9**

<sup>34</sup> *Ibid*

<sup>35</sup> *PEI Reference, supra*, para 196, **Joint Book of Documents, Tab 25**

– suggest that an increase beyond statutory indexation based on CPI is not justified at this time.

## **2. Financial Security Respected**

34. When assessing the “adequacy” of judicial compensation, s. 26(1.1)(b) of the *Judges Act* requires consideration as to whether the compensation level is such that it ensures the financial security of the judiciary. Financial security is an essential condition of judicial independence, its purpose being ultimately to protect the judiciary from economic manipulation by the legislature or the executive.<sup>36</sup>

35. As articulated by Chief Justice Lamer (as he then was), in order to ensure financial security, judicial salaries must not fall below an acceptable minimum level:

I have no doubt that the Constitution protects judicial salaries from falling below an acceptable minimum level. The reason it does is for financial security to protect the judiciary from political interference through economic manipulation, and to thereby ensure public confidence in the administration of justice. If salaries are too low, there is always the danger, however speculative, that members of the judiciary could be tempted to adjudicate cases in a particular way in order to secure a higher salary from the executive or the legislature or to receive benefits from one of the litigants...<sup>37</sup>

36. The current judicial salary of \$308,600 is far removed from the minimum level at which a need to protect the judiciary from political interference through economic manipulation would be relevant. Automatic indexing in accordance with the CPI offers sufficient protection against the erosion of judicial salaries.

## **3. No Difficulty Attracting Outstanding Candidates**

### **(a) Consider the Pools from which Judges Drawn**

37. It is under the third criterion that the Commission must consider the pools from which judges are drawn. In order to continue to attract outstanding candidates to the judiciary, judicial salaries must be set at a level that will not deter those candidates from applying. It must also be recognized, however, that the judicial salary is not the sole

---

<sup>36</sup> *Ibid*, para 131

<sup>37</sup> *Ibid*, para 193

motivating factor in applying for a judicial position. Other considerations, including the opportunity to make a contribution to public life, a career change, the security of tenure of a judge, the generous judicial annuity and the recognition, status and quality of life associated with judicial office, also play an important role.<sup>38</sup>

38. Further, as acknowledged by the Block Commission, “the issue is not how to attract the highest earners; the issue is how to attract outstanding candidates” from both private and public sectors, from large and small firms and from large and small centres.<sup>39</sup> Or as the Drouin Commission noted, “no segment of the legal profession has a monopoly on outstanding candidates”.<sup>40</sup>

39. Based on the evidence heard by the Standing Senate Committee on Legal and Constitutional Affairs, the third criterion – “the need to attract outstanding candidates to the judiciary” was prescribed when the *Judges Act* was amended in 1998.<sup>41</sup> This criterion was intended to address recruitment – what was necessary in order to “attract” senior members of the Bar to judicial office.

However, taking the point about the criteria, we do always have to be measuring how we compensate our judges against that body of people from which we are drawing to ensure that we are competitive.<sup>42</sup>

40. The first Quadrennial Commission, the Drouin Commission, understood that s. 26(1.1) expressly mandates consideration of this relationship:

**The criterion identified in subsection 26(1.1)(c), for example, is directed expressly to the issue of recruitment of suitable candidates for the Bench.** Traditionally, most judges in Canada are appointed from the ranks of private legal practitioners. Accordingly, those factors constituting incentives or disincentives to

---

<sup>38</sup> Report of the Fourth Quadrennial Judicial Compensation and Benefits Commission, dated May 15, 2012 [Levitt Commission Report], para 42, p 15, **Joint Book of Documents, Tab 31**

<sup>39</sup> Report of the Third Quadrennial Judicial Compensation and Benefits Commission, dated May 30, 2008 [Block Commission Report], para 116, p 37, **Joint Book of Documents, Tab 30**

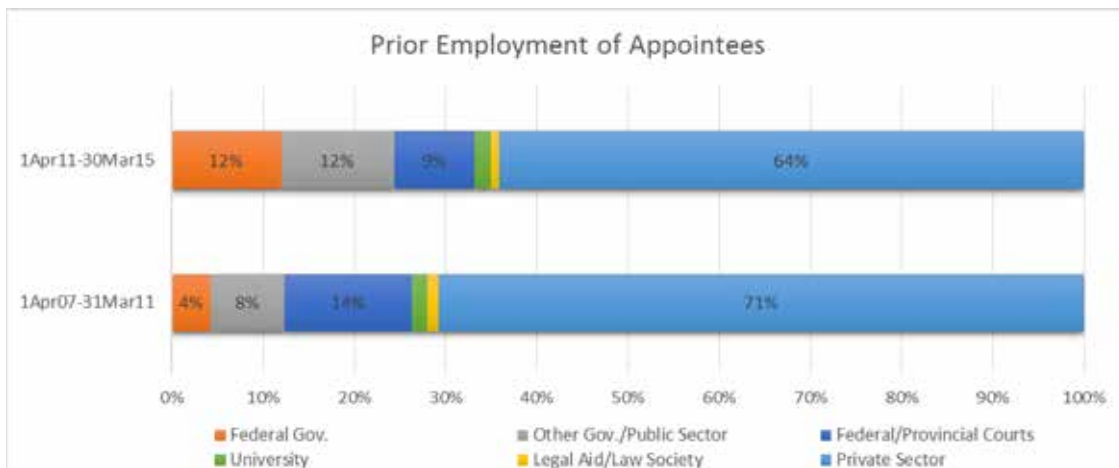
<sup>40</sup> Report of the First Quadrennial Judicial Compensation and Benefits Commission, dated May 31, 2000 [Drouin Commission Report], p 36, **Joint Book of Documents, Tab 28**

<sup>41</sup> Hansard November 6, 1998, *supra*, p 1025, **Government’s Book of Documents, Tab 7**. Senate Committee October 22, 1998, *supra*, p 37:20, **Government’s Book of Documents, Tab 8**

<sup>42</sup> Senate Committee September 30, 1998, *supra*, pp 32:18-32:19, **Government’s Book of Documents, Tab 6**

the seeking of judicial office by private legal practitioners are relevant to recruitment of judicial candidates.<sup>43</sup> (emphasis added)

41. Between 2011 and 2015, of the 226 lawyers appointed to the judiciary, 64% were from private practice and 36% from other sectors - federal and provincial government lawyers, legal aid lawyers, in-house counsel, academia and the provincial court judiciary. This is a significant increase from the last Quadrennial Commission process, where 29% of appointees were from other sectors.<sup>44</sup>



42. On that basis, therefore, it is relevant to consider the income levels of the lawyers who are eligible for appointment to the bench from private practice, as well as outside the private sector.

43. While past Commissions have considered income levels of private sector lawyers, they have not fully considered the salary levels of lawyers from other sectors who are eligible for and are, in fact, appointed to the judiciary. Instead, under the rubric of “the need to attract outstanding candidates”, the past two Commissions have considered a public

<sup>43</sup> Drouin Commission Report, *supra*, p 23, **Joint Book of Documents, Tab 28**. See also: Drouin Commission Report, *supra*, p 35, **Joint Book of Documents, Tab 28**; Report of the Second Quadrennial Judicial Compensation and Benefits Commission, dated May 31, 2004 [McLennan Commission Report], pp 31 & 41, **Joint Book of Documents, Tab 29**.

<sup>44</sup> Statistics derived from Judicial Appointments Database Documentation provided by the Commissioner for Federal Judicial Affairs [CFJA Data], **Joint Book of Documents, Tabs 4 & 5(i)**. An increase from 29% during the last Quadrennial period to 36% during this Quadrennial period is a 23% increase.

sector comparator (the DM-3 group) and a private sector comparator (private sector lawyers).<sup>45</sup>

44. The former, however, is not a relevant or equivalent comparator under this criterion. The DM-3 group is not a pool from which judges are drawn. The DM-3 group is not the analogous “public sector pool” as compared to the “private sector pool” of lawyers from private sector law firms.

45. As the legislative history demonstrates, this criterion is concerned with the relationship between judicial salaries and those salaries of the senior members of the bar from whose ranks the judiciary are drawn. In that respect, the salary level of the DM-3 group is not relevant to whether the judicial salary is adequate to “attract” or “recruit” outstanding candidates under s. 26(1.1)(c) of the *Judges Act*.

46. If consideration of the DM-3 salary level is a relevant factor, as noted by the Drouin Commission, it is properly considered under the fourth criterion under s. 26(1.1)(d) – “other objective criteria which the Commission considers relevant”.<sup>46</sup> As is fully explored below, however, the Government’s position is that the DM-3 salary alone is not an objective or relevant criterion that this Commission should take into account. Rather, the better approach is to consider public sector compensation trends more generally.

*(i) Salary Adequate to Attract Outstanding Candidates from Public Sector*

47. The Canadian judiciary must continue to be drawn from a broad background, in addition to private sector lawyers. As the Block Commission recognized, “it is important that there be a mix of appointees from private and public practice”.<sup>47</sup>

48. In the last four years, 36% of judges were appointed from other than private practice. This included federal and provincial government lawyers, legal aid lawyers, law professors and judges from other courts.

---

<sup>45</sup> Block Commission Report, *supra*, para 93, **Joint Book of Documents, Tab 30**; Levitt Commission Report, *supra*, paras 22-43, **Joint Book of Documents, Tab 31**.

<sup>46</sup> Drouin Commission Report, *supra*, pp 9, 23, **Joint Book of Documents, Tab 28**

<sup>47</sup> Block Commission Report, *supra*, para 116, p 37, **Joint Book of Documents, Tab 30**

49. The current judicial salary of \$308,600 exceeds the salary levels of all those positions. Within the federal government, the highest paid rank in the Law Practitioner Group is LP5/Senior General Counsel at a maximum of \$193,377, with maximum performance pay of 10%.<sup>48</sup> Within the Law Management Group, the highest rank is that of LC4 with a maximum pay of \$199,700, with maximum performance pay of 26%.<sup>49</sup>

50. The judicial salary is also significantly higher than the most senior law positions in provincial governments. The maximum rate of pay of the top-ranking Ontario provincial government lawyer (Crown Counsel 4) is \$211,553, inclusive of performance pay.<sup>50</sup> In British Columbia, a Legal Counsel Manager's salary is a maximum of \$210,571.70 with no performance pay.<sup>51</sup>

51. The current judicial salary also exceeds that of law professors at any Canadian law school. According to the 2014 list published pursuant to the Ontario *Public Sector Salary Disclosure Act*, the highest professor salaries at the two largest law schools – Osgoode Hall and the University of Toronto – were \$247,457 and \$299,695, respectively. In fact, the current judicial salary is significantly higher than all Canadian law school Deans, except for the Deans of the University of Toronto and University of Western Ontario, who earned slightly more.<sup>52</sup>

---

<sup>48</sup> Treasury Board of Canada Secretariat, "Agreement between the Treasury Board and the Association of Justice Counsel", March 12, 2013, online: [https://www.tbs-sct.gc.ca/pubs\\_pol/hrpubs/coll\\_agre/la/la-eng.pdf](https://www.tbs-sct.gc.ca/pubs_pol/hrpubs/coll_agre/la/la-eng.pdf), Appendix C, **Government's Book of Documents, Tab 16**

<sup>49</sup> Treasury Board of Canada Secretariat, "LC-Law Management Occupational Group Rates of Pay", online: <https://www.tbs-sct.gc.ca/psm-fpfm/pay-remuneration/rates-taux/rapaceexunem02-eng.asp#Toc476385565b>, **Government's Book of Documents, Tab 17**; Treasury Board of Canada Secretariat, "Directive on the Performance Management Program (PMP) for Executives", online: <http://publiservice.tbs-sct.gc.ca/pol/doc-eng.aspx?id=14226&section=text%20-%20cha1#secD.1>, **Government's Book of Documents, Tab 18**

<sup>50</sup> 2009-2013 Collective Agreement between Ontario Crown Attorneys Association, The Association of Law Officers of the Crown and the Government of Ontario, art 41 & 42, **Government's Book of Documents, Tab 19**; Government of Ontario, Salary Schedules for Professional Bargaining and Professional Excluded Crown Counsel, **Government's Book of Documents, Tab 20**

<sup>51</sup> Government of British Columbia, Human Resources, "Salary Look-up Tool", online: [http://www2.gov.bc.ca/local/myhr/tools/salary\\_lookup\\_tool/salary\\_lookup/legal/legal\\_counsel\\_manager.html](http://www2.gov.bc.ca/local/myhr/tools/salary_lookup_tool/salary_lookup/legal/legal_counsel_manager.html), **Government's Book of Documents, Tab 21**

<sup>52</sup> Government of Ontario, Treasury Board Secretariat, "Public Sector Salary Disclosure for 2014: Universities", online: <http://www.fin.gov.on.ca/en/publications/salarydisclosure/pssd/orgs-tbs.php?organization=universities&year=2014>, **Government's Book of Documents, Tab 22**

(ii) *Salary Adequate to Attract Outstanding Private Sector Lawyers*

52. The judicial salary also compares very favourably to the income levels of self-employed lawyers in private practice. In 2014, the judicial salary of \$300,800 was higher than the net incomes of 78% of self-employed lawyers aged 35-69, without taking into consideration the judicial annuity.<sup>53</sup> In recent years the judicial salary has risen in relation to the net incomes of self-employed lawyers: in 2010 it was equivalent to the 75<sup>th</sup> percentile, the 76<sup>th</sup> in 2011, the 77<sup>th</sup> in 2012 and the 78<sup>th</sup> in 2013.<sup>54</sup>

53. As past Commissions have recognized, the judicial annuity is a significant component of judicial compensation that must be considered in any comparison with private sector salaries.<sup>55</sup> In fact, the annuity has been valued at approximately 36.5% of the judicial salary.<sup>56</sup> When the judicial annuity is included as part of judicial compensation, it increases the 2014 judicial salary to \$410,592, which exceeded the net income of at least 85% of all self-employed lawyers in 2014.<sup>57</sup>

a. **Proper Analysis of the CRA Data**

54. Similar to the last Commission process, the principal parties collaborated and worked with the Canada Revenue Agency (the CRA) for the purpose of jointly submitting a data set compiled by the CRA. The data provides income information for self-employed lawyers who declared professional income when filing their income taxes for the 2010-2014 taxation years.<sup>58</sup>

55. While the principal parties have jointly produced this data, views differ on how to interpret the data, in particular on the use of filters in analyzing the data. Filters related to age, region and minimum income threshold have a significant impact on the resulting

---

<sup>53</sup> Pannu Report, *supra*, p 5, **Government's Book of Documents, Tab 10**

<sup>54</sup> *Ibid*

<sup>55</sup> Levitt Commission Report, *supra*, para 42, p 15, **Joint Book of Documents, Tab 31**; Drouin Commission Report, *supra*, p 42, **Joint Book of Documents, Tab 28**; McLennan Commission Report, *supra*, p 5, **Joint Book of Documents, Tab 29**

<sup>56</sup> Pannu Report, *supra*, p 13, **Government's Book of Documents, Tab 10**

<sup>57</sup> *Ibid*, p 15

<sup>58</sup> Statistics derived from Self-Employed Lawyers' data provided by the Canada Revenue Agency, [CRA Data], **Joint Book of Documents, Tab 1**



average income level. In addition, the appropriate and relevant percentile is an important consideration which the parties do not agree on.

56. The Government engaged Haripaul Pannu, an actuary with expertise in executive compensation, the analysis of employee data and the valuation of pension plans and retirement savings plans. His report analyzes the CRA data, identifies significant trends in the income of self-employed lawyers, compares the judicial salary with the income of self-employed lawyers and provides a valuation of the judicial annuity.<sup>59</sup>

57. The Commission must consider which of the data points are relevant and appropriate to its inquiry into the adequacy of judicial compensation. Rather than making a determination in that regard, the Levitt Commission simply noted that the judicial salary was “at least on par with” the private sector comparator group advocated by the judiciary and “well above” that of the comparator group advocated by the Government.<sup>60</sup>

58. In considering this evidence, the Commission should be cognizant of the fact that this data set is a “rough proxy” for private sector lawyer income levels in that it only provides information related to income levels of a certain segment of private sector lawyers: self-employed lawyers who earned professional income. It does not provide information about those private sector lawyers whose main source of income is employment income, such as non-equity law firm partners, law firm associates or those lawyers who operate as professional corporations.

**i. *65th Percentile is the Appropriate Comparator***

59. The Government’s position is that the 65<sup>th</sup> percentile of self-employed lawyers’ incomes is the appropriate private sector comparator for judges for the following reasons: (1) the current economic conditions; (2) the ample pool of qualified applicants; and (3) self-employed lawyers are the highest-earning subset of outstanding candidates.

---

<sup>59</sup> Pannu Report, *supra*, **Government’s Book of Documents, Tab 10**

<sup>60</sup> Levitt Commission Report, *supra*, para 47(a), p 17, **Joint Book of Documents, Tab 31**

60. It is commonly accepted practice in compensation studies to benchmark against different percentiles of the peer group in order to gain a better understanding of what is competitive compensation.<sup>61</sup> The particular percentile used depends on supply/demand issues, economic factors and the ability to attract individuals.<sup>62</sup> While the 50<sup>th</sup> percentile is commonly used as a benchmark in recruiting suitable individuals, Mr. Pannu's report examines the 65<sup>th</sup> and 75<sup>th</sup> percentiles on the basis that "judges' salaries should not be based on the median".<sup>63</sup>

61. An analysis of the incomes of private sector lawyers between 2010 and 2014 reveals that income levels have decreased in those four years. In 2010, the 65<sup>th</sup> percentile self-employed lawyer's income was \$198,030, whereas in 2014 it significantly decreased to \$188,138.<sup>64</sup> Conversely, in those four years, judicial salaries rose by \$29,400, an increase of 10.8%.<sup>65</sup> By 2014, the judicial salary was \$300,800 – \$112,662 higher than the 65<sup>th</sup> percentile of self-employed lawyers.<sup>66</sup>

62. Even if the Commission is inclined to consider the 75<sup>th</sup> percentile as the appropriate comparator group, the judicial salary is still significantly higher. In 2014, the 75<sup>th</sup> percentile of self-employed lawyer's income was \$261,363 – \$39,437 less than the judicial salary of \$300,800. There has been a similar decline over the past four years in self-employed lawyers' incomes at the 75<sup>th</sup> percentile. In 2010, it was \$274,058 - approximately \$13,000 more than it was in 2014.<sup>67</sup>

63. A comparison of the judicial salary and the 65<sup>th</sup> and 75<sup>th</sup> percentile self-employed lawyers' incomes between 2002-2012 shows that while judicial salaries have continued to increase at a steady rate, self-employed lawyers' incomes have been decreasing since

---

<sup>61</sup> Frederick D Lipman and Steven E Hall, *Executive Compensation Best Practices* (Hoboken, New Jersey: John Wiley & Sons Inc, 2008), p 31, **Government's Book of Documents, Tab 23**

<sup>62</sup> Pannu Report, *supra*, pp 3, 5, **Government's Book of Documents, Tab 10**

<sup>63</sup> *Ibid*, p 5

<sup>64</sup> *Ibid*

<sup>65</sup> *Ibid*

<sup>66</sup> *Ibid*

<sup>67</sup> *Ibid*

2010.<sup>68</sup> Thus, the current judicial salary now far outpaces that of the 65<sup>th</sup> and 75<sup>th</sup> percentiles of private sector lawyers.

### Net Self-Employed Lawyer Incomes

|                       | 2002      | 2003      | 2004      | 2005      | 2006      | 2007      | 2008      |
|-----------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| 65th Percentile       | \$147,077 | \$153,491 | \$168,523 | \$170,261 | \$177,137 | \$188,204 | \$193,401 |
| 75th Percentile       | \$198,950 | \$207,429 | \$229,797 | \$233,932 | \$242,006 | \$257,762 | \$264,550 |
| Puisne Judge Salaries | \$210,200 | \$216,600 | \$232,300 | \$237,400 | \$244,700 | \$252,000 | \$260,000 |

|                       | 2009      | 2010      | 2011      | 2012      | 2013      | 2014      |
|-----------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| 65th Percentile       | \$196,790 | \$198,030 | \$189,995 | \$192,658 | \$187,833 | \$188,138 |
| 75th Percentile       | \$266,210 | \$274,058 | \$266,843 | \$267,223 | \$260,088 | \$261,363 |
| Puisne Judge Salaries | \$267,200 | \$271,400 | \$281,100 | \$288,100 | \$295,500 | \$300,800 |



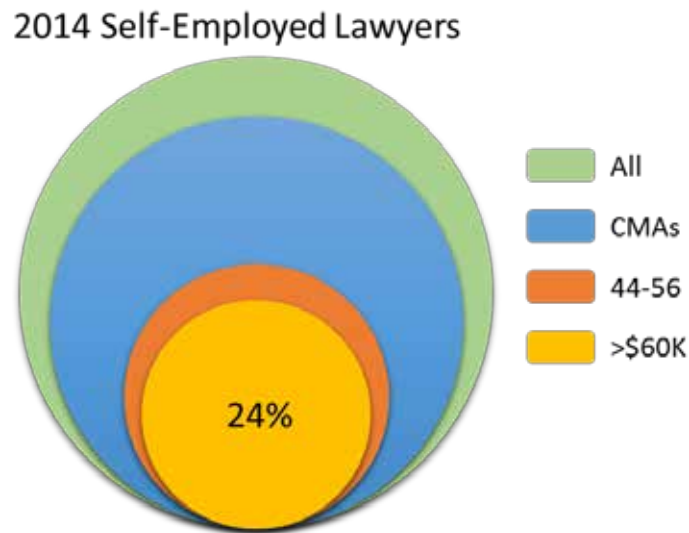
### ii. *The Filters used by the Judiciary Skew the Results*

64. Before previous Commissions, the judiciary has advocated for the application of filters related to age, location and income exclusions which result in a significant reduction

<sup>68</sup> *Ibid*; Haripaul Pannu, Report on the Earnings of Self-Employed Lawyers for the Department of Justice Canada in Preparation for the 2007 Judicial Compensation and Benefits Commission, December 2007, p 17, **Government's Book of Documents, Tab 24**; Haripaul Pannu, Report on the Earnings of Self-Employed Lawyers for the Department of Justice Canada in Preparation for the 2011 Judicial Compensation and Benefits Commission [Pannu 2011 Report], December 13, 2011, p 7, **Government's Book of Documents, Tab 25**

in the size of the target group of self-employed lawyers. Historically, their position has been that the Commission should only consider the incomes of those self-employed lawyers who (1) are between 44-56; (2) practice in Canada's top 10 Census Metropolitan Areas (CMAs)<sup>69</sup>; and (3) earn greater than \$60,000.

65. For the 2014 taxation year, applying these filters reduces the target group of all self-employed lawyers in the CRA data set to only 24%:<sup>70</sup>



**a) Age-Weighting is More Appropriate**

66. Rather than wholly exclude incomes of those lawyers below and above the 44-56 age bands, it is more appropriate to factor in a further refinement related to age by age-weighting. This approach factors in that private sector incomes do vary with the lawyer's age and judges are appointed to the bench at various ages.

<sup>69</sup> A Census Metropolitan Area is an area consisting of one or more neighbouring municipalities situated around a core. A CMA must have a total population of at least 100,000 of which 50,000 or more live in the core. See: Statistics Canada, Census Dictionary, "Census Metropolitan Area", online: <https://www12.statcan.gc.ca/census-recensement/2011/ref/dict/geo009-eng.cfm>, **Government's Book of Documents, Tab 26.**

<sup>70</sup> Statistics derived from CRA Data, *supra*, **Joint Book of Documents, Tab 1**

67. Accordingly, the Government's expert age-weighted private sector incomes according to judges' ages of appointment from January 1, 1997 to March 31, 2015.<sup>71</sup> This approach provides a single point of income comparison for a private sector lawyer who is hypothetically considering accepting a judicial appointment.

68. For 2014, age-weighting raises the 65th percentile income to \$208,306, which is still significantly less than the judicial salary of \$300,800.<sup>72</sup> Age-weighting the 75<sup>th</sup> percentile income for 2014 increases it to \$267,041, which is still approximately \$33,000 less than the 2014 judicial salary.<sup>73</sup>

69. A further reason to prefer age-weighting over simply considering the 44-56 age band is that ages of appointment have changed. As the chart below illustrates, there has been a statistically significant trend towards older appointees.<sup>74</sup>



70. Finally, another reason to age-weight rather than wholly exclude age bands is that private sector lawyers' incomes decline after the median age of judicial appointment. On that basis, focussing on the average income of a self-employed lawyer between the ages of

<sup>71</sup> Pannu Report, *supra*, pp 5-7, **Government's Book of Documents, Tab 10**

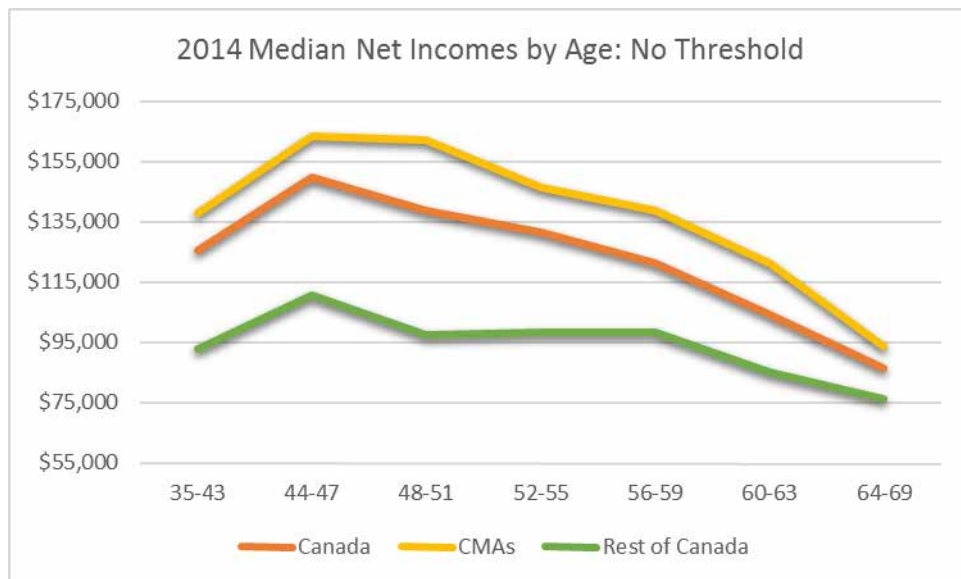
<sup>72</sup> *Ibid*, p 6

<sup>73</sup> *Ibid*, p 7

<sup>74</sup> Statistics derived from CFJA Data, *supra*, **Joint Book of Documents, Tabs 4 & 5(i)**

44-56 is not an accurate portrayal of the income he/she would actually be giving up in future years in accepting a judicial appointment.

71. The CRA data set establishes a decline in private sector lawyer incomes as they age beyond the typical judicial appointment age. More particularly, the data shows that self-employed lawyers' incomes stagnate and/or decrease significantly after age 56. As illustrated below, this trend is particularly evident in Canada's major cities and at higher income brackets:<sup>75</sup>



72. For the foregoing reasons, the Government submits that the incomes of all private sector lawyers who are eligible for appointment should be considered, with appropriate age-weighting. To focus solely on the 44-56 age bands excludes the incomes of 33% of appointees since 2004.<sup>76</sup>

<sup>75</sup> Statistics derived from CRA Data, *supra*, Second Release, November 24, 2015, **Joint Book of Documents, Tab 1**

<sup>76</sup> Statistics derived from CFJA Data, *supra*, **Joint Book of Documents, Tabs 4 & 5(i)**

**b) No Objective Basis for Salary Exclusions**

73. There is no objective basis for applying any salary exclusions to the data. In the past three Commission processes, the judiciary applied a \$60,000 income exclusion.<sup>77</sup>

74. This is not an accepted practice in compensation benchmarking.<sup>78</sup> The rationale of choosing a percentile above the median is to give less weight to lower-income earners within the data source. As Mr. Pannu explains, applying a salary exclusion distorts the results of the compensation analysis:

As incomes below \$60,000 and \$80,000 are excluded, the range of incomes are compressed, resulting in higher percentile values than if no salary exclusion was applied.<sup>79</sup>

75. The impact of using a salary exclusion is significant. Applying a \$60,000 income exclusion and benchmarking to the 65<sup>th</sup> percentile of self-employed lawyers' incomes is really applying approximately the 75<sup>th</sup> percentile.<sup>80</sup> Applying the same salary exclusion and benchmarking to the 75<sup>th</sup> percentile results in an approximate percentile of 82%.<sup>81</sup>

76. Worthy of note is that the impact of applying a salary exclusion has increased over time. Excluding those with salaries under \$60,000 in 2014 results in excluding 30% of self-employed lawyers in the CRA data set from consideration.<sup>82</sup> In 2010, it amounted to excluding 28% of those lawyers.<sup>83</sup>

---

<sup>77</sup> Levitt Commission Report, *supra*, para 36, p 13, **Joint Book of Documents, Tab 31**; Pannu Report, *supra*, p 7, **Government's Book of Documents, Tab 10**

<sup>78</sup> Pannu Report, *ibid*, p 8

<sup>79</sup> *Ibid*, p 7

<sup>80</sup> *Ibid*

<sup>81</sup> *Ibid*, p 8

<sup>82</sup> *Ibid*, p 7

<sup>83</sup> Pannu 2011 Report, *supra*, p 7, **Government's Book of Documents, Tab 25**

**c) *Confining the Income Analysis to the Top 10 CMAs Not Justified***

77. In past Commission processes, the judiciary has further suggested that the analysis is appropriately restricted to incomes of self-employed lawyers in the top 10 CMAs.<sup>84</sup> The Government's position is that such an approach is not justified.

78. The Drouin Committee properly concluded that it is not "responsible to suggest that the salary level of the Judiciary should be set so as to match the income of the highest earning lawyers in the largest urban centres in Canada".<sup>85</sup>

79. In 2014, the judicial salary of \$300,800 placed it in the 78<sup>th</sup> percentile nationally.<sup>86</sup> Further, the 2014 judicial salary was in at least the 75<sup>th</sup> percentile in the CMAs, except Toronto and Calgary where it was at the 70<sup>th</sup> percentile.<sup>87</sup>

80. Restricting the analysis to the CMAs results in ignoring a significant portion of lawyers' incomes. Between January 1997 and March 31, 2015, 39.3% of judicial appointees from the private sector bar were from the rest of Canada.<sup>88</sup>

81. In addition, the incomes of self-employed lawyers are considerably lower outside the CMAs. Thus focussing exclusively on lawyers' incomes in the CMAs rather than considering the income levels from across Canada significantly increases the results. Using the 2014 CRA data as an illustration:

- a. At the 65<sup>th</sup> percentile, the all of Canada income is \$188,138 whereas the CMA income is \$218,400 – a difference of \$30,262 or 16%;<sup>89</sup> and
- b. At the 75<sup>th</sup> percentile, the all of Canada income is \$261,363 whereas the CMA income is \$306,810 – a difference of \$45,447 or 17%.<sup>90</sup>

---

<sup>84</sup> Levitt Commission Report, *supra*, para 36, p 13, **Joint Book of Documents, Tab 31**

<sup>85</sup> Drouin Commission Report, *supra*, p 46, **Joint Book of Documents, Tab 28**

<sup>86</sup> Pannu Report, *supra*, p 5, **Government's Book of Documents, Tab 10**

<sup>87</sup> *Ibid*, p 15

<sup>88</sup> *Ibid*, p 10

<sup>89</sup> *Ibid*, p 9

<sup>90</sup> *Ibid*, p 10



82. An alternative way of approaching it would be to “CMA-weight” the income levels based on the percentage of judicial appointees from the CMAs as opposed to the rest of Canada. This approach would entail taking the distribution of judicial appointments by CMA and applying that distribution to lawyers’ incomes. The result is income percentiles that reflect that judicial appointments are distributed across different CMAs as well as outside CMAs. Using this approach, the 65<sup>th</sup> percentile actually declines to \$182,555 and the 75<sup>th</sup> percentile drops to \$249,317.<sup>91</sup>

**b. The Value of the Judicial Annuity Raises Total Compensation Significantly**

83. For those in private practice, the judicial annuity is a significant incentive to apply for a judicial appointment and must be factored in when comparing judicial and private sector lawyer compensation. As recognized by the Levitt Commission:

the superiority of the judicial annuity to the capital accumulation alternatives available to private sector lawyers to provide retirement income must be taken into consideration in order to arrive at a comparison of judicial and private sector lawyer compensation.<sup>92</sup>

84. The judicial annuity comprises not only a retirement benefit, but a generous disability benefit as well. After 15 years on the bench, a judge is entitled to an annuity for life equal to two-thirds of salary, based on his or her last year serving as a judge.<sup>93</sup> Based on the current judicial salary, the retirement benefit is approximately \$205,733 for a *puisne* judge. A judge who becomes disabled is entitled to the full annuity for life, with no minimum service requirement.<sup>94</sup>

85. The total annuity is valued at 36.5% of the judicial salary, with the retirement benefit being 32% and the disability benefit 4.5%.<sup>95</sup> Taking into account the total value of

---

<sup>91</sup> *Ibid*

<sup>92</sup> Levitt Commission Report, *supra*, para 42, p 15, **Joint Book of Documents, Tab 31**. See also: McLennan Commission Report, *supra*, pp 5, 15, 57, **Government’s Book of Documents, Tab 29**; Drouin Commission Report, *supra*, p.42, **Government’s Book of Documents, Tab 28**

<sup>93</sup> *Judges Act, supra*, s 42(1), **Joint Book of Documents, Tab 24**; Summary of Judges’ and Prothonotaries’ Compensation as of April 1, 2015, **Joint Book of Documents, Tab 34**; Pannu Report, *ibid*, p 11

<sup>94</sup> *Judges Act, ibid*, s 42(1)(c); Summary of Judges’ and Prothonotaries’ Compensation as of April 1, 2015, *ibid*; Pannu Report, *ibid*, p 11

<sup>95</sup> Pannu Report, *ibid*, p 13

the judicial annuity, the 2014 judicial salary increases from \$300,800 to \$410,592.<sup>96</sup> In comparison, that salary level exceeds the net income of at least 85% of self-employed lawyers nationally, who would still need to save for retirement and pay for disability insurance out of that income.<sup>97</sup>

86. In its Report, the Levitt Commission addressed the difference between the principal parties' valuations of the judicial annuity, noting that such valuations are "extremely sensitive to the interest-rate assumptions used". In fact, the Commission's expert pointed out that if a rate that is more reflective of current market expectations for interest rates is used, the valuation of the judicial annuity would yield a much higher percentage than either of the principal parties had used – in the 40-50% range.<sup>98</sup> The obvious impact is that the prospect of a judicial annuity would be even more attractive to a private sector lawyer.

87. For this process, the Government's expert has examined an alternative way to value the retirement benefit, namely to determine the cost to a self-employed lawyer to fund a similar benefit. Based on the analysis, he determined that self-employed lawyers would have to contribute 43.7% of their annual income to fund a retirement benefit equivalent to the judicial annuity.<sup>99</sup>

88. Using this approach provides another perspective of comparison between a judge's salary and a private sector lawyer's. Reducing the latter's annual net income by 43.7%, the amount needed to fund a pension equivalent to a judge's, the 2014 75<sup>th</sup> percentile income is reduced to approximately \$147,147, which is approximately 51% less than a 2014 judicial salary.<sup>100</sup>

---

<sup>96</sup> *Ibid*

<sup>97</sup> *Ibid*, p 15

<sup>98</sup> Levitt Commission Report, *supra*, para 41, p 14, **Joint Book of Documents, Tab 31**

<sup>99</sup> Pannu Report, *supra*, pp 13-14, **Government's Book of Documents, Tab 10**

<sup>100</sup> *Ibid*, p 14

### c. Supernumerary Status – An Important Incentive

89. Consideration of the third criterion – the necessity to attract outstanding candidates – must also factor in the option to elect supernumerary status.<sup>101</sup> Although to date no Commission has attributed a monetary value to the ability to elect supernumerary status, its value to prospective judicial candidates is significant. Indeed, the Supreme Court recognized that it is an “undeniable economic benefit” that is taken into account “by candidates for the office of judge in planning their economic and financial affairs”.<sup>102</sup>

90. While this is an option that would be attractive to all judicial appointees, it is particularly significant for a private sector lawyer. Increasingly, large private sector law firms are requiring retirement as equity partners at age 65.<sup>103</sup> In contrast, the mandatory retirement age for a judge is 75. Based on CFJA data, 48% of judges retired at 75 (excluding death and disability) and the average age of retirement since 1997 has been 71.5.<sup>104</sup>

91. A judge can elect to become supernumerary if (1) he or she is eligible to retire with a full annuity; or (2) has served 10 years and attained the age of 70.<sup>105</sup> A supernumerary judge remains a member of the court and receives a full judicial salary, but is generally only expected to carry a 50% workload.<sup>106</sup> As such, they have the flexibility to ramp down as health and energy decline or other interests take precedence, but continue to maintain a full judicial salary until retirement.

92. In addition to the significant economic and lifestyle advantages supernumerary status offers, supernumeraries can continue to enjoy the personal satisfaction of doing fulfilling work and contributing to the operations of their court. The relative attractiveness

---

<sup>101</sup> McLennan Commission Report, *supra*, p 5, **Joint Book of Documents, Tab 29**

<sup>102</sup> *Mackin v New Brunswick (Minister of Finance)*; *Rice v New Brunswick*, [2002] 1 SCR 405, para 67, **Joint Book of Documents, Tab 27**

<sup>103</sup> Kevin Marron, “Just saying ‘no’ to retirement”, Canadian Lawyer Magazine, April 1, 2011, online: <http://www.canadianlawyermag.com/3673/Just-saying-no-to-retirement.html>, **Government’s Book of Documents, Tab 27**

<sup>104</sup> Data derived from the Judicial Personnel System database of the Office of the Commissioner for Federal Judicial Affairs, current as of September 23, 2015.

<sup>105</sup> *Judges Act*, *supra*, s. 28, **Joint Book of Documents, Tab 24**

<sup>106</sup> Pannu Report, *supra*, p 16, **Government’s Book of Documents, Tab 10**

of this benefit is supported by the fact that approximately 89% of judges entitled to elect supernumerary status do so.<sup>107</sup>

93. The prospect of maintaining a high salary to age 75 is a significant inducement for attracting outstanding candidates from the private sector to the bench. Of particular relevance is the fact that, on average, as illustrated by the chart following paragraph 71, private sector income levels decrease precipitously in a lawyer's early to mid-50s.<sup>108</sup> On the other hand, judges' salaries increase year by year, and if they elect supernumerary status, as noted above a full salary can be maintained with a significantly reduced workload for many years past this point.

**d. Other Generous Benefits Afforded to the Judiciary**

94. Another aspect to consider in comparing the compensation of self-employed lawyers and the judiciary is the generous benefits package provided to the judiciary. Most self-employed lawyers would have to provide their own individual extended health and dental benefits and purchase life insurance.<sup>109</sup> The judges' premiums, on the other hand, are paid for by the Government.<sup>110</sup>

95. Members of the judiciary are entitled to an extensive benefits plan which includes:<sup>111</sup>

- a. basic life insurance, supplementary life insurance, post-retirement insurance and dependents' life insurance;<sup>112</sup>
- b. accidental death and dismemberment insurance;<sup>113</sup>

---

<sup>107</sup> Data derived from the Judicial Personnel System database of the Office of the Commissioner for Federal Judicial Affairs, *supra*, current as of September 23, 2015

<sup>108</sup> Statistics derived from CRA Data, *supra*, Second Release, November 24, 2015, **Joint Book of Documents, Tab 1**

<sup>109</sup> Pannu Report, *supra*, p 16, **Government's Book of Documents, Tab 10**

<sup>110</sup> Summary of Judges' and Prothonotaries' Compensation as of April 1, 2015, *supra*, **Joint Book of Documents, Tab 34**

<sup>111</sup> *Ibid*

<sup>112</sup> *Judges Act, supra*, s 41.2(1), **Joint Book of Documents, Tab 24**

<sup>113</sup> *Ibid*

- c. health care plan;<sup>114</sup> and
- d. dental care plan.<sup>115</sup>

**(iii) Pre-Appointment Income Study**

96. The Government renews its request that a study be conducted during this Commission process.<sup>116</sup> With the benefit of the parties' principal submissions and a hearing, the Commission will be well-placed to undertake the study and request the requisite extension of time for providing its report to the Minister of Justice.

97. The Government maintains that the benefits of such a study are clear given the Commission's broad task to inquire into the adequacy of judicial compensation. The income levels of those actually appointed to the bench will supplement the evidentiary record before this Commission and will serve to validate the assumptions made by the principal parties about the income level required to attract outstanding candidates based on the CRA data.

**4. Benchmarking to DM-3 not Objective, Relevant or Justified**

98. The Government's position is that an exclusive focus on the DM-3 group is not an objective, relevant and justified consideration under s. 26(1.1)(d) of the *Judges Act*. Rather, a more objective and justified approach would be to consider trends in public sector compensation generally. This approach would allow the Commission to ensure that judicial compensation trends are relative to what other individuals of outstanding character and ability are paid in the public sector without establishing a formulaic link.

---

<sup>114</sup> *Ibid*, s 41.3(1)

<sup>115</sup> *Ibid*

<sup>116</sup> Submissions of the Government of Canada on the Proposal for a Pre-Appointment Income Study, January 19, 2016, **Government's Book of Documents, Tab 28**

99. Formulaic benchmarking minimizes the purpose and import of the entire inquiry process.<sup>117</sup> It neither fulfils the constitutional requirement of the Commission process as established in *PEI Reference* nor accords with legislative intent.

100. The McLennan Commission recognized the inherent dangers of simply linking the judicial salary to another group:

We were, and are, of the view that it **would be counter-productive to fix judicial salaries as having a pre-determined relationship to other salaries**, whether those of senior civil servants or senior legal practitioners. Those considerations represent dynamics at work in our society and they change constantly. We believe the proper approach was to consider these and other factors in light of the most current information. Were it otherwise, there would be no need to address this subject every four years, as contemplated by the *Judges Act*.<sup>118</sup> (emphasis added)

Ultimately, the Commission determined that there was no “mandate in the statute or in logic to maintain” rough equivalence with any comparator.<sup>119</sup>

101. During the next Quadrennial Commission review process, the Block Commission did not take that approach. Instead, the Commission was focussed on identifying a “single consistent benchmark” within the public sector against which the judicial salary could be compared.<sup>120</sup> Indeed, the Commission’s salary recommendation was entirely founded on “what compensation increase is required, then, to bring the salary of *puisne* judges to rough

---

<sup>117</sup> McLennan Commission Report, *supra*, p 91, **Joint Book of Documents, Tab 29**; Drouin Commission Report, *supra*, pp 13, 22, **Joint Book of Documents, Tab 28**; Report and Recommendations of the 1995 Commission on Judges' Salaries and Benefits, September 30, 1996 [Scott Commission Report], p 14, **Government's Book of Documents, Tab 29**; Report of the Special Advisory Committee on Judicial Compensation and Related Benefits, September 13, 1974 [Hall Commission Report], p 4, **Government's Book of Documents, Tab 30**; Report and Recommendations of the Advisory Committee on Judicial Compensation and Related Benefits, November 22, 1978 [Dorfman Commission Report], p 6, **Government's Book of Documents, Tab 31**; Report and Recommendations of the 1986 Commission on Judges' Salaries and Benefits, February 27, 1987 [Guthrie Commission Report], p 8, **Government's Book of Documents, Tab 32**

<sup>118</sup> McLennan Commission Report, *supra*, p 8, **Joint Book of Documents, Tab 29**. See also: Drouin Commission Report, *supra*, p 22, **Joint Book of Documents, Tab 28**; Senate Committee September 30, 1998, *supra*, pp 32:16- 32:17, **Government's Book of Documents, Tab 6**

<sup>119</sup> McLennan Commission Report, *ibid*, p 49

<sup>120</sup> Block Commission Report, *supra*, para 103, p 32, **Joint Book of Documents, Tab 30**

equivalence with the DM-3 salary range mid-point plus one-half of maximum performance pay?”<sup>121</sup>

102. The Levitt Commission also focussed exclusively on the DM-3 group finding that while it was not “ideal”, it was the “best choice”.<sup>122</sup> It rationalized the benchmark on the basis that judicial candidates needed “certainty” about future remuneration.<sup>123</sup>

103. A singular focus on the DM-3 group is misplaced for the following reasons: (1) the Commission’s statutory mandate; (2) comparability issues; and (3) the increased availability and reliability of evidence related to the salary levels of lawyers eligible for judicial appointment.

**(a) Formulaic Linkage Inconsistent with Commission Mandate**

104. Had Parliament intended that Commissions simply measure the adequacy of judicial salaries against a single, formulaic benchmark it would have specifically provided for that in the *Judges Act*. Instead, as previously discussed, it prescribed certain criteria to guide Commissions in their inquiry.

105. As explained in paragraphs 13-19, a deliberate decision was made not to specifically mandate Commission consideration of public service remuneration in the 1998 legislative amendments. That decision was informed by the 1995 Triennial Commission chair’s evidence regarding concerns about the benchmarking or linking judicial salaries to public servants’ salaries.<sup>124</sup>

106. Before the 1998 amendments, pursuant to their Terms of Reference, past Commissions were specifically mandated to consider comparative factors, such as the

---

<sup>121</sup> *Ibid*, para 120, p 38

<sup>122</sup> Levitt Commission Report, *supra*, para 27, p 9, **Joint Book of Documents, Tab 31**

<sup>123</sup> *Ibid*, para 30, p 11

<sup>124</sup> Senate Committee September 30, 1998, *supra*, pp 32:16-32:17, **Government’s Book of Documents, Tab 6**

relative compensation of judges in other jurisdictions, persons paid out of public funds and Canadians generally.<sup>125</sup>

107. Rather than continuing that approach, Parliament included a “catch-all” or residual provision which contemplates the consideration of other objective, relevant and justified criteria, in addition to the three enumerated ones:

If we are to allow the commission the capacity to do its work, then it must be able to consider other criteria, but in an objective manner. In other words, it must consider criteria that are justified, ones that are measured on objective grounds, that is why the word “objective” is so important.<sup>126</sup>

108. In order for DM-3 remuneration to be a proper consideration under s. 26(1.1)(d) of the *Judges Act* it must be objective, relevant and justified. In present day circumstances, comparing judicial salaries to that of DM-3s does not satisfy that threshold. There is no principled basis upon which to continue this formulaic benchmark.

#### (b) Comparability Issues

109. The existence of a “historic relationship” between judicial and deputy minister salaries does not support its continuation. Benchmarks must be objective, relevant and justified. As the Scott Commission noted, “a strong case can be made for the proposition that the comparison between DM-3’s and judges’ compensation is **both imprecise and inappropriate**” (emphasis added).<sup>127</sup>

110. The Courtois Commission justified the DM-3 salary as a comparator on the basis that it “reflects what the market place expects to pay individuals of outstanding character and ability, which are attributes shared by deputy ministers and judges”.<sup>128</sup>

---

<sup>125</sup> Scott Commission Report, *supra*, Appendix A – Terms of Reference, p 32, **Government’s Book of Documents, Tab 29**; Report and Recommendations of the 1992 Commission on Judges’ Salaries and Benefits, March 31, 1993 [Crawford Commission Report], Terms of Reference, p 1, **Government’s Book of Documents, Tab 33**.

<sup>126</sup> Senate Committee October 22, 1998, *supra*, p 37:21, **Government’s Book of Documents, Tab 8**

<sup>127</sup> Scott Commission Report, *supra*, p 14, **Government’s Book of Documents, Tab 29**

<sup>128</sup> Report and Recommendations of the 1989 Commission on Judges’ Salaries and Benefits, March 5, 1989 [Courtois Commission Report], p 10, **Government’s Book of Documents, Tab 34**



111. While this rationale for relying on the mid-point of the DM-3 salary has been repeated and relied on by other Commissions, it has consistently been made with the caveat that a comparative analysis of the two positions is not appropriate.<sup>129</sup> Put another way, Commissions have determined the appropriateness of benchmarking or seeking rough equivalence with DM-3s based purely on “salary level”. They have not examined or evaluated commonly accepted compensable factors such as skill, effort, responsibility, working conditions or security of tenure in order to determine whether the DM-3 group is indeed an appropriate peer group.<sup>130</sup>

112. The Levitt Commission criticized the Government for “submissions that focussed on job content” concluding that it was not relevant to “what the market place expects to pay”.<sup>131</sup> With respect, the Government disagrees. That very question invites a comparative exercise or analysis of the commonalities in positions to determine whether benchmarking is in fact substantiated.

113. Jobs that are salary-benchmarked to other jobs necessarily have common tasks, skills, responsibilities and working conditions.<sup>132</sup> For retention and recruitment purposes, jobs are commonly benchmarked to similar positions with equivalent responsibilities in the Canadian labour market.<sup>133</sup> Stating that judicial salaries should be the same as those paid to DM-3s because they share the attributes of outstanding character and ability fails to give sufficient consideration to all the relevant factors.

---

<sup>129</sup> Crawford Commission Report, *supra*, p 11, **Government’s Book of Documents, Tab 33**; Drouin Commission Report, *supra*, p 31, **Joint Book of Documents, Tab 28**; Block Commission Report, *supra*, para 103, p 32, **Joint Book of Documents, Tab 30**; Levitt Commission Report, *supra*, para 26, pp 8-9, **Joint Book of Documents, Tab 31**

<sup>130</sup> The McLennan Commission was not prepared to consider judges from other jurisdictions as appropriate comparators on the basis that there was no information about working conditions, annuities and security of tenure that would permit meaningful comparisons. McLennan Commission Report, *supra*, p 12, **Joint Book of Documents, Tab 29**

<sup>131</sup> Levitt Commission Report, *supra*, para 26, pp 8-9, **Joint Book of Documents, Tab 31**

<sup>132</sup> Kent Romanoff et al, “Pay Equity: Internal and External Considerations”, Compensation and Benefits Review, 18(6):17-25, November 1986, **Government’s Book of Documents, Tab 35**; Nan Weiner and Morley Gunderson, *Pay Equity: Issues, Options and Experiences* (Toronto, Ontario: Butterworths, 1990), pp 17-33, **Government’s Book of Documents, Tab 36**

<sup>133</sup> Kent Romanoff et al, “Pay Equity: Internal and External Considerations”, *ibid*; Frederick D Lipman and Steven E Hall, *Executive Compensation Best Practices*, *supra*, pp 25-31, **Government’s Book of Documents, Tab 23**

114. Further, the Levitt Commission’s failure to consider this approach, which is grounded in accepted compensation benchmarking practice, is inconsistent with the approach it took on the issue of including performance pay as part of DM-3 cash compensation. On that issue, the Commission determined that not including those amounts would be contrary to “customary compensation practice”.<sup>134</sup>

115. There is nothing untoward or demeaning about the requirement to undertake a comparative analysis to support a continued benchmarking or linkage to the mid-point of the DM-3 group. Such an analysis will not undermine “the constitutional status and role of the judiciary and also the importance of its appearance and image to the effective performance of that role”.<sup>135</sup> Rather, it will confirm whether the mid-point of the DM-3 salary is an objective, justified and relevant consideration under s. 26(1.1)(d) of the *Judges Act*.

116. The formulaic linkage to the DM-3 group is not appropriate based on the following comparability issues: (i) the small size of the DM-3 group, (ii) differences in tenure of the respective positions, and (iii) differences in considerations informing DM-3 compensation. Indeed, all these factors made it difficult for the Block and Levitt Commissions to determine an objective reference point in the DM-3 salary range against which to measure judicial salaries.

(i) *Small Sample Size*

117. At the present time, there are only eight DM-3s compared to 1,165 judges. The McLennan Commission did not restrict its inquiry to DM-3s based, in part, on this factor – “a very small sample upon which to base the remuneration of more than 1,100 federally appointed judges”.<sup>136</sup>

---

<sup>134</sup> Levitt Commission Report, *supra*, para 25, p 8, **Joint Book of Documents, Tab 31**

<sup>135</sup> *Ibid*, para 26, p 9

<sup>136</sup> McLennan Commission Report, *supra*, p 28, **Joint Book of Documents, Tab 29**

118. In fact, the size of the DM-3 group fluctuates. In the past 17 years, there have been anywhere from eight to thirteen individuals at the DM-3 level at any given time.<sup>137</sup> This fluctuation is due to the fact that the deputy minister rank is not tied to the position, but rather the individual. That is, one individual in a position (for example the Deputy Minister of Finance) could be appointed at the DM-3 level and the next day a new appointee could be appointed at a different level.

*(ii) No Security of Tenure*

119. The fact that deputy ministers do not have the security of tenure accorded to judges is also a relevant consideration.<sup>138</sup> Deputy ministers serve at the pleasure of the Governor in Council and, as such, are demonstrably at risk. On the other hand, pursuant to s. 99 of the *Constitution Act, 1867*, judges can only be removed from office on address of the Senate and the House of Commons.

120. Among the 35 individuals who served as a DM-3 and whose tenure as a DM-3 or higher ended between 2000 and 2015, the median tenure at the rank of DM-3 or higher was 4.4 years. Since 2000 the longest tenure was 12 years, and among active senior deputies the maximum tenure to date at the DM-3/4 level is 8.7 years.<sup>139</sup>

121. In contrast, the 710 judges who retired between 2000 and 2015 had spent a median of 20.8 years as a judge, with the maximum tenure of 37.5 years. Indeed, only 10% retired with less than 12 years of service, which was the maximum DM-3 tenure.<sup>140</sup>

---

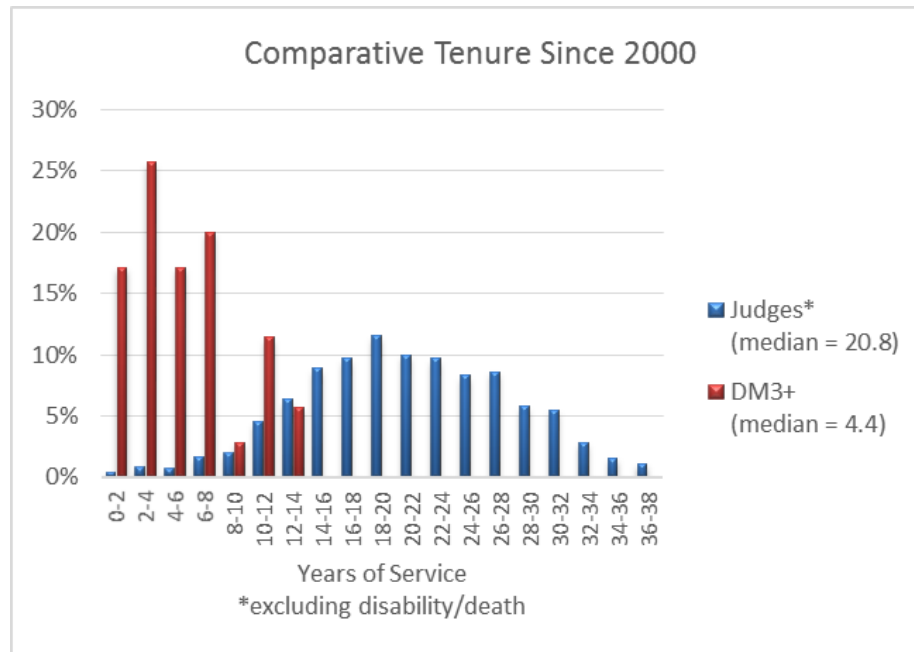
<sup>137</sup> At the time of the last Quadrennial Commission process in 2011, there were 13 DM-3s, Levitt Commission Report, *supra*, footnote 26, p 9, **Joint Book of Documents, Tab 31**. In 2003 there were 9 DM-3s, McLennan Commission Report, *supra*, p 24, **Joint Book of Documents, Tab 29**. In 1999 there were 10 DM-3s and in 2000 13 DM-3s, Drouin Commission Report, *supra*, p 23, **Joint Book of Documents, Tab 28**

<sup>138</sup> McLennan Commission Report, *supra*, p 28, **Joint Book of Documents, Tab 29**

<sup>139</sup> Data derived from Privy Council Office, "DM3-4 Appointment History Export (names and departments removed)", August 15, 2015, **Joint Book of Documents, Tab 17**

<sup>140</sup> Data derived from the Judicial Personnel System database of the Office of the Commissioner for Federal Judicial Affairs, *supra*, current as of September 23, 2015

122. The chart below illustrates the significant differences in tenure between the DM-3 group and the judiciary.



**(iii) Significant Differences in Compensation Measures**

123. Differences in compensation measures further militate against formulaic benchmarking for two reasons.

124. First, an individual who occupies a DM position is paid at a certain level based on a combination of the individual's skills and experience and the duties to be performed. The DM salary plan is more akin to appointment to level, rather than position. Because DM compensation is so highly individualized, a newly appointed deputy minister could be paid less or more than the individual who occupied the position immediately before, depending on his/her seniority and skills, and the complexity of the Government's agenda. This system of determining compensation individually and based on personal achievements is not appropriate in the context of judicial compensation.

125. Second, since 1998, deputy ministers have been eligible to receive "performance pay" measured against agreed targets and the achievement of business plans.

126. The McLennan Commission recognized that performance pay and “the achievement of defined goals, are concepts that have no relationship whatsoever to the judicial function”.<sup>141</sup> Further, the Commission questioned the continued usefulness of the DM-3 group as a comparator based on the “unfortunate disconnect” due to the “structure to compensate DM-3s”.<sup>142</sup>

127. Performance pay has two elements – a potential variable amount (at-risk pay) which is re-assessed each year and a potential bonus for performance that surpasses expectations.<sup>143</sup> At-risk pay is measured against individual commitments which are composed of policy and program results in support of the Government’s agenda, management results, leadership results and corporate results in support of a priority identified by the Clerk of the Privy Council.<sup>144</sup>

128. Based on the applicable rating distribution, the majority of DM-3s receive performance ratings of “succeeded” or “succeeded+”. The rating of “surpassed expectations”, which includes a bonus, is reserved for not more than 20% of the group.<sup>145</sup> In the 2014-15 fiscal year, of the ten DM-3s, only two were rated at the “surpassed expectations” level, one received no performance pay at all and the other seven received at-risk pay based on either a “succeeded” or “succeeded+” rating.<sup>146</sup>

129. It is critical to understand that at-risk pay is determined according to the performance assessment of the individuals in those positions in a given year. From year to year, the same person’s cash compensation will fluctuate.

130. The fact that a significant portion of a DM-3s potential overall cash compensation (up to 33% for 2014-15)<sup>147</sup> is predicated on the achievement of individual and corporate

---

<sup>141</sup> McLennan Commission Report, *supra*, p 24, **Joint Book of Documents, Tab 29**. See also: McLennan Commission Report, *ibid*, pp 26, 27

<sup>142</sup> *Ibid*, p 91

<sup>143</sup> Privy Council Office, “Performance Management Program Guidelines for Deputy Ministers, Associate Deputy Ministers and Individuals Paid in the GX Salary Range”, updated July 2015, p 1, **Joint Book of Documents, Tab 13**

<sup>144</sup> *Ibid*, pp 3-4

<sup>145</sup> *Ibid*, p 7

<sup>146</sup> Privy Council Office, “Remuneration of DM 1-3s – Fiscal 2011-2014”, Distribution of at-risk-pay for DM-3s, 2014-15, **Joint Book of Documents, Tab 11**

<sup>147</sup> *Ibid*

objectives has been overlooked and underestimated by prior Commissions in assessing the comparability of DM-3 and judicial salaries. With the introduction of the new compensation plan for deputy ministers in 1998, the validity of any continued benchmarking became even more questionable.

131. Despite the very different considerations at play in deciding to change the DM group's compensation structure, past Commissions have considered performance pay on the basis that all compensation elements must be considered. In doing so, they have not recognized the variability, as well as the very personal nature of those "bonuses" that are contingent on individual performance.

132. The reality is that these "bonuses" are not transferrable to the judicial compensation context. The Levitt Commission recognized the difficulty in factoring the quantum of bonus or other forms of variable pay into the analysis. The Commission's answer was to translate "it into the judicial context through the use of judgment".<sup>148</sup>

133. Based on the small size of the DM-3 group, the rate of turnover and fluctuations in performance pay year to year, this proved to be a difficult task. Simply using the average would not yield a "static" reference point. As a consequence, the Block and Levitt Commissions determined that the best approach to ensure salary relativity was to use the mid-point of the DM-3 salary range and one-half of the maximum performance pay for which a DM-3 is eligible.<sup>149</sup>

134. With respect, that approach is arbitrary and further underscores the inappropriateness of trying to directly benchmark judicial salaries to the DM-3 group. The same factors – small size, short tenures and different compensation plans – which made the choice of a benchmarking point difficult - are also the factors which discredit comparability in the first place.

---

<sup>148</sup> Levitt Commission Report, *supra*, para 29, p 10, **Joint Book of Documents, Tab 31**

<sup>149</sup> Block Commission Report, *supra*, para 106, p 33, **Joint Book of Documents, Tab 30**; Levitt Commission Report, *ibid*, para 29, p 10

**(c) Reliable Evidence Relating to Pre-appointment Salaries**

135. The growing availability of reliable evidence regarding the remuneration levels of members of the senior bar from both private and public sectors also militates against relying on the DM-3 group as a comparator. In past processes, the lack of this type of evidence has frustrated the inquiry and resulted in undue weight and relevance being placed on the DM-3 salary.

136. While cognizant that lawyers' incomes are critical to the inquiry based on the binding statutory criteria, past Quadrennial Commissions expressed concern and frustration with "the lack of available and reliable data on comparators other than the remuneration of public servants at the deputy minister level".<sup>150</sup>

137. This lack of reliable evidence has been remedied to a degree through the collaboration of the principal parties and the CRA in presenting data on self-employed lawyers' incomes in the last process and the current one.

138. Another positive step in this direction, as already advocated by the Government, would be a pre-appointment income study which would provide reliable and accurate evidence about the actual incomes of lawyers prior to judicial appointment. In addition to validating the reasonableness of the assumptions made about the level required to attract outstanding candidates from the private sector, it would also provide information about the income levels of public sector lawyers and other judicial candidates.

**(d) Consideration of General Trends More Appropriate and Relevant**

139. Rather than seeking to establish a formulaic linkage with the mid-point of the DM-3 group, a more objective and justified approach would be to consider senior public servants' salaries generally. Looking at trends would be useful in demonstrating that judicial salaries retain a "relationship" to compensation levels in senior level government

---

<sup>150</sup> McLennan Commission Report, *supra*, p 41, **Joint Book of Documents, Tab 29**. See also: Drouin Commission Report, *supra*, p 37, **Joint Book of Documents, Tab 28**; Block Commission Report, *supra*, para 112, p 35, **Joint Book of Documents, Tab 30**

positions. This approach would be responsive to the criterion of “other objective criteria that the Commission considers relevant”.

140. This approach was used by the McLennan Commission. The Commission questioned “the wisdom of confining the examination to the DM-3 level”<sup>151</sup> and felt it was incumbent on them to “look at a broader range of the most senior public servants whose qualities, character and abilities might be said to be similar to those of judges”.<sup>152</sup> Consequently, the Commission considered the entire group of deputy ministers and other classes of Governor-in-Council (GIC) appointees.<sup>153</sup>

141. The Drouin Commission also noted that “remuneration levels within the senior ranks of the Government” are relevant because judicial salaries should not be permitted “to lag materially behind”.<sup>154</sup>

142. An examination of the salary levels of the broader DM community and other GIC appointees demonstrates that the current judicial salary of \$308,600 is higher than the salary mid-point (without at-risk pay) for all current positions within the DM group, the GC group and the GCQ group.

143. As of April 2015, the salary midpoints for the DM group are: DM-1 - \$209,550; DM-2 - \$240,800; DM-3- \$269,750 and DM-4-\$302,050.<sup>155</sup> The chart below illustrates the trends in DM salaries compared to the judicial salary over the last 10 years.<sup>156</sup> The judicial salary has been consistently well above the mid-point salaries of the DM-1-3 groups and in the past two years outpaced the DM-4 salary.

---

<sup>151</sup> McLennan Commission Report, *ibid*, p 28

<sup>152</sup> *Ibid*, p 30

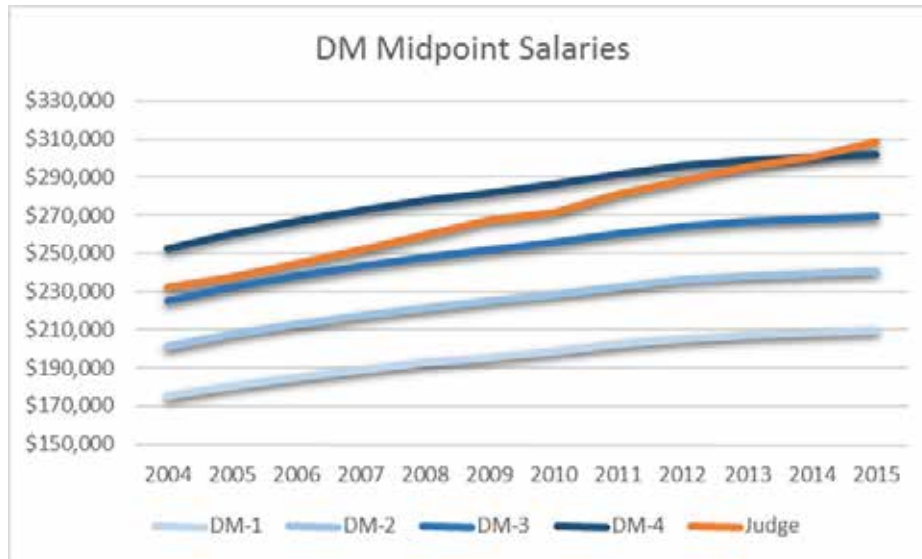
<sup>153</sup> *Ibid*, pp 28-31

<sup>154</sup> Drouin Commission Report, *supra*, p 32, **Joint Book of Documents, Tab 28**

<sup>155</sup> Privy Council Office, “Income Information Regarding Deputy Ministers -- Salary Ranges, Salary Mid-Point and Average Salary, 2004-2015”, **Joint Book of Documents, Tab 12**

<sup>156</sup> *Ibid*





144. The GC and GCQ groups are smaller in number than the DM group. At present there are three GC-9 positions.<sup>157</sup> The present midpoint salary of a GC-9 is \$246,050.<sup>158</sup> There are presently only two GC-10s.<sup>159</sup> The midpoint salary is currently \$282,800.<sup>160</sup>

145. There are four GCQ-9s at present.<sup>161</sup> The current midpoint salary is \$288,700.<sup>162</sup> There have been no appointments to the GCQ-10 level since the creation of the current classification system in 2002.

146. As illustrated by the chart below, the judicial salary has been consistently higher than that of the GC-9 group for over ten years, kept pace with that of the GC-10s and GCQ-9s and then, in the last four years, has outpaced those salaries.

<sup>157</sup> (1) Chief Public Health Officer, Public Health Agency of Canada; (2) President, Natural Sciences and Engineering Research Council; and (3) President, Social Sciences and Humanities Research Council: see: Privy Council Office, "GC and GCQ Income Information Regarding as of April 1, 2015", p 1, **Joint Book of Documents, Tab 15**

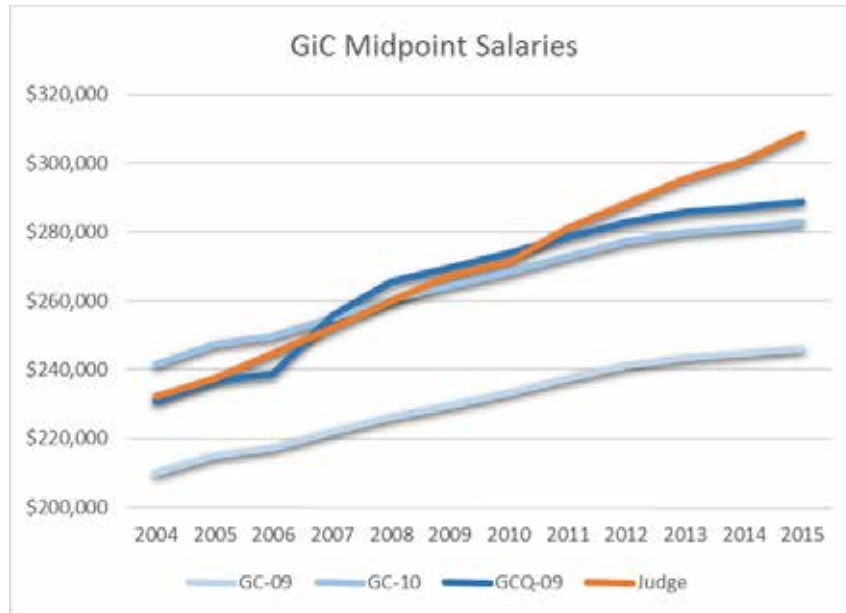
<sup>158</sup> *Ibid*, p 2

<sup>159</sup> The Presidents of the Canadian Institutes of Health Research and the National Research Council of Canada, *ibid*, p 1

<sup>160</sup> *Ibid*, p 2

<sup>161</sup> (1) Chairperson and Member, Canadian Radio-television and Telecommunications Commission; (2) Chairman and Member, National Energy Board; (3) Commissioner of Competition; and (4) Superintendent, Office of the Superintendent of Financial Institutions, *ibid*, p 1

<sup>162</sup> *Ibid*, p 3



147. As previously stated, the Government’s position is that it is inappropriate to factor in performance pay due to the fact that it must be earned each year, a percentage of appointees will not receive it and the individuals do not have security of tenure like judges. While individuals in the GC group are eligible to receive performance pay, those in the GCQ group are not.<sup>163</sup>

148. Even if at-risk pay is factored in based on the practice used by past Commissions (midpoint salary and one-half of maximum performance pay), the judicial salary compares very favourably. Indeed, at the present time, it is higher than that of DM-1s and DM-2s and is only \$5,659 or less than 2% lower than the current DM-3 level.

149. In terms of the DM-4 group it is less than 15% lower, which is not unreasonable given that the Block Commission recognized that this level is “reserved for exceptional circumstances and positions of particularly large scope”.<sup>164</sup> At present, there are four individuals appointed to the DM-4 level, including the Clerk of the Privy Council and the Secretary of the Treasury Board.

<sup>163</sup> *Ibid*, p 4

<sup>164</sup> Block Commission Report, *supra*, para 105, p 33, **Joint Book of Documents, Tab 30**. Also see: Chart prepared by the Department of Justice, “Midpoint + Maximum Performance Pay/2 of DMs, GCs and Judges”, **Government’s Book of Documents, Tab 37**

150. The judicial salary is also significantly higher than the GC-9 salary midpoint with one-half maximum performance pay and is only approximately 4% lower than that of the GC-10 salary midpoint with one-half maximum performance pay.<sup>165</sup>

## 5. Conclusion

151. Consideration of the prescribed statutory criteria demonstrates that the current level of judicial compensation is entirely adequate to maintain judicial independence. The salaries of judges need only be increased annually to allow for a cost of living adjustment until the next review process.

### B. CPI – More Appropriate Statutory Indexation Measure

152. The Government proposes that judicial salaries be adjusted annually based on changes to CPI, rather than the Industrial Aggregate Index (IAI). CPI is a more modern and relevant measure of changes to the cost of living that will continue to ensure that judicial salaries are protected from erosion through inflation.

153. When statutory indexation of judicial salaries was first introduced in 1981 it was intended to minimize the erosion of judicial salaries through Parliamentary inaction. The rationale for introducing indexation was to “enhance the independence of the judiciary by removing judicial compensation from the give-and-take of the political process to the extent consistent with the principles of parliamentary democracy and ministerial responsibility for the expenditure of public funds”.<sup>166</sup>

154. IAI was chosen as the indexation factor because at the time, IAI applied to Members of Parliament and it was thought that applying it to judges would avoid further controversy.

---

<sup>165</sup> See chart prepared by the Department of Justice, “Midpoint + Maximum Performance Pay/2 of DMs, GCs and Judges”, *ibid*

<sup>166</sup> *Debates of the Senate*, 32<sup>nd</sup> Parl, 1<sup>st</sup> Sess, Vol II (March 11, 1981) at 1993, **Government’s Book of Documents, Tab 38**

In answer to a question in the House of Commons about “the possibility of taking a look at a more accurate index”, the Minister of Justice responded as follows:

That one we felt would be less controversial – the same one that existed for members of Parliament. I do not want this act to be subject to much controversy. I would rather go with a clause of indexation that is in existence so that we will not raise any new problems.<sup>167</sup>

155. The original purpose of statutory indexation was meant to “maintain the judges’ buying power”.<sup>168</sup> CPI is, however, better tailored to achieve this. It is more widely known and understood than IAI, and is a more direct means of ensuring that purchasing power remains stable. Indeed, IAI does not correlate directly to either buying power or inflation.<sup>169</sup>

156. IAI is based on average weekly wages and salaries of typical “wage-earners” with whom judges share few if any characteristics. The types of salaries included in the index are forestry, logging and support; utilities; construction; information and cultural industries; finance and insurance and educational services.<sup>170</sup>

157. In contrast, Statistics Canada defines CPI in the following terms:<sup>171</sup>

**1.1** The Canadian Consumer Price Index (CPI) is an indicator of the change in consumer prices. It measures price change by comparing through time the cost of a fixed-basket of consumer goods and services. Since the basket contains products of unchanging or equivalent quantity and quality, the index reflects only “pure” price change.

**1.3** The index is used for an assortment of different purposes by various users. One of its most important uses is by governments, businesses and individuals to adjust selected contractual or legislated payments in line with inflation. By linking

---

<sup>167</sup> *Proceedings of the House of Commons Standing Committee on Justice and Legal Affairs*, Issue No 13, 1<sup>st</sup> Sess, 32<sup>nd</sup> Parl, February 17, 1981, pp 13:27, **Government’s Book of Documents, Tab 39**

<sup>168</sup> *Proceedings of the House of Commons Standing Committee on Justice and Legal Affairs*, Issue No 14, 1<sup>st</sup> Sess, 32<sup>nd</sup> Parl, February 19, 1981, pp 14:29, **Government’s Book of Documents, Tab 40**

<sup>169</sup> The Industrial Aggregate Index is the annual rate of change in aggregate Average Weekly Earnings (AWE) established by Statistics Canada: Statistics Canada, “Earnings, average weekly, by industry, monthly (Canada)”, online: <http://www.statcan.gc.ca/tables-tableaux/sum-som/101/cst01/labor93a-eng.htm>, **Government’s Book of Documents, Tab 41**

<sup>170</sup> *Ibid*

<sup>171</sup> Statistics Canada, “The Canadian Consumer Price Index Reference Paper”, 62-553-X, December 19, 2014, online: <http://www.statcan.gc.ca/pub/62-553-x/62-553-x2014001-eng.pdf>, Chapter 1, **Government’s Book of Documents, Tab 42**

a stream of future payments to the CPI, it is possible to ensure the purchasing power represented by those payments is unaffected by the average change in consumer prices that may occur.

158. There is no constitutional requirement for statutory indexation to ensure judicial independence. Providing for automatic adjustment to judicial salaries based on the widely-accepted CPI, the same basis upon which judicial annuities are adjusted annually, will continue to ensure that judicial salaries are protected from falling below the “adequate minimum” which concerned the Supreme Court in *PEI Reference*.

159. Based on forecasts of CPI for the quadrennial period, and taking into account the statutory objective as outlined above, the net result would be a judicial salary that is adequate.<sup>172</sup>

160. Finally, it is important to note that while there has been a historic relationship between the CPI and the IAI, at any given time one may be higher than the other. However, as a matter of principle, if the primary purpose of indexation is to guard against inflation, CPI is more suited to this purpose. It is the Government’s position therefore that the *Judges Act* should be amended to replace the reference to the IAI with CPI.

### **C. Prothonotaries’ Compensation and Representational Funding**

#### **1. Total Compensation is Adequate**

161. The prothonotaries’ current compensation arrangements are fully adequate. Their current salary is \$234,500 – 76% of a Federal Court judge’s salary. Furthermore, they are now entitled to an annuity calculated in the same manner as the judicial annuity – that is two-thirds of their salary. The judicial annuity which is valued at 36.5% increases their

---

<sup>172</sup> The forecasted CPI rates for the next four years are as follows: 1.1%, 1.6%, 2.0% and 2.0%. Letter from the Assistant Deputy Minister of Finance dated February 24, 2016, Department of Finance Canada, *supra*, p 3, **Joint Book of Documents, Tab 9**. Using CPI as the statutory indexation rate there would be a net increase of 6.8% over the next 4 years. IAI forecasts over the next four years are: 1.8%, 2.2%, 2.4% and 2.6%: Letter from the Office of the Chief Actuary dated February 25, 2016, Office of the Superintendent of Financial Institutions, **Joint Book of Documents, Tab 7**. Applying IAI would result in a net increase of 9.3% over the next 4 years.

current net income to approximately \$320,093.<sup>173</sup> Given the recency of these significant changes to the prothonotaries' total compensation, the Government submits that there is no basis for further enhancements.

162. The Special Advisor on Federal Court Prothonotaries undertook a comprehensive review of prothonotaries' compensation in 2013.<sup>174</sup> The Government considered the Special Advisor's Report and issued a response in 2014.<sup>175</sup> Parliament then amended the *Judges Act*, significantly increasing the prothonotaries' compensation. Their salary was increased by 10% from \$198,700 to \$218,900 retroactive to April 1, 2012 and the prothonotaries became entitled to an annuity under the *Judges Act* effective January 1, 2015.<sup>176</sup>

163. The prothonotaries have given notice of their intention to raise the issues of salary, incidental allowance and supernumerary status during this review process. The onus is on the prothonotaries to establish that their current compensation is inadequate with reference to the statutorily prescribed criteria in the *Judges Act*.

164. Based on the significant change to their salary effective April 1, 2012 and an entitlement to a generous annuity under the *Judges Act* effective January 1, 2015, the Government submits that nothing more than indexation is required during this Commission process.

## 2. Full Funding of Costs Not Justified

165. The Commission declined to make a preliminary ruling with respect to the prothonotaries' request for full funding, but rather determined that the issue must be considered as part of its full inquiry into the adequacy of amounts payable under the *Judges Act*. The Government will provide a more complete response to this issue in reply to the prothonotaries' written submissions, but makes the following observations at this time.

---

<sup>173</sup> *Supra* footnote 18

<sup>174</sup> Report by the Special Advisor on Federal Court Prothonotaries' Compensation, July 31, 2013 [Cunningham Report], **Joint Book of Documents, Tab 33**

<sup>175</sup> Response of the Minister of Justice to the Report of the Special Advisor on Federal Court Prothonotaries' Compensation, February 27, 2014, **Joint Book of Documents, Tab 33(a)**

<sup>176</sup> *Judges Act, supra*, ss 2.1, 10.1, 42, **Joint Book of Documents, Tab 24**

166. First, it is incumbent on the prothonotaries to articulate how the current formula under the *Judges Act* – the reimbursement of two-thirds of their costs – fails to meet the prescribed statutory criteria for the determination of the adequacy of the amounts payable under the Act.

167. Second, the amounts payable to Military Judges as representational costs in past compensation processes are irrelevant to the Commission’s task. Distinct from s. 26.3 of the *Judges Act*, the regulatory provisions governing the Military Judges Compensation Committee were silent as to representational funding.<sup>177</sup>

168. Finally, the public policy rationale for not providing full funding to the judges is equally applicable to the prothonotaries.<sup>178</sup> Allowing full funding would afford the prothonotaries’ representatives a largely unchecked discretion in deciding what costs would be incurred for legal counsel, expert witnesses and disbursements. It is in the public interest that prothonotaries be responsible for the payment of one-third of their costs. Responsibility for some costs is a financial incentive to ensure that costs are incurred reasonably and prudently.

#### **D. Step-Down Amendments**

169. The Government further proposes that s. 43(2) of the *Judges Act* be amended to entitle the Honourable J.E. (Ted) Richard to an annuity based on his former position as Senior Judge of the Supreme Court of the Northwest Territories.

170. Chief justices who have served for at least five years are entitled to “step down” from their functions as chief justices and serve as *puisne* judges. If they elect to do so, they

---

<sup>177</sup> Past Military Judges Compensation Committees were established in accordance with s 165.22 of the *National Defence Act*, RSC 1985 c N-5, **Government’s Book of Documents, Tab 43** and ss 204.23-204.24 of the *Queen’s Regulations and Orders* (Chapter 204, PC 2000-1419), **Government’s Book of Documents, Tab 44**. The *National Defence Act* has since been amended and the process governing the Military Judges Compensation Committees is now provided for in ss 165.33-165.37, **Government’s Book of Documents, Tab 45**

<sup>178</sup> Response to the Report of the Judicial Compensation and Benefits Commission dated May 31, 2004 by the Minister of Justice, November 30, 2004, p 10, **Government’s Book of Documents, Tab 46**

receive a *puisne* judge's salary, but are entitled to an annuity on their retirement based on the salary of a chief justice.<sup>179</sup>

171. Following the 2011 Quadrennial Commission process, s. 43(2) was amended to extend this benefit to senior judges in the territories. Based on the coming into force date, however, Mr. Richard did not benefit from the legislative change. A minor statutory amendment would also address the situation of a chief justice or senior judge who "steps down" to a different court as a *puisne* judge and allow him/her to receive an annuity based on the salary of a chief justice.<sup>180</sup>

172. In the Government's view these proposed amendments are fair, appropriate and in the public interest.

## **E. Future Studies**

173. The Government proposes that the Commission undertake two studies within its four-year mandate for use during the next Quadrennial Commission process: (1) a pre-appointment income study; and (2) a quality of life study. This would ensure that the next Commission and the principal parties have this relevant evidence available to them from the outset of the process.

### **1. Pre-appointment Income Study**

174. As fully explained in its preliminary submissions requesting this Commission to undertake a pre-appointment income study, the Government's view is that the evidence gathered from such a study would be relevant and probative to the Commission's broad inquiry into the adequacy of judicial compensation. In that respect, the Government repeats and relies on those submissions.<sup>181</sup>

175. In addition to undertaking a pre-appointment income study to inform its inquiry during this process, the Government proposes that during its tenure, the Commission also

---

<sup>179</sup> *Judges Act, supra*, s 43(2), **Joint Book of Documents, Tab 24**

<sup>180</sup> At this time the Government is aware of two active judges who would benefit from this amendment.

<sup>181</sup> Submissions of the Government of Canada on the Proposal for a Pre-appointment Income Study, January 19, 2016, *supra*, **Government's Book of Documents, Tab 28**



undertake a study to be used for the next process. It is proposed that the study would cover the ten-year period 2007-2017 for use by the 2019 Quadrennial Commission.

176. This approach would address the concerns raised by this Commission about “the delays attendant upon such a process” and asking for an extension of time. Such a prospective approach was proposed by the McLennan Commission in its recommendations for improvements to the commission process.<sup>182</sup>

## 2. Quality of Life Study

177. The second proposed study is one that would examine the intangible aspects of judicial life that factor into applying for judicial appointment – a quality of life study. Successive Commissions have recognized that compensation is only one aspect that factors into making a decision to apply to the bench. Other considerations, such as the satisfaction from public service, the development of the law, a career change, a lifestyle change and collegial colleagues are a few examples of positive attributes.<sup>183</sup> Commissions have also considered the weighty judicial responsibilities and challenges faced by those accepting judicial appointments, such as the growth in litigation and intensified public scrutiny of judicial decisions.<sup>184</sup>

178. The judiciary’s views on what these non-monetary considerations are and what role they may play in informing a decision to apply are essential. Without them, Commissions are left to speculate. With a view to gaining a more complete picture of judicial life, this Commission could oversee a study to identify, describe and perhaps even quantify the intangible advantages and disadvantages associated with judicial office. The findings would be available for consideration by the Commission and the principal parties during the next Commission process.

---

<sup>182</sup> McLennan Commission Report, *supra*, pp 92-93, **Joint Book of Documents, Tab 29**

<sup>183</sup> Levitt Commission Report, *supra*, para 42, **Joint Book of Documents, Tab 31**. McLennan Commission Report, *ibid*, p 49

<sup>184</sup> Drouin Commission Report, *supra*, pp 10, 17, **Joint Book of Documents, Tab 28**; McLennan Commission Report, *ibid*, p 5

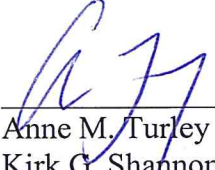
179. A similar type of study was commissioned in the United Kingdom in 2005 and 2010. The study examined the motivating factors for accepting judicial appointment, looking at why judges accepted judicial appointment, as well as why lawyers would accept an appointment.<sup>185</sup>

#### IV. CONCLUSION

180. Given the current salary levels and the significant value of the judicial annuity, the Government's position is that no changes to either judicial or prothonotary compensation are justified during the next four years. Annual indexation in accordance with the CPI will provide the required protection against erosion of judicial salaries due to the effect of inflation. Applying the forecasted CPI amounts to a 6.8% net increase over four years. On that basis, by 2019-20 the judicial salary would increase to \$329,500 and the prothonotaries' salaries would increase to \$250,400.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

Dated at Ottawa, Ontario, this <sup>29<sup>th</sup></sup> day of February, 2016

  
\_\_\_\_\_  
Anne M. Turley  
Kirk G. Shannon  
Department of Justice  
500-50 O'Connor Street  
Ottawa, ON K1A 0H8

Tel: 613-670-6291  
Fax: 613-954-1920

Counsel for the Government of Canada

---

<sup>185</sup> Block Commission Report, *supra*, para 69, **Joint Book of Documents, Tab 30**. Office of Manpower Economics, "Report on Surveys of Pre-appointment Earnings of Recently Appointed Judges and Earnings of Experienced Barristers", July, 2010, **Government's Book of Documents, Tab 47**; Office of Manpower Economics, "Survey of Pre-appointment Earnings of Recently Appointed Judges and Earnings of Experienced Barristers", June, 2005, **Government's Book of Documents, Tab 48**

# Judicial Compensation and Benefits Commission Hearings

English Transcript  
on Monday, May 10, 2021



77 King Street West, Suite 2020  
Toronto, Ontario M5K 1A1

[neesonsreporting.com](http://neesonsreporting.com) | 416.413.7755

1                   IN THE MATTER OF THE JUDGES ACT,  
2                                   R.S.C. 1985, c. J-1

3  
4  
5  
6  
7                   2021 JUDICIAL COMPENSATION  
8                                   AND BENEFITS COMMISSION  
9

10  
11  
12  
13  
14  
15                                   -----

16  
17     --- This is the transcript of a Public Hearing,  
18     taken by Neesons Reporting, via Zoom virtual  
19     platform, on the 10th day of May, 2021  
20     commencing at 9:30 a.m.

21  
22                                   -----

23     [All participants appearing virtually or  
24     telephonically.]

25     REPORTED BY: Helen Martineau, CSR

1 C O M M I S S I O N P A N E L:

2 Mtre Martine Turcotte Madam Chair

3  
4 Peter Griffin Commissioner

5  
6 Margaret Bloodworth Commissioner

7  
8

9 P A R T I C I P A N T S:

10 Pierre Bienvenu Canadian Superior  
11 & Azim Hussain Courts Judges  
12 & Jean-Simon Schoenholz Association  
13 & Chief Justice and the Canadian  
14 Martel D. Popescul Judicial Council  
15 (The Judiciary)

16  
17  
18 Andrew K. Lokan Federal Court  
19 Prothonotaries

20  
21  
22 Christopher Rupar Government of Canada  
23 & Kirk Shannon  
24 & Samar Musallam

25

|    |                       |                       |
|----|-----------------------|-----------------------|
| 1  | Chief Justice         | Court Martial Appeal  |
| 2  | Richard Bell          | Court                 |
| 3  | & Eugene Meehan, Q.C. |                       |
| 4  | & Cory Giordano       |                       |
| 5  |                       |                       |
| 6  |                       |                       |
| 7  | Justice Jacques       | Independent Appellate |
| 8  | Chamberland           | Judge                 |
| 9  |                       |                       |
| 10 |                       |                       |
| 11 | Brad Regehr           | Canadian Bar          |
| 12 | Indra Maharaj         | Association           |
| 13 |                       |                       |
| 14 |                       |                       |
| 15 |                       |                       |
| 16 |                       |                       |
| 17 |                       |                       |
| 18 |                       |                       |
| 19 |                       |                       |
| 20 |                       |                       |
| 21 |                       |                       |
| 22 |                       |                       |
| 23 |                       |                       |
| 24 |                       |                       |
| 25 |                       |                       |

1 -- Upon commencing at 9:35 a.m.

2 MADAM CHAIR: Good morning. And  
3 welcome to the Judicial Compensation and  
4 Benefits Commission. My name is Martine, I am  
5 the Chair of this Commission.

6 This is Margaret Bloodworth.

7 MADAM COMMISSIONER: Good morning.  
8 everyone.

9 MADAM CHAIR: And I'd like to  
10 introduce, as well, my colleague Peter Griffin.

11 MR. COMMISSIONER: Good morning.

12 MADAM CHAIR: I would like to start by  
13 saying thank you very much for joining us today.  
14 We have a very full agenda and I would like to  
15 respect it because we have a very hard stop at  
16 4:30 every afternoon otherwise we lose our  
17 translators, so this is just a reminder.

18 And with that, I'd like to turn it  
19 over to the representative of the judiciary.  
20 And I would ask each party, when you start your  
21 presentation if you could introduce yourself and  
22 your colleagues that would be very helpful to  
23 us. Thank you.

24 MR. BIENVENU: Thank you, Madam Chair.  
25 Good morning. It is an honour for me and my

1 colleagues, Azim Hussain and Jean-Simon  
2 Schoenholz, to appear before you on behalf of  
3 the Canadian Superior Courts Judges Association  
4 and the Canadian Judicial Council. I would like  
5 to begin by thanking each of you, on behalf of  
6 the federal judiciary, for having accepted to  
7 serve on the Commission. I know that my friends  
8 Mr. Rupar, Mr. Shannon, all of their colleagues  
9 representing the government of Canada, as well  
10 as Mr. Lokan, representing the Federal Court of  
11 Prothonotaries, join me in acknowledging and  
12 commending the sense of public duty and  
13 commitment to judicial independence evidenced by  
14 your agreement to serve on the Commission.

15 As members of the Commission your  
16 names are added to a small group of renowned  
17 Canadians who, since the very first Quadrennial  
18 Commission in 1983 agreed to take part in this  
19 process and thus contribute to promoting  
20 judiciary independence and ensuring that the  
21 highest quality candidates make up the Canadian  
22 judiciary --

23  
24 [AUDIO OF SPEAKER NOT COMING THROUGH]  
25



1                   -- by the landmark decision  
2 of the Supreme Court of Canada in the PEI  
3 reference. The Commission is no longer a  
4 teenager and it is a sign of the maturity of the  
5 Quadrennial process that both principal parties,  
6 without consulting each other, chose to  
7 re-appoint their respective nominees to the  
8 previous inquiry. And in so doing the principal  
9 parties expressed confidence not just in the two  
10 Commission members concern, but indeed also in  
11 the larger process over which the Commission  
12 presides.

13                   Now, at your invitation I would like  
14 to introduce the representatives of the Canadian  
15 Superior Court Judges Association and the  
16 Canadian Judicial Council who are attending this  
17 hearing, albeit, like all of us, virtually.

18                   The Canadian Superior Courts Judges  
19 Association is represented by its President, the  
20 Honourable Thomas Cyr of the New Brunswick Court  
21 of Queen's Bench, by its Treasurer The  
22 Honourable Justice Michèle Monast from the  
23 Superior Court of Quebec, by The Honourable  
24 Chantal Chatelain also from the Superior Court  
25 of Quebec.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

[AUDIO OF SPEAKER NOT COMING THROUGH]

By The Honourable Kristine Eidsvik of The Alberta Court of Queen's Bench, a long serving member of the association's Compensation Committee who currently serves as Vice-Chair of the committee. Also by The Honourable Lukasz Granosik, The Superior Court of Quebec, and who also serves --

[AUDIO OF SPEAKER NOT COMING THROUGH]

And last but not least, Stephanie Lockhart, who is executive director of the association.

The Canadian Judicial Council is represented by The Honourable David Jenkins of the Prince Edward Island Court of Appeal, and The Honourable Robert Richard of the Saskatchewan Court of Appeal. Justice Jenkins is Chief Justice of PEI and he is the Chair of the Judicial Salaries and Benefits Committee of the CJC. Justice Richard is Chief Justice of Saskatchewan, and he too serves on the Council's

1 Salary and Benefits Committee.

2 Also in attendance, as a  
3 representative of the council, is The Honourable  
4 Martel Popescul, Chief Justice of The Court of  
5 Queen's Bench of Saskatchewan. Justice Popescul  
6 chairs the Council's Trial Courts Committee, as  
7 well as its Judicial Vacancies Working Group.  
8 He will be making a brief statement this morning  
9 to relate his own experience, as well as that of  
10 many of his colleagues on the Council, with  
11 respect to trends in judicial recruitment.

12 Madam Chair, I know that many other  
13 justices are attending this hearing remotely,  
14 along with members of the general public, and to  
15 one and all we extend a warm welcome to these  
16 proceedings.

17 As counsel to the Association and  
18 Council our instructions have been to co-operate  
19 with the Government of Canada and the  
20 Commission, with the view to assist you, members  
21 of the Commission, in formulating  
22 recommendations to the government as it is your  
23 mandate to do under the Judges Act, and the  
24 applicable constitutional principles.

25 I take this opportunity to thank our

1 friends, Mr. Rupar, Mr. Shannon, Ms. Musallam  
2 and their colleagues from the government of  
3 Canada for their co-operation in this process,  
4 especially considering the strain that everyone  
5 has been working under during this once in a  
6 lifetime pandemic.

7 Now, the parties have filed extensive  
8 written submissions. I do not propose to go  
9 over this ground, but I'm confident that the  
10 Commission members are now familiar with this  
11 material.

12 What I propose to do instead is to  
13 address what we consider are the key issues  
14 arising from these submissions.

15 The Commission knows that the  
16 Association and Council's key submission is that  
17 the Commission should recommend that judicial  
18 salaries be increased by 2.3 percent as of  
19 April 1st, 2022, and April 1st, 2023, in  
20 addition to the annual adjustments based on the  
21 IAI, provided for in the Judges Act. The  
22 evidence relating to the compensation earned by  
23 the two key comparator groups provides objective  
24 support for these proposed increases.

25 Now, the impetus driving this proposed

1 recommendation is the Association and Council's  
2 serious concern, with worrying trends in  
3 judicial recruitment to federally-appointed  
4 judicial positions over the last decade, and the  
5 lack of interest on the part of many senior  
6 members of the Bar in an appointment to the  
7 bench.

8 Now, we've reproduced, in a condensed  
9 book of materials, to be cited in oral argument,  
10 extracts of documents to which I will refer in  
11 the course of my oral presentation. This was  
12 emailed to Commission members yesterday evening.  
13 Most of these documents are already in the  
14 record and the extracts are reproduced in the  
15 condensed book so that you don't have to look  
16 for them in the documentation.

17  
18 [AUDIO OF SPEAKER NOT COMING THROUGH]  
19

20 Let me outline what I propose to cover  
21 in oral argument. And I refer you, in this  
22 respect, to a document entitled "Outline of Oral  
23 Argument", which you will find under tab A of  
24 our condensed book. And you'll see it -- you're  
25 seeing it now displayed on the screen.

1           So I'll begin by saying a few words  
2 about the Commission's mandate, including the  
3 scope of its inquiry. I'll then turn to my main  
4 submission, which will be divided into two  
5 parts, first, the principle of continuity, and  
6 then substantive issues.

7           On substance I will begin by  
8 addressing the issue of prevailing economic  
9 conditions and the current financial position of  
10 the government. I will then address the  
11 government's proposal to cap the annual  
12 adjustments to judicial salaries based on the  
13 IAI, a proposal to which the judiciary is firmly  
14 opposed, and that we ask the Commission to  
15 reject.

16           I will thereafter speak to the salary  
17 recommendation that is being sought by the  
18 judiciary and point to the evidence, before the  
19 Commission, showing that there is a recruitment  
20 problem with meritorious potential candidates  
21 from the Bar. This is when I will invite  
22 Justice Popescul to describe to the Commission  
23 how, in his experience, this recruitment problem  
24 plays out in the real world.

25           As part of the discussion of the

1 judiciary's proposed salary recommendation, I  
2 will address the two key comparators that you  
3 are invited to consider, DM-3s and self-employed  
4 lawyers.

5           Within the discussion of self-employed  
6 lawyers I will address the issue of filters to  
7 be applied to the CRA data on income of  
8 self-employed lawyers.

9           I begin then with the Commission's  
10 mandate, which is to inquire into the adequacy  
11 of judicial salaries and benefits payable under  
12 the Judges Act, applying the statutory criteria  
13 set out in section 26 of the Act.

14           It is the judiciary's submission that  
15 in applying these criteria the Commission needs  
16 to build on the work of prior Commissions. The  
17 Commission must, of course, conduct its own  
18 independent inquiry based on the evidence placed  
19 before it, and other relevant prevailing  
20 circumstances. But the Commission ought not, as  
21 the government and its expert, Mr. Gorham, would  
22 have it, embark upon its inquiry as if it was  
23 working on a blank slate having to reinvent the  
24 wheel at every turn. Nor should the Commission  
25 approach the exercise without due consideration

1 for the accumulated wisdom and collective  
2 insight of the other distinguished individuals  
3 who, have in the past, served on the Commission.

4 And that is a good segue into the  
5 first topic I would like to address, namely the  
6 principle of continuity and the unfortunate  
7 pattern of relitigation of settled issues in  
8 which we are invited to engage every four years  
9 by the Government of Canada. And if my remarks  
10 on that subject sound familiar to two members of  
11 the Commission, well, that in itself militates  
12 in favour of a robust adoption of continuity as  
13 a guiding principle in the work of this  
14 Commission.

15 Now, the Block Commission's  
16 recommendation 14 and the Levitt Commission's  
17 identical recommendation 10 formulate a  
18 principle that applies irrespective of the  
19 subject matter of any given recommendation. And  
20 it is what the judiciary calls the principle of  
21 continuity between successive Quadrennial  
22 Commissions. This recommendation reads as  
23 follows:

24 "Where consensus has emerged  
25 around a particular issue during a



1 previous Commission inquiry, in the  
2 absence of demonstrated change such  
3 consensus be taken into account by the  
4 Commission and reflected in the  
5 submissions of the parties."

6 Now, consensus in this context does  
7 not mean that everyone agreed with the position,  
8 as the government has once argued, what it means  
9 is that once an issue has been fully aired, and  
10 a Commission has determined that issue, it  
11 cannot be addressed before subsequent  
12 Commissions as if the past finding or past  
13 practice did not exist. This is what we mean by  
14 "the principle of continuity".

15 Now, the value of continuity is so  
16 self-evident that one should not have to  
17 elaborate upon it. All boards, all Commissions,  
18 all tribunals, value and promote continuity by  
19 building on practices that build on past  
20 experience. The doctrine of precedent is rooted  
21 in the principle of continuity.

22 Madam Chair, members of the  
23 Commission, we say that as a question of  
24 principle, and in the absence of demonstrated  
25 changes, the Commission should refuse to

1 reconsider settled issues such as, to pick  
2 examples to the submissions before you, the  
3 relevance of DM-3 comparator. And by way of  
4 another example, which filters should be used  
5 when considering the CRA data relating to  
6 self-employed lawyers' income, 75th percentile,  
7 low income exclusion, 44 to 56 age range, and  
8 consideration of large CMAs. From the  
9 judiciary's perspective it is simply not open to  
10 the Government of Canada to seek repeatedly to  
11 relitigate these points.

12 Now, before the Rémillard Commission  
13 the judiciary complained about the relitigation  
14 of issues and also about the fact that for the  
15 fourth time relitigation was being done relying  
16 on the absence of --

17  
18 [MUSIC COMING IN OVER THE CHANNEL AND  
19 DROWNING OUT SPEAKER]

20  
21 -- RECESSED AT 9:52 A.M. --

22 -- RESUMED AT 10:01 A.M. --

23 MR. BIENVENU: I believe we left off  
24 when I was observing that even though the  
25 government has changed experts it has not

1 changed its approach. Looking at the  
2 government's -- at the report of the  
3 government's new expert, Mr. Gorham.

4 And, first of all, it is difficult to  
5 believe, I submit to you, that a single  
6 individual's expertise can be so wide ranging as  
7 to pretend to offer expert evidence about the  
8 concept of economic compensation, economic  
9 factors behind the IAI, valuation of the  
10 judicial annuity, CRA data and the filters  
11 applied to it and the compensation of Deputy  
12 Ministers.

13 Mr. Gorham even allows himself to  
14 speculate that private legal practitioners,  
15 whose remuneration places them at the top of the  
16 market, are mere business hustlers rather than  
17 accomplished jurists to which clients are  
18 willing to pay a premium for their advice and  
19 professional services.

20 We acknowledge that Mr. Gorham can be  
21 recognized as an expert in actuarial science,  
22 and even then we submit that his analysis ought  
23 to have been guided by the Commission's  
24 precedents and past practice, which it was not.  
25 However, Mr. Gorham's report, if it is presented

1 as expert evidence, requires an expertise that  
2 goes well beyond actuarial science. Mr. Gorham  
3 also wears the hat of economist, compensation  
4 specialist and accountant. Consider the fact  
5 that the judiciary needed no less than five  
6 experts to be able to address in reply --

7  
8 [MUSIC COMING IN OVER THE CHANNEL AND  
9 DROWNING OUT SPEAKER]

10  
11 MR. BIENVENU: So I was observing that  
12 a measure of the scope of the evidence offered  
13 by Mr. Gorham is the number of experts that the  
14 judiciary had to turn to in order, responsibly,  
15 to respond to Mr. Gorham's evidence. And I'll  
16 just mention them: Professor Hyatt, an  
17 economist; Messrs. Leblanc and Pickler, two  
18 accountants and tax specialists; Ms. Haydon, a  
19 compensation specialist; and, Mr. Newell, an  
20 actuary. And that, I submit to you, in and of  
21 itself speaks to the nature of the opinion  
22 evidence contained in the government's expert  
23 report.

24 This report, I respectfully submit, is  
25 more an advocacy submission in its own right,

1 and a muscular one at that, rather than the  
2 opinion of an independent expert.

3 Now, of particular concern, so far as  
4 the relitigation of issues is concerned, is the  
5 government's attempt to undermine the DM-3  
6 comparator in the salary determination process,  
7 and the objectivity provided by the application  
8 of this long-standing comparator. And I'll have  
9 more to say about this later.

10 Even more troubling, in our  
11 submission, is the government's attempt to  
12 revisit the IAI as if the issue had not been  
13 canvassed by the Levitt and Rémillard  
14 Commission. You will recall that the government  
15 asked the Levitt Commission for a recommendation  
16 to cap the IAI. It asked the Rémillard  
17 Commission to replace the IAI with the Consumer  
18 Price Index, the CPI. Both Commissions refused  
19 and quoted from various sources to demonstrate  
20 the deep roots of the IAI as a source of  
21 protection against the erosion of the judicial  
22 salary.

23 Now the government is attacking the  
24 IAI once again before this Commission, reverting  
25 back to the approach adopted before the Levitt

1 Commission by advocating for a lower cap than  
2 the cap already included in the Judges Act.

3 To conclude on relitigation, we invite  
4 the Commission to be as firm as the Block,  
5 Levitt and Rémillard Commissions have been and  
6 to say enough is enough. Part of the rules of  
7 engagement in a process such as this one is that  
8 due consideration must be given to the work of  
9 past Commissions, and that absent demonstrated  
10 changes past findings should not be relitigated  
11 but should be incorporated in the parties'  
12 submissions.

13 And with the greatest respect, finding  
14 an expert willing to contradict 20 years of  
15 Commission practices and findings is not a  
16 license to disregard settled issues.

17 Now, the government has also put  
18 forward Mr. Szekely in support of its argument  
19 in favour of more comparators. However, the  
20 government does not make the case for a widening  
21 of the comparator group, nor does it seek to  
22 justify the choice of the proposed additional  
23 comparators, or the reliability of the data  
24 provided as comparison.

25 Now, members of the Commission, I want

1 to be very clear, the judiciary is not opposed  
2 to a party bringing fresh water to the well,  
3 however, this must serve to enrich the  
4 Commission's analysis, taking into account its  
5 past pronouncements not to seek to dilute  
6 existing comparators.

7           And take the issue of judges' salaries  
8 in other jurisdictions. The judiciary itself  
9 presented evidence before the Drouin Commission  
10 about judicial salaries in the exact same  
11 foreign jurisdictions as those canvassed by  
12 Mr. Szekely. And what the Drouin Commission had  
13 to say about this evidence is reproduced in your  
14 condensed book, and you see it displayed on the  
15 screen now. And it's worth reading an extract  
16 of it together:

17                   "The utility and reliability of  
18                   comparisons between judicial salaries  
19                   in other jurisdictions and those in  
20                   this country are questionable on the  
21                   basis of the information now available  
22                   to us. This is so, in our view,  
23                   because of variations between economic  
24                   and social conditions in Canada and  
25                   the other identified jurisdictions,

1 fluctuating exchange rates,  
2 significantly different income tax  
3 structures, different costs of living  
4 and the absence of information  
5 concerning the retirement benefits of  
6 judges in the other identified  
7 jurisdictions."

8 Now, the judiciary took note of these  
9 requirements and it has refrained from adducing  
10 that kind of evidence, again simply because it  
11 could not satisfy the requirements set out by  
12 the Commission.

13 The evidence contained in  
14 Mr. Szekely's report about the salaries of  
15 foreign judges is being placed before you  
16 without these safeguards that the Drouin  
17 Commission said were required for any comparison  
18 to be meaningful and reliable. Mr. Szekely  
19 provides no information about the comparability  
20 of functions and responsibilities between the  
21 jurisdictions canvassed in his report, and he  
22 omits relevant information about nonsalaried  
23 benefits enjoyed by some of these foreign  
24 judges.

25 For example, he does not mention the



1 fact that U.S. federal judges are entitled to  
2 their full salary after retirement, nor that  
3 federally-appointed Australian judges enjoy a  
4 car with driver service and a private vehicle  
5 allowance. And because such key information is  
6 missing from Mr. Szekely's evidence it is of  
7 very little assistance to the Commission.

8 But in any event, even taken at face  
9 value, the take-away from Mr. Szekely's report  
10 is that the Canadian judiciary is paid  
11 substantially less than those holding equivalent  
12 judicial functions in Australia and New Zealand.  
13 And as for the United Kingdom and the United  
14 States, it is well-known that these two  
15 jurisdictions face alarming problems in seeking  
16 to attract senior practitioners to the bench.

17 So having discussed the need for  
18 continuity in the analytical tools used by the  
19 Commission I now turn to the substantive issues  
20 which, as I mentioned, are framed by the  
21 statutory criteria that the Commission must  
22 consider, prevailing economic conditions, the  
23 role of financial security in ensuring judicial  
24 independence and the need to attract outstanding  
25 candidates to the judiciary.

1                   Now, the criteria I will be  
2 concentrating on in oral argument are prevailing  
3 economic conditions in Canada, including the  
4 current fiscal position of the government and,  
5 secondly, the need to attract outstanding  
6 candidates to the judiciary.

7                   And let me jump right in then and  
8 address a subject that is a subject matter that  
9 you will need to address and, therefore, that  
10 must be on your minds, COVID-19.

11                   Members of the Commission, the  
12 pandemic has upended everyone's lives. Untold  
13 lives have been lost and livelihoods have been  
14 impaired and many lost. These are a given and  
15 they are terrible losses. The Canadian  
16 judiciary has risen to the challenges posed by  
17 the pandemic. And, reacting nimbly, has ensured  
18 that our justice system, a key institution in  
19 maintaining the fabric of Canadian society,  
20 continued to function and do what it is tasked  
21 to do, resolve disputes fairly, definitively,  
22 and peacefully; and in so doing instill  
23 confidence in our public institutions.

24                   Now, more than one year after the  
25 lockdown of March 2020, and the initial doomsday

1 economic forecasts, we are today better able to  
2 take stock of the prevailing economic conditions  
3 in Canada and of the financial position of the  
4 Canadian government.

5 To assist the Commission in its  
6 analysis of this factor the judiciary's expert  
7 economist, Professor Doug Hyatt, has submitted  
8 two expert reports. Professor Hyatt is a  
9 renowned economist at the University of  
10 Toronto's Rotman School of Management and Centre  
11 for Industrial Relations. It is the second time  
12 that he submits a report to the Commission,  
13 having also contributed to the inquiry of the  
14 Rémillard Commission.

15 In his first report, which Commission  
16 members will find at tab C of our condensed  
17 book, Professor Hyatt makes an important  
18 distinction, at page 3, between temporary fiscal  
19 deficits and structural deficits. He refers to  
20 the pandemic as an "exogenous shock" which has  
21 led to near term deficits that, and I quote,  
22 "will be eliminated when the pandemic has  
23 dissipated".

24 Now, the description by Professor  
25 Hyatt is not his own but rather is taken from

1 the government's 2020 Fall Economic Statement.  
2 And it is relying on that statement that  
3 Professor Hyatt points out that, and I quote:

4 "If exogenous fiscal shock  
5 brought about by the pandemic should,  
6 therefore, not be treated in the same  
7 way as shocks that create permanent  
8 irreversible structural damage to the  
9 economy."

10 He goes on to say:

11 "The cost of responding to a  
12 'once-in-a-century' shock should  
13 properly be addressed by amortizing  
14 the cost of the shock over time and  
15 not by offsetting reductions to  
16 otherwise normal Government  
17 expenditures[...]. Such actions would  
18 be self-defeating to the goal of  
19 future economic growth."

20 It is also important to keep in mind  
21 the distinction between the financial position  
22 of the government, on the one hand, and  
23 prevailing economic conditions in Canada on the  
24 other. Section 26(1.1)(a) makes that  
25 distinction and Professor Hyatt addresses it.

1           In his second report, attached as tab  
2 D to your condensed book, Professor Hyatt  
3 reviews the 2021 budget. And he points out that  
4 its GDP projection for 2021 is more favourable  
5 than the projection in the November 2020  
6 economic statement. The projected increase is  
7 now 5.8 percent, up from 4.8 percent last  
8 November. This is at page 3 of his second  
9 report.

10           So the picture that has emerged,  
11 members of the Commission, as confirmed by the  
12 budget, is that the economy is recovering in a  
13 very strong way and the forecast is that the  
14 recovery will be robust. And this evidence  
15 establishes that the prevailing economic  
16 conditions do not stand as an obstacle to the  
17 judiciary's proposed increase.

18           Now, we say that the financial  
19 position of the government does not stand as an  
20 obstacle to the proposed salary increase either.  
21 And this is evidenced by the fact that the  
22 government's own budget, tabled a month ago, was  
23 not an austerity budget, as observed by  
24 Professor Hyatt in his second report. It's on  
25 page 4. This is also relevant, members of the

1 Commission, to the issue of the government's  
2 proposed cap on the application of the IAI to  
3 adjust judicial salaries. And this is the issue  
4 to which I would like now to turn.

5 So the government's proposal is that  
6 there should be a cumulative 10 percent cap on  
7 the IAI applied over the course of a four-year  
8 period. Now I'll get back to the question of  
9 which four-year period is being referred to by  
10 the government? But, first, I need to provide  
11 context by reviewing the recent history of the  
12 government's attempt to undermine this crucial  
13 feature of judicial compensation, and I refer to  
14 that in the introduction.

15 You know that the indexation of  
16 judicial salaries, based on the IAI, has been in  
17 place since 1981. And today we are witness to  
18 the third attack by the government in as many  
19 Commission cycles on the IAI as a factor for the  
20 annual adjustments of salaries.

21 Before the Levitt Commission the  
22 government proposed an annual cap of  
23 1.5 percent, resulting in a capped net increase  
24 of 6.1 percent over the quadrennial period. The  
25 Levitt Commission rejected this and said that

1 the IAI was, and I quote:

2 "[...] a key element in the  
3 architecture of the legislative scheme  
4 for fixing judicial remuneration."

5 And the Commission added that it  
6 should not be likely tampered with.

7 The government tried another angle  
8 before the Rémillard Commission. Then it  
9 proposed a complete replacement of the IAI by  
10 the CPI, and this too was rejected by a  
11 Commission that reiterated the Levitt  
12 Commission's strong defence of the IAI. Today  
13 the government seeks to underline the IAI by  
14 proposing a cumulative cap of 10 percent.

15 Now, before I explain why the  
16 judiciary invites the Commission to reject this  
17 proposal, it is useful to recall why the IAI  
18 annual adjustments are so important to the  
19 scheme for fixing judicial compensation.

20 Annual adjustments to judicial  
21 salaries based on the IAI have been described by  
22 the Scott Commission, in 1996, as part of the  
23 social contract between the government and the  
24 judiciary. find the relevant extract in our  
25 condensed book at tab H. And I'll read only a

1 short extract of the relevant passage:

2 "The provisions of s. 25 of the  
3 Act are reflective of much more than a  
4 mere indexing of judges' salaries.  
5 They are, more specifically, a  
6 statutory mechanism for ensuring that  
7 there will be, to the extent possible,  
8 a constant relationship, in terms of  
9 degree, between judges' salaries and  
10 the incomes of those members of the  
11 Bar most suited in experience and  
12 ability for appointment to the Bench.  
13 The importance of the maintenance of  
14 this constant cannot be overstated.  
15 It represents, in effect, a social  
16 contract between the state and the  
17 judiciary."

18 The enduring value of the statutory  
19 indexation mechanism, based on the IAI, lies in  
20 the fact that it is apolitical in character. It  
21 exists since 1981, it is automatic, it reflects  
22 inflation and productivity gains and it has a  
23 predetermined cap.

24 Members of the Commission, this is  
25 something that both parties should want to



1 preserve as a single accomplishment in the  
2 relationship between the judiciary and the  
3 legislative and executive branches, so far as  
4 Parliaments' obligation to fix salaries is  
5 concerned.

6 Now, with this background in mind  
7 let's look at what the government is proposing.  
8 And I begin with what might seem to be a  
9 technical point but it is very much substantive.  
10 The government refers to the years 2021, 2022,  
11 2023 and 2024 as the relevant years for counting  
12 the IAI adjustments that would lead to the  
13 10 percent cap.

14 If you look at the table on page 13 of  
15 the government's submission, it's displayed on  
16 the screen, the right-most column shows the  
17 projected IAI. However, the figure isn't  
18 applied in the year indicated in the left-most  
19 column. Rather, it is applied in the subsequent  
20 year. And this is explained in footnote 36 on  
21 that page, which reads as follows:

22 "Projected IAI for the row year  
23 (i.e. 6.7 % is the projected value of  
24 IAI for 2020 which will be used to  
25 calculate salary increases effective

1                   April 1, 2021)."

2                   So since the IAI figure actually  
3 applies for the next year, it means that the  
4 government is proposing that its cap calculation  
5 begins as of April 1st, 2021, and go through  
6 April 4th, 2024, and that's the zero percent  
7 that you see in the right-hand column on the  
8 fourth line, and that figure would apply on  
9 April 1st, 2024. But the problem is that  
10 April 1st, 2024, is the first year of the  
11 reference period for the next Commission.

12                   Your reference period begins  
13 April 1st, 2020, because that's when the  
14 reference period of the Rémillard Commission  
15 ended. And since your reference period begins  
16 April 1st, 2020, a period of four fiscal years,  
17 means that it ends March 31st, 2024. That is  
18 the quadrennial reference period covered by your  
19 inquiry.

20                   So under the government's proposal,  
21 either the government is ignoring the year of  
22 April 1st, 2020, to March 31st, 2021, or it is  
23 including a fifth year, April 1st, 2024, to  
24 March 31st, 2025. Either way, it's a period  
25 that is not consistent with the Judges Act and

1 it has obvious constitutional implications.

2 Now, if the 10 percent cap is applied  
3 to the four-year period over which this  
4 Commission has jurisdiction, the cap would  
5 reduce the adjustment in the third year from the  
6 projected 2.1 percent to 0.5 percent. You see  
7 that in the third column and it would eliminate  
8 the adjustment in the fourth year.

9 I now turn to the substance of the  
10 proposed -- the proposal to cap the IAI. And in  
11 that respect, the government states that:

12 "[...] the judiciary must  
13 shoulder their share of the burden in  
14 difficult economic times."

15 And in support of this, the government  
16 cites the PEI reference and the Supreme Court's  
17 statement in that case that:

18 "Nothing would be more damaging  
19 to the reputation of the judiciary and  
20 the administration of justice than a  
21 perception that judges were not  
22 shouldering their share of the burden  
23 in difficult economic times."

24 That's at paragraph 196 of the PEI  
25 reference.

1           Now, what gets out of the government's  
2 invocation of the PEI reference is the fact that  
3 the Supreme Court, when using the language  
4 relied upon by the government, was specifically  
5 referring to deficit reduction policies of  
6 general application.

7           If everyone paid from the federal  
8 public purse were in fact faced with freezes or  
9 reductions in compensation and benefits, but  
10 judges were exempt from this, judges could  
11 indeed be said not to be shouldering their share  
12 of the burden. But there is no burden to be  
13 shouldered by persons paid from the public purse  
14 at the present time.

15           The government is actually doing the  
16 opposite. The government is engaging in  
17 stimulus spending as part of its plan of  
18 economic recovery. So we say that it is  
19 jarringly incongruous in such a context to argue  
20 that the judiciary should bear a reduction in  
21 the statutory indexation mechanism, which, as  
22 I've said, is considered an essential component  
23 of the statutory scheme relating to judicial  
24 compensation.

25           Now, you've read that the judiciary --

1 the government's proposal seems to be motivated  
2 by the relatively high IAI that applied on  
3 April 1st, 2021, which was the amount of  
4 6.6 percent. This figure is considered to be  
5 the result of the so-called compositional effect  
6 of the pandemic. Namely the fact that with the  
7 dropping off of a large segment of low-earning  
8 workers, the resulting increased proportion of  
9 high-earning workers caused an upward push on  
10 the IAI.

11 Now, Professor Hyatt explains in his  
12 second report that there is a self-correcting  
13 aspect to this compositional effect. There will  
14 be downward pressure on the IAI as low-income  
15 workers resume employment. You'll see that at  
16 page 7 of his second report. And this downward  
17 pressure could continue for years. And you'll  
18 note, members of the Commission, that the  
19 government itself appears to acknowledge this  
20 self-correcting feature in its March 21  
21 submission when it argues, as a selling point  
22 for a newly proposed floor to the IAI  
23 adjustment, that it is possible that there will  
24 be a negative IAI during the next four years.  
25 It's written right there in paragraph 4:

1                    "These unpredictable [...]   
2                    circumstances may also result in a   
3                    negative IAI [...] in the near   
4                    future."

5                    So if a negative IAI is to be posited,   
6                    it can only be the result of this   
7                    self-correcting phenomenon when low-earning   
8                    workers re-enter the labour market and, in so   
9                    doing, exert a downward pressure on the IAI.

10                    Now, it should also be pointed out,   
11                    and this is very important, that Parliament has   
12                    already turned its mind to what would be an   
13                    appropriate cap to the annual adjustment to   
14                    judicial salaries. Parliament decided that a   
15                    cap of 7 percent to the annual IAI adjustment   
16                    was reasonable. Now, 6.6 percent is less than   
17                    7 percent. Parliament did not provide for any   
18                    exclusionary factors in the Judges Act that   
19                    would call for a derogation from that 7 percent   
20                    cap.

21                    And please note that, in a way, the   
22                    proposed cumulative 10 percent cap is an   
23                    attempt, indirectly and retroactively, to modify   
24                    the annual 7 percent cap by clawing back what   
25                    the government seems to think was too large an

1 adjustment.

2 Now, a final point about the IAI. The  
3 government states at paragraph 16 of its reply  
4 submissions that the judiciary is suggesting  
5 that:

6 "[...] it has suffered a loss  
7 because actual IAI rates have been  
8 lower than the IAI projections used by  
9 successive Quadrennial Commissions."

10 The government cites paragraph 75 to  
11 80 and 117 and 118 of our March 29 submission as  
12 support for this assertion. The assertion is  
13 incorrect. The judiciary did not and does not  
14 characterize the gap between projected and  
15 actual IAI as a loss.

16 What the judiciary did describe as a  
17 loss is the consequence in terms of lost salary  
18 increases of the failure of the government to  
19 implement the McLennan Commission's salary  
20 recommendation and later the Block Commission's  
21 salary recommendation. That did result in a  
22 loss and it was properly described as such in  
23 our submission.

24 The gap between projected and actual  
25 IAI is significant, but on a different plain.

1 It is significant because the Rémillard  
2 Commission included in its reasoning, on the  
3 adequacy of judicial salaries, the IAI figures  
4 that were projected at the time. And since the  
5 actual IAI figures turned out to be much lower  
6 than the projections, from 2.2 to 0.4 in 2017,  
7 the question arises as to whether the Rémillard  
8 Commission would have considered the judicial  
9 salary to be adequate in light of the actual  
10 figure. That observation was made in paragraph  
11 80 of our March submission and it does not  
12 contain the word "loss".

13 Now, I leave the topic of the IAI and  
14 move to the topic of the proposed increase to  
15 the judicial salary. I noted in the  
16 introduction that we propose an increase of  
17 2.3 percent on each of April 1st, 2022 and 2023.  
18 Those are the last two years of this  
19 Commission's reference period. And the regular  
20 IAI adjustments under that proposal would  
21 continue to apply each year.

22 Now, you must approach this proposal  
23 in its proper historical context. The last  
24 increase to the judicial salary, outside of the  
25 annual adjustments based on the IAI, was in



1 2004.

2           You might recall from the historical  
3 overview in our main submission that the  
4 McLennan Commission issued its recommendation in  
5 2004. The government initially accepted the  
6 recommendation, but then when a different party  
7 was elected to form the government, a second  
8 response was issued varying the first response  
9 and rejecting the salary recommendation of the  
10 McLennan Commission.

11           In 2006 what this new government did  
12 was impose the lower increase that it had  
13 proposed before the McLennan Commission,  
14 retroactive to 2004. But my point here is that  
15 in spite of the Block Commission's  
16 recommendation for a salary increase, judicial  
17 salaries were only adjusted since 2004 based on  
18 the IAI.

19           Now, I mentioned the earlier the  
20 statutory responsibility of the Commission,  
21 being to inquire into the adequacy of judicial  
22 salary benefits using, as a framework, the  
23 factors listed in subsection 26.1.1. And these  
24 factors must be balanced and none of the three  
25 enumerated factors obviously can trump the

1 others.

2           Now, I want to highlight the fact that  
3 there are constraints inherent to some of the  
4 concepts used in subsection 26.1, and there are  
5 duties arising from the objectives that these  
6 factors serve to attain. And let me try to  
7 illustrate the point with two examples. The  
8 second factor is the role of financial security  
9 in ensuring judicial independence. I believe  
10 it's always been common ground between the  
11 parties that there flows, from the nature of the  
12 second factor, a hard constraint on the  
13 Commission. Judicial salaries can never be  
14 allowed to fall to a level that would undermine  
15 financial security and thus threaten judicial  
16 independence. Now, I give this by way of  
17 example, not to suggest that we find ourselves  
18 in such circumstances.

19           My second example is the third factor,  
20 the need to attract outstanding candidates to  
21 the judiciary. You have read in our March  
22 submission that, in our view, there arises from  
23 the third factor a duty that we have  
24 characterized as a duty of vigilance. We say  
25 that in order to preserve the quality of

1 Canada's judiciary, the Commission must make  
2 recommendations designed to preserve Canada's  
3 ability to attract outstanding candidates to the  
4 judiciary.

5 Now, in weighing that factor, the  
6 Commission must consider the consequences of  
7 missing the mark. Judicial salaries, by their  
8 nature, cannot be quickly adjusted. One can  
9 quickly adjust the proposed salary of the CFO of  
10 a company if one's recruitment efforts to fill  
11 the position are unsuccessful.

12 In contrast, adjustments to judicial  
13 salaries must result from a recommendation of  
14 this Commission, which only meets every four  
15 years, and any corrective measure takes time  
16 implement through legislation, assuming the  
17 recommendation is accepted by the government.

18 So between the time you are confronted  
19 with a recruitment problem and the time that  
20 having realized that corrective measures are  
21 required, those measures are first recommended  
22 by the Commission and then hopefully implemented  
23 by the government, years will go by. Years.  
24 Years during which vacancies will arise and an  
25 insufficient number of meritorious candidates

1 will be available to fill them. And in that  
2 sense, it can be said that adjusting judicial  
3 salaries is a little bit like correcting the  
4 course of an ocean liner. You cannot do it on a  
5 dime. It takes time. And what this Commission  
6 must bear in mind is that real, long-lasting  
7 damage can be caused to Canada's judiciary until  
8 the correct -- or the corrected salary incentive  
9 is recommended and implemented.

10 Now, why do I say all this? I say all  
11 this because the evidence before this Commission  
12 shows that there is a recruitment problem. You  
13 see it in the table on applications for  
14 appointment, which is tab 20 of volume 2 of the  
15 joint book of documents, where the proportion of  
16 highly recommended candidates in some provinces  
17 is extremely low. And when that is combined  
18 with the fact that there is a downward trend in  
19 appointments from private practice over the past  
20 15 years, you see it displayed on the screen,  
21 you get a picture revealing a declining interest  
22 in the Bench on the part of the private Bar.  
23 And that, members of the Commission, is a source  
24 of real concern for the association and council.

25 And we thought it might be helpful to

1 the Commission if a senior representative of the  
2 judiciary were invited to appear before you to  
3 describe the reality that lies behind these  
4 numbers. And so as announced in our March 29  
5 submission, we are joined by The Honourable  
6 Martel Popescul, whom I've introduced at the  
7 outset. And Justice Popescul has a brief  
8 statement to make, and he will remain available  
9 if the Commission has questions at the end of my  
10 oral submissions.

11 So Justice Popescul?

12 JUSTICE POPESCUL: Good morning, Madam  
13 Chair, members of the Commission. My name is  
14 Martel Popescul and I am the Chief Justice of  
15 the Court of Queen's Bench for Saskatchewan. It  
16 is an honour for me to appear before the  
17 Commission as a representative of the Canadian  
18 Judicial Council, and I hope my presentation  
19 today will be of some assistance to you. My aim  
20 is to share my direct experience of what I and  
21 many of my colleagues on the CJC view as a  
22 worrying trend in judicial recruitment over the  
23 last decade or so. These trends raise concerns  
24 and are of direct relevance to one of the  
25 factors listed at section 26.1.1 of the Judges

1 Act, namely the need to attract outstanding  
2 candidates to the judiciary.

3 I speak to the issue of recruitment as  
4 someone who has had the privilege to engage with  
5 judicial recruitment from various perspectives.

6 I was appointed to the Court of  
7 Queen's Bench for Saskatchewan in 2006. Prior  
8 to my appointment, I served as the President of  
9 the Law Society of Saskatchewan from 2001 to  
10 2002. During this time, I sat on the Provincial  
11 Court Judicial Council as the Law Society's  
12 representative. In that capacity, I considered  
13 and provided input on candidates considered for  
14 appointment to the provincial Bench.

15 After my appointment to the Court of  
16 Queen's Bench, I was appointed the Chair of  
17 Saskatchewan's Judicial Advisory Committee in  
18 2010. Judicial advisory committees, sometimes  
19 referred to as JACs, have the responsibility  
20 of assessing the qualifications for appointment  
21 of lawyers and provincial and territorial judges  
22 who apply for a federally appointed judicial  
23 position. There is at least one JAC in one  
24 province and territory.

25 In this capacity, I reviewed the

1 applications of each candidate for appointment  
2 to the Court of Queen's Bench, which also  
3 includes the Saskatchewan Court of Appeal and  
4 Saskatchewan applicant's seeking appointment to  
5 the Federal Court for the Federal Court of  
6 Appeal.

7 I chaired the Saskatchewan Judicial  
8 Advisory Committee for five years until 2014.  
9 It is during that period of time that I was  
10 appointed Chief Justice of the Court of Queen's  
11 Bench for Saskatchewan in 2012. In this role, I  
12 have been intimately involved in considering  
13 each potential appointee to our court, something  
14 I will discuss in greater detail later on. As  
15 Chief Justice, I have also been involved in the  
16 review of the applications of all lawyers who  
17 apply for appointment to the provincial court in  
18 our province.

19 In other words, for over a decade,  
20 I've observed trends in judicial recruitment in  
21 both the provincial court and the Court of  
22 Queen's Bench for Saskatchewan.

23 As Chief Justice, my experience with  
24 judicial recruitment issues extends beyond  
25 Saskatchewan. In addition to regularly engaging

1 with my CJC colleagues on these issues, I chair  
2 the CJC's Trial Courts Committee, which brings  
3 together Chief Justices and Associate Chief  
4 Justices of each trial court across Canada. In  
5 this capacity, I regularly discuss issues of  
6 judicial vacancies and judicial recruitments  
7 with my fellow Chief Justices.

8           A key concern for the CJs Trial  
9 Courts Committee has been judicial vacancies.  
10 In September of 2020, the Trial Courts Committee  
11 proposed to the leadership of the CJC the  
12 creation of a working group dedicated to  
13 considering the causes of judicial vacancies,  
14 which are endemic in many courts and to propose  
15 solutions to the problem. I've acted as Chair  
16 of the CJC's Judicial Vacancy Working Group  
17 since its inception.

18           The statement I have prepared for the  
19 Commission is meant to reflect my observations  
20 from over 10 years of engagement on issues of  
21 judicial recruitment at the local and national  
22 level, as well as my discussions with my CJC  
23 colleagues across Canada.

24           I've observed, as have most of my  
25 colleagues on the CJC, a reduction in the pool



1 of applicants from private practice, the  
2 traditional source of candidates for the Bench.  
3 Outstanding private practitioners, many of whom  
4 distinguish themselves as leaders of the  
5 profession, have previously seen a judicial  
6 appointment to one of Canada's Superior Courts  
7 as the crowning achievement of an outstanding  
8 career.

9           However, many are increasingly  
10 uninterested in seeking appointment to the  
11 Bench. A large and growing number of leading  
12 practitioners no longer see a judicial  
13 appointment, with all its responsibilities and  
14 benefits, as being worthy of the increasing  
15 significant reduction in income.

16           This is a concerning trend and one I  
17 respectfully submit which should be of concern  
18 to this Commission. To be clear, neither I nor  
19 my CJC colleagues are questioning the quality of  
20 recent appointments to the Bench, nor do we call  
21 into question the fact that outstanding  
22 candidates can come from all types of legal  
23 careers and areas of practice. What I'm  
24 concerned about is the future and whether the  
25 current trend of a shrinking pool of outstanding

1 candidates will translate into a chronic  
2 inability to attract outstanding candidates from  
3 private practice, including those practicing in  
4 metropolitan areas or in larger firms.

5 It used to be the case that applicants  
6 regularly included leaders of the Bar from both  
7 the private and public sectors. Increasingly,  
8 the applicant pool does not include senior  
9 litigators from private practice. A good part  
10 of the reason for that lack of interest is a  
11 combination of the workload of Superior Court  
12 judges and the perceived lack of commensurate  
13 pay for that work.

14 Since my appointment as Chief Justice  
15 of the Court of Queen's Bench for Saskatchewan,  
16 I often find myself having to actively seek out  
17 outstanding lawyers to convince them to apply  
18 for vacancies at our court. I must say that  
19 this was a role I had not anticipated I would  
20 need to play, but such is the current state of  
21 affairs.

22 The CJC's Judicial Vacancies Working  
23 Group has identified two root causes for  
24 vacancies endemic to our judicial system.  
25 First, there appears to be a lack of urgency on

1 the part of the government in filling judicial  
2 positions as they become vacant. Second, and  
3 most relevant for our purposes today, there is  
4 often a reduced range of outstanding candidates  
5 in the applicant pool.

6 I have, as part of my role as Chief  
7 Justice, actively communicated on multiple  
8 occasions with senior lawyers and even  
9 provincial court judges, who my colleagues and I  
10 believe would be outstanding and diverse  
11 candidates for appointment to the Bench.

12 I've been unable to persuade many of  
13 these perspective candidates to apply despite my  
14 best efforts. They have shared a common  
15 narrative with me. The benefits of judicial  
16 appointment, including the judicial annuity, are  
17 increasingly perceived as not outweighing the  
18 demands imposed on federally appointed judges  
19 and the significant and increasingly reduction  
20 in income that lawyers in private practice must  
21 be willing to accept.

22 In particular, many perspective  
23 candidates are aware of the significant  
24 workload, travel demands, loss of autonomy, and  
25 increased public scrutiny imposed on federally

1 appointed judges. When viewed in light of the  
2 significant reduction in income they must  
3 accept, many candidates have expressed a lack of  
4 interest in seeking appointment.

5 In my experience, these issues are  
6 less pronounced amongst public sector lawyers  
7 who generally receive a significant pay increase  
8 upon appointment.

9 I want to emphasize that this trend  
10 that I have personally witnessed is found in  
11 Saskatchewan, which does not even have one of  
12 the top 10 CMAs. In other words, the market  
13 for legal services in this relatively small  
14 jurisdiction is such that leading practitioners  
15 can still earn much more than the judicial  
16 salary such that judicial salaries is  
17 unattractive when considered in light of the  
18 workload that federally appointed judges must  
19 take on.

20 That lawyers in private practice  
21 seeking appointment to the Bench accept a  
22 reduction in income is not new. This reduction  
23 has, however, become increasingly significant as  
24 is clear from my discussions with perspective  
25 candidates, as well as my colleagues at the CJC.

1 Outstanding candidates from private practice are  
2 increasingly unwilling to accept such a  
3 significant reduction in income in exchange for  
4 what is perceived as increasingly demanding  
5 judicial functions.

6 As a result, in my experience, many  
7 outstanding candidates who I would view as  
8 ideally suited for appointment to the Court of  
9 Queen's Bench are simply not interested in  
10 judicial appointment.

11 I also note that recruitment from the  
12 provincial Bench has become more difficult in  
13 some provinces where the gap between salaries of  
14 provincial judges and federally appointed judges  
15 are narrowing. For example, in Saskatchewan,  
16 provincial judges are paid 95 percent of the  
17 salary of federally appointed judges, while  
18 their workload is significantly less than  
19 Superior Court judges.

20 Now, I say this not to be  
21 disrespectful to my colleagues in the provincial  
22 court, however, the reality is, based upon  
23 concordant comments made to me by judges who  
24 have been elevated from provincial court to our  
25 court, that the complexity and the time required

1 to fulfill the requirements of a judge of the  
2 Court of Queen's Bench is significantly greater  
3 than they had experienced on the provincial  
4 court.

5 I've reviewed the appointment  
6 statistics provided by the office of the  
7 Commissioner for Judicial Affairs. In my view,  
8 based upon the experience in my own province,  
9 the decreasing proportion of appointments from  
10 private practice, the small pool of highly  
11 recommended candidates in certain regions, and  
12 the high proportion of not-recommended  
13 candidates, are reflective of the trends I have  
14 observed, namely, that outstanding candidates  
15 from private practice are applying much less  
16 frequently.

17 Again, and I underscore, this is not  
18 meant to cast doubt on the merit of our recent  
19 appointments. Rather, the concern is whether,  
20 given that we are already seeing a shrinking  
21 pool of quality candidates for judicial  
22 appointments from private practice, we will  
23 continue to be able to have a large enough pool  
24 of highly recommended applicants tomorrow and  
25 into the future.

1           In preparing to make this submission  
2 to the Commission, I have spoken to a number of  
3 my colleagues at the CJC. Many of them have  
4 shared similar stories, confirming the trends I  
5 have described. Of note, these trends are of  
6 particular concern in some of the larger  
7 metropolitan regions where the disparity between  
8 the incomes of lawyers in private practice and  
9 the judiciary salary is particularly  
10 significant. From my discussions with my CJC  
11 colleagues, I know that such concerns exist in  
12 places such as Halifax, Edmonton, Calgary and  
13 Vancouver, to be specific.

14           Again, I thank you very much for  
15 listening to me and I am prepared to attempt to  
16 answer any questions that you may have. So  
17 again, thank you very much for your time.

18           MADAM CHAIR: Thank you very much,  
19 Justice Popescul.

20           Mr. Bienvenu, if you want us to wait  
21 till the end or ask questions now, whichever you  
22 prefer and Justice Popescul prefers.

23           MR. BIENVENU: My suggestion would be  
24 to wait to the end.

25           MADAM CHAIR: Perfect.

1                   MR. BIENVENU: You appear to manage  
2 the clock, as it were, but I trust that I will  
3 be allowed to spill over a little bit because of  
4 the time --

5                   MADAM CHAIR: Yes, we will.

6                   MR. BIENVENU: Members of the  
7 Commission, never before has a member of the CJC  
8 appeared before a Quadrennial Commission in  
9 connection with the recommendations to be made  
10 by the Commission concerning judicial salaries.  
11 And Justice Popescul's appearance reflects the  
12 association and Council's deep concern about the  
13 negative trends in recruitment described in the  
14 judiciary's written submissions.

15                   Career dynamics in the profession are  
16 such that if a compensation disincentive sets in  
17 as an obstacle to lawyers in private practice  
18 being attracted to the Bench, it will be like  
19 turning an ocean liner to try to correct that  
20 disincentive.

21                   And you see clear evidence of that  
22 phenomenon in other jurisdictions like the U.S.  
23 and the U.K. And we can be thankful to  
24 Mr. Szekely for bringing our attention to these  
25 jurisdictions, both of which vividly illustrate



1 the problems that can arise when judicial  
2 compensation issues are not addressed in a  
3 timely manner.

4 Now, we've demonstrated in our written  
5 submissions that the salary increase that is  
6 being sought by the judiciary is supported by  
7 both the DM-3 comparator and the private sector  
8 comparator. Nevertheless, we are once more  
9 faced with familiar objections to your reliance  
10 on these comparators, and it is to those  
11 government objections that I would now like to  
12 turn, beginning with the DM-3 comparator.

13 And as regard to the DM-3 comparator,  
14 I have two points to make. One is to draw  
15 attention to the Government's attempt to water  
16 down the DM-3 comparator. Second is the need  
17 for the Commission to accept to use average  
18 compensation as a measure of the compensation of  
19 DM-3s, because of recent changes in the manner  
20 in which DM-3s are remunerated.

21 Members of the Commission, believe it  
22 or not, the government argues that DM-3  
23 compensation, "is not itself a comparator," but  
24 only one factor among many in the Commission's  
25 consideration of "public sector compensation

1 trends". You will find this in the government's  
2 submission in paragraph 51.

3 Now, this submission I say,  
4 respectfully, defies reality as evidenced by  
5 nearly 40 years of triennial and Quadrennial  
6 Commission reports. So I'll limit myself to  
7 saying that the government's attempt to replace  
8 the DM-3 comparator with some undefined "public  
9 sector compensation trends" contradicts past  
10 positions of the government, contradicts the  
11 considered opinion of successive triennial and  
12 Quadrennial Commissions, would break with the  
13 longstanding practice rooted in principle, and  
14 would undermine objectivity.

15 Now, we've provided extensive  
16 references to the various Commission reports  
17 endorsing the use of the DM-3 comparator and  
18 rejecting the government's proposed focus on  
19 public sector compensation trends. The record  
20 is so clear that it would be a waste of your  
21 time to try to demonstrate this once again.

22 I will reiterate that the sui generis  
23 nature of the judicial role does not lend itself  
24 to comparison with broad and undefined  
25 categories of comparators and this would

1     undermine the role of the DM-3 group as an  
2     anchor point. Doing so would remove a constant  
3     that creates objectivity for the Commission's  
4     inquiry, as Ms. Haydon rightly points out in her  
5     expert evidence. In fact, the sui generis  
6     nature of the judicial role makes it all the  
7     more important for this Commission to rely on a  
8     principled, objective, comparator such as the  
9     DM-3 comparator.

10             That DM-3 comparator is important  
11     because it reflects, as you know, what the  
12     government is prepared to pay its most senior  
13     employees. And its relevance, as compared to  
14     the private sector comparator, comes precisely  
15     from the fact that it reflects the salary level,  
16     not of outstanding individuals who've elected to  
17     work in the private sector and perhaps seek to  
18     maximize the financial reward they can derive  
19     from their work, but of outstanding individuals  
20     who have opted, instead, for public service.  
21     Like lawyers who accept an appointment to the  
22     Bench.

23             If you accept to dilute the DM-3  
24     comparator as the public sector comparator by  
25     considering a host of other unprincipled

1 comparators, you will set yourself adrift in  
2 comparative exercise.

3 Now, as part of its argument seeking  
4 to undermine the DM-3 comparator, the government  
5 again refers to the differences in size, tenure,  
6 and form of compensation as between DM-3s and  
7 judges. I believe we've addressed this fully in  
8 our reply and I say only that these arguments  
9 have no more merit today than the same arguments  
10 had 4 years ago, 8 years ago, 12 years ago or 16  
11 years ago.

12 The second point I wish to address  
13 with respect to the DM-3 comparators is the  
14 judiciary's reliance on the total average  
15 compensation of DM-3s. Now, in its reply, the  
16 government characterizes this approach as an  
17 attempt to measure judicial salaries, "against a  
18 different and higher benchmark."

19 Now, in articulating its objection to  
20 the judiciary's reliance on average  
21 compensation, the government conflates the  
22 comparator with the measure of compensation of  
23 that comparator. The comparator is the DM-3.  
24 The compensation measure is, for example, the  
25 midpoint salary range or the average

1 compensation. And historically, the measure --  
2 or determining the measure of compensation has  
3 required past Commissions to decide, for  
4 example, whether to include at-risk pay. And  
5 having concluded that at-risk pay must be  
6 concluded, how should it be factored in to the  
7 compensation measure.

8 And by the way, the same distinction  
9 exists between self-employed lawyers, which is  
10 the private sector comparator, and the measure  
11 of compensation for that comparator, which is  
12 derived from the CRA data applying the various  
13 filters and deciding at which percentile you  
14 will find the appropriate compensation measure.

15 Now, I mention this distinction  
16 because it provides a complete answer to the  
17 suggestion that by inviting reconsideration of  
18 the compensation measure, the judiciary is  
19 putting into question the value of the  
20 comparator. The two are two completely separate  
21 questions.

22 Now, the reason why the Commission  
23 must henceforth look at average compensation is  
24 a simple one and it is there for anyone to see.  
25 Since 2017, for a reason that the government has

1 failed to explain, there has been an  
2 unprecedented flatlining of the DM-3 salary  
3 range and consequently of the block comparator.  
4 And that is so in spite of the fact that between  
5 2017 and 2019, the last three years for which  
6 data is available, the actual compensation of  
7 DM-3s has increased year-over-year.

8 Now, in 2016, the Rémillard Commission  
9 reaffirmed the use of the block comparator on  
10 the basis that previous Commissions had used the  
11 DM-3 reference point:

12 "as an objective, consistent  
13 measure of year over year changes in  
14 DM-3 compensation policy."

15 Well, this simply is no longer the  
16 case because, in reality, the actual total  
17 average compensation of DM-3s has, as a matter  
18 of fact, increased year-over-year since 2007.

19 So if you look at tab J, you see that  
20 between 2017 and 2019 alone, DM-3 total average  
21 compensation has increased by more than \$20,000.  
22 So clearly the stagnant block comparator can no  
23 longer act as a reliable proxy for the actual  
24 compensation of DM-3s and thus play its  
25 intended role.

1           Now, I refer back to the Block  
2 Commission's rationale for favouring the block  
3 comparator over the DM-3 total average  
4 compensation. It's at paragraph 106 of the  
5 Block report and it includes the following  
6 caveat:

7                         "Average salary and performance  
8 pay may be used to demonstrate that  
9 judges' salaries do retain a  
10 relationship to actual compensation of  
11 DM-3s."

12           So what the past four years  
13 demonstrate is that in order for judges' salary  
14 to retain a relationship with the actual  
15 compensation of DM-3s, you have to look at  
16 average compensation. Now, the government has  
17 not responded to this point, but clearly, in our  
18 submission, this is a demonstrated change that  
19 requires the Commission to reevaluate the  
20 appropriate measure for the DM-3 comparator.

21           Now, this brings me to the graph at  
22 paragraph 40 of the government's reply. And you  
23 have -- so I'm at tab M. So this is meant to  
24 impress upon you the seemingly large difference  
25 between the total average compensation of DM-3s

1 and the block comparator.

2 Now, members of the Commission, I  
3 invite each of you to put a big question mark in  
4 the margin next to that graph because that graph  
5 is not a graph that can be relied upon. First,  
6 the DM-3 total average compensation shown on  
7 that graph is inaccurate. It has been grossed  
8 up by the assertive net value of a Deputy  
9 Minister's pension calculated at 11 percent by  
10 Mr. Gorham. Now, there's no indication of this  
11 gross up, whether it be in the chart or in the  
12 paragraphs describing it.

13 Second, the chart compares this  
14 adjusted DM-3 average compensation with the  
15 block comparator, but without the same pension  
16 adjustment being made to the block comparator.  
17 And likewise, you have a comparison made with  
18 the judicial salary, but again without an  
19 adjustment for the value of the judicial  
20 annuity.

21 So you see that by selectively  
22 applying this pension adjustment to the DM-3  
23 compensation curve, the graph grossly inflates  
24 and misrepresents the DM-3's total average  
25 compensation, and misrepresents the significance



1 of the gap between that compensation level and  
2 the block comparator.

3 Now, I don't have much time to  
4 illustrate the need for caution with the expert  
5 evidence tendered by the government, but looking  
6 at Mr. Szekely's report, take a look at  
7 paragraph 11 of that report. There you are  
8 told, and I quote:

9 "Overall salaries [of] the DM-3  
10 group (including 'at-risk' pay) have  
11 risen, on average from [288,000] as of  
12 March 31, 2015 to [305,000] as of  
13 March 31, 2020."

14 Well, both of those figures are  
15 inaccurate. Contrary to what is said in the  
16 parentheses, they do not include at-risk pay.  
17 And to give you an example, the correct figure  
18 as of March 31, 2020, is not 305,545, it is  
19 383,545. \$79,000 more than the figure quoted in  
20 Mr. Szekely's report.

21 So we say that the DM-3 comparator, if  
22 assessed using an appropriate compensation  
23 measure, which is the average compensation of  
24 DM-3s, demonstrate the need for an adjustment  
25 to the judicial salary, and you have that

1 supported in our written submissions.

2 Now, that gap is but one justification  
3 for the judiciary's requested recommendation.  
4 The other is even more significant and it's the  
5 gap with the incomes of self-employment --  
6 self-employed lawyers and that's the question to  
7 which I now turn.

8 Now, the Commission knows that  
9 self-employed lawyers remain the principle,  
10 albeit shrinking, source of outstanding  
11 candidates for the Bench and that's why it's  
12 been the other key comparator to assess adequacy  
13 of judicial salaries.

14 So you have before you the CRA data,  
15 but you also have before you something that was  
16 not previously available to the Commission and  
17 that is cogent evidence of the extent to which  
18 higher earning, self-employed lawyers are using  
19 professional corporations to earn their income.  
20 And you have evidence about the impact of that  
21 phenomenon on the CRA data used to --

22

23 [SPEAKERS AUDIO CUTTING OUT]

24

25 The compensation measure for the

1 private sector comparator. We put before you  
2 data on the number of lawyers in each of the  
3 provinces that use professional corporations and  
4 we've put before you the expert evidence of  
5 Messrs. Leblanc and Pickler of E&Y on the  
6 attractiveness of professional corporations from  
7 a tax-planning point of view for high earning  
8 lawyers.

9           And what you need to keep in mind when  
10 you look at the CRA data is that it dramatically  
11 under reports the actual income of self-employed  
12 lawyers and Mr. Leblanc and Mr. Pickler explain  
13 why. Once a self-employed lawyer starts earning  
14 in the 200 to \$300,000 range, there is an  
15 incentive to create a professional corporation  
16 in which the earnings of the lawyer will be  
17 retained. So the lawyer draws a lower salary or  
18 lower amount as needed, it can be a salary or it  
19 can be dividends, the corporation receives the  
20 entire professional income and that's recorded  
21 as corporate income. And when the individual  
22 lawyer receives either a salary or dividends,  
23 neither is recorded in the CRA data.

24           So the data you have before you has no  
25 trace of the large and increasing numbers of

1 lawyers practicing in professional corporations.  
2 And typically, because having and maintaining a  
3 professional corporation involves costs, the  
4 experts tell you that it's in the 200 to 300,000  
5 range that it starts to make sense to have a  
6 professional corporation.

7 Now, even with the data provided by  
8 CRA in its limited form, we see, looking at the  
9 table at tab 0 of the condensed book, the  
10 objective evidence supporting the need for an  
11 increase in the judicial salary.

12 Now, I need to address a point raised  
13 by Mr. Gorham in his report regarding total  
14 compensation and this is really something about  
15 which this expert goes overboard. Mr. Gorham  
16 grosses up the judicial salary by a whopping  
17 49.5 percent under the guise of arriving at a  
18 total value of the judicial annuity, inclusive  
19 of pension, disability, and what he describes as  
20 the additional cost for self-employed lawyers to  
21 replicate that annuity.

22 Now, you know, members of the  
23 Commission, that Mr. Gorham's 49.5 percent is  
24 18.5 percentage points more than the value used  
25 by the Rémillard Commission. So ask yourself,

1 is this consistent with the principle of  
2 continuity?

3 Mr. Gorham's approach is contrary to  
4 the considered decisions of past Commission.  
5 Look at the question of whether the disability  
6 benefit should be included. The answer is no.  
7 The answer was arrived at based on the view of  
8 the Commission's own expert, the Levitt  
9 Commission's own expert, Mr. Sauvé.

10 Having included this disability  
11 benefit, Mr. Gorham further inflates the value  
12 of the annuity by another 11.67 percent.  
13 There's no precedent for this component of the  
14 valuation exercise to be included.

15 And, members of the Commission, if one  
16 was going to look into this, one should have  
17 done it rigorously, which Mr. Gorham did not.  
18 And you know that by consulting the second  
19 report of E&Y Canada where it is explained to  
20 you that the figure of 11.6 percent does not  
21 take into account well-known vehicles like  
22 professional corporations, like the individual  
23 pension plan, which come to reduce the cost for  
24 self-employed lawyers to save privately for  
25 retirement.

1                   So we say that by adopting this  
2 maximalist approach that pays no heed to the  
3 precedents of the Commission, Mr. Gorham has  
4 just strayed outside of his field of expertise  
5 and his opinion is unhelpful.

6                   Now, next in line was the proposed  
7 relitigation by the government of the filters to  
8 be applied in the CRA data on self-employed  
9 lawyers. And here Mr. Gorham calls all of the  
10 filters into question and leaves the reader  
11 wondering, at the end, whether there remains any  
12 stable reference points.

13                   Take one example. Look at  
14 Mr. Gorham's treatment of the percentile filter.  
15 At paragraph 169, he states that the evaluation  
16 for high performing employees requires looking  
17 at the 70th to 80th percentile. And he says  
18 about the same thing at paragraph 77 -- 177, and  
19 we would agree with this because this is in line  
20 with past Commissions. But notwithstanding  
21 this, at page 46 of his report, Mr. Gorham  
22 devotes an entire page to answering the  
23 question, how can percentiles mislead us?

24                   Now, the basic point to retain on the  
25 issue of relitigating the filters is the simple

1 point made by Ms. Haydon in her report. And  
2 I'll quote her report.

3 "One of the foundations of  
4 compensation research is the degree of  
5 consistency over time in the use of  
6 comparators in order to maintain  
7 confidence in the data collection and  
8 related analytical process."

9 As Ms. Haydon cautions, filters are  
10 useful and they are necessary. And bear in mind  
11 that she speaks from the point of view of a  
12 compensation expert, something that Mr. Gorham  
13 is not.

14 Now, I need to say a few words about  
15 the low-income exclusions and the reasons why it  
16 must be increased from 60 to 80,000. That low  
17 income exclusion has always been applied by the  
18 Commission every single time the CRA data has  
19 been considered. And it's logical because,  
20 without it, there's no way to control for those  
21 people who are practicing part-time or whose  
22 talent simply does not command an income that is  
23 even close to the average.

24 Now, Mr. Gorham tells you at  
25 paragraph 173 of his report that:

1                    "[He] is unable to determine a  
2                    valid and appropriate reason for such  
3                    an exclusion."

4                    Well, our short answer to that is that  
5                    20 years of reasoned Quadrennial Commission  
6                    reports informed by expert evidence every step  
7                    of the way, including from Commission appointed  
8                    experts, is a valid and appropriate reason to  
9                    apply it.

10                    Now, why must that low income  
11                    inclusion be increased? Ms. Haydon notes that  
12                    the Robert Half 2021 Legal Profession Salary  
13                    Guide reports that \$81,000 is the salary of a  
14                    first-year associate. A first-year associate at  
15                    the 75th percentile. So this is one piece of  
16                    evidence which demonstrates that a low income  
17                    cut off of \$60,000 is manifestly too low.

18                    Another piece of evidence is the  
19                    analysis done by Professor Hyatt.

20                    MR. LAVOIE: Sorry, to interrupt. I'm  
21                    getting some messages from the reporters that  
22                    they might be in need of a break.

23                    Madam Chair, I know we're still in the  
24                    middle of Mr. Bienvenu's submissions, but I'm  
25                    wondering if we might be able to take a break



1 for the reporters at this time?

2 MADAM CHAIR: Mr. Bienvenu, is it a  
3 good time? Can we cut -- of course we'll go  
4 back to you after the break. I realize we'll  
5 try to juggle around the timing.

6 MR. BIENVENU: No, no, I'm entirely in  
7 your hands, Madam Chair. What I would ask is of  
8 course we need to take a break for the court  
9 reporter. I'm going to streamline what left I  
10 have to say to you and I'll be done in 10  
11 minutes.

12 MADAM CHAIR: Okay. We will take a  
13 10-minute break. I would ask everybody to be  
14 back at 11:45.

15 -- RECESSED AT 11:35 A.M. --

16 -- RESUMED AT 11:45 A.M. --

17 MADAM CHAIR: We will check with the  
18 relevant people for a change in schedule.

19 Mr. Bienvenu, maybe I can throw it to  
20 you to give us a maximum 10 minutes.

21 MR. BIENVENU: Thank you for your  
22 indulgence.

23 So the topic I'm addressing is the  
24 reasons why the low income exclusion must be  
25 raised from 60 to 80,000. The first ground in

1 the evidence is the salary of first-year  
2 associate at the 75th percentile.

3 The second is Professor Hyatt's  
4 evidence. He shows that if the cutoff had been  
5 increased to match the growth in the IAI in 2004  
6 when it was last adjusted to 2019, it would give  
7 you 87,000. If you apply the CPI, it would be  
8 79,000. So it's 79,200, \$800 short of the  
9 80,000 that we proposed, which is clearly  
10 reasonable.

11 Now, you can come at it by doing the  
12 proposed calculation. If it was appropriate in  
13 2004, as decided by the McLennan Commission, to  
14 have a low income exclusion of \$60,000, the --  
15 the effect of inflation alone has reduced that  
16 number to the amount of \$46,000. So in effect,  
17 if you apply 60,000, as compared to what it was  
18 designed to catch, you're applying a \$46,000  
19 exclusion.

20 Now, interestingly, Professor Hyatt  
21 breaks down the demographics of lawyers earning  
22 between the 60 and 80,000 levels and you'll see  
23 that he finds that nearly half of them are aged  
24 between 55 and 69. So you know that they are  
25 people -- should not be included in that group.

1           The other filter is the 44 to 56 age  
2 range. It's always been applied because that's  
3 where the applicants come from on the top  
4 CMAs. So we noted, members of the Commission,  
5 what the Rémillard Commission said in paragraph  
6 70. And what it said is that it gave very  
7 limited weight to the difference between private  
8 sector lawyers salaries in the top 10 CMAs and  
9 those in the rest of the country, but we have  
10 now provided evidence that really should bring  
11 you to pay a lot of attention.

12           MR. LAVOIE: Sorry, Mr. Bienvenu, I  
13 need to interrupt again. I'm being advised that  
14 we're missing Mr. Lokan, Mr. Andrew Lokan. I  
15 believe he might be necessary for him to be  
16 present during the hearing, but he's not on at  
17 the moment.

18           Does Madam Chair wish to take a brief  
19 pause while we wait for him to reconnect?

20           MR. COMMISSIONER: If we can take a  
21 minute, let's see if we can get him.

22           -- RECESSED AT 11:49 A.M. --

23           -- RESUMED AT 11:52 A.M. --

24           MADAM CHAIR: Over to you,  
25 Mr. Bienvenu.

1 MR. BIENVENU: So I was speaking about  
2 the need of the Commission to pay attention to  
3 the top CMAs. You have the evidence of Chief  
4 Justice Popescul. You have the applications  
5 table. And please recall that fully 68 percent  
6 of appointees come from the top 10 CMAs, so  
7 this is more than two thirds of appointees.

8 Now, I'm going to end by talking about  
9 incidental allowances and representational  
10 allowances. And here, our request is for an  
11 increase in these allowances consistent with the  
12 rate of inflation since they were last adjusted,  
13 and that was more than 20 years ago.

14 The government has replied to our  
15 suggested recommendation that the modest  
16 increases we proposed are not warranted because,  
17 it is said, not all judges use the full  
18 allowances available to them.

19 Now, we fail to see the relevance of  
20 this point. If anything, it proves that the  
21 allowance is only used by those who really need  
22 it. The allowance is not a form of judicial  
23 compensation. It is an entitlement to the  
24 reimbursement of reasonable expenses, reasonably  
25 incurred.

1           A number of judges do use the full  
2 amount of the allowances available to them or  
3 close to it. For example, more than 70 percent  
4 of judges use more than \$4,000 of their  
5 incidental allowance. And for those judges  
6 making use of the allowances, it is only  
7 reasonable that, for them, that its amount  
8 should be adjusted as the cost associated with  
9 related expenses increased with inflation. And  
10 for those judges who do not use the allowance,  
11 well, the change will be of no consequence to  
12 the Government.

13           Now, we focused, in our submission, on  
14 the costs associated with the increased use of  
15 technology with remote judging. I think the  
16 experience we're living this morning speaks for  
17 itself in that regard. These costs are  
18 significant. I'll just give you a pointer.  
19 Half of judges recently canvassed spent more  
20 than a quarter of the available incidental  
21 allowance on home Internet costs alone. Now,  
22 those costs were not even contemplated in 2000  
23 when the allowance was last adjusted.

24           Now, please consider the same reverse  
25 calculation point that I made earlier. The

1 inflation adjusted value of the \$5,000 allowance  
2 recommended by the Drouin Commission is, today,  
3 \$3,500. So inflation brought this amount down,  
4 but the cost of the expenses designed to be  
5 reimbursed has gone up with inflation.

6 Now, the same reasoning holds for  
7 representational allowances, and consider this.  
8 If it was Parliament's view, and we know that it  
9 was, when legislation was adopted to implement  
10 the 2000 report of the Drouin Commission, that  
11 the sums earmarked for the representational  
12 duties of chief justices and associate chief  
13 justices were appropriate and commensurate to  
14 the proper discharge of their duties, well then  
15 you know, you know that the passage of time and  
16 inflation have by now defeated Parliament's  
17 intention, because these amounts have, in  
18 effect, been reduced by more than 40 percent.

19 Madam Bloodworth, Mr. Griffin, Madam  
20 Chair, those are my submissions. I wish to  
21 thank you for your attention and your patience,  
22 in spite of the many interruptions.

23 MADAM CHAIR: Thank you, Mr. Bienvenu,  
24 thank you. I'm still waiting on the answer for  
25 the relevant parties on the translation and

1 transcript whether we can break for lunch break  
2 and do the federal protonotaries and Mr. Lokan  
3 after a short break for lunch.

4 Sorry, I've got one answer. We do  
5 have a problem with the interpreters.

6 Any questions that you would have,  
7 Commissioners?

8 MR. COMMISSIONER: I don't have any  
9 particular questions.

10 MADAM COMMISSIONER: No, I'm okay as  
11 well, thanks.

12 MADAM CHAIR: Justice Popescul, thank  
13 you very much for your evidence, very  
14 interesting. The one question I have, being a  
15 bit of a neophyte in this is, can you tell me in  
16 the highly recommend that you say that that has  
17 gone down and the rejection has gone up, what  
18 about the recommend? Has highly recommend been  
19 in the trends over the past 10 years, really the  
20 driver? Would you look at that or more a  
21 combination of highly recommend and recommend,  
22 just so that I understand the picture a bit  
23 better?

24 JUSTICE POPESCUL: A very good  
25 question. I can tell you that as 10 years ago

1 when I started to be the Chair of the JAC, there  
2 was no "highly recommended" category. Because  
3 what had occurred is there was a "highly  
4 recommended" category at one point, and when the  
5 government changed, they took out the "highly  
6 recommended" category, so you just had  
7 "recommended" and "not recommended". And then  
8 more recently with this government when they  
9 came into power, they reinstated the "highly  
10 recommended" category.

11 So it's hard to go back 10 years  
12 because that category didn't exist 10 years ago  
13 when I was doing the JAC, chairing the JAC.

14 MADAM CHAIR: So is it fair that if I  
15 look today at highly recommend and recommend, we  
16 should feel good? As you said, you're not  
17 saying that there's a lack of -- how would I say  
18 that, the Bench currently, there's no issue in  
19 the quality of the Bench right now. So I should  
20 be able to combine the "highly recommend" and  
21 "recommend" as a pool when we look at the  
22 tables?

23 JUSTICE POPESCUL: Yes, I think that  
24 that would be fair to say is that when you're  
25 looking at the tables, you can put them both



1 together. And I think again, as a Chair of the  
2 JAC, what they are doing is they're trying to  
3 signal to the Government, who has the ultimate  
4 authority as to who they would appoint, which  
5 candidates are of particular outstanding  
6 quality, and that would be the highly  
7 recommended categories. And they can choose  
8 from the highly recommended and recommended  
9 categories.

10 So the point, I guess, is the  
11 dwindling pool. And that if you -- if you have,  
12 say, for example, on a court, four vacancies and  
13 you only have six people from which to choose,  
14 that means your -- it affects diversity, who you  
15 can choose. It would be certainly a lot better  
16 if you had four vacancies and you had 20 people  
17 from which to choose, that the government could  
18 choose from.

19 So -- but I think in answer to your  
20 question, yes, the government is able to choose  
21 from the highly recommended and recommended  
22 categories.

23 MADAM CHAIR: Thank you very much,  
24 that answers my question.

25 In terms of moving ahead, normally we

1 would go on -- and I do have questions for the  
2 judiciary, but it could wait until tomorrow.

3 Mr. Bienvenu, you have answered many  
4 of my questions already, so thank you very much.

5 Peter and Margaret, how would you like  
6 to proceed, given I still don't have an answer  
7 on whether we can have the team of translators  
8 come back earlier in time. Should we break for  
9 lunch now and come back early?

10 MR. COMMISSIONER: Well, I think it's  
11 probably the logical place to be fair to  
12 Mr. Lokan, so that he doesn't get a bit of a  
13 kangaroo start.

14 MADAM CHAIR: Okay. So you would  
15 propose that we would go for lunch, come back at  
16 12:45 at the latest. And, Mr. Lokan, if we give  
17 you a 40-minute break, that would mean it brings  
18 us back to about 1:25. Would that be okay?

19 MR. LOKAN: That's fine, Madam  
20 Commissioner. And I just want to say, I am able  
21 to be flexible. I can either do my submissions  
22 now, start my submissions now, wait till after  
23 lunch. I am completely in your hands.

24 MADAM CHAIR: Are you okay then, Peter  
25 and Margaret, to start?

1 MR. COMMISSIONER: If that's going to  
2 save time, I'm fine with that.

3 MADAM CHAIR: Probably we should do  
4 that, Mr. Lokan. And if you can assume we've  
5 read very carefully your documents, which I did.  
6 So thank you very much. If we can find some  
7 time that would be greatly appreciated.

8 MR. LOKAN: Thank you, Madam  
9 Commissioner, and thank you to the Commission  
10 for the opportunity to make submissions on  
11 behalf of the Prothonotaries.

12 I have with me today as my client  
13 representative Prothonotary Aylen who will pull  
14 up a couple of documents later in my  
15 submissions.

16 The Prothonotaries have raised three  
17 discrete issues before this Commission. One is  
18 that of supernumerary status. The second is  
19 increasing the incidental allowance to achieve  
20 parity with the incidental allowance of the  
21 judges. And the third is change in their title  
22 from Prothonotary to "Associate Judge".

23 Now, on these three discrete issues,  
24 the government has indicated that it does not  
25 disagree with each substantive position of the

1 Prothonotaries, so I will be able to be briefer  
2 on those than I would be otherwise.

3 On supernumerary status, the parties  
4 are essentially putting forward a common  
5 position on the elements of a supernumerary  
6 scheme. Of course, the Commission will want to  
7 know the underlying logic to be able to make a  
8 recommendation, if so advised.

9 On incidental allowances, the  
10 government accepts that there should be parity  
11 with -- between judges and Prothonotaries.

12 On the change in title issue, the  
13 government asserts that the Commission has no  
14 jurisdiction, so I will be addressing  
15 jurisdiction. The government advises that it  
16 intends to make the change as a matter of  
17 policy, but gives no time frame and simply says,  
18 well, we will or may do that.

19 On the salary issues, the  
20 Prothonotaries are not seeking any variation for  
21 this Commission in the 80 percent ratio that was  
22 established last time. However, the  
23 Prothonotaries are affected by the government's  
24 proposed cap on the IAI increases and, as well,  
25 by the Association in the Council's proposed

1 salary increases. So I will make some brief  
2 submissions on those points.

3 So let me start with supernumerary  
4 status. The Commission should make a  
5 recommendation on the terms which are set out in  
6 the Prothonotaries initial submissions, at  
7 paragraph 71. The supernumerary program is a  
8 win-win for the government and the  
9 Prothonotaries and for the Federal Court. It's  
10 a benefit for the Prothonotaries in that it  
11 enables them to keep contributing in the years  
12 in which they transition to retirement with a  
13 reduced workload. It's a benefit to the  
14 Government because the government receives the  
15 benefit of 50 percent of a full-time  
16 Prothonotary's caseload while only being  
17 required to pay approximately 33 percent of the  
18 salary. So there's a financial benefit there.

19 It is a particular benefit to the  
20 court, which can use supernumerary appointments  
21 to smooth out workload and retain the benefit of  
22 its most experienced Prothonotaries, and this is  
23 particularly important for a small cohort.  
24 There are a total of nine in the office of  
25 Prothonotary.

1           If you have a couple of retirements or  
2 disabilities happen in quick succession and  
3 you're not able to use supernumerary  
4 appointments, then you have the potential of a  
5 disruption to the court by the time that new  
6 Prothonotaries are found and appointed and  
7 brought up to speed. But if you can plug those  
8 gaps with supernumerary appointments, it gives a  
9 lot more flexibility to the court.

10           These were the factors that led the  
11 Rémillard Commission to recommend that the  
12 government and the Chief Justice consider the  
13 possibility of allowing a supernumerary status.  
14 Those discussions, I'm happy to report, were  
15 held in the time since the Rémillard Commission  
16 and they have led to the more crystallized  
17 proposal at paragraph 71.

18           There are four elements, and I do  
19 understand this to be a common proposal, as  
20 well, from the government. That is to say,  
21 Prothonotaries would be eligible when eligible  
22 for the full judicial annuity under the Judges  
23 Act. The election to go supernumerary would be  
24 at the Prothonotary's option both whether and  
25 when. The duration of a Prothonotary's

1 appointment as a supernumerary would be up to  
2 five years. And the workload would be defined  
3 as 50 percent of that of a full-time  
4 Prothonotary.

5 Now, in our paragraph 71, we do have  
6 some language saying that that would be as a  
7 matter to be scheduled between the chief justice  
8 and the Prothonotaries. You may not need to  
9 include that in your recommendation. You may  
10 regard it as implicit since certainly that's the  
11 way in which scheduling happens, but that was a  
12 point that the Chief Justice had wanted to  
13 raise.

14 Now, on incidental allowance, I don't  
15 need to say very much because Mr. Bienvenu has  
16 covered that ground. This is an allowance that  
17 is paid to reimburse expenses and it's on the  
18 provision of receipts, it's not an open-ended  
19 allowance. It's not a form of compensation, but  
20 it is a benefit for Prothonotaries and judges  
21 not to have to subsidize the position with  
22 personal expenditures. Not to have to say,  
23 well, I know I need a second computer or  
24 whatever, and the allowance doesn't cover it,  
25 but I want to be professional and I want to

1 fulfill the duties of my office, so I'm just  
2 going to spring for it myself. We don't want  
3 that situation.

4           The range of expenses is set out in  
5 our paragraph 77 of our initial submissions.  
6 The major expenses, especially lately, have been  
7 in establishing and maintaining a home office as  
8 well as meeting requirements for continuing  
9 legal education, and both of those are the same  
10 for judges and Prothonotaries. Staples doesn't  
11 give a special Prothonotary deal of an  
12 80 percent rate for printer cartridges if you're  
13 a Prothonotary. The price is the same. So  
14 we're pleased to see that the government agrees  
15 with parity and wherever that allowance amount  
16 ends up being set, it should be the same for  
17 both Prothonotaries and judges.

18           With respect to the change in title, I  
19 am going to spend a little more time on that one  
20 because it's contested, at least, as to  
21 jurisdiction.

22           This is an issue of some importance  
23 because there is widespread misunderstanding and  
24 confusion with the title of Prothonotary. It is  
25 a long-standing issue. The Committee of Judges



1 and Prothonotaries that were first tasked with  
2 looking at this issued a report some 15 years  
3 ago in 2006, and recommended a change to  
4 "Associate Judge" or Judge.

5 The Chief Justice put this  
6 recommendation into a notice to the profession  
7 in 2009 and perhaps the hope was that the Bar  
8 would pick up from the notice to the profession  
9 and start using that title, but the difficulty  
10 is that it requires legislative change. Both  
11 the Judges Act and the Federal Courts Act refer  
12 to Prothonotary. So unless and until those are  
13 amended, the statutory title will remain  
14 Prothonotary.

15 Now, to address jurisdiction. I ask  
16 you to look at the wording of section 26  
17 carefully. This Commission has jurisdiction:

18 "[...] to inquire into the  
19 adequacy of the salaries and other  
20 amounts payable under this Act [...]" .  
21 And those are very important words.

22 "[...] and into the adequacy of  
23 judges' benefits generally."

24 So the insertion of those words, "and  
25 other amounts payable under this Act," is your

1 tipoff that benefits can go beyond financial  
2 issues, because if it was just financial, you  
3 would not need to talk about benefits at all,  
4 having said salaries and other amounts payable  
5 under this Act. So amounts payable covers the  
6 financial field, but then section 26 goes on to  
7 say:

8                    "[...] and into the adequacy of  
9                    judges' benefits generally."

10                    And I respectfully submit that the  
11 title is very much a benefit of the office. The  
12 wrong title is a burden; the right title is a  
13 benefit.

14                    The change that is requested by the  
15 Prothonotaries ties into the reasons for having  
16 a Quadrennial Commission process in the first  
17 place. It's to safeguard the independence of  
18 the judiciary.

19                    Judges, we know, are held in very high  
20 regard and are understood by Canadians to be  
21 independent of government. All too often,  
22 unfortunately, Prothonotaries are mistaken for  
23 part of government. It is a benefit to be  
24 regarded as a judge and it's a benefit that  
25 reinforces the independence of the judiciary

1 because everybody understands the independence  
2 of judges. Conversely, it is a distinct burden  
3 to carry a title that litigants, and even  
4 counsel, can't pronounce and don't understand.

5 There is some practical importance, as  
6 well, to your jurisdictional finding. If you  
7 agree with me on jurisdiction and do make a  
8 recommendation, I'm going to make a prediction,  
9 the government will then have to implement. The  
10 government will not be able to articulate any  
11 rational reason not to make the change.

12 You know, in the Bodner framework, the  
13 government must respond and they can refuse a  
14 recommendation on a rational basis, and on  
15 financial matters that's often contested. It  
16 would be very difficult to imagine on what basis  
17 the government would say, we're not going to  
18 change Prothonotary title in the face of a  
19 recommendation from this Commission. Now, we  
20 say that it is helpful that the government  
21 currently says that it is its present intention  
22 to change the title as a matter of policy, but  
23 we do note that things can change. Mr. Bienvenu  
24 referred to the change of government in 2006  
25 earlier in his submissions. The Prothonotaries

1 were also affected by that change in government  
2 because there was a proposal to include them in  
3 a Commission process in 2005 that died on the  
4 order paper of the House of Commons with the  
5 calling of the election.

6 So it's much less secure to have,  
7 well, as a matter of policy, we think that would  
8 be a good idea when there's always the  
9 possibility of a change in policy, whether  
10 connected or not to a change in government.

11 At the very least, however, the  
12 Prothonotaries do ask, even if you don't find  
13 you have jurisdiction to make a recommendation,  
14 would you please record that the Prothonotaries  
15 raised this issue and that the government stated  
16 its intention to fix it.

17 Now, if I can just spend a few minutes  
18 and again this goes back to the jurisdictional  
19 points, as well as the merits. On some of the  
20 confusion that is created by the current title,  
21 and if I can ask Prothonotary Ayles to screen  
22 share for this? We had a debate in 2014, or so,  
23 in the Senate in which a Senator made an  
24 assertion about who Prothonotaries were:

25 "Prothonotaries in the Federal

1 Court are clerks who are halfway to  
2 being a judge. They are not  
3 necessarily legally trained but most  
4 of them are. Their salary is being  
5 increased to \$228,000 a year [...]."

6 It may not be the most inaccurate  
7 thing ever said in the Senate, but it's got to  
8 be up there close.

9 If we can look at tab 11 of our book  
10 of documents? Here is an email, and this is  
11 perhaps a little more serious, from a litigant  
12 before the court to Prothonotary Furlanetto, as  
13 she then was, she has since been appointed as a  
14 judge.

15 "Please be advised that the  
16 respondent, his firm and the counsel  
17 will not refer to you by the colonial  
18 title of Prothonotary as such term  
19 refers to the Catholic church and the  
20 role of the recorder of slave deeds,  
21 and other instruments of slavery  
22 [...]."

23 Certainly it's true that the  
24 "Prothonotary" label was originally an  
25 ecclesiastical office. I don't know about the

1 Catholic church. But the link to slavery caused  
2 the Prothonotaries to look into this event,  
3 because it's obviously a bit of a concern, and  
4 sure enough they found, and this is at tab 12 of  
5 our book of documents, that in turn of the  
6 19th century America, this is actually in  
7 Pennsylvania, the Prothonotaries were  
8 responsible for keeping what were called the  
9 registers of Negroes and Mulattos. That is to  
10 say, listings of slaves born and to whom -- who  
11 owns them. Now, that may be a little more  
12 ancient history, but obviously concerning for  
13 the court.

14           Even the Department of Justice, if we  
15 can go to tab 12, in announcing the appointments  
16 of the last three, I think, Prothonotaries, in  
17 the announcement in French has asserted that  
18 "les protonotaires sont des fonctionnaires, de  
19 la cour federale", using the word  
20 "fonctionnaires", as I say, this is mistaking  
21 them for part of government. That is what I  
22 would understand to be the same as civil  
23 servant. They are not. They are judicial  
24 officers. And it might be forgivable if that  
25 had happened only once, but it happened three

1 times, as documented in our Book of Documents.

2 And just a final example, a Globe and  
3 Mail article reporting on the merits of a case,  
4 there was a case in which some affidavits were  
5 struck out, and it was a fairly high profile  
6 case, and the Globe and Mail reported that Roger  
7 Lafreniere, now again Justice Lafreniere:

8 "Prothonotary and explained as  
9 chief clerk of the Federal Court  
10 stressed the need to allow the judge  
11 to hear the wealth of information."

12 So there is rampant, widespread  
13 confusion and not only that, but it's confusion  
14 that engages the separation of powers. The  
15 common theme running through this is that  
16 Prothonotaries are seen as government  
17 functionaries. They are seen as part of  
18 government as opposed to part of the judiciary.  
19 It's a wholly unsuitable title. Spellcheck does  
20 not even recognize the word.

21 And to get back to section 26 of the  
22 Judges Act and to the criteria there, as  
23 Mr. Bienvenu pointed out, one of the main ones  
24 is the need to attract and retain outstanding  
25 candidate. All I can say about that is that the

1 title is distinctly not helpful in terms of  
2 attracting leading members of the Bar.

3 You should be aware, and this is in  
4 our materials in the initial submissions at  
5 paragraph 88, that in Ontario there is a cohort  
6 of case management Masters who have many similar  
7 functions and there is legislation before the  
8 legislative assembly of Ontario to change that  
9 title to Associate Judge there as well. Again,  
10 it's not clear to the public what a Master is  
11 and there may be some connotations to that  
12 title, but that's in the works in Ontario.

13 So we respectfully request that you  
14 recommend that the title be changed from  
15 Prothonotary to Associate Judge or Juge Adoir  
16 [ph].

17 Now, that brings me to my comments on  
18 the economic issues. The Prothonotaries adopt  
19 the submissions of the Association and Council  
20 and I will just add a few comments.

21 With respect to the cap on the IAI  
22 increases, we say that that cap is unwarranted  
23 and lacks any principle. As Mr. Bienvenu  
24 pointed out, the issue of the impact of COVID is  
25 self-correcting over time. As the labour market



1 normalizes, IAI increases will face downward  
2 pressure that will compensate for what is said  
3 to have occurred with the 2021 increase.

4           It's contrary to the legislative  
5 scheme in which Parliament has already  
6 determined that a statutory cap of 7 percent in  
7 any given year is the appropriate legislative  
8 limit.

9           And, furthermore, the government's  
10 position, with respect, is not symmetrical,  
11 because what they have said is, well, we'll  
12 cap -- we propose that you cap at 10 percent  
13 over the 4 years of the mandate, but don't  
14 worry, if the downward pressure is sufficient  
15 that any given year you would go negative and it  
16 would be less than zero, well, we'll protect you  
17 from that. But what the economists are telling  
18 us and the budget and the Bank of Canada, and  
19 the consensus forecast, all of those tell us  
20 that it's unlikely that the IAI increases will  
21 dip below zero. That there is still sufficient  
22 strength in the economy that between  
23 productivity improvements and inflationary  
24 increases, we are probably looking at, you know,  
25 a couple of percent for each of the next couple

1 of years.

2 So the protection that the government  
3 would offer is very unlikely to come into play.  
4 There is indeed a lot of chatter these days  
5 about whether we're underestimating the risks of  
6 inflation and that COVID recovery may, in fact,  
7 cause inflation to be higher. And if it does,  
8 then there's a two-fold effect. The cap becomes  
9 more limiting for the judges and Prothonotaries  
10 and, again, it's even less likely that there  
11 would be any need for downside protection to  
12 prevent against a negative increase. So one  
13 looks in vain for any articulation of a  
14 principled basis for what the government  
15 proposes.

16 Now, if I can make some comments on  
17 the analysis of the comparators to judges. I'm  
18 not going to talk about the DM-3s. That was  
19 covered completely by Mr. Bienvenu, but I would  
20 like to talk about lawyers in private practice  
21 for a couple of minutes.

22 The government's analysis of lawyers  
23 in private practice is not reliable for a number  
24 of reasons, but including that the government  
25 ignores the impact of professional corporations.

1 As you know, the Gorham report applies a gross  
2 up to judicial salaries to account for what is  
3 presented as more tax efficient saving through  
4 the judicial annuity. And in the Gorham report,  
5 the analysis is once you've maxed out on your  
6 RRSP, you're saving in after-tax dollars if you  
7 are a lawyer in private practice, but no  
8 allowance is made for professional corps. And  
9 that professional corps are a very powerful  
10 savings vehicle and they are available to all  
11 lawyers. We know they are extremely widespread.  
12 They now account for around about a quarter of  
13 all practicing lawyers, according to the  
14 materials.

15 And now Mr. Bienvenu took you to the  
16 point that it's really not worth doing until you  
17 hit about 200,000 to 300,000 in income. The  
18 reason for that is, firstly, because there are  
19 expenses with setting up a separate corporation.  
20 But also that when you're in that range, you're  
21 more likely to be using most of your income for  
22 your expenses, but as income increases above  
23 those amounts, the higher the income, the  
24 greater the savings for professional  
25 corporations.

1           That is to say, if you're being paid,  
2 let's say, 800,000 a year and you really only  
3 need 300,000 to sustain your spending  
4 commitments, that extra 500,000, you pay tax at  
5 a lower rate and leave it as retained earnings  
6 in the corporation. It becomes very much like a  
7 second RRSP, but with no limit on contributions.  
8 So as I say, very powerful.

9           MADAM CHAIR: Mr. Lokan, do you have a  
10 hard stop in three or four minutes, is that  
11 good? I can give you more after lunch. I  
12 didn't mean to cut you. I just want to be mind  
13 that we lose translators and transcripts at  
14 12:30.

15           MR. LOKAN: If I can just finish this  
16 point and then break for lunch. I will then  
17 only have 5 or 10 minutes after lunch.

18           MADAM CHAIR: That's great.

19           MR. LOKAN: So what I was going to  
20 perhaps put in your minds, I hope, is that  
21 roughly speaking, once you reach the upper  
22 levels, you have \$25,000 in tax savings for  
23 every \$100,000 in extra income. So -- and you  
24 see that ratio in the Leblanc Pickler report and  
25 also in the comparative tax rates that we've

1 included in our materials. So if you can save  
2 400,000, then you've got 100,000 saving in tax.  
3 So a very powerful vehicle.

4 With that, I will stop for the lunch  
5 break and I look forward to completing my  
6 submissions, briefly, when we come back.

7 MADAM CHAIR: Perfect. Thank you very  
8 much, Mr. Lokan. I apologize, I'm mindful of  
9 the people who are there to help us.

10 So, Mr. Lokan, you will give us a  
11 maximum of 10 minutes when we come back.

12 MR. LOKAN: I will have less than 10  
13 minutes.

14 MADAM CHAIR: Can everyone please stay  
15 connected. Please do not disconnect as we would  
16 have to test again your audio and that might be  
17 a nightmare that would delay us yet again. So  
18 thank you. We'll see you starting right sharp  
19 at 1:30.

20 -- RECESSED AT 12:28 P.M. --

21 -- RESUMED AT 1:31 P.M. --

22 MR. LOKAN: Before the break I was  
23 talking about the widespread use of professional  
24 corporations and how that widespread use means  
25 that the CRA data is essentially missing the top

1 part of the chart. And I had referred earlier  
2 to the fact that professional corporations are  
3 not very useful at the lower income levels but  
4 become increasingly useful the more that a  
5 lawyer earns. There's another dimension to that  
6 which is, of course, you can retain more  
7 earnings if your income goes up, but you can  
8 also retain more earnings if your lifestyle  
9 expenses go down.

10 And one feature of professional  
11 corporations is that as you reach the stage  
12 later in life where you've paid off your  
13 mortgage, perhaps you've put your kids through  
14 school, university, you may experience a decline  
15 in expenses and, again, that's when you  
16 typically turn to a professional corporation.  
17 It's not so much the junior partners as the  
18 middle and senior partners that use them and,  
19 again, that's associated with higher earnings.

20 Now, the government in its written  
21 submissions conjures up the image of the senior  
22 partner in the corner office as being the only  
23 kind of lawyer who would be deterred from  
24 applying to the judiciary by the lower salaries,  
25 but that image is both inaccurate and woefully

1 outdated.

2           There is reason to believe that in the  
3 major cities there are thousands of lawyers who  
4 are earning average partner incomes and are  
5 earning amounts in the higher six-figure range,  
6 north of 500,000, 600,000 et cetera, et cetera,  
7 that never show up in the CRA data. And this is  
8 particularly relevant to the Prothonotaries who  
9 are appointed to the largest census metropolitan  
10 areas. They are appointed specifically to  
11 Toronto, Montreal, Ottawa and Vancouver where  
12 the leading lawyers who appear before them often  
13 earn far more than they do.

14           We do have one data point, and that is  
15 in the judiciary's book of exhibits and  
16 documents at tab 30. There is a Globe and Mail  
17 article about Cassels Brock. The information in  
18 that article gives us enough to be able to  
19 deduce that average partner compensation at  
20 Cassels Brock is in the range of \$750,000 a  
21 year. You can get that from the -- they give  
22 the gap between men and women and they talk  
23 about how many men there are versus women  
24 partners. And you just do a bit of math and get  
25 that \$750,000 figure. That's average partner

1 compensation that's is not the corner offices.

2 Now, Cassels Brock is a fine firm, it  
3 has offices in Toronto, Vancouver and Calgary,  
4 but they are not uniquely profitable. The  
5 Cassels Brock firm would be replicated by a  
6 number of mid-size to larger firms in the major  
7 cities in Canada.

8 So, with respect, when you have that  
9 data point, when you understand how professional  
10 corporations work, when you understand the tax  
11 advantages, and when you see the very large  
12 number of professional corporations that private  
13 practitioners are electing to use, you can have  
14 very little confidence in the percentiles that  
15 the government puts forward. And when they talk  
16 about 89th percentile this, et cetera, et  
17 cetera, those figures are just likely to be very  
18 seriously skewed and not reliable.

19 So we say that the recruitment issues  
20 are real, and that the modest increases that are  
21 sought by the judges, and which would flow  
22 through to the Prothonotaries, would begin to  
23 address the challenges of recruitment. They  
24 would only be a small step but they would begin  
25 to address them and those should be recommended.



1           Now, subject to any questions from the  
2 panel those are my submissions on behalf of the  
3 Prothonotaries.

4           MADAM CHAIR: Mr. Lokan, to get more  
5 time I assume you're back tomorrow? There is a  
6 reply by the Prothonotaries so I think we will  
7 keep and reserve our questions then, if that is  
8 all right with you?

9           MR. LOKAN: Yes.

10          MADAM CHAIR: Thank you very much,  
11 Mr. Lokan.

12          Now can I call on the representatives  
13 for the government, Mr. Rupar.

14          MR. RUPAR: Thank you, Madam Chair. I  
15 hope you can hear me.

16          MADAM CHAIR: Yes, very well, thank  
17 you.

18          MR. RUPAR: Madam Chair,  
19 Commissioners, we would like to echo the opening  
20 statements of my friend, Mr. Bienvenu, in  
21 respect of the admiration that all Canadians  
22 hold for our judiciary. There is simply no  
23 question that our judiciary is the envy of the  
24 world, it is second to none. And we are very  
25 proud to have all the members of the judiciary

1 function in the very difficult circumstances, in  
2 this past year in particular, in the manner that  
3 they have. So I wish to echo those comments  
4 that my friend made.

5 I would also like to echo the comments  
6 my friend made with respect to the work of the  
7 past Commissions and this Commission. It's  
8 always a challenging endeavour, shall we say,  
9 and it's always been undertaken in the most  
10 professional and independent manner and, again,  
11 I echo the comments of my friend there.

12 And, finally, I also echo the comments  
13 with respect to the co-operation between the  
14 various principal parties. It's worked out very  
15 well. There's been very few hiccups. We don't  
16 agree on everything, as you will see in a few  
17 minutes as we go through some submissions. But  
18 I do like to thank Mr. Bienvenu and his teams  
19 for their co-operation.

20 Now, one of the very first times I  
21 ever appeared in court the judge looked at me  
22 and said, Mr. Rupar, now it's time to switch the  
23 water to the other side of the bathroom, so  
24 we'll see if we can do that.

25 Before we start I just want to talk,

1 just a moment, about the process and some of the  
2 comments made about Mr. Gorham in particular.  
3 There seemed to be a suggestion that there  
4 should be a finding of credibility here. And we  
5 just want to make a comment that we understand  
6 the process of this Commission is not to go that  
7 way. We never understood this Commission to be  
8 a litigation-based Commission, more of a  
9 co-operative Commission.

10 Mr. Gorham put his report in, it's a  
11 very fulsome report. He was asked to find the  
12 value of the annuity and total compensation of  
13 the judiciary and he set out exactly, in great  
14 detail, how he would get there. And, as we will  
15 see in a few moments, Mr. Newell agrees, for the  
16 most part, with him. They are within a stone's  
17 throw of each other.

18 There's been no cross-examinations  
19 here, there's been no staggered reports, as you  
20 would find in traditional litigation. There's  
21 been no discovery. We're not asking for any  
22 kind of finding of credibility here and we just  
23 think that that's not the way this Commission  
24 should be run. And we found that that's the way  
25 it's been in the past so just a word of caution

1 with respect to those comments that I think are  
2 in order.

3 Now, with those opening words I'd just  
4 like to add this, when we go through our  
5 materials it's about context and it's about  
6 prospective. There were some comments made  
7 about the fact that the government has raised  
8 other factors or considerations, if I can put it  
9 that way, for this Commission to take into its  
10 deliberations. Yes, we've looked at what other  
11 judiciaries were. And we're well aware what the  
12 Drouin Commission said before. And we're not  
13 suggesting, in any means, and we said this in  
14 our written submission, that there are direct  
15 comparisons between our judiciary and those of  
16 other countries.

17 We're not suggesting, by any means,  
18 that there's a direct comparison between what  
19 medical doctors earn and the judiciary. What we  
20 are saying, and the reason we put this  
21 information before this Commission, is it offers  
22 context and perspective. It offers context with  
23 respect to what other judiciaries generally are  
24 receiving as compensation in similar western  
25 democracies. We've tried to address a number of

1 the concerns that were raised by the Drouin  
2 Commission with respect to finding comparables  
3 and, as our report set out, finding ways to  
4 translate the salaries and benefits there  
5 through the exchange rate to what a comparable  
6 Canadian value would be. Again, we're not  
7 suggesting these are direct comparisons, they're  
8 contextual comparisons and it provides a broader  
9 perspective.

10 Because we're of the view that there's  
11 been a narrowing of what the Commission should  
12 look at over the years. And we're not at all  
13 suggesting that we disregard the DMs, we're not  
14 at all suggesting that we disregard the private  
15 sector, of course not. We are not doing that.  
16 What we are saying is that cannot be the narrow  
17 sole perspective.

18 The other judiciaries -- the other  
19 information we put before you is not perhaps the  
20 primary information you'll turn towards, but we  
21 say it's part of the overall picture you should  
22 look at.

23 Now, with that, the submissions we  
24 make this afternoon will be as follows. I will  
25 be starting and I will speak primarily to the

1 judicial annuity issue, the prevailing economic  
2 conditions and the attraction of outstanding  
3 candidates to the Bench.

4 My colleague, Mr. Shannon, will deal  
5 with the CRA information primarily, the ability  
6 to track public sector candidates, and he will  
7 also deal with the DM-3 comparator and, more  
8 broadly, the other comparisons in criteria 4.

9 And I would be remiss, even though  
10 Mr. Shannon and I will be speaking to you today,  
11 not to acknowledge the outstanding contributions  
12 of Ms. Musallam who is also part of our team,  
13 although she will not be speaking today.

14 Just one caveat, Madam Chair, I know  
15 timing is a little tight today. I will come  
16 back after Mr. Shannon has completed -- has  
17 discussed briefly the issues of allowance and  
18 the issues of the Prothonotaries. I am not  
19 suggesting these are not important but I suggest  
20 the gulf between us, particularly with  
21 Prothonotaries, is much smaller. And we have  
22 accepted, as noted by Chief Justice Crampton's  
23 letter to the Commission a few days ago, that  
24 there's a fair amount of acceptance by the  
25 government of the matters which the

1 ProthonotariesProthonotaries have raised. So  
2 it's not a disrespect to the Prothonotaries it's  
3 just that we've agreed for much of what they've  
4 proposed.

5 So with that starting let's turn to  
6 annuities. This is really one of the keys, of  
7 course, that we have to deal with. And I will  
8 address specific issues, I'm not going to go  
9 over everything in all the submissions. Of  
10 course you've read everything but I will touch  
11 on some of the key issues. And let's start with  
12 the valuation of the annuity. And I won't ask  
13 you to turn these up. These are in our  
14 submissions at paragraph -- or sorry, in our  
15 condensed book at tab 6. We will turn that up  
16 if you don't mind. If we can go to tab 6.? And  
17 this is from the most recent Commission.  
18 Paragraph 71, this is tab 6 of our condensed  
19 book. And what the Rémillard Commission said  
20 is:

21 "We must consider more than  
22 income when comparing judges' salaries  
23 with private sector lawyers' pay. The  
24 judicial annuity is a considerable  
25 benefit to judges and is a significant

1                   part of their compensation package."

2                   So there's no issue that the annuity  
3 has to be dealt with. And for us the starting  
4 point of getting to what compensation should be  
5 is what we agree on. And I don't think there's  
6 any issue that what we agree with on, between  
7 the parties, is that as of April 1st of this  
8 past year, so approximately a month ago, the  
9 base salary, without any annuity value-added for  
10 federally-appointed judges, is \$361,100. So I  
11 don't think there's any disagreement there. And  
12 that's where we build from.

13                   Now, we have to determine what the  
14 valuation is of the annuity. And I'll give you  
15 the result and then I'll tell you why we get  
16 there. We, on the government side, agree with  
17 Mr. Newell's valuation of 34.1 percent. We will  
18 accept that as a valid value for the annuity.  
19 That is different from what Mr. Gorham had.  
20 Mr. Gorham had 37.84. Why is there this  
21 difference? And it's explained by Mr. Newell in  
22 his supplementary report, it's because  
23 Mr. Gorham has included the disability benefit  
24 as something that should be included as part of  
25 the annuity, so that's why there is the



1 distinction. He says that at page 12 of his  
2 report and that is at our condensed book  
3 number 2.

4 And I would like to pull that up, if  
5 we could, because we're going to spend a few  
6 moments with Mr. Newell. And he explained this  
7 quite clearly at the top of that page where he  
8 says:

9 "For clarity, this calculation of  
10 the value of the Judicial Annuity of  
11 34.1% is distinct from my calculation  
12 of 36.7% in the question 1c above,  
13 which includes an assumption for  
14 disability. The figure of 34.1% does  
15 not include a disability assumption  
16 whereas the 36.7%[does][...]."

17 So that's where he explains the  
18 distinction between the two.

19 And just if we're doing -- as you've  
20 seen in many of our submissions an  
21 apples-to-apples, the inclusion of the annuity,  
22 the 36.7, would be comparable to Mr. Gorham's  
23 37.84 because they both include the disability  
24 benefit at that point.

25 When I said earlier they're within a

1 stone's throw of each other, we're approximately  
2 1 percent difference between the two experts.  
3 So even though we heard a great deal this  
4 morning about Mr. Gorham's approach, at the end  
5 of the day where we end up between the two  
6 experts is almost identical, using that  
7 methodology.

8           And just to reinforce that Mr. Newell  
9 does not have any difficulties with what  
10 Mr. Gorham has done, I'd like to go back a page  
11 or two to page 6 of Mr. Newell's report. And  
12 this is answer 1(c) that was just referred to by  
13 Mr. Newell. And if we look at the third  
14 paragraph it says:

15                   "I wish to observe that some of  
16                   the key assumptions Mr. Gorham uses  
17                   are more conservative than mine, which  
18                   will push the valuation higher - but I  
19                   believe the assumptions he selected  
20                   are still within the range of accepted  
21                   actuarial practice."

22           So Mr. Newell has no difficulty with  
23 what Mr. Gorham has done. He says that's within  
24 what actuaries can do.

25           He then goes on to talk about down in

1 the bottom of the paragraph:

2 "[...]there are other assumptions  
3 in which we have slight differences  
4 (e.g. mortality assumption, retirement  
5 age assumption, surviving spouse  
6 assumption)."

7 So they're within -- like I said, when  
8 you use the same methodology they're within  
9 1 percent of each other. So we don't see any  
10 significant differences between them.

11 So let's take the next step. The next  
12 step is to take the \$361,100 and apply the  
13 34.1 percent, and that gets us to,  
14 approximately, \$484,235. And I won't take you  
15 to it now because we don't have to because I  
16 just stated it, but this is set out for your  
17 convenience at tab 1 of our condensed book,  
18 those calculations.

19 Now, if we use Mr. Gorham's number, if  
20 we use Mr. Gorham's higher number of  
21 37.84 percent we'd end up with a total value of  
22 \$497,740. Now I know those two are not the same  
23 methodology because Mr. Newell's 34 percent does  
24 not include the disability, Mr. Gorham's 37.84  
25 does. But I just did this to show you that even

1 using Mr. Gorham's more larger benefit factor  
2 the difference really is \$13,000 at the end of  
3 the day.

4           So going forward we can use  
5 Mr. Newell's number but we're not done yet. And  
6 the reason we're not done is we still have to  
7 deal with two factors. We have to deal with the  
8 tax implications that Mr. Gorham says are  
9 necessary to deal with, and then we have to deal  
10 with this idea of professional corporations, so  
11 let's deal with those in turn.

12           So if we can turn to our condensed  
13 book at tab 3? If we can turn that up? And at  
14 paragraph 137 this is where Mr. Gorham says we  
15 have a tax issue here because to replicate the  
16 full amount of the judicial annuity there's not  
17 enough RRSP room and so there are going to be  
18 tax implications on the additional money used by  
19 the private sector to match that, to replicate  
20 that annuity. And then if we just turn over the  
21 next page, the chart that he's done, and if  
22 we -- sorry, keep going to the next, page 32  
23 please. There we are. That's where we get the  
24 11.67 percent. Mr. Gorham has done a series of  
25 weighted calculations and he comes to

1 11.67 percent. And then he talks, in the next  
2 paragraph, this is where he says :

3 "By looking at the ages[...]".

4 He does the age calculation of the  
5 appointments to calculate the:

6 "[...]age-weighted average value  
7 of the Judicial Annuity for all  
8 federally appointed judges including  
9 the effects of income tax. Net of  
10 judges' contributions, that is  
11 49.51%[...] a self-employed lawyer  
12 would, on average, need to save 49.51%  
13 more of their net income than a judge  
14 in order to provide savings sufficient  
15 to provide the 2/3rds of earnings  
16 payable under the Judicial Annuity."

17 That is where Mr. Bienvenu was  
18 talking about 45.91, he explains it here.

19 So what do -- we heard this morning  
20 Mr. Newell and Messrs. Leblanc and Pickler don't  
21 agree with this, and we accept that they don't  
22 agree with it. Let's see what they say. Sorry  
23 to move around like this but this is how we have  
24 to put the pieces together. If we go back to  
25 Mr. Newell, which is at our condensed book

1 tab 2, we go to the last page in that, page 12.  
2 Now, under question 1(e) Mr. Newell is asked to  
3 comment on the figure of 49.51 arrived by  
4 Mr. Gorham by taking into account his  
5 11.67 percent.

6 Now, I note here that Mr. Newell  
7 doesn't come up with a different number than  
8 11.67 percent. What he does say in the answer:

9 "It is true that lawyers in  
10 private practice would be limited in  
11 their use of 'tax-efficient' means to  
12 replicate the Judicial Annuity if they  
13 were to rely upon RRSP [only][...]."  
14 However, there may be other ways to do  
15 this.

16 He looks -- in the next paragraph he  
17 says:

18 "As is noted in the April 21,  
19 2021 Ernst & Young Letter, the 11.67%  
20 additional cost to a self-employed  
21 lawyer to replicate the judicial  
22 annuity would be overstated due to the  
23 fact that the tax deferral available  
24 through incorporation of a  
25 professional corporation, or the use

1 of an Individual Pension Plan, was not  
2 taken into consideration by  
3 Mr. Gorham."

4 Fine, we don't disagree with that.

5 Let's look for a moment to see what exactly is  
6 said by Messrs. Leblanc and Pickler. And let's  
7 go to the combined or condensed book number 5  
8 please. And if we look at the fourth paragraph  
9 it says -- in the actual report prepared by  
10 Mr. Gorham. And if we go four lines down it  
11 starts with:

12 "As discussed in our previous  
13 report entitled 'Fiscal Advantages of  
14 Incorporation for Lawyers' dated March  
15 26, 2021, there is a possibility of a  
16 large tax deferral through the  
17 implementation of a professional  
18 corporation."

19 And at the end of that paragraph they  
20 then conclude, if I can take you there :

21 "The additional cost to replicate  
22 the Judicial Annuity, calculated at  
23 11.67 percent by Mr. Gorham would be  
24 overstated due to the fact that the  
25 tax deferral available through

1 incorporation of a professional  
2 corporation has not been taken into  
3 consideration."

4 Similar comments were made later about  
5 the IPP, Individual Pension Plan.

6 What's interesting here is the use of  
7 the term, as I brought to you the first part, is  
8 the "possibility". We're not denying there's a  
9 possibility that this could happen. But you do  
10 not have any information before you as to what  
11 is actually happening on the ground with respect  
12 to professional corporations in the profession,  
13 in the legal profession.

14 There was comment made in the  
15 Rémillard report about this, there were efforts  
16 made by the parties to try to get this  
17 information in concert with the CRA. We were  
18 not able to do it for this Commission. So what  
19 you have before you is theory and speculation  
20 and possibility as to what the effect would be  
21 here by the inclusion of a professional  
22 corporation, but you have no numbers.

23 We don't know how many -- aside from a  
24 very broad view of a large percentage -- a  
25 largish group of lawyers who will take advantage



1 of professional corporations, we don't have any  
2 specific data, as we do in the CRA  
3 self-employment data. We don't have the  
4 granular numbers that you can then apply the  
5 corporate -- the professional corporation tax  
6 efficiencies to. We're not denying they may  
7 exist, you just don't have that information  
8 before you. And it will be our submission that  
9 you cannot make a recommendation based on the  
10 possibility of using these because you do not  
11 have any solid evidence as to how they would be  
12 used in particular circumstances, particular  
13 ranges of incomes, et cetera. That is the  
14 difficulty.

15           Perhaps the next Quadrennial  
16 Commission we will be able to have that  
17 information before you and we will have our  
18 experts make adjustments. What you do have  
19 before you is information with respect to  
20 self-employed lawyers. And it's our position  
21 that Mr. Gorham's 11.67 percent does apply to  
22 that group and no alternative percentage has  
23 been provided to you, that I recall. So that's  
24 the context. That's the perspective that I  
25 talked about earlier that we're trying to give

1 to you with respect to these matters.

2 So at the end of the day it's our  
3 position that we will accept the 34.1 percent as  
4 the value of the judicial annuity. And it's  
5 also our position, however, because of the data  
6 that you are dealing with from the CRA,  
7 Mr. Gorham's addition of 11.67 percent, which he  
8 has set out in great detail in his report, is  
9 also a fact that has to be taken into  
10 consideration in finding the total  
11 compensation -- the value of the total  
12 compensation for the judiciary.

13 Now, I'd like to turn to the second  
14 main item I'm going to deal with, which is  
15 prevailing economic conditions.

16 MADAM CHAIR: Can I ask, Mr. Rupar,  
17 the CPP contribution of about \$3,160 (sic) that  
18 your expert mentions is that something you add  
19 to this or is that --

20 MR. RUPAR: Well, he's taking into  
21 consideration -- although when there's the  
22 discussion between Mr. Gorham and Mr. Newell  
23 they talk about the disability. I didn't see  
24 Mr. Newell discussing the disability and the CPP  
25 I didn't see -- he just talked about the

1 disability. So that's why -- it's another  
2 reason -- we can just go with 34,100, it's a  
3 little easier, a little simpler, and we don't  
4 have to get into that issue of comparing  
5 Mr. Gorham who has CPP and disability and  
6 Mr. Newell who just talked about disability.  
7 He, as I understood, did not deal with the CPP  
8 issue.

9 MADAM CHAIR: Okay, thank you.

10 MR. RUPAR: It's not a large issue,  
11 it's one that the precision of an actuary would  
12 be interested in but I think we can go with, as  
13 I said, 34,100.

14 MADAM CHAIR: Perfect. Thank you.

15 MR. RUPAR: Now, when we deal with  
16 prevailing economic conditions I'll deal with  
17 the IAI 10 percent proposal that we've  
18 discussed, which is, you know, I don't think  
19 there's any -- telling any tales out of school,  
20 that's the point of contention in this hearing.  
21 And I will go through the rationale of how we  
22 got to the 10 percent.

23 I'll start though, and just again with  
24 perspective in context, and Mr. Bienvenu went  
25 through some of the figures this morning, I'll

1 add a few more to what he said. I don't think  
2 there's any disagreement among the parties that  
3 the last year has certainly been a challenging  
4 that for the Canadian economy and for the world  
5 economy at that.

6 We agree to a certain point that, yes,  
7 there are hopeful signs in the future. The most  
8 recent unemployment figures that came out on  
9 Friday, of course, are not that hopeful. But we  
10 say, yes, there could be, to use the proverbial,  
11 light at the end of the tunnel but we don't  
12 know. That's projections. What we do know is  
13 what we have had in the last 15 months or so.  
14 And that's where I'll take you to now for a few  
15 moments and then turn to the IAI.

16 So I'll just give you where you find  
17 these figures in our submissions. I'm not  
18 asking you to look them up right now. Just  
19 write down -- for the first set of figures from  
20 our reply submission, paragraph 19, the budget  
21 confirmed that the deficit for the past fiscal  
22 year was \$354 billion, projected to be  
23 154 billion going forward. And another  
24 additional 50 billion for fiscal years 2023  
25 and -- sorry, '22-'23, and '23-'24. So, yes,

1 there are significant constraints on the federal  
2 budget.

3 In our reply at paragraph 20 we speak  
4 of the GDP numbers of -- there's a bit of a  
5 variance between 12.4 percent and 13.8 percent.  
6 So, again, we're within a fairly close range.  
7 However, as we point out in our submissions we  
8 must also take into account the contraction that  
9 occurred in the pandemic year we just passed,  
10 which was 5.4 percent. We have to take that  
11 into account when looking at those figures.

12 The last set I'll give you, and these  
13 are from our main submissions at paragraph 19,  
14 the CPI going forward in 2021 is estimated at  
15 1.7 percent, in 2022 is 1.9, in 2023 is 2.0, in  
16 2024 is 2.1. Mr. Lokan talked this afternoon  
17 about the possibility of inflation fears. You  
18 know, economics are always a little hard to  
19 predict but these are the figures that we have  
20 and we've given you the cites for those.

21 Unemployment, and this is from our  
22 main submission as well, paragraph 20, expected  
23 to remain close to 10 percent -- going from  
24 2020, and we expect it to be down around  
25 8 percent in 2021, so it's still significant

1 although hopefully better unemployment numbers  
2 going forward.

3 Now, with that economic context is  
4 where we'll go next to what we said with respect  
5 to IAI. And just before we get there I'd like  
6 to take -- and Mr. Bienvenu mentioned this  
7 morning the PEI reference. If we can go to our  
8 condensed book at tab 8, we have that set out,  
9 that reference set out. And in some of the  
10 commentary, some of the reply we had from the  
11 judiciary they said, well, you have to put the  
12 PEI reference in the context of a  
13 deficit-fighting budget. And we're not  
14 suggesting that was not the case there. I  
15 believe it was the Chief Justice that said at  
16 the time :

17 "Finally, I want to emphasize  
18 that the guarantee of a minimum  
19 acceptable level of judicial  
20 remuneration is not a device to shield  
21 the courts from the effects of deficit  
22 reduction. Nothing would be more  
23 damaging to the reputation of the  
24 judiciary and the administration of  
25 justice than a perception that judges

1                   were not shouldering their share of  
2                   the burden in difficult economic  
3                   times."

4                   So what we take from that is that  
5                   there's a recognition, in this judgment at  
6                   least, that there is a sense that the judiciary  
7                   taking -- the remuneration for the judiciary  
8                   have to take into account the economic  
9                   structure, the prevailing economic conditions at  
10                  the time.

11                  We're not suggesting that deficits  
12                  have to be borne solely or disproportionately, I  
13                  should say, on the shoulders of the judiciary.  
14                  We're not suggesting that at all. We are  
15                  suggesting that in the broader context of the  
16                  economy and the budgetary constraints of any  
17                  given year of the government, or any given  
18                  quadrennial cycle, shall I say, is a factor that  
19                  needs to be taken into consideration, as the PEI  
20                  reference has said. Not a direct link, again,  
21                  but a factor, a perspective that needs to be  
22                  taken into consideration.

23                  I'm going to turn now to our position  
24                  on IAI. And just a brief primer on IAI, and  
25                  this was set out in our factum and explained by

1 Mr. Gorham in particular at paragraph 70 to 78  
2 of his main report: The industrial aggregate is  
3 the overall twelve-month average of the average  
4 weekly of earnings of Canadians, that's the  
5 industrial aggregate. The industrial aggregate  
6 index is the rate of change in the industrial  
7 aggregate from year-to-year.

8 Now, just to comment on a few things  
9 we heard this morning. We're not reconciling  
10 (sic) from the use of the IAI as the mechanism  
11 for guiding increases in judicial remuneration.  
12 We're not going back to CPI. We're not  
13 suggesting any other measure. What we are  
14 suggesting is that there has been an anomalous  
15 growth in the index, the industrial aggregate  
16 index in this pandemic -- this past pandemic  
17 year, which is out of line with what  
18 historically has been the growth of IAI.

19 Now, I'd like to turn back to the  
20 Rémillard Commission, and that's our condensed  
21 book 6. And if we turn to paragraph 39 of that  
22 report -- or sorry, recommendation. And you may  
23 recall that there was some -- there was some  
24 submissions made in that Quadrennial Commission  
25 as to whether it should be CPI or whether it



1 should be IAI as is the relevant measure for  
2 increasing judicial compensation.

3 And what the Commission found, in  
4 part, is at paragraph 39 what the Commission  
5 said was this:

6 "As Professor Hyatt, the expert  
7 retained by the Association and  
8 Council, said, 'Changes in the IAI  
9 reflect changes in weekly wages,  
10 including both the cost of living and  
11 the real wage (the standard of  
12 living)'. The IAI ensures that the  
13 'annual earnings of judges' keep pace  
14 with the 'annual earnings of the  
15 average Canadian'."

16 And if we look at footnote 52 there is  
17 the reference back to Professor Hyatt's report  
18 in that particular Quadrennial Commission. What  
19 he said was:

20 "Keeps pace with the annual  
21 earnings of the average Canadian."

22 But that is not what we've seen in the  
23 last year. And I don't think there's any  
24 disagreement that what we've seen in this last  
25 year is that there has been a bottoming out of

1 that average weekly report, that earning's  
2 report. In that the lower end of the wage  
3 earners have been hit the hardest by the  
4 pandemic; tourism, hospitality, restaurants,  
5 bars, some of the transient type of employment.  
6 And I don't think there's any controversy that  
7 that is what happened. And, of course, the  
8 inverse occurs to the average; when the lower  
9 end is removed the average goes to the top.

10 So what we are suggesting here is  
11 there has been a change of circumstances, from  
12 when IAI was adopted certainly in the 1980s and  
13 when it was reinforced by the Rémillard  
14 Commission, that could not have been foreseen.  
15 Nobody was foreseeing a pandemic that would turn  
16 on its head how the IAI was supposed to work.

17 As Professor Hyatt said, the IAI is  
18 supposed to work as a reflection of the average  
19 general wage. And what it's done, and this is  
20 certainly no fault of anyone, but what it has  
21 done is it has done -- it is not a reflection,  
22 at least for that period, of those average wages  
23 of those real wage earners, as Professor Hyatt  
24 said. It is an inflated value because the lower  
25 end has been removed. So that's why we say,

1 this is a unique set of circumstances that would  
2 justify a review for this quadrennial period.

3 We're not suggesting at all that  
4 there's any structural change going forward.  
5 We're not suggesting that there has to be a  
6 revisiting of the IAI and its indexing -- and  
7 the indexing of judicial salaries to IAI. That  
8 is not what we're suggesting. What we are  
9 saying is for this one particular period of  
10 time, where it went to 6.6, because of the  
11 removal of the lower end of the wage  
12 stratosphere, it does not reflect what it should  
13 reflect, as set out by Professor Hyatt.

14 Now, we can look at this in a couple  
15 of ways. And if we can turn to our condensed  
16 book at tab 9, and this is from our main  
17 submission. And this is how we get to our  
18 10 percent. Again I emphasize it's a 10 percent  
19 for this quadrennial period only. It is not --  
20 we are not spilling into the next quadrennial  
21 period. April 1st, 2024, the new quadrennial  
22 period starts. We're not moving beyond this  
23 four years.

24 If we go back one page please? So  
25 this is a chart we've put together. And what it

1 shows in the firm lines is the data we have over  
2 the last approximately 16 years with respect to  
3 increases in salary and effective IAI. And as  
4 you can see there's some ups and downs in IAI  
5 but it's within a relatively close range. What  
6 we see, as we said, is this anomalous spike in  
7 2021 for the reasons I just said.

8 And then projections -- and I don't  
9 think there's a great deal of controversy, there  
10 are projections that we're going to go back to  
11 what call a more normal gradient of IAI over the  
12 next two to three years.

13 So what we say then, explaining this  
14 over the next two charts, what we're saying is  
15 this, as we set out in paragraph -- sorry, if  
16 you go back to the other page please? Thank  
17 you. At paragraph 30 of our main submissions we  
18 say:

19 "As set out in the chart below,  
20 the average IAI cumulative four-year  
21 increase has been 9.9%, with a maximum  
22 four-year increase of 11.9% and a  
23 minimum four-year Increase of 7.9%."

24 The wide range to this, and I'll pause  
25 here, is it's been suggested that there's no

1 rationale to what we're doing. That it seems to  
2 be pulled out of thin air but it's we're not.  
3 It's based in the statistics that have been used  
4 over the past 16 years and projections going  
5 forward. So there is a rationale to what we're  
6 doing, and it's tied back to the original reason  
7 for implementing IAI, as reflected in what I  
8 just brought you the with the Rémillard  
9 Commission.

10 Now, if we could just go to the next  
11 page please? It says:

12 "In addition, the 16-year average  
13 yearly increase has been 2.4%, with a  
14 yearly high of 3.6% and a yearly low  
15 of 0.4%." So as they conclude, "This  
16 demonstrates a steady and consistent  
17 increase of Judicial salaries in line  
18 with IAI that is well within the  
19 proposed cumulative four-year increase  
20 of 10% for this quadrennial cycle.

21 So that's our rationale. That's how  
22 we get -- we get there because it's -- if we  
23 didn't have the pandemic, which was certainly  
24 not foreseen by anybody, we would have had this  
25 continued progression of a little up, a little

1 down. That's what we say is proper when we look  
2 at the overall flow of the last 15 to 16 years.

3 Now, my friend took you to a chart  
4 that we had. It's -- I'm not asking you to pull  
5 it up because I don't have his PowerPoints up,  
6 but it was his tab F. And it was projected  
7 salaries under the Judges Act with proposed  
8 cumulative 10 percent increase. It's difficult  
9 to do this. It's this chart here, I put it to  
10 you so you recognize what it is.

11 And my friend pointed out that he  
12 said, well, it doesn't make sense what's going  
13 on here because it looks like what the  
14 government is doing is they're pushing beyond  
15 the quadrennial period and they're moving into  
16 the next quadrennial cycle. And we're not --  
17 we're not doing that. There's a slight error  
18 that we should have made -- that they should  
19 have -- there we are. If you look at under  
20 April 1st, 2023, and we go over to "Puisne"  
21 judge at 372,600. And it's -- thank you, right  
22 there. So that is the figure that at the end of  
23 this quadrennial cycle, using our 10 percent  
24 proposed increase, would be the base salary.

25 Now, what we should have done is we

1 should have stopped there but we tried to go  
2 forward and say, projecting forward what we  
3 would be doing. So when we go over to the  
4 right-hand side there then and we say there's  
5 zero percent increase for the next year, and  
6 that's not accurate. We don't know what it's  
7 going to be on April 1st, 2024, because that  
8 would be for the next Quadrennial Commission.

9 So I just want to clarify how we ended  
10 up there. The number of 372,600 is the number  
11 we end up with if you use our 10 percent over  
12 the quadrennial cycle. We should have left it  
13 at that. We should not have moved forward. And  
14 certainly it won't be a zero percent increase.  
15 We don't know what it will be because that will  
16 be for the next Quadrennial Commission to  
17 determine.

18 And just to re-emphasize, our proposed  
19 10 percent is a one-time-only proposal to deal  
20 with the issue of the pandemic. So that's how  
21 we get to 10 percent proposal for this period.

22 MADAM CHAIR: Sorry, Mr. Rupar, for  
23 interrupting, but while you're on the slide I  
24 just want to understand, I calculate the 6.7,  
25 the 2.1 and the 1.03.

1 MR. RUPAR: Yes.

2 MADAM CHAIR: Are you including --  
3 that's 9.8.

4 MR. RUPAR: Right. Yes. But what  
5 we're saying is that it's a 10 percent  
6 cumulative from the base of the first year.

7 MADAM CHAIR: From the base, okay.  
8 Thank you.

9 MR. RUPAR: Not the percentages, it's  
10 10 percent cumulative.

11 MADAM CHAIR: Okay.

12 MR. RUPAR: Yeah, that's where we --  
13 yeah.

14 MR. COMMISSIONER: Mr. Rupar, can I  
15 ask you one other question?

16 MR. RUPAR: Certainly.

17 MR. COMMISSIONER: Is your proposal  
18 that the 7 percent per annum cap remains in the  
19 statute?

20 MR. RUPAR: Yes.

21 MR. COMMISSIONER: And the statute  
22 specifically says that it is a 10 percent cap  
23 for those years only?

24 MR. RUPAR: Yes. I'll double check  
25 with my -- with our instructing officers, but



1 that would be the recommendation, that it'll be  
2 10 percent for this period but we are not going  
3 to remove 7 percent, that will remain going  
4 forward.

5 And if there were normal conditions,  
6 if I can put it this way, if there were normal  
7 conditions, not pandemic conditions, then the  
8 7 percent may work because there would be a flow  
9 of all the wages and the 7 percent may in fact  
10 be perfectly fine.

11 It's just in this very specific and  
12 very unique circumstances of the pandemic where  
13 we say, we won't go with a 7 percent for this  
14 particular year we'll go with a 10 percent for  
15 the reasons we stated. Going forward in 2024  
16 and onward we're back to where we were before  
17 with the legislation untouched.

18 MR. COMMISSIONER: But what is the  
19 source of the 10 percent, other than a  
20 representative calculation that we just looked  
21 at?

22 MR. RUPAR: That is the source of our  
23 10 percent, Mr. Griffin, is that we say  
24 historically if the pandemic had not occurred,  
25 and there hadn't been this anomalous increase of

1 6.6 percent, as I showed you, the figures we  
2 have are -- it would have been -- over four  
3 years the average would have been a 9.9. Over  
4 the 16 years the yearly was 2.4 so that gets us  
5 to -- that's how we arrived at the 10 percent.

6 MR. COMMISSIONER: Thank you.

7 MR. RUPAR: I'll touch just briefly on  
8 the issue of judicial independence being  
9 respected. I don't understand there to be any  
10 issue with the judiciary to suggest that there's  
11 been any problems with independence with the  
12 salaries and compensation. If I'm wrong maybe  
13 we can deal with that tomorrow, but I didn't  
14 understand anything this morning from what I  
15 heard to be -- that to be a significant issue  
16 that this Commission would have to deal with.

17 Now I will turn to the final issue I'm  
18 going to deal with, and that is the attraction  
19 of outstanding candidates. And perhaps we can  
20 just go to our condensed -- to my condensed  
21 book, if we can do that? And tab 6, this again  
22 is the most recent Commission, the Rémillard  
23 Commission. And if I can take us -- we'll wait  
24 for it to come up on the screen. It will just  
25 be a movement. And I think that the statement

1 of paragraph 80 applies today:

2 "All parties agreed that Canada  
3 has an outstanding judiciary. To  
4 continue to attract outstanding  
5 candidates, judges' salaries must be  
6 set at a level that will not deter  
7 them from applying to the bench."

8 And 81 is an important paragraph.

9 What that Commission said was:

10 "Comparators help us to assess  
11 this factor, but this is not a  
12 mathematical exercise. Financial  
13 factors are not and should not be the  
14 only factor - or even the major factor  
15 - attracting outstanding judicial  
16 candidates. The desire to serve the  
17 public is an important incentive for  
18 accepting an appointment to the  
19 judiciary."

20 And that's repeated at paragraph 83.

21 So that's just a little bit of context when  
22 we're dealing with how to attract outstanding  
23 candidates. Salary and benefits are absolutely  
24 important but they are not everything.

25 And just let me can touch for a moment

1 on some comments we've heard this morning about  
2 what our position was with respect to attracting  
3 high earners, as the phrase has gone. We  
4 absolutely think that high earners need to be  
5 attracted to the judiciary, we are not saying  
6 anything to the opposite. High earners, to a  
7 certain degree, are a reflection of success in  
8 their profession, we agree with that. Our  
9 position though is that we do not have to focus  
10 solely on high earners, and this has been  
11 reflected, in our view, on what other  
12 Commissions have said.

13 The Block Commission, at paragraph 116  
14 of its report, said:

15 "The issue is not how to attract  
16 the highest earners, the issue is how  
17 to attract outstanding candidates."

18 And the Drouin Commission at page 36  
19 of their report said:

20 "No segment of the legal  
21 profession has a monopoly on  
22 outstanding candidates."

23 So it's a balance, in our view. It  
24 has to be -- outstanding candidates, as we said  
25 in our submissions, are found in all segments of

1 the profession. They are found in large firms,  
2 they are found in small firms, they are found in  
3 NGOs, they are found in academia, they are  
4 found in government.

5 Outstanding lawyers are found  
6 everywhere. The idea is how to attract them.  
7 We're not suggesting that we exclude high  
8 earners, we need to have high earners, we just  
9 do not have to focus exclusively on high earners  
10 in setting judicial compensation.

11 I'd like to take you to a couple of  
12 points that we think merit some notice. If we  
13 can turn to our condensed book, tab 10? Now  
14 this is an analysis that we did, it's in our  
15 supplemental book. And what it shows, in our  
16 analysis from the public information that's  
17 available, is that the appointment of partners  
18 over the past decade has generally been on the  
19 rise to the judiciary.

20 Now, we do admit, we do say at the end  
21 there's a bit of an overlap and a bit of a  
22 reverse, but it's minor compared to the overall  
23 trend. And generally partners would be the  
24 higher earners in a firm. So we just say that  
25 as a starting point.

1           And if we can go back now to -- sorry,  
2 go ahead. I thought there was a question,  
3 sorry.

4           If we can turn back a tab to our tab  
5 9? And if we can go to the last page there?  
6 This is a chart found at page 18 of our main  
7 submission. And there's a chart and then the  
8 graph. And what we tried to depict here is  
9 there's a fairly steady recognition of the  
10 private sector as being the main component of  
11 appointments to the judiciary.

12           Now, my friend Mr. Bienvenu brought  
13 out a chart he had this morning where he said we  
14 don't go back far enough. And it's really --  
15 there's been a decrease. And I'm not disputing  
16 what Mr. Bienvenu's charts were saying. I do  
17 recall there was a bit of a -- there was a down  
18 then an up and a down. And I'm not disputing  
19 that perhaps thirty or forty years ago the  
20 percentage of appointments from the private  
21 sector was probably around 70 percent, or in the  
22 early 70s, as opposed to 64 to 62 percent that  
23 we have here. Sorry, Mr. Bienvenu's lost  
24 connection.

25           -- RECESSED AT 2:27 P.M. --

1                   -- RESUMED AT 2:33 P.M. --

2                   MR. RUPAR: Just speaking about the  
3 chart we had this morning and 25, 30, 35 years  
4 ago, there was a slightly higher percentage in  
5 the '70s, from the private sector. And the  
6 only submission we have here is that, in our  
7 view, it still has been very steady, at least in  
8 the last decade, if not beyond the last 20 to 30  
9 years that the preponderance of appointments  
10 have fairly come from the private sector. If  
11 there has been a slight dip, it would be a  
12 reflection, maybe, of the growth of areas of  
13 practice outside of the traditional private  
14 sector government venues for practice. You  
15 know, there has been a great deal of expansion  
16 in the past 15, 20 years as the profession  
17 diversifies in other areas. So we don't see  
18 this as a significant change or significant --  
19 the private sector is still the dominant source  
20 of appointments to the judiciary.

21                   Again, I won't ask you to turn this  
22 up, but at paragraph 42 of our main submissions,  
23 we refer to some statistics as of October 30th,  
24 2020, and for the period of March 30th, 2017, to  
25 October 23rd, 2020, just some overall statistics

1 with respect to applications and appointments.

2           What we put there is the Judicial  
3 Advisory Committees had full assessed 925  
4 applicants. Of those, 140 appointments had been  
5 made, and an additional 183 applicants had been  
6 recommended for appointment, and 105 had been  
7 highly recommended. So when we do the quick  
8 math there, it's approximately 428 of the 925  
9 applicants have either been appointed or  
10 recommended or highly recommended.

11           What I'd like to do now is turn to our  
12 condensed book 11 and it's the same chart --  
13 I'll just dig up where it was in my friend's  
14 material. It's the same chart that he has at  
15 tab 1 of his materials and I just want to walk  
16 through this for a moment. And there was some  
17 discussion in some of the written materials, I  
18 believe, from my friends that there was only one  
19 qualified or highly qualified or highly  
20 recommended person from British Columbia based  
21 on this chart.

22           And if we look -- there's a couple of  
23 things we have to take into consideration here.  
24 If we look at the bottom of the chart, the  
25 footnotes, they're fairly important actually.



1 They say:

2 "The last column includes  
3 appointments resulting from  
4 applications received outside of the  
5 report period window."

6 So if we look at that last column, it  
7 says "Total appointments" for this period. So  
8 that includes people who had applied before  
9 March 30th, 2017. So that's why there's a  
10 larger number there.

11 And the other important aspect to keep  
12 in mind is what's highlighted here. It says:

13 "Appointees are not included in  
14 the applicant columns."

15 So when we look at the middle columns,  
16 it says:

17 "Status of applicants on  
18 October 23rd, 2020."

19 For instance, if we look at British  
20 Columbia, there's only one highly recommended  
21 and there are 18 recommended. But if we slide  
22 over to the far side, we had 21 appointments in  
23 this period who were applicants from that period  
24 and 40 in total. So there was one person left  
25 in the pool here, but that doesn't mean there

1 was only one highly qualified or highly  
2 recommended applicant in that period.

3 Presumably the -- well, not  
4 presumably, the applicants who were appointed  
5 have to come from the highly recommended or the  
6 recommended. So we just have to read these  
7 figures in that context that the appointees are  
8 not reflected here, but they were at one time,  
9 in that pool.

10 And what I heard this morning from  
11 Justice Popescul is that he was of the view, if  
12 I recall correctly, that highly recommended and  
13 recommended was one pool from which everyone was  
14 chosen. And, as he pointed out, there's been  
15 some changing of -- their highly recommended,  
16 recommended, highly recommended depending on  
17 each government's view of how they should be  
18 categorized.

19 But at the end of the day, it would be  
20 our submission that if you are recommended by an  
21 independent judicial advisory committee for a  
22 position in the judiciary, then you are an  
23 outstanding candidate. And the judicial  
24 advisory committees have representatives from  
25 the Bar, from the judiciary, from the public.

1 There's a wide variety of people who are on  
2 those committees and making these  
3 recommendations.

4 So what we take from this in respect  
5 to outstanding candidates is for every  
6 appointment, there were three available and  
7 approved candidates for appointments.

8 Another point I'll make here is when  
9 someone is labeled or found to be unable to be  
10 recommended, there could be a host of reasons  
11 why that is. I don't -- I would not want to  
12 leave the thought with this Commission that  
13 there's a link between the amount of money a  
14 lawyer would make -- the amount of money an  
15 applicant would make as a lawyer and his or her  
16 being found to be unacceptable or unable to be  
17 recommended. There is no evidence that we've  
18 seen in the record anywhere to make such a  
19 linkage.

20 With that, what I'd think I'd like to  
21 do, Madam Chair, if it's agreeable to you, is  
22 what Mr. Shannon is going to speak about will  
23 follow naturally from where I took. He's going  
24 to talk about the CRA. And then as I said, if  
25 there's time for me, I'll come back and speak

1 briefly about the other issues that Mr. Bienvenu  
2 raised this morning.

3 MADAM CHAIR: That's great. And,  
4 Mr. Shannon, if you can do the first 20 minutes  
5 or so that we can actually stop for 3:00 and  
6 start again with you at 3:30, if you're not  
7 finished. So I'll let you figure where is the  
8 best to break.

9 MR. SHANNON: Thank you very much,  
10 Madam Chair.

11 Just so I can orient you in terms of  
12 if my eyes are going in a weird direction, I  
13 have screens all around me. So to the extent  
14 I'm looking up, I'm actually looking at you.  
15 This virtual hearing world, we all are trying  
16 new systems and this is my system for the day,  
17 so here we go.

18 As Mr. Rupar noted, I'm going to speak  
19 further about criterion number 3 and then also  
20 address the fourth criterion, after which I will  
21 turn it over the Mr. Rupar.

22 As a preliminary point, I want to note  
23 that we have included in our discussion of -- we  
24 have included our discussion of the DM-3  
25 comparison, not in the third criterion, but

1 rather in the fourth, other objective factors.

2 And this follows the Drouin  
3 Commission's agreement with this approach and  
4 that's been the consistent position of the  
5 government that the DM-3 comparator should be  
6 included in the fourth criterion. And I'll just  
7 give you the cite for that in the Drouin  
8 Commission report. It's at page 23 of that  
9 report in that first paragraph on that page.  
10 And obviously the report is included at tab 9 of  
11 the joint book of documents.

12 And the reason for this is the third  
13 criterion deals with the pools from which judges  
14 are traditionally drawn. Deputy Ministers are  
15 not a pool from which judges are traditionally  
16 drawn. That's not to say, and we heard a lot  
17 this morning frustration with the government's  
18 position with respect to DM-3s, that is not to  
19 say that the government rejects or challenges  
20 the use of the DM-3 block comparator as a means  
21 of comparison. Simply to say that it's  
22 inappropriate to address this comparator in the  
23 context of the third criterion, as the Drouin  
24 Commission stated it belongs in the fourth.

25 So with that, I'll move to the private

1 sector comparators as part of the third  
2 criterion. Before getting into the numbers, I  
3 do want to address the limits of the data that  
4 is before this Commission. We've heard a great  
5 deal about professional corporations, et cetera.

6 So as Mr. Rupar noted, despite the  
7 fact that the parties requested data on lawyers  
8 who operate as professional corporations, the  
9 CRA unfortunately was unable to provide any such  
10 data. And this was for a variety of reasons  
11 involving confidentiality and the difficulty  
12 with isolating professional corps that are  
13 specifically used by lawyers in the tax  
14 information.

15 The numbers here are important and  
16 they're set out in a graph we've included at our  
17 page 23 of our main submissions and I'll call  
18 that up right now. So as you can see in this  
19 graph, in 2018 there were 63,956 practicing and  
20 insured lawyers in Canada. That statistic comes  
21 from the Federation of Canadian Law Societies.  
22 So 63,000 or almost 64,000 practicing and  
23 insured lawyers in Canada.

24 In 2019, there were 17,871 operating  
25 as professional corps and 15,510 that are

1 self-employed lawyers within the meaning of the  
2 CRA data. And we only have data on those  
3 15,510. We do not have any data on lawyers  
4 operating as professional corporations. So the  
5 only proxy that we had is -- the only proxy we  
6 have for private sector lawyers is the CRA data  
7 for that 15,510.

8           So as a result, any arguments related  
9 to the income of lawyers operating as  
10 professional corporations unfortunately are  
11 speculative at best. We simply don't know the  
12 income of these individuals and we must work  
13 with the proxy we have, which is the CRA data.  
14 I'm going to speak more about the taxation issue  
15 in a little bit because we obviously do have  
16 some information on the taxation issue, on the  
17 11.67 percent, but with respect the specifics of  
18 how many lawyers are professional corporations,  
19 who they are, what are their income levels, we  
20 don't have any information on that  
21 unfortunately. And so the proxy that we do have  
22 is the CRA data.

23           So as you will have seen, the central  
24 argument between the parties for the private  
25 sector comparison is what number do we use to

1 represent the income level for private sector  
2 lawyers and what number do we use to capture  
3 judicial compensation? So put another way, what  
4 filters should be used to ensure an  
5 apples-to-apples comparison between the levels  
6 of compensation for private sector lawyers  
7 versus judges.

8           Before discussing each of the filters  
9 that are proposed by the judiciary, I'm going to  
10 share another chart, and it's based on a chart  
11 that was included by the Rémillard Commission,  
12 between paragraph 72 and 73 of their report.  
13 The Commission inserted this table and it  
14 compares the 75th percentile using the 44 to 56  
15 age band, with a \$60,000 exclusion to the base  
16 judicial salary and to judicial compensation,  
17 including the annuity. And we've made an effort  
18 to update that table for this past quadrennial  
19 cycle, given that it was of concerns to the  
20 Rémillard Commission. And I'm just going to  
21 pull up the updated version of that chart now.

22           Sorry, I'm working my own tech, so  
23 please bear with me.

24           So this is at tab 13 of our condensed  
25 book. And as you'll see here, the numbers in



1 the second column, the average private sector  
2 income, 75th percentile, 60K exclusion, 44-56  
3 year-old age band, these are taken directly from  
4 the CRA data and you see the numbers there.  
5 We've got then the judicial base salary, and  
6 this fourth column, we've included the judicial  
7 salary with a 34.1 percent annuity, no  
8 disability, and that comes from Mr. Newell's  
9 report. And in the final column, we've included  
10 the judicial salary plus the 34.1 percent  
11 annuity, plus the 11.67 tax gross up.

12 And I'm going to get into more and  
13 more about these issues, but I wanted to start  
14 off my presentation by putting this chart up  
15 there as it reflects the concerns of the  
16 Rémillard Commission and these are the numbers  
17 updated to the past four years.

18 As you can see from this table, we  
19 have accepted the valuation by Mr. Newell and  
20 we've also added the 11.67. And this is  
21 important, because we certainly don't dispute  
22 the fact that tax treatment is different and  
23 perhaps more advantageous for lawyers operating  
24 as professional corporations, but we don't have  
25 that data and we don't have how that would

1 impact income of people operating as  
2 professional corporations.

3 The data we have is the self-employed  
4 lawyer data. And given the limits of RSP  
5 contributions, a self-employed lawyer making  
6 \$361,600 would not be able to have the same two  
7 thirds annuity that a judge would have. They  
8 would have to save an additional amount and so  
9 that's the basis of the 11.67. They would  
10 actually, in order to have a two-thirds annuity  
11 plus a \$361,000 salary, they would actually have  
12 to save or have to make \$526,375, so that's the  
13 basis. It's -- the most important part of this  
14 is to have an apples-to-apples comparison  
15 between the two groups and that justifies the  
16 11.67, with respect to this particular  
17 comparison.

18 If we had professional corporation  
19 data, it would be a different tax gross up.  
20 Less. There would still be one because there  
21 are still limits to IPPs and other tax  
22 considerations, but it would be less than 11.67,  
23 but there would still be a tax gross up.

24 I want to also note that Mr. Newell,  
25 as Mr. Rupar took you to in parts of this

1 report, he questions the -- he accepts that  
2 there is a tax gross up. He accepts the 11.6  
3 number, or rather, doesn't offer perhaps an  
4 alternative number. His questioning with  
5 respect to the tax gross up is that it may not  
6 be appropriate when considering the cost of the  
7 judicial annuity to the Government, but that's  
8 not what's being done. As Mr. Rupar set out, in  
9 order to have an apples-to-apples comparison  
10 between self-employed lawyer data, which is the  
11 CRA data, and judicial compensation, those tax  
12 implications have to be considered, otherwise  
13 we're doing an oranges-to-apples comparison.

14 So we've included this updated version  
15 of the table used by the Rémillard Commission as  
16 a comparative aid and we will return to it at  
17 the end of my presentation.

18 I do want to discuss the government's  
19 position on the filters and on filtering the CRA  
20 data because filters are problematic. First,  
21 because filtering data, especially if you are  
22 putting data through multiple filters,  
23 significantly affects the results and any  
24 resulting analysis and pushing those results  
25 towards higher and higher earners. As

1 Mr. Gorham points out, this is inappropriate  
2 from an actuarial perspective because it  
3 severely limits the data set.

4 Here we have a data set of 15,510 and  
5 if we impose all of the filters proposed by  
6 counsel for the judiciary, that brings the data  
7 set down to 2990 lawyers, or a mere 19 percent  
8 of all the lawyers originally captured by the  
9 CRA data. And then we would presumably look at  
10 the 75th percentile of that very small set.

11 Second, limiting the data towards  
12 higher and higher earners also supports the  
13 false narrative, frankly, that Mr. Rupar  
14 referred to and that is this notion that the  
15 most outstanding candidates for the Bench are  
16 the highest paid individuals from the legal  
17 practice. And we would urge the Commission to  
18 reject this notion of who would make the best  
19 judges.

20 The legal community, the legal culture  
21 and the makeup of the profession have changed  
22 significantly even in the last five years, and  
23 it's important that diversity within society and  
24 within the profession is mirrored on the Bench.  
25 And it is a simple fact that this diversity may

1 not have permeated to all levels of the  
2 profession.

3 I want to go through each of the  
4 filters in turn. First, with respect to  
5 percentile. The government agrees that  
6 depending on which other filters are imposed,  
7 the appropriate percentile to look at is likely  
8 the 75th percentile. Just to note that the  
9 75th percentile of all Canadian self-employed  
10 lawyers in 2019 was 270,000, that's without any  
11 other filters. And even when not considering  
12 the judicial annuity, in 2019 the judicial  
13 salary was 329,900.

14 So, second, the age filters. I note  
15 here that the Rémillard Commission, and I'm just  
16 going to pull up a paragraph, if you bear with  
17 me, please. The Rémillard Commission said that  
18 the 44 to 56 age band was a useful starting  
19 point. But that Commission did not lose sight  
20 of the fact that 33 percent of appointees  
21 from -- came from outside that age band over the  
22 past -- the previous 17 years before the  
23 Rémillard Commission.

24 I'll note that during this quadrennial  
25 cycle, 35 percent of appointees came from

1 outside that 44 to 56-year-old age band.

2 And I'd also note that 62 percent of  
3 self-employed lawyers in the CRA data were from  
4 outside that age band, so this is a significant  
5 filtering or exclusion that we would be  
6 applying. So while the 44 to 56-year-old age  
7 band is a useful starting point, the broader  
8 picture is also important to consider, and that  
9 is what the Rémillard Commission said. And I'm  
10 going to pull that up now. In paragraph 61, the  
11 Rémillard Commission said:

12 "We agree that focusing on the  
13 age group from which the majority of  
14 judges is appointed is a useful  
15 starting point. However, using any of  
16 the comparators in considering the  
17 appropriate judicial salary is not a  
18 mathematical exercise. We must apply  
19 sound judgment in determining the  
20 adequacy of judges' salaries. In  
21 doing so, we have considered the fact  
22 that 33 % of the appointments over the  
23 past 17 years have come from [outside  
24 that age band]."

25 Likewise, we would ask that the same

1 points be considered here. We would ask the  
2 Commission to recall that for a self-employed  
3 lawyer, the period between 44 to 56 years old is  
4 by far the most lucrative period during a  
5 self-employed lawyer's life. And you can see  
6 this in a chart that we've included and I won't  
7 take you there, but we've included it at page 27  
8 of our main submissions, where you'll see that  
9 income drops precipitously starting at the age  
10 of 44.

11 By contrast, when we're looking at the  
12 judicial salary, we're looking at a lifetime of  
13 income. At the age of 70-plus, working judges  
14 are still bringing home the judicial salary,  
15 whereas the income of most self-employed lawyers  
16 has dropped off significantly by this point.  
17 And this is an added attraction for individuals  
18 considering a judicial position. Just as  
19 incomes of self-employed lawyers being to drop  
20 off, the judicial salary and annuity maintains  
21 an ongoing and increasing income as far down the  
22 road as 75 years of age.

23 I'll touch on salary exclusions. The  
24 government maintains its concern with respect to  
25 salary exclusions and states that they're

1 problematic. We -- if we add a \$60,000  
2 exclusion, this is just to explain, but if we  
3 add a \$60,000 exclusion, the figure we get for  
4 the new 75th percentile is actually the 82nd  
5 percentile in the complete distribution. So put  
6 another way, if we use a \$60,000 exclusion, it's  
7 simply false to say that we're targeting the  
8 75th percentile. With the exclusion, it's not  
9 the 75th, it's the 82nd and we have just bumped  
10 it up by excluding a chunk of data at the lower  
11 end.

12 I'd also note that the Rémillard  
13 Commission doesn't appear to -- I was about to  
14 say whole hog, but entirely have accepted the  
15 application of a \$60,000 salary exclusion. And  
16 I'm going to refer you to, or I'll take you to  
17 actually, paragraph 65 of the Rémillard  
18 Commission's report. And the first part of that  
19 sentence is:

20 "Even assuming a basis for  
21 excluding lower incomes from the data  
22 to be examined [...]."

23 And the point there is that the  
24 Rémillard Commission didn't accept necessarily  
25 the validity of these exclusions, though it did,



1 as I mentioned with respect to that chart, it  
2 did use those exclusions.

3 The second half of that sentence  
4 explicitly rejects the use of an increased  
5 exclusion to \$80,000. It says:

6 "[...] we are not convinced that  
7 a case has been made to increase the  
8 salary level based on this type of  
9 exclusion."

10 Nevertheless, the judiciary has raised  
11 or chosen to reraise this issue before this  
12 Commission, despite the rejection before the  
13 last Commission. And in response, the  
14 government maintains that there is really no  
15 basis for any exclusion. And certainly no basis  
16 to raise the level of any exclusion. It's  
17 simply feeds into this false narrative that  
18 lower income is a proxy for a lack of commitment  
19 or a lack of success. It favours the notion  
20 that the highest paid lawyers are the only  
21 outstanding candidates. It would also,  
22 presumably, exclude a large number of  
23 individuals who work outside the largest cities  
24 where lawyers' incomes may be lower. And these  
25 are areas from which judges are regularly drawn

1 and the salaries of many of those self-employed  
2 lawyers should not be simply factored out.

3           Furthermore, an income exclusion  
4 doesn't account for fluctuations in lawyers'  
5 income. I just recall that the CRA data is a  
6 snapshot in time, but from year-to-year, a  
7 self-employed lawyer's income may fluctuate  
8 significantly. Such fluctuations have no  
9 bearing on whether they're eligible for  
10 appointment or whether they would make  
11 outstanding candidates. If there's a year with  
12 significantly higher expenses and lower fees, an  
13 exclusion would factor that lawyer out, whereas  
14 the next year with higher fees and lower  
15 expenses, they may be back in. We don't see the  
16 basis for that.

17           Finally, Mr. Bienvenu noted that half  
18 of the people between the 60 and \$80,000 groups  
19 are from the age 55 to 69 age group. I would  
20 say that people from that age group are  
21 regularly appointed to the Bench and there's  
22 simply no basis for just excluding them from the  
23 data set because of their age.

24           Again, as the Rémillard Commission  
25 found, a significant proportion of appointees

1 are from outside that 44 to 56 age band, so we  
2 shouldn't, on that basis, exclude lower income  
3 earners who may be part of that age group.

4 I'll move to the census metropolitan  
5 areas.

6 MADAM CHAIR: Is this a good time  
7 to -- before you get on to another filter. So  
8 can I have everybody back at 3:30, please?  
9 Please do not disconnect. Just put yourself on  
10 mute and stop the video. Do not disconnect.

11 And Gab, can you put us each in our  
12 breakout rooms, please.

13  
14 MR. RUPAR:  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

-- RECESSED AT 2:59 P.M. --

-- RESUMED AT 3:30 P.M. --

MADAM CHAIR: Welcome back everyone.

Do we have everyone?

MR. LAVOIE: I believe we're all back.

MADAM CHAIR: Perfect. Welcome back.

Mr. Shannon, can I hand it over?

MR. SHANNON: Thank you very much,  
Madam Chair.

The next topic that I wanted to address was the CMA filter, the census metropolitan area filter that's being proposed. As you will know, the Rémillard Commission effectively rejected using a CMA filter or exclusion the last time around, and that's at paragraph 70 of the report. It said:

"Accordingly, we have given very limited weight to the difference between private sector lawyers' salaries in the top ten CMAs and those in the rest of the country and have looked primarily to average national

1 salary figures."

2 Thirty-eight percent of private sector  
3 appointees were from outside the top ten CMAs  
4 between 1997 and 2019, with 33 percent of  
5 private sector appointees coming from outside  
6 the top CMAs in the last quadrennial cycle.

7 To use the Rémillard Commission's  
8 language, there's is still no evidence that  
9 lawyers' salaries in the top ten CMAs had become  
10 so high that attracting qualified applicants to  
11 sit in those cities has become an issue.

12 I want to note, in that regard, that  
13 the 2019 base judicial salary, so that's without  
14 annuity, is the equivalent of the  
15 75th percentile of all the top ten CMAs,  
16 except in Toronto where it is the equivalent of  
17 the 72nd percentile. So the 75th for all the  
18 top ten CMAs except Toronto with the 72nd.

19 But of course, and I'm going to sound  
20 a bit like a broken record, this itself is a  
21 false comparison, it's an apples-to-oranges  
22 comparison, because once you include the  
23 judicial annuity in the comparison judicial  
24 compensation is considerably above the  
25 75th percentile in all of the top ten CMAs.

1           And that brings me to my final point  
2 on private sector comparisons. It's simply  
3 wrong to compare self-employed lawyer data with  
4 the base judicial salary. The judicial annuity  
5 is an excellent, excellent pension regime and,  
6 as Mr. Rupar described it, it would be extremely  
7 costly to replicate for a self-employed lawyer  
8 cover by the CRA data.

9           So, to conclude, I want to take you  
10 back to the chart that I put up at the beginning  
11 of the private sector comparison, which is at  
12 tab 13 of our condensed book. And once again,  
13 these -- this data has been updated for this  
14 period of time, for this last quadrennial cycle.  
15 And we suggest that it shows that the value of  
16 judicial compensation is sufficient to attract  
17 outstanding candidates from the private sector.

18           And this brings me back to my next  
19 point, which is the public sector comparison  
20 under the third criterion. Again, doesn't  
21 include the DM-3, in our submission, that waits  
22 until the fourth criterion. So 38 percent of  
23 appointees in this last cycle were from that  
24 sector. It includes legal Aid, provincial court  
25 judges, public service, profs, deans, et cetera.

1 And from our research, apart from three law  
2 deans throughout Canada, the base judicial  
3 salary is more than every other one of these  
4 groups.

5 As you heard this morning, there is a  
6 bit of a discounting of this comparison. It's  
7 says it's not entirely relevant because public  
8 sector workers often don't make as much as the  
9 judicial salary and so, therefore, of course  
10 it's adequate.

11 We would say given that almost  
12 40 percent of judicial appointees come from this  
13 world it's incredibly relevant to look at this  
14 public sector data, that we've included at  
15 paragraphs 101 and following of our main  
16 submissions. So I'm not going to say much more  
17 about the public sector data, it's included in  
18 our submissions. But, again, we would say that  
19 it absolutely has bearing on this issue and it  
20 should be considered.

21 And I'll move on to the fourth  
22 criterion, which is other objective factors.  
23 And, of course, primary among these is a block  
24 comparator. Before getting into the details or  
25 addressing the judiciary's proposal in this

1 regard I want to make a few brief points on the  
2 history of the comparison.

3           The judiciary has expressed its  
4 frustration with our written submissions  
5 regarding the DM-3 comparison, and I believe  
6 there may have been some sort of an  
7 understanding on this issue. The government  
8 doesn't contest or challenge the use of the DM-3  
9 comparator, in so far as we're using the one  
10 that has been used by successive Quadrennial  
11 Commissions and predecessor Commissions. And  
12 what I mean by this is, from the 1975  
13 equivalency, through the rough equivalency,  
14 including the Guthrie Commission the Crawford  
15 Commission, the Courtois Commission, and on to  
16 the Quadrennial Commissions, including Block and  
17 Levitt, to the extent there has been a consensus  
18 among these Commissions, it's using the DM-3  
19 midpoint as the comparator. And later on, when  
20 at-risk pay came in, the DM-3 midpoint plus half  
21 the available at-risk, that is the historical  
22 consensus. It is not DM-3 writ large. It is  
23 not some other version of DM-3 salary and  
24 at-risk pay. The only historical consensus is  
25 the DM-3 midpoint plus half of the available



1 at-risk. And, frankly, for obvious reasons the  
2 government doesn't contest or relitigate, as  
3 it's been put, the use of that comparator as we  
4 have already achieved parity. The judicial base  
5 salary now exceeds the DM-3 midpoint and half  
6 available at-risk.

7 Now, before the Block Commission and  
8 the Rémillard Commission, and here again before  
9 this Commission, the judiciary proposes a  
10 different comparator from the historical one,  
11 which is total average compensation of the DM-3  
12 group. The first two times the judiciary  
13 proposed this it was rejected by the Commission.  
14 And, once again, we say it should be rejected by  
15 this Commission.

16 We heard Mr. Bienvenu this morning  
17 speaking about differences between comparators  
18 and compensation measures, this is a new point  
19 that I -- that hadn't been argued to date. And,  
20 as I understood it, Mr. Bienvenu said that DM-3  
21 total average compensation is a compensation  
22 measure rather than a comparator and, therefore,  
23 the appropriate compensation measure is up for  
24 discussion and debate while the comparator is,  
25 in his submission a settled matter of precedent.

1           Our response, and with the greatest of  
2 respect, is that there is some inconsistency  
3 with Mr. Bienvenu's point here. He criticizes  
4 the government for relitigation of the CRA  
5 filters, which are all compensation measures, by  
6 the definition he uses. However, even though  
7 the Block and Rémillard Commission rejected  
8 these -- the notional total average compensation  
9 of DM-3 the issue is once again raised before  
10 this Commission. So I think there's a bit of an  
11 inconsistency in terms of approach.

12           Before going any further I do want to  
13 bring up a passage from the Rémillard  
14 Commission's report that deals with DM-3 and  
15 deals specifically with block and with the total  
16 average. So I'm going to pull up paragraphs 47  
17 through 50 of the Rémillard Commission's report.  
18 And 47 starts off:

19                   "We agree that the position of a  
20 highly-ranked deputy minister is very  
21 different in a number of ways than the  
22 position of a judge, and that the DM-3  
23 comparator should not be used in a  
24 'formulaic benchmarking' fashion. We  
25 do not read previous Commission

1 reports as having done that. Rather,  
2 the DM-3 comparator has been used as a  
3 reference point against which to test  
4 whether judges' salaries have been  
5 advancing appropriately in relation to  
6 other public sector salaries.

7 Indeed, the Levitt Commission  
8 agreed with previous Commissions in  
9 calling the DM-3 comparator a 'rough  
10 equivalence'. The Levitt Commission  
11 found that, while a 7.3% gap 'tests  
12 the limits of rough equivalence',  
13 judicial salaries did not require  
14 adjustment in view of this comparator  
15 to remain adequate and respect the  
16 criteria in the Judges Act."

17 The Rémillard Commission then goes  
18 into what we would call the "new" comparator,  
19 total average compensation that has been -- was  
20 raised before the Rémillard Commission:

21 "The Association and Council  
22 raised a further issue in relation to  
23 the DM-3 comparator. They argued that  
24 the comparator should be changed from  
25 the midpoint of the DM-3 salary range

1 plus half of at-risk pay, to the total  
2 average compensation of DM-3s. The  
3 difficulty with that proposal is that  
4 DM-3s constitute a very small group -  
5 currently eight - the compensation of  
6 which is subject to considerable  
7 variation depending on the exact  
8 composition of the group at any given  
9 point in time. Previous Commissions  
10 have used the DM-3 reference point as  
11 'an objective, consistent measure of  
12 year over year changes in DM-3  
13 compensation policy'. Moving to the  
14 total average compensation of a very  
15 small group would not meet those  
16 criteria. We agree with the Block  
17 Commission, which rejected moving to  
18 average pay and performance pay  
19 because it would not 'provide a  
20 consistent reflection of year over  
21 year changes in compensation'."

22 I'd also note that further than just  
23 suggesting the total average compensation, the  
24 judiciary has also hinted at something further,  
25 and they say they asked the Commission to keep

1 an eye on, and they use those words "keep an eye  
2 on" the DM-4 category, raising the possibility  
3 there would be a push away from the consistent  
4 approach taken since 1957 towards an even higher  
5 and higher comparator.

6 The government's position on this is  
7 as follows: The government does not contest the  
8 notion that the DM-3 midpoint, plus half  
9 at-risk, as the Rémillard Commission said, is a  
10 useful reference point against which to test  
11 whether judges' salaries have been advancing  
12 appropriately, and I'm going to underscore this,  
13 in relation to other public sector salaries.  
14 It's a relative test.

15 The government fully agrees with the  
16 Rémillard Commission that this should not be  
17 done in a formulaic -- it's not a formulaic  
18 benchmarking exercise. And, in our view,  
19 frankly, it is unfortunately that the  
20 judiciary's submissions at paragraphs 146 and  
21 following, there is what can only be described  
22 as a formulaic benchmarking exercise that is  
23 undertaken; ultimately concluding that there  
24 is -- excuse me, 4.62625 percent gap that needs  
25 to be filled via an increase to judicial salary,

1 and that begets the 2.3 percent over the two  
2 years. Surely we must consider a percentage to  
3 the 5th decimal place to be a formulaic  
4 benchmarking exercise.

5           Regarding the new total average  
6 compensation that's proposed for, this would  
7 once again involve calculating the average  
8 income of the eight, and it is still currently  
9 eight Deputy Ministers occupying the DM-3  
10 position. I want to be clear, it's not the same  
11 eight. During the last quadrennial cycle  
12 between 2015 and 2020 there were as many as  
13 fourteen DM-3s and as few as 8 DM-3s.

14           So the concerns articulated by the  
15 Rémillard Commission at paragraph 50, which I  
16 just read, and by the Block Commission, are  
17 still applicable. We're speaking about the  
18 average pay to eight people who have short  
19 average periods of tenure and whose pay is  
20 individually targeted to the specific Deputy  
21 Minister.

22           And as we set out in our reply  
23 submission, salaries and at-risk pays of DMs,  
24 as I said, they are dictated individually.

25           One can easily imagine a year, for

1 instance, where several deputy DM-3's retire or  
2 move on to other jobs and a number of new Deputy  
3 Ministers are promoted and receive a salary at  
4 the lower end of the range. And in this  
5 hypothetical the total average compensation of  
6 DM-3s would change significantly, because  
7 you've lost some, presumably, from the top and  
8 gained some at the bottom, and there's a shift  
9 in total average compensation. Total average  
10 compensation is, therefore, subject to  
11 considerable variation depending on the exact  
12 composition of the group at any given point in  
13 time.

14 By contrast, as the Block Commission  
15 wrote, midpoint, plus half available at-risk  
16 does not vary over time; and consistency is key.  
17 And as the judiciary's expert, Ms. Haydon,  
18 points out at page 2 of the report, and  
19 Mr. Bienvenu quoted this passage this morning:

20 "One of the foundations of  
21 compensation research is a degree of  
22 consistency over time in the use of  
23 comparators in order to maintain  
24 confidence in the data collection and  
25 related analytical process."

1           Now, Ms. Haydon is speaking about  
2 another comparator but I think that statement  
3 applies equally to the DM-3 comparator. And  
4 just for your reference, that report is at  
5 Exhibit C of the joint reply of the Association  
6 and Council.

7           MADAM CHAIR: Mr. Shannon, can you  
8 help me, and you may want to do it later, just  
9 on the data set two questions I have. And I'm  
10 asking right now because just to understand the  
11 data. We're past April 1, 2021, do you have the  
12 current salary range for the DM-3s? And the  
13 reason why I'm saying that is I notice that  
14 every time you're close your average is within  
15 2,000, or less even, than the high end of range.  
16 So presumably you have either no room to move,  
17 unless every changing in the mix. So I just  
18 wondered if you to have that. You don't have to  
19 answer me today but that's something that I just  
20 want to understand because it does impact the  
21 block comparator as well, right?

22           MR. SHANNON: Absolutely.

23           MADAM CHAIR: The second thing is I've  
24 noticed, and don't take my comment as looking  
25 for average compensation, but just so that I



1 understand, and it goes to your argument that  
2 bonuses, paid performance and salaries are very  
3 individualized, which I'm not disputing. The  
4 only thing I realize is that the bonus average  
5 itself is pretty much constant.

6 So prior to 2007 it was around 33,000  
7 and it moved to 55,000. And in between 2007 and  
8 2011 it was pretty constant, maybe 55 to 57, but  
9 pretty constant. And it jumped in 2011 to  
10 64,000 to 65,000. And, again, it stayed very  
11 constant as an average until 2019 where it  
12 jumped to 80,000, and then we have no data.

13 So I find that the bonus average stays  
14 pretty much in the same realm. So I just want  
15 to understand, because often I view salary plus  
16 pay perform, target performance not the actual,  
17 target bonus is often what you view as total  
18 compensation and what the market is ready to  
19 accept.

20 I just want to understand when you  
21 say, well, it may change and it's  
22 individualized, it hasn't changed so much. So  
23 what is it I'm not getting from those statistic  
24 and that data?

25 MR. SHANNON: So, Madam Chair, I would

1 like the opportunity to come back to you on  
2 those points briefly tomorrow.

3 MADAM CHAIR: That's fine.

4 MR. SHANNON: And especially the  
5 current salary range, because I want to make  
6 sure that I get the numbers exact for you rather  
7 than flipping through documents madly right now.

8 As to the bonus average, or rather the  
9 at-risk average, I fully recognize that there's  
10 been a consistency over time. My point is, and  
11 the point of the Rémillard Commission's comments  
12 in this regard, and the Block Commission's  
13 comments, is there's no guarantee of consistency  
14 there. That though that has been the case if  
15 the make-up of the DM-3 group changes  
16 significantly, which it can through promotions,  
17 through retirement, given the short tenure of  
18 the DM-3s, et cetera, it will adjust and it  
19 will shift, and that necessarily has to be taken  
20 into consideration.

21 When we consider the purpose of the  
22 DM-3 of -- and the goal of consistency in the  
23 DM-3 comparator, a midpoint plus half at-risk is  
24 going to be consistent over time and not shift.  
25 And that is -- was the goal of the original

1 creation of the DM-3 comparator, and have been  
2 the goal consistent, and have been the comments  
3 of both the Block and Rémillard Commissions in  
4 that regard.

5 So I think -- I'll come back to you on  
6 the specific numbers with respect to averages,  
7 but I -- my point still stands that the  
8 consistency may have been there at different  
9 points but it -- there's no guarantee that it  
10 will continue. And to the extent it does this  
11 it doesn't assist the Commission in performing  
12 an actual comparison.

13 MADAM CHAIR: Okay. Thank you very  
14 much.

15 MADAM COMMISSIONER: Mr. Shannon,  
16 perhaps I could just piggy-back on the data, and  
17 if you could come back with what the at-risk  
18 component is for fully satisfactory performance,  
19 and whether that is half of that risk? Or maybe  
20 over the same time period?

21 Because I think some of the variation  
22 may be related to changing of the amount of the  
23 at-risk, but I think the at-risk we should focus  
24 on is the kind of fully satisfactory one, or  
25 whatever they're calling the equivalent right

1 now.

2 MR. SHANNON: And, Commissioner  
3 Bloodworth, just so I'm clear, you're looking  
4 for a percentage of where fully satisfactory  
5 would be within that 33 percent range, is that  
6 correct?

7 MADAM COMMISSIONER: Yes.

8 MR. SHANNON: Got it. I cannot speak  
9 as to whether that data is available, but to the  
10 extent we have it we will track it down and get  
11 it to you.

12 Two other brief points in response to  
13 issues raised by the judiciary. I note that the  
14 judiciary expressed concerns with our inclusions  
15 of data on or information on DM-3 tenure and the  
16 nature of the DM-3 job. But to understand why  
17 total average compensation is problematic this  
18 information is essential.

19 It's important to consider the short  
20 tenure, the highly individual nature of the  
21 compensation because they caused fluctuations in  
22 the compensation, and can cause fluctuations in  
23 the compensation to DM-3s and render this  
24 proposal problematic. So that's -- to a certain  
25 extent that is why that data is in there. And I

1 wanted to note as much.

2 I also want to just take the  
3 Commission to judiciary's table 7, which was  
4 inserted at their paragraph 156 of their main  
5 submissions. I have it here in the condensed  
6 book at tab 15, and I'll bring it up now. So  
7 this is a table which shows judicial salary,  
8 obviously it's base salary which doesn't include  
9 the annuity, which will be my next point.

10 But it shows judicial salary for these  
11 years, projected forward to 2023. It shows DM-3  
12 total average compensation. And the only thing  
13 I would note here is that everything other than  
14 the first row is a projection. And obviously  
15 the second row of the second column is not a  
16 projection, but everything in gray is a  
17 projection and it assumes quite a bit. It  
18 assumes no change in the compensation of the  
19 group. It assumes also that the DM-3 range will  
20 change. And what I mean by that is currently,  
21 as things currently stand, a DM-3, top of the  
22 range, top of the performance pay or at-risk  
23 pay, gets you to 407,645. And here if you look  
24 at the April 1st, 2023, it's 413,725. So my  
25 point here is simply that there are a lot of

1 assumptions built into this chart.

2 We don't know where the DM-3 range  
3 will go. That is not before this Commission in  
4 terms of why the salaries to DMs are set in  
5 the way they are. But this chart in and of  
6 itself necessarily includes quite a bit of  
7 projections going forward that may -- are  
8 subject to shift, especially given the small  
9 number of individuals, especially given that  
10 we're talking about eight -- between eight and  
11 fourteen, I would suggest, individuals.

12 My final point on DM-3 is, again, a  
13 call for apples-to-apples comparison. Total  
14 compensation must be considered in any  
15 comparison. Like the judiciary DMs, of  
16 course, have an annuity. But the DM annuity is  
17 not as beneficial or as generous as the judicial  
18 annuity.

19 According to the Gorham report at  
20 paragraph 221 and 222 the DM pension is valued  
21 at 17 percent, versus the judicial pension,  
22 which we are accepting Mr. Newell's number at  
23 34.1 percent.

24 We certainly took note of  
25 Mr. Bienvenu's comments this morning regarding

1 the table, which was included at page 14 of our  
2 submissions. That's at tab M of the  
3 judiciary's -- "M" as in Michael, of the  
4 judiciary's condensed book. And after review of  
5 it we certainly acknowledge and apologize for  
6 the error. Mr. Bienvenu is entirely right, that  
7 the chart incorrectly adds the value of the  
8 annuity to the top line but not to the others,  
9 and we apologize for that. And before the ends  
10 of the day we will provide a replacement chart  
11 for that specific chart.

12           However, the error illustrates the  
13 point I'm trying to make here quite nicely. We  
14 can't fairly compare compensation without  
15 considering annuities, and I'm going to list off  
16 some numbers, and it's looking at 2019 numbers  
17 specifically. So in 2019 we have the block  
18 comparator, and if you adjust it to include  
19 17 percent annuity that takes you to 386,498.  
20 The judicial salary, adjusted to include the  
21 34.1 percent annuity, takes you to 442,395.  
22 And, interestingly, the total average  
23 compensation of DM-3s, adjusted to include their  
24 annuity, again 17 percent, takes you to 448,641.  
25 So doing an apples-to-apples comparison judicial

1 compensation measures up very well.

2 Before I turn it over to Mr. Rupar I  
3 want to briefly address the other professions as  
4 context not comparator. So you will see at  
5 paragraphs 130 to 135 of our main submissions we  
6 included a section on other professions and  
7 other judiciaries, and this morning you heard  
8 some submissions on those submission.

9 Just to be clear, as Mr. Rupar already  
10 said, the government is not proposing new  
11 comparators. We're providing context to  
12 understand where judicial compensation fits in  
13 with the broader societal picture. And, in our  
14 view, it is essential to understand not only the  
15 legal and public service context but the broader  
16 context.

17 So we've noted that in 2018 family  
18 doctors made approximately \$204,000, and general  
19 surgery specialists made an average of  
20 approximately \$347,000. And this is not  
21 including annuities, et cetera, but this is in  
22 terms of income, that's what's listed. So  
23 judicial-based compensation in 2018, which is  
24 the year I quoted for those other professions,  
25 was 321,600 without annuity. So are we saying



1 that these jobs are directly comparable?  
2 Certainly not, but we believe they assist the  
3 Commission to fit the judicial compensation  
4 within the broader context of high-level  
5 professionals in Canada.

6 As for other commonwealth and common  
7 law judges perhaps there is more direct  
8 comparison that can done but, yet again, we  
9 don't propose them as comparator in the strict  
10 sense, it's context. And as you'll see at  
11 paragraph 134 of our main submission, Canadian  
12 federally appointed judges make slightly more  
13 than their counterparts in Australia and the  
14 U.S. and the U.K. as well, but slightly less  
15 than other counterparts in the U.K., Australia  
16 and New Zealand.

17 The conclusion is simply this, the  
18 Canadian judicial base salary is in the same  
19 range as other commonwealth and common law  
20 judges. That is the submission we're putting  
21 forward.

22 Subject to any questions I will turn  
23 the microphone back to Mr. Rupar.

24 MADAM CHAIR: We probably will have  
25 other questions for you tomorrow after we hear

1 all the replies, but we just wanted to get that.

2 Unless, Peter and Margaret, there is  
3 any specific questions that might be useful for  
4 Mr. Shannon to get back to us?

5 MR. COMMISSIONER: I don't have  
6 anything else.

7 MADAM COMMISSIONER: No, I'm fine.

8 MADAM CHAIR: Perfect. Thank you,  
9 Mr. Shannon.

10 Mr. Rupar

11 MR. RUPAR: Thank you, Madam Chair.  
12 I'm happy to report I will be brief, this late  
13 in the day for everybody.

14 With respect to the allowances for the  
15 judiciary that Mr. Bienvenu spoke of this  
16 morning, I've reviewed our position and our  
17 submissions were -- the point I was going to  
18 make is we've reviewed our written submissions  
19 and we don't really have anything to add with  
20 respect to the allowances that are not found in  
21 our written submissions so we'll stand by those.

22 And with respect to Prothonotaries, I  
23 take what Mr. Lokan said this morning, a number  
24 of the issues raised by the Prothonotaries have  
25 been, to use the general term, agreed with by

1 the government. We have agreed with the  
2 creation of a supernumerary office and with the  
3 increase in the allowances, and those  
4 discussions are ongoing and matters are  
5 pressing.

6 With respect to compensation,  
7 Mr. Lokan went on a bit, to some degree, about  
8 professional corporations and taxation. We've  
9 dealt with that in our main submissions and we  
10 don't see a significant, if any, difference  
11 between how the judiciary and the Prothonotaries  
12 will be treated, as the Prothonotaries is  
13 based -- the compensation is based on that of  
14 the Judiciary. So I'll just say that what we  
15 said this afternoon applies to them as well.

16 The last point that I raise, and it's  
17 not that we are disagreeing here I just want to  
18 clarify a couple of points that Mr. Lokan raised  
19 with respect the change of title to Associate  
20 Judge. The government has committed to making  
21 this change and has given its intention to bring  
22 the necessary legislative changes to do this.  
23 Mr. Lokan has suggested that it's still  
24 necessary for this Commission to make a  
25 recommendation. And we are of the view that it

1 is beyond the jurisdiction of this Commission,  
2 dealing with compensation and benefits, to deal  
3 with the matter of process and legislation,  
4 which is what the title of "Prothonotary" deals  
5 with. So although we agree there should be a  
6 change, and we have signalled our very clear  
7 intention to make the necessary changes, we do  
8 not agree it's something that the  
9 recommendations of this Commission should be  
10 dealing with.

11 And subject to that those would be our  
12 submissions until tomorrow.

13 MADAM CHAIR: Thank you very much.  
14 Mr. Rupar.

15 Peter and Margaret, anything else? Do  
16 you want to probe a bit on professional  
17 corporations or wait until tomorrow?

18 MR. COMMISSIONER: We do have a little  
19 bit of time. Mr. Rupar, could I ask you this  
20 question, it's troubling to me that we have a  
21 lacuna in the data with respect to professional  
22 corporations where we have a crossover now of  
23 17,000 versus the 15,000 of self-employed  
24 lawyers.

25 And I take it from your submission

1 that what you're telling this Commission to do  
2 is to only rely on the self-employed lawyer  
3 data, because we have data there, and not to,  
4 for want of a prettier way of saying it, not to  
5 pay any attention to the professional  
6 corporation side of the equation. First off, is  
7 that your position?

8 MR. RUPAR: I wouldn't quite put it  
9 that way, but at the end of the day it is our  
10 position that there is not enough evidence,  
11 enough specific evidence before the Commission  
12 for it to make conclusions and recommendations  
13 based on professional corporations. Because we  
14 have the theory, we have the general approach  
15 that would be taken but we don't have any data  
16 to apply to. And that's where we run into the  
17 problem where the lacuna, as you describe it,  
18 Mr. Griffin.

19 MR. COMMISSIONER: Okay. But do you  
20 accept at least this much, that it is likely  
21 that the higher-earner category, leaving aside  
22 the significance of that component of the  
23 criteria under section 26, that the higher  
24 earning category may be found within that data  
25 if it was available to us?

1 MR. RUPAR: Well that's why we need to  
2 see the data, Mr. Griffin. I'll check today,  
3 but I don't think we're prepared to make that  
4 assumption because until we see the data, until  
5 we see what stratuses of categories of -- or  
6 levels of income are using the professional  
7 corporations, to what degree, it would be  
8 difficult for us to agree that it would be the  
9 higher end strata.

10 MR. COMMISSIONER: Do you accept that  
11 it would be earners in the 200 to \$300,000  
12 category would begin to use the alternative of a  
13 professional corporation?

14 MR. RUPAR: We'll agree with what  
15 Messrs. Leblanc and Pickler have said in their  
16 evidence, that it would generally be a starting  
17 point. But we're not excluding, and I should be  
18 clear that we're not wish to exclude that  
19 earners who make less than \$200,000 may be able  
20 to take advantage of that as well.

21 Much like Mr. Shannon talked about,  
22 the exclusion of the lower end of the CRA data.  
23 At this point we simply see no basis for  
24 excluding -- if professional corporations are to  
25 be applied it should be across the Board. We

1 don't see a reason for excluding below 200,000.

2 Right now you have the general  
3 propositions that have been set out by the  
4 gentlemen I described, Mr. Leblanc and  
5 Mr. Pickler, but we don't -- it comes down to  
6 the point of we just don't have the data set  
7 that we can put the experts' focus on and come  
8 up with numbers.

9 It may very well be that the  
10 propositions you have put to us, Mr. Griffin,  
11 are accurate. We just don't know because we  
12 don't have the data. And I wouldn't want to tie  
13 the hands of the government, and necessarily the  
14 Commission, to a proposition where we cannot  
15 support it.

16 MR. COMMISSIONER: No, I appreciate  
17 that point. But it leaves the Commission in a  
18 position where it has, at worst, anecdotal  
19 evidence of a higher earning category that is  
20 not reflected in the data we have in front of  
21 us.

22 Perhaps you can help me with this, I  
23 appreciate that there seem to be impediments to  
24 being able to reach the data that presumably  
25 would tell us which professional corporations

1 are lawyer professional corporations, but we  
2 seem to have that data in the 17,000  
3 professional corporation numbers so we know  
4 we've got that much information.

5 Presumably within the cohort of  
6 professional corporations' line items  
7 distinguished between professional income and  
8 passive income, which seems to be the other area  
9 that is described as an advantage of a  
10 professional corporation, and so are we to  
11 understand that there is no potential to have  
12 that greater granularity now for this Commission  
13 or in the future for successive Commissions?  
14 Because that is something we need to grapple  
15 with.

16 MR. RUPAR: Correct. And I can't  
17 speak to future Commissions because  
18 circumstances may change in two, four years or  
19 eight years. I can say that requests were made  
20 and efforts were made to work with the CRA to  
21 retrieve this data, because we learned from the  
22 Rémillard Commission it was a trend and it was  
23 something that would be of interest.

24 And I don't think I'm speaking out of  
25 turn here, correct me if I am, but both parties



1 were invested in trying to get this sort of  
2 data, and it simply wasn't available for the  
3 reasons that Mr. Shannon said.

4 We can -- Mr. Bienvenu and I can  
5 speak, and our teams can speak maybe tonight or  
6 tomorrow, or even after the completion of the  
7 Commission tomorrow to see if there's any  
8 further material that we can provide to you  
9 which would provide objective information. But  
10 as it stands now we did make joint efforts to --  
11 and we did co-operate with each other to make  
12 efforts with the CRA to get this material and we  
13 were unsuccessful for this Commission.

14 MR. COMMISSIONER: And was it a  
15 question of time or cost? Because you were able  
16 to distill out the information as to the number  
17 that were legal professional corporations. So  
18 I'm just trying to understand what the  
19 limitation are in this data?

20 MR. RUPAR: Right. That information  
21 came from -- as I understood it came from the  
22 Federation of Law Societies and not the CRA.  
23 When we went to the CRA, as Mr. Shannon set out,  
24 there were issues of privacy and ability to  
25 extract that type of data from the information

1 they had available to them.

2 MR. COMMISSIONER: Well, I can  
3 understand the Federation of Law Societies  
4 because you have to register a professional  
5 corporation with the provincial regulator, so  
6 that would give us some indication that that  
7 number is likely accurate as to number. It just  
8 leaves us in even more of a quandary, right?

9 MR. RUPAR: It does. I don't have  
10 anything further to offer you right now. As I  
11 say, we've made the efforts. We can speak  
12 again.

13 But I believe the last time, the last  
14 Commission, the Rémillard Commission, they were  
15 post-hearing discussions with respect to the  
16 actuaries discussing numbers with each other.  
17 So this may be a situation where we have to  
18 speak with Mr. Bienvenu and his team to see what  
19 if anything we can provide to you.

20 I'm not hopeful. I don't want to  
21 raise hopes because we have gone down this road  
22 with the CRA over the last number of months and  
23 these road blocks -- I won't say road blocks,  
24 these difficulties in extraction were explained  
25 to us and we were not able to get the material.

1 But given the issues raised today by the  
2 Commission we will see what, if anything, in  
3 addition we can do about that.

4 MR. COMMISSIONER: I think it would be  
5 a help. And I don't think I speak just for  
6 myself, but others are better able to express it  
7 for themselves. And it is something that is  
8 incumbent on us to have the best information we  
9 can possibly have.

10 MR. RUPAR: Absolutely. And if we had  
11 the information available, as I said, if we had  
12 the data, the granular level data then we could  
13 have our various experts look at it, reports  
14 made and we'd have the sort of discussion we've  
15 had with the CRA data over the last number of  
16 the Commissions. So we're not at all  
17 unwelcoming this change. We have to deal with  
18 the reality of how the profession operates.

19 We are saying that we cannot give you  
20 the sort of representations and guidance, if you  
21 will, in making recommendations that you need  
22 based on the information that we have now  
23 available to us.

24 MADAM COMMISSIONER: What I would --  
25 just to piggyback on what Mr. Griffin was

1 asking, I would like to know whether this is a  
2 time issue. Because if CRA had been asked in  
3 last couple of months and they're simply saying,  
4 this would take us too much time and cost us too  
5 much to do that. Then I think it's incumbent on  
6 us as a Commission to say, well, this is  
7 something that should be done for the next  
8 Commission, if that's the only option. And I  
9 didn't quite understand your answer about time,  
10 but maybe you could try and confirm for us  
11 tomorrow? Are they saying no, they could never  
12 do it? Or are they saying it would take them  
13 some time and perhaps some money to be able to  
14 do it?

15 MR. RUPAR: Well, it was a bit more  
16 than time, as I understood it, Ms. Bloodworth,  
17 as Mr. Shannon pointed out. There were  
18 significant privacy issues raised by the CRA and  
19 extraction ability, is the way to put it, of the  
20 data.

21 So we'll go back and we'll look at  
22 this again and provide some of that information  
23 to you. I don't think it was simply a time and  
24 money issue. There were other issues that were  
25 involved as well.

1           But since the Commission has now  
2 raised it it would be incumbent on both of the  
3 main parties to go back to you, either tomorrow  
4 or within a reasonably short period after the  
5 close out of the hearing tomorrow, with what we  
6 have, what we can reasonably ask for now and  
7 what possibilities there may be in the future.

8           Let me put it to you this way, we're  
9 not -- on the government side we're not trying  
10 to avoid professional corporations, it's a  
11 reality. What we're saying is we have to do it  
12 in a fulsome manner. And we just don't have the  
13 information now so that we can have that  
14 discussion between us, the judiciary and other  
15 interested parties, as to where this fits within  
16 the recommendations you need to make, with  
17 respect comparators and ultimately a  
18 recommendation on salaries going forward, and  
19 compensation.

20           MADAM COMMISSIONER: But you do  
21 understand that if the trends continue there  
22 will be a point at which, I don't know in the  
23 next Commission or the Commission after that,  
24 where the self-employed lawyers will be such a  
25 small percentage compared to the professional

1 corporations that their data will become less  
2 and less useful as well.

3 MADAM CHAIR: And also the use of  
4 filters. For example, just the simple fact of  
5 saying, filter, no matter which one, reduces the  
6 data pool, as you correctly point out, is  
7 unfortunately a big function of us missing  
8 50 percent of the data through the professional  
9 corporations; so that exacerbates the issues.

10 MR. RUPAR: I hear you, Madam Chair,  
11 and I would invite Mr. Bienvenu to jump in if he  
12 has anything to add.

13 The parties did recognize this issue  
14 well in advance of this hearing and did make  
15 significant efforts to try and get that sort of  
16 information for you. We were cognizant of what  
17 the Rémillard Commission said. We did work to  
18 try to get it. We were unable to get it.

19 We understand the position that places  
20 the Commission in now and the concerns the  
21 Commission is raising about that now. And I  
22 don't want to get -- I don't want to overpromise  
23 and say we're going to come up with something  
24 that we didn't come up with over the last number  
25 of months, when we worked together with CRA to

1 try to get this information. But we will try  
2 and get some answers for you, if that is  
3 satisfactory.

4 MADAM CHAIR: That is fair enough.  
5 Thank you very much, Mr. Rupar.

6 MADAM COMMISSIONER: On another --

7 MADAM CHAIR: Mr. Bienvenu?

8 MR. BIENVENU: I was just going to say  
9 that perhaps we can work with our friends from  
10 the government to describe the position, in so  
11 far as the limitations faced with CRA, in a  
12 joint submission to the Commission. And you  
13 will know what the issues are and what prospect  
14 there may be in the future of getting  
15 information about PCs.

16 I can certainly say that one of the  
17 big issue, as I understand it, was the ability  
18 of CRA to identify, within the broader group of  
19 professional corporations, which were legal  
20 corporations. And just identifying the correct  
21 universe posed challenges.

22 But my suggestion would be that we get  
23 together with our friends and we'll describe the  
24 position in a joint submission so you will know  
25 what are the issues and what prospect there is

1 of getting them solved at one point.

2 MR. COMMISSIONER: Can I add one other  
3 point? In some circumstances lawyers, perhaps  
4 other professionals, have used two professional  
5 corporations in the structure. And so when you  
6 address it with CRA you may have one actual  
7 income earner but two corporations. So that's  
8 another factor that if they're in any position  
9 to provide the information which isolates it by  
10 single lawyer taxpayer, if you like, lawyer  
11 taxpayer as opposed to corporation. There may  
12 need to be some additional granularity. Now, as  
13 I understand it that advantage went away with a  
14 budget a couple of years ago. But if we're  
15 looking at historical data we still may have an  
16 overlay with respect that. So that's another  
17 factor when you're asking questions just to keep  
18 in the back of your mind.

19 MR. BIENVENU: And the situation we  
20 are facing today, with respect to the impact of  
21 professional corporations on the reliability of  
22 the CRA data, the exact same issue that we faced  
23 twelve years ago when we were at the high water  
24 mark of the use of family trusts within the  
25 profession. And none of that was captured by



1 the CRA. Then there was a change in policy on  
2 the part of the federal government and the  
3 family trust disappeared, but the other  
4 professional corporation gained favour and  
5 prevalence.

6 MR. RUPAR: I just add, Madam Chair,  
7 given the scope of the questions raised by the  
8 Commission today I agree fully with  
9 Mr. Bienvenu's position that we should work  
10 together to bring this information to you. I  
11 don't think we're going to be able to do it by  
12 the end of tomorrow. What I would suggest is  
13 that we get it to you as quickly as we can  
14 within the next number of days. Because we'll  
15 have -- we'll go back to CRA and just clarify  
16 some of these issues.

17 MADAM CHAIR: That's fair.

18 MR. RUPAR: We understand you're under  
19 a legislative time constraint as well so we  
20 understand the need to get it to you as quickly  
21 as possible.

22 MADAM CHAIR: Thank you, Mr. Rupar.

23 Mr. Bienvenu, yes we would -- at least  
24 if we can't get any form of reliable data, as it  
25 looks like, understanding the difficulties and

1 the obstacles would at least be useful for us,  
2 as Commissioners, in developing where we end.  
3 So that would be very useful as well.

4 Margaret, you have I believe another  
5 question?

6 MADAM COMMISSIONER: Yeah, another  
7 data related question, Madam Chair, and that was  
8 about applicants for the judiciary. We have a  
9 table we looked at today and I remembered it  
10 from the submissions, where it talks about  
11 applicants by province. I'm wondering if there  
12 is data available for a further breakdown of  
13 applicants?

14 Now, I realize in a place like PEI it  
15 may be difficult to break down further because  
16 it's smaller, but a place like Ontario it might  
17 be relevant for us to know how many of those  
18 applicants are coming from the Toronto area as  
19 opposed to northern Ontario, for example. But I  
20 don't know whether that data is available but  
21 perhaps you can look for that?

22 MR. RUPAR: We have to inquire at the  
23 CGFA for that, that's the source, the  
24 independent office. But we can inquire to see  
25 if they have that sort of breakdown, yes.

1 MADAM COMMISSIONER: Thank you.

2 MADAM CHAIR: Any other things? No?  
3 So thank you very much everybody. Sorry we had  
4 a few technological glitches but hopeful they  
5 are gone for tomorrow.

6 Again we start at 9:30 tomorrow  
7 morning and I'm more than happy to give my ten  
8 minutes away to Chief Justice Richard Bell, not  
9 to add to your time but to basically make sure  
10 we have more time for the questions in the end.

11 I would ask everybody to please sign  
12 on around 9:00 a.m. so we can again test all  
13 your microphones and cameras and then shift you  
14 into the breakout rooms, and that allows to  
15 start on time effectively.

16 Gabriel, am I forgetting anything?

17 MR. LAVOIE: No I think you covered  
18 everything, Madam Chair. I wanted to say thank  
19 you everyone for the few technical difficulties  
20 we had earlier in the day.

21 JUSTICE J. CHAMBERLAND: That being  
22 said I have no reply so I feel a little bit  
23 isolated in the group who don't have right of  
24 reply, but I can live with that.

25 But my question is the following, are

1 you expecting me to take advantage of my right  
2 to speak to comment on the government's reply,  
3 for example, with regard to what the appellate  
4 judges are proposing?

5 MADAM CHAIR: Yes, and if you need a  
6 right of reply, because we've seen what the  
7 government has submitted, but if afterwards the  
8 government comes back to us and if would like to  
9 intervene quickly we can probably find you some  
10 time in our question period, if that suits out.

11 JUSTICE J. CHAMBERLAND: Yes, that's  
12 good. Thank you very much.

13 MADAM CHAIR: Anything else? No.  
14 Thank you. Please place us in breakout rooms  
15 and people can leave from there.

16 -- Meeting adjourned at 4:22 p.m.

17  
18  
19  
20  
21  
22  
23  
24  
25

1 REPORTER'S CERTIFICATE

2  
3 I, HELEN MARTINEAU, CSR, Certified  
4 Shorthand Reporter, certify;

5 That the foregoing public hearing was  
6 taken before me at the time and date therein set  
7 forth;

8 All discussions had by the  
9 participants were recorded stenographically by  
10 me and were thereafter transcribed;

11 That the foregoing is a true and  
12 accurate transcript of my shorthand notes so  
13 taken. Dated this 12th day of May, 2021.

14  
15 

16  
17 PER: HELEN MARTINEAU  
18 CERTIFIED SHORTHAND REPORTER  
19  
20  
21  
22  
23  
24  
25

**WORD INDEX**

< \$ >  
\$100,000 97:23  
\$13,000 113:2  
\$20,000 59:21  
\$200,000 187:19  
\$204,000 181:18  
\$228,000 90:5  
\$25,000 97:22  
\$3,160 119:17  
\$3,500 75:3  
\$300,000 64:14  
187:11  
\$347,000 181:20  
\$354 121:22  
\$361,000 151:11  
\$361,100 109:10  
112:12  
\$361,600 151:6  
\$4,000 74:4  
\$46,000 71:16,  
18  
\$484,235 112:14  
\$497,740 112:22  
\$5,000 75:1  
\$526,375 151:12  
\$60,000 69:17  
71:14 149:15  
157:1, 3, 6, 15  
\$750,000 100:20,  
25  
\$79,000 62:19  
\$80,000 158:5  
159:18  
\$800 71:8  
\$81,000 69:13  
  
< 0 >  
0 65:9  
0.4 37:6 130:15  
0.5 32:6  
  
< 1 >  
1 31:1 111:2  
112:9, 17  
141:15 173:11  
1(c) 111:12  
1(e) 115:2  
1.03 132:25  
1.5 27:23  
1.7 122:15  
1.9 122:15  
1:25 79:18  
  
1:30 98:19  
1:31 98:21  
10 13:17 27:6  
28:14 30:13  
32:2 35:22  
45:20 49:12  
70:10, 20 72:8  
73:6 76:19, 25  
77:11, 12 94:12  
97:17 98:11, 12  
120:17, 22  
122:23 128:18  
130:20 131:8,  
23 132:11, 19,  
21 133:5, 10, 22  
134:2, 14, 19, 23  
135:5 138:13  
10:01 15:22  
100,000 98:2  
101 164:15  
105 141:6  
106 60:4  
10-minute 70:13  
10th 1:19  
11 61:9 62:7  
90:9 141:12  
11.6 66:20  
152:2  
11.67 66:12  
113:24 114:1  
115:5, 8, 19  
116:23 118:21  
119:7 148:17  
150:11, 20  
151:9, 16, 22  
11.9 129:22  
11:35 70:15  
11:45 70:14, 16  
11:49 72:22  
11:52 72:23  
116 137:13  
117 36:11  
118 36:11  
12 57:10 91:4,  
15 110:1 115:1  
12.4 122:5  
12:28 98:20  
12:30 97:14  
12:45 79:16  
12th 202:13  
13 30:14  
149:24 163:12  
13.8 122:5  
130 181:5  
  
134 182:11  
135 181:5  
137 113:14  
14 13:16 180:1  
140 141:4  
146 170:20  
15 41:20 86:2  
121:13 131:2  
140:16 178:6  
15,000 185:23  
15,510 147:25  
148:3, 7 153:4  
154 121:23  
156 178:4  
16 36:3 57:10  
129:2 130:4  
131:2 135:4  
169 67:15  
16-year 130:12  
17 154:22  
155:23 179:21  
180:19, 24  
17,000 185:23  
189:2  
17,871 147:24  
173 68:25  
177 67:18  
18 139:6 142:21  
18.5 65:24  
183 141:5  
19 121:20  
122:13 153:7  
1957 170:4  
196 32:24  
1975 165:12  
1980s 127:12  
1981 27:17  
29:21  
1983 5:18  
1985 1:2  
1996 28:22  
1997 162:4  
19th 91:6  
1c 110:12  
1st 9:19 31:5,  
9, 10, 13, 16, 22,  
23 34:3 37:17  
109:7 128:21  
131:20 132:7  
178:24  
  
< 2 >  
2 41:14 110:3  
115:1 172:18  
  
2,000 173:15  
2.0 122:15  
2.1 32:6 122:16  
132:25  
2.2 37:6  
2.3 9:18 37:17  
171:1  
2.4 130:13  
135:4  
2/3rds 114:15  
2:27 139:25  
2:33 140:1  
2:59 161:3  
20 19:14 41:14  
69:5 73:13  
78:16 122:3, 22  
140:8, 16 145:4  
200 64:14 65:4  
187:11  
200,000 96:17  
188:1  
2000 74:22  
75:10  
2001 43:9  
2002 43:10  
2004 38:1, 5, 14,  
17 71:5, 13  
2005 89:3  
2006 38:11  
43:7 86:3 88:24  
2007 59:18  
174:6, 7  
2009 86:7  
2010 43:18  
2011 174:8, 9  
2012 44:11  
2014 44:8 89:22  
2015 62:12  
171:12  
2016 59:8  
2017 37:6  
58:25 59:5, 20  
140:24 142:9  
2018 147:19  
181:17, 23  
2019 59:5, 20  
71:6 147:24  
154:10, 12  
162:4, 13  
174:11 180:16,  
17  
2020 23:25  
25:1 26:5  
30:24 31:13, 16,  
22 45:10 62:13,  
18 122:24  
140:24, 25  
142:18 171:12  
2021 1:7, 19  
26:3, 4 30:10  
31:1, 5, 22 34:3  
69:12 94:3  
115:19 116:15  
122:14, 25  
129:7 173:11  
202:13  
2022 9:19  
30:10 37:17  
122:15  
2023 9:19  
30:11 37:17  
121:24 122:15  
131:20 178:11,  
24  
2024 30:11  
31:6, 9, 10, 17,  
23 122:16  
128:21 132:7  
134:15  
2025 31:24  
21 34:20  
115:18 142:22  
221 179:20  
222 179:20  
22-23 121:25  
23 146:8 147:17  
23-24 121:25  
23rd 140:25  
142:18  
25 29:2 140:3  
26 12:13 86:16  
87:6 92:21  
116:15 186:23  
26(1.1)(a) 25:24  
26.1 39:4  
26.1.1 38:23  
42:25  
27 156:7  
270,000 154:10  
288,000 62:11  
29 36:11 42:4  
2990 153:7  
  
< 3 >  
3 24:18 26:8  
113:13 145:19  
3.6 130:14  
3:00 145:5  
3:30 145:6  
160:8 161:4

**30** 100:16  
129:17 140:3, 8  
**300,000** 65:4  
96:17 97:3  
**305,000** 62:12  
**305,545** 62:18  
**30th** 140:23, 24  
142:9  
**31** 62:12, 13, 18  
**31st** 31:17, 22,  
24  
**32** 113:22  
**321,600** 181:25  
**329,900** 154:13  
**33** 82:17  
154:20 155:22  
162:4 177:5  
**33,000** 174:6  
**34** 112:23  
**34,100** 120:2, 13  
**34.1** 109:17  
110:11, 14  
112:13 119:3  
150:7, 10  
179:23 180:21  
**35** 140:3 154:25  
**36** 30:20 137:18  
**36.7** 110:12, 22  
**36.7%**[does  
110:16  
**37.84** 109:20  
110:23 112:21,  
24  
**372,600** 131:21  
132:10  
**38** 163:22  
**383,545** 62:19  
**386,498** 180:19  
**39** 125:21 126:4  
  
< 4 >  
**4** 26:25 34:25  
57:10 94:13  
107:8  
**4.62625** 170:24  
**4.8** 26:7  
**4:22** 201:16  
**4:30** 4:16  
**40** 55:5 60:22  
75:18 142:24  
164:12  
**400,000** 98:2  
**407,645** 178:23  
**40-minute** 79:17

**413,725** 178:24  
**42** 140:22  
**428** 141:8  
**44** 15:7 72:1  
149:14 154:18  
155:1, 6 156:3,  
10 160:1  
**442,395** 180:21  
**44-56** 150:2  
**448,641** 180:24  
**45.91** 114:18  
**46** 67:21  
**47** 167:16, 18  
**49.5** 65:17, 23  
**49.51** 114:11, 12  
115:3  
**4th** 31:6  
  
< 5 >  
**5** 97:17 116:7  
**5.4** 122:10  
**5.8** 26:7  
**50** 82:15 84:3  
121:24 167:17  
171:15 195:8  
**500,000** 97:4  
100:6  
**51** 55:2  
**52** 126:16  
**55** 71:24  
159:19 174:8  
**55,000** 174:7  
**56** 15:7 72:1  
149:14 154:18  
156:3 160:1  
**56-year-old**  
155:1, 6  
**57** 174:8  
**5th** 171:3  
  
< 6 >  
**6** 108:15, 16, 18  
111:11 125:21  
135:21  
**6.1** 27:24  
**6.6** 34:4 35:16  
128:10 135:1  
**6.7** 30:23  
132:24  
**60** 68:16 70:25  
71:22 159:18  
**60,000** 71:17  
**600,000** 100:6  
**60K** 150:2

**61** 155:10  
**62** 139:22 155:2  
**63,000** 147:22  
**63,956** 147:19  
**64** 139:22  
**64,000** 147:22  
174:10  
**65** 157:17  
**65,000** 174:10  
**68** 73:5  
**69** 71:24 159:19  
  
< 7 >  
**7** 34:16 35:15,  
17, 19, 24 94:6  
133:18 134:3, 8,  
9, 13 178:3  
**7.3** 168:11  
**7.9** 129:23  
**70** 72:6 74:3  
125:1 139:21  
161:19  
**70-plus** 156:13  
**70s** 139:22  
140:5  
**70th** 67:17  
**71** 82:7 83:17  
84:5 108:18  
**72** 149:12  
**72nd** 162:17, 18  
**73** 149:12  
**75** 36:10 156:22  
**75th** 15:6  
69:15 71:2  
149:14 150:2  
153:10 154:8, 9  
157:4, 8, 9  
162:15, 17, 25  
**77** 67:18 85:5  
**78** 125:1  
**79,000** 71:8  
**79,200** 71:8  
  
< 8 >  
**8** 57:10 122:25  
123:8 171:13  
**80** 36:11 37:11  
81:21 85:12  
136:1  
**80,000** 68:16  
70:25 71:9, 22  
174:12  
**800,000** 97:2  
**80th** 67:17

**81** 136:8  
**82nd** 157:4, 9  
**83** 136:20  
**87,000** 71:7  
**88** 93:5  
**89th** 101:16  
  
< 9 >  
**9** 128:16 139:5  
146:10  
**9.8** 133:3  
**9.9** 129:21  
135:3  
**9:00** 200:12  
**9:30** 1:20 200:6  
**9:35** 4:1  
**9:52** 15:21  
**925** 141:3, 8  
**95** 50:16  
  
< A >  
**a.m** 1:20 4:1  
15:21, 22 70:15,  
16 72:22, 23  
200:12  
**ability** 29:12  
40:3 107:5  
190:24 193:19  
196:17  
**absence** 14:2,  
24 15:16 21:4  
**absent** 19:9  
**absolutely**  
136:23 137:4  
164:19 173:22  
192:10  
**academia** 138:3  
**accept** 48:21  
49:3, 21 50:2  
54:17 56:21, 23  
109:18 114:21  
119:3 157:24  
174:19 186:20  
187:10  
**acceptable**  
123:19  
**acceptance**  
107:24  
**accepted** 5:6  
38:5 40:17  
107:22 111:20  
150:19 157:14  
**accepting**  
136:18 179:22

**accepts** 81:10  
152:1, 2  
**accomplished**  
16:17  
**accomplishment**  
30:1  
**account** 14:3  
20:4 66:21  
96:2, 12 115:4  
122:8, 11 124:8  
159:4  
**accountant** 17:4  
**accountants**  
17:18  
**accumulated**  
13:1  
**accurate** 132:6  
188:11 191:7  
202:12  
**achieve** 80:19  
**achieved** 166:4  
**achievement**  
46:7  
**acknowledge**  
16:20 34:19  
107:11 180:5  
**acknowledging**  
5:11  
**ACT** 1:1 8:23  
9:21 12:12, 13  
19:2 29:3  
31:25 35:18  
43:1 59:23  
83:23 86:11, 20,  
25 87:5 92:22  
131:7 168:16  
**acted** 45:15  
**actions** 25:17  
**actively** 47:16  
48:7  
**actual** 36:7, 15,  
24 37:5, 9 59:6,  
16, 23 60:10, 14  
64:11 116:9  
174:16 176:12  
197:6  
**actuarial** 16:21  
17:2 111:21  
153:2  
**actuaries**  
111:24 191:16  
**actuary** 17:20  
120:11  
**add** 93:20  
105:4 119:18

121:1 157:1, 3  
183:19 195:12  
197:2 198:6  
200:9  
**added** 5:16  
28:5 150:20  
156:17  
**addition** 9:20  
44:25 119:7  
130:12 192:3  
**additional** 19:22  
65:20 113:18  
115:20 116:21  
121:24 141:5  
151:8 197:12  
**address** 9:13  
11:10 12:2, 6  
13:5 17:6 23:8,  
9 57:12 65:12  
86:15 101:23,  
25 105:25  
108:8 145:20  
146:22 147:3  
161:14 181:3  
197:6  
**addressed**  
14:11 25:13  
54:2 57:7  
**addresses** 25:25  
**addressing**  
11:8 70:23  
81:14 164:25  
**adds** 180:7  
**adducing** 21:9  
**adequacy** 12:10  
37:3 38:21  
63:12 86:19, 22  
87:8 155:20  
**adequate** 37:9  
164:10 168:15  
**adjourned**  
201:16  
**adjust** 27:3  
40:9 175:18  
180:18  
**adjusted** 38:17  
40:8 61:14  
71:6 73:12  
74:8, 23 75:1  
180:20, 23  
**adjusting** 41:2  
**adjustment**  
32:5, 8 34:23  
35:13, 15 36:1

61:16, 19, 22  
62:24 168:14  
**adjustments**  
9:20 11:12  
27:20 28:18, 20  
30:12 37:20, 25  
40:12 118:18  
**administration**  
32:20 123:24  
**admiration**  
102:21  
**admit** 138:20  
**Adoir** 93:15  
**adopt** 93:18  
**adopted** 18:25  
75:9 127:12  
**adopting** 67:1  
**adoption** 13:12  
**adrift** 57:1  
**advance** 195:14  
**advancing**  
168:5 170:11  
**advantage**  
117:25 187:20  
189:9 197:13  
201:1  
**advantageous**  
150:23  
**advantages**  
101:11 116:13  
**advice** 16:18  
**advised** 72:13  
81:8 90:15  
**advises** 81:15  
**Advisory** 43:17,  
18 44:8 141:3  
143:21, 24  
**advocacy** 17:25  
**advocating** 19:1  
**affairs** 47:21  
51:7  
**affidavits** 92:4  
**after** 22:2  
23:24 43:15  
70:4 76:3  
79:22 97:11, 17  
107:16 145:20  
180:4 182:25  
190:6 194:4, 23  
**afternoon** 4:16  
106:24 122:16  
184:15  
**after-tax** 96:6  
**age** 15:7 72:1  
112:5 114:4

149:15 150:3  
154:14, 18, 21  
155:1, 4, 6, 13,  
24 156:9, 13, 22  
159:19, 20, 23  
160:1, 3  
**aged** 71:23  
**agenda** 4:14  
**ages** 114:3  
**age-weighted**  
114:6  
**aggregate**  
125:2, 5, 7, 15  
**ago** 26:22  
57:10, 11 73:13  
76:25 77:12  
86:3 107:23  
109:8 139:19  
140:4 197:14, 23  
**agree** 67:19  
88:7 103:16  
109:5, 6, 16  
114:21, 22  
121:6 137:8  
155:12 167:19  
169:16 185:5, 8  
187:8, 14 198:8  
**agreeable**  
144:21  
**agreed** 5:18  
14:7 108:3  
136:2 168:8  
183:25 184:1  
**agreement** 5:14  
146:3  
**agrees** 85:14  
104:15 154:5  
170:15  
**ahead** 78:25  
139:2  
**aid** 152:16  
163:24  
**aim** 42:19  
**air** 130:2  
**aired** 14:9  
**alarming** 22:15  
**albeit** 6:17  
63:10  
**Alberta** 7:5  
**allow** 92:10  
**allowance** 22:5  
73:21, 22 74:5,  
10, 21, 23 75:1  
80:19, 20 84:14,

16, 19, 24 85:15  
96:8 107:17  
**allowances**  
73:9, 10, 11, 18  
74:2, 6 75:7  
81:9 183:14, 20  
184:3  
**allowed** 39:14  
53:3  
**allowing** 83:13  
**allows** 16:13  
200:14  
**alternative**  
118:22 152:4  
187:12  
**amended** 86:13  
**America** 91:6  
**amortizing**  
25:13  
**amount** 34:3  
64:18 71:16  
74:2, 7 75:3  
85:15 107:24  
113:16 144:13,  
14 151:8 176:22  
**amounts** 75:17  
86:20, 25 87:4,  
5 96:23 100:5  
**analysis** 16:22  
20:4 24:6  
69:19 95:17, 22  
96:5 138:14, 16  
152:24  
**analytical** 22:18  
68:8 172:25  
**anchor** 56:2  
**ancient** 91:12  
**Andrew** 2:18  
72:14  
**anecdotal**  
188:18  
**angle** 28:7  
**announced** 42:4  
**announcement**  
91:17  
**announcing**  
91:15  
**annual** 9:20  
11:11 27:20, 22  
28:18, 20 35:13,  
15, 24 37:25  
126:13, 14, 20  
**annuities** 108:6  
180:15 181:21

**annuity** 16:10  
48:16 61:20  
65:18, 21 66:12  
83:22 96:4  
104:12 107:1  
108:12, 24  
109:2, 9, 14, 18,  
25 110:10, 21  
113:16, 20  
114:7, 16  
115:12, 22  
116:22 119:4  
149:17 150:7,  
11 151:7, 10  
152:7 154:12  
156:20 162:14,  
23 163:4 178:9  
179:16, 18  
180:8, 19, 21, 24  
181:25  
**annum** 133:18  
**anomalous**  
125:14 129:6  
134:25  
**answered** 79:3  
**answering** 67:22  
**answers** 78:24  
196:2  
**anticipated**  
47:19  
**anybody** 130:24  
**apart** 164:1  
**apolitical** 29:20  
**apologize** 98:8  
180:5, 9  
**Appeal** 3:1  
7:19, 21 44:3, 6  
**appear** 5:2  
42:2, 16 53:1  
100:12 157:13  
**appearance**  
53:11  
**appeared** 53:8  
103:21  
**appearing** 1:23  
**appears** 34:19  
47:25  
**Appellate** 3:7  
201:3  
**apples-to-apples**  
110:21 149:5  
151:14 152:9  
179:13 180:25  
**apples-to-  
oranges** 162:21



|  |  |   |   |   |
|--|--|---|---|---|
| <p><b>applicable</b> 8:24<br/>171:17</p> <p><b>applicant</b> 47:8<br/>48:5 142:14<br/>143:2 144:15</p> <p><b>applicants</b> 46:1<br/>47:5 51:24<br/>72:3 141:4, 5, 9<br/>142:17, 23<br/>143:4 162:10<br/>199:8, 11, 13, 18</p> <p><b>applicant's</b> 44:4</p> <p><b>application</b> 18:7<br/>27:2 33:6<br/>157:15</p> <p><b>applications</b><br/>41:13 44:1, 16<br/>73:4 141:1<br/>142:4</p> <p><b>applied</b> 12:7<br/>16:11 27:7<br/>30:18, 19 32:2<br/>34:2 67:8<br/>68:17 72:2<br/>142:8 187:25</p> <p><b>applies</b> 13:18<br/>31:3 96:1<br/>136:1 173:3<br/>184:15</p> <p><b>apply</b> 31:8<br/>37:21 43:22<br/>44:17 47:17<br/>48:13 69:9<br/>71:7, 17 112:12<br/>118:4, 21<br/>155:18 186:16</p> <p><b>applying</b> 12:12,<br/>15 51:15 58:12<br/>61:22 71:18<br/>99:24 136:7<br/>155:6</p> <p><b>appoint</b> 78:4</p> <p><b>appointed</b> 43:6,<br/>16, 22 44:10<br/>48:18 49:1, 18<br/>50:14, 17 69:7<br/>83:6 90:13<br/>100:9, 10 114:8<br/>141:9 143:4<br/>155:14 159:21<br/>182:12</p> <p><b>appointee</b> 44:13</p> <p><b>appointees</b> 73:6,<br/>7 142:13 143:7<br/>154:20, 25</p> | <p>159:25 162:3, 5<br/>163:23 164:12</p> <p><b>appointment</b><br/>10:6 29:12<br/>41:14 43:8, 14,<br/>15, 20 44:1, 4,<br/>17 46:6, 10, 13<br/>47:14 48:11, 16<br/>49:4, 8, 21 50:8,<br/>10 51:5 56:21<br/>84:1 136:18<br/>138:17 141:6<br/>144:6 159:10</p> <p><b>appointments</b><br/>41:19 46:20<br/>51:9, 19, 22<br/>82:20 83:4, 8<br/>91:15 114:5<br/>139:11, 20<br/>140:9, 20 141:1,<br/>4 142:3, 7, 22<br/>144:7 155:22</p> <p><b>appreciate</b><br/>188:16, 23</p> <p><b>appreciated</b><br/>80:7</p> <p><b>approach</b> 12:25<br/>16:1 18:25<br/>37:22 57:16<br/>66:3 67:2<br/>111:4 146:3<br/>167:11 170:4<br/>186:14</p> <p><b>appropriate</b><br/>35:13 58:14<br/>60:20 62:22<br/>69:2, 8 71:12<br/>75:13 94:7<br/>152:6 154:7<br/>155:17 166:23</p> <p><b>appropriately</b><br/>168:5 170:12</p> <p><b>approved</b> 144:7</p> <p><b>approximately</b><br/>82:17 109:8<br/>111:1 112:14<br/>129:2 141:8<br/>181:18, 20</p> <p><b>April</b> 9:19 31:1,<br/>5, 6, 9, 10, 13, 16,<br/>22, 23 34:3<br/>37:17 109:7<br/>115:18 128:21<br/>131:20 132:7<br/>173:11 178:24</p> | <p><b>architecture</b><br/>28:3</p> <p><b>area</b> 161:15<br/>189:8 199:18</p> <p><b>areas</b> 46:23<br/>47:4 100:10<br/>140:12, 17<br/>158:25 160:5</p> <p><b>argue</b> 33:19</p> <p><b>argued</b> 14:8<br/>166:19 168:23</p> <p><b>argues</b> 34:21<br/>54:22</p> <p><b>argument</b> 10:9,<br/>21, 23 19:18<br/>23:2 57:3<br/>148:24 174:1</p> <p><b>arguments</b> 57:8,<br/>9 148:8</p> <p><b>arises</b> 37:7<br/>39:22</p> <p><b>arising</b> 9:14<br/>39:5</p> <p><b>arrived</b> 66:7<br/>115:3 135:5</p> <p><b>arriving</b> 65:17</p> <p><b>article</b> 92:3<br/>100:17, 18</p> <p><b>articulate</b> 88:10</p> <p><b>articulated</b><br/>171:14</p> <p><b>articulating</b><br/>57:19</p> <p><b>articulation</b><br/>95:13</p> <p><b>aside</b> 117:23<br/>186:21</p> <p><b>asked</b> 18:15, 16<br/>104:11 115:2<br/>169:25 193:2</p> <p><b>asking</b> 104:21<br/>121:18 131:4<br/>173:10 193:1<br/>197:17</p> <p><b>aspect</b> 34:13<br/>142:11</p> <p><b>assembly</b> 93:8</p> <p><b>asserted</b> 91:17</p> <p><b>assertion</b> 36:12<br/>89:24</p> <p><b>assertive</b> 61:8</p> <p><b>asserts</b> 81:13</p> <p><b>assess</b> 63:12<br/>136:10</p> | <p><b>assessed</b> 62:22<br/>141:3</p> <p><b>assessing</b> 43:20</p> <p><b>assist</b> 8:20<br/>24:5 176:11<br/>182:2</p> <p><b>assistance</b> 22:7<br/>42:19</p> <p><b>Associate</b> 45:3<br/>69:14 71:2<br/>75:12 80:22<br/>86:4 93:9, 15<br/>184:19</p> <p><b>associated</b> 74:8,<br/>14 99:19</p> <p><b>Association</b><br/>2:12 3:12 5:3<br/>6:15, 19 7:16<br/>8:17 9:16 10:1<br/>41:24 53:12<br/>81:25 93:19<br/>126:7 168:21<br/>173:5</p> <p><b>association's</b><br/>7:6</p> <p><b>assume</b> 80:4<br/>102:5</p> <p><b>assumes</b><br/>178:17, 18, 19</p> <p><b>assuming</b> 40:16<br/>157:20</p> <p><b>assumption</b><br/>110:13, 15<br/>112:4, 5, 6 187:4</p> <p><b>assumptions</b><br/>111:16, 19<br/>112:2 179:1</p> <p><b>at-risk</b> 58:4, 5<br/>62:10, 16<br/>165:20, 21, 24<br/>166:1, 6 169:1<br/>170:9 171:23<br/>172:15 175:9,<br/>23 176:17, 23<br/>178:22</p> <p><b>attached</b> 26:1</p> <p><b>attack</b> 27:18</p> <p><b>attacking</b> 18:23</p> <p><b>attain</b> 39:6</p> <p><b>attempt</b> 18:5, 11<br/>27:12 35:23<br/>52:15 54:15<br/>55:7 57:17</p> <p><b>attendance</b> 8:2</p> | <p><b>attending</b> 6:16<br/>8:13</p> <p><b>attention</b> 53:24<br/>54:15 72:11<br/>73:2 75:21<br/>186:5</p> <p><b>attract</b> 22:16, 24<br/>23:5 39:20<br/>40:3 43:1 47:2<br/>92:24 136:4, 22<br/>137:15, 17<br/>138:6 163:16</p> <p><b>attracted</b> 53:18<br/>137:5</p> <p><b>attracting</b> 93:2<br/>136:15 137:2<br/>162:10</p> <p><b>attraction</b> 107:2<br/>135:18 156:17</p> <p><b>attractiveness</b><br/>64:6</p> <p><b>AUDIO</b> 5:24<br/>7:2, 12 10:18<br/>63:23 98:16</p> <p><b>austerity</b> 26:23</p> <p><b>Australia</b> 22:12<br/>182:13, 15</p> <p><b>Australian</b> 22:3</p> <p><b>authority</b> 78:4</p> <p><b>automatic</b> 29:21</p> <p><b>autonomy</b> 48:24</p> <p><b>available</b> 20:21<br/>41:1 42:8 59:6<br/>63:16 73:18<br/>74:2, 20 96:10<br/>115:23 116:25<br/>138:17 144:6<br/>165:21, 25<br/>166:6 172:15<br/>177:9 186:25<br/>190:2 191:1<br/>192:11, 23<br/>199:12, 20</p> <p><b>average</b> 54:17<br/>57:14, 20, 25<br/>58:23 59:17, 20<br/>60:3, 7, 16, 25<br/>61:6, 14, 24<br/>62:11, 23 68:23<br/>100:4, 19, 25<br/>114:6, 12 125:3<br/>126:15, 21<br/>127:1, 8, 9, 18,<br/>22 129:20<br/>130:12 135:3</p> |
|--|--|---|---|---|

|   |  |   |  |  |
|---|--|---|--|--|
| 150:1 161:25<br>166:11, 21<br>167:8, 16<br>168:19 169:2,<br>14, 18, 23 171:5,<br>7, 18, 19 172:5,<br>9 173:14, 25<br>174:4, 11, 13<br>175:8, 9 177:17<br>178:12 180:22<br>181:19<br><b>averages</b> 176:6<br><b>avoid</b> 194:10<br><b>aware</b> 48:23<br>93:3 105:11<br><b>Aylen</b> 80:13<br>89:21<br><b>Azim</b> 2:11 5:1<br><br><b>&lt; B &gt;</b><br><b>back</b> 18:25<br>27:8 35:24<br>60:1 70:4, 14<br>77:11 79:8, 9,<br>15, 18 89:18<br>92:21 98:6, 11<br>102:5 107:16<br>111:10 114:24<br>125:12, 19<br>126:17 128:24<br>129:10, 16<br>130:6 134:16<br>139:1, 4, 14<br>144:25 159:15<br>160:8 161:6, 8,<br>9 163:10, 18<br>175:1 176:5, 17<br>182:23 183:4<br>193:21 194:3<br>197:18 198:15<br>201:8<br><b>background</b><br>30:6<br><b>balance</b> 137:23<br><b>balanced</b> 38:24<br><b>band</b> 149:15<br>150:3 154:18,<br>21 155:1, 4, 7,<br>24 160:1<br><b>Bank</b> 94:18<br><b>Bar</b> 3:11 10:6<br>11:21 29:11<br>41:22 47:6<br>86:7 93:2 | 143:25<br><b>bars</b> 127:5<br><b>base</b> 109:9<br>131:24 133:6, 7<br>149:15 150:5<br>162:13 163:4<br>164:2 166:4<br>178:8 182:18<br><b>based</b> 9:20<br>11:12 12:18<br>27:16 28:21<br>29:19 37:25<br>38:17 50:22<br>51:8 66:7<br>118:9 130:3<br>141:20 149:10<br>158:8 184:13<br>186:13 192:22<br><b>basic</b> 67:24<br><b>basically</b> 200:9<br><b>basis</b> 20:21<br>59:10 88:14, 16<br>95:14 151:9, 13<br>157:20 158:15<br>159:16, 22<br>160:2 187:23<br><b>bathroom</b><br>103:23<br><b>bear</b> 33:20<br>41:6 68:10<br>149:23 154:16<br><b>bearing</b> 159:9<br>164:19<br><b>begets</b> 171:1<br><b>beginning</b><br>54:12 163:10<br><b>begins</b> 31:5, 12,<br>15<br><b>behalf</b> 5:2, 5<br>80:11 102:2<br><b>believe</b> 15:23<br>16:5 39:9<br>48:10 54:21<br>57:7 72:15<br>100:2 111:19<br>123:15 141:18<br>161:8 165:5<br>182:2 191:13<br>199:4<br><b>Bell</b> 3:2 200:8<br><b>belongs</b> 146:24<br><b>Bench</b> 6:21 7:5<br>8:5 10:7 22:16<br>29:12 41:22<br>42:15 43:7, 14, | 16 44:2, 11, 22<br>46:2, 11, 20<br>47:15 48:11<br>49:21 50:9, 12<br>51:2 53:18<br>56:22 63:11<br>77:18, 19 107:3<br>136:7 153:15,<br>24 159:21<br><b>benchmark</b><br>57:18<br><b>benchmarking</b><br>167:24 170:18,<br>22 171:4<br><b>beneficial</b><br>179:17<br><b>benefit</b> 66:6, 11<br>82:10, 13, 15, 18,<br>19, 21 84:20<br>87:11, 13, 23, 24<br>108:25 109:23<br>110:24 113:1<br><b>BENEFITS</b> 1:8<br>4:4 7:23 8:1<br>12:11 21:5, 23<br>33:9 38:22<br>46:14 48:15<br>86:23 87:1, 3, 9<br>106:4 136:23<br>185:2<br><b>best</b> 48:14<br>145:8 148:11<br>153:18 192:8<br><b>better</b> 24:1<br>76:23 78:15<br>123:1 192:6<br><b>Bienvenu</b> 2:10<br>4:24 15:23<br>17:11 52:20, 23<br>53:1, 6 70:2, 6,<br>19, 21 72:12, 25<br>73:1 75:23<br>79:3 84:15<br>88:23 92:23<br>93:23 95:19<br>96:15 102:20<br>103:18 114:17<br>120:24 123:6<br>139:12 145:1<br>159:17 166:16,<br>20 172:19<br>180:6 183:15<br>190:4 191:18<br>195:11 196:7, 8<br>197:19 198:23 | <b>Bienvenu's</b><br>69:24 139:16,<br>23 167:3<br>179:25 198:9<br><b>big</b> 61:3 195:7<br>196:17<br><b>billion</b> 121:22,<br>23, 24<br><b>bit</b> 41:3 53:3<br>76:15, 22 79:12<br>91:3 100:24<br>122:4 136:21<br>138:21 139:17<br>148:15 162:20<br>164:6 167:10<br>178:17 179:6<br>184:7 185:16,<br>19 193:15<br>200:22<br><b>blank</b> 12:23<br><b>Block</b> 13:15<br>19:4 36:20<br>38:15 59:3, 9,<br>22 60:1, 2, 5<br>61:1, 15, 16<br>62:2 137:13<br>146:20 164:23<br>165:16 166:7<br>167:7, 15<br>169:16 171:16<br>172:14 173:21<br>175:12 176:3<br>180:17<br><b>blocks</b> 191:23<br><b>Bloodworth</b> 2:6<br>4:6 75:19<br>177:3 193:16<br><b>Board</b> 187:25<br><b>boards</b> 14:17<br><b>Bodner</b> 88:12<br><b>bonus</b> 174:4, 13,<br>17 175:8<br><b>bonuses</b> 174:2<br><b>book</b> 10:9, 15,<br>24 20:14 24:17<br>26:2 28:25<br>41:15 65:9<br>90:9 91:5 92:1<br>100:15 108:15,<br>19 110:2<br>112:17 113:13<br>114:25 116:7<br>123:8 125:21<br>128:16 135:21<br>138:13, 15 | 141:12 146:11<br>149:25 163:12<br>178:6 180:4<br><b>born</b> 91:10<br><b>borne</b> 124:12<br><b>bottom</b> 112:1<br>141:24 172:8<br><b>bottoming</b><br>126:25<br><b>Brad</b> 3:11<br><b>branches</b> 30:3<br><b>break</b> 55:12<br>69:22, 25 70:4,<br>8, 13 76:1, 3<br>79:8, 17 97:16<br>98:5, 22 145:8<br>199:15<br><b>breakdown</b><br>199:12, 25<br><b>breakout</b><br>160:12 200:14<br>201:14<br><b>breaks</b> 71:21<br><b>brief</b> 8:8 42:7<br>72:18 82:1<br>124:24 165:1<br>177:12 183:12<br><b>briefe</b> 81:1<br><b>briefly</b> 98:6<br>107:17 135:7<br>145:1 175:2<br>181:3<br><b>bring</b> 72:10<br>167:13 178:6<br>184:21 198:10<br><b>bringing</b> 20:2<br>53:24 156:14<br><b>brings</b> 45:2<br>60:21 79:17<br>93:17 153:6<br>163:1, 18<br><b>British</b> 141:20<br>142:19<br><b>broad</b> 55:24<br>117:24<br><b>broader</b> 106:8<br>124:15 155:7<br>181:13, 15<br>182:4 196:18<br><b>broadly</b> 107:8<br><b>Brock</b> 100:17,<br>20 101:2, 5<br><b>broken</b> 162:20<br><b>brought</b> 25:5<br>75:3 83:7 |
|---|--|---|--|--|

117:7 130:8  
139:12  
**Brunswick** 6:20  
**budget** 26:3, 12,  
22, 23 94:18  
121:20 122:2  
123:13 197:14  
**budgetary**  
124:16  
**build** 12:16  
14:19 109:12  
**building** 14:19  
**built** 179:1  
**bumped** 157:9  
**burden** 32:13,  
22 33:12 87:12  
88:2 124:2  
**business** 16:16  
  
< C >  
**calculate** 30:25  
114:5 132:24  
**calculated** 61:9  
116:22  
**calculating**  
171:7  
**calculation** 31:4  
71:12 74:25  
110:9, 11 114:4  
134:20  
**calculations**  
112:18 113:25  
**Calgary** 52:12  
101:3  
**call** 35:19  
46:20 102:12  
129:11 147:17  
168:18 179:13  
**called** 91:8  
**calling** 89:5  
168:9 176:25  
**calls** 13:20 67:9  
**cameras** 200:13  
**Canada** 2:22  
5:9 6:2 8:19  
9:3 13:9 15:10  
20:24 23:3  
24:3 25:23  
45:4, 23 66:19  
94:18 101:7  
136:2 147:20,  
23 164:2 182:5  
**Canada's** 40:1,  
2 41:7 46:6

**Canadian** 2:10,  
13 3:11 5:3, 4,  
21 6:14, 16, 18  
7:17 22:10  
23:15, 19 24:4  
42:17 106:6  
121:4 126:15,  
21 147:21  
154:9 182:11, 18  
**Canadians** 5:17  
87:20 102:21  
125:4  
**candidate** 44:1  
92:25 143:23  
**candidates** 5:21  
11:20 22:25  
23:6 39:20  
40:3, 25 41:16  
43:2, 13 46:2,  
22 47:1, 2 48:4,  
11, 13, 23 49:3,  
25 50:1, 7  
51:11, 13, 14, 21  
63:11 78:5  
107:3, 6 135:19  
136:5, 16, 23  
137:17, 22, 24  
144:5, 7 153:15  
158:21 159:11  
163:17  
**canvassed**  
18:13 20:11  
21:21 74:19  
**cap** 11:11  
18:16 19:1, 2  
27:2, 6, 22  
28:14 29:23  
30:13 31:4  
32:2, 4, 10  
35:13, 15, 20, 22,  
24 81:24 93:21,  
22 94:6, 12  
95:8 133:18, 22  
**capacity** 43:12,  
25 45:5  
**capped** 27:23  
**capture** 149:2  
**captured** 153:8  
197:25  
**car** 22:4  
**career** 46:8  
53:15  
**careers** 46:23  
**carefully** 80:5

86:17  
**carry** 88:3  
**cartridges** 85:12  
**case** 19:20  
32:17 47:5  
59:16 92:3, 4, 6  
93:6 123:14  
158:7 175:14  
**caseload** 82:16  
**Cassels** 100:17,  
20 101:2, 5  
**cast** 51:18  
**catch** 71:18  
**categories**  
55:25 78:7, 9,  
22 187:5  
**categorized**  
143:18  
**category** 77:2, 4,  
6, 10, 12 170:2  
186:21, 24  
187:12 188:19  
**Catholic** 90:19  
91:1  
**caused** 34:9  
41:7 91:1  
177:21  
**caution** 62:4  
104:25  
**cautions** 68:9  
**caveat** 60:6  
107:14  
**census** 100:9  
160:4 161:14  
**central** 148:23  
**Centre** 24:10  
**century** 91:6  
**certain** 51:11  
121:6 137:7  
177:24  
**certainly** 78:15  
84:10 90:23  
121:3 127:12,  
20 130:23  
132:14 133:16  
150:21 158:15  
179:24 180:5  
182:2 196:16  
**CERTIFICATE**  
202:1  
**Certified** 202:3,  
18  
**certify** 202:4  
**cetera** 100:6  
101:16, 17

118:13 147:5  
163:25 175:18  
181:21  
**CFO** 40:9  
**CGFA** 199:23  
**Chair** 2:2 4:2,  
5, 9, 12, 24 7:22  
8:12 14:22  
42:13 43:16  
45:1, 15 52:18,  
25 53:5 69:23  
70:2, 7, 12, 17  
72:18, 24 75:20,  
23 76:12 77:1,  
14 78:1, 23  
79:14, 24 80:3  
97:9, 18 98:7,  
14 102:4, 10, 14,  
16, 18 107:14  
119:16 120:9,  
14 132:22  
133:2, 7, 11  
144:21 145:3,  
10 160:6 161:6,  
9, 12 173:7, 23  
174:25 175:3  
176:13 182:24  
183:8, 11  
185:13 195:3,  
10 196:4, 7  
198:6, 17, 22  
199:7 200:2, 18  
201:5, 13  
**chaired** 44:7  
**chairing** 77:13  
**chairs** 8:6  
**challenge** 165:8  
**challenges**  
23:16 101:23  
146:19 196:21  
**challenging**  
103:8 121:3  
**Chamberland**  
3:8 200:21  
201:11  
**change** 14:2  
60:18 70:18  
74:11 80:21  
81:12, 16 85:18  
86:3, 10 87:14  
88:11, 18, 22, 23,  
24 89:1, 9, 10  
93:8 125:6  
127:11 128:4  
140:18 172:6

174:21 178:18,  
20 184:19, 21  
185:6 189:18  
192:17 198:1  
**changed** 15:25  
16:1 77:5  
93:14 153:21  
168:24 174:22  
**changes** 14:25  
19:10 54:19  
59:13 126:8, 9  
169:12, 21  
175:15 184:22  
185:7  
**changing**  
143:15 173:17  
176:22  
**CHANNEL**  
15:18 17:8  
**Chantal** 6:24  
**character** 29:20  
**characterize**  
36:14  
**characterized**  
39:24  
**characterizes**  
57:16  
**chart** 61:11, 13  
99:1 113:21  
128:25 129:19  
131:3, 9 139:6,  
7, 13 140:3  
141:12, 14, 21,  
24 149:10, 21  
150:14 156:6  
158:1 163:10  
179:1, 5 180:7,  
10, 11  
**charts** 129:14  
139:16  
**Chatelain** 6:24  
**chatter** 95:4  
**check** 70:17  
133:24 187:2  
**Chief** 2:13 3:1  
7:22, 24 8:4  
42:14 44:10, 15,  
23 45:3, 7  
47:14 48:6  
73:3 75:12  
83:12 84:7, 12  
86:5 92:9  
107:22 123:15  
200:8  
**choice** 19:22

**choose** 78:7, 13, 15, 17, 18, 20  
**chose** 6:6  
**chosen** 143:14 158:11  
**Christopher** 2:22  
**chronic** 47:1  
**chunk** 157:10  
**church** 90:19 91:1  
**circumstances** 12:20 35:2 39:18 103:1 118:12 127:11 128:1 134:12 189:18 197:3  
**cite** 146:7  
**cited** 10:9  
**cites** 32:16 36:10 122:20  
**cities** 100:3 101:7 158:23 162:11  
**civil** 91:22  
**CJC** 7:24 42:21 45:1, 11, 22, 25 46:19 49:25 52:3, 10 53:7  
**CJCs** 45:8  
**CJC's** 45:2, 16 47:22  
**clarify** 132:9 184:18 198:15  
**clarity** 110:9  
**clawing** 35:24  
**clear** 20:1 46:18 49:24 53:21 55:20 93:10 171:10 177:3 181:9 185:6 187:18  
**clearly** 59:22 60:17 71:9 110:7  
**clerk** 92:9  
**clerks** 90:1  
**client** 80:12  
**clients** 16:17  
**clock** 53:2  
**close** 68:23 74:3 90:8 122:6, 23 129:5

173:14 194:5  
**CMA** 161:14, 17  
**CMAs** 15:8 49:12 72:4, 8 73:3, 6 161:23 162:3, 6, 9, 15, 18, 25  
**cogent** 63:17  
**cognizant** 195:16  
**cohort** 82:23 93:5 189:5  
**colleague** 4:10 107:4  
**colleagues** 4:22 5:1, 8 8:10 9:2 42:21 45:1, 23, 25 46:19 48:9 49:25 50:21 52:3, 11  
**collection** 68:7 172:24  
**collective** 13:1  
**colonial** 90:17  
**Columbia** 141:20 142:20  
**column** 30:16, 19 31:7 32:7 142:2, 6 150:1, 6, 9 178:15  
**columns** 142:14, 15  
**combination** 47:11 76:21  
**combine** 77:20  
**combined** 41:17 116:7  
**come** 46:22 66:23 71:11 72:3 73:6 79:8, 9, 15 95:3 98:6, 11 107:15 115:7 135:24 140:10 143:5 144:25 155:23 164:12 175:1 176:5, 17 188:7 195:23, 24  
**comes** 56:14 113:25 147:20 150:8 188:5 201:8  
**COMING** 5:24 7:2, 12 10:18

15:18 17:8 162:5 199:18  
**command** 68:22  
**commencing** 1:20 4:1  
**commending** 5:12  
**commensurate** 47:12 75:13  
**comment** 104:5 115:3 117:14 125:8 173:24 201:2  
**commentary** 123:10  
**comments** 50:23 93:17, 20 95:16 103:3, 5, 11, 12 104:2 105:1, 6 117:4 137:1 175:11, 13 176:2 179:25  
**COMMISSION** 1:8 4:4, 5 5:7, 14, 15, 18 6:3, 10, 11 8:20, 21 9:10, 15, 17 10:12 11:14, 19, 22 12:15, 17, 20, 24 13:3, 11, 14 14:1, 4, 10, 23, 25 15:12 18:14, 15, 17, 24 19:1, 4, 15, 25 20:9, 12 21:12, 17 22:7, 19, 21 23:11 24:5, 12, 14, 15 26:11 27:1, 19, 21, 25 28:5, 8, 11, 16, 22 29:24 31:11, 14 32:4 34:18 37:2, 8 38:4, 10, 13, 20 39:13 40:1, 6, 14, 22 41:5, 11, 23 42:1, 9, 13, 17 45:19 46:18 52:2 53:7, 8, 10 54:17, 21 55:6, 16 56:7 58:22 59:8 60:19 61:2 63:8, 16 65:23, 25 66:4, 15 67:3 68:18

69:5, 7 71:13 72:4, 5 73:2 75:2, 10 80:9, 17 81:6, 13, 21 82:4 83:11, 15 86:17 87:16 88:19 89:3 103:7 104:6, 7, 8, 9, 23 105:9, 12, 21 106:2, 11 107:23 108:17, 19 117:18 118:16 125:20, 24 126:3, 4, 18 127:14 130:9 132:8, 16 135:16, 22, 23 136:9 137:13, 18 144:12 146:8, 24 147:4 149:11, 13, 20 150:16 152:15 153:17 154:15, 17, 19, 23 155:9, 11 156:2 157:13, 24 158:12, 13 159:24 161:16 165:14, 15 166:7, 8, 9, 13, 15 167:7, 10, 25 168:7, 10, 17, 20 169:17, 25 170:9, 16 171:15, 16 172:14 176:11 178:3 179:3 182:3 184:24 185:1, 9 186:1, 11 188:14, 17 189:12, 22 190:7, 13 191:14 192:2 193:6, 8 194:1, 23 195:17, 20, 21 196:12 198:8  
**Commissioner** 2:4, 6 4:7, 11 51:7 72:20 76:8, 10 79:10, 20 80:1, 9 133:14, 17, 21 134:18 135:6 176:15 177:2, 7 183:5, 7 185:18

186:19 187:10 188:16 190:14 191:2 192:4, 24 194:20 196:6 197:2 199:6 200:1  
**Commissioners** 76:7 102:19 199:2  
**Commissions** 12:16 13:22 14:12, 17 18:18 19:5, 9 36:9 55:12 58:3 59:10 67:20 103:7 137:12 165:11, 16, 18 168:8 169:9 176:3 189:13, 17 192:16  
**Commission's** 11:2 12:9 13:15, 16 16:23 20:4 28:12 36:19, 20 37:19 38:15 54:24 56:3 60:2 66:8, 9 146:3 157:18 162:7 167:14, 17 175:11, 12  
**commitment** 5:13 158:18  
**commitments** 97:4  
**committed** 184:20  
**Committee** 7:7, 8, 23 8:1, 6 43:17 44:8 45:2, 9, 10 85:25 143:21  
**committees** 43:18 141:3 143:24 144:2  
**common** 39:10 48:14 81:4 83:19 92:15 182:6, 19  
**Commons** 89:4  
**commonwealth** 182:6, 19  
**communicated** 48:7  
**community**

|  |  |  |   |   |
|--|--|--|---|---|
| <p>153:20<br/><b>company</b> 40:10<br/><b>comparability</b><br/>21:19<br/><b>comparable</b><br/>106:5 110:22<br/>182:1<br/><b>comparables</b><br/>106:2<br/><b>comparative</b><br/>57:2 97:25<br/>152:16<br/><b>comparator</b><br/>9:23 15:3 18:6,<br/>8 19:21 54:7, 8,<br/>12, 13, 16, 23<br/>55:8, 17 56:8, 9,<br/>10, 14, 24 57:4,<br/>22, 23 58:10, 11,<br/>20 59:3, 9, 22<br/>60:3, 20 61:1,<br/>15, 16 62:2, 21<br/>63:12 64:1<br/>107:7 146:5, 20,<br/>22 164:24<br/>165:9, 19 166:3,<br/>10, 22, 24<br/>167:23 168:2, 9,<br/>14, 18, 23, 24<br/>170:5 173:2, 3,<br/>21 175:23<br/>176:1 180:18<br/>181:4 182:9<br/><b>comparators</b><br/>12:2 19:19, 23<br/>20:6 54:10<br/>55:25 57:1, 13<br/>68:6 95:17<br/>136:10 147:1<br/>155:16 166:17<br/>172:23 181:11<br/>194:17<br/><b>compare</b> 163:3<br/>180:14<br/><b>compared</b><br/>56:13 71:17<br/>138:22 194:25<br/><b>compares</b> 61:13<br/>149:14<br/><b>comparing</b><br/>108:22 120:4<br/><b>comparison</b><br/>19:24 21:17<br/>55:24 61:17<br/>105:18 145:25</p> | <p>146:21 148:25<br/>149:5 151:14,<br/>17 152:9, 13<br/>162:21, 22, 23<br/>163:11, 19<br/>164:6 165:2, 5<br/>176:12 179:13,<br/>15 180:25 182:8<br/><b>comparisons</b><br/>20:18 105:15<br/>106:7, 8 107:8<br/>163:2<br/><b>compensate</b><br/>94:2<br/><br/><b>COMPENSATION</b><br/>1:7 4:3 7:6<br/>9:22 16:8, 11<br/>17:3, 19 27:13<br/>28:19 33:9, 24<br/>53:16 54:2, 18,<br/>23, 25 55:9, 19<br/>57:6, 15, 21, 22,<br/>24 58:1, 2, 7, 11,<br/>14, 18, 23 59:6,<br/>14, 17, 21, 24<br/>60:4, 10, 15, 16,<br/>25 61:6, 14, 23,<br/>25 62:1, 22, 23<br/>63:25 65:14<br/>68:4, 12 73:23<br/>84:19 100:19<br/>101:1 104:12<br/>105:24 109:1, 4<br/>119:11, 12<br/>126:2 135:12<br/>138:10 149:3, 6,<br/>16 152:11<br/>162:24 163:16<br/>166:11, 18, 21,<br/>23 167:5, 8<br/>168:19 169:2, 5,<br/>13, 14, 21, 23<br/>171:6 172:5, 9,<br/>10, 21 173:25<br/>174:18 177:17,<br/>21, 22, 23<br/>178:12, 18<br/>179:14 180:14,<br/>23 181:1, 12, 23<br/>182:3 184:6, 13<br/>185:2 194:19<br/><b>complained</b><br/>15:13</p> | <p><b>complete</b> 28:9<br/>58:16 157:5<br/><b>completed</b><br/>107:16<br/><b>completely</b><br/>58:20 79:23<br/>95:19<br/><b>completing</b> 98:5<br/><b>completion</b><br/>190:6<br/><b>complexity</b><br/>50:25<br/><b>component</b><br/>33:22 66:13<br/>139:10 176:18<br/>186:22<br/><b>composition</b><br/>169:8 172:12<br/><b>compositional</b><br/>34:5, 13<br/><b>computer</b> 84:23<br/><b>concentrating</b><br/>23:2<br/><b>concept</b> 16:8<br/><b>concepts</b> 39:4<br/><b>concern</b> 6:10<br/>10:2 18:3<br/>41:24 45:8<br/>46:17 51:19<br/>52:6 53:12<br/>91:3 156:24<br/><b>concerned</b> 18:4<br/>30:5 46:24<br/><b>concerning</b><br/>21:5 46:16<br/>53:10 91:12<br/><b>concerns</b> 42:23<br/>52:11 106:1<br/>149:19 150:15<br/>171:14 177:14<br/>195:20<br/><b>concert</b> 117:17<br/><b>conclude</b> 19:3<br/>116:20 130:15<br/>163:9<br/><b>concluded</b> 58:5,<br/>6<br/><b>concluding</b><br/>170:23<br/><b>conclusion</b><br/>182:17<br/><b>conclusions</b><br/>186:12<br/><b>concordant</b><br/>50:23</p> | <p><b>condensed</b> 10:8,<br/>15, 24 20:14<br/>24:16 26:2<br/>28:25 65:9<br/>108:15, 18<br/>110:2 112:17<br/>113:12 114:25<br/>116:7 123:8<br/>125:20 128:15<br/>135:20 138:13<br/>141:12 149:24<br/>163:12 178:5<br/>180:4<br/><b>conditions</b> 11:9<br/>20:24 22:22<br/>23:3 24:2<br/>25:23 26:16<br/>107:2 119:15<br/>120:16 124:9<br/>134:5, 7<br/><b>conduct</b> 12:17<br/><b>confidence</b> 6:9<br/>23:23 68:7<br/>101:14 172:24<br/><b>confident</b> 9:9<br/><b>confidentiality</b><br/>147:11<br/><b>confirm</b> 193:10<br/><b>confirmed</b><br/>26:11 121:21<br/><b>confirming</b> 52:4<br/><b>conflates</b> 57:21<br/><b>confronted</b><br/>40:18<br/><b>confusion</b><br/>85:24 89:20<br/>92:13<br/><b>conjures</b> 99:21<br/><b>connected</b><br/>89:10 98:15<br/><b>connection</b><br/>53:9 139:24<br/><b>connotations</b><br/>93:11<br/><b>consensus</b><br/>13:24 14:3, 6<br/>94:19 165:17,<br/>22, 24<br/><b>consequence</b><br/>36:17 74:11<br/><b>consequences</b><br/>40:6<br/><b>consequently</b><br/>59:3</p> | <p><b>conservative</b><br/>111:17<br/><b>consider</b> 9:13<br/>12:3 17:4<br/>22:22 40:6<br/>74:24 75:7<br/>83:12 108:21<br/>155:8 171:2<br/>175:21 177:19<br/><b>considerable</b><br/>108:24 169:6<br/>172:11<br/><b>considerably</b><br/>162:24<br/><b>consideration</b><br/>12:25 15:8<br/>19:8 54:25<br/>116:2 117:3<br/>119:10, 21<br/>124:19, 22<br/>141:23 175:20<br/><b>considerations</b><br/>105:8 151:22<br/><b>considered</b><br/>33:22 34:4<br/>37:8 43:12, 13<br/>49:17 55:11<br/>66:4 68:19<br/>152:12 155:21<br/>156:1 164:20<br/>179:14<br/><b>considering</b> 9:4<br/>15:5 44:12<br/>45:13 56:25<br/>152:6 154:11<br/>155:16 156:18<br/>180:15<br/><b>consistency</b><br/>68:5 172:16, 22<br/>175:10, 13, 22<br/>176:8<br/><b>consistent</b><br/>31:25 59:12<br/>66:1 73:11<br/>130:16 146:4<br/>169:11, 20<br/>170:3 175:24<br/>176:2<br/><b>constant</b> 29:8,<br/>14 56:2 174:5,<br/>8, 9, 11<br/><b>constitute</b> 169:4<br/><b>constitutional</b><br/>8:24 32:1</p> |
|--|--|--|---|---|

|   |  |   |   |   |
|---|--|---|---|---|
| <p><b>constraint</b><br/>39:12 198:19<br/><b>constraints</b><br/>39:3 122:1<br/>124:16<br/><b>consulting</b> 6:6<br/>66:18<br/><b>Consumer</b> 18:17<br/><b>contain</b> 37:12<br/><b>contained</b> 17:22<br/>21:13<br/><b>contemplated</b><br/>74:22<br/><b>contention</b><br/>120:20<br/><b>contest</b> 165:8<br/>166:2 170:7<br/><b>contested</b> 85:20<br/>88:15<br/><b>context</b> 14:6<br/>27:11 33:19<br/>37:23 105:5, 22<br/>118:24 120:24<br/>123:3, 12<br/>124:15 136:21<br/>143:7 146:23<br/>181:4, 11, 15, 16<br/>182:4, 10<br/><b>contextual</b> 106:8<br/><b>continue</b> 34:17<br/>37:21 51:23<br/>136:4 176:10<br/>194:21<br/><b>continued</b><br/>23:20 130:25<br/><b>continuing</b> 85:8<br/><b>continuity</b> 11:5<br/>13:6, 12, 21<br/>14:14, 15, 18, 21<br/>22:18 66:2<br/><b>contract</b> 28:23<br/>29:16<br/><b>contraction</b><br/>122:8<br/><b>contradict</b> 19:14<br/><b>contradicts</b><br/>55:9, 10<br/><b>Contrary</b> 62:15<br/>66:3 94:4<br/><b>contrast</b> 40:12<br/>156:11 172:14<br/><b>contribute</b> 5:19<br/><b>contributed</b><br/>24:13</p> | <p><b>contributing</b><br/>82:11<br/><b>contribution</b><br/>119:17<br/><b>contributions</b><br/>97:7 107:11<br/>114:10 151:5<br/><b>control</b> 68:20<br/><b>controversy</b><br/>127:6 129:9<br/><b>convenience</b><br/>112:17<br/><b>Conversely</b> 88:2<br/><b>convince</b> 47:17<br/><b>convinced</b> 158:6<br/><b>co-operate</b> 8:18<br/>190:11<br/><b>co-operation</b><br/>9:3 103:13, 19<br/><b>co-operative</b><br/>104:9<br/><b>corner</b> 99:22<br/>101:1<br/><b>corporate</b> 64:21<br/>118:5<br/><b>corporation</b><br/>64:15, 19 65:3,<br/>6 96:19 97:6<br/>99:16 115:25<br/>116:18 117:2,<br/>22 118:5<br/>151:18 186:6<br/>187:13 189:3,<br/>10 191:5<br/>197:11 198:4<br/><b>corporations</b><br/>63:19 64:3, 6<br/>65:1 66:22<br/>95:25 96:25<br/>98:24 99:2, 11<br/>101:10, 12<br/>113:10 117:12<br/>118:1 147:5, 8<br/>148:4, 10, 18<br/>150:24 151:2<br/>184:8 185:17,<br/>22 186:13<br/>187:7, 24<br/>188:25 189:1, 6<br/>190:17 194:10<br/>195:1, 9 196:19,<br/>20 197:5, 7, 21<br/><b>corps</b> 96:8, 9<br/>147:12, 25</p> | <p><b>correct</b> 41:8<br/>53:19 62:17<br/>177:6 189:16,<br/>25 196:20<br/><b>corrected</b> 41:8<br/><b>correcting</b> 41:3<br/><b>corrective</b><br/>40:15, 20<br/><b>correctly</b><br/>143:12 195:6<br/><b>Cory</b> 3:4<br/><b>cost</b> 25:11, 14<br/>65:20 66:23<br/>74:8 75:4<br/>115:20 116:21<br/>126:10 152:6<br/>190:15 193:4<br/><b>costly</b> 163:7<br/><b>costs</b> 21:3<br/>65:3 74:14, 17,<br/>21, 22<br/><b>Council</b> 2:14<br/>5:4 6:16 7:17<br/>8:3, 10, 18<br/>41:24 42:18<br/>43:11 93:19<br/>126:8 168:21<br/>173:6<br/><b>Council's</b> 7:25<br/>8:6 9:16 10:1<br/>53:12 81:25<br/><b>counsel</b> 8:17<br/>88:4 90:16<br/>153:6<br/><b>counterparts</b><br/>182:13, 15<br/><b>counting</b> 30:11<br/><b>countries</b><br/>105:16<br/><b>country</b> 20:20<br/>72:9 161:24<br/><b>couple</b> 80:14<br/>83:1 94:25<br/>95:21 128:14<br/>138:11 141:22<br/>184:18 193:3<br/>197:14<br/><b>cour</b> 91:19<br/><b>course</b> 10:11<br/>12:17 27:7<br/>41:4 70:3, 8<br/>81:6 99:6<br/>106:15 108:7,<br/>10 121:9 127:7</p> | <p>162:19 164:9,<br/>23 179:16<br/><b>Court</b> 2:18 3:1,<br/>2 5:10 6:2, 15,<br/>20, 23, 24 7:5, 9,<br/>19, 21 8:4 33:3<br/>42:15 43:6, 11,<br/>15 44:2, 3, 5, 10,<br/>13, 17, 21 45:4<br/>47:11, 15, 18<br/>48:9 50:8, 19,<br/>22, 24, 25 51:2,<br/>4 70:8 78:12<br/>82:9, 20 83:5, 9<br/>90:1, 12 91:13<br/>92:9 103:21<br/>163:24<br/><b>Courtois</b> 165:15<br/><b>Courts</b> 2:11<br/>5:3 6:18 8:6<br/>45:2, 9, 10, 14<br/>46:6 86:11<br/>123:21<br/><b>Court's</b> 32:16<br/><b>cover</b> 10:20<br/>84:24 163:8<br/><b>covered</b> 31:18<br/>84:16 95:19<br/>200:17<br/><b>covers</b> 87:5<br/><b>COVID</b> 93:24<br/>95:6<br/><b>COVID-19</b> 23:10<br/><b>CPI</b> 18:18<br/>28:10 71:7<br/>122:14 125:12,<br/>25<br/><b>CPP</b> 119:17, 24<br/>120:5, 7<br/><b>CRA</b> 12:7 15:5<br/>16:10 58:12<br/>63:14, 21 64:10,<br/>23 65:8 67:8<br/>68:18 98:25<br/>100:7 107:5<br/>117:17 118:2<br/>119:6 144:24<br/>147:9 148:2, 6,<br/>13, 22 150:4<br/>152:11, 19<br/>153:9 155:3<br/>159:5 163:8<br/>167:4 187:22<br/>189:20 190:12,<br/>22, 23 191:22</p> | <p>192:15 193:2,<br/>18 195:25<br/>196:11, 18<br/>197:6, 22 198:1,<br/>15<br/><b>Crampton's</b><br/>107:22<br/><b>Crawford</b> 165:14<br/><b>create</b> 25:7<br/>64:15<br/><b>created</b> 89:20<br/><b>creates</b> 56:3<br/><b>creation</b> 45:12<br/>176:1 184:2<br/><b>credibility</b> 104:4,<br/>22<br/><b>criteria</b> 12:12,<br/>15 22:21 23:1<br/>92:22 107:8<br/>168:16 169:16<br/>186:23<br/><b>criterion</b> 145:19,<br/>20, 25 146:6, 13,<br/>23 147:2<br/>163:20, 22<br/>164:22<br/><b>criticizes</b> 167:3<br/><b>cross-</b><br/><b>examinations</b><br/>104:18<br/><b>crossover</b><br/>185:22<br/><b>crowning</b> 46:7<br/><b>crucial</b> 27:12<br/><b>crystallized</b><br/>83:16<br/><b>CSR</b> 1:25 202:3<br/><b>culture</b> 153:20<br/><b>cumulative</b> 27:6<br/>28:14 35:22<br/>129:20 130:19<br/>131:8 133:6, 10<br/><b>current</b> 11:9<br/>23:4 46:25<br/>47:20 89:20<br/>173:12 175:5<br/><b>currently</b> 7:7<br/>77:18 88:21<br/>169:5 171:8<br/>178:20, 21<br/><b>curve</b> 61:23<br/><b>cut</b> 69:17 70:3<br/>97:12<br/><b>cutoff</b> 71:4<br/><b>CUTTING</b> 63:23</p> |
|---|--|---|---|---|

|  |   |  |  |  |
|--|---|--|--|--|
| <p><b>cycle</b> 124:18<br/>130:20 131:16,<br/>23 132:12<br/>149:19 154:25<br/>162:6 163:14,<br/>23 171:11<br/><b>cycles</b> 27:19<br/><b>Cyr</b> 6:20</p> <p>&lt; D &gt;</p> <p><b>damage</b> 25:8<br/>41:7</p> <p><b>damaging</b> 32:18<br/>123:23</p> <p><b>data</b> 12:7 15:5<br/>16:10 19:23<br/>58:12 59:6<br/>63:14, 21 64:2,<br/>10, 23, 24 65:7<br/>67:8 68:7, 18<br/>98:25 100:7, 14<br/>101:9 118:2, 3<br/>119:5 129:1<br/>147:3, 7, 10<br/>148:2, 3, 6, 13,<br/>22 150:4, 25<br/>151:3, 4, 19<br/>152:10, 11, 20,<br/>21, 22 153:3, 4,<br/>6, 9, 11 155:3<br/>157:10, 21<br/>159:5, 23 163:3,<br/>8, 13 164:14, 17<br/>172:24 173:9,<br/>11 174:12, 24<br/>176:16 177:9,<br/>15, 25 185:21<br/>186:3, 15, 24<br/>187:2, 4, 22<br/>188:6, 12, 20, 24<br/>189:2, 21 190:2,<br/>19, 25 192:12,<br/>15 193:20<br/>195:1, 6, 8<br/>197:15, 22<br/>198:24 199:7,<br/>12, 20</p> <p><b>date</b> 166:19<br/>202:6</p> <p><b>dated</b> 116:14<br/>202:13</p> <p><b>David</b> 7:18</p> <p><b>day</b> 1:19 111:5<br/>113:3 119:2<br/>143:19 145:16</p> | <p>180:10 183:13<br/>186:9 200:20<br/>202:13</p> <p><b>days</b> 95:4<br/>107:23 198:14</p> <p><b>de</b> 91:18</p> <p><b>deal</b> 85:11<br/>107:4, 7 108:7<br/>111:3 113:7, 9,<br/>11 119:14<br/>120:7, 15, 16<br/>129:9 132:19<br/>135:13, 16, 18<br/>140:15 147:5<br/>185:2 192:17</p> <p><b>dealing</b> 119:6<br/>136:22 185:2, 10</p> <p><b>deals</b> 146:13<br/>167:14, 15 185:4</p> <p><b>dealt</b> 109:3<br/>184:9</p> <p><b>deans</b> 163:25<br/>164:2</p> <p><b>debate</b> 89:22<br/>166:24</p> <p><b>decade</b> 10:4<br/>42:23 44:19<br/>138:18 140:8</p> <p><b>decide</b> 58:3</p> <p><b>decided</b> 35:14<br/>71:13</p> <p><b>deciding</b> 58:13</p> <p><b>decimal</b> 171:3</p> <p><b>decision</b> 6:1</p> <p><b>decisions</b> 66:4</p> <p><b>decline</b> 99:14</p> <p><b>declining</b> 41:21</p> <p><b>decrease</b> 139:15</p> <p><b>decreasing</b> 51:9</p> <p><b>dedicated</b> 45:12</p> <p><b>deduce</b> 100:19</p> <p><b>deeds</b> 90:20</p> <p><b>deep</b> 18:20<br/>53:12</p> <p><b>defeated</b> 75:16</p> <p><b>defence</b> 28:12</p> <p><b>deferral</b> 115:23<br/>116:16, 25</p> <p><b>deficit</b> 33:5<br/>121:21 123:21</p> <p><b>deficit-fighting</b><br/>123:13</p> <p><b>deficits</b> 24:19,<br/>21 124:11</p> | <p><b>defies</b> 55:4</p> <p><b>defined</b> 84:2</p> <p><b>definition</b> 167:6</p> <p><b>definitively</b><br/>23:21</p> <p><b>degree</b> 29:9<br/>68:4 137:7<br/>172:21 184:7<br/>187:7</p> <p><b>delay</b> 98:17</p> <p><b>deliberations</b><br/>105:10</p> <p><b>demanding</b> 50:4</p> <p><b>demands</b> 48:18,<br/>24</p> <p><b>democracies</b><br/>105:25</p> <p><b>demographics</b><br/>71:21</p> <p><b>demonstrate</b><br/>18:19 55:21<br/>60:8, 13 62:24</p> <p><b>demonstrated</b><br/>14:2, 24 19:9<br/>54:4 60:18</p> <p><b>demonstrates</b><br/>69:16 130:16</p> <p><b>denying</b> 117:8<br/>118:6</p> <p><b>Department</b><br/>91:14</p> <p><b>depending</b><br/>143:16 154:6<br/>169:7 172:11</p> <p><b>depict</b> 139:8</p> <p><b>Deputy</b> 16:11<br/>61:8 146:14<br/>167:20 171:9,<br/>20 172:1, 2</p> <p><b>derive</b> 56:18</p> <p><b>derived</b> 58:12</p> <p><b>derogation</b><br/>35:19</p> <p><b>des</b> 91:18</p> <p><b>describe</b> 11:22<br/>36:16 42:3<br/>186:17 196:10,<br/>23</p> <p><b>described</b> 28:21<br/>36:22 52:5<br/>53:13 163:6<br/>170:21 188:4<br/>189:9</p> <p><b>describes</b> 65:19</p> | <p><b>describing</b><br/>61:12</p> <p><b>description</b><br/>24:24</p> <p><b>designed</b> 40:2<br/>71:18 75:4</p> <p><b>desire</b> 136:16</p> <p><b>despite</b> 48:13<br/>147:6 158:12</p> <p><b>detail</b> 44:14<br/>104:14 119:8</p> <p><b>details</b> 164:24</p> <p><b>deter</b> 136:6</p> <p><b>determination</b><br/>18:6</p> <p><b>determine</b> 69:1<br/>109:13 132:17</p> <p><b>determined</b><br/>14:10 94:6</p> <p><b>determining</b><br/>58:2 155:19</p> <p><b>deterred</b> 99:23</p> <p><b>developing</b><br/>199:2</p> <p><b>device</b> 123:20</p> <p><b>devotes</b> 67:22</p> <p><b>dictated</b> 171:24</p> <p><b>died</b> 89:3</p> <p><b>difference</b><br/>60:24 72:7<br/>109:21 111:2<br/>113:2 161:21<br/>184:10</p> <p><b>differences</b><br/>57:5 112:3, 10<br/>166:17</p> <p><b>different</b> 21:2, 3<br/>36:25 38:6<br/>57:18 109:19<br/>115:7 150:22<br/>151:19 166:10<br/>167:21 176:8</p> <p><b>difficult</b> 16:4<br/>32:14, 23 50:12<br/>88:16 103:1<br/>124:2 131:8<br/>187:8 199:15</p> <p><b>difficulties</b><br/>111:9 191:24<br/>198:25 200:19</p> <p><b>difficulty</b> 86:9<br/>111:22 118:14<br/>147:11 169:3</p> <p><b>dig</b> 141:13</p> | <p><b>dilute</b> 20:5<br/>56:23</p> <p><b>dime</b> 41:5</p> <p><b>dimension</b> 99:5</p> <p><b>dip</b> 94:21<br/>140:11</p> <p><b>direct</b> 42:20, 24<br/>105:14, 18<br/>106:7 124:20<br/>182:7</p> <p><b>direction</b> 145:12</p> <p><b>directly</b> 150:3<br/>182:1</p> <p><b>director</b> 7:15</p> <p><b>disabilities</b> 83:2</p> <p><b>disability</b> 65:19<br/>66:5, 10 109:23<br/>110:14, 15, 23<br/>112:24 119:23,<br/>24 120:1, 5, 6<br/>150:8</p> <p><b>disagree</b> 80:25<br/>116:4</p> <p><b>disagreeing</b><br/>184:17</p> <p><b>disagreement</b><br/>109:11 121:2<br/>126:24</p> <p><b>disappeared</b><br/>198:3</p> <p><b>discharge</b> 75:14</p> <p><b>disconnect</b><br/>98:15 160:9, 10</p> <p><b>discounting</b><br/>164:6</p> <p><b>discovery</b><br/>104:21</p> <p><b>discrete</b> 80:17,<br/>23</p> <p><b>discuss</b> 44:14<br/>45:5 152:18</p> <p><b>discussed</b><br/>22:17 107:17<br/>116:12 120:18</p> <p><b>discussing</b><br/>119:24 149:8<br/>191:16</p> <p><b>discussion</b><br/>11:25 12:5<br/>119:22 141:17<br/>145:23, 24<br/>166:24 192:14<br/>194:14</p> <p><b>discussions</b><br/>45:22 49:24</p> |
|--|---|--|--|--|

|  |  |  |  |  |
|--|--|--|--|--|
| 52:10 83:14<br>184:4 191:15<br>202:8<br><b>disincentive</b><br>53:16, 20<br><b>disparity</b> 52:7<br><b>displayed</b> 10:25<br>20:14 30:15<br>41:20<br><b>disproportionately</b> 124:12<br><b>dispute</b> 150:21<br><b>disputes</b> 23:21<br><b>disputing</b><br>139:15, 18 174:3<br><b>disregard</b> 19:16<br>106:13, 14<br><b>disrespect</b> 108:2<br><b>disrespectful</b><br>50:21<br><b>disruption</b> 83:5<br><b>dissipated</b> 24:23<br><b>distill</b> 190:16<br><b>distinct</b> 88:2<br>110:11<br><b>distinction</b><br>24:18 25:21, 25<br>58:8, 15 110:1,<br>18<br><b>distinctly</b> 93:1<br><b>distinguish</b> 46:4<br><b>distinguished</b><br>13:2 189:7<br><b>distribution</b><br>157:5<br><b>diverse</b> 48:10<br><b>diversifies</b><br>140:17<br><b>diversity</b> 78:14<br>153:23, 25<br><b>divided</b> 11:4<br><b>dividends</b> 64:19,<br>22<br><b>DM</b> 179:16, 20<br><b>DM-3</b> 15:3 18:5<br>54:7, 12, 13, 16,<br>22 55:8, 17<br>56:1, 9, 10, 23<br>57:4, 13, 23<br>59:2, 11, 14, 20<br>60:3, 20 61:6,<br>14, 22 62:9, 21<br>107:7 145:24<br>146:5, 20<br>163:21 165:5, 8, | 18, 20, 22, 23, 25<br>166:5, 11, 20<br>167:9, 14, 22<br>168:2, 9, 23, 25<br>169:10, 12<br>170:8 171:9<br>173:3 175:15,<br>22, 23 176:1<br>177:15, 16<br>178:11, 19, 21<br>179:2, 12<br><b>DM-3s</b> 12:3<br>54:19, 20 57:6,<br>15 59:7, 17, 24<br>60:11, 15, 25<br>62:24 95:18<br>146:18 169:2, 4<br>171:13 172:6<br>173:12 175:18<br>177:23 180:23<br><b>DM-3's</b> 61:24<br>172:1<br><b>DM-4</b> 170:2<br><b>DMs</b> 106:13<br>171:23 179:4, 15<br><b>doctors</b> 105:19<br>181:18<br><b>doctrine</b> 14:20<br><b>document</b> 10:22<br><b>documentation</b><br>10:16<br><b>documented</b><br>92:1<br><b>documents</b><br>10:10, 13 41:15<br>80:5, 14 90:10<br>91:5 92:1<br>100:16 146:11<br>175:7<br><b>doing</b> 6:8<br>23:22 33:15<br>35:9 56:2<br>71:11 77:13<br>78:2 96:16<br>106:15 110:19<br>130:1, 6 131:14,<br>17 132:3<br>152:13 155:21<br>180:25<br><b>dollars</b> 96:6<br><b>dominant</b><br>140:19<br><b>doomsday</b> 23:25<br><b>double</b> 133:24 | <b>doubt</b> 51:18<br><b>Doug</b> 24:7<br><b>downs</b> 129:4<br><b>downside</b> 95:11<br><b>downward</b><br>34:14, 16 35:9<br>41:18 94:1, 14<br><b>dramatically</b><br>64:10<br><b>draw</b> 54:14<br><b>drawn</b> 146:14,<br>16 158:25<br><b>draws</b> 64:17<br><b>driver</b> 22:4<br>76:20<br><b>driving</b> 9:25<br><b>drop</b> 156:19<br><b>dropped</b> 156:16<br><b>dropping</b> 34:7<br><b>drops</b> 156:9<br><b>Drouin</b> 20:9, 12<br>21:16 75:2, 10<br>105:12 106:1<br>137:18 146:2, 7,<br>23<br><b>DROWNING</b><br>15:19 17:9<br><b>due</b> 12:25 19:8<br>115:22 116:24<br><b>duration</b> 83:25<br><b>duties</b> 39:5<br>75:12, 14 85:1<br><b>duty</b> 5:12<br>39:23, 24<br><b>dwindling</b> 78:11<br><b>dynamics</b> 53:15<br><br>< E ><br><b>E&amp;Y</b> 64:5 66:19<br><b>e.g</b> 112:4<br><b>earlier</b> 38:19<br>74:25 79:8<br>88:25 99:1<br>110:25 118:25<br>200:20<br><b>early</b> 79:9<br>139:22<br><b>earmarked</b><br>75:11<br><b>earn</b> 49:15<br>63:19 100:13<br>105:19<br><b>earned</b> 9:22<br><b>earner</b> 197:7 | <b>earners</b> 127:3,<br>23 137:3, 4, 6,<br>10, 16 138:8, 9,<br>24 152:25<br>153:12 160:3<br>187:11, 19<br><b>earning</b> 63:18<br>64:7, 13 71:21<br>100:4, 5 186:24<br>188:19<br><b>earnings</b> 64:16<br>97:5 99:7, 8, 19<br>114:15 125:4<br>126:13, 14, 21<br><b>earning's</b> 127:1<br><b>earns</b> 99:5<br><b>easier</b> 120:3<br><b>easily</b> 171:25<br><b>ecclesiastical</b><br>90:25<br><b>echo</b> 102:19<br>103:3, 5, 11, 12<br><b>economic</b> 11:8<br>16:8 20:23<br>22:22 23:3<br>24:1, 2 25:1, 19,<br>23 26:6, 15<br>32:14, 23 33:18<br>93:18 107:1<br>119:15 120:16<br>123:3 124:2, 8, 9<br><b>economics</b><br>122:18<br><b>economist</b> 17:3,<br>17 24:7, 9<br><b>economists</b><br>94:17<br><b>economy</b> 25:9<br>26:12 94:22<br>121:4, 5 124:16<br><b>Edmonton</b> 52:12<br><b>education</b> 85:9<br><b>Edward</b> 7:19<br><b>effect</b> 29:15<br>34:5, 13 71:15,<br>16 75:18 95:8<br>117:20<br><b>effective</b> 30:25<br>129:3<br><b>effectively</b><br>161:17 200:15<br><b>effects</b> 114:9<br>123:21<br><b>efficiencies</b> | 118:6<br><b>efficient</b> 96:3<br><b>effort</b> 149:17<br><b>efforts</b> 40:10<br>48:14 117:15<br>189:20 190:10,<br>12 191:11<br>195:15<br><b>Eidsvik</b> 7:4<br><b>elaborate</b> 14:17<br><b>elected</b> 38:7<br>56:16<br><b>electing</b> 101:13<br><b>election</b> 83:23<br>89:5<br><b>element</b> 28:2<br><b>elements</b> 81:5<br>83:18<br><b>elevated</b> 50:24<br><b>eligible</b> 83:21<br>159:9<br><b>eliminate</b> 32:7<br><b>eliminated</b> 24:22<br><b>email</b> 90:10<br><b>emailed</b> 10:12<br><b>embark</b> 12:22<br><b>emerged</b> 13:24<br>26:10<br><b>emphasize</b> 49:9<br>123:17 128:18<br><b>employees</b><br>56:13 67:16<br><b>employment</b><br>34:15 127:5<br><b>enables</b> 82:11<br><b>endeavour</b><br>103:8<br><b>ended</b> 31:15<br>132:9<br><b>endemic</b> 45:14<br>47:24<br><b>endorsing</b> 55:17<br><b>ends</b> 31:17<br>85:16 180:9<br><b>enduring</b> 29:18<br><b>engage</b> 13:8<br>43:4<br><b>engagement</b><br>19:7 45:20<br><b>engages</b> 92:14<br><b>engaging</b> 33:16<br>44:25<br><b>enjoy</b> 22:3<br><b>enjoyed</b> 21:23 |
|--|--|--|--|--|



|   |  |   |   |   |
|---|--|---|---|---|
| <p><b>enrich</b> 20:3<br/><b>ensure</b> 149:4<br/><b>ensured</b> 23:17<br/><b>ensures</b> 126:12<br/><b>ensuring</b> 5:20<br/>22:23 29:6 39:9<br/><b>entire</b> 64:20<br/>67:22<br/><b>entirely</b> 70:6<br/>157:14 164:7<br/>180:6<br/><b>entitled</b> 10:22<br/>22:1 116:13<br/><b>entitlement</b><br/>73:23<br/><b>enumerated</b><br/>38:25<br/><b>envy</b> 102:23<br/><b>equally</b> 173:3<br/><b>equation</b> 186:6<br/><b>equivalence</b><br/>168:10, 12<br/><b>equivalency</b><br/>165:13<br/><b>equivalent</b><br/>22:11 162:14,<br/>16 176:25<br/><b>Ernst</b> 115:19<br/><b>erosion</b> 18:21<br/><b>error</b> 131:17<br/>180:6, 12<br/><b>especially</b> 9:4<br/>85:6 152:21<br/>175:4 179:8, 9<br/><b>essential</b> 33:22<br/>177:18 181:14<br/><b>essentially</b> 81:4<br/>98:25<br/><b>established</b><br/>81:22<br/><b>establishes</b><br/>26:15<br/><b>establishing</b><br/>85:7<br/><b>estimated</b><br/>122:14<br/><b>Eugene</b> 3:3<br/><b>evaluation</b> 67:15<br/><b>evening</b> 10:12<br/><b>event</b> 22:8 91:2<br/><b>everybody</b><br/>70:13 88:1<br/>160:8 183:13<br/>200:3, 11</p> | <p><b>everyone's</b><br/>23:12<br/><b>evidence</b> 9:22<br/>11:18 12:18<br/>16:7 17:1, 12,<br/>15, 22 20:9, 13<br/>21:10, 13 22:6<br/>26:14 41:11<br/>53:21 56:5<br/>62:5 63:17, 20<br/>64:4 65:10<br/>69:6, 16, 18<br/>71:1, 4 72:10<br/>73:3 76:13<br/>118:11 144:17<br/>162:8 186:10,<br/>11 187:16<br/>188:19<br/><b>evidenced</b> 5:13<br/>26:21 55:4<br/><b>exacerbates</b><br/>195:9<br/><b>exact</b> 20:10<br/>169:7 172:11<br/>175:6 197:22<br/><b>exactly</b> 104:13<br/>116:5<br/><b>examined</b><br/>157:22<br/><b>example</b> 15:4<br/>21:25 39:17, 19<br/>50:15 57:24<br/>58:4 62:17<br/>67:13 74:3<br/>78:12 92:2<br/>195:4 199:19<br/>201:3<br/><b>examples</b> 15:2<br/>39:7<br/><b>exceeds</b> 166:5<br/><b>excellent</b> 163:5<br/><b>exchange</b> 21:1<br/>50:3 106:5<br/><b>exclude</b> 138:7<br/>158:22 160:2<br/>187:18<br/><b>excluding</b><br/>157:10, 21<br/>159:22 187:17,<br/>24 188:1<br/><b>exclusion</b> 15:7<br/>68:17 69:3<br/>70:24 71:14, 19<br/>149:15 150:2<br/>155:5 157:2, 3,</p> | <p>6, 8, 15 158:5, 9,<br/>15, 16 159:3, 13<br/>161:18 187:22<br/><b>exclusionary</b><br/>35:18<br/><b>exclusions</b><br/>68:15 156:23,<br/>25 157:25 158:2<br/><b>exclusively</b><br/>138:9<br/><b>excuse</b> 170:24<br/><b>executive</b> 7:15<br/>30:3<br/><b>exempt</b> 33:10<br/><b>exercise</b> 12:25<br/>57:2 66:14<br/>136:12 155:18<br/>170:18, 22 171:4<br/><b>exert</b> 35:9<br/><b>Exhibit</b> 173:5<br/><b>exhibits</b> 100:15<br/><b>exist</b> 14:13<br/>52:11 77:12<br/>118:7<br/><b>existing</b> 20:6<br/><b>exists</b> 29:21<br/>58:9<br/><b>exogenous</b><br/>24:20 25:4<br/><b>expansion</b><br/>140:15<br/><b>expect</b> 122:24<br/><b>expected</b> 122:22<br/><b>expecting</b> 201:1<br/><b>expenditures</b><br/>25:17 84:22<br/><b>expenses</b> 73:24<br/>74:9 75:4<br/>84:17 85:4, 6<br/>96:19, 22 99:9,<br/>15 159:12, 15<br/><b>experience</b> 8:9<br/>11:23 14:20<br/>29:11 42:20<br/>44:23 49:5<br/>50:6 51:8<br/>74:16 99:14<br/><b>experienced</b><br/>51:3 82:22<br/><b>expert</b> 12:21<br/>16:3, 7, 21 17:1,<br/>22 18:2 19:14<br/>24:6, 8 56:5<br/>62:4 64:4<br/>65:15 66:8, 9</p> | <p>68:12 69:6<br/>119:18 126:6<br/>172:17<br/><b>expertise</b> 16:6<br/>17:1 67:4<br/><b>experts</b> 15:25<br/>17:6, 13 65:4<br/>69:8 111:2, 6<br/>118:18 188:7<br/>192:13<br/><b>explain</b> 28:15<br/>59:1 64:12<br/>157:2<br/><b>explained</b> 30:20<br/>66:19 92:8<br/>109:21 110:6<br/>124:25 191:24<br/><b>explaining</b><br/>129:13<br/><b>explains</b> 34:11<br/>110:17 114:18<br/><b>explicitly</b> 158:4<br/><b>express</b> 192:6<br/><b>expressed</b> 6:9<br/>49:3 165:3<br/>177:14<br/><b>extend</b> 8:15<br/><b>extends</b> 44:24<br/><b>extensive</b> 9:7<br/>55:15<br/><b>extent</b> 29:7<br/>63:17 145:13<br/>165:17 176:10<br/>177:10, 25<br/><b>extra</b> 97:4, 23<br/><b>extract</b> 20:15<br/>28:24 29:1<br/>190:25<br/><b>extraction</b><br/>191:24 193:19<br/><b>extracts</b> 10:10,<br/>14<br/><b>extremely</b> 41:17<br/>96:11 163:6<br/><b>eye</b> 170:1<br/><b>eyes</b> 145:12<br/><br/>&lt; F &gt;<br/><b>fabric</b> 23:19<br/><b>face</b> 22:8, 15<br/>88:18 94:1<br/><b>faced</b> 33:8<br/>54:9 196:11<br/>197:22<br/><b>facing</b> 197:20</p> | <p><b>fact</b> 15:14 17:4<br/>22:1 26:21<br/>29:20 33:2, 8<br/>34:6 39:2<br/>41:18 46:21<br/>56:5, 15 59:4,<br/>18 95:6 99:2<br/>105:7 115:23<br/>116:24 119:9<br/>134:9 147:7<br/>150:22 153:25<br/>154:20 155:21<br/>195:4<br/><b>factor</b> 24:6<br/>27:19 39:8, 12,<br/>19, 23 40:5<br/>54:24 113:1<br/>124:18, 21<br/>136:11, 14<br/>159:13 197:8, 17<br/><b>factored</b> 58:6<br/>159:2<br/><b>factors</b> 16:9<br/>35:18 38:23, 24,<br/>25 39:6 42:25<br/>83:10 105:8<br/>113:7 136:13<br/>146:1 164:22<br/><b>factum</b> 124:25<br/><b>fail</b> 73:19<br/><b>failed</b> 59:1<br/><b>failure</b> 36:18<br/><b>fair</b> 77:14, 24<br/>79:11 107:24<br/>196:4 198:17<br/><b>fairly</b> 23:21<br/>92:5 122:6<br/>139:9 140:10<br/>141:25 180:14<br/><b>Fall</b> 25:1 39:14<br/><b>false</b> 153:13<br/>157:7 158:17<br/>162:21<br/><b>familiar</b> 9:10<br/>13:10 54:9<br/><b>family</b> 181:17<br/>197:24 198:3<br/><b>fashion</b> 167:24<br/><b>fault</b> 127:20<br/><b>favour</b> 13:12<br/>19:19 198:4<br/><b>favourable</b> 26:4<br/><b>favouring</b> 60:2<br/><b>favours</b> 158:19<br/><b>fears</b> 122:17</p> |
|---|--|---|---|---|

|   |   |   |   |  |
|---|---|---|---|--|
| <b>feature</b> 27:13<br>34:20 99:10   | 11, 14 167:5<br>195:4   | <b>flexible</b> 79:21                               | 101:15 113:4  | <b>fully</b> 14:9 57:7   |
| <b>Federal</b> 2:18<br>5:6, 10 22:1<br>33:7 44:5 76:2<br>82:9 86:11<br>89:25 92:9<br>122:1 198:2                | <b>final</b> 36:2 92:2<br>135:17 150:9<br>163:1 179:12  | <b>flipping</b> 175:7                               | 121:23 122:14<br>123:2 128:4<br>130:5 132:2, 13<br>134:4, 15  | 73:5 170:15<br>175:9 176:18,<br>24 177:4 198:8   |
| <b>federale</b> 91:19   | <b>financial</b> 11:9<br>22:23 24:3<br>25:21 26:18<br>39:8, 15 56:18<br>82:18 87:1, 2, 6<br>88:15 136:12            | <b>floor</b> 34:22                                  | <b>flow</b> 101:21<br>131:2 134:8   | <b>fulsome</b> 104:11<br>194:12  |
| <b>federally</b> 43:22<br>48:18, 25 49:18<br>50:14, 17 114:8<br>182:12  | <b>find</b> 10:23<br>24:16 28:24<br>39:17 47:16<br>55:1 58:14<br>80:6 89:12<br>104:11, 20<br>121:16 174:13<br>201:9 | <b>flows</b> 39:11                                  | <b>flows</b> 39:11  | <b>function</b> 23:20<br>103:1 195:7   |
| <b>federally-</b><br><b>appointed</b> 10:3<br>22:3 109:10   | <b>finding</b> 14:12<br>19:13 88:6<br>104:4, 22 106:2,<br>3 119:10  | <b>fluctuate</b> 159:7                              | <b>fluctuating</b> 21:1   | <b>functionaries</b><br>92:17  |
| <b>Federation</b><br>147:21 190:22<br>191:3   | <b>findings</b> 19:10,<br>15  | <b>fluctuations</b><br>159:4, 8 177:21,<br>22       | <b>found</b> 49:10<br>83:6 91:4<br>104:24 126:3<br>137:25 138:1, 2,<br>3, 4, 5 139:6<br>144:9, 16<br>159:25 168:11<br>183:20 186:24 | <b>functions</b> 21:20<br>22:12 50:5 93:7  |
| <b>feeds</b> 158:17   | <b>finds</b> 71:23  | <b>focus</b> 55:18<br>137:9 138:9<br>176:23 188:7   | <b>foundations</b><br>68:3 172:20   | <b>Furlanetto</b> 90:12  |
| <b>feel</b> 77:16<br>200:22   | <b>fine</b> 79:19 80:2<br>101:2 116:4<br>134:10 175:3<br>183:7  | <b>focused</b> 74:13                                | <b>fourteen</b> 171:13<br>179:11  | <b>furthermore</b><br>94:9 159:3   |
| <b>fees</b> 159:12, 14  | <b>finished</b> 145:7   | <b>focusing</b> 155:12                              | <b>fourth</b> 15:15<br>31:8 32:8<br>116:8 145:20<br>146:1, 6, 24<br>150:6 163:22<br>164:21  | <b>future</b> 25:19<br>35:4 46:24<br>51:25 121:7<br>189:13, 17<br>194:7 196:14   |
| <b>fellow</b> 45:7  | <b>firm</b> 19:4 90:16<br>101:2, 5 129:1<br>138:24  | <b>follow</b> 144:23                                | <b>four-year</b> 27:7,<br>9 32:3 129:20,<br>22, 23 130:19   | <b>&lt; G &gt;</b>   |
| <b>field</b> 67:4 87:6  | <b>firmly</b> 11:13   | <b>following</b> 60:5<br>164:15 170:21<br>200:25    | <b>framed</b> 22:20   | <b>Gab</b> 160:11  |
| <b>fifth</b> 31:23  | <b>firms</b> 47:4<br>101:6 138:1, 2   | <b>footnote</b> 30:20<br>126:16                     | <b>framework</b><br>38:22 88:12   | <b>Gabriel</b> 200:16  |
| <b>figure</b> 30:17<br>31:2, 8 34:4<br>37:10 62:17, 19<br>66:20 100:25<br>110:14 115:3<br>131:22 145:7<br>157:3 | <b>first-year</b> 69:14<br>71:1   | <b>footnotes</b><br>141:25                          | <b>frankly</b> 153:13<br>166:1 170:19   | <b>gained</b> 172:8<br>198:4   |
| <b>figures</b> 37:3, 5<br>62:14 101:17<br>120:25 121:8,<br>17, 19 122:11,<br>19 135:1 143:7<br>162:1            | <b>firstly</b> 96:18  | <b>forecast</b> 26:13<br>94:19                      | <b>frame</b> 81:17  | <b>gains</b> 29:22   |
| <b>filed</b> 9:7  | <b>fiscal</b> 23:4<br>24:18 25:4<br>31:16 116:13<br>121:21, 24  | <b>forecasts</b> 24:1                               | <b>framed</b> 22:20   | <b>gap</b> 36:14, 24<br>50:13 62:1<br>63:2, 5 100:22<br>168:11 170:24  |
| <b>fill</b> 40:10 41:1  | <b>fit</b> 182:3  | <b>foregoing</b> 202:5,<br>11                       | <b>framework</b><br>38:22 88:12   | <b>gaps</b> 83:8   |
| <b>filled</b> 170:25  | <b>fits</b> 181:12<br>194:15  | <b>foreign</b> 20:11<br>21:15, 23                   | <b>frankly</b> 153:13<br>166:1 170:19   | <b>GDP</b> 26:4 122:4  |
| <b>filling</b> 48:1   | <b>fix</b> 30:4 89:16   | <b>foreseeing</b><br>127:15                         | <b>freezes</b> 33:8   | <b>general</b> 8:14<br>33:6 127:19<br>181:18 183:25<br>186:14 188:2  |
| <b>filter</b> 67:14<br>72:1 160:7<br>161:14, 15, 17<br>195:5  | <b>fixing</b> 28:4, 19  | <b>foreseen</b> 127:14<br>130:24                    | <b>French</b> 91:17   | <b>generally</b> 49:7<br>86:23 87:9<br>105:23 138:18,<br>23 187:16   |
| <b>filtering</b> 152:19,<br>21 155:5  | <b>flatlining</b> 59:2  | <b>forgetting</b><br>200:16                         | <b>frequently</b> 51:16   | <b>generis</b> 55:22<br>56:5   |
| <b>filters</b> 12:6<br>15:4 16:10<br>58:13 67:7, 10,<br>25 68:9 149:4,<br>8 152:19, 20, 22<br>153:5 154:4, 6,   | <b>flexibility</b> 83:9   | <b>forgivable</b> 91:24                             | <b>fresh</b> 20:2   | <b>generous</b><br>179:17  |
|   |   | <b>form</b> 38:7 57:6<br>65:8 73:22<br>84:19 198:24 | <b>Friday</b> 121:9   | <b>gentlemen</b> 188:4   |
|   |   | <b>formulaic</b><br>167:24 170:17,<br>22 171:3      | <b>friend</b> 102:20<br>103:4, 6, 11<br>131:3, 11 139:12  | <b>Giordano</b> 3:4  |
|   |   | <b>formulate</b> 13:17                              | <b>friends</b> 5:7 9:1<br>141:18 196:9, 23  | <b>give</b> 39:16<br>62:17 70:20<br>71:6 74:18<br>79:16 85:11<br>97:11 98:10<br>100:21 109:14<br>118:25 121:16<br>122:12 146:7 |
|   |   | <b>formulating</b> 8:21                             | <b>friend's</b> 141:13  |  |
|   |   | <b>forth</b> 202:7                                  | <b>front</b> 188:20   |  |
|   |   | <b>forty</b> 139:19                                 | <b>frustration</b><br>146:17 165:4  |  |
|   |   | <b>forward</b> 19:18<br>81:4 98:5                   | <b>fulfill</b> 51:1 85:1<br>full 4:14 22:2<br>73:17 74:1<br>83:22 113:16<br>141:3   |  |
|   |   |   | <b>full-time</b> 82:15<br>84:3  |  |

|   |   |  |  |  |
|---|---|--|--|--|
| 191:6 192:19<br>200:7<br><b>given</b> 13:19<br>19:8 23:14<br>51:20 79:6<br>94:7, 15 122:20<br>124:17 149:19<br>151:4 161:20<br>164:11 169:8<br>172:12 175:17<br>179:8, 9 184:21<br>192:1 198:7<br><b>gives</b> 81:17<br>83:8 100:18<br><b>glitches</b> 200:4<br><b>Globe</b> 92:2, 6<br>100:16<br><b>goal</b> 25:18<br>175:22, 25 176:2<br><b>Good</b> 4:2, 7, 11,<br>25 13:4 42:12<br>47:9 70:3<br>76:24 77:16<br>89:8 97:11<br>160:6 201:12<br><b>Gorham</b> 12:21<br>16:3, 13, 20<br>17:2, 13 61:10<br>65:13, 15 66:11,<br>17 67:3, 9, 21<br>68:12, 24 96:1,<br>4 104:2, 10<br>109:19, 20, 23<br>111:10, 16, 23<br>113:8, 14, 24<br>115:4 116:3, 10,<br>23 119:22<br>120:5 125:1<br>153:1 179:19<br><b>Gorham's</b> 16:25<br>17:15 65:23<br>66:3 67:14<br>110:22 111:4<br>112:19, 20, 24<br>113:1 118:21<br>119:7<br><b>Government</b><br>2:22 5:9 8:19,<br>22 9:2 11:10<br>12:21 13:9<br>14:8 15:10, 25<br>18:14, 23 19:17,<br>20 23:4 24:4<br>25:16, 22 26:19<br>27:10, 18, 22 | 28:7, 13, 23<br>30:7, 10 31:4,<br>21 32:11, 15<br>33:4, 15, 16<br>34:19 35:25<br>36:3, 10, 18<br>38:5, 7, 11<br>40:17, 23 48:1<br>54:11, 22 55:10<br>56:12 57:4, 16,<br>21 58:25 60:16<br>62:5 67:7<br>73:14 74:12<br>77:5, 8 78:3, 17,<br>20 80:24 81:10,<br>13, 15 82:8, 14<br>83:12, 20 85:14<br>87:21, 23 88:9,<br>10, 13, 17, 20, 24<br>89:1, 10, 15<br>91:21 92:16, 18<br>95:2, 14, 24<br>99:20 101:15<br>102:13 105:7<br>107:25 109:16<br>124:17 131:14<br>138:4 140:14<br>146:5, 19 152:7<br>154:5 156:24<br>158:14 165:7<br>166:2 167:4<br>170:7, 15<br>181:10 184:1,<br>20 188:13<br>194:9 196:10<br>198:2 201:7, 8<br><b>government's</b><br>11:11 16:2, 3<br>17:22 18:5, 11<br>25:1 26:22<br>27:1, 5, 12<br>30:15 31:20<br>33:1 34:1<br>54:15 55:1, 7,<br>18 60:22 81:23<br>94:9 95:22<br>143:17 146:17<br>152:18 170:6<br>201:2<br><b>gradient</b> 129:11<br><b>Granosik</b> 7:9<br><b>granular</b> 118:4<br>192:12<br><b>granularity</b><br>189:12 197:12 | <b>graph</b> 60:21<br>61:4, 5, 7, 23<br>139:8 147:16, 19<br><b>grapple</b> 189:14<br><b>gray</b> 178:16<br><b>great</b> 97:18<br>104:13 111:3<br>119:8 129:9<br>140:15 145:3<br>147:4<br><b>greater</b> 44:14<br>51:2 96:24<br>189:12<br><b>greatest</b> 19:13<br>167:1<br><b>greatly</b> 80:7<br><b>Griffin</b> 2:4 4:10<br>75:19 134:23<br>186:18 187:2<br>188:10 192:25<br><b>gross</b> 61:11<br>96:1 150:11<br>151:19, 23<br>152:2, 5<br><b>grossed</b> 61:7<br><b>grosses</b> 65:16<br><b>grossly</b> 61:23<br><b>ground</b> 9:9<br>39:10 70:25<br>84:16 117:11<br><b>group</b> 5:16 8:7<br>19:21 45:12, 16<br>47:23 56:1<br>62:10 71:25<br>117:25 118:22<br>155:13 159:19,<br>20 160:3<br>166:12 169:4, 8,<br>15 172:12<br>175:15 178:19<br>196:18 200:23<br><b>groups</b> 9:23<br>151:15 159:18<br>164:4<br><b>growing</b> 46:11<br><b>growth</b> 25:19<br>71:5 125:15, 18<br>140:12<br><b>guarantee</b><br>123:18 175:13<br>176:9<br><b>guess</b> 78:10<br><b>guidance</b> 192:20<br><b>Guide</b> 69:13<br><b>guided</b> 16:23 | <b>guiding</b> 13:13<br>125:11<br><b>guise</b> 65:17<br><b>gulf</b> 107:20<br><b>Guthrie</b> 165:14<br><br>< H ><br><b>Half</b> 69:12<br>71:23 74:19<br>158:3 159:17<br>165:20, 25<br>166:5 169:1<br>170:8 172:15<br>175:23 176:19<br><b>halfway</b> 90:1<br><b>Halifax</b> 52:12<br><b>hand</b> 25:22<br>161:10<br><b>hands</b> 70:7<br>79:23 188:13<br><b>happen</b> 83:2<br>117:9<br><b>happened</b> 91:25<br>127:7<br><b>happening</b><br>117:11<br><b>happens</b> 84:11<br><b>happy</b> 83:14<br>183:12 200:7<br><b>hard</b> 4:15<br>39:12 77:11<br>97:10 122:18<br><b>hardest</b> 127:3<br><b>hat</b> 17:3<br><b>Haydon</b> 17:18<br>56:4 68:1, 9<br>69:11 172:17<br>173:1<br><b>head</b> 127:16<br><b>hear</b> 92:11<br>102:15 182:25<br>195:10<br><b>heard</b> 111:3<br>114:19 125:9<br>135:15 137:1<br>143:10 146:16<br>147:4 164:5<br>166:16 181:7<br><b>Hearing</b> 1:17<br>6:17 8:13<br>72:16 120:20<br>145:15 194:5<br>195:14 202:5<br><b>heed</b> 67:2 | <b>held</b> 83:15<br>87:19<br><b>Helen</b> 1:25<br>202:3, 17<br><b>help</b> 98:9<br>136:10 173:8<br>188:22 192:5<br><b>helpful</b> 4:22<br>41:25 88:20<br>93:1<br><b>henceforth</b><br>58:23<br><b>hiccups</b> 103:15<br><b>high</b> 34:2<br>51:12 64:7<br>67:16 87:19<br>92:5 130:14<br>137:3, 4, 6, 10<br>138:7, 8, 9<br>162:10 173:15<br>197:23<br><b>high-earning</b><br>34:9<br><b>higher</b> 57:18<br>63:18 95:7<br>96:23 99:19<br>100:5 111:18<br>112:20 138:24<br>140:4 152:25<br>153:12 159:12,<br>14 170:4, 5<br>186:23 187:9<br>188:19<br><b>higher-earner</b><br>186:21<br><b>highest</b> 5:21<br>137:16 153:16<br>158:20<br><b>high-level</b> 182:4<br><b>highlight</b> 39:2<br><b>highlighted</b><br>142:12<br><b>highly</b> 41:16<br>51:10, 24 76:16,<br>18, 21 77:2, 3, 5,<br>9, 15, 20 78:6, 8,<br>21 141:7, 10, 19<br>142:20 143:1, 5,<br>12, 15, 16 177:20<br><b>highly-ranked</b><br>167:20<br><b>hinted</b> 169:24<br><b>historical</b> 37:23<br>38:2 165:21, 24<br>166:10 197:15 |
|---|---|--|--|--|

**historically** 58:1  
125:18 134:24  
**history** 27:11  
91:12 165:2  
**hit** 96:17 127:3  
**hog** 157:14  
**hold** 102:22  
**holding** 22:11  
**holds** 75:6  
**home** 74:21  
85:7 156:14  
**honour** 4:25  
42:16  
**Honourable**  
6:20, 22, 23 7:4,  
8, 18, 20 8:3  
42:5  
**hope** 42:18  
86:7 97:20  
102:15  
**hopeful** 121:7, 9  
191:20 200:4  
**hopefully** 40:22  
123:1  
**hopes** 191:21  
**hospitality** 127:4  
**host** 56:25  
144:10  
**House** 89:4  
**Hussain** 2:11  
5:1  
**hustlers** 16:16  
**Hyatt** 17:16  
24:7, 8, 17, 25  
25:3, 25 26:2,  
24 34:11 69:19  
71:20 126:6  
127:17, 23  
128:13  
**Hyatt's** 71:3  
126:17  
**hypothetical**  
172:5  
  
< I >  
**i.e** 30:23  
**IAI** 9:21 11:13  
16:9 18:12, 16,  
17, 20, 24 27:2,  
7, 16, 19 28:1, 9,  
12, 13, 17, 21  
29:19 30:12, 17,  
22, 24 31:2  
32:10 34:2, 10,  
14, 22, 24 35:3,

5, 9, 15 36:2, 7,  
8, 15, 25 37:3, 5,  
13, 20, 25 38:18  
71:5 81:24  
93:21 94:1, 20  
120:17 121:15  
123:5 124:24  
125:10, 18  
126:1, 8, 12  
127:12, 16, 17  
128:6, 7 129:3,  
4, 11, 20 130:7,  
18  
**idea** 89:8  
113:10 138:6  
**ideally** 50:8  
**identical** 13:17  
111:6  
**identified** 20:25  
21:6 47:23  
**identify** 196:18  
**identifying**  
196:20  
**ignores** 95:25  
**ignoring** 31:21  
**illustrate** 39:7  
53:25 62:4  
**illustrates**  
180:12  
**image** 99:21, 25  
**imagine** 88:16  
171:25  
**impact** 63:20  
93:24 95:25  
151:1 173:20  
197:20  
**impaired** 23:14  
**impediments**  
188:23  
**impetus** 9:25  
**implement**  
36:19 40:16  
75:9 88:9  
**implementation**  
116:17  
**implemented**  
40:22 41:9  
**implementing**  
130:7  
**implications**  
32:1 113:8, 18  
152:12  
**implicit** 84:10

**importance**  
29:13 85:22  
88:5  
**important** 24:17  
25:20 28:18  
35:11 56:7, 10  
82:23 86:21  
107:19 136:8,  
17, 24 141:25  
142:11 147:15  
150:21 151:13  
153:23 155:8  
177:19  
**impose** 38:12  
153:5  
**imposed** 48:18,  
25 154:6  
**impress** 60:24  
**improvements**  
94:23  
**inability** 47:2  
**inaccurate** 61:7  
62:15 90:6  
99:25  
**inappropriate**  
146:22 153:1  
**incentive** 41:8  
64:15 136:17  
**inception** 45:17  
**incidental** 73:9  
74:5, 20 80:19,  
20 81:9 84:14  
**include** 47:8  
58:4 62:16  
84:9 89:2  
110:15, 23  
112:24 162:22  
163:21 178:8  
180:18, 20, 23  
**included** 19:2  
37:2 47:6 66:6,  
10, 14 71:25  
98:1 109:23, 24  
142:13 145:23,  
24 146:6, 10  
147:16 149:11  
150:6, 9 152:14  
156:6, 7 164:14,  
17 180:1 181:6  
**includes** 44:3  
60:5 110:13  
142:2, 8 163:24  
179:6  
**including** 11:2  
23:3 31:23

47:3 48:16  
62:10 69:7  
95:24 114:8  
126:10 133:2  
149:17 165:14,  
16 181:21  
**inclusion** 69:11  
110:21 117:21  
**inclusions**  
177:14  
**inclusive** 65:18  
**income** 12:7  
15:6, 7 21:2  
46:15 48:20  
49:2, 22 50:3  
63:19 64:11, 20,  
21 68:17, 22  
69:10, 16 70:24  
71:14 96:17, 21,  
22, 23 97:23  
99:3, 7 108:22  
114:9, 13 148:9,  
12, 19 149:1  
150:2 151:1  
156:9, 13, 15, 21  
158:18 159:3, 5,  
7 160:2 171:8  
181:22 187:6  
189:7, 8 197:7  
**incomes** 29:10  
52:8 63:5  
100:4 118:13  
156:19 157:21  
158:24  
**incongruous**  
33:19  
**inconsistency**  
167:2, 11  
**incorporated**  
19:11  
**incorporation**  
115:24 116:14  
117:1  
**incorrect** 36:13  
**incorrectly**  
180:7  
**increase** 26:6,  
17, 20 27:23  
37:14, 16, 24  
38:12, 16 49:7  
54:5 65:11  
73:11 94:3  
95:12 129:21,  
22, 23 130:13,  
17, 19 131:8, 24

132:5, 14  
134:25 158:7  
170:25 184:3  
**increased** 9:18  
34:8 48:25  
59:7, 18, 21  
68:16 69:11  
71:5 74:9, 14  
90:5 158:4  
**increases** 9:24  
30:25 36:18  
73:16 81:24  
82:1 93:22  
94:1, 20, 24  
96:22 101:20  
125:11 129:3  
**increasing**  
46:14 64:25  
80:19 126:2  
156:21  
**increasingly**  
46:9 47:7  
48:17, 19 49:23  
50:2, 4 99:4  
**incredibly**  
164:13  
**incumbent**  
192:8 193:5  
194:2  
**incurred** 73:25  
**independence**  
5:13, 20 22:24  
39:9, 16 87:17,  
25 88:1 135:8,  
11  
**Independent**  
3:7 12:18 18:2  
87:21 103:10  
143:21 199:24  
**Index** 18:18  
125:6, 15, 16  
**indexation**  
27:15 29:19  
33:21  
**indexing** 29:4  
128:6, 7  
**indicated** 30:18  
80:24  
**indication** 61:10  
191:6  
**indirectly** 35:23  
**individual** 64:21  
66:22 116:1  
117:5 177:20

|   |   |   |  |  |
|---|---|---|--|--|
| <b>individualized</b><br>174:3, 22  | <b>inserted</b> 149:13<br>178:4                       | <b>invited</b> 12:3<br>13:8 42:2  | 196:13, 25<br>198:16   | 114:8, 10<br>123:25 126:13   |
| <b>individually</b><br>171:20, 24   | <b>insertion</b> 86:24                                | <b>invites</b> 28:16  | <b>item</b> 119:14   | 131:7 136:5  |
| <b>individuals</b> 13:2<br>56:16, 19<br>148:12 153:16<br>156:17 158:23<br>179:9, 11   | <b>insight</b> 13:2                                   | <b>inviting</b> 58:17   | <b>items</b> 189:6   | 146:13, 15   |
| <b>individual's</b> 16:6  | <b>instance</b> 142:19<br>172:1                       | <b>invocation</b> 33:2  | <b>it'll</b> 134:1   | 149:7 153:19<br>155:14, 20   |
| <b>Indra</b> 3:12   | <b>instill</b> 23:22                                  | <b>involved</b> 44:12,<br>15 193:25   | < J >  | 156:13 158:25  |
| <b>indulgence</b><br>70:22  | <b>institution</b> 23:18                              | <b>involves</b> 65:3  | <b>J-1</b> 1:2   | 163:25 168:4,<br>16 170:11   |
| <b>Industrial</b> 24:11<br>125:2, 5, 6, 15  | <b>institutions</b><br>23:23                          | <b>involving</b> 147:11   | <b>JAC</b> 43:23<br>77:1, 13 78:2  | 182:7, 12, 20<br>201:4   |
| <b>inflated</b> 127:24  | <b>instructing</b><br>133:25                          | <b>IPP</b> 117:5  | <b>Jacques</b> 3:7   | <b>judging</b> 74:15   |
| <b>inflates</b> 61:23<br>66:11  | <b>instructions</b><br>8:18                           | <b>IPPs</b> 151:21  | <b>JACs</b> 43:19  | <b>judgment</b> 124:5<br>155:19  |
| <b>inflation</b> 29:22<br>71:15 73:12<br>74:9 75:1, 3, 5,<br>16 95:6, 7<br>122:17   | <b>instrument</b><br>90:21                            | <b>irrespective</b><br>13:18  | <b>jarringly</b> 33:19   | <b>JUDICIAL</b> 1:7<br>2:14 4:3 5:4,<br>13 6:16 7:17,<br>23 8:7, 11 9:17<br>10:3, 4 11:12<br>12:11 16:10<br>18:21 20:10, 18<br>22:12, 23 27:3,<br>13, 16 28:4, 19,<br>20 33:23 35:14<br>37:3, 8, 15, 24<br>38:16, 21 39:9,<br>13, 15 40:7, 12<br>41:2 42:18, 22<br>43:5, 11, 17, 18,<br>22 44:7, 20, 24<br>45:6, 9, 13, 16,<br>21 46:5, 12<br>47:22, 24 48:1,<br>15, 16 49:15, 16<br>50:5, 10 51:7,<br>21 53:10 54:1<br>55:23 56:6<br>57:17 61:18, 19<br>62:25 63:13<br>65:11, 16, 18<br>73:22 83:22<br>91:23 96:2, 4<br>107:1 108:24<br>110:10 113:16<br>114:7, 16<br>115:12, 21<br>116:22 119:4<br>123:19 125:11<br>126:2 128:7<br>130:17 135:8<br>136:15 138:10<br>141:2 143:21,<br>23 149:3, 16<br>150:5, 6, 10<br>152:7, 11 |
| <b>inflationary</b><br>94:23  | <b>insured</b> 147:20,<br>23                          | <b>irreversible</b> 25:8  | <b>Jean-Simon</b><br>2:12 5:1  |  |
| <b>information</b><br>20:21 21:4, 19,<br>22 22:5 92:11<br>100:17 105:21<br>106:19, 20<br>107:5 117:10,<br>17 118:7, 17, 19<br>138:16 147:14<br>148:16, 20<br>177:15, 18<br>189:4 190:9, 16,<br>20, 25 192:8, 11,<br>22 193:22<br>194:13 195:16<br>196:1, 15 197:9<br>198:10 | <b>intended</b> 59:25                                 | <b>Island</b> 7:19  | <b>Jenkins</b> 7:18, 21  |  |
| <b>informed</b> 69:6  | <b>intends</b> 81:16                                  | <b>isolated</b> 200:23  | <b>job</b> 177:16  |  |
| <b>inherent</b> 39:3  | <b>intention</b> 75:17<br>88:21 89:16<br>184:21 185:7 | <b>isolates</b> 197:9   | <b>jobs</b> 172:2<br>182:1   |  |
| <b>initial</b> 23:25<br>82:6 85:5 93:4  | <b>interest</b> 10:5<br>41:21 47:10<br>49:4 189:23    | <b>isolating</b> 147:12   | <b>join</b> 5:11   |  |
| <b>initially</b> 38:5   | <b>interested</b> 50:9<br>120:12 194:15               | <b>issue</b> 11:8<br>12:6 13:25<br>14:9, 10 18:12<br>20:7 27:1, 3<br>43:3 67:25<br>77:18 81:12<br>85:22, 25 89:15<br>93:24 107:1<br>109:2, 6 113:15<br>120:4, 8, 10<br>132:20 135:8,<br>10, 15, 17<br>137:15, 16<br>148:14, 16<br>158:11 162:11<br>164:19 165:7<br>167:9 168:22<br>193:2, 24<br>195:13 196:17<br>197:22 | <b>jointly</b> 33:19   |  |
| <b>input</b> 43:13  | <b>interesting</b><br>76:14 117:6                     | <b>issued</b> 38:4, 8<br>86:2   | <b>joint</b> 41:15<br>146:11 173:5<br>190:10 196:12,<br>24   |  |
| <b>inquire</b> 12:10<br>38:21 86:18<br>199:22, 24   | <b>interestingly</b><br>71:20 180:22                  | <b>issues</b> 9:13<br>11:6 13:7 15:1,<br>14 18:4 19:16<br>22:19 44:24<br>45:1, 5, 20 49:5<br>54:2 80:17, 23<br>81:19 87:2<br>93:18 101:19<br>107:17, 18<br>108:8, 11 145:1<br>150:13 177:13<br>183:24 190:24<br>192:1 193:18,<br>24 195:9   | <b>JUDGES</b> 1:1<br>2:11 5:3 6:15,<br>18 8:23 9:21<br>12:12 19:2<br>20:7 21:6, 15,<br>24 22:1, 3 29:4,<br>9 31:25 32:21<br>33:10 35:18<br>42:25 43:21<br>47:12 48:9, 18<br>49:1, 18 50:14,<br>16, 17, 19, 23<br>57:7 60:9, 13<br>73:17 74:1, 4, 5,<br>10, 19 80:21<br>81:11 83:22<br>84:20 85:10, 17,<br>25 86:11, 23<br>87:9, 19 88:2<br>92:22 95:9, 17<br>101:21 108:22,<br>25 109:10 |  |
| <b>inquiry</b> 6:8<br>11:3 12:18, 22<br>14:1 24:13<br>31:19 56:4  | <b>Internet</b> 74:21                                 |   |  |  |
|   | <b>interpreters</b> 76:5                              |   |  |  |
|   | <b>interrupt</b> 69:20<br>72:13                       |   |  |  |
|   | <b>interrupting</b><br>132:23                         |   |  |  |
|   | <b>interruptions</b><br>75:22                         |   |  |  |
|   | <b>intervene</b> 201:9                                |   |  |  |
|   | <b>intimately</b> 44:12                               |   |  |  |
|   | <b>introduce</b> 4:10,<br>21 6:14                     |   |  |  |
|   | <b>introduced</b> 42:6                                |   |  |  |
|   | <b>introduction</b><br>27:14 37:16                    |   |  |  |
|   | <b>inverse</b> 127:8                                  |   |  |  |
|   | <b>invested</b> 190:1                                 |   |  |  |
|   | <b>invitation</b> 6:13                                |   |  |  |
|   | <b>invite</b> 11:21<br>19:3 61:3<br>195:11            |   |  |  |

154:12 155:17  
156:12, 14, 18,  
20 162:13, 23  
163:4, 16 164:2,  
9, 12 166:4  
168:13 170:25  
178:7, 10  
179:17, 21  
180:20, 25  
181:12 182:3, 18  
**judicial-based**  
181:23  
**judiciaries**  
105:11, 23  
106:18 181:7  
**Judiciary** 2:15  
4:19 5:6, 20, 22  
11:13, 18 13:20  
15:13 17:5, 14  
20:1, 8 21:8  
22:10, 25 23:6,  
16 28:16, 24  
29:17 30:2  
32:12, 19 33:20,  
25 36:4, 13, 16  
39:21 40:1, 4  
41:7 42:2 43:2  
52:9 54:6  
58:18 79:2  
87:18, 25 92:18  
99:24 102:22,  
23, 25 104:13  
105:15, 19  
119:12 123:11,  
24 124:6, 7, 13  
135:10 136:3,  
19 137:5  
138:19 139:11  
140:20 143:22,  
25 149:9 153:6  
158:10 165:3  
166:9, 12  
169:24 177:13,  
14 179:15  
183:15 184:11,  
14 194:14 199:8  
**judiciary's** 12:1,  
14 15:9 24:6  
26:17 53:14  
57:14, 20 63:3  
100:15 164:25  
170:20 172:17  
178:3 180:3, 4  
**Juge** 93:15  
**juggle** 70:5

**jump** 23:7  
195:11  
**jumped** 174:9,  
12  
**junior** 99:17  
**jurisdiction**  
32:4 49:14  
81:14, 15 85:21  
86:15, 17 88:7  
89:13 185:1  
**jurisdictional**  
88:6 89:18  
**jurisdictions**  
20:8, 11, 19, 25  
21:7, 21 22:15  
53:22, 25  
**jurists** 16:17  
**Justice** 2:13  
3:1, 7 6:22  
7:21, 22, 24 8:4,  
5 11:22 23:18  
32:20 42:7, 11,  
12, 14 44:10, 15,  
23 47:14 48:7  
52:19, 22 53:11  
73:4 76:12, 24  
77:23 83:12  
84:7, 12 86:5  
91:14 92:7  
107:22 123:15,  
25 143:11  
200:8, 21 201:11  
**justices** 8:13  
45:3, 4, 7 75:12,  
13  
**justification**  
63:2  
**justifies** 151:15  
**justify** 19:22  
128:2  
  
< K >  
**kangaroo** 79:13  
**keeping** 91:8  
**Keeps** 126:20  
**key** 9:13, 16, 23  
12:2 22:5  
23:18 28:2  
45:8 63:12  
108:11 111:16  
172:16  
**keys** 108:6  
**kids** 99:13

**kind** 21:10  
99:23 104:22  
176:24  
**Kingdom** 22:13  
**Kirk** 2:23  
**knows** 9:15  
63:8  
**Kristine** 7:4  
  
< L >  
**la** 91:19  
**label** 90:24  
**labeled** 144:9  
**labour** 35:8  
93:25  
**lack** 10:5 47:10,  
12, 25 49:3  
77:17 158:18, 19  
**lacks** 93:23  
**lacuna** 185:21  
186:17  
**Lafreniere** 92:7  
**landmark** 6:1  
**language** 33:3  
84:6 162:8  
**large** 15:8 34:7  
35:25 46:11  
51:23 60:24  
64:25 101:11  
116:16 117:24  
120:10 138:1  
158:22 165:22  
**larger** 6:11  
47:4 52:6  
101:6 113:1  
142:10  
**largest** 100:9  
158:23  
**largish** 117:25  
**late** 183:12  
**lately** 85:6  
**latest** 79:16  
**LAVOIE** 69:20  
72:12 161:8  
200:17  
**Law** 43:9, 11  
147:21 164:1  
182:7, 19  
190:22 191:3  
**lawyer** 64:13,  
16, 17, 22 96:7  
99:5, 23 114:11  
115:21 144:14,  
15 151:4, 5  
152:10 156:3

159:13 163:3, 7  
186:2 189:1  
197:10  
**lawyers** 12:4, 6,  
8 15:6 43:21  
44:16 47:17  
48:8, 20 49:6,  
20 52:8 53:17  
56:21 58:9  
63:6, 9, 18 64:2,  
8, 12 65:1, 20  
66:24 67:9  
71:21 72:8  
95:20, 22 96:11,  
13 100:3, 12  
108:23 115:9  
116:14 117:25  
118:20 138:5  
147:7, 13, 20, 23  
148:1, 3, 6, 9, 18  
149:2, 6 150:23  
153:7, 8 154:10  
155:3 156:15,  
19 158:20, 24  
159:2, 4 161:22  
162:9 185:24  
194:24 197:3  
**lawyer's** 156:5  
159:7  
**lead** 30:12  
**leaders** 46:4  
47:6  
**leadership** 45:11  
**leading** 46:11  
49:14 93:2  
100:12  
**learned** 189:21  
**leave** 37:13  
97:5 144:12  
201:15  
**leaves** 67:10  
188:17 191:8  
**leaving** 186:21  
**Leblanc** 17:17  
64:5, 12 97:24  
114:20 116:6  
187:15 188:4  
**led** 24:21  
83:10, 16  
**left** 15:23 70:9  
132:12 142:24  
**left-most** 30:18  
**legal** 16:14  
46:22 49:13  
69:12 85:9

117:13 137:20  
153:16, 20  
163:24 181:15  
190:17 196:19  
**legally** 90:3  
**legislation**  
40:16 75:9  
93:7 134:17  
185:3  
**legislative** 28:3  
30:3 86:10  
93:8 94:4, 7  
184:22 198:19  
**lend** 55:23  
**les** 91:18  
**letter** 107:23  
115:19  
**level** 39:14  
45:22 56:15  
62:1 123:19  
136:6 149:1  
158:8, 16 192:12  
**levels** 71:22  
97:22 99:3  
148:19 149:5  
154:1 187:6  
**Levitt** 13:16  
18:13, 15, 25  
19:5 27:21, 25  
28:11 66:8  
165:17 168:7, 10  
**license** 19:16  
**lies** 29:19 42:3  
**life** 99:12 156:5  
**lifestyle** 99:8  
**lifetime** 9:6  
156:12  
**light** 37:9 49:1,  
17 121:11  
**likewise** 61:17  
155:25  
**limit** 55:6 94:8  
97:7  
**limitation** 190:19  
**limitations**  
196:11  
**limited** 65:8  
72:7 115:10  
161:21  
**limiting** 95:9  
153:11  
**limits** 147:3  
151:4, 21 153:3  
168:12  
**liner** 41:4 53:19

|  |   |   |   |   |
|--|---|---|---|---|
| <p><b>lines</b> 116:10<br/>129:1<br/><b>link</b> 91:1<br/>124:20 144:13<br/><b>linkage</b> 144:19<br/><b>listed</b> 38:23<br/>42:25 181:22<br/><b>listening</b> 52:15<br/><b>listings</b> 91:10<br/><b>litigant</b> 90:11<br/><b>litigants</b> 88:3<br/><b>litigation</b> 104:20<br/><b>litigation-based</b><br/>104:8<br/><b>litigators</b> 47:9<br/><b>live</b> 200:24<br/><b>livelihoods</b><br/>23:13<br/><b>lives</b> 23:12, 13<br/><b>living</b> 21:3<br/>74:16 126:10, 12<br/><b>local</b> 45:21<br/><b>lockdown</b> 23:25<br/><b>Lockhart</b> 7:15<br/><b>logic</b> 81:7<br/><b>logical</b> 68:19<br/>79:11<br/><b>Lokan</b> 2:18<br/>5:10 72:14<br/>76:2 79:12, 16,<br/>19 80:4, 8 97:9,<br/>15, 19 98:8, 10,<br/>12, 22 102:4, 9,<br/>11 122:16<br/>183:23 184:7,<br/>18, 23<br/><b>long</b> 7:5<br/><b>longer</b> 6:3<br/>46:12 59:15, 23<br/><b>long-lasting</b><br/>41:6<br/><b>longstanding</b><br/>55:13<br/><b>long-standing</b><br/>18:8 85:25<br/><b>looked</b> 103:21<br/>105:10 134:20<br/>161:25 199:9<br/><b>Looking</b> 16:1<br/>62:5 65:8<br/>67:16 77:25<br/>86:2 94:24<br/>114:3 122:11<br/>145:14 156:11,<br/>12 173:24</p> | <p>177:3 180:16<br/>197:15<br/><b>looks</b> 95:13<br/>115:16 131:13<br/>198:25<br/><b>lose</b> 4:16<br/>97:13 154:19<br/><b>loss</b> 36:6, 15,<br/>17, 22 37:12<br/>48:24<br/><b>losses</b> 23:15<br/><b>lost</b> 23:13, 14<br/>36:17 139:23<br/>172:7<br/><b>lot</b> 72:11 78:15<br/>83:9 95:4<br/>146:16 178:25<br/><b>low</b> 15:7 41:17<br/>68:16 69:10, 16,<br/>17 70:24 71:14<br/>130:14<br/><b>low-earning</b><br/>34:7 35:7<br/><b>lower</b> 19:1<br/>36:8 37:5<br/>38:12 64:17, 18<br/>97:5 99:3, 24<br/>127:2, 8, 24<br/>128:11 157:10,<br/>21 158:18, 24<br/>159:12, 14<br/>160:2 172:4<br/>187:22<br/><b>low-income</b><br/>34:14 68:15<br/><b>lucrative</b> 156:4<br/><b>Lukasz</b> 7:8<br/><b>lunch</b> 76:1, 3<br/>79:9, 15, 23<br/>97:11, 16, 17<br/>98:4<br/><br/>&lt; M &gt;<br/><b>Madam</b> 2:2 4:2,<br/>7, 9, 12, 24 8:12<br/>14:22 42:12<br/>52:18, 25 53:5<br/>69:23 70:2, 7,<br/>12, 17 72:18, 24<br/>75:19, 23 76:10,<br/>12 77:14 78:23<br/>79:14, 19, 24<br/>80:3, 8 97:9, 18<br/>98:7, 14 102:4,<br/>10, 14, 16, 18</p> | <p>107:14 119:16<br/>120:9, 14<br/>132:22 133:2, 7,<br/>11 144:21<br/>145:3, 10 160:6<br/>161:6, 9, 12<br/>173:7, 23<br/>174:25 175:3<br/>176:13, 15<br/>177:7 182:24<br/>183:7, 8, 11<br/>185:13 192:24<br/>194:20 195:3,<br/>10 196:4, 6, 7<br/>198:6, 17, 22<br/>199:6, 7 200:1,<br/>2, 18 201:5, 13<br/><b>made</b> 37:10<br/>50:23 53:9<br/>61:16, 17 68:1<br/>74:25 89:23<br/>96:8 103:4, 6<br/>104:2 105:6<br/>117:4, 14, 16<br/>125:24 131:18<br/>141:5 149:17<br/>158:7 181:18,<br/>19 189:19, 20<br/>191:11 192:14<br/><b>madly</b> 175:7<br/><b>Maharaj</b> 3:12<br/><b>Mail</b> 92:3, 6<br/>100:16<br/><b>main</b> 11:3 38:3<br/>92:23 119:14<br/>122:13, 22<br/>125:2 128:16<br/>129:17 139:6,<br/>10 140:22<br/>147:17 156:8<br/>164:15 178:4<br/>181:5 182:11<br/>184:9 194:3<br/><b>maintain</b> 68:6<br/>172:23<br/><b>maintaining</b><br/>23:19 65:2 85:7<br/><b>maintains</b><br/>156:20, 24<br/>158:14<br/><b>maintenance</b><br/>29:13<br/><b>major</b> 85:6<br/>100:3 101:6</p> | <p>136:14<br/><b>majority</b> 155:13<br/><b>makeup</b> 153:21<br/><b>make-up</b> 175:15<br/><b>making</b> 8:8<br/>74:6 144:2<br/>151:5 184:20<br/>192:21<br/><b>manage</b> 53:1<br/><b>Management</b><br/>24:10 93:6<br/><b>mandate</b> 8:23<br/>11:2 12:10<br/>94:13<br/><b>manifestly</b> 69:17<br/><b>manner</b> 54:3, 19<br/>103:2, 10 194:12<br/><b>March</b> 23:25<br/>31:17, 22, 24<br/>34:20 36:11<br/>37:11 39:21<br/>42:4 62:12, 13,<br/>18 116:14<br/>140:24 142:9<br/><b>Margaret</b> 2:6<br/>4:6 79:5, 25<br/>183:2 185:15<br/>199:4<br/><b>margin</b> 61:4<br/><b>mark</b> 40:7 61:3<br/>197:24<br/><b>market</b> 16:16<br/>35:8 49:12<br/>93:25 174:18<br/><b>Martel</b> 2:14 8:4<br/>42:6, 14<br/><b>Martial</b> 3:1<br/><b>Martine</b> 2:2 4:4<br/><b>Martineau</b> 1:25<br/>202:3, 17<br/><b>Master</b> 93:10<br/><b>Masters</b> 93:6<br/><b>match</b> 71:5<br/>113:19<br/><b>material</b> 9:11<br/>141:14 190:8,<br/>12 191:25<br/><b>materials</b> 10:9<br/>93:4 96:14<br/>98:1 105:5<br/>141:15, 17<br/><b>math</b> 100:24<br/>141:8<br/><b>mathematical</b><br/>136:12 155:18</p> | <p><b>MATTER</b> 1:1<br/>13:19 23:8<br/>59:17 81:16<br/>84:7 88:22<br/>89:7 166:25<br/>185:3 195:5<br/><b>matters</b> 88:15<br/>107:25 119:1<br/>184:4<br/><b>maturity</b> 6:4<br/><b>maxed</b> 96:5<br/><b>maximalist</b> 67:2<br/><b>maximize</b> 56:18<br/><b>maximum</b> 70:20<br/>98:11 129:21<br/><b>McLennan</b><br/>36:19 38:4, 10,<br/>13 71:13<br/><b>meaning</b> 148:1<br/><b>meaningful</b><br/>21:18<br/><b>means</b> 14:8<br/>31:3, 17 78:14<br/>98:24 105:13,<br/>17 115:11<br/>146:20<br/><b>meant</b> 45:19<br/>51:18 60:23<br/><b>measure</b> 17:12<br/>40:15 54:18<br/>57:17, 22, 24<br/>58:1, 2, 7, 10, 14,<br/>18 59:13 60:20<br/>62:23 63:25<br/>125:13 126:1<br/>166:22, 23<br/>169:11<br/><b>measures</b> 40:20,<br/>21 166:18<br/>167:5 181:1<br/><b>mechanism</b><br/>29:6, 19 33:21<br/>125:10<br/><b>medical</b> 105:19<br/><b>Meehan</b> 3:3<br/><b>meet</b> 169:15<br/><b>meeting</b> 85:8<br/>201:16<br/><b>meets</b> 40:14<br/><b>member</b> 7:6<br/>53:7<br/><b>members</b> 5:15<br/>6:10 8:14, 20<br/>9:10 10:6, 12<br/>13:10 14:22</p> |
|--|---|---|---|---|

|  |  |  |   |   |
|--|--|--|---|---|
| 19:25 23:11<br>24:16 26:11, 25<br>29:10, 24 34:18<br>41:23 42:13<br>53:6 54:21<br>61:2 65:22<br>66:15 72:4<br>93:2 102:25<br><b>men</b> 100:22, 23<br><b>mention</b> 17:16<br>21:25 58:15<br><b>mentioned</b><br>22:20 38:19<br>123:6 158:1<br><b>mentions</b> 119:18<br><b>mere</b> 16:16<br>29:4 153:7<br><b>merit</b> 51:18<br>57:9 138:12<br><b>meritorious</b><br>11:20 40:25<br><b>merits</b> 89:19<br>92:3<br><b>messages</b> 69:21<br><b>Messrs</b> 17:17<br>64:5 114:20<br>116:6 187:15<br><b>methodology</b><br>111:7 112:8, 23<br><b>metropolitan</b><br>47:4 52:7<br>100:9 160:4<br>161:15<br><b>Michael</b> 180:3<br><b>Michèle</b> 6:22<br><b>microphone</b><br>182:23<br><b>microphones</b><br>200:13<br><b>middle</b> 69:24<br>99:18 142:15<br><b>midpoint</b> 57:25<br>165:19, 20, 25<br>166:5 168:25<br>170:8 172:15<br>175:23<br><b>mid-size</b> 101:6<br><b>militates</b> 13:11<br><b>mind</b> 25:20<br>30:6 35:12<br>41:6 64:9<br>68:10 97:12<br>108:16 142:12<br>197:18<br><b>mindful</b> 98:8 | <b>minds</b> 23:10<br>97:20<br><b>mine</b> 111:17<br><b>minimum</b><br>123:18 129:23<br><b>minister</b> 167:20<br>171:21<br><b>Ministers</b> 16:12<br>146:14 171:9<br>172:3<br><b>Minister's</b> 61:9<br><b>minor</b> 138:22<br><b>minute</b> 72:21<br><b>minutes</b> 70:11,<br>20 89:17 95:21<br>97:10, 17 98:11,<br>13 103:17<br>145:4 200:8<br><b>mirrored</b> 153:24<br><b>mislead</b> 67:23<br><b>misrepresents</b><br>61:24, 25<br><b>missing</b> 22:6<br>40:7 72:14<br>98:25 195:7<br><b>mistaken</b> 87:22<br><b>mistaking</b> 91:20<br><b>misunderstandin<br/>g</b> 85:23<br><b>mix</b> 173:17<br><b>modest</b> 73:15<br>101:20<br><b>modify</b> 35:23<br><b>moment</b> 72:17<br>104:1 116:5<br>136:25 141:16<br><b>moments</b><br>104:15 110:6<br>121:15<br><b>Monast</b> 6:22<br><b>money</b> 113:18<br>144:13, 14<br>193:13, 24<br><b>monopoly</b><br>137:21<br><b>month</b> 26:22<br>109:8<br><b>months</b> 121:13<br>191:22 193:3<br>195:25<br><b>Montreal</b> 100:11<br><b>morning</b> 4:2, 7,<br>11, 25 8:8<br>42:12 74:16<br>111:4 114:19 | 120:25 123:7<br>125:9 135:14<br>137:1 139:13<br>140:3 143:10<br>145:2 146:17<br>164:5 166:16<br>172:19 179:25<br>181:7 183:16,<br>23 200:7<br><b>mortality</b> 112:4<br><b>mortgage</b> 99:13<br><b>motivated</b> 34:1<br><b>move</b> 37:14<br>114:23 146:25<br>160:4 164:21<br>172:2 173:16<br><b>moved</b> 132:13<br>174:7<br><b>movement</b><br>135:25<br><b>moving</b> 78:25<br>128:22 131:15<br>169:13, 17<br><b>Mtre</b> 2:2<br><b>Mulattos</b> 91:9<br><b>multiple</b> 48:7<br>152:22<br><b>Musallam</b> 2:24<br>9:1 107:12<br><b>muscular</b> 18:1<br><b>MUSIC</b> 15:18<br>17:8<br><b>mute</b> 160:10<br><br>< N ><br><b>names</b> 5:16<br><b>narrative</b> 48:15<br>153:13 158:17<br><b>narrow</b> 106:16<br><b>narrowing</b><br>50:15 106:11<br><b>national</b> 45:21<br>161:25<br><b>naturally</b> 144:23<br><b>nature</b> 17:21<br>39:11 40:8<br>55:23 56:6<br>177:16, 20<br><b>near</b> 24:21 35:3<br><b>nearly</b> 55:5<br>71:23<br><b>necessarily</b><br>90:3 157:24<br>175:19 179:6<br>188:13 | <b>necessary</b><br>68:10 72:15<br>113:9 184:22,<br>24 185:7<br><b>needed</b> 17:5<br>64:18<br><b>needs</b> 12:15<br>124:19, 21<br>170:24<br><b>Neesons</b> 1:18<br><b>negative</b> 34:24<br>35:3, 5 53:13<br>94:15 95:12<br><b>Negroes</b> 91:9<br><b>neither</b> 46:18<br>64:23<br><b>neophyte</b> 76:15<br><b>net</b> 27:23 61:8<br>114:9, 13<br><b>Nevertheless</b><br>54:8 158:10<br><b>New</b> 6:20 16:3<br>22:12 38:11<br>49:22 83:5<br>128:21 145:16<br>157:4 166:18<br>168:18 171:5<br>172:2 181:10<br>182:16<br><b>Newell</b> 17:19<br>104:15 109:21<br>110:6 111:8, 13,<br>22 114:20, 25<br>115:2, 6 119:22,<br>24 120:6<br>150:19 151:24<br><b>Newell's</b> 109:17<br>111:11 112:23<br>113:5 150:8<br>179:22<br><b>newly</b> 34:22<br><b>NGOs</b> 138:3<br><b>nicely</b> 180:13<br><b>nightmare</b> 98:17<br><b>nimbly</b> 23:17<br><b>nominees</b> 6:7<br><b>nonsalaried</b><br>21:22<br><b>normal</b> 25:16<br>129:11 134:5, 6<br><b>normalizes</b> 94:1<br><b>normally</b> 78:25<br><b>north</b> 100:6<br><b>northern</b> 199:19 | <b>note</b> 21:8<br>34:18 35:21<br>50:11 52:5<br>88:23 115:6<br>145:22 151:24<br>154:8, 14, 24<br>155:2 157:12<br>162:12 169:22<br>177:13 178:1,<br>13 179:24<br><b>noted</b> 37:15<br>72:4 107:22<br>115:18 145:18<br>147:6 159:17<br>181:17<br><b>notes</b> 69:11<br>202:12<br><b>notice</b> 86:6, 8<br>138:12 173:13<br><b>noticed</b> 173:24<br><b>notion</b> 153:14,<br>18 158:19 170:8<br><b>notional</b> 167:8<br><b>not-<br/>recommended</b><br>51:12<br><b>notwithstanding</b><br>67:20<br><b>November</b> 26:5,<br>8<br><b>number</b> 17:13<br>40:25 46:11<br>52:2 64:2<br>71:16 74:1<br>95:23 101:6, 12<br>105:25 110:3<br>112:19, 20<br>113:5 115:7<br>116:7 132:10<br>142:10 145:19<br>148:25 149:2<br>152:3, 4 158:22<br>167:21 172:2<br>179:9, 22<br>183:23 190:16<br>191:7, 22<br>192:15 195:24<br>198:14<br><b>numbers</b> 42:4<br>64:25 117:22<br>118:4 122:4<br>123:1 147:2, 15<br>149:25 150:4,<br>16 175:6 176:6 |
|--|--|--|---|---|



|  |   |   |   |   |
|--|---|---|---|---|
| 180:16 188:8<br>189:3 191:16<br><br>< O ><br><b>objection</b> 57:19<br><b>objections</b> 54:9,<br>11<br><b>objective</b> 9:23<br>56:8 59:12<br>65:10 146:1<br>164:22 169:11<br>190:9<br><b>objectives</b> 39:5<br><b>objectivity</b> 18:7<br>55:14 56:3<br><b>obligation</b> 30:4<br><b>observation</b><br>37:10<br><b>observations</b><br>45:19<br><b>observe</b> 111:15<br><b>observed</b> 26:23<br>44:20 45:24<br>51:14<br><b>observing</b><br>15:24 17:11<br><b>obstacle</b> 26:16,<br>20 53:17<br><b>obstacles</b> 199:1<br><b>obvious</b> 32:1<br>166:1<br><b>occasions</b> 48:8<br><b>occupying</b> 171:9<br><b>occurred</b> 77:3<br>94:3 122:9<br>134:24<br><b>occurs</b> 127:8<br><b>ocean</b> 41:4<br>53:19<br><b>October</b> 140:23,<br>25 142:18<br><b>offer</b> 16:7 95:3<br>152:3 191:10<br><b>offered</b> 17:12<br><b>offers</b> 105:21, 22<br><b>office</b> 51:6<br>82:24 85:1, 7<br>87:11 90:25<br>99:22 184:2<br>199:24<br><b>officers</b> 91:24<br>133:25<br><b>offices</b> 101:1, 3<br><b>offsetting</b> 25:15 | <b>old</b> 156:3<br><b>omits</b> 21:22<br><b>once-in-a-<br/>century</b> 25:12<br><b>ones</b> 92:23<br><b>one's</b> 40:10<br><b>one-time-only</b><br>132:19<br><b>ongoing</b> 156:21<br>184:4<br><b>Ontario</b> 93:5, 8,<br>12 199:16, 19<br><b>onward</b> 134:16<br><b>open</b> 15:9<br><b>open-ended</b><br>84:18<br><b>opening</b> 102:19<br>105:3<br><b>operate</b> 147:8<br><b>operates</b> 192:18<br><b>operating</b><br><b>operating</b><br>147:24 148:4, 9<br>150:23 151:1<br><b>opinion</b> 17:21<br>18:2 55:11 67:5<br><b>opportunity</b><br>8:25 80:10<br>175:1<br><b>opposed</b> 11:14<br>20:1 92:18<br>139:22 197:11<br>199:19<br><b>opposite</b> 33:16<br>137:6<br><b>opted</b> 56:20<br><b>option</b> 83:24<br>193:8<br><b>oral</b> 10:9, 11, 21,<br>22 23:2 42:10<br><b>oranges-to-<br/>apples</b> 152:13<br><b>order</b> 17:14<br>39:25 60:13<br>68:6 89:4<br>105:2 114:14<br>151:10 152:9<br>172:23<br><b>orient</b> 145:11<br><b>original</b> 130:6<br>175:25<br><b>originally</b> 90:24<br>153:8<br><b>Ottawa</b> 100:11<br><b>ought</b> 12:20 | 16:22<br><b>outdated</b> 100:1<br><b>outline</b> 10:20, 22<br><b>outset</b> 42:7<br><b>outside</b> 37:24<br>67:4 140:13<br>142:4 154:21<br>155:1, 4, 23<br>158:23 160:1<br>162:3, 5<br><b>outstanding</b><br>22:24 23:5<br>39:20 40:3<br>43:1 46:3, 7, 21,<br>25 47:2, 17<br>48:4, 10 50:1, 7<br>51:14 56:16, 19<br>63:10 78:5<br>92:24 107:2, 11<br>135:19 136:3, 4,<br>15, 22 137:17,<br>22, 24 138:5<br>143:23 144:5<br>153:15 158:21<br>159:11 163:17<br><b>outweighing</b><br>48:17<br><b>Overall</b> 62:9<br>106:21 125:3<br>131:2 138:22<br>140:25<br><b>overboard</b> 65:15<br><b>overlap</b> 138:21<br><b>overlay</b> 197:16<br><b>overpromise</b><br>195:22<br><b>overstated</b><br>29:14 115:22<br>116:24<br><b>overview</b> 38:3<br><b>owns</b> 91:11<br><br>< P ><br><b>P.M</b> 98:20, 21<br>139:25 140:1<br>161:3, 4 201:16<br><b>pace</b> 126:13, 20<br><b>package</b> 109:1<br><b>paid</b> 22:10<br>33:7, 13 50:16<br>84:17 97:1<br>99:12 153:16<br>158:20 174:2<br><b>pandemic</b> 9:6<br>23:12, 17 24:20, | 22 25:5 34:6<br>122:9 125:16<br>127:4, 15<br>130:23 132:20<br>134:7, 12, 24<br><b>panel</b> 102:2<br><b>paper</b> 89:4<br><b>paragraph</b><br>32:24 34:25<br>36:3, 10 37:10<br>55:2 60:4, 22<br>62:7 67:15, 18<br>68:25 72:5<br>82:7 83:17<br>84:5 85:5 93:5<br>108:14, 18<br>111:14 112:1<br>113:14 114:2<br>115:16 116:8,<br>19 121:20<br>122:3, 13, 22<br>125:1, 21 126:4<br>129:15, 17<br>136:1, 8, 20<br>137:13 140:22<br>146:9 149:12<br>154:16 155:10<br>157:17 161:19<br>171:15 178:4<br>179:20 182:11<br><b>paragraphs</b><br>61:12 164:15<br>167:16 170:20<br>181:5<br><b>parentheses</b><br>62:16<br><b>parity</b> 80:20<br>81:10 85:15<br>166:4<br><b>Parliament</b><br>35:11, 14, 17<br>94:5<br><b>Parliaments</b><br>30:4<br><b>Parliament's</b><br>75:8, 16<br><b>part</b> 5:18 10:5<br>11:25 19:6<br>28:22 33:17<br>41:22 47:9<br>48:1, 6 57:3<br>87:23 91:21<br>92:17, 18 99:1<br>104:16 106:21<br>107:12 109:1, | 24 117:7 126:4<br>147:1 151:13<br>157:18 160:3<br>198:2<br><b>participants</b><br>1:23 202:9<br><b>particular</b> 13:25<br>18:3 48:22<br>52:6 76:9 78:5<br>82:19 103:2<br>104:2 118:12<br>125:1 126:18<br>128:9 134:14<br>151:16<br><b>particularly</b><br>52:9 82:23<br>100:8 107:20<br><b>parties</b> 6:5, 9<br>9:7 14:5 19:11<br>29:25 39:11<br>75:25 81:3<br>103:14 109:7<br>117:16 121:2<br>136:2 147:7<br>148:24 189:25<br>194:3, 15 195:13<br><b>partner</b> 99:22<br>100:4, 19, 25<br><b>partners</b> 99:17,<br>18 100:24<br>138:17, 23<br><b>parts</b> 11:5<br>151:25<br><b>part-time</b> 68:21<br><b>party</b> 4:20 20:2<br>38:6<br><b>passage</b> 29:1<br>75:15 167:13<br>172:19<br><b>passed</b> 122:9<br><b>passive</b> 189:8<br><b>patience</b> 75:21<br><b>pattern</b> 13:7<br><b>pause</b> 72:19<br>129:24<br><b>pay</b> 16:18<br>47:13 49:7<br>56:12 58:4, 5<br>60:8 62:10, 16<br>72:11 73:2<br>82:17 97:4<br>108:23 165:20,<br>24 169:1, 18<br>171:18, 19 |
|--|---|---|---|---|

|   |  |   |   |   |
|---|--|---|---|---|
| 174:16 178:22,<br>23 186:5<br><b>payable</b> 12:11<br>86:20, 25 87:4,<br>5 114:16<br><b>pays</b> 67:2<br>171:23<br><b>PCs</b> 196:15<br><b>peacefully</b> 23:22<br><b>PEI</b> 6:2 7:22<br>32:16, 24 33:2<br>123:7, 12<br>124:19 199:14<br><b>Pennsylvania</b><br>91:7<br><b>pension</b> 61:9,<br>15, 22 65:19<br>66:23 116:1<br>117:5 163:5<br>179:20, 21<br><b>people</b> 68:21<br>70:18 71:25<br>78:13, 16 98:9<br>142:8 144:1<br>151:1 159:18,<br>20 171:18<br>201:15<br><b>perceived</b> 47:12<br>48:17 50:4<br><b>percent</b> 9:18<br>26:7 27:6, 23,<br>24 28:14 30:13<br>31:6 32:2, 6<br>34:4 35:15, 16,<br>17, 19, 22, 24<br>37:17 50:16<br>61:9 65:17, 23<br>66:12, 20 73:5<br>74:3 75:18<br>81:21 82:15, 17<br>84:3 85:12<br>94:6, 12, 25<br>109:17 111:2<br>112:9, 13, 21, 23<br>113:24 114:1<br>115:5, 8 116:23<br>118:21 119:3, 7<br>120:17, 22<br>122:5, 10, 15, 23,<br>25 128:18<br>131:8, 23 132:5,<br>11, 14, 19, 21<br>133:5, 10, 18, 22<br>134:2, 3, 8, 9, 13,<br>14, 19, 23 135:1, | 5 139:21, 22<br>148:17 150:7,<br>10 153:7<br>154:20, 25<br>155:2 162:2, 4<br>163:22 164:12<br>170:24 171:1<br>177:5 179:21,<br>23 180:19, 21,<br>24 195:8<br><b>percentage</b><br>65:24 117:24<br>118:22 139:20<br>140:4 171:2<br>177:4 194:25<br><b>percentages</b><br>133:9<br><b>percentile</b> 15:6<br>58:13 67:14, 17<br>69:15 71:2<br>101:16 149:14<br>150:2 153:10<br>154:5, 7, 8, 9<br>157:4, 5, 8<br>162:15, 17, 25<br><b>percentiles</b><br>67:23 101:14<br><b>perception</b><br>32:21 123:25<br><b>Perfect</b> 52:25<br>98:7 120:14<br>161:9 183:8<br><b>perfectly</b> 134:10<br><b>perform</b> 174:16<br><b>performance</b><br>60:7 169:18<br>174:2, 16<br>176:18 178:22<br><b>performing</b><br>67:16 176:11<br><b>period</b> 27:8, 9,<br>24 31:11, 12, 14,<br>15, 16, 18, 24<br>32:3 37:19<br>44:9 127:22<br>128:2, 9, 19, 21,<br>22 131:15<br>132:21 134:2<br>140:24 142:5, 7,<br>23 143:2 156:3,<br>4 163:14<br>176:20 194:4<br>201:10<br><b>periods</b> 171:19<br><b>permanent</b> 25:7 | <b>permeated</b><br>154:1<br><b>person</b> 141:20<br>142:24<br><b>personal</b> 84:22<br><b>personally</b> 49:10<br><b>persons</b> 33:13<br><b>perspective</b><br>15:9 48:13, 22<br>49:24 105:22<br>106:9, 17<br>118:24 120:24<br>124:21 153:2<br><b>perspectives</b><br>43:5<br><b>persuade</b> 48:12<br><b>Peter</b> 2:4 4:10<br>79:5, 24 183:2<br>185:15<br><b>ph</b> 93:16<br><b>phenomenon</b><br>35:7 53:22<br>63:21<br><b>phrase</b> 137:3<br><b>pick</b> 15:1 86:8<br><b>Pickler</b> 17:17<br>64:5, 12 97:24<br>114:20 116:6<br>187:15 188:5<br><b>picture</b> 26:10<br>41:21 76:22<br>106:21 155:8<br>181:13<br><b>piece</b> 69:15, 18<br><b>pieces</b> 114:24<br><b>Pierre</b> 2:10<br><b>piggyback</b><br>192:25<br><b>piggy-back</b><br>176:16<br><b>place</b> 27:17<br>79:11 87:17<br>171:3 199:14,<br>16 201:14<br><b>placed</b> 12:18<br>21:15<br><b>places</b> 16:15<br>52:12 195:19<br><b>plain</b> 36:25<br><b>plan</b> 33:17<br>66:23 116:1<br>117:5<br><b>platform</b> 1:19<br><b>play</b> 47:20 | 59:24 95:3<br><b>plays</b> 11:24<br><b>pleased</b> 85:14<br><b>plug</b> 83:7<br><b>plus</b> 150:10, 11<br>151:11 165:20,<br>25 169:1 170:8<br>172:15 174:15<br>175:23<br><b>point</b> 11:18<br>30:9 34:21<br>36:2 38:14<br>39:7 56:2<br>57:12 59:11<br>60:17 64:7<br>65:12 67:24<br>68:1, 11 73:20<br>74:25 77:4<br>78:10 84:12<br>96:16 97:16<br>100:14 101:9<br>109:4 110:24<br>120:20 121:6<br>122:7 138:25<br>144:8 145:22<br>154:19 155:7,<br>15 156:16<br>157:23 163:1,<br>19 166:18<br>167:3 168:3<br>169:9, 10<br>170:10 172:12<br>175:10, 11<br>176:7 178:9, 25<br>179:12 180:13<br>183:17 184:16<br>187:17, 23<br>188:6, 17<br>194:22 195:6<br>197:1, 3<br><b>pointed</b> 35:10<br>92:23 93:24<br>131:11 143:14<br>193:17<br><b>pointer</b> 74:18<br><b>points</b> 15:11<br>25:3 26:3<br>54:14 56:4<br>65:24 67:12<br>82:2 89:19<br>138:12 153:1<br>156:1 165:1<br>172:18 175:2<br>176:9 177:12 | 184:18<br><b>policies</b> 33:5<br><b>policy</b> 59:14<br>81:17 88:22<br>89:7, 9 169:13<br>198:1<br><b>pool</b> 45:25<br>46:25 47:8<br>48:5 51:10, 21,<br>23 77:21 78:11<br>142:25 143:9,<br>13 146:15 195:6<br><b>pools</b> 146:13<br><b>Popescul</b> 2:14<br>8:4, 5 11:22<br>42:6, 7, 11, 12,<br>14 52:19, 22<br>73:4 76:12, 24<br>77:23 143:11<br><b>Popescul's</b><br>53:11<br><b>posed</b> 23:16<br>196:21<br><b>posited</b> 35:5<br><b>position</b> 11:9<br>14:7 23:4 24:3<br>25:21 26:19<br>40:11 43:23<br>80:25 81:5<br>84:21 94:10<br>118:20 119:3, 5<br>124:23 137:2, 9<br>143:22 146:4,<br>18 152:19<br>156:18 167:19,<br>22 170:6<br>171:10 183:16<br>186:7, 10<br>188:18 195:19<br>196:10, 24<br>197:8 198:9<br><b>positions</b> 10:4<br>48:2 55:10<br><b>possibilities</b><br>194:7<br><b>possibility</b><br>83:13 89:9<br>116:15 117:8, 9,<br>20 118:10<br>122:17 170:2<br><b>possible</b> 29:7<br>34:23 198:21<br><b>possibly</b> 192:9<br><b>post-hearing</b><br>191:15 |
|---|--|---|---|---|

|  |   |  |   |   |
|--|---|--|---|---|
| <p><b>potential</b> 11:20<br/>44:13 83:4<br/>189:11<br/><b>power</b> 77:9<br/><b>powerful</b> 96:9<br/>97:8 98:3<br/><b>PowerPoints</b><br/>131:5<br/><b>powers</b> 92:14<br/><b>practical</b> 88:5<br/><b>practice</b> 14:13<br/>16:24 41:19<br/>46:1, 23 47:3, 9<br/>48:20 49:20<br/>50:1 51:10, 15,<br/>22 52:8 53:17<br/>55:13 95:20, 23<br/>96:7 111:21<br/>115:10 140:13,<br/>14 153:17<br/><b>practices</b> 14:19<br/>19:15<br/><b>practicing</b> 47:3<br/>65:1 68:21<br/>96:13 147:19, 22<br/><b>practitioners</b><br/>16:14 22:16<br/>46:3, 12 49:14<br/>101:13<br/><b>precedent</b><br/>14:20 66:13<br/>166:25<br/><b>precedents</b><br/>16:24 67:3<br/><b>precipitously</b><br/>156:9<br/><b>precisely</b> 56:14<br/><b>precision</b> 120:11<br/><b>predecessor</b><br/>165:11<br/><b>predetermined</b><br/>29:23<br/><b>predict</b> 122:19<br/><b>prediction</b> 88:8<br/><b>prefer</b> 52:22<br/><b>prefers</b> 52:22<br/><b>preliminary</b><br/>145:22<br/><b>premium</b> 16:18<br/><b>prepared</b> 45:18<br/>52:15 56:12<br/>116:9 187:3<br/><b>preparing</b> 52:1<br/><b>preponderance</b><br/>140:9</p> | <p><b>present</b> 33:14<br/>72:16 88:21<br/><b>presentation</b><br/>4:21 10:11<br/>42:18 150:14<br/>152:17<br/><b>presented</b><br/>16:25 20:9 96:3<br/><b>preserve</b> 30:1<br/>39:25 40:2<br/><b>President</b> 6:19<br/>43:8<br/><b>presides</b> 6:12<br/><b>pressing</b> 184:5<br/><b>pressure</b> 34:14,<br/>17 35:9 94:2, 14<br/><b>Presumably</b><br/>143:3, 4 153:9<br/>158:22 172:7<br/>173:16 188:24<br/>189:5<br/><b>pretend</b> 16:7<br/><b>prettier</b> 186:4<br/><b>pretty</b> 174:5, 8,<br/>9, 14<br/><b>prevailing</b> 11:8<br/>12:19 22:22<br/>23:2 24:2<br/>25:23 26:15<br/>107:1 119:15<br/>120:16 124:9<br/><b>prevalence</b><br/>198:5<br/><b>prevent</b> 95:12<br/><b>previous</b> 6:8<br/>14:1 59:10<br/>116:12 154:22<br/>167:25 168:8<br/>169:9<br/><b>previously</b> 46:5<br/>63:16<br/><b>Price</b> 18:18<br/>85:13<br/><b>primarily</b><br/>106:25 107:5<br/>161:25<br/><b>primary</b> 106:20<br/>164:23<br/><b>primer</b> 124:24<br/><b>Prince</b> 7:19<br/><b>principal</b> 6:5, 8<br/>103:14<br/><b>principle</b> 11:5<br/>13:6, 13, 18, 20<br/>14:14, 21, 24</p> | <p>55:13 63:9<br/>66:1 93:23<br/><b>principled</b> 56:8<br/>95:14<br/><b>principles</b> 8:24<br/><b>printer</b> 85:12<br/><b>prior</b> 12:16<br/>43:7 174:6<br/><b>privacy</b> 190:24<br/>193:18<br/><b>private</b> 16:14<br/>22:4 41:19, 22<br/>46:1, 3 47:3, 7,<br/>9 48:20 49:20<br/>50:1 51:10, 15,<br/>22 52:8 53:17<br/>54:7 56:14, 17<br/>58:10 64:1<br/>72:7 95:20, 23<br/>96:7 101:12<br/>106:14 108:23<br/>113:19 115:10<br/>139:10, 20<br/>140:5, 10, 13, 19<br/>146:25 148:6,<br/>24 149:1, 6<br/>150:1 161:22<br/>162:2, 5 163:2,<br/>11, 17<br/><b>privately</b> 66:24<br/><b>privilege</b> 43:4<br/><b>probe</b> 185:16<br/><b>problem</b> 11:20,<br/>23 31:9 40:19<br/>41:12 45:15<br/>76:5 186:17<br/><b>problematic</b><br/>152:20 157:1<br/>177:17, 24<br/><b>problems</b> 22:15<br/>54:1 135:11<br/><b>proceed</b> 79:6<br/><b>proceedings</b><br/>8:16<br/><b>process</b> 5:19<br/>6:5, 11 9:3<br/>18:6 19:7 68:8<br/>87:16 89:3<br/>104:1, 6 172:25<br/>185:3<br/><b>productivity</b><br/>29:22 94:23<br/><b>profession</b> 46:5<br/>53:15 69:12<br/>86:6, 8 117:12,</p> | <p>13 137:8, 21<br/>138:1 140:16<br/>153:21, 24<br/>154:2 192:18<br/>197:25<br/><b>professional</b><br/>16:19 63:19<br/>64:3, 6, 15, 20<br/>65:1, 3, 6 66:22<br/>84:25 95:25<br/>96:8, 9, 24<br/>98:23 99:2, 10,<br/>16 101:9, 12<br/>103:10 113:10<br/>115:25 116:17<br/>117:1, 12, 21<br/>118:1, 5 147:5,<br/>8, 12, 25 148:4,<br/>10, 18 150:24<br/>151:2, 18 184:8<br/>185:16, 21<br/>186:5, 13 187:6,<br/>13, 24 188:25<br/>189:1, 3, 6, 7, 10<br/>190:17 191:4<br/>194:10, 25<br/>195:8 196:19<br/>197:4, 21 198:4<br/><b>professionals</b><br/>182:5 197:4<br/><b>professions</b><br/>181:3, 6, 24<br/><b>Professor</b> 17:16<br/>24:7, 8, 17, 24<br/>25:3, 25 26:2,<br/>24 34:11 69:19<br/>71:3, 20 126:6,<br/>17 127:17, 23<br/>128:13<br/><b>profile</b> 92:5<br/><b>profitable</b> 101:4<br/><b>profs</b> 163:25<br/><b>program</b> 82:7<br/><b>progression</b><br/>130:25<br/><b>projected</b> 26:6<br/>30:17, 22, 23<br/>32:6 36:14, 24<br/>37:4 121:22<br/>131:6 178:11<br/><b>projecting</b> 132:2<br/><b>projection</b> 26:4,<br/>5 178:14, 16, 17<br/><b>projections</b><br/>36:8 37:6</p> | <p>121:12 129:8,<br/>10 130:4 179:7<br/><b>promote</b> 14:18<br/><b>promoted</b> 172:3<br/><b>promoting</b> 5:19<br/><b>promotions</b><br/>175:16<br/><b>pronounce</b> 88:4<br/><b>pronounced</b><br/>49:6<br/><br/><b>pronouncements</b><br/>20:5<br/><b>proper</b> 37:23<br/>75:14 131:1<br/><b>properly</b> 25:13<br/>36:22<br/><b>proportion</b> 34:8<br/>41:15 51:9, 12<br/>159:25<br/><b>proposal</b> 11:11,<br/>13 27:5 28:17<br/>31:20 32:10<br/>34:1 37:20, 22<br/>83:17, 19 89:2<br/>120:17 132:19,<br/>21 133:17<br/>164:25 169:3<br/>177:24<br/><b>propose</b> 9:8, 12<br/>10:20 37:16<br/>45:14 79:15<br/>94:12 182:9<br/><b>proposed</b> 9:24,<br/>25 12:1 19:22<br/>26:17, 20 27:2,<br/>22 28:9 32:10<br/>34:22 35:22<br/>37:14 38:13<br/>40:9 45:11<br/>55:18 67:6<br/>71:9, 12 73:16<br/>81:24, 25 108:4<br/>130:19 131:7,<br/>24 132:18<br/>149:9 153:5<br/>161:15 166:13<br/>171:6<br/><b>proposes</b> 95:15<br/>166:9<br/><b>proposing</b><br/>28:14 30:7<br/>31:4 181:10<br/>201:4</p> |
|--|---|--|---|---|

|   |   |   |  |  |
|---|---|---|--|--|
| <p><b>proposition</b><br/>188:14</p> <p><b>propositions</b><br/>188:3, 10</p> <p><b>prospect</b><br/>196:13, 25</p> <p><b>prospective</b><br/>105:6</p> <p><b>protect</b> 94:16</p> <p><b>protection</b><br/>18:21 95:2, 11</p> <p><b>Prothonotaries</b><br/>2:19 5:11<br/>80:11, 16 81:1,<br/>11, 20, 23 82:6,<br/>9, 10, 22 83:6,<br/>21 84:8, 20<br/>85:10, 17 86:1<br/>87:15, 22 88:25<br/>89:12, 14, 24, 25<br/>91:2, 7, 16<br/>92:16 93:18<br/>95:9 100:8<br/>101:22 102:3, 6<br/>107:18, 21<br/>108:2 183:22,<br/>24 184:11</p> <p><b>Prothonotariesiesie</b><br/><b>s</b> 184:12</p> <p><b>ProthonotariesPr</b><br/><b>othonotaries</b><br/>108:1</p> <p><b>Prothonotary</b><br/>80:13, 22 82:25<br/>84:4 85:11, 13,<br/>24 86:12, 14<br/>88:18 89:21<br/>90:12, 18, 24<br/>92:8 93:15<br/>185:4</p> <p><b>Prothonotary's</b><br/>82:16 83:24, 25</p> <p><b>protonotaires</b><br/>91:18</p> <p><b>protonotaries</b><br/>76:2</p> <p><b>proud</b> 102:25</p> <p><b>proverbial</b><br/>121:10</p> <p><b>proves</b> 73:20</p> <p><b>provide</b> 27:10<br/>35:17 114:14,<br/>15 147:9<br/>169:19 180:10</p> | <p>190:8, 9 191:19<br/>193:22 197:9</p> <p><b>provided</b> 9:21<br/>18:7 19:24<br/>43:13 51:6<br/>55:15 65:7<br/>72:10 118:23</p> <p><b>provides</b> 9:23<br/>21:19 58:16<br/>106:8</p> <p><b>providing</b><br/>181:11</p> <p><b>province</b> 43:24<br/>44:18 51:8<br/>199:11</p> <p><b>provinces</b> 41:16<br/>50:13 64:3</p> <p><b>Provincial</b><br/>43:10, 14, 21<br/>44:17, 21 48:9<br/>50:12, 14, 16, 21,<br/>24 51:3 163:24<br/>191:5</p> <p><b>provision</b> 84:18</p> <p><b>provisions</b> 29:2</p> <p><b>proxy</b> 59:23<br/>148:5, 13, 21<br/>158:18</p> <p><b>Public</b> 1:17<br/>5:12 8:14<br/>23:23 33:8, 13<br/>47:7 48:25<br/>49:6 54:25<br/>55:8, 19 56:20,<br/>24 93:10 107:6<br/>136:17 138:16<br/>143:25 163:19,<br/>25 164:7, 14, 17<br/>168:6 170:13<br/>181:15 202:5</p> <p><b>Puisne</b> 131:20</p> <p><b>pull</b> 80:13<br/>110:4 131:4<br/>149:21 154:16<br/>155:10 167:16</p> <p><b>pulled</b> 130:2</p> <p><b>purpose</b> 175:21</p> <p><b>purposes</b> 48:3</p> <p><b>purse</b> 33:8, 13</p> <p><b>push</b> 34:9<br/>111:18 170:3</p> <p><b>pushing</b> 131:14<br/>152:24</p> <p><b>put</b> 19:17 61:3<br/>64:1, 4 77:25</p> | <p>86:5 97:20<br/>99:13 104:10<br/>105:8, 20<br/>106:19 114:24<br/>123:11 128:25<br/>131:9 134:6<br/>141:2 149:3<br/>157:5 160:9, 11<br/>163:10 166:3<br/>186:8 188:7, 10<br/>193:19 194:8</p> <p><b>puts</b> 101:15</p> <p><b>putting</b> 58:19<br/>81:4 150:14<br/>152:22 182:20</p> <p>&lt; Q &gt;</p> <p><b>Q.C</b> 3:3</p> <p><b>Quadrennial</b><br/>5:17 6:5 13:21<br/>27:24 31:18<br/>36:9 53:8 55:5,<br/>12 69:5 87:16<br/>118:15 124:18<br/>125:24 126:18<br/>128:2, 19, 20, 21<br/>130:20 131:15,<br/>16, 23 132:8, 12,<br/>16 149:18<br/>154:24 162:6<br/>163:14 165:10,<br/>16 171:11</p> <p><b>qualifications</b><br/>43:20</p> <p><b>qualified</b> 141:19<br/>143:1 162:10</p> <p><b>quality</b> 5:21<br/>39:25 46:19<br/>51:21 77:19<br/>78:6</p> <p><b>quandary</b> 191:8</p> <p><b>quarter</b> 74:20<br/>96:12</p> <p><b>Quebec</b> 6:23,<br/>25 7:9</p> <p><b>Queen's</b> 6:21<br/>7:5 8:5 42:15<br/>43:7, 16 44:2,<br/>10, 22 47:15<br/>50:9 51:2</p> <p><b>question</b> 14:23<br/>27:8 37:7<br/>46:21 58:19<br/>61:3 63:6 66:5<br/>67:10, 23 76:14,</p> | <p>25 78:20, 24<br/>102:23 110:12<br/>115:2 133:15<br/>139:2 185:20<br/>190:15 199:5, 7<br/>200:25 201:10</p> <p><b>questionable</b><br/>20:20</p> <p><b>questioning</b><br/>46:19 152:4</p> <p><b>questions</b> 42:9<br/>52:16, 21 58:21<br/>76:6, 9 79:1, 4<br/>102:1, 7 152:1<br/>173:9 182:22,<br/>25 183:3<br/>197:17 198:7<br/>200:10</p> <p><b>quick</b> 83:2<br/>141:7</p> <p><b>quickly</b> 40:8, 9<br/>198:13, 20 201:9</p> <p><b>quite</b> 110:7<br/>178:17 179:6<br/>180:13 186:8<br/>193:9</p> <p><b>quote</b> 24:21<br/>25:3 28:1 62:8<br/>68:2</p> <p><b>quoted</b> 18:19<br/>62:19 172:19<br/>181:24</p> <p>&lt; R &gt;</p> <p><b>R.S.C</b> 1:2</p> <p><b>raise</b> 42:23<br/>84:13 158:16<br/>184:16 191:21</p> <p><b>raised</b> 65:12<br/>70:25 80:16<br/>89:15 105:7<br/>106:1 108:1<br/>145:2 158:10<br/>167:9 168:20,<br/>22 177:13<br/>183:24 184:18<br/>192:1 193:18<br/>194:2 198:7</p> <p><b>raising</b> 170:2<br/>195:21</p> <p><b>rampant</b> 92:12</p> <p><b>range</b> 15:7<br/>48:4 57:25<br/>59:3 64:14<br/>65:5 72:2 85:4</p> | <p>96:20 100:5, 20<br/>111:20 122:6<br/>129:5, 24<br/>168:25 172:4<br/>173:12, 15<br/>175:5 177:5<br/>178:19, 22<br/>179:2 182:19</p> <p><b>ranges</b> 118:13</p> <p><b>ranging</b> 16:6</p> <p><b>rate</b> 73:12<br/>85:12 97:5<br/>106:5 125:6</p> <p><b>rates</b> 21:1 36:7<br/>97:25</p> <p><b>ratio</b> 81:21<br/>97:24</p> <p><b>rational</b> 88:11,<br/>14</p> <p><b>rationale</b> 60:2<br/>120:21 130:1, 5,<br/>21</p> <p><b>reach</b> 97:21<br/>99:11 188:24</p> <p><b>reacting</b> 23:17</p> <p><b>read</b> 28:25<br/>33:25 39:21<br/>80:5 108:10<br/>143:6 167:25<br/>171:16</p> <p><b>reader</b> 67:10</p> <p><b>reading</b> 20:15</p> <p><b>reads</b> 13:22<br/>30:21</p> <p><b>ready</b> 174:18</p> <p><b>reaffirmed</b> 59:9</p> <p><b>real</b> 11:24 41:6,<br/>24 101:20<br/>126:11 127:23</p> <p><b>reality</b> 42:3<br/>50:22 55:4<br/>59:16 192:18<br/>194:11</p> <p><b>realize</b> 70:4<br/>174:4 199:14</p> <p><b>realized</b> 40:20</p> <p><b>really</b> 65:14<br/>72:10 73:21<br/>76:19 96:16<br/>97:2 108:6<br/>113:2 139:14<br/>158:14 183:19</p> <p><b>realm</b> 174:14</p> <p><b>re-appoint</b> 6:7</p> |
|---|---|---|--|--|

**reason** 47:10  
58:22, 25 69:2,  
8 88:11 96:18  
100:2 105:20  
113:6 120:2  
130:6 146:12  
173:13 188:1  
**reasonable**  
35:16 71:10  
73:24 74:7  
**reasonably**  
73:24 194:4, 6  
**reasoned** 69:5  
**reasoning** 37:2  
75:6  
**reasons** 68:15  
70:24 87:15  
95:24 129:7  
134:15 144:10  
147:10 166:1  
190:3  
**recall** 18:14  
28:17 38:2  
73:5 118:23  
125:23 139:17  
143:12 156:2  
159:5  
**receipts** 84:18  
**receive** 49:7  
172:3  
**received** 142:4  
**receives** 64:19,  
22 82:14  
**receiving** 105:24  
**RECESSED**  
15:21 70:15  
72:22 98:20  
139:25 161:3  
**recognition**  
124:5 139:9  
**recognize** 92:20  
131:10 175:9  
195:13  
**recognized**  
16:21  
**recommend**  
9:17 76:16, 18,  
21 77:15, 20, 21  
83:11 93:14  
**recommendation**  
10:1 11:17  
12:1 13:16, 17,  
19, 22 18:15  
36:20, 21 38:4,  
6, 9, 16 40:13,  
17 63:3 73:15  
81:8 82:5 84:9  
86:6 88:8, 14,  
19 89:13 118:9  
125:22 134:1  
184:25 194:18  
**recommendation**  
**s** 8:22 40:2  
53:9 144:3  
185:9 186:12  
192:21 194:16  
**recommended**  
40:21 41:9, 16  
51:11, 24 75:2  
77:2, 4, 6, 7, 10  
78:7, 8, 21 86:3  
101:25 141:6, 7,  
10, 20 142:20,  
21 143:2, 5, 6,  
12, 13, 15, 16, 20  
144:10, 17  
**reconciling**  
125:9  
**reconnect** 72:19  
**reconsider** 15:1  
**reconsideration**  
58:17  
**record** 10:14  
55:19 89:14  
144:18 162:20  
**recorded** 64:20,  
23 202:9  
**recorder** 90:20  
**recovering**  
26:12  
**recovery** 26:14  
33:18 95:6  
**recruitment**  
8:11 10:3  
11:19, 23 40:10,  
19 41:12 42:22  
43:3, 5 44:20,  
24 45:21 50:11  
53:13 101:19, 23  
**recruitments**  
45:6  
**reduce** 32:5  
66:23  
**reduced** 48:4  
71:15 75:18  
82:13  
**reduces** 195:5  
**reduction** 33:5,  
20 45:25 46:15  
48:19 49:2, 22  
50:3 123:22  
**reductions**  
25:15 33:9  
**re-emphasize**  
132:18  
**re-enter** 35:8  
**reevaluate** 60:19  
**refer** 10:10, 21  
27:13 60:1  
86:11 90:17  
140:23 157:16  
**reference** 6:3  
31:11, 12, 14, 15,  
18 32:16, 25  
33:2 37:19  
59:11 67:12  
123:7, 9, 12  
124:20 126:17  
168:3 169:10  
170:10 173:4  
**references**  
55:16  
**referred** 27:9  
43:19 88:24  
99:1 111:12  
153:14  
**referring** 33:5  
**refers** 24:19  
30:10 57:5  
90:19  
**reflect** 45:19  
126:9 128:12, 13  
**reflected** 14:4  
130:7 137:11  
143:8 188:20  
**reflection**  
127:18, 21  
137:7 140:12  
169:20  
**reflective** 29:3  
51:13  
**reflects** 29:21  
53:11 56:11, 15  
150:15  
**refrained** 21:9  
**refuse** 14:25  
88:13  
**refused** 18:18  
**regard** 54:13  
74:17 84:10  
87:20 162:12  
165:1 175:12  
176:4 201:3  
**regarded** 87:24  
**regarding** 65:13  
165:5 171:5  
179:25  
**Regehr** 3:11  
**regime** 163:5  
**regions** 51:11  
52:7  
**register** 191:4  
**registers** 91:9  
**regular** 37:19  
**regularly** 44:25  
45:5 47:6  
158:25 159:21  
**regulator** 191:5  
**reimburse** 84:17  
**reimbursed** 75:5  
**reimbursement**  
73:24  
**reinforce** 111:8  
**reinforced**  
127:13  
**reinforces** 87:25  
**reinstated** 77:9  
**reinvent** 12:23  
**reiterate** 55:22  
**reiterated** 28:11  
**reject** 11:15  
28:16 153:18  
**rejected** 27:25  
28:10 161:17  
166:13, 14  
167:7 169:17  
**rejecting** 38:9  
55:18  
**rejection** 76:17  
158:12  
**rejects** 146:19  
158:4  
**relate** 8:9  
**related** 68:8  
74:9 148:8  
172:25 176:22  
199:7  
**relating** 9:22  
15:5 33:23  
**relation** 168:5,  
22 170:13  
**Relations** 24:11  
**relationship**  
29:8 30:2  
60:10, 14  
**relative** 170:14  
**relatively** 34:2  
49:13 129:5  
**relevance** 15:3  
42:24 56:13  
73:19  
**relevant** 12:19  
21:22 26:25  
28:24 29:1  
30:11 48:3  
70:18 75:25  
100:8 126:1  
164:7, 13 199:17  
**reliability** 19:23  
20:17 197:21  
**reliable** 21:18  
59:23 95:23  
101:18 198:24  
**reliance** 54:9  
57:14, 20  
**relied** 33:4 61:5  
**relitigate** 15:11  
166:2  
**relitigated** 19:10  
**relitigating**  
67:25  
**relitigation** 13:7  
15:13, 15 18:4  
19:3 67:7 167:4  
**rely** 56:7  
115:13 186:2  
**relying** 15:15  
25:2  
**remain** 42:8  
63:9 86:13  
122:23 134:3  
168:15  
**remains** 67:11  
133:18  
**remarks** 13:9  
**remembered**  
199:9  
**Rémillard** 15:12  
18:13, 16 19:5  
24:14 28:8  
31:14 37:1, 7  
59:8 65:25  
72:5 83:11, 15  
108:19 117:15  
125:20 127:13  
130:8 135:22  
149:11, 20  
150:16 152:15  
154:15, 17, 23  
155:9, 11  
157:12, 17, 24  
159:24 161:16  
162:7 166:8

|   |   |  |  |   |
|---|---|--|--|---|
| 167:7, 13, 17<br>168:17, 20<br>170:9, 16<br>171:15 175:11<br>176:3 189:22<br>191:14 195:17<br><b>reminder</b> 4:17<br><b>remiss</b> 107:9<br><b>remote</b> 74:15<br><b>remotely</b> 8:13<br><b>removal</b> 128:11<br><b>remove</b> 56:2<br>134:3<br><b>removed</b> 127:9,<br>25<br><b>remunerated</b><br>54:20<br><b>remuneration</b><br>16:15 28:4<br>123:20 124:7<br>125:11<br><b>render</b> 177:23<br><b>renowned</b> 5:16<br>24:9<br><b>repeated</b> 136:20<br><b>repeatedly</b> 15:10<br><b>replace</b> 18:17<br>55:7<br><b>replacement</b><br>28:9 180:10<br><b>replicate</b> 65:21<br>113:15, 19<br>115:12, 21<br>116:21 163:7<br><b>replicated</b> 101:5<br><b>replied</b> 73:14<br><b>replies</b> 183:1<br><b>reply</b> 17:6 36:3<br>57:8, 15 60:22<br>102:6 121:20<br>122:3 123:10<br>171:22 173:5<br>200:22, 24<br>201:2, 6<br><b>report</b> 16:2, 25<br>17:23, 24 21:14,<br>21 22:9 24:12,<br>15 26:1, 9, 24<br>34:12, 16 60:5<br>62:6, 7, 20<br>65:13 66:19<br>67:21 68:1, 2,<br>25 75:10 83:14<br>86:2 96:1, 4<br>97:24 104:10, | 11 106:3<br>109:22 110:2<br>111:11 116:9,<br>13 117:15<br>119:8 125:2, 22<br>126:17 127:1, 2<br>137:14, 19<br>142:5 146:8, 9,<br>10 149:12<br>150:9 152:1<br>157:18 161:19<br>167:14, 17<br>172:18 173:4<br>179:19 183:12<br><b>REPORTED</b><br>1:25 92:6<br><b>reporter</b> 70:9<br>202:4, 18<br><b>reporters</b> 69:21<br>70:1<br><b>REPORTER'S</b><br>202:1<br><b>Reporting</b> 1:18<br>92:3<br><b>reports</b> 24:8<br>55:6, 16 64:11<br>69:6, 13 104:19<br>168:1 192:13<br><b>represent</b> 149:1<br><b>representational</b><br>73:9 75:7, 11<br><b>representations</b><br>192:20<br><b>representative</b><br>4:19 8:3 42:1,<br>17 43:12 80:13<br>134:20<br><b>representatives</b><br>6:14 102:12<br>143:24<br><b>represented</b><br>6:19 7:18<br><b>representing</b><br>5:9, 10<br><b>represents</b><br>29:15<br><b>reproduced</b><br>10:8, 14 20:13<br><b>reputation</b><br>32:19 123:23<br><b>request</b> 73:10<br>93:13<br><b>requested</b> 63:3<br>87:14 147:7 | <b>requests</b> 189:19<br><b>require</b> 168:13<br><b>required</b> 21:17<br>40:21 50:25<br>58:3 82:17<br><b>requirements</b><br>21:9, 11 51:1<br>85:8<br><b>requires</b> 17:1<br>60:19 67:16<br>86:10<br><b>reraise</b> 158:11<br><b>research</b> 68:4<br>164:1 172:21<br><b>reserve</b> 102:7<br><b>resolve</b> 23:21<br><b>respect</b> 4:15<br>8:11 10:22<br>19:13 32:11<br>57:13 85:18<br>93:21 94:10<br>101:8 102:21<br>103:6, 13 105:1,<br>23 106:2<br>117:11 118:19<br>119:1 123:4<br>129:2 137:2<br>141:1 144:4<br>146:18 148:17<br>151:16 152:5<br>154:4 156:24<br>158:1 167:2<br>168:15 176:6<br>183:14, 20, 22<br>184:6, 19<br>185:21 191:15<br>194:17 197:16,<br>20<br><b>respected</b> 135:9<br><b>respectfully</b><br>17:24 46:17<br>55:4 87:10<br>93:13<br><b>respective</b> 6:7<br><b>respond</b> 17:15<br>88:13<br><b>responded</b><br>60:17<br><b>respondent</b><br>90:16<br><b>responding</b><br>25:11<br><b>response</b> 38:8<br>158:13 167:1<br>177:12 | <b>responsibilities</b><br>21:20 46:13<br><b>responsibility</b><br>38:20 43:19<br><b>responsible</b><br>91:8<br><b>responsibly</b><br>17:14<br><b>rest</b> 72:9<br>161:24<br><b>restaurants</b><br>127:4<br><b>result</b> 34:5<br>35:2, 6 36:21<br>40:13 50:6<br>109:15 148:8<br><b>resulting</b> 27:23<br>34:8 142:3<br>152:24<br><b>results</b> 152:23,<br>24<br><b>resume</b> 34:15<br><b>RESUMED</b><br>15:22 70:16<br>72:23 98:21<br>140:1 161:4<br><b>retain</b> 60:9, 14<br>67:24 82:21<br>92:24 99:6, 8<br><b>retained</b> 64:17<br>97:5 126:7<br><b>retire</b> 172:1<br><b>retirement</b> 21:5<br>22:2 66:25<br>82:12 112:4<br>175:17<br><b>retirements</b> 83:1<br><b>retrieve</b> 189:21<br><b>retroactive</b><br>38:14<br><b>retroactively</b><br>35:23<br><b>return</b> 152:16<br><b>revealing</b> 41:21<br><b>reverse</b> 74:24<br>138:22<br><b>reverting</b> 18:24<br><b>review</b> 44:16<br>128:2 180:4<br><b>reviewed</b> 43:25<br>51:5 183:16, 18<br><b>reviewing</b> 27:11<br><b>reviews</b> 26:3<br><b>revisit</b> 18:12 | <b>revisiting</b> 128:6<br><b>reward</b> 56:18<br><b>Richard</b> 3:2<br>7:20, 24 200:8<br><b>right-hand</b> 31:7<br>132:4<br><b>rightly</b> 56:4<br><b>right-most</b> 30:16<br><b>rigorously</b> 66:17<br><b>rise</b> 138:19<br><b>risen</b> 23:16<br>62:11<br><b>risk</b> 176:19<br><b>risks</b> 95:5<br><b>road</b> 156:22<br>191:21, 23<br><b>Robert</b> 7:20<br>69:12<br><b>robust</b> 13:12<br>26:14<br><b>Roger</b> 92:6<br><b>role</b> 22:23 39:8<br>44:11 47:19<br>48:6 55:23<br>56:1, 6 59:25<br>90:20<br><b>room</b> 113:17<br>173:16<br><b>rooms</b> 160:12<br>200:14 201:14<br><b>root</b> 47:23<br><b>rooted</b> 14:20<br>55:13<br><b>roots</b> 18:20<br><b>Rotman</b> 24:10<br><b>rough</b> 165:13<br>168:9, 12<br><b>roughly</b> 97:21<br><b>row</b> 30:22<br>178:14, 15<br><b>RRSP</b> 96:6<br>97:7 113:17<br>115:13<br><b>RSP</b> 151:4<br><b>rules</b> 19:6<br><b>run</b> 104:24<br>186:16<br><b>running</b> 92:15<br><b>Rupar</b> 2:22 5:8<br>9:1 102:13, 14,<br>18 103:22<br>119:16, 20<br>120:10, 15<br>132:22 133:1, 4,<br>9, 12, 14, 16, 20, |
|---|---|--|--|---|

24 134:22  
135:7 140:2  
145:18, 21  
147:6 151:25  
152:8 153:13  
160:14 163:6  
181:2, 9 182:23  
183:10, 11  
185:14, 19  
186:8 187:1, 14  
189:16 190:20  
191:9 192:10  
193:15 195:10  
196:5 198:6, 18,  
22 199:22

< S >

**safeguard** 87:17

**safeguards**  
21:16

**Salaries** 7:23

9:18 11:12  
12:11 20:7, 10,  
18 21:14 27:3,  
16, 20 28:21  
29:4, 9 30:4  
35:14 37:3  
38:17 39:13  
40:7, 13 41:3  
49:16 50:13  
53:10 57:17  
60:9 62:9  
63:13 72:8  
86:19 87:4  
96:2 99:24  
106:4 108:22  
128:7 130:17  
131:7 135:12  
136:5 155:20  
159:1 161:23  
162:9 168:4, 6,  
13 170:11, 13  
171:23 174:2  
179:4 194:18

**Salary** 8:1

11:16 12:1  
18:6, 22 22:2  
26:20 30:25  
36:17, 19, 21  
37:9, 15, 24  
38:9, 16, 22  
40:9 41:8  
49:16 50:17  
52:9 54:5  
56:15 57:25

59:2 60:7, 13  
61:18 62:25  
64:17, 18, 22  
65:11, 16 69:12,  
13 71:1 81:19  
82:1, 18 90:4  
109:9 129:3  
131:24 136:23  
149:16 150:5, 7,  
10 151:11  
154:13 155:17  
156:12, 14, 20,  
23, 25 157:15  
158:8 162:1, 13  
163:4 164:3, 9  
165:23 166:5  
168:25 170:25  
172:3 173:12  
174:15 175:5  
178:7, 8, 10  
180:20 182:18  
**Samar** 2:24  
**Saskatchewan**  
7:21, 25 8:5  
42:15 43:7, 9  
44:3, 4, 7, 11, 22,  
25 47:15 49:11  
50:15  
**Saskatchewan's**  
43:17  
**sat** 43:10  
**satisfactory**  
176:18, 24  
177:4 196:3  
**satisfy** 21:11  
**Sauvé** 66:9  
**save** 66:24  
80:2 98:1  
114:12 151:8, 12  
**saving** 96:3, 6  
98:2  
**savings** 96:10,  
24 97:22 114:14  
**schedule** 70:18  
**scheduled** 84:7  
**scheduling**  
84:11  
**scheme** 28:3,  
19 33:23 81:6  
94:5  
**Schoenholz**  
2:12 5:2  
**School** 24:10  
99:14 120:19

**science** 16:21  
17:2  
**scope** 11:3  
17:12 198:7  
**Scott** 28:22  
**screen** 10:25  
20:15 30:16  
41:20 89:21  
135:24  
**screens** 145:13  
**scrutiny** 48:25  
**secondly** 23:5  
**section** 12:13  
25:24 42:25  
86:16 87:6  
92:21 181:6  
186:23  
**sector** 49:6  
54:7, 25 55:9,  
19 56:14, 17, 24  
58:10 64:1  
72:8 106:15  
107:6 108:23  
113:19 139:10,  
21 140:5, 10, 14,  
19 147:1 148:6,  
25 149:1, 6  
150:1 161:22  
162:2, 5 163:2,  
11, 17, 19, 24  
164:8, 14, 17  
168:6 170:13  
**sectors** 47:7  
**secure** 89:6  
**security** 22:23  
39:8, 15  
**seek** 15:10  
19:21 20:5  
47:16 56:17  
**seeking** 22:15  
44:4 46:10  
49:4, 21 57:3  
81:20  
**seeks** 28:13  
**seemingly** 60:24  
**segment** 34:7  
137:20  
**segments**  
137:25  
**segue** 13:4  
**selected** 111:19  
**selectively**  
61:21

**self-correcting**  
34:12, 20 35:7  
93:25  
**self-defeating**  
25:18  
**self-employed**  
12:3, 5, 8 15:6  
58:9 63:6, 9, 18  
64:11, 13 65:20  
66:24 67:8  
114:11 115:20  
118:20 148:1  
151:3, 5 152:10  
154:9 155:3  
156:2, 5, 15, 19  
159:1, 7 163:3,  
7 185:23 186:2  
194:24  
**self-employment**  
63:5 118:3  
**self-evident**  
14:16  
**selling** 34:21  
**Senate** 89:23  
90:7  
**Senator** 89:23  
**senior** 10:5  
22:16 42:1  
47:8 48:8  
56:12 99:18, 21  
**sense** 5:12  
41:2 65:5  
124:6 131:12  
182:10  
**sentence**  
157:19 158:3  
**separate** 58:20  
96:19  
**separation**  
92:14  
**September**  
45:10  
**series** 113:24  
**serious** 10:2  
90:11  
**seriously** 101:18  
**servant** 91:23  
**serve** 5:7, 14  
20:3 39:6  
136:16  
**served** 13:3  
43:8  
**serves** 7:7, 10,  
25

**service** 22:4  
56:20 163:25  
181:15  
**services** 16:19  
49:13  
**serving** 7:6  
**set** 12:13  
21:11 57:1  
82:5 85:4, 16  
104:13 106:3  
112:16 119:8  
121:19 122:12  
123:8, 9 124:25  
128:1, 13  
129:15, 19  
136:6 147:16  
152:8 153:3, 4,  
7, 10 159:23  
171:22 173:9  
179:4 188:3, 6  
190:23 202:6  
**sets** 53:16  
**setting** 96:19  
138:10  
**settled** 13:7  
15:1 19:16  
166:25  
**severely** 153:3  
**Shannon** 2:23  
5:8 9:1 107:4,  
10, 16 144:22  
145:4, 9 161:10,  
11 173:7, 22  
174:25 175:4  
176:15 177:2, 8  
183:4, 9 187:21  
190:3, 23 193:17  
**share** 32:13, 22  
33:11 42:20  
89:22 124:1  
149:10  
**shared** 48:14  
52:4  
**sharp** 98:18  
**shield** 123:20  
**shift** 172:8  
175:19, 24  
179:8 200:13  
**shock** 24:20  
25:4, 12, 14  
**shocks** 25:7  
**short** 29:1 69:4  
71:8 76:3  
171:18 175:17  
177:19 194:4

|  |  |  |   |   |
|--|--|--|---|---|
| <b>Shorthand</b><br>202:4, 12, 18<br><b>shoulder</b> 32:13<br><b>shouldered</b><br>33:13<br><b>shouldering</b><br>32:22 33:11<br>124:1<br><b>shoulders</b><br>124:13<br><b>show</b> 100:7<br>112:25<br><b>showed</b> 135:1<br><b>showing</b> 11:19<br><b>shown</b> 61:6<br><b>shows</b> 30:16<br>41:12 71:4<br>129:1 138:15<br>163:15 178:7,<br>10, 11<br><b>shrinking</b> 46:25<br>51:20 63:10<br><b>sic</b> 119:17<br>125:10<br><b>side</b> 103:23<br>109:16 132:4<br>142:22 186:6<br>194:9<br><b>sight</b> 154:19<br><b>sign</b> 6:4 200:11<br><b>signal</b> 78:3<br><b>signalled</b> 185:6<br><b>significance</b><br>61:25 186:22<br><b>significant</b><br>36:25 37:1<br>46:15 48:19, 23<br>49:2, 7, 23 50:3<br>52:10 63:4<br>74:18 108:25<br>112:10 122:1,<br>25 135:15<br>140:18 155:4<br>159:25 184:10<br>193:18 195:15<br><b>significantly</b><br>21:2 50:18<br>51:2 152:23<br>153:22 156:16<br>159:8, 12 172:6<br>175:16<br><b>signs</b> 121:7<br><b>similar</b> 52:4<br>93:6 105:24<br>117:4 | <b>simple</b> 58:24<br>67:25 153:25<br>195:4<br><b>simpler</b> 120:3<br><b>simply</b> 15:9<br>21:10 50:9<br>59:15 68:22<br>81:17 102:22<br>146:21 148:11<br>157:7 158:17<br>159:2, 22 163:2<br>178:25 182:17<br>187:23 190:2<br>193:3, 23<br><b>single</b> 16:5<br>30:1 68:18<br>197:10<br><b>sit</b> 162:11<br><b>situation</b> 85:3<br>191:17 197:19<br><b>six-figure</b> 100:5<br><b>size</b> 57:5<br><b>skewed</b> 101:18<br><b>slate</b> 12:23<br><b>slave</b> 90:20<br><b>slavery</b> 90:21<br>91:1<br><b>slaves</b> 91:10<br><b>slide</b> 132:23<br>142:21<br><b>slight</b> 112:3<br>131:17 140:11<br><b>slightly</b> 140:4<br>182:12, 14<br><b>small</b> 5:16<br>49:13 51:10<br>82:23 101:24<br>138:2 153:10<br>169:4, 15 179:8<br>194:25<br><b>smaller</b> 107:21<br>199:16<br><b>smooth</b> 82:21<br><b>snapshot</b> 159:6<br><b>so-called</b> 34:5<br><b>social</b> 20:24<br>28:23 29:15<br><b>societal</b> 181:13<br><b>Societies</b><br>147:21 190:22<br>191:3<br><b>society</b> 23:19<br>43:9 153:23<br><b>Society's</b> 43:11<br><b>sole</b> 106:17 | <b>solely</b> 124:12<br>137:10<br><b>solid</b> 118:11<br><b>solutions</b> 45:15<br><b>solved</b> 197:1<br><b>sont</b> 91:18<br><b>Sorry</b> 69:20<br>72:12 76:4<br>108:14 113:22<br>114:22 121:25<br>125:22 129:15<br>132:22 139:1, 3,<br>23 149:22 200:3<br><b>sort</b> 165:6<br>190:1 192:14,<br>20 195:15<br>199:25<br><b>sought</b> 11:17<br>54:6 101:21<br><b>sound</b> 13:10<br>155:19 162:19<br><b>source</b> 18:20<br>41:23 46:2<br>63:10 134:19,<br>22 140:19<br>199:23<br><b>sources</b> 18:19<br><b>speak</b> 11:16<br>43:3 106:25<br>122:3 144:22,<br>25 145:18<br>148:14 177:8<br>189:17 190:5<br>191:11, 18<br>192:5 201:2<br><b>SPEAKER</b> 5:24<br>7:2, 12 10:18<br>15:19 17:9<br><b>SPEAKERS</b><br>63:23<br><b>speaking</b> 73:1<br>97:21 107:10,<br>13 140:2<br>166:17 171:17<br>173:1 189:24<br><b>speaks</b> 17:21<br>68:11 74:16<br><b>special</b> 85:11<br><b>specialist</b> 17:4,<br>19<br><b>specialists</b><br>17:18 181:19<br><b>specific</b> 52:13<br>108:8 118:2<br>134:11 171:20 | 176:6 180:11<br>183:3 186:11<br><b>specifically</b><br>29:5 33:4<br>100:10 133:22<br>147:13 167:15<br>180:17<br><b>specifics</b> 148:17<br><b>speculate</b> 16:14<br><b>speculation</b><br>117:19<br><b>speculative</b><br>148:11<br><b>speed</b> 83:7<br><b>Spellcheck</b><br>92:19<br><b>spend</b> 85:19<br>89:17 110:5<br><b>spending</b> 33:17<br>97:3<br><b>spent</b> 74:19<br><b>spike</b> 129:6<br><b>spill</b> 53:3<br><b>spilling</b> 128:20<br><b>spite</b> 38:15<br>59:4 75:22<br><b>spoke</b> 183:15<br><b>spoken</b> 52:2<br><b>spouse</b> 112:5<br><b>spring</b> 85:2<br><b>stable</b> 67:12<br><b>stage</b> 99:11<br><b>staggered</b><br>104:19<br><b>stagnant</b> 59:22<br><b>stand</b> 26:16, 19<br>178:21 183:21<br><b>standard</b> 126:11<br><b>stands</b> 176:7<br>190:10<br><b>Staples</b> 85:10<br><b>start</b> 4:12, 20<br>79:13, 22, 25<br>82:3 86:9<br>103:25 108:11<br>120:23 145:6<br>150:13 200:6, 15<br><b>started</b> 77:1<br><b>starting</b> 98:18<br>106:25 108:5<br>109:3 138:25<br>154:18 155:7,<br>15 156:9 187:16 | <b>starts</b> 64:13<br>65:5 116:11<br>128:22 167:18<br><b>state</b> 29:16<br>47:20<br><b>stated</b> 89:15<br>112:16 134:15<br>146:24<br><b>statement</b> 8:8<br>25:1, 2 26:6<br>32:17 42:8<br>45:18 135:25<br>173:2<br><b>statements</b><br>102:20<br><b>States</b> 22:14<br>32:11 36:3<br>67:15 156:25<br><b>statistic</b> 147:20<br>174:23<br><b>statistics</b> 51:6<br>130:3 140:23, 25<br><b>status</b> 80:18<br>81:3 82:4<br>83:13 142:17<br><b>statute</b> 133:19,<br>21<br><b>statutory</b> 12:12<br>22:21 29:6, 18<br>33:21, 23 38:20<br>86:13 94:6<br><b>stay</b> 98:14<br><b>stayed</b> 174:10<br><b>stays</b> 174:13<br><b>steady</b> 130:16<br>139:9 140:7<br><b>stenographically</b><br>202:9<br><b>step</b> 69:6<br>101:24 112:11,<br>12<br><b>Stephanie</b> 7:14<br><b>stimulus</b> 33:17<br><b>stock</b> 24:2<br><b>stone's</b> 104:16<br>111:1<br><b>stop</b> 4:15<br>97:10 98:4<br>145:5 160:10<br><b>stopped</b> 132:1<br><b>stories</b> 52:4<br><b>strain</b> 9:4<br><b>strata</b> 187:9<br><b>stratosphere</b> |
|--|--|--|---|---|



|  |  |   |  |   |
|--|--|---|--|---|
| 128:12<br><b>stratuses</b> 187:5<br><b>strayed</b> 67:4<br><b>streamline</b> 70:9<br><b>strength</b> 94:22<br><b>stressed</b> 92:10<br><b>strict</b> 182:9<br><b>strong</b> 26:13<br>28:12<br><b>struck</b> 92:5<br><b>structural</b> 24:19<br>25:8 128:4<br><b>structure</b> 124:9<br>197:5<br><b>structures</b> 21:3<br><b>subject</b> 13:10,<br>19 23:8 102:1<br>169:6 172:10<br>179:8 182:22<br>185:11<br><b>submission</b><br>9:16 11:4<br>12:14 17:25<br>18:11 30:15<br>34:21 36:11, 23<br>37:11 38:3<br>39:22 42:5<br>52:1 55:2, 3<br>60:18 74:13<br>105:14 118:8<br>121:20 122:22<br>128:17 139:7<br>140:6 143:20<br>163:21 166:25<br>171:23 181:8<br>182:11, 20<br>185:25 196:12,<br>24<br><b>submissions</b><br>9:8, 14 14:5<br>15:2 19:12<br>36:4 42:10<br>53:14 54:5<br>63:1 69:24<br>75:20 79:21, 22<br>80:10, 15 82:2,<br>6 85:5 88:25<br>93:4, 19 98:6<br>99:21 102:2<br>103:17 106:23<br>108:9, 14<br>110:20 121:17<br>122:7, 13<br>125:24 129:17<br>137:25 140:22 | 147:17 156:8<br>164:16, 18<br>165:4 170:20<br>178:5 180:2<br>181:5, 8 183:17,<br>18, 21 184:9<br>185:12 199:10<br><b>submit</b> 16:5, 22<br>17:20, 24 46:17<br>87:10<br><b>submits</b> 24:12<br><b>submitted</b> 24:7<br>201:7<br><b>subsection</b><br>38:23 39:4<br><b>subsequent</b><br>14:11 30:19<br><b>subsidize</b> 84:21<br><b>substance</b> 11:7<br>32:9<br><b>substantially</b><br>22:11<br><b>substantive</b><br>11:6 22:19<br>30:9 80:25<br><b>success</b> 137:7<br>158:19<br><b>succession</b> 83:2<br><b>successive</b><br>13:21 36:9<br>55:11 165:10<br>189:13<br><b>suffered</b> 36:6<br><b>sufficient</b> 94:14,<br>21 114:14<br>163:16<br><b>suggest</b> 39:17<br>107:19 135:10<br>163:15 179:11<br>198:12<br><b>suggested</b><br>73:15 129:25<br>184:23<br><b>suggesting</b><br>36:4 105:13, 17<br>106:7, 13, 14<br>107:19 123:14<br>124:11, 14, 15<br>125:13, 14<br>127:10 128:3, 5,<br>8 138:7 169:23<br><b>suggestion</b><br>52:23 58:17<br>104:3 196:22<br><b>sui</b> 55:22 56:5 | <b>suited</b> 29:11<br>50:8<br><b>suits</b> 201:10<br><b>sums</b> 75:11<br><b>Superior</b> 2:10<br>5:3 6:15, 18, 23,<br>24 7:9 46:6<br>47:11 50:19<br><b>supernumerary</b><br>80:18 81:3, 5<br>82:3, 7, 20 83:3,<br>8, 13, 23 84:1<br>184:2<br><b>supplemental</b><br>138:15<br><b>supplementary</b><br>109:22<br><b>support</b> 9:24<br>19:18 32:15<br>36:12 188:15<br><b>supported</b> 54:6<br>63:1<br><b>supporting</b><br>65:10<br><b>supports</b> 153:12<br><b>supposed</b><br>127:16, 18<br><b>Supreme</b> 6:2<br>32:16 33:3<br><b>Surely</b> 171:2<br><b>surgery</b> 181:19<br><b>surviving</b> 112:5<br><b>sustain</b> 97:3<br><b>switch</b> 103:22<br><b>symmetrical</b><br>94:10<br><b>system</b> 23:18<br>47:24 145:16<br><b>systems</b> 145:16<br><b>Szekely</b> 19:18<br>20:12 21:18<br>53:24<br><b>Szekely's</b> 21:14<br>22:6, 9 62:6, 20<br><br>< T ><br><b>tab</b> 10:23<br>24:16 26:1<br>28:25 41:14<br>59:19 60:23<br>65:9 90:9 91:4,<br>15 100:16<br>108:15, 16, 18<br>112:17 113:13<br>115:1 123:8 | 128:16 131:6<br>135:21 138:13<br>139:4 141:15<br>146:10 149:24<br>163:12 178:6<br>180:2<br><b>table</b> 30:14<br>41:13 65:9<br>73:5 149:13, 18<br>150:18 152:15<br>178:3, 7 180:1<br>199:9<br><b>tabled</b> 26:22<br><b>tables</b> 77:22, 25<br><b>take-away</b> 22:9<br><b>takes</b> 40:15<br>41:5 180:19, 21,<br>24<br><b>talent</b> 68:22<br><b>tales</b> 120:19<br><b>talk</b> 87:3 95:18,<br>20 100:22<br>101:15 103:25<br>111:25 119:23<br>144:24<br><b>talked</b> 118:25<br>119:25 120:6<br>122:16 187:21<br><b>talking</b> 73:8<br>98:23 114:18<br>179:10<br><b>talks</b> 114:1<br>199:10<br><b>tampered</b> 28:6<br><b>target</b> 174:16, 17<br><b>targeted</b> 171:20<br><b>targeting</b> 157:7<br><b>tasked</b> 23:20<br>86:1<br><b>tax</b> 17:18 21:2<br>96:3 97:4, 22,<br>25 98:2 101:10<br>113:8, 15, 18<br>114:9 115:23<br>116:16, 25<br>118:5 147:13<br>150:11, 22<br>151:19, 21, 23<br>152:2, 5, 11<br><b>taxation</b> 148:14,<br>16 184:8<br><b>tax-efficient</b><br>115:11<br><b>taxpayer</b> 197:10,<br>11 | <b>tax-planning</b><br>64:7<br><b>team</b> 79:7<br>107:12 191:18<br><b>teams</b> 103:18<br>190:5<br><b>tech</b> 149:22<br><b>technical</b> 30:9<br>200:19<br><b>technological</b><br>200:4<br><b>technology</b><br>74:15<br><b>teenager</b> 6:4<br><b>telephonically</b><br>1:24<br><b>tells</b> 68:24<br><b>temporary</b> 24:18<br><b>tendered</b> 62:5<br><b>tenure</b> 57:5<br>171:19 175:17<br>177:15, 20<br><b>term</b> 24:21<br>90:18 117:7<br>183:25<br><b>terms</b> 29:8<br>36:17 78:25<br>82:5 93:1<br>145:11 167:11<br>179:4 181:22<br><b>terrible</b> 23:15<br><b>territorial</b> 43:21<br><b>territory</b> 43:24<br><b>test</b> 98:16<br>168:3 170:10,<br>14 200:12<br><b>tests</b> 168:11<br><b>thankful</b> 53:23<br><b>thanking</b> 5:5<br><b>thanks</b> 76:11<br><b>theme</b> 92:15<br><b>theory</b> 117:19<br>186:14<br><b>thin</b> 130:2<br><b>thing</b> 67:18<br>90:7 173:23<br>174:4 178:12<br><b>things</b> 88:23<br>125:8 141:23<br>178:21 200:2<br><b>third</b> 27:18<br>32:5, 7 39:19,<br>23 80:21<br>111:13 145:25 |
|--|--|---|--|---|

|   |   |  |  |   |
|---|---|--|--|---|
| 146:12, 23<br>147:1 163:20<br><b>thirds</b> 73:7<br>151:7<br><b>thirty</b> 139:19<br><b>Thirty-eight</b><br>162:2<br><b>Thomas</b> 6:20<br><b>thought</b> 41:25<br>139:2 144:12<br><b>thousands</b><br>100:3<br><b>threaten</b> 39:15<br><b>throw</b> 70:19<br>104:17 111:1<br><b>tie</b> 188:12<br><b>tied</b> 130:6<br><b>ties</b> 87:15<br><b>tight</b> 107:15<br><b>till</b> 52:21 79:22<br><b>time</b> 15:15<br>24:11 25:14<br>33:14 37:4<br>40:15, 18, 19<br>41:5 43:10<br>44:9 50:25<br>52:17 53:4<br>55:21 62:3<br>68:5, 18 70:1, 3<br>75:15 79:8<br>80:2, 7 81:17,<br>22 83:5, 15<br>85:19 93:25<br>102:5 103:22<br>123:16 124:10<br>128:10 143:8<br>144:25 159:6<br>160:6 161:18<br>163:14 169:9<br>172:13, 16, 22<br>173:14 175:10,<br>24 176:20<br>185:19 190:15<br>191:13 193:2, 4,<br>9, 13, 16, 23<br>198:19 200:9,<br>10, 15 201:10<br>202:6<br><b>timely</b> 54:3<br><b>times</b> 32:14, 23<br>92:1 103:20<br>124:3 166:12<br><b>timing</b> 70:5<br>107:15<br><b>tipoff</b> 87:1 | <b>title</b> 80:21<br>81:12 85:18, 24<br>86:9, 13 87:11,<br>12 88:3, 18, 22<br>89:20 90:18<br>92:19 93:1, 9,<br>12, 14 184:19<br>185:4<br><b>today</b> 4:13<br>24:1 27:17<br>28:12 42:19<br>48:3 57:9 75:2<br>77:15 80:12<br>107:10, 13, 15<br>136:1 173:19<br>187:2 192:1<br>197:20 198:8<br>199:9<br><b>told</b> 62:8<br><b>tomorrow</b> 51:24<br>79:2 102:5<br>135:13 175:2<br>182:25 185:12,<br>17 190:6, 7<br>193:11 194:3, 5<br>198:12 200:5, 6<br><b>tonight</b> 190:5<br><b>tools</b> 22:18<br><b>top</b> 16:15<br>49:12 72:3, 8<br>73:3, 6 98:25<br>110:7 127:9<br>161:23 162:3, 6,<br>9, 15, 18, 25<br>172:7 178:21,<br>22 180:8<br><b>topic</b> 13:5<br>37:13, 14 70:23<br>161:13<br><b>Toronto</b> 100:11<br>101:3 162:16,<br>18 199:18<br><b>Toronto's</b> 24:10<br><b>total</b> 57:14<br>59:16, 20 60:3,<br>25 61:6, 24<br>65:13, 18 82:24<br>104:12 112:21<br>119:10, 11<br>142:7, 24<br>166:11, 21<br>167:8, 15<br>168:19 169:1,<br>14, 23 171:5<br>172:5, 9 174:17 | 177:17 178:12<br>179:13 180:22<br><b>touch</b> 108:10<br>135:7 136:25<br>156:23<br><b>tourism</b> 127:4<br><b>trace</b> 64:25<br><b>track</b> 107:6<br>177:10<br><b>traditional</b> 46:2<br>104:20 140:13<br><b>traditionally</b><br>146:14, 15<br><b>trained</b> 90:3<br><b>transcribed</b><br>202:10<br><b>transcript</b> 1:17<br>76:1 202:12<br><b>transcripts</b><br>97:13<br><b>transient</b> 127:5<br><b>transition</b> 82:12<br><b>translate</b> 47:1<br>106:4<br><b>translation</b><br>75:25<br><b>translators</b> 4:17<br>79:7 97:13<br><b>travel</b> 48:24<br><b>Treasurer</b> 6:21<br><b>treated</b> 25:6<br>184:12<br><b>treatment</b> 67:14<br>150:22<br><b>trend</b> 41:18<br>42:22 46:16, 25<br>49:9 138:23<br>189:22<br><b>trends</b> 8:11<br>10:2 42:23<br>44:20 51:13<br>52:4, 5 53:13<br>55:1, 9, 19<br>76:19 194:21<br><b>Trial</b> 8:6 45:2,<br>4, 8, 10<br><b>tribunals</b> 14:18<br><b>triennial</b> 55:5, 11<br><b>troubling</b> 18:10<br>185:20<br><b>true</b> 90:23<br>115:9 202:11<br><b>trump</b> 38:25<br><b>trust</b> 53:2 198:3<br><b>trusts</b> 197:24 | <b>trying</b> 78:2<br>118:25 145:15<br>180:13 190:1,<br>18 194:9<br><b>tunnel</b> 121:11<br><b>Turcotte</b> 2:2<br><b>turn</b> 4:18 11:3<br>12:24 17:14<br>22:19 27:4<br>32:9 54:12<br>63:7 91:5<br>99:16 106:20<br>108:5, 13, 15<br>113:11, 12, 13,<br>20 119:13<br>121:15 124:23<br>125:19, 21<br>127:15 128:15<br>135:17 138:13<br>139:4 140:21<br>141:11 145:21<br>154:4 181:2<br>182:22 189:25<br><b>turned</b> 35:12<br>37:5<br><b>turning</b> 53:19<br><b>twelve</b> 197:23<br><b>twelve-month</b><br>125:3<br><b>two-fold</b> 95:8<br><b>two-thirds</b><br>151:10<br><b>type</b> 127:5<br>158:8 190:25<br><b>types</b> 46:22<br><b>typically</b> 65:2<br>99:16<br><br>< U ><br><b>U.K</b> 53:23<br>182:14, 15<br><b>U.S</b> 22:1 53:22<br>182:14<br><b>ultimate</b> 78:3<br><b>ultimately</b><br>170:23 194:17<br><b>unable</b> 48:12<br>69:1 144:9, 16<br>147:9 195:18<br><b>unacceptable</b><br>144:16<br><b>unattractive</b><br>49:17<br><b>undefined</b> 55:8,<br>24 | <b>underestimating</b><br>95:5<br><b>underline</b> 28:13<br><b>underlying</b> 81:7<br><b>undermine</b> 18:5<br>27:12 39:14<br>55:14 56:1 57:4<br><b>underscore</b><br>51:17 170:12<br><b>understand</b><br>76:22 83:19<br>88:4 91:22<br>101:9, 10 104:5<br>132:24 135:9,<br>14 173:10, 20<br>174:1, 15, 20<br>177:16 181:12,<br>14 189:11<br>190:18 191:3<br>193:9 194:21<br>195:19 196:17<br>197:13 198:18,<br>20<br><b>understanding</b><br>165:7 198:25<br><b>understands</b><br>88:1<br><b>understood</b><br>87:20 104:7<br>120:7 166:20<br>190:21 193:16<br><b>undertaken</b><br>103:9 170:23<br><b>unemployment</b><br>121:8 122:21<br>123:1<br><b>unfortunate</b> 13:6<br><b>unfortunately</b><br>87:22 147:9<br>148:10, 21<br>170:19 195:7<br><b>unhelpful</b> 67:5<br><b>uninterested</b><br>46:10<br><b>unique</b> 128:1<br>134:12<br><b>uniquely</b> 101:4<br><b>United</b> 22:13<br><b>universe</b> 196:21<br><b>University</b> 24:9<br>99:14<br><b>unprecedented</b><br>59:2<br><b>unpredictable</b><br>35:1 |
|---|---|--|--|---|

|   |  |  |  |   |
|---|--|--|--|---|
| <p><b>unprincipled</b> 56:25<br/><b>unsuccessful</b> 40:11 190:13<br/><b>unsuitable</b> 92:19<br/><b>Untold</b> 23:12<br/><b>untouched</b> 134:17<br/><b>unwarranted</b> 93:22<br/><b>unwelcoming</b> 192:17<br/><b>unwilling</b> 50:2<br/><b>update</b> 149:18<br/><b>updated</b> 149:21 150:17 152:14 163:13<br/><b>upended</b> 23:12<br/><b>upper</b> 97:21<br/><b>ups</b> 129:4<br/><b>upward</b> 34:9<br/><b>urge</b> 153:17<br/><b>urgency</b> 47:25<br/><b>useful</b> 28:17 68:10 99:3, 4 154:18 155:7, 14 170:10 183:3 195:2 199:1, 3<br/><b>uses</b> 111:16 167:6<br/><b>utility</b> 20:17</p> <p>&lt; V &gt;<br/><b>Vacancies</b> 8:7 40:24 45:6, 9, 13 47:18, 22, 24 78:12, 16<br/><b>Vacancy</b> 45:16<br/><b>vacant</b> 48:2<br/><b>vain</b> 95:13<br/><b>valid</b> 69:2, 8 109:18<br/><b>validity</b> 157:25<br/><b>valuation</b> 16:9 66:14 108:12 109:14, 17 111:18 150:19<br/><b>value</b> 14:15, 18 22:9 29:18 30:23 58:19 61:8, 19 65:18, 24 66:11 75:1 104:12 106:6 109:18 110:10</p> | <p>112:21 114:6 119:4, 11<br/>127:24 163:15 180:7<br/><b>value-added</b> 109:9<br/><b>valued</b> 179:20<br/><b>Vancouver</b> 52:13 100:11 101:3<br/><b>variance</b> 122:5<br/><b>variation</b> 81:20 169:7 172:11 176:21<br/><b>variations</b> 20:23<br/><b>variety</b> 144:1 147:10<br/><b>various</b> 18:19 43:5 55:16 58:12 103:14 192:13<br/><b>vary</b> 172:16<br/><b>varying</b> 38:8<br/><b>vehicle</b> 22:4 96:10 98:3<br/><b>vehicles</b> 66:21<br/><b>venues</b> 140:14<br/><b>version</b> 149:21 152:14 165:23<br/><b>versus</b> 100:23 149:7 179:21 185:23<br/><b>Vice-Chair</b> 7:7<br/><b>video</b> 160:10<br/><b>view</b> 8:20 20:22 39:22 42:21 50:7 51:7 64:7 66:7 68:11 75:8 106:10 117:24 137:11, 23 140:7 143:11, 17 168:14 170:18 174:15, 17 181:14 184:25<br/><b>viewed</b> 49:1<br/><b>vigilance</b> 39:24<br/><b>virtual</b> 1:18 145:15<br/><b>virtually</b> 1:23 6:17<br/><b>vividly</b> 53:25<br/><b>volume</b> 41:14</p> | <p>&lt; W &gt;<br/><b>wage</b> 126:11 127:2, 19, 23 128:11<br/><b>wages</b> 126:9 127:22 134:9<br/><b>wait</b> 52:20, 24 72:19 79:2, 22 135:23 185:17<br/><b>waiting</b> 75:24<br/><b>waits</b> 163:21<br/><b>walk</b> 141:15<br/><b>wanted</b> 84:12 150:13 161:13 178:1 183:1 200:18<br/><b>warm</b> 8:15<br/><b>warranted</b> 73:16<br/><b>waste</b> 55:20<br/><b>water</b> 20:2 54:15 103:23 197:23<br/><b>ways</b> 106:3 115:14 128:15 167:21<br/><b>wealth</b> 92:11<br/><b>wears</b> 17:3<br/><b>weekly</b> 125:4 126:9 127:1<br/><b>weighing</b> 40:5<br/><b>weight</b> 72:7 161:21<br/><b>weighted</b> 113:25<br/><b>weird</b> 145:12<br/><b>well-known</b> 22:14 66:21<br/><b>western</b> 105:24<br/><b>wheel</b> 12:24<br/><b>whichever</b> 52:21<br/><b>wholly</b> 92:19<br/><b>whopping</b> 65:16<br/><b>who've</b> 56:16<br/><b>wide</b> 16:6 129:24 144:1<br/><b>widening</b> 19:20<br/><b>widespread</b> 85:23 92:12 96:11 98:23, 24<br/><b>willing</b> 16:18 19:14 48:21<br/><b>window</b> 142:5<br/><b>win-win</b> 82:8<br/><b>wisdom</b> 13:1</p> | <p><b>wish</b> 57:12 72:18 75:20 103:3 111:15 187:18<br/><b>witness</b> 27:17<br/><b>witnessed</b> 49:10<br/><b>woefully</b> 99:25<br/><b>women</b> 100:22, 23<br/><b>wondered</b> 173:18<br/><b>wondering</b> 67:11 69:25 199:11<br/><b>won't</b> 108:12 112:14 132:14 134:13 140:21 156:6 191:23<br/><b>word</b> 37:12 91:19 92:20 104:25<br/><b>wording</b> 86:16<br/><b>words</b> 11:1 44:19 49:12 68:14 86:21, 24 105:3 170:1<br/><b>work</b> 12:16 13:13 19:8 47:13 56:17, 19 101:10 103:6 127:16, 18 134:8 148:12 158:23 189:20 195:17 196:9 198:9<br/><b>worked</b> 103:14 195:25<br/><b>workers</b> 34:8, 9, 15 35:8 164:8<br/><b>Working</b> 8:7 9:5 12:23 45:12, 16 47:22 149:22 156:13<br/><b>workload</b> 47:11 48:24 49:18 50:18 82:13, 21 84:2<br/><b>works</b> 93:12<br/><b>world</b> 11:24 102:24 121:4 145:15 164:13<br/><b>worry</b> 94:14<br/><b>worrying</b> 10:2 42:22<br/><b>worst</b> 188:18</p> | <p><b>worth</b> 20:15 96:16<br/><b>worthy</b> 46:14<br/><b>writ</b> 165:22<br/><b>write</b> 121:19<br/><b>written</b> 9:8 34:25 53:14 54:4 63:1 99:20 105:14 141:17 165:4 183:18, 21<br/><b>wrong</b> 87:12 135:12 163:3<br/><b>wrote</b> 172:15</p> <p>&lt; Y &gt;<br/><b>Yeah</b> 133:12, 13 199:6<br/><b>year</b> 23:24 30:18, 20, 22 31:3, 10, 21, 23 32:5, 8 37:21 59:13 90:5 94:7, 15 97:2 100:21 103:2 109:8 121:3, 22 122:9 124:17 125:17 126:23, 25 132:5 133:6 134:14 159:11, 14 169:12, 20, 21 171:25 181:24<br/><b>yearly</b> 130:13, 14 135:4<br/><b>year-old</b> 150:3<br/><b>year-over-year</b> 59:7, 18<br/><b>years</b> 13:8 19:14 30:10, 11 31:16 34:17, 24 37:18 40:15, 23, 24 41:20 44:8 45:20 55:5 57:10, 11 59:5 60:12 69:5 73:13 76:19, 25 77:11, 12 82:11 84:2 86:2 94:13 95:1 106:12 121:24 128:23 129:2, 12 130:4 131:2 133:23 135:3, 4 139:19 140:3, 9</p> |
|---|--|--|--|---|

16 150:17  
153:22 154:22  
155:23 156:3,  
22 171:2  
178:11 189:18,  
19 197:14, 23  
**year-to-year**  
125:7 159:6  
**yesterday** 10:12  
**Young** 115:19

**< Z >**

**Zealand** 22:12  
182:16  
**zero** 31:6  
94:16, 21 132:5,  
14  
**Zoom** 1:18

**Comité d'examen de la  
rémunération des juges  
militaires**



**Military Judges  
Compensation Committee**

**31 JANUARY 2024**

# **Report of the Military Judges Compensation Committee**

## EXECUTIVE SUMMARY

The Military Judges Compensation Committee (MJCC) is established as a matter of constitutional imperative relating to the independence of the judiciary. Sections 165.33 and 165.34 of the *National Defence Act*, R.S.C. 1985, c. N-5 (*NDA*), which establish the composition of the MJCC and its mandate, were enacted to comply with the constitutional requirement for an independent advisory body to “inquire into the adequacy of remuneration of military judges” (s-s. 165.34(1) *NDA*) and advise the Government of its findings and conclusions. Pursuant to the jurisprudence of the Supreme Court of Canada, the purpose of this process is to take judicial compensation out of the political sphere and avoid unseemly conflict between Parliament and the judges. While the Supreme Court’s vision was that this process would be effective, the Committee observes that this vision has unfortunately not been realized. The Government of Canada (the Government) has rejected the compensation recommendations of the last two Committees, and this raises legitimate concerns about the effectiveness of the process.

Under section 165.34 of the *NDA*, we are required to consider four statutory factors in our inquiry into the adequacy of judicial compensation: economic conditions, financial security securing judicial independence, attracting outstanding candidates, and other objective criteria the Committee considers relevant. We have done so, as we will explain in detail in the pages that follow.

For reasons that we will set out at length, our consideration of all the relevant factors leads us to share the views of two previous Committees that the military judges should receive the same remuneration as all other federally appointed judges.

The economics of remunerating four federally appointed judges around 15% more to gain parity with the other approximately 1200 federally appointed judges do not, we conclude, impair the overall economic and current financial position of the Government, and takes account of the prevailing economic conditions in Canada. The role of financial security in ensuring judicial independence favours parity, given the risk of perception that the military judges are not of the same quality or value as other federally appointed judges. The necessity of attracting the best

candidates also favours parity lest some of the best candidates for an appointment as a military judge opt instead for appointments to other branches of the federally appointed judiciary on the basis of the higher remuneration of those other posts. In short, we conclude that the same remuneration that has been considered adequate for all other federally appointed judges is also the adequate remuneration for the military judges.

## **TABLE OF CONTENTS**

### **I. INTRODUCTION**

- A. The Constitutional Basis for the Committee’s Work
- B. The Statutory Scheme

### **II. COMMITTEE’S COMPOSITION, APPOINTMENT AND CONSIDERATION PROCESS**

- A. The Purpose and Object of the Report
- B. Composition of Committee, Members and Administrative Support
- C. Military Judges: Who They Are, How Many, Where Do They Sit, and Nature of Their Work
- D. Counsel for Military Judges and Counsel for the Government
- E. Written Submissions Received by the Committee and Expert Testimony
- F. In-Person Hearing
- G. Acknowledgment of Contributions and Assistance to the Committee
- H. Effectiveness of the Committee Process
  - a. 2012 MJCC Report Majority Recommend Remuneration Parity with Other Federally Appointed Judges*
  - b. 2019 Report Unanimous in Recommending Remuneration Parity with Other Federally Appointed Judges*
  - c. Government’s Consistent Acceptance of JCBC Reports Recommendations*

### **III. STATUTORY CONSTRUCTION OF GOVERNING LEGISLATION**

### **IV. OVERVIEW OF 2023 PARTIES’ POSITIONS**

- A. The Military Judges
- B. The Government



## **V. ANALYSIS OF THE STATUTORY FACTORS**

### **A. The Statutory Framework for the Committee's Work**

#### *a. The Prevailing Economic Conditions in Canada*

- i. The position and argument of the Government on economics*
- ii. The position and argument of the military judges on economics*
- iii. Analysis of the economic factor*

#### *b. The Role of Financial Security*

- i. The position and argument of the Government on financial security*
- ii. The position and argument of the military judges on financial security*
- iii. Analysis of the financial security factor*

#### *c. The Need to Attract Outstanding Candidates to the Military Judiciary*

- i. The position and argument of the Government on outstanding candidates*
- ii. The position and argument of the military judges on outstanding candidates*
- iii. Analysis of the outstanding candidates factor*

#### *d. Other Relevant Factors*

- i. Pension scheme comparisons*
- ii. Comparisons with other federally appointed judges*
- iii. Comparisons with provincial court judges and federally appointed associate judges*

## **VI. THE INCIDENTAL ALLOWANCE**

## **VII. CONCLUSIONS AND RECOMMENDATIONS**

## I. INTRODUCTION

### A. The Constitutional Basis for the Committee's Work

Military judges are federally appointed members of a federal judiciary by an Order-in-Council who are also commissioned officers in His Majesty's Canadian Armed Forces (CAF). They devote their full-time work and attention to their service as military judges.

Parliament established the Military Judges Compensation Committee to provide independent, impartial advice to the Government on military judges' remuneration. The role of the independent MJCC is to inquire into the adequacy of the remuneration for military judges and to recommend remuneration for the period of its review – in this case, 1 September 2019 to 31 August 2023. The establishment of an independent Committee to recommend remuneration is a direct result of the decision of the Court Martial Appeal Court in *R. v Lauzon* (1998) 6 CMAR 19, which stipulated that judicial independence and depoliticization of the salary determination process must be ensured. In *Lauzon*, the court also stipulated that the remuneration must be fair and reasonable, objective, and guided by the public interest. The court followed the earlier decision of the Supreme Court of Canada in *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 SCR 3, which established that there must be an independent committee which must make a recommendation to the governing authority, and that negotiations between Government and the judges are prohibited. Most importantly, it established that the salary level of judges must not be one that risks putting a judge in a situation where they may be subject to financial manipulation.

The process for salary determination of military judges parallels the process for federally appointed judges where, pursuant to the *Judges Act*, R.S.C. 1985, c. J-1 (*Judges Act*), an independent Commission recommends appropriate remuneration to the governing authority. It is notable that the statutory language Parliament used in creating the Judicial Compensation and Benefits Commission (JCBC) is almost identical to that which establishes the MJCC.

The central task of the Committee is to “inquire into the adequacy of the remuneration of military judges” (s. 165.34 *NDA*). This focus on “adequacy” is also found in the mandate of the JCBC under the *Judges Act* which is to “inquire into the adequacy” of the salaries and other amounts

payable to other federally appointed judges. It follows that the jurisprudence about “adequacy” within the meaning of the *Judges Act* provides a useful guide to how to approach that same term in the *NDA*.

The Supreme Court of Canada jurisprudence teaches that the process by which judicial remuneration is established must be independent, effective, and objective and that the Committee’s work must have a “meaningful effect” on the determination of compensation (*Bodner v. Alberta*, 2005 SCC 44). The Committee is a vehicle to help assure that these objectives are attained. With respect to the amount of remuneration, the Supreme Court of Canada has held that the mandate to determine adequate remuneration “is neither to determine the minimum remuneration nor to achieve maximal conditions.” Rather, the mandate is to recommend “an appropriate level or remuneration” (*Bodner* at para. 67). This is done considering the constitutional requirement of judicial independence, including financial security, and having regard to the factors set out in the statute. Adequacy is, therefore, neither the bare minimum amount necessary to meet the constitutional requirement of financial security nor the ideal maximum amount. Adequacy must be assessed by placing remuneration somewhere between these two polls guided by the statutory factors.

## **B. The Statutory Scheme**

When the *NDA* was amended to include sections 165.33 through 165.37 establishing the MJCC’s mandate and procedure, Parliament’s aspirations appeared to be both clear and efficient: every four years, the MJCC would make recommendations to the Government on military judges’ salaries, focused on prevailing economic conditions, the financial security of the judiciary that ensures judicial independence, and the need to attract outstanding candidates. While the Committee’s mandate was limited to recommending to Government rather than making binding decisions, the Committee’s mandate and procedure as a core part of the *NDA* establishes the importance of the MJCC’s role in the overall administration of the “the Canadian Forces and of all matters relating to national defence” as specified in section 4 of the *NDA* under the Minister’s responsibilities.

Unfortunately, we observe that the process established by Parliament has neither been followed with vigour nor proved to be effective. This is the sixth Committee to be convened under *NDA* authority. As we will describe in more detail, the long delay in appointment of the members of the Committee and the Government's rejection of the key remuneration recommendation of the past two Committees have undermined the intended effectiveness of the process.

## **II. COMMITTEE'S COMPOSITION, APPOINTMENT AND CONSIDERATION PROCESS**

### **A. Purpose and Object of the Report**

The Committee is mandated by Parliament in s. 165.33 of the *NDA* to enquire into the adequacy of the remuneration of military judges in Canada. Its governing legislation specifies:

## Military Judges Compensation Committee

### Composition of Committee

**165.33 (1)** There is established a Military Judges Compensation Committee consisting of three part-time members to be appointed by the Governor in Council as follows:

- (a) one person nominated by the military judges;
- (b) one person nominated by the Minister; and
- (c) one person, who shall act as chairperson, nominated by the members who are nominated under paragraphs (a) and (b).

### Tenure and removal

(2) Each member holds office during good behaviour for a term of four years, and may be removed for cause at any time by the Governor in Council.

### Reappointment

(3) A member is eligible to be reappointed for one further term.

### Absence or incapacity

(4) In the event of the absence or incapacity of a member, the Governor in Council may appoint, as a substitute temporary member, a person nominated in accordance with subsection (1).

### Vacancy

(5) If the office of a member becomes vacant during the member's term, the Governor in Council shall appoint a person nominated in accordance with subsection (1) to hold office for the remainder of the term.

### Quorum

(6) All three members of the compensation committee together constitute a quorum.

### Remuneration

(7) The members of the compensation committee shall be paid the remuneration fixed by the Governor in Council and, subject to any applicable Treasury Board directives, the reasonable travel and living expenses incurred

## Comité d'examen de la rémunération des juges militaires

### Constitution du comité

**165.33 (1)** Est constitué le comité d'examen de la rémunération des juges militaires, composé de trois membres à temps partiel nommés par le gouverneur en conseil sur le fondement des propositions suivantes :

- a) un membre proposé par les juges militaires;
- b) un membre proposé par le ministre;
- c) un membre proposé à titre de président par les membres nommés conformément aux alinéas a) et b).

### Durée du mandat et révocation

(2) Les membres sont nommés à titre inamovible pour un mandat de quatre ans, sous réserve de révocation motivée du gouverneur en conseil.

### Mandat renouvelable

(3) Leur mandat est renouvelable une fois.

### Remplacement

(4) En cas d'absence ou d'empêchement d'un membre, le gouverneur en conseil peut lui nommer un remplaçant suivant la procédure prévue au paragraphe (1).

### Vacance à combler

(5) Le gouverneur en conseil comble toute vacance suivant la procédure prévue au paragraphe (1). Le mandat du nouveau membre prend fin à la date prévue pour la fin du mandat de l'ancien.

### Quorum

(6) Le quorum est de trois membres.

### Rémunération et frais

(7) Les membres ont droit à la rémunération fixée par le gouverneur en conseil et sont indemnisés, en conformité avec les instructions du Conseil du Trésor, des frais de

by them in the course of their duties while absent from their ordinary place of residence.

2013, c. 24, s. 45.

#### **Mandate**

**165.34 (1)** The Military Judges Compensation Committee shall inquire into the adequacy of the remuneration of military judges.

#### **Factors to be considered**

**(2)** In conducting its inquiry, the compensation committee shall consider

- (a)** the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government;
- (b)** the role of financial security of the judiciary in ensuring judicial independence;
- (c)** the need to attract outstanding candidates to the judiciary; and
- (d)** any other objective criteria that the committee considers relevant.

#### **Quadrennial inquiry**

**(3)** The compensation committee shall commence an inquiry on September 1, 2015, and on September 1 of every fourth year after 2015, and shall submit a report containing its recommendations to the Minister within nine months after the day on which the inquiry commenced.

#### **Postponement**

**(4)** The compensation committee may, with the consent of the Minister and the military judges, postpone the commencement of a quadrennial inquiry.

2013, c. 24, s. 45.

déplacement et de séjour entraînés par l'accomplissement de leurs fonctions hors de leur lieu habituel de résidence.

2013, ch. 24, art. 45.

#### **Fonctions**

**165.34 (1)** Le comité d'examen de la rémunération des juges militaires est chargé d'examiner la question de savoir si la rémunération des juges militaires est satisfaisante.

#### **Facteurs à prendre en considération**

**(2)** Le comité fait son examen en tenant compte des facteurs suivants :

- a)** l'état de l'économie au Canada, y compris le coût de la vie, ainsi que la situation économique et financière globale de l'administration fédérale;
- b)** le rôle de la sécurité financière des juges militaires dans la préservation de l'indépendance judiciaire;
- c)** le besoin de recruter les meilleurs officiers pour la magistrature militaire;
- d)** tout autre facteur objectif qu'il considère comme important.

#### **Examen quadriennal**

**(3)** Il commence ses travaux le 1<sup>er</sup> septembre 2015 et remet un rapport faisant état de ses recommandations au ministre dans les neuf mois qui suivent. Il refait le même exercice, dans le même délai, à partir du 1<sup>er</sup> septembre tous les quatre ans par la suite.

#### **Report**

**(4)** Il peut, avec le consentement du ministre et des juges militaires, reporter le début de ses travaux.

2013, ch. 24, art. 45.

## **B. Composition of the Committee, Members and Administrative Support**

The Committee was composed of one Chairperson and two Members. The Chair of the Committee was the Honourable Clément Gascon, C.C., Ad. É. The Members were the Honourable Thomas A. Cromwell, C.C., and Mr. James E. Lockyer, O.N.B., C.D., K.C. The Committee was administratively supported by Gordon S. Campbell as Executive Secretary.

## **C. Military Judges: Who They Are, How Many, Where They Sit and Nature of Their Work**

There is a roster of four military judges appointed in Canada who sit throughout Canada and as required around the world wherever His Majesty's Canadian Armed Forces are deployed. Their

duties are established by the *NDA*. They are federally appointed judges having a specialized role, as is the case with other federally appointed judges in specialized roles such as those who have been appointed to the Tax Court of Canada. Military judges are commissioned military officers within the Canadian Armed Forces.

#### **D. Counsel for Military Judges and Counsel for the Government**

Counsel for the Military Judges were Me Michel Jolin, Me Sean Griffin, Me Catherine Martel and Me Jean-Philippe Dionne. Counsel for the Government were Me Jean-Robert Noiseux and Me Sara Gauthier. They all most ably represented their respective clients and advocated for their positions.

#### **E. Written Submissions Received by the Committee and Expert Testimony**

The Committee received voluminous well-drafted written argument and supporting documentation from both the Government and military judges. The submissions for the Government and their dates of receipt by the Committee were:

- a) 2 December 2022, the “Memorandum”;
- b) 30 March 2023, the “CV of Yann Bernard”;
- c) 17 February 2023, the “Mémoire du Gouvernement”;
- d) 17 February 2023, the “Cahier de Documents” (Volumes 1 through 4);
- e) 3 March 2023, the “Réplique”;
- f) 3 March 2023, the “Cahier de Documents” (Volume 5);
- g) 29 March 2023, the “Cahier d’authorités”; and
- h) 29 March 2023, the “Cahier de Documents” (Volume 6).

The submissions for the military judges and their dates of receipt were:

- a) 13 January 2023, the “Lettre de M. André Sauvé”;
- b) 17 February 2023, the “Mémoire des juges militaires”;

- c) 17 February 2023, the “Cahier d’authorités”;
- d) 17 February 2023, the “Cahier d’annexes”;
- e) 3 March 2023, the “Réplique;”;
- f) 3 March 2023, the “Cahier d’annexes supplémentaires”; and
- g) 29 May 2023, the “Documents additionels.”

Mr. Yann Bernard was presented as an expert witness for the Government, who the Committee duly recognized as a qualified expert in his field. He is the Director of the Office of the Chief Actuary. He presented an analysis of the compensation of the Military Judges of Canada as of 2 December 2022. In his analysis, Mr. Bernard explained the results of his calculation on determining the value of compensation for the military judges compared to the other federally appointed judges of Canada.

Mr. André Sauvé is a consulting actuary and was presented as the expert for the military judges. He was likewise duly recognized by the Committee as an expert. He presented and explained his 13 January 2023 report, in which he sought to rebut several of Mr. Bernard’s findings, such as the rank available after Lieutenant-Colonel. He also calculated the value of military judges’ pension benefits and proposed some economic and demographic hypotheses. The experts especially diverged over whether total remuneration of salary and pension values resulted in military judges or other federally appointed judges being more highly remunerated.

## **F. In-Person Hearing**

An oral in-person hearing took place in Gatineau, Quebec on the 14th and 15th of June, 2023, which proceeded in three parts:

- 1) the presentations of the expert witnesses Mr. Sauvé and Mr. Bernard by way of sworn *viva voce* testimony before the Committee;
- 2) the presentation of military judge Pelletier J. before the Committee;
- 3) oral argument made by counsel for the Government and the military judges.



At the end of the hearing, the Committee indicated that it would take the matter under consideration. This report is the result of the deliberations of the Committee, based upon all of the evidence and argument presented by the parties.

### **G. Acknowledgment of Contributions and Assistance to the Committee**

The Committee wishes to thank Mr. Campbell for his skilled and dedicated assistance.

### **H. Effectiveness of the Committee Process**

The Military Judges noted the long and unexplained delay in appointing the Committee. Their factum presented to this Commission at paras. 100-104 sets out the relevant facts:

[translation] This Committee should have been set up shortly after 1 September 2019. Yet, it was only on 20 June 2022, after the military judges had sent a draft application for mandamus to the Federal Court, that the members of this Committee were appointed by Order in Council.

The military judges do not understand and furthermore condemn the considerable time the Minister has taken in establishing this Committee, despite the clear and express terms of the NDA and the QR&O regarding the required deadlines.

The legislative intent is for the Compensation Committee to operate on a permanent basis. However, the failure to respect the applicable deadlines and process has left the military judges without a formal process for determining their compensation, thereby undermining the independence of the military judiciary.

That forces the Committee to engage in an essentially retroactive exercise, which affects public confidence in the independence and effectiveness of a process that is required pursuant to constitutional principles and the NDA.

The military judges deplore the fact that this Committee was not set up until almost two years after all the administrative steps and documentation required by the Governor in Council for the appointment of the three Committee members had been completed...

The Committee notes that such delays are not consistent with the constitutional imperative that it be effective and converts our role into recommending remuneration retrospectively rather than prospectively. We urge the Government to appoint future Committees in a timely way so that they

may report their recommendations before the beginning of period to which they relate rather than after that period has passed.

The Government's recent consistent rejections of the MJCC's core recommendations also undermine the effectiveness of the Committee's process as envisaged by the Supreme Court of Canada. While the Government is not bound by the recommendations, consistent refusal to implement independent recommendations saps confidence in the process.

The two most recent Committees recommended parity of remuneration for the military judges with other federally appointed judges. It is instructive to consider their views.

*a. 2012 MJCC Report Majority Recommend Remuneration Parity with Other Federally Appointed Judges*

The 2012 MJCC Report emphasized the following at pages 12 and 14:

It is quite stunning to realize that **only four of more than a thousand judges are singled out for much lesser remuneration if one accepts that they are indeed just as qualified as the others and paid from the same sources.**

...

judges who would qualify for military appointments and are selected according to a similar process as members of another superior court are paid 31% more than military judges, from the same public purse ... We agree that **the rationale of the government does not stand up to scrutiny.** [emphasis added]

...

*b. 2019 Report Unanimous in Recommending Remuneration Parity with Other Federally Appointed Judges*

The 2019 MJCC Report noted at pages 8 and 9:

If the Government of Canada is fine with equal remuneration for judges working in different provinces or for specialized courts, it is difficult to understand why, as a matter of principle, it would be any different for the military Courts ...

The 2019 MJCC Report concluded at pages 10 and 11:

1. economic conditions are not the primary factor for the Committee to consider as they are “not an obstacle to setting adequate remuneration; this was admitted by the government.”
2. financial security in preserving judicial independence should not simply aspire to the absolute bare minimum: “we should not be satisfied with the minimum requirement and that it is impossible to set adequate remuneration on the basis of this standard alone.”
3. for attracting outstanding candidates “When one considers appointments to the superior courts ... It has already been established that many candidates will earn much more than what they earned previously. There is no need to make a distinction for military judges. Our finding on this criteria is simply to accept that an adequate salary is one that allows for reasonable and stable recruitment.”
4. “military judges’ salaries should be increased with a view to equating their salaries with those of those of other federally appointed judges ... there is nothing to justify paying military judges less when they have equivalent training.”

We note that the Government’s responses to these reports were concerned that the Committees appeared to focus only one benchmark or criterion, namely parity, rather than inquiring into the adequacy of the remuneration having regard to all the statutory factors. In our deliberations, we have taken those concerns to heart and carefully and fully considered all the statutory factors in coming to our conclusions.

***c Government’s Consistent Acceptance of JCBC Reports Recommendations***

The Government’s treatment of the JCBC recommendations relating to other federally appointed judges stands in sharp contrast to that given by the Government to the previous MJCC reports. The Committee notes that the “Response of the Government of Canada to the Report of the 2021 Judicial Compensation and Benefits Commission” (11 May 2022) accepted 100% of the eight recommendations made by the Commission: “The Government will take steps to ensure the timely implementation the Commission’s recommendations ” This included improvements to judicial allowances such as a 50% increase in the annual “incidental allowance” (from \$5,000 to \$7,500). There the Commission rejected the Government’s proposal for “a 10 percent limit on salary increases attributable to IAI above the salary payable as of April 1, 2020” notwithstanding an

“unusually large increase at April 1, 2021,” while also rejecting “proposals put forward by ... the judiciary (i.e. 2.3 percent increases in salary in the third and fourth years of the Commission’s inquiry period, in addition to indexation).”

The Committee notes that the Government likewise accepted 100% of the recommendations of the Rémillard Commission in its “Response of The Government of Canada to the Report of the 2015 Judicial Compensation and Benefits Commission,” even finding that “The Government agrees that it is appropriate that the Chief Justice of the Court Martial Appeal Court receive a salary equal to that of other superior court chief justices, and that the step-down provisions also be extended to that office.” The Government’s responses to the last two Judicial Benefits and Compensation Commissions thus stand in stark contrast to the Government’s response to the last two MJCCs.

The Government noted in its response to the Sixth Judicial Compensation and Benefits Commission (Turcotte Commission) that the Commission is “a manifestation of one of the protections constructed around the constitutional principle of judicial independence, which the Supreme Court of Canada has found to be the lifeblood of constitutionalism in democratic societies and a principle that is fundamental to maintaining public confidence in the administration of justice.” This is equally true for the MJCC, which is statutorily governed by precisely the same principles as direct the JCBC.

### **III. STATUTORY CONSTRUCTION OF GOVERNING LEGISLATION**

We must address two points of interpretation in relation to our statutory mandate. The first concerns the meaning of “adequacy” of the remuneration. The English term “adequacy” - the adjective form of the noun “adequate” - in some definitions has the sense of bare minimum, but in others it does not, leading to some ambiguity in Parliament’s intentions in using the English term. The *Concise Oxford Dictionary*, 8<sup>th</sup> ed. (Oxford: Clarendon Press, 1990) at p. 14 defines “adequate” as “sufficient, satisfactory” (often with the implication of being barely so). *Black’s Law Dictionary*, 6<sup>th</sup> ed (St. Paul: West Publishing, 1990) at p. 39 defines “adequate” as “sufficient, commensurate, equally efficient; equal to what is required; suitable to a case or occasion; satisfactory.” We find the term “satisfaisant” in French used in the French statutory text of both the *NDA* and the *Judge’s Act* has a more precise and broader meaning, with an equivalency in

English of “satisfactory.” See *Provincial Court Judges’ Assn. of New Brunswick v. New Brunswick (Minister of Justice)*; *Ontario Judge’s Assn. v. Ontario (Management Board)*; *Bodner v. Alberta*; *Conférence des juges du Québec v. Québec (Attorney General)*; *Minc v. Québec (Attorney General)*, 2005 SCC 44 at paras. 65-67,

R. Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed. (Toronto: Butterworth, 2002), at pp. 80-81, notes:

The basic rule governing the interpretation of bilingual legislation is known as the shared or common meaning rule. Where the two versions of bilingual legislation do not say the same thing, the meaning that is shared by both ought to be adopted unless the meaning is for some reason unacceptable ... The law is the abstract rule or provision that the legislature ‘intends’ to enact. The words in which the law is expressed may or may not be well chosen; they may be well chosen in one language version but not in the other. The court’s job is to construct, or reconstruct, the rule relying on the meaning of both language versions ...”

Here, we find the French meaning is more precise than the English meaning, but the English meaning overlaps the French meaning. As such, they can each have a shared meaning of “satisfactory” in the context of compensation for military judges as mandated by the *NDA*, which is quite different than merely the bare minimum.

A statutory comparison of the *NDA*’s provisions in establishing the Committee and the *Judges Act* provisions in establishing the Commission is also useful, as we observe that Parliament’s drafting of the *Judges Act* contains the same key English-French version issue at s-s. 26(1) as does the *NDA* at s. 165.34. Thus, what the JCBC has found to be satisfactory for the approximately 1200 other federally appointed judges is highly relevant to this Committee’s determination of what will be satisfactory for four federally appointed military judges. It is helpful to apply the golden rule of modern statutory construction as endorsed numerous times by the Supreme Court of Canada, such as in *R. v. Ulybel Enterprises Ltd.*, 2001 SCC 56 at paras. 28-19:

In numerous cases, this Court has endorsed the approach to the construction of statutes set out in the following passage from Driedger’s *Construction of Statutes* (2nd ed. 1983), at p. 87:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

This famous passage from Driedger “best encapsulates” our Court’s preferred approach to statutory interpretation: *Rizzo & Rizzo Shoes Ltd. (Re)* , [1998] 1 S.C.R. 27, at paras. 21 and 23. Driedger’s passage has been cited with approval by our Court on frequent occasions in many different interpretive settings which need not be mentioned here.

Here, the Committee determines that the intention of Parliament in establishing both the JCBC and MJCC was to provide for independent advisory bodies in compliance with Parliament’s constitutional obligations on the remuneration that should be provided to the federal judiciary. The object of both the *NDA* and the *Judges Act* in respect of establishing a judiciary was in part to guarantee “judicial independence” as confirmed in s-s. 165.34(2)(b) of the *NDA*, where “outstanding” judges would preside, having “financial security” by way of “adequate” remuneration. We therefore find that the JCBC’s findings - and the Government’s responses to them - although not binding, are relevant to our work in assessing the adequacy of compensation of military judges, on the basis that Parliament’s intention in establishing the scheme of both Acts was the same.

The second interpretative point concerns the third statutory criterion of attracting “outstanding candidates” in s-s. 165.34(2)(c) of the *NDA*. The statutory language in both official languages can be harmonized by giving them a common meaning of “the best” in English. We elaborate on the implications of these statutory construction findings below, in analyzing the application of the evidence to the third criterion.

## **IV. OVERVIEW OF 2023 PARTIES’ POSITIONS**

### **A. The Military Judges**

The military judges, as summarized especially at paragraphs 8 and 204 of their factum, took the position that:

- the Government misconceives the roles of the military judges, who are in fact and law judges first who happen to also be military officers, and not the other way around;

- military judges are part of the federal justice system where there is no reason to treat the four of them any different from the other approximately 1200 federally appointed judges;
- parity of remuneration with other federally appointed judges has been recommended since 2012 by the Committee, but consistently ignored by the Government;
- there is no reason to depart from parity for military judges (see judges' brief at paras. 154-166);
- the pension plan of military judges is not relevant to the assessment of remuneration, and even if there is relevance it should not be given the value attributed to it by the Government.

The military judges have long argued, before successive remuneration committees, that their remuneration should be the same as for other federally appointed judges. They argue that their current salary is fifteen percent less. They argue strenuously that this disparity, which has been condemned by the previous committees, impinges on the independence of military judges. They maintain the disparity is not experienced by other federally appointed judges. Those judges are treated differently, from a salary point of view, and that lessens judicial independence.

The military judges argue that to ensure public confidence in the independence of the military judiciary they should be paid a salary commensurate with the other federally appointed judges. They argue that the criteria set out in section 165.34 of the *NDA* would allow for salary parity with other federally appointed judges and that the section does not prohibit "parity."

## **B. The Government**

The Government, as summarized especially at paragraphs 1 to 3 of their factum, took the position that:

- military judges already receive satisfactory treatment;
- adequacy of remuneration should be assessed globally, taking into account particularly the value of the pension plan (paras. 140-159), workload (paras. 122-139), and a comparison with provincially appointed judges' remuneration (paras. 160 and following);
- parity with federally appointed judges is not justified, as they are governed by a different statute, their remuneration recommendations come from a different Commission, and different factors are involved.

The position of the Government is that the current salary structure is adequate. The salaries of military judges are increased each year on April 1<sup>st</sup> based on the CIAI (Canada Industrial Aggregate Index), as is the case with other federally appointed judges. That provision will bring military judges' salaries to \$339,183.00 for the year 2023-2024, which constitutes a 19.4% increase over the four-year period of this review. The Government also relies heavily on the assertion that military judges will benefit from their CAF pensions as military officers, which it is claimed by the government's expert witness will bring the global value of their remuneration package to \$545,034.00. The Government argues these figures assure that the criteria for an increase in salary as set out in the legislation (s. 165.34 *NDA*) is fully respected and that no increase to their salary apart from this feature is necessary. The Government argues that military judges receive this salary through the existing process, and therefore there is no need to link their salary to that of other federally appointed judges. The current process is supposedly quite adequate.

The parties take a common position on the issues of CIAI and Chief Justice differential remuneration, but diverge on remuneration and the incidental allowance.

## **V. ANALYSIS OF THE STATUTORY FACTORS**

### **A. The Statutory Framework for the Committee's Work**

For military judges, the determination of remuneration is a process founded in the *NDA*. Section 165.34(2) of the *Act* sets out the criteria which the Committee must consider in determining the adequacy of the remuneration of military judges for the period under review.

Succinctly put, the four factors the Committee must consider are as follows:

- The Prevailing Economic Conditions in Canada;
- The Role of Financial Security;
- The Need to Attract Outstanding Candidates to the Military Judiciary;
- Other objective criteria that the committee considers relevant.

The Committee heard representations from both the Government and the military judges on each of these criteria.



*a. The Prevailing Economic Conditions in Canada*

*i. The position and argument of the Government on economics*

The Government argues that any increase in the remuneration of military judges must reflect the current economy and the financial situation of Canadians. The pandemic caused a distortion in the CIAI in 2021 when 2.9 million Canadian workers lost their employment in the spring of 2020. Most who lost their work during the pandemic occupied positions that were subject to lower remuneration rates. At the same time, inflation was projected for 2023 at 4.3% and approximately 2.9% annually until 2027.

The Government argues that throughout this period military judges' salaries benefited from an increase in the CIAI at 6.6%. Therefore, and contrary to most Canadians, the salary of military judges increased considerably during this period. The Government argues, consistent with the *PEI* case, that the reputation of the judiciary would be damaged if the public perception was that judges, including military judges, were not carrying their fair share of the burden of the economic difficulties. The Government points out that consistent with the Turcotte Commission, which set the increase for the other federally appointed judges as a function of the CIAI, military judges received the very same increase as the other federally appointed judges.

The Government argues that during the period from 2020 to 2022, there was a fall in GDP and CPI, as well as a recession and exploding budget deficits. There was also a recovery, with rising inflation and CPI, falling unemployment and high debt producing, at a minimum, uncertainty in the marketplace and in the economy. In these circumstances, the increase in the cost of living was largely offset by the increase (CIAI) in the salaries of military judges. Accordingly, the military judges have been insulated from the economic pressures through the increase in salary provided by the annual increase based on the CIAI.

The Government argues that the uncertainty in the economy, which will be experienced at least until 2027, requires caution in any determination of salary; meaning the existing formula provides a sufficient salary and the formula should be maintained. The Government argues that a salary increase to that of the other federally nominated judges is not warranted, given the present economic circumstances.

*ii. The position and argument of the military judges on economics*

The military judges maintain that the percentage increases brought about by the CIAI are not an increase in salary but simply a provision to ensure that military judges do not lose the value of their existing salary. They argue that the three and four-year delay in which the Government has addressed the issue of military judicial salaries is a violation of the spirit of Section 164.34 of the *NDA*. They maintain that the Act requires a prospective approach to the issue and is not one to recommend salaries retroactively. They argue that this is a blatant and unjustifiable disregard of the structure put forward in the *NDA*. The military judges point out that this exercise should have begun in September 2019. This inordinate and unacceptable delay risks impinging upon the independence of the military judiciary and is sufficient to negatively impact the confidence of the public in the efficacy of the process to recommend military judicial remuneration. In other words, the Government is not following the relevant legislation, and this disrespect of the governing legislation is therefore an impingement of judicial independence.

The military judges argue that the issue of the strength, or weakness, of the economy was discussed by the Turcotte Commission in its report of 2021. They maintain that the Turcotte Commission concluded that the state of the economy should not constitute a restrictive factor in the establishment of judicial remuneration notwithstanding the economic difficulties presented by COVID-19. They point out that the Commission stressed that temporary budget deficits have the goal to stimulate the economy. They are not structural deficits and that the legislative criteria (Sec.165.34 *NDA*) should not be interpreted as a restriction on what should be considered as a satisfactory remuneration for judges. The Turcotte Commission concluded that the state of the economy could not be a limiting factor in setting the remuneration of federally appointed judges, despite the turmoil caused by the COVID-19 pandemic.

The military judges maintain that the effects of the uncertainty of the Canadian economy are temporary. They point out that during 2019 and 2020, which forms part of this review period, the Government of Canada was indicating publicly that Canada would be the leader in economic activity amongst the G7 group of nations. The four military judges maintain that the Government cannot reasonably suggest that the requested increase in salary to parity with other federal nominated judges would seriously prejudice the state of Canadian public finances. They say that

the Government cannot credibly claim that the implementation of their proposal, for four judges, is financially harmful to the Canadian economy.

The military judges submit that the Turcotte Commission's conclusions are perfectly applicable in this matter. On the one hand, the effects of the pandemic on the Canadian economy are of a temporary nature, and on the other, the Government has presented no evidence of the adoption or implementation of a policy of general application to reduce the deficits generated during the pandemic period.

### *iii. Analysis of the economic factor*

The prevailing economic conditions in Canada appear to have stabilized after the COVID pandemic. The 2019 Budget of the Government of Canada foresaw the strengthening of the Canadian economy through 2019 and estimated that Canada would become the leader of economic growth in 2019 and into 2020 amongst the G7 Group of Nations.

As the military judges have argued that the determination of the salary for the period of the mandate of this committee (2019 to 2023) should have been undertaken by September 2019 and completed shortly thereafter, as is required by the *NDA* and *KR&Os* (King's Regulations and Orders). Had that determination been completed, as it was supposed to have been, it would have fallen within the time frame set out in 2019 and 2020 precisely when Canada was projected to be a leader in economic growth amongst the world's most developed nations. That economic projection was current through to 2021 because, as was pointed out by the Turcotte Commission, the 2021 Federal Budget, which is a statement reflective of the Canadian economy, was not an austerity budget and did not impose measures to limit discretionary spending of departments and federal agencies.

As was pointed out by the military judges, the Turcotte Commission concluded in their analysis of the state of the Canadian economy in 2021, that the "state of the economy" should not be considered a restrictive factor in the determination of the remuneration of federally appointed

judges notwithstanding the challenges posed by the COVID-19 pandemic. The JCBC concluded at paras. 78-79 (footnotes omitted):

1. As argued by the Canadian Bar Association, section 26(1.1) “does not give dominance to any criterion. It suggests that each one must be given due weight and consideration.”<sup>49</sup>
2. Given that,
  - a. the temporary fiscal deficits were meant to stimulate the economy rather than being structural deficits;
  - b. the Budget 2021 is not an austerity budget. Unlike Budget 2009, it did not “outline measures to manage expenditures, including actions to limit discretionary spending by federal departments and agencies”;
  - c. the Government presented no evidence of deficit reduction policies of general application; and
  - d. statutory indexing was maintained by the Government following each of the Block and Levitt Commissions despite the prevailing economic conditions;<sup>51</sup>

We are of the view that the first criterion under section 26(1.1) of the *Judges Act* should not inhibit or restrain us from making recommendations we would otherwise consider necessary to ensure the adequacy of judicial compensation.

The same would be true of the evidence presented to the MJCC in 2023. If anything, the economy has been slowly recovering since the pandemic, which was at its height in 2021 for the JCBC Turcotte Committee. Thus, for the MJCC in 2023, the first factor should not inhibit or restrain the MJCC from making recommendations we would otherwise consider necessary to ensure the adequacy of military judicial compensation. Finally, the salary increase requested by the military judges, which is parity with other federally appointed judges, cannot be credibly or reasonably said to compromise in any realistic manner Canadian public finances.

## **b. The Role of Financial Security**

### ***i. The position and argument of the Government on financial security***

The Government accepts that financial security is an essential condition of judicial independence and is designed to ensure that judges do not succumb to interference in their decision-making process through the exercise of financial manipulation. The Government agrees with the *PEI* case

which states that public confidence in the independence of the judiciary requires salaries that ensure that judges do not become vulnerable to pressures brought about by financial manipulation. The Government agrees military judicial salaries should be maintained at a level that insulates judges from such pressures.

The Government argues that while the current salary is eighty-five percent of that paid to other federally nominated judges, the value of the pension adds another \$219,835 to the annual value of the salary providing an overall value of \$545,034. The Government asserts that the current value of the salary and pension of military judges is such that a reasonable well-informed person would conclude that the salary and benefits of military judges is far superior to that which would make them susceptible to bias through economic manipulation. We note that the military judges have advanced their own expert evidence which disputes the Government's pension numbers, which are based on several assumptions.

***ii. The Position and Argument of the Military Judges on Financial Security***

A military judge is both a federally appointed judge and an officer of the Canadian Armed Forces. The *Report of the Third Independent Review Authority to the Minister of National Defence Pursuant to subsection 273.601(1) of the National Defence Act, RSC 1985, c N-5* (30 April 2022) authored by the Honourable Morris J. Fish indicated that this fact could erode confidence in the independence of military judges because of the public perception of their inclusion as an officer in the CAF and their proximity to both the decision-making process inherent in the chain of command and to the Judge Advocate General's (JAG) Branch which provides prosecution and defence services to members of the CAF. The military judges argue that one factor in dispelling this perception is to equate the remuneration of military judges to that of other federally appointed judges. In other words, treat military judges equally to superior court judges.

The military judges also argue that the systematic refusal of the Government to follow the salary recommendations of "parity" found in the decisions of this Committee of 2008, 2012 and 2019 is ministerial confirmation that military judges are not equal in stature to other federally appointed judges. This, they argue, amounts to a statement from the Government that federally appointed military judges do not have the same judicial standing, status, and independence of other federally

appointed judges. They argue that members of the CAF and potentially civilians who appear before them would have the perception military judges are judges of a lesser stature. They stress that the problem of financial security and independence, taken together, is exacerbated by the refusal of the Government to accept the principal recommendations of the Military Judges Compensation Committees of 2008, 2012, 2019 with respect to remuneration.

The military judges say that the disparity between the salaries of military judges and other federally appointed judges undermines the independence of military judges. The remuneration of current military judges is fifteen percent lower than that of other federally appointed judges with no explanation given by the Government to justify the existence of this disparity. The military judges argue that they are fulfilling the same responsibilities, following the same training, attending the same conferences and workshops as their federally appointed counterparts. And yet, amongst approximately 1200 federally appointed, four military judges have been singled out to receive a lesser remuneration than their federally appointed colleagues. Finally, the military judges argue that the Committee should recommend, consistent with the committees that preceded it, that “parity” in the financial treatment of military judges as other federally appointed judges is required.

### *iii. Analysis of the Financial Security Factor*

The Government and the military judges appear to agree on one aspect – that the current salary should not make military judges susceptible to bias through economic manipulation. The military judges stress that the eighty-five percent remuneration of other federally appointed judges is a minimum to ensure the independence of the military judiciary. But their argument goes further. Within the context of a federally appointed judiciary, no one has explained to them, or others, why military judges should be treated differently than other appointees in the federally appointed judiciary. Currently, that difference is approximately fifteen percent.

The Government asserts at para. 81 of its factum that: [translation] “The current salary ... is far above the minimum level required to protect the military judiciary from political interference through economic manipulation.” However, this Committee believes that the three criteria statutorily mandated by Parliament must be considered in their totality, and not in isolation from each other, or from the overall mandate of the Committee.

The Government appears to be advocating for a “bare minimum” interpretation of s. 165.34 of the *NDA*. For the reasons noted above, we have come to the conclusion that application of proper principles of statutory interpretation lead to the conclusion that Parliament in creating s. 165.34 of the *NDA* was not tasking the Committee with a bare minimum model, but rather with determining what satisfactory remuneration would be. We determine that satisfactory financial security would be parity with the remuneration of other federally appointed judges.

We agree with the submission of the military judges at paras. 117 of their factum: [translation] “Therefore, in order to meet the constitutional standard, the Committee’s recommendations take on additional importance. These recommendations must be expressed in such a way as to foster the perception that military judges enjoy full judicial independence despite the fact that they belong to the CAF.”

“Judicial independence” as articulated by Parliament in s. 165.34(1)(2) *NDA* has both an objective and subjective component to it. The judiciary must not only remain independent but be perceived to be independent. The salary differential between military judges and other federally appointed judges promotes a perception of difference to the disadvantage of the perception of the independence and impartiality of the military judges. We believe that public perception of independence is especially important within a hierarchical organization like the CAF, where clearly military judges remain integral parts of the CAF, unlike other federally appointed judges.

*c. The Need to Attract Outstanding Candidates to the Military Judiciary*

*i. The position and argument of the Government on outstanding candidates*

The Government states that the current remuneration of military judges does not deter the recruitment of the best candidates for appointment to the military judiciary. Since 2005, for each of the five appointments between 7 and 10 candidates were classified as either “recommended” or “highly recommended” for appointments to the military judiciary. The Government maintains that these figures are certainly comparable or superior to those of federally appointed judges working in the civilian system. The Government maintains that the results of the processes for appointing military judges have achieved success overall.

By comparative analysis, the salary of a military judge is certainly attractive to CAF members who are regular force or reserve lawyers working in the military justice system. The comparison of military judge salaries with JAG officer salaries displays an attractive advantage to pursuing an appointment as a military judge.

Comparing the available information, the Government argues there is nothing to suggest that the remuneration of a military judge is dissuasive for applications from reserve force lawyers. The Government points out that in 2018 there were candidates from the reserve force who applied for military judicial positions. The Government indicates thirty percent of officers who applied for military judicial positions were reservists and seventy percent were members of the regular force – a proportion which has remained stable across the years. The Government maintains that while there could be other factors which may dissuade reservists from applying to be a military judge, salary would not be one of them.

***ii. The position and argument of the military judges on outstanding candidates***

The military judges argue that the Government has adopted an unjustifiably restrictive view of the pool of candidates for the military judiciary. The military judges stress that it is essential the best possible candidates be attracted to service in the federally appointed military judiciary. They state that remuneration is a major factor in promoting this attractiveness. They maintain the converse is also very true: low remuneration must not become an obstacle to the attraction of the best candidates. The salary must not be sufficiently low as to dissuade potential candidates from applying for a federal appointment as a military judge. This must be true for military lawyers working in the JAG Branch, as well as other officers in the regular force who may be lawyers not practicing military law as their daily responsibility, and finally for members of the reserve force who practice law in their civilian occupation. The military judges say this salary must be such that members of the CAF are attracted to the call for service as a military judge. The salary must be attractive to a broad spectrum of potential candidates including satisfying the requirements for diversity and inclusion.



The military judges say that given the salary disparity between other federally appointed judges and military judges, the best candidates are more attracted to a federal appointment in the civil judicial system than service in the military justice system. They point out that any qualified lawyer of the CAF, regular or reserve, is eligible to be a federally appointed judge in the civilian justice system. As an example, the military judges maintain that CAF reservists who practice law as their civilian occupation would be far more attracted to a superior court appointment rather than a military judicial appointment. This preference could be largely due to the discrepancy in remuneration.

The military judges argue that salary “parity” with federally appointed judges in the civil system would negate that disadvantage, thereby ensuring that for all military judicial appointments the very best candidates from the Canadian Armed Forces, and the private sector, would be assured. It might also have the added benefit of having a non-member of the Canadian Armed Forces who is a specialist in military law make an application for a military judicial position.

### *iii. Analysis of the outstanding candidates factor*

The Government, as noted, argues that there are plenty of qualified candidates for the posts of military judges and it follows that remuneration must already be adequate: [translation] “The current remuneration of military judges has no deterrent effect on the recruitment of the best candidates for the military judiciary” (factum para. 86). But as we explained above, our statutory interpretation is that Parliament intended in drafting s. 165.34 to attract “the best” candidates, not just well-qualified candidates. The “best” means that the top candidates will not be diverted to higher-paying judicial positions elsewhere. With the current salary differential in place between military judges and all other federally appointed judges, the best candidates are likely to seek appointment to other parts of the federal judiciary.

We conclude that this criterion favours remuneration parity with other federally appointed judges.

### *d. Other Relevant Factors*

Under s. 165.34(2)(d), the Committee “shall consider ... any other objective criteria that the committee considers relevant” to its mandate to inquire into “the adequacy of the remuneration of

military judges.” The military judges submitted that we ought to consider the remuneration of other federally appointed judges under the heading of other objective criteria. As part of the comparison with federally appointed judges, the Government invites us to consider the pension scheme for the military judges as compared with the annuity for other federally appointed judges. The Government also invites us to consider the increases in remuneration of others in the federal public service, the role of the military judges and their workload.

*i. Pension scheme comparisons*

There was disagreement between the parties over whether the Committee has the authority to consider pension/annuity provisions in its inquiry into the remuneration of military judges. We find that we do have authority to examine the adequacy of “remuneration” and should not be blind to the reality of the totality of that remuneration in making our recommendation as to its adequacy. However we do not have authority to make recommendations dealing with the pension scheme.

The Committee has considered the Government’s argument that including their pensions, the remuneration of military judges is in fact more than that of other federally appointed judges. In our view, the evidence does not bear this out.

The Government has insisted during the hearings of the Committee that the salaries of military judges are \$545,034 when their pensions are accounted for, according to the evidence presented by their actuary who claims they receive an additional 67.6% of their salary by way of pension benefits. It is also argued by the Government that military judge pensions have a greater value than other federal judges because they retire 14 to 16 years earlier than other judges, and that provincial judges only receive \$287,136 per year and Superior Court Associate Judges \$297,700 by way of annual salary.

The Committee was presented with dueling expert evidence from the military judges and the Government concerning pension comparisons. By comparison, there was no debate over what the actual salaries of military judges and other federally appointed judges are. We do not believe it necessary to choose a winner in the war of experts over pension valuations. That military judges may retire with greater pensions than other federally appointed judges may simply be a function of most military judges having devoted themselves to a career life of public service prior to being

appointed to the judiciary, rather than federal judges where a significant proportion of other federally appointed judges came from the private sector where if in private practice, they may have had not been benefitting from any pension regime, and thus be starting their pension contributions at a much later age than military judges did.

However, this ignores the fact that other federally appointed judges may have been earning much higher salaries in the private sector prior to being appointed a judge, and some might be taking pay cuts upon appointment to the bench, which would help offset their fewer pensionable years, particularly if they were setting aside significant portions of their incomes as investments for retirement. There are too many variables in pension values for there to be apt comparisons between the pension values of military judges and other federally appointed judges.

It is not disputed that both military judges and other federally appointed judges benefit from significant indexed retirement schemes. Military judge pension amounts payable upon retirement could be greater than other federally appointed judges if they had contributed longer to pension schemes, but then again, they might not be. Military judges might also retire at much younger ages than other federally appointed judges. A variety of life factors can affect pension values including taking early retirement for reasons of health.

The calculations of both experts involved several assumptions to advance the arguments that either military judges including pensions were already paid more or less than other federally appointed judges. Pension values are not an obligatory factor we must consider according to our mandate from Parliament. We do not find the comparison of the pension schemes useful for several reasons:

- the retirement regimes are completely different (counting of years of service, retirement ages, accumulation of benefits);
- the value of the benefit swings wildly depending on the assumptions used in the calculations;
- some of the pension value is based on subjective factors, such as choice of retirement date or the choice to elect supernumerary status.

Thus, while we concluded that the comparative value of pension schemes is a relevant factor, the evidence presented before us does not materially assist in applying this factor in investigating the adequacy of the military judges' remuneration.

*ii. Comparisons with other federally appointed judges*

The Government asserts at paras. 121 of its factum: [translation] "Tying the salaries of military judges to those of federally appointed judges or provincial court judges would run counter to the mandate and requirements of the NDA." The sole authority cited for that assertion is the Committee's 2008 Report at p. 15. However, when one examines the wording the 2008 Report used, it does not support the Government's submission:

The parties have both agreed that the previous Committees' determination that the salary of military judges should not be tied directly to that of the average of provincial court judges was not an appropriate approach to or method for the determination of adequate compensation of military judges. This Committee agrees. Among other problems, this would constitute an abdication of the responsibility of this Committee to make its own determination, by linking the outcome to the conclusions of the various other judicial compensation committees in Canada. This would also entail a degree of circularity. It is up to each judicial compensation committee to make its own assessment, rather than to predicate its conclusion on those of others. Furthermore, the salary of military judges cannot be determined in reference to any one single comparator.

Thus, the Committee was talking about avoiding abdicating its statutory responsibilities in favour of other committees, not that the remuneration of other federally appointed judges was irrelevant. As the 2008 Committee said, and we agree one and a half decades later, it falls to each Committee to come to its own conclusions, and those conclusions must be based on the evidence and consideration of all statutory factors. From the evidence presented before us, we conclude that the remuneration of military judges is less advantageous than that of other federally appointed judges. This may give rise to the impression that military judges are "second-class" judges. As we have noted above, we do not consider parity with other federally appointed judges to be a "factor" under s-s. 165.34(2)(d) of the *NDA*, rather, it is a conclusion under s-s. 165.34(1) of the *NDA*.

*iii. Comparisons with provincial court judges and federally appointed associate judges*

We do not believe that the remuneration of federally appointed Associate Judges is a useful comparison for determining the adequacy of the remuneration of military judges. This comparison, if anything, suggests that military judges should be compared with judicial officers who, like the Associate Judges, are not judges but rather have more limited jurisdiction and authority than judges. That would mean classing military judges effectively as judicial officers who are not full-fledged judges, which is neither legally nor factually correct. Similarly, we find the comparison of provincial court judge remuneration throughout Canada to be of limited value, given the differing economic situations of the various jurisdictions.

If one is to take provincial court judges' salaries presiding over more than 38% of Canada's population in the province of Ontario, Schedule A - Order in Council 1273/2018, "Salaries for Judges of the Ontario Court of Justice," they are already tied to 95.27% of federal Superior Court judge's salaries:

In respect of service from April 1, 2018 to March 31, 2022, the annual salary of a provincial judge set out in subsection 1(3), following the adjustment in Section 3, shall also be increased to align with a percentage of the salary rate of judges of the Ontario Superior Court of Justice set out in Part I of the Judges Act (Canada), R.S.C., 1985, c. J-1, ("Superior Court Judge salary rate") as follows:

...

From April 1, 2021 to March 31, 2022, to equal 95.27% of the Superior Court Judge salary rate for that period.

By comparison, military judges' salaries rest at 85% of federal judges' salaries, over 10 percent below provincial court judge salaries in Canada's largest province. We particularly caution against comparing the remuneration of civil servants to that of judges. While it is true that both are paid with tax dollars, judges occupy constitutionally vital positions in Canadian society which places them differently than civil servants. As the Supreme Court of Canada said in *British Columbia (Attorney General) v. Provincial Court Judge's Association of British Columbia*, 2020 SCC 20 at para. 85: "a government that does not take into account the distinctive nature of judicial office and treats judges simply as a class of civil servant will fail to engage with the principle of judicial independence."

We do not give workload significant weight as an additional factor. Workload varies tremendously among other federally appointed judges. We do not find days of sitting a useful point of comparison. For example, the Supreme Court of Canada sat for 35 days in 2020 and issued 45 decisions (Supreme Court of Canada Year in Review 2020, online: <https://www.scc-csc.ca/review-revue/2020/index-eng.aspx>).

## **VI. THE INCIDENTAL ALLOWANCE**

The military judges' position at para. 203 of their factum is that considering that military judges receive certain reimbursements from the budget allocated to the Office of the Chief Military Judge, it is appropriate to grant them a lesser incidental allowance in the amount of \$3,000 as compared to the \$7,500 incidental allowance granted to other federally appointed judges. Whereas the Government is of the view at para. 148 of their brief that it is not necessary, nor justified, to change entirely the manner in which the operating expenses of military judges are reimbursed. Just as the Chief Military Judge may refuse to reimburse military judges for certain costs, the Government asserts that other federally appointed judges may be denied certain costs under the line directors.

This Committee finds that currently all incidental funds payable to the military judges are under the control of the Department of National Defence chain of command, whereas the military judges in order to preserve their independence require an independent guaranteed source for an incidental allowance. Therefore, this Committee agrees that fixing an annual incidental allowance of \$3,000 for the military judges would be most appropriate.

## **VII. CONCLUSIONS AND RECOMMENDATIONS**

It is the Committee's conclusion that only parity of remuneration between military judges and other federally appointed judges will comply with Parliament's direction to us to determine what adequate remuneration for military judges would be. The conclusions of this sixth Committee are based in constitutional imperatives reflected through proper statutory construction which reflect Parliament's intent in enacting s. 165.34 of the *NDA*. This Committee's conclusions are not based on a "single factor." Indeed, it is a global consideration of all the factors mandated by Parliament in s-s. 165.34(2) of the *NDA* that leads the Committee to its conclusions.

To sum up, parity of remuneration with other federally appointed judges is not just a “factor” under s-s. 165.3(2)(d), rather it is a product of the Committee’s careful analysis under s-s. 165.34(2) which takes into account all factors to be considered pursuant to s-s. 165.34(2). There is nothing philosophical about our conclusions, we considered the evidence and arguments before us, applied the test established for us by Parliament, and arrived at a conclusion. This is not an exercise of attempting to compare apples to oranges, to somehow find a judicial position outside the military that most closely fits the duties of military judges, and then seize upon that remuneration as what the Committee should recommend, rather the Committee must consider all evidence, arguments and statutory direction in their totality in coming to conclusions.

1 ListSheets

2 individual\_top\_cma\_90k\_ni

3 corporations\_top\_cma\_90k\_ni

4 individual\_top\_cma\_all\_ni

5 corporations\_top\_cma\_all\_ni

6 individual\_canada\_90k\_ni

7 corporations\_canada\_90k\_ni

8 individual\_canada\_all\_ni

9 corporations\_canada\_all\_ni



individual\_top\_cma\_90k\_ni

| year | partner_type | variable              | income_90k | Calgary | Edmonton  | Halifax  | KCWH | Montreal  | Ottawa-Gatineau | Quebec | Toronto    | Vancouver | Winnipeg | other_cma |
|------|--------------|-----------------------|------------|---------|-----------|----------|------|-----------|-----------------|--------|------------|-----------|----------|-----------|
| 2018 | 1            | Partner Count         | above_90   | X       | 340       | X        | X    | 1050      | 690             | X      | 4630       | X         | 250      | 1030      |
| 2019 | 1            | Partner Count         | above_90   | X       | X         | 200      | X    | 930       | X               | X      | 4350       | X         | 260      | 1040      |
| 2020 | 1            | Partner Count         | above_90   | X       | X         | 210      | X    | 910       | 680             | X      | 4260       | X         | X        | 1000      |
| 2021 | 1            | Partner Count         | above_90   | X       | X         | 210      | X    | 910       | 660             | X      | 4260       | X         | 260      | 1010      |
| 2022 | 1            | Partner Count         | above_90   | X       | X         | 210      | X    | 880       | 650             | X      | 4150       | X         | 270      | 930       |
| 2018 | 1            | Total Net Income      | above_90   | X       | 114762000 | X        | X    | 278541000 | 226202000       | X      | 1779773000 | X         | 39672000 | 230589000 |
| 2019 | 1            | Total Net Income      | above_90   | X       | X         | 55418000 | X    | 249035000 | X               | X      | 1763633000 | X         | 44962000 | 229473000 |
| 2020 | 1            | Total Net Income      | above_90   | X       | X         | 64512000 | X    | 262396000 | 233697000       | X      | 1914862000 | X         | X        | 232759000 |
| 2021 | 1            | Total Net Income      | above_90   | X       | X         | 66960000 | X    | 301893000 | 262841000       | X      | 2085756000 | X         | 52810000 | 246911000 |
| 2022 | 1            | Total Net Income      | above_90   | X       | X         | 66056000 | X    | 288713000 | 221908000       | X      | 1933925000 | X         | 42667000 | 211289000 |
| 2018 | 1            | Average Net Income    | above_90   | X       | 376000    | X        | X    | 286000    | 348000          | X      | 421000     | X         | 185000   | 241000    |
| 2019 | 1            | Average Net Income    | above_90   | X       | X         | 281000   | X    | 294000    | X               | X      | 437000     | X         | 207000   | 237000    |
| 2020 | 1            | Average Net Income    | above_90   | X       | X         | 323000   | X    | 324000    | 378000          | X      | 482000     | X         | X        | 252000    |
| 2021 | 1            | Average Net Income    | above_90   | X       | X         | 343000   | X    | 374000    | 420000          | X      | 530000     | X         | 255000   | 265000    |
| 2022 | 1            | Average Net Income    | above_90   | X       | X         | 330000   | X    | 367000    | 372000          | X      | 503000     | X         | 225000   | 248000    |
| 2018 | 1            | SD Net Income         | above_90   | X       | 322000    | X        | X    | 255000    | 331000          | X      | 418000     | X         | 173000   | 247000    |
| 2019 | 1            | SD Net Income         | above_90   | X       | X         | 212000   | X    | 271000    | X               | X      | 425000     | X         | 185000   | 248000    |
| 2020 | 1            | SD Net Income         | above_90   | X       | X         | 193000   | X    | 291000    | 304000          | X      | 487000     | X         | X        | 304000    |
| 2021 | 1            | SD Net Income         | above_90   | X       | X         | 216000   | X    | 347000    | 411000          | X      | 555000     | X         | 207000   | 288000    |
| 2022 | 1            | SD Net Income         | above_90   | X       | X         | 205000   | X    | 338000    | 286000          | X      | 530000     | X         | 261000   | 241000    |
| 2018 | 1            | Median Net Income     | above_90   | X       | 298000    | X        | X    | 227000    | 271000          | X      | 298000     | X         | 166000   | 194000    |
| 2019 | 1            | Median Net Income     | above_90   | X       | X         | 244000   | X    | 239000    | X               | X      | 314000     | X         | 174000   | 194000    |
| 2020 | 1            | Median Net Income     | above_90   | X       | X         | 293000   | X    | 264000    | 302000          | X      | 341000     | X         | X        | 199000    |
| 2021 | 1            | Median Net Income     | above_90   | X       | X         | 308000   | X    | 292000    | 334000          | X      | 362000     | X         | 225000   | 215000    |
| 2022 | 1            | Median Net Income     | above_90   | X       | X         | 291000   | X    | 283000    | 326000          | X      | 335000     | X         | 178000   | 207000    |
| 2018 | 1            | 75th ptile Net Income | above_90   | X       | 474000    | X        | X    | 375000    | 486000          | X      | 580000     | X         | 257000   | 303000    |
| 2019 | 1            | 75th ptile Net Income | above_90   | X       | X         | 329000   | X    | 377000    | X               | X      | 586000     | X         | 292000   | 287000    |
| 2020 | 1            | 75th ptile Net Income | above_90   | X       | X         | 396000   | X    | 429000    | 521000          | X      | 656000     | X         | X        | 318000    |
| 2021 | 1            | 75th ptile Net Income | above_90   | X       | X         | 423000   | X    | 492000    | 572000          | X      | 688000     | X         | 365000   | 340000    |
| 2022 | 1            | 75th ptile Net Income | above_90   | X       | X         | 403000   | X    | 483000    | 522000          | X      | 655000     | X         | 314000   | 322000    |

corporations\_top\_cma\_90k\_ni

| year | partner_type | variable              | income_90k | Calgary | Edmonton | Halifax  | KCWH | Montreal  | Ottawa-Gatineau | Quebec | Toronto    | Vancouver | Winnipeg | other_cma |
|------|--------------|-----------------------|------------|---------|----------|----------|------|-----------|-----------------|--------|------------|-----------|----------|-----------|
| 2018 | 2            | Partner Count         | above_90   | X       | X        | X        | X    | 390       | 250             | X      | 2140       | X         | 90       | 1310      |
| 2019 | 2            | Partner Count         | above_90   | X       | X        | 160      | X    | 390       | X               | X      | 2260       | X         | X        | 1360      |
| 2020 | 2            | Partner Count         | above_90   | X       | X        | X        | X    | 400       | 280             | X      | 2360       | X         | 90       | 1440      |
| 2021 | 2            | Partner Count         | above_90   | X       | X        | X        | X    | 420       | 300             | X      | 2560       | X         | 100      | 1470      |
| 2022 | 2            | Partner Count         | above_90   | X       | X        | X        | X    | 450       | 320             | X      | 2780       | X         | 130      | 1510      |
| 2018 | 2            | Total Net Income      | above_90   | X       | X        | X        | X    | 205824000 | 115855000       | X      | 1622149000 | X         | 32397000 | 479128000 |
| 2019 | 2            | Total Net Income      | above_90   | X       | X        | 50888000 | X    | 189174000 | X               | X      | 1730874000 | X         | X        | 462400000 |
| 2020 | 2            | Total Net Income      | above_90   | X       | X        | X        | X    | 207990000 | 133170000       | X      | 2005103000 | X         | 35096000 | 544284000 |
| 2021 | 2            | Total Net Income      | above_90   | X       | X        | X        | X    | 232068000 | 153341000       | X      | 2454839000 | X         | 37390000 | 611094000 |
| 2022 | 2            | Total Net Income      | above_90   | X       | X        | X        | X    | 224020000 | 152051000       | X      | 2514489000 | X         | 57827000 | 583101000 |
| 2018 | 2            | Average Net Income    | above_90   | X       | X        | X        | X    | 547000    | 497000          | X      | 802000     | X         | 395000   | 380000    |
| 2019 | 2            | Average Net Income    | above_90   | X       | X        | 349000   | X    | 497000    | X               | X      | 795000     | X         | X        | 355000    |
| 2020 | 2            | Average Net Income    | above_90   | X       | X        | X        | X    | 561000    | 499000          | X      | 880000     | X         | 413000   | 398000    |
| 2021 | 2            | Average Net Income    | above_90   | X       | X        | X        | X    | 598000    | 544000          | X      | 1000000    | X         | 440000   | 432000    |
| 2022 | 2            | Average Net Income    | above_90   | X       | X        | X        | X    | 540000    | 512000          | X      | 939000     | X         | 466000   | 404000    |
| 2018 | 2            | SD Net Income         | above_90   | X       | X        | X        | X    | 564000    | 436000          | X      | 777000     | X         | 283000   | 408000    |
| 2019 | 2            | SD Net Income         | above_90   | X       | X        | 208000   | X    | 573000    | X               | X      | 732000     | X         | X        | 366000    |
| 2020 | 2            | SD Net Income         | above_90   | X       | X        | X        | X    | 692000    | 421000          | X      | 821000     | X         | 312000   | 404000    |
| 2021 | 2            | SD Net Income         | above_90   | X       | X        | X        | X    | 728000    | 490000          | X      | 985000     | X         | 338000   | 383000    |
| 2022 | 2            | SD Net Income         | above_90   | X       | X        | X        | X    | 583000    | 580000          | X      | 918000     | X         | 380000   | 401000    |
| 2018 | 2            | Median Net Income     | above_90   | X       | X        | X        | X    | 404000    | 405000          | X      | 621000     | X         | 348000   | 280000    |
| 2019 | 2            | Median Net Income     | above_90   | X       | X        | 309000   | X    | 368000    | X               | X      | 612000     | X         | X        | 283000    |
| 2020 | 2            | Median Net Income     | above_90   | X       | X        | X        | X    | 411000    | 417000          | X      | 658000     | X         | 372000   | 304000    |
| 2021 | 2            | Median Net Income     | above_90   | X       | X        | X        | X    | 423000    | 448000          | X      | 730000     | X         | 344000   | 353000    |
| 2022 | 2            | Median Net Income     | above_90   | X       | X        | X        | X    | 401000    | 392000          | X      | 678000     | X         | 382000   | 332000    |
| 2018 | 2            | 75th ptile Net Income | above_90   | X       | X        | X        | X    | 702000    | 625000          | X      | 1090000    | X         | 505000   | 435000    |
| 2019 | 2            | 75th ptile Net Income | above_90   | X       | X        | 470000   | X    | 653000    | X               | X      | 1078000    | X         | X        | 426000    |
| 2020 | 2            | 75th ptile Net Income | above_90   | X       | X        | X        | X    | 728000    | 661000          | X      | 1163000    | X         | 549000   | 467000    |
| 2021 | 2            | 75th ptile Net Income | above_90   | X       | X        | X        | X    | 762000    | 737000          | X      | 1350000    | X         | 602000   | 537000    |
| 2022 | 2            | 75th ptile Net Income | above_90   | X       | X        | X        | X    | 703000    | 679000          | X      | 1227000    | X         | 632000   | 497000    |

## individual\_top\_cma\_all\_ni

| year | partner_type | variable              | income_90k | Calgary  | Edmonton  | Halifax  | KCWH     | Montreal  | Ottawa-Gatineau | Quebec   | Toronto    | Vancouver | Winnipeg | other_cma |
|------|--------------|-----------------------|------------|----------|-----------|----------|----------|-----------|-----------------|----------|------------|-----------|----------|-----------|
| 2018 | 1            | Partner Count         | all        | 230      | 340       | 250      | 170      | 1250      | 700             | 350      | 4710       | 350       | 250      | 1090      |
| 2019 | 1            | Partner Count         | all        | 230      | 350       | 260      | 150      | 1150      | 710             | 310      | 4550       | 350       | 260      | 1080      |
| 2020 | 1            | Partner Count         | all        | 200      | 340       | 210      | 120      | 1120      | 710             | 300      | 4380       | 330       | 260      | 1060      |
| 2021 | 1            | Partner Count         | all        | 210      | 340       | 210      | X        | 1100      | 680             | X        | 4370       | 310       | 260      | 1040      |
| 2022 | 1            | Partner Count         | all        | 200      | 270       | 210      | 130      | 1080      | 670             | 270      | 4300       | 390       | 270      | 970       |
| 2018 | 1            | Total Net Income      | all        | 54484000 | 114762000 | 43304000 | 34837000 | 278584000 | 226431000       | 55787000 | 1780947000 | 111603000 | 39672000 | 231101000 |
| 2019 | 1            | Total Net Income      | all        | 54181000 | 122212000 | 55439000 | 26632000 | 249358000 | 267271000       | 59401000 | 1762916000 | 105805000 | 44962000 | 230729000 |
| 2020 | 1            | Total Net Income      | all        | 60180000 | 125339000 | 64512000 | 28431000 | 262246000 | 234102000       | 50639000 | 1914753000 | 110400000 | 50463000 | 233279000 |
| 2021 | 1            | Total Net Income      | all        | 62469000 | 135261000 | 66960000 | X        | 301901000 | 262472000       | X        | 2086480000 | 111423000 | 52810000 | 246373000 |
| 2022 | 1            | Total Net Income      | all        | 55132000 | 69811000  | 66056000 | 23581000 | 288608000 | 220981000       | 55277000 | 1943580000 | 161822000 | 42667000 | 217332000 |
| 2018 | 1            | Average Net Income    | all        | 264000   | 376000    | 185000   | 237000   | 245000    | 342000          | 173000   | 416000     | 355000    | 185000   | 227000    |
| 2019 | 1            | Average Net Income    | all        | 281000   | 387000    | 214000   | 211000   | 247000    | 414000          | 203000   | 427000     | 344000    | 207000   | 230000    |
| 2020 | 1            | Average Net Income    | all        | 340000   | 393000    | 323000   | 231000   | 270000    | 365000          | 190000   | 471000     | 367000    | 235000   | 241000    |
| 2021 | 1            | Average Net Income    | all        | 376000   | 425000    | 343000   | X        | 314000    | 410000          | X        | 521000     | 417000    | 255000   | 256000    |
| 2022 | 1            | Average Net Income    | all        | 338000   | 280000    | 330000   | 209000   | 303000    | 362000          | 214000   | 493000     | 473000    | 225000   | 245000    |
| 2018 | 1            | SD Net Income         | all        | 245000   | 322000    | 193000   | 208000   | 257000    | 331000          | 190000   | 418000     | 415000    | 173000   | 245000    |
| 2019 | 1            | SD Net Income         | all        | 262000   | 336000    | 221000   | 205000   | 270000    | 569000          | 195000   | 425000     | 322000    | 185000   | 247000    |
| 2020 | 1            | SD Net Income         | all        | 313000   | 372000    | 193000   | 209000   | 292000    | 306000          | 144000   | 488000     | 325000    | 193000   | 302000    |
| 2021 | 1            | SD Net Income         | all        | 384000   | 430000    | 216000   | X        | 347000    | 412000          | X        | 554000     | 357000    | 207000   | 288000    |
| 2022 | 1            | SD Net Income         | all        | 361000   | 185000    | 205000   | 187000   | 337000    | 291000          | 154000   | 561000     | 529000    | 261000   | 280000    |
| 2018 | 1            | Median Net Income     | all        | 248000   | 298000    | 178000   | 200000   | 194000    | 263000          | 143000   | 293000     | 269000    | 166000   | 185000    |
| 2019 | 1            | Median Net Income     | all        | 261000   | 295000    | 209000   | 172000   | 192000    | 300000          | 177000   | 302000     | 271000    | 174000   | 190000    |
| 2020 | 1            | Median Net Income     | all        | 292000   | 290000    | 293000   | 211000   | 213000    | 287000          | 166000   | 333000     | 292000    | 203000   | 192000    |
| 2021 | 1            | Median Net Income     | all        | 272000   | 314000    | 308000   | X        | 242000    | 326000          | X        | 351000     | 340000    | 225000   | 209000    |
| 2022 | 1            | Median Net Income     | all        | 260000   | 253000    | 291000   | 170000   | 224000    | 317000          | 182000   | 325000     | 334000    | 178000   | 201000    |
| 2018 | 1            | 75th ptile Net Income | all        | 411000   | 474000    | 267000   | 303000   | 339000    | 485000          | 232000   | 576000     | 461000    | 257000   | 295000    |
| 2019 | 1            | 75th ptile Net Income | all        | 443000   | 498000    | 296000   | 283000   | 346000    | 548000          | 249000   | 574000     | 445000    | 292000   | 285000    |
| 2020 | 1            | 75th ptile Net Income | all        | 531000   | 490000    | 396000   | 296000   | 387000    | 520000          | 262000   | 644000     | 479000    | 313000   | 311000    |
| 2021 | 1            | 75th ptile Net Income | all        | 608000   | 540000    | 423000   | X        | 439000    | 571000          | X        | 680000     | 525000    | 365000   | 332000    |
| 2022 | 1            | 75th ptile Net Income | all        | 514000   | 375000    | 403000   | 297000   | 424000    | 519000          | 276000   | 642000     | 589000    | 314000   | 317000    |

corporations\_top\_cma\_all\_ni

| year | partner_ty | variable              | income_90k | Calgary   | Edmonton  | Halifax  | KCWH     | Montreal  | Ottawa-Gatineau | Quebec   | Toronto    | Vancouver | Winnipeg | other_cma |
|------|------------|-----------------------|------------|-----------|-----------|----------|----------|-----------|-----------------|----------|------------|-----------|----------|-----------|
| 2018 | 2          | Partner Count         | all        | 250       | 370       | 170      | 90       | 420       | 250             | 90       | 2170       | 720       | 90       | 1360      |
| 2019 | 2          | Partner Count         | all        | 270       | 410       | 170      | 110      | 450       | 270             | 100      | 2310       | 740       | 90       | 1400      |
| 2020 | 2          | Partner Count         | all        | 280       | 400       | 150      | 100      | 440       | 280             | 90       | 2400       | 730       | 90       | 1490      |
| 2021 | 2          | Partner Count         | all        | 300       | 400       | 160      | X        | 450       | 300             | X        | 2580       | 760       | 100      | 1530      |
| 2022 | 2          | Partner Count         | all        | 320       | 370       | 150      | 110      | 490       | 320             | 90       | 2850       | 920       | 130      | 1560      |
| 2018 | 2          | Total Net Income      | all        | 130405000 | 171440000 | 50848000 | 29434000 | 205988000 | 115855000       | 24613000 | 1621899000 | 361085000 | 32397000 | 479616000 |
| 2019 | 2          | Total Net Income      | all        | 111274000 | 177635000 | 50362000 | 29769000 | 189068000 | 140067000       | 28085000 | 1730974000 | 363726000 | 33423000 | 461731000 |
| 2020 | 2          | Total Net Income      | all        | 130184000 | 228293000 | 58335000 | 34325000 | 207969000 | 133170000       | 27994000 | 2003249000 | 407372000 | 35096000 | 544776000 |
| 2021 | 2          | Total Net Income      | all        | 145809000 | 221468000 | 63945000 | X        | 232481000 | 153341000       | X        | 2454945000 | 475891000 | 37390000 | 611472000 |
| 2022 | 2          | Total Net Income      | all        | 158778000 | 163652000 | 62162000 | 36656000 | 223989000 | 152051000       | 29934000 | 2514677000 | 547023000 | 57827000 | 582953000 |
| 2018 | 2          | Average Net Income    | all        | 548000    | 475000    | 318000   | 334000   | 511000    | 497000          | 300000   | 795000     | 533000    | 395000   | 368000    |
| 2019 | 2          | Average Net Income    | all        | 484000    | 449000    | 323000   | 278000   | 452000    | 567000          | 327000   | 788000     | 541000    | 408000   | 346000    |
| 2020 | 2          | Average Net Income    | all        | 515000    | 610000    | 392000   | 343000   | 516000    | 499000          | 326000   | 867000     | 588000    | 413000   | 388000    |
| 2021 | 2          | Average Net Income    | all        | 524000    | 580000    | 435000   | X        | 560000    | 544000          | X        | 993000     | 652000    | 440000   | 417000    |
| 2022 | 2          | Average Net Income    | all        | 553000    | 474000    | 420000   | 378000   | 501000    | 512000          | 361000   | 928000     | 634000    | 466000   | 392000    |
| 2018 | 2          | SD Net Income         | all        | 583000    | 424000    | 214000   | 320000   | 561000    | 436000          | 489000   | 778000     | 613000    | 283000   | 407000    |
| 2019 | 2          | SD Net Income         | all        | 477000    | 407000    | 225000   | 245000   | 565000    | 518000          | 295000   | 733000     | 800000    | 271000   | 368000    |
| 2020 | 2          | SD Net Income         | all        | 488000    | 1762000   | 263000   | 303000   | 681000    | 421000          | 439000   | 824000     | 592000    | 312000   | 404000    |
| 2021 | 2          | SD Net Income         | all        | 451000    | 741000    | 282000   | X        | 718000    | 490000          | X        | 985000     | 607000    | 338000   | 384000    |
| 2022 | 2          | SD Net Income         | all        | 748000    | 647000    | 273000   | 281000   | 579000    | 580000          | 421000   | 918000     | 690000    | 380000   | 401000    |
| 2018 | 2          | Median Net Income     | all        | 418000    | 373000    | 284000   | 242000   | 386000    | 405000          | 198000   | 614000     | 401000    | 348000   | 273000    |
| 2019 | 2          | Median Net Income     | all        | 379000    | 361000    | 282000   | 245000   | 325000    | 457000          | 284000   | 605000     | 376000    | 388000   | 274000    |
| 2020 | 2          | Median Net Income     | all        | 400000    | 392000    | 367000   | 285000   | 380000    | 417000          | 215000   | 649000     | 449000    | 372000   | 299000    |
| 2021 | 2          | Median Net Income     | all        | 406000    | 422000    | 398000   | X        | 390000    | 448000          | X        | 717000     | 492000    | 344000   | 344000    |
| 2022 | 2          | Median Net Income     | all        | 416000    | 372000    | 369000   | 333000   | 373000    | 392000          | 260000   | 664000     | 455000    | 382000   | 319000    |
| 2018 | 2          | 75th ptile Net Income | all        | 663000    | 616000    | 456000   | 400000   | 652000    | 625000          | 290000   | 1078000    | 688000    | 505000   | 429000    |
| 2019 | 2          | 75th ptile Net Income | all        | 623000    | 602000    | 462000   | 355000   | 618000    | 722000          | 439000   | 1076000    | 652000    | 572000   | 420000    |
| 2020 | 2          | 75th ptile Net Income | all        | 657000    | 664000    | 555000   | 419000   | 673000    | 661000          | 424000   | 1145000    | 721000    | 549000   | 459000    |
| 2021 | 2          | 75th ptile Net Income | all        | 676000    | 709000    | 602000   | X        | 706000    | 737000          | X        | 1344000    | 801000    | 602000   | 525000    |
| 2022 | 2          | 75th ptile Net Income | all        | 707000    | 601000    | 570000   | 480000   | 681000    | 679000          | 498000   | 1206000    | 786000    | 632000   | 489000    |

| year | partner_type | variable              | income_90k | all        |
|------|--------------|-----------------------|------------|------------|
| 2018 | 1            | Partner Count         | above_90   | 9210       |
| 2019 | 1            | Partner Count         | above_90   | 8760       |
| 2020 | 1            | Partner Count         | above_90   | 8590       |
| 2021 | 1            | Partner Count         | above_90   | 8520       |
| 2022 | 1            | Partner Count         | above_90   | 8300       |
| 2018 | 1            | Total Net Income      | above_90   | 2969192000 |
| 2019 | 1            | Total Net Income      | above_90   | 2977818000 |
| 2020 | 1            | Total Net Income      | above_90   | 3133583000 |
| 2021 | 1            | Total Net Income      | above_90   | 3408975000 |
| 2022 | 1            | Total Net Income      | above_90   | 3125540000 |
| 2018 | 1            | Average Net Income    | above_90   | 351000     |
| 2019 | 1            | Average Net Income    | above_90   | 368000     |
| 2020 | 1            | Average Net Income    | above_90   | 396000     |
| 2021 | 1            | Average Net Income    | above_90   | 437000     |
| 2022 | 1            | Average Net Income    | above_90   | 413000     |
| 2018 | 1            | SD Net Income         | above_90   | 363000     |
| 2019 | 1            | SD Net Income         | above_90   | 389000     |
| 2020 | 1            | SD Net Income         | above_90   | 413000     |
| 2021 | 1            | SD Net Income         | above_90   | 470000     |
| 2022 | 1            | SD Net Income         | above_90   | 446000     |
| 2018 | 1            | Median Net Income     | above_90   | 253000     |
| 2019 | 1            | Median Net Income     | above_90   | 262000     |
| 2020 | 1            | Median Net Income     | above_90   | 283000     |
| 2021 | 1            | Median Net Income     | above_90   | 305000     |
| 2022 | 1            | Median Net Income     | above_90   | 287000     |
| 2018 | 1            | 75th ptile Net Income | above_90   | 461000     |
| 2019 | 1            | 75th ptile Net Income | above_90   | 467000     |
| 2020 | 1            | 75th ptile Net Income | above_90   | 512000     |
| 2021 | 1            | 75th ptile Net Income | above_90   | 558000     |
| 2022 | 1            | 75th ptile Net Income | above_90   | 516000     |

| year | partner_ty | variable              | income_90k | all        |
|------|------------|-----------------------|------------|------------|
| 2018 | 2          | Partner Count         | above_90   | 5800       |
| 2019 | 2          | Partner Count         | above_90   | 6000       |
| 2020 | 2          | Partner Count         | above_90   | 6240       |
| 2021 | 2          | Partner Count         | above_90   | 6590       |
| 2022 | 2          | Partner Count         | above_90   | 7050       |
| 2018 | 2          | Total Net Income      | above_90   | 3226929000 |
| 2019 | 2          | Total Net Income      | above_90   | 3318361000 |
| 2020 | 2          | Total Net Income      | above_90   | 3812308000 |
| 2021 | 2          | Total Net Income      | above_90   | 4706339000 |
| 2022 | 2          | Total Net Income      | above_90   | 4528738000 |
| 2018 | 2          | Average Net Income    | above_90   | 583000     |
| 2019 | 2          | Average Net Income    | above_90   | 577000     |
| 2020 | 2          | Average Net Income    | above_90   | 640000     |
| 2021 | 2          | Average Net Income    | above_90   | 747000     |
| 2022 | 2          | Average Net Income    | above_90   | 675000     |
| 2018 | 2          | SD Net Income         | above_90   | 627000     |
| 2019 | 2          | SD Net Income         | above_90   | 630000     |
| 2020 | 2          | SD Net Income         | above_90   | 790000     |
| 2021 | 2          | SD Net Income         | above_90   | 3114000    |
| 2022 | 2          | SD Net Income         | above_90   | 754000     |
| 2018 | 2          | Median Net Income     | above_90   | 395000     |
| 2019 | 2          | Median Net Income     | above_90   | 395000     |
| 2020 | 2          | Median Net Income     | above_90   | 433000     |
| 2021 | 2          | Median Net Income     | above_90   | 478000     |
| 2022 | 2          | Median Net Income     | above_90   | 454000     |
| 2018 | 2          | 75th ptile Net Income | above_90   | 740000     |
| 2019 | 2          | 75th ptile Net Income | above_90   | 723000     |
| 2020 | 2          | 75th ptile Net Income | above_90   | 803000     |
| 2021 | 2          | 75th ptile Net Income | above_90   | 891000     |
| 2022 | 2          | 75th ptile Net Income | above_90   | 830000     |

| year | partner_type | variable              | income_90k | all        |
|------|--------------|-----------------------|------------|------------|
| 2018 | 1            | Partner Count         | all        | 9690       |
| 2019 | 1            | Partner Count         | all        | 9400       |
| 2020 | 1            | Partner Count         | all        | 9030       |
| 2021 | 1            | Partner Count         | all        | 8910       |
| 2022 | 1            | Partner Count         | all        | 8750       |
| 2018 | 1            | Total Net Income      | all        | 2971511000 |
| 2019 | 1            | Total Net Income      | all        | 2978906000 |
| 2020 | 1            | Total Net Income      | all        | 3134343000 |
| 2021 | 1            | Total Net Income      | all        | 3414106000 |
| 2022 | 1            | Total Net Income      | all        | 3144847000 |
| 2018 | 1            | Average Net Income    | all        | 336000     |
| 2019 | 1            | Average Net Income    | all        | 350000     |
| 2020 | 1            | Average Net Income    | all        | 380000     |
| 2021 | 1            | Average Net Income    | all        | 422000     |
| 2022 | 1            | Average Net Income    | all        | 398000     |
| 2018 | 1            | SD Net Income         | all        | 362000     |
| 2019 | 1            | SD Net Income         | all        | 388000     |
| 2020 | 1            | SD Net Income         | all        | 412000     |
| 2021 | 1            | SD Net Income         | all        | 469000     |
| 2022 | 1            | SD Net Income         | all        | 466000     |
| 2018 | 1            | Median Net Income     | all        | 240000     |
| 2019 | 1            | Median Net Income     | all        | 251000     |
| 2020 | 1            | Median Net Income     | all        | 270000     |
| 2021 | 1            | Median Net Income     | all        | 296000     |
| 2022 | 1            | Median Net Income     | all        | 275000     |
| 2018 | 1            | 75th ptile Net Income | all        | 448000     |
| 2019 | 1            | 75th ptile Net Income | all        | 454000     |
| 2020 | 1            | 75th ptile Net Income | all        | 494000     |
| 2021 | 1            | 75th ptile Net Income | all        | 543000     |
| 2022 | 1            | 75th ptile Net Income | all        | 496000     |

| year | partner_type | variable              | income_90k | all        |
|------|--------------|-----------------------|------------|------------|
| 2018 | 2            | Partner Count         | all        | 5990       |
| 2019 | 2            | Partner Count         | all        | 6310       |
| 2020 | 2            | Partner Count         | all        | 6450       |
| 2021 | 2            | Partner Count         | all        | 6760       |
| 2022 | 2            | Partner Count         | all        | 7300       |
| 2018 | 2            | Total Net Income      | all        | 3223582000 |
| 2019 | 2            | Total Net Income      | all        | 3316116000 |
| 2020 | 2            | Total Net Income      | all        | 3810765000 |
| 2021 | 2            | Total Net Income      | all        | 4707596000 |
| 2022 | 2            | Total Net Income      | all        | 4529703000 |
| 2018 | 2            | Average Net Income    | all        | 569000     |
| 2019 | 2            | Average Net Income    | all        | 560000     |
| 2020 | 2            | Average Net Income    | all        | 622000     |
| 2021 | 2            | Average Net Income    | all        | 732000     |
| 2022 | 2            | Average Net Income    | all        | 658000     |
| 2018 | 2            | SD Net Income         | all        | 630000     |
| 2019 | 2            | SD Net Income         | all        | 629000     |
| 2020 | 2            | SD Net Income         | all        | 787000     |
| 2021 | 2            | SD Net Income         | all        | 3083000    |
| 2022 | 2            | SD Net Income         | all        | 752000     |
| 2018 | 2            | Median Net Income     | all        | 386000     |
| 2019 | 2            | Median Net Income     | all        | 382000     |
| 2020 | 2            | Median Net Income     | all        | 423000     |
| 2021 | 2            | Median Net Income     | all        | 468000     |
| 2022 | 2            | Median Net Income     | all        | 441000     |
| 2018 | 2            | 75th ptile Net Income | all        | 726000     |
| 2019 | 2            | 75th ptile Net Income | all        | 710000     |
| 2020 | 2            | 75th ptile Net Income | all        | 785000     |
| 2021 | 2            | 75th ptile Net Income | all        | 877000     |
| 2022 | 2            | 75th ptile Net Income | all        | 815000     |