Judicial Compensation and Benefits Commission

Commission d'examen de la rémunération des juges

PUBLIC HEARING

Held in the Québec Suite
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1 Rideau Street, Ottawa, Ontario
on Thursday, February 20, 2025
and Friday, February 21, 2025

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TRANSCRIPT, FRIDAY, FEBRUARY 21, 2025

TRANSCRIPTION DU VENDREDI 21 FÉVRIER 2025

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C O M M I S S I O N:

Anne Giardini	Commission Chair
Douglas Hodson	Commissioner
Graham Flack	Commissioner

P A R T I C I P A N T S:

Elizabeth Richards Dylan Smith Sarah-Dawn Norris Anna Dekker	Government of Canada (Department of Justice)
Pierre Bienvenu Jean-Michel Boudreau Étienne Morin-Lévesque	Canadian Superior Courts Judges Association and the Canadian Judicial Council (the Judiciary)

P A R T I C I P A N T S (Cont.):

Andrew K. Lokan	Federal Court
Sonia Patel	Associate Judges
Chief Justice Paul Crampton	
Roselle Wu	Canadian Bar Association
Julie Terrien	
Louise Meagher	Executive Director of the Commission

I N D E X

-- Upon commencing at 9:27 a.m.

COMMISSIONER GIARDINI: Good morning. It appears that everyone's gathered. I think most people are either here or going to be here soon.

Thank you again for reconvening, and I want to express again our gratitude for your contributions yesterday. We're looking forward to hearing replies today.

And we're going to start with the Government's reply. So, thank you.

MS. RICHARDS: Thank you very much, Madam Chair. Just before I start, there was an issue that was raised briefly yesterday about the situation of associate judges in the Tax Court, and so just to advise the Commission that counsel have been having some discussions; we're hopeful there's going to be an easy resolution.

What we propose is that when we write in to respond to the questions that the Commission has, that we would address it further at that time, if that's permissible.

COMMISSIONER GIARDINI: That would be great. Thank you.

REPLY SUBMISSIONS BY MS. RICHARDS:

MS. RICHARDS: Thank you very much.

And as I alluded to yesterday, I certainly won't be an hour, and I won't be very long this morning. There are just three points that I wanted to address, and they all go, of course, to the issue of attracting outstanding candidates.

And in the submissions that you heard yesterday and in the presentation, pardon me, from the Canadian Bar Association, there was some discussion about numbers and ability to attract numbers of candidates. And what the Government of Canada would urge upon the Commission is to be cautious about relying solely on impressionistic evidence and that you have a broader category or group of evidence before you on this issue.

So we certainly are appreciative of the active participation of judges before this Commission and that they've shared -- and they've

been very frank and open with the Commission about their experiences, but you can't rely just on that information. It is very useful and it's a piece of the puzzle for the Commission, but there are some limits to that information because it lacks some specificity, and it lacks objective data.

So, you know, for example, you don't have nor would we ever expect you to have the number of people who were spoken to, the details of what was said, or, indeed, the notions of what, from a judge's perspective, would amount to an outstanding candidate.

And as you're aware, since 2016, there is a different process in Canada for attracting and assessing judicial candidates, and that's the JACs that we've talked about, the Judicial [Advisory] Committees. And those are the committees that are now responsible -- this was part of an overhaul in the appointment process in Canada -- and it was really based on a need to attract greater diversity on the bench.

At that time in 2016, when it was

brought in, really, the majority of judges were white men, including at the senior levels of the Chief Justice and the Associate Chief Justice, and so this independent process was partly intended to bring about the diversity that we are starting to see in greater numbers on the bench.

And the Judicial Advisory Committees have the objective or the requirement to apply specific objective guidelines. Now, there were guidelines before, to be sure, but this is a new process with those outside of the Judiciary who are doing this assessment, and they make recommendations, as you know, to the Government on appointments.

And so they assess the qualification of lawyers based on their professional competence and overall merit, and it's notable that salary is not one of the criteria that is ever considered when they look at the judicial candidates.

The guidelines that are considered by JAC include, among other things, identifying jurists from a wide range of backgrounds and

practice areas with a view to having a Judiciary that reflects the diversity of Canadian society.

And so it is part of a natural goal of JACs to diversify the bench, which could, as we've said in our submissions, of course, be one of the reasons that we're seeing a drop in lawyers from private practice. And we know, as I said in my opening, that work remains to be done, but statistics are showing that Canada's bench is more diverse then ever. And even in the face of that, the majority of candidates continue to be from private practice, and the majority of appointments continue to be from private practice.

Now, in the Turcotte Commission, it was recognized, this push towards diversity, and I'll just refer you to paragraph 65 of that Commission report where Commissioner Turcotte talked about factors affecting who was appointed to the bench, which includes issues like diversity with respect to gender, language, and racialized groups. And as my friend from the Canadian Bar Association noted, there was reference to minority groups, and I

think, in this day and age, we use the expression "racialized groups."

I also would urge you to be cautious about putting sole reliance on statements from the minister or other judges made in the press. You have some other evidence before you. So, certainly, counsel for the judges have made submissions about that, and we've made submissions in reply that I'd just like to address quickly.

There's no question that the minister made comments about candidates and how that was affecting the pace of appointments, but, in our submission, the evidence does not show that was about individuals who are actually applying. It was about the pace of assessment at the JACs.

And so, as a result, in 2023, there were changes made. And so when the minister expressed a concern, it was about a number of applicants in the recommended pool, not actual applications, and in 2023, the changes included extending the terms for JAC members and extending the assessment period of judicial applications from

two to three years.

And so these changes have significantly improved the capacity of JACs to review the high number of applications and ensure ongoing source of recommended candidates from which the Government can make recommendations for appointment. So that's another, I think, piece of evidence or factor that's important.

And as well, the objective data that you have before you from JACs, in our submissions, shows that applications have, in fact, not decreased in the years, certainly since the last quadrennial session.

What we have for you in our reply submissions is a chart that's at paragraph 23 of our reply submissions, and it's Figure 2, and I don't think we need to bring it up. I would just encourage you to look at it because, in fact, it shows that the numbers have been, if anything, consistent, and in some respects, over the last seven years, there have been some bumps, and they've gone up and down.

We certainly see a drop in the 2020-2021 period, which may be accounted for COVID; I guess we'll never know what that was caused by. But when you look at those numbers of applications, you certainly can't say that there's been such a significant drop that this Commission should find that there's difficulty in attracting candidates to the bench.

And we would also refer you to Figure 3 in our reply submissions because, in our submissions, the numbers also show that there has not been a drop in the number of highly recommended candidates. In fact, there's been an increase in the two years following the apex of the COVID-19 pandemic.

And so we've given you the numbers in that chart of those applications which were assessed, those which were highly recommended, recommended, and unable to recommend. And so in 2023, by way of example, there have been 95 candidates rated as highly recommended, and there have been approximately 300 candidates rated as

highly recommended in the last quadrennial cycle.

And as I said, the requirement to assess whether a candidate is highly recommended or not rests with the JACs, and in the last cycle, in the last four years, there were 1,382 applications assessed by them in accordance with the guidelines.

And in our submission, based on looking at the whole picture, including this objective evidence, it would be very difficult for this Commission to find that there's some linkage between highly recommended candidates and higher salaries. We just don't have that type of evidence or that type of linkage.

And just before I move off this, I'd also like to say, I think you have to be cautious as well about totally relying on the testimony of Chief Justice Crampton. He, as well, has been very generous with his time in coming forward and sharing his experiences, but it's an area, actually, where you have a little bit less information because you don't have the same type of objective information about applications and

assessments that you have for judges with the associate judge process. It is a bit of a different process.

But I would encourage you to look at Appendix 3 to Chief Justice Crampton's submissions because, in that, he gives the total number of candidates versus the number of interviews.

So by way of example, in spring 2024, according to the Federal Court, there were 95 candidates and two interviews. What this Commission doesn't know is of those 95 how many would have been highly recommended or recommended. All you know is that two interviews were granted. So there are some limits in terms of what you can do with that information.

And when you look at those numbers, you'll see there are similarly high numbers of total applications for the period, and there are certainly low numbers of interviews. The difficulty, as we say, is extrapolating from that that out of, for example, the 96 [sic] candidates, only two of them were outstanding candidates. You

just don't have that type of objective information.

The second point or issue that I'd like to make is that the Commission should be cautious about not confusing appointments with applications because throughout the submissions of the Canadian Bar Association and my friends, when they talk about numbers and dropping numbers, they've talked about appointments often and not the number of applications.

And, in our submissions, applications talk to attracting candidates and outstanding candidates. We certainly recognize that appointments are part of the process because appointments are the follow-through in terms of how many candidates were outstanding, highly recommended candidates.

But when you look at the numbers around appointments, in our submission, they still demonstrate that private practitioners are being called to the bench, and outstanding candidates are applying in high numbers because they still make up approximately half or over half of the number of

appointments.

And my colleague, Mr. Smith, talked about that yesterday. And I would just refer you to it, you don't need to turn it up, but Figure 7 at paragraph 63 of the Government's submissions.

So it is certainly difficult to extrapolate from the data why. In the Government's submission, you cannot simply say that because there is a drop in the percentage of private practitioners who are being appointed that that is because of salary.

And one of the examples that we have talked about or other reasons that we've talked about, and I think the previous Commission, the Turcotte Commission, recognized, is that this focus on diversity and the expansion on the members of the legal profession and who may apply is likely one other explanation why the number of private practitioners who are appointed to the bench has decreased.

And we'd also like to note that it is not the role of this Commission, nor should it be

the goal of this Commission, to ensure that 75 percent of the members of the bench come from private practice. That's not what's in the legislation, and that's certainly not what previous Commissions have said.

And I'll just refer you, for example, to the Block Commission, and that's at Tab 11 of the Joint Book of Documents, and I'll refer you to paragraph 116 where, in that case, Commissioner Block fully recognized that outstanding candidates can be drawn from a broad background, not just private practice.

Similarly, I'll just refer you to the Drouin Commission, and that's at Tab 9 of the Joint Book of Documents, paragraphs 61 and 62, which I think is very interesting because it's a recognition that, early in the Commission process, there was a lot of focus on salary around private practice because at that time, and we recognize at that time, a significant percentage of the bench came from private practice, but I don't take any of these Commissioners to have said that that's the

way it should always be.

It was a direct corollary because of where the outstanding candidates were coming, but the legal profession has evolved, and the bench has evolved, and that means that it is no longer the case that 75 percent of appointees come from private practice. And as Commissioner Drouin noted in that early Commission, no segment of the legal profession has a monopoly on outstanding candidates.

And so, in the submission of the Government, it would not be correct to say that only outstanding candidates can come from private practice or that the judicial salary should be set so that three-quarters of the bench come from private practice. That's just not in keeping with the current goals and objectives for our Judiciary.

And the third and final point I wanted to address are some of the other important issues that were raised in closing by the Canadian Bar Association about fundamental issues with funding for the justice system. And the Judiciary has

raised and Chief Justice Crampton has raised similar issues, as has Mr. Lokan, about issues around workload and complexity.

Those are indeed important issues that all Canadians and the Canadian Government is grappling with, but those aren't issues for this Commission. Those questions around funding the justice system are complex issues, and they're not linked to salaries for judges, which is salaries and benefits, which is the focus of this Commission.

And there's important reasons for that because when you talk about issues around administrative support, which is one of the issues that was raised by Chief Justice Morawetz, or workload, those are issues that attract the provincial jurisdiction as well as the federal jurisdiction.

But what those factors do demonstrate and are relevant considerations for you is that there are a number of factors outside of salary that attract or discourage legal practitioners from

applying for the bench, and that is what many Commissions have said before. So salary is not the only consideration when you're looking at ability to attract members of the bench.

And so what you've seen in the evidence before you and the discussions between the parties is that some of the factors that might encourage or discourage legal practitioners are desire to serve the public; we've heard a lot about that. Security of tenure; obviously, judges have a security of tenure, and I think there was some reference to the fact that, from Chief Justice Crampton, there's some attractiveness to legal practitioners in private practice near the end of their career when their salary would drop off or they're being forced out of their law firms to apply to the bench where they will have security of tenure with a guaranteed judicial annuity.

Quality of life. And we've talked about judicial annuity, which, as you know, is two-thirds of the final salary of a judge, plus a survivor benefit. It's been described by our

expert, and I don't think the judges' expert would disagree, it's really the Cadillac of pensions in Canada.

And, of course, we recognize some of the issues that might discourage legal practitioners from applying to the bench, issues like workload, travel demands, loss of autonomy, loss of admin support, and increased public scrutiny.

In our submission, that's why this Commission should be very cautious about not jumping to the conclusion that it's the judicial salary alone when you're looking at some of the submissions that are being made about private-practice salaries. And that's why the legislation requires you to consider the four criteria, all four criteria, in assessing the adequacy of salaries and not simply focus on the salary of the highest-paid private practitioner.

And so, in the submission of the Government, when you look at the complete picture, including the objective evidence, and you look at

the evidence from the judges and you look at the evidence from the Judicial Advisory Committees, there are a number of other factors that will affect decisions around applying for the bench, and previous Commissions have recognized these issues.

And, in our submission, there simply is not evidence before you that there is a difficulty of attracting outstanding candidates based on the judicial salary at this time.

So I said I would be brief. Those were the points I wanted to raise. I understand that you may have more questions for us, and so I won't say more, but we're certainly happy to assist the Commission however we can.

COMMISSIONER GIARDINI: Thank you, Ms. Richards. That's a helpful summation.

I believe we will be hearing from Mr. Lokan, then, on behalf of the associate judges in reply.

REPLY SUBMISSIONS BY MR. LOKAN:

MR. LOKAN: Thank you. I do have a few points.

Firstly, my friend, Ms. Norris,

misspoke when she made the submission that associate judges only have jurisdiction in actions up to $100,000.

In fact, the $100,000 limit applies only to trials, not actions as a whole. Associate judges can and do hear and determine motions in actions irrespective of the amount at issue, and motions are a very significant and increasing component of the Court's work.

Secondly, and more broadly, we respectfully submit that the Government simply did not engage with much of the case that was presented by the associate judges. Our submissions pointed to several areas in which the role of associate judges has grown since 2016 vis-à-vis Federal Court judges, so in relative terms, not just the business of getting -- ah, of judging overall has changed.

And let me just remind you of those factors, which, we say, are essentially unanswered by the Government.

Firstly, the increase in monetary jurisdiction for trials from 50,000 to 100,000 and

all that entails.

Secondly, the increase in active case management, and Chief Justice Crampton is clear in his written submissions: The bulk of this falls to the associate judges. They are each -- and you'll see on page 3 of the written submissions of Chief Justice Crampton: Each associate judge is assigned between 100 and 200 matters to case manage, and there are ten associate judges.

There is, in Footnote 4 of the submissions, an estimate that there's around about 100 of them will be active case management, and what he says in his written submission is that there's been a spillover to the 42 judges on the Court who have collectively been required to be assigned, I think the number is, 215 case management files, active case management, that can't be handled by the cohort of associate judges.

It's obvious from those numbers that the active case management burden falls disproportionately upon the associate judges, and that's a change since 2016. That's on top of their

existing work with motions, with trials, and the other duties that they have.

The Chief Justice also confirms that case management is in all areas of the Court's work, including judicial review applications. It is true that associate judges do not hear and determine the final judicial review application on the merits, but they do hear motions, and they can and do decide motions, including motions to strike, which can result in the end of a judicial review application.

Thirdly, the increase in the proportion of self-represented litigants to now 25 percent of cases, again, the burden falls disproportionately on the associate judges. Self-represented litigant cases attract preliminary motions, such as motions to strike the whole case or some of the evidence, because self-represented litigants are not aware of things like jurisdictional limits, proper procedures, rules of evidence, and so on. Self-represented litigants are also more likely to be under the $100,000 threshold for trials.

So, again, the Chief Justice confirms in his submissions at page 2 that the associate judges, as frontline judicial officers, shoulder much of this burden, again, on top of their existing duties.

Fourthly, the Hospira case has confirmed that the status of associate judges as judges, for all intents and purposes, performing the same tasks as Federal Court judges except for their jurisdictional limitations. That is a development since 2016.

Fifthly, we have the evidence of the Chief Justice of the difficulty in recruiting judges, set out in Appendix 3 of his written submissions.

Now, I must differ with my friend from the Government of Canada on that evidence.

First of all, it is incorrect and unfair to say that it's not objective. The Chief Justice, remember, presides over the Federal Court as a whole. He looks at the judges, the Federal Court judges, as well as the associate

judges. He's involved in the recruitment process. No one is better placed to speak to the issues of recruitment and what drives people and what challenges are faced than he is.

The numbers indicate that since the Rémillard Commission in 2016, so the Appendix 3 chart, there have been ten associate judge appointments from a very narrow pool of suitable candidates, and that pool is either 15 or 16. Not only that, but four associate judges have left to become Federal Court judges.

I simply submit that this is much too thin a margin for the Commission to be confident that associate judges are sufficient to attract outstanding candidates.

Now, as for the suggestion that many of the applicants didn't get through to the interview process who might have been outstanding candidates, there is no evidentiary basis to believe that.

I think it's a fair inference that if you have a small number of interviews out of a large number of applications, it's because somebody

has gone through and determined there's only a few that are worth interviewing, and of those, a very small number have, according to the Chief Justice, met the criteria of not necessarily an outstanding candidate but a suitable candidate for appointment.

As the Chief Justice --

COMMISSIONER GIARDINI: Sorry, just a question. Is that evidence or conjecture, or do you know the answer to that?

MR. LOKAN: I'm just going to look for the reference.

So if I can give you the reference in Appendix 2, now, this is a previous submission that was made by the Chief Justice. And so he's talking about earlier on, but in assessing applications, he makes some general comments. He says:

> "With greatest respect to the applicants who participated, there were very few who had both the breadth of experience in the Court and the gravitas required for the position. Some lacked ten years at

the bar. Many had never appeared in Federal Court. Some had not litigated..."

Et cetera, et cetera. When you look at Appendix 3 itself, which is 2017 through 2024, number of candidates is the numbers 96, 77, 38, 28, et cetera, and then number of interviews is a very low number; it maxes out at five.

Now, unless you're prepared to assume that there were a large number or a significant number of candidates who were outstanding but were not interviewed, I mean, the whole reason for having interviews is to be able to identify the short list of those who may be selected to the position.

So for my friend to say, well, you know, maybe there's a lot of hidden outstanding candidates there, there's no evidentiary basis to say that. It is a much more natural inference, and I would put it as an inference, that those selected for interviews are those who met the bar of being potentially a suitable candidate, if that assists.

And as the Chief Justice said, the numbers don't lie, when he went through his evidence on that.

More broadly, I would say that the facts that the Chief Justice who presides over the Court as a whole believes that the pay differential between associate judges and Federal Court judges is too wide and that that impedes recruitment and retention of associate judges, that should send a powerful message.

The Chief Justice has no reason, other than the merits, to say that the differential should be narrower or should be bigger. Obviously, he presides over the entire Court, and if his evidence is that that is too broad for this very issue, you should regard that as very helpful evidence.

Now, with respect to the Canadian Bar Association's intervention, we thank them for their analysis. We must take issue with what may be simply a point of semantics, and that's the use of the term or description of the associate judges as

having a subordinate role.

Associate judges are not subordinate in the Federal Court. They have some limits on jurisdiction, but within these limits, they function fully as judges, and just as we would not say that a trial court judge is subordinate to appellate judge, it is inaccurate to say that associate judges are subordinate to Federal Court judges.

On the broader point that because there is a difference in jurisdiction there should be some differential in pay, on that, we agree. We are not arguing for parity. We have suggested 95 percent, but obviously, there should be some gap there.

The next point is on the value of the judicial annuity, which, of course, applies to both associate judges and to the other judges.

The Government argues that it is not possible to replicate this benefit in private practice, and they use the term "by conventional means." From the sources that are provided, it

appears that this is a reference to RRSPs. I would point out that for lawyers practicing through PLCs, they can easily achieve something similar by retaining earnings in the corporation.

So just looking at the numbers, and there is a difference in the parties on the numbers, but for Superior Court judges, the Judiciary values the pension benefit at $111,000 -- that's the 28 percent on the current salary per year -- while the Government values that as 150,000 on their 38 percent per year on the current salary.

For the associate judges, those numbers are correspondingly smaller. It would be 89,000 per year on the Judiciary's analysis or 120,000 on Government's analysis.

For a lawyer practicing through a PLC earning a million dollars or even significantly less than a million dollars, it is not a great challenge to retain even $150,000 in income inside the corporation as retained earnings left to be accessed in retirement.

And I would therefore submit that since

the growth of PLCs, which has happened over the last five to ten years, in particular, the judicial annuity, while it is an attractive plan, it is not the draw that it used to be. It can be replicated, indeed surpassed. There are no limits on what can be retained in a professional corporation.

My final point is to --

COMMISSIONER FLACK: Could I just ask a question?

MR. LOKAN: Sure.

COMMISSIONER FLACK: You're talking about the ability to retain the earnings and shelter them in a structure that's not the same as an RRSP but different. How is it the same from a risk perspective? How does a lawyer operating a PLC generate an income stream in retirement that is 100 percent guaranteed with no risk?

MR. LOKAN: So you could probably get into quite a conversation about the comparative advantages and disadvantages of both. Certainly, you can accumulate more in a PLC than the estimates of the value of the judicial annuity.

There are also potentially tax-favoured ways of retrieving that money in retirement; that is to say, it can come out as dividends, and they may, depending on the circumstances, be taxed less than if you're drawing a pension, which is taxed on essentially the same basis as employment income.

Against that, you would have the facts that how your investments grow is a matter of the success of your investment policy as opposed to a guaranteed amount, but I wasn't even talking about growth in investment. What I said, setting aside $150,000 a year or 120,000 or whatever, that's just leftover income without factoring in how much it grows or not.

So I suspect, at the end of the day, you would have a bit of a ledger with some points on one side and some points on the other side as to the comparative benefits of both.

I would not discount how comforting it is to have a guaranteed income that the judicial annuity provides; however, you might be able to save up a lot more than the value of the judicial

annuity and then withdraw it in retirement on a tax-favoured basis. I hope that's a balanced answer for you.

COMMISSIONER FLACK: Just one more question on that. You could save more, but then the equivalent would be, in effect, that you are contributing more, and the value, therefore, is higher. In other words, the valuation that's been provided would be insufficient to generate the guaranteed return that you talked about. So then we would be looking at using a higher, different number for the valuation of the pension.

I guess I'm trying to get at the risk point of, if I'm in the private sector, trying to assure 100 percent guarantee that I am going to be able to get at the end an income stream of X, one of the big factors that plays in is the risk of markets going in different directions and what you have to do. So that's the one I'm trying to get at.

So I appreciate a way to deal with that is to put more money into the instrument, the PLC,

for example, but if that's the mechanism you have to do to achieve the same guarantee of an outcome, then that would create a higher valuation you'd have to give for the guaranteed judicial annuity.

So that's what I'm trying to get at.

MR. LOKAN: Respectfully, that may not be the case. If you have $150,000 in excess earnings that you can put aside, that's the value, the actuarial value that the Government -- so this is at the highest end -- has. If you save that and simply put it in GICs, you would come out at least the same as, on the evidence, the value of the judicial annuity.

Now, in practice, people are going to probably choose an investment mix that's different from that and not be that risk averse. But if you have sufficient income, and for somebody earning a million dollars a year through a PLC, that's not difficult to do, then you could do it on a very low-risk basis or a risk-free basis.

It's a complex question, and, as I say, there certainly are two sides to that. But it

should not be assumed that the judicial annuity cannot be functionally replicated by practicing lawyers.

The final point I wanted to make is that the Government's reliance on statistics showing a drop in private-sector incomes after age 55 implicitly assumes that this is not by choice, but that is not an assumption that you should be comfortable in making automatically.

Lawyers could very well have reached a stage where they have made and saved a significant amount of money, and they'd prefer to shift towards a counsel arrangement where they're doing less work, but they are still on the books as practicing lawyers, and that that is partly behind what appears to be a drop-off in income.

I'm not sure that I've ever heard of a lawyer saying, well, now that I've turned 60, I'm going to lower my hourly rate. So, again, there's probably a bit of a complex story behind that.

For a lawyer contemplating seeking judicial appointment and prepared to assume the

heavy workload of a sitting judge or associate judge, there is no reason to believe that they would face a drop in income if they instead elected to stay in private practice.

Now, we have had reference to there being some firms that have retirement policies, but, again, you don't have data on what that accounts for, which firms have that and which do not. Certainly, it's not universal, or there's no suggestion that it's universal. So beware of treating that chart, seeing the drop-off in income, as something that inevitably happens to lawyers in private practice once they reach a certain age. There is no evidence to back that up.

And subject to any questions, those are the reply submissions on behalf of the associate judges.

COMMISSIONER GIARDINI: Thank you. That's helpful.

We're scheduled for a break; however, I think if you're prepared to go ahead, we can continue right through unless there's a ground

swell of support for a time-out.

I'm not seeing any.

MR. BIENVENU: We're in your hands, Madam Chair.

COMMISSIONER GIARDINI: Mr. Bienvenu.

MR. BIENVENU: We're happy to go right away.

COMMISSIONER GIARDINI: I think we're ready. Thank you.

REPLY SUBMISSIONS BY MR. BIENVENU:

MR. BIENVENU: Thank you.

So, Madam Chair, Members of the Commission, Mr. Boudreau and I will share the Judiciary's reply on the same basis that we shared the oral argument in-chief.

So I will reply to my friends' submissions on the principle of continuity, on the Government's proposed change to the IAI statutory adjustment, and the collection of pre-appointment income data; and Mr. Boudreau will address the comparators, including the value of the judicial annuity and the other statutory criteria.

Let me begin by thanking you, Madam Chair and Members of the Commission, for your attention throughout this hearing, for the flexibility you have afforded counsel for all parties, and, if I may say so, for presiding over a process that was both efficient and very congenial. We're very thankful, and I'm sure that my friends join me in expressing our gratitude for that.

When my friend came to discussing the principle of continuity, she stated that the Government agrees that previous Commission reports are important, but she emphasized that they are not binding. I'm happy to say that this is a point of agreement. The Judiciary never argued that the decisions and findings of previous Commissions are binding in the way that judicial precedents are binding.

I have read the relevant recommendations from the Block, Levitt, and Rémillard Commissions, and, in our submission, those could not be more explicit and congruent, and I think I need say no more about what that principle stands for.

Ms. Richards then went on to state that there is no consensus on the principle of continuity. If I understood her submission correctly, that is a point of disagreement because consensus in this context does not refer and indeed never referred to consensus between the parties.

It refers to consensus in the findings and decisions of previous Commissions on contested issues, such as the filters to be applied to the data on self-employed lawyers, the methodology to be used to value the judicial annuity, and, to preface my next topic, the systematic rejection of attempts by the Government to tamper with the IAI adjustment provided in the Judges Act.

Speaking of the IAI adjustment, you will recall that, in my opening presentation yesterday, I made the point that nowhere in the Government's written submission was the Commission provided with any reason why an indexation cap of 14 percent over four years was thought preferable to the existing statutory cap of 7 percent per annum or 28 percent over four years.

My friends had an opportunity to fill that gap and attempt to provide some basis for the Government's request to vary that cap, a request that the Turcotte Commission had considered and rejected four years ago.

What have we heard from the Government about this topic? We heard counsel state on three separate occasions -- once by Ms. Richards; twice by Ms. Norris -- the IAI is doing its job. The IAI has done its job, the IAI is appropriate, and then it was dropped as an afterthought, up to a maximum of 14 percent. But counsel did not justify 14 percent, nor did counsel explain why it should not be 28 percent as set out in the Act.

Now, at one point in her remarks, Ms. Richards intimated that the concern was the occurrence of another COVID-19 crisis, which she conceded caused the IAI to spike at 6.6 percent for one year. That is not an argument that was run by our friends in their written submissions, and I make two comments in reply.

The first one is that the Commission

best placed to assess that argument was the Turcotte Commission because it was sitting during the pandemic in an inquiry that included copious submissions and expert evidence on the pandemic, its impact, the risk of reoccurrence, and the Turcotte Commission considered and rejected the Government's request to vary the IAI cap.

My second comment is that had the concern floated by Ms. Richards being raised in the Government's submission, the Judiciary would have had an opportunity to address it, including by filing evidence on this question. This is an evidence-based process. It is a process that is to be objective and effective. It is not open to counsel to float ideas, arguments, with no evidentiary basis.

At the end of the day, Members of the Commission, there is no evidence to support this stated concern. What you have before you is the knowledge that the average IAI over the past 20 years is 2.73 percent, hardly, hardly support for the Government's request to vary the cap.

Now, Madam Chair, in your opening remarks, you have asked us not to repeat what is already set out in the parties' written submissions, and I won't do that, but I need to draw your attention to the sharp contrast between the importance of the IAI in the architecture of the Judges Act on the one hand and the total absence of evidence or reasons put forward in support of the Government's proposal to tamper with this adjustment.

And I refer you on this question to paragraphs 18 and following of the Judiciary's reply, and, in particular, to how successive Commissions have characterized this annual salary adjustment, starting with the Scott Commission in 1996, almost 30 years ago. And you'll recall that the Scott Commission characterized the IAI adjustment as:

> "An integral part of the social contract that the Government and lawyers appointed to the bench can be considered to have entered into,

a contract whose importance cannot be overstated."

And you know that that quote and that characterization was referred to with approval by three Quadrennial Commissions, most recently by your immediate predecessors.

Now, the flaw in the Government's treatment of the IAI adjustment is fully displayed in paragraph 33 of the Government's opening submissions. I will not read it to you, but when you consider in your deliberations, you will see in that paragraph the Government conflating two distinct measures having two distinct objectives.

One measure is this process, the Quadrennial Inquiry, whose objective is to determine an appropriate salary level, applying the statutory criteria and the traditional comparators.

Another measure: Once that salary level is determined, has, as its objective, to ensure that that salary is not eroded by inflation, and that is the function of the IAI adjustment.

The last raise in judicial salaries was

in 2004. That was the result of the process we are engaged in today: Setting the appropriate level of judicial salaries. Another measure is the IAI, and that is what protected that judicial salary level from erosion through inflation and also to reflect gains in productivity.

So if, as suggested in paragraph 33 of my friend's opening submissions, you cap the IAI adjustment over four years at the level of the projected IAI during that period in the course of your inquiry, you are conflating these two distinct measures, and you are, in effect, depriving the IAI adjustment of its essential function.

I conclude on this by repeating what I said in opening: In the record before you, Members of the Commission, you simply cannot make the recommendation that the Government is seeking on the subject of the IAI.

On the pre-appointment income data collection, I will be very brief.

The Judiciary's consistent position on that subject has always been that collecting

pre-appointment income data was a breech of privacy, was self-serving, and prone to manipulation for an obvious reason: The Government is the one that has the power to appoint Superior Court justices.

And the third prong to the Judiciary's position on PAI data is that this data, as the Block Commission found after a full airing of the subject, is of no assistance in understanding the position of candidates who are not applying for an appointment, even though they are outstanding candidates and thus prime candidates for a judicial appointment.

Now, I want to end my remarks by recalling Ms. Richards' very first words yesterday afternoon. She said:

> "We all agree that Canada has an outstanding Judiciary."

And this is indeed a point of agreement, but easy enough as it is to say that, this is not a state of affairs that can be taken for granted.

It is a fact that the Canadian Judiciary is looked upon with admiration and envy in Canada and aboard, but the quality of Canada's Judiciary is not a gift from above. It is not mere happenstance, nor is it a happy coincidence. It is so because of Canada's ability, historically, to attract to the bench the best and the brightest from the legal profession.

And everyone agrees that Canada's continued ability to do that is dependent on judicial salaries being at the level that will not deter outstanding members of the profession from seeking an appointment to the bench.

Now, the Government wrote in its submission and its counsel made, again, the bold statement this morning, I'll read from paragraph 25 of my friend's reply submissions:

> "There is nothing to support the Judiciary's assertion that the current judicial salary is insufficient to attract candidates from private practice."

That's paragraph 25 of the reply submission, and she said, in effect, the same thing this morning.

Members of the Commission, one is drawn to ask the question: What does it take? What does it take?

Ms. Wu, from the CBA, has enumerated, for your benefit yesterday, the evidence of that reality, the evidence that is before you. She's referred to the two written witness statements by senior members of the Canadian Judicial Council, Chief Justice Morawetz, Chief Justice Popescul, who very candidly shared with you their experience in the field, trying to find the talent they need to serve Canadians with a competent Judiciary.

You've had an explicit oral presentation before you by Chief Justice Crampton, who, in respect of the recruitment of judges, remember what he said at the end of his presentation: In respect of the recruitment of judges, he said that he needs, at his Court, private practitioners with specific expertise --

you'll recall he mentioned securities, class action, competition law, IP -- and he referred to his inability to attract suitable candidates from regions of the country; he mentioned the Atlantic region, the Prairies, and the Province of Québec.

Reference was made in the parties' written submissions to statements, explicit statements, by the Chief Justice of Canada on this subject. What does it take?

And then you have corroborating all this the evidence that my friend, Mr. Boudreau, will address in a minute, showing the delta between income levels in the private sector and the judicial salary.

Now, in reply to Ms. Richards' invitation that you consider the evidence of the three Chief Justices who have appeared before you, with caution, I invite you to observe the congruence of that evidence with the other evidence before you.

Now, the suggestion was made this morning that the increased workload of

Superior Court judges should not concern you, and the suggestion was even made that it escapes the scope of your remit. We could not disagree more with that submission.

Most people would agree that in most fields of endeavour, priesthood being, perhaps, an exception, a heavier workload commands a higher remuneration. Workload lies at the heart of Section 26 1.1(c) of the Judges Act. And, again, this is consistent with the evidence of Chief Justice Morawetz, who's told you that when he has conversations with potential candidates to the bench, they refer to the workload and the salary. And I'm speaking from memory, but I think that Chief Justice Popescul said the exact same thing. And I think that is consistent with the experience of anybody who's been involved in recruitment.

Anything that drives the attractiveness of a judicial appointment is part of your remit. It is something that you must consider, and there is ample evidence of that in the reports of previous Commissions. It is simple economics, and

it is confirmed by the experience of people involved in recruiting talent for any organization, whether it is Government or in the private sector.

Now, as I foreshadow, one very important part of your job is to digest the newly available, combined, combined source of data on the income levels of private-sector, self-employed lawyers, both incorporated and unincorporated, and that, we say, gives you a pointer that is fully consistent with the rest of the evidence as to the challenge of continuing, as I said, so Canadians can continue to be proud of their Judiciary and continuing with Canada's success in attracting the best and the brightest to the bench.

On this, I thank you for your attention and invite my friend to deal with the evidence.

COMMISSIONER GIARDINI: Thank you very much.

And, Mr. Boudreau, over to you, then. Thank you.

REPLY SUBMISSIONS BY MR. BOUDREAU:

MR. BOUDREAU: Madam Chair, Members of

the Commission, good morning.

In my reply submissions, I will address first the private-sector comparator. I will then touch on the valuation of the judicial annuity, including the issue of the disability benefit, and I will end briefly with prevailing economic conditions.

On the private-sector comparator, after the parties put much effort into obtaining that new crucial data that we discussed in detail yesterday, the Government has since put forth various arguments to undermine the value of this new enlightening data. Those arguments have progressively been discarded, and rightfully so, I would say.

So first, there was the confusion between the Partner Type 1, which happened to be individuals and not corporations, which has led to the abandonment of Figure 18 and the supporting data. Further, there was the idea that we could proximate the income of an incorporated lawyer by adding the net income and the dividends. I

understand that that has also been cast aside.

There are a few that remain that I will address today, but I submit to you that they're not valid, either.

And what we were told yesterday on that same topic is that filtering should not be used altogether but more so in the context of the PLC data, and I will address that as well because what was said was that it increases the number, and there appears to be a different -- there would be a difference in nature in the PLC data, whereas we shouldn't apply those filters to the data as well.

And my first point is that there is no difference in nature between the candidates that we capture with both sets of data. They're both self-employed lawyers. The difference is that some decide to incorporate, others do not, and we saw that there are some taxation considerations that go into that decision, and it is based on evidence that was submitted to the Turcotte Commission.

It is a decision that one can postpone to a further moment in his or her life, depending

on the income that they generate from the practice. And so this mobility from one data set to the other, in and of itself, should speak to the fact that they are the same and can absolutely be combined and should be looked at together.

On that note, the only reason that my friend ultimately pointed it was a difficulty in combining the data was that because we have data going to 2022 for the PLC data, whereas the self-employed unincorporated data goes to 2023. That is not a difficulty. We deal with this all the time with the data from the Commission.

We have slightly different endings for the data, which is why we provided a fulsome combined comparator for the year 2022 and going back all the way to 2019.

Another argument that was presented was that the data on the PLCs is skewed towards the high earners, and that was in the written reply arguments. It's addressed by Ernst & Young at Tab 9 of our compendium, and this argument begins on the bottom of page 6, and then there is the

table summarizing the analysis at the top of page 7.

The gist of the argument was that the PLC data had a large ratio between the mean and the median, and that was supposed to lead to the conclusion that it was most heavily skewed towards the high earners.

So the analysis that Ernst & Young did on the right-hand side of this table before you is the same analysis for the traditional CRA data for self-employed lawyers, and what this showed is that the ratio was actually higher for the traditional data set than for the new data, completely revoking this hypothesis that it was skewed towards high earners.

And Ernst & Young adds another comment, which is going to be important later when we look again at the graphic, that skewing the data towards outliers is something that the average is sensitive to, as we can appreciate, but when we use values such as mean or 75th percentile, they are much more immune to those variations, and that is the

advantage of using that type of comparator.

Another argument that was presented yesterday, I believe for the first time, was that data on PLCs was -- or overemphasized to top-three CMAs in Canada, and my friend said the PLC data is composed 58 percent of data from Toronto, Montreal, and Vancouver.

So, of course, the question similar to the analysis I just showed you that arose was what is that value if we look at the more traditional data set that we had before? And based on our calculations, which we're happy to provide to this Commission after the hearing, the percentage for the top-three CMAs, when we look at the unincorporated self-employed lawyers, was also 58 percent.

Along that same argument, my friend presented a value and said if we look at all the top-ten CMAs for the PLC data, they represent 78 percent of the data. So, once again, we conducted that analysis for the unincorporated self-employed lawyers, and the number we arrived at

was 77 percent.

So as you can see, there is virtually no difference between the data sets. And I submit to you that what they show is not that the data is skewed but simply that self-employed lawyers practice mostly in the top-ten CMAs in Canada.

There is an argument generally that this data set, its weight should be downplayed because it favours high earners. That is not an argument. That is the very reason that we wanted the inclusion, and the previous Commission was concerned about the lack of data on the incorporated lawyers. It suspected that high earners were excluded from the data sets, thereby underestimating the income values. So it should not come as a surprise, and it's definitely not an argument to undermine that data.

If we could show -- I think we have one graphic that we looked at yesterday. I want to emphasize the difference between high earners and the highest earners. So this, once again, is the combined comparator, not even the PLC data. If we

drew a line for the PLC data, as you know from the data that we showed yesterday, we would have a line that's in the million-dollar range. That line is the 75th percentile.

So what I want to draw your attention to is those are not the highest earners. There were allusions to partners in the corner office in Toronto, the top-most earners of the profession. That line does not represent the 90th percentile of earners at the top of the distribution.

Above this line, we have unincorporated and incorporated lawyers that represent 25 percent of the candidate pool for the Judiciary. That is a very important consideration. So this is the lowest income of that outstanding population that we've isolated.

Turning now to the issue of filters, before going into the details of filtering, I think I must dispel first the idea that filtering is inherently bad because we lose data points. Filtering, as I said yesterday, fosters two objectives: To narrow the data pool to relevant

candidates, qualified candidates, and, as a second step, to identify outstanding candidates within that pool.

But the notion of filtering data, processing data, is a good thing. It is a desired thing, as explained in the Ernst & Young report, but let me take a very simple example.

If instead of providing lawyer data the CRA told us, here's what we have -- we have all data on self-employed people in Canada -- then we would take that data set, and we would say, well, I want only lawyers, and no one would look behind to say, well, you've excluded millions of people from your data set; because these people would not be relevant to our analysis. And that is precisely what we do.

So when we obtain the data on self-employed lawyers, we want to know within that data set, well, who qualifies to be a judge? And if you don't have ten years of admission to the bar, you do not qualify. So we want to filter out these people. So it is intentional, and it is good

because, at the end, we want the relevant data points to carry out a proper analysis.

And these filters have been repeatedly referred to yesterday as the Judiciary's filters, but I want to point out that they've been applied for 25 years by this Commission. They are not the filters of the Judiciary.

On the low-income cut-off, I've just mentioned the rationale, but just to emphasize a little more that it was endorsed by this Commission and, more particularly, the McLennan Commission, we have, at Tab 6-A at page 43, the low-income exclusion. It's around the middle of the paragraph.

With respect to the appropriate level of exclusion mentioned above, our view is that it would be more appropriate to increase the level to 60,000. It is unlikely that any in the pool of qualified candidates will have an income level lower than 60,000. The salaries of articling students range from 40,000 to 66,000 in major urban centres, and the salaries of first-year lawyers

range from 60 to 90 in those same centres and are often augmented by bonuses.

So we see that the intent of this low-income filter was precisely to eliminate irrelevant data points from that set.

The same analysis was carried out today. I will not take you to them specifically, but they're at Tab 9 of the compendium on page 8.

Ernst & Young discusses the salaries. I'll give you the exact reference. On page 8, you have a section that discusses the application of the minimum salary cut-off, and within that section, you have the salaries of first-year associates in today's world, and you'll see that they're well above the low-income cut-off.

And that's only a first-year associate. We're not looking to exclude only them but anyone with less than ten years' experience. That data is from Tab 85 of our book on the -- there's [indiscernible] data on that.

Turning now to the age-group filter, you've asked us, Madam Chair, to identify issues on

which we agree. Having heard the submissions of my friends, I believe we agree that there must be some kind of age-filtering process. The Judiciary, as you know, submits to you that we should keep the 44-to-56 age-range filter that's been used, whereas the Government argues for an age-weighting method.

The one thing that I submit makes no sense is no age-weighting or age-filtering at all. That would be the equivalent of giving all ages or salaries at all ages the same weight, whereas we know, based on data that I presented to you yesterday, which is at Tab 8 of our compendium -- if you want to take it again, it's Tab 8, page 18.

So, yesterday, we looked at the distortion created by age-weighting without proper data, but what I want to emphasize today is that when you don't use any type of age-filtering, you end up in a situation where you would be factoring the salaries of someone who's 37, where we have one single appointment in ten years; you would be factoring that number the same as someone who's 52 or 53, where we have 36, 39 appointments. And

so it would result in a very distorted view and very understated numbers.

Now, the issue is that while the Government advocates for age-weighting, the numbers that this Commission is provided with, which I alluded to yesterday, is that you, in fact, do not have the income numbers with age-weighting. What you are provided with are the income of self-employed lawyers with no filters at all.

And an example is specifically a figure summarizing the income of self-employed lawyers, unincorporated; that's at Figure 15 of the Government's submission. That data has no type of age-weighting.

In the Government's submissions, they mention that the Eckler report age-weighted private-sector comparator provides age-weighting for that data, and what is referenced are pages 13 and 14 of the Eckler report. Those pages do not contain such weighted data.

On the 75th percentile, I will not further address that filter. I believe we have a

form of agreement.

On the valuation of the judicial annuity, I think it's important to read, again, the comments of the Turcotte Commission because they were read to you yesterday. We have them at a tab of our compendium. I'd just... [inaudible sidebar].

17(b), exactly. Looking at paragraph 183. So a portion of those paragraphs were read to you yesterday in arriving at the conclusion that we could now include the disability benefit, and I think we need to take a full read of those paragraphs. 183, in its submissions, the Government looks at total compensation, including:

> "Judicial annuity, additional costs to replicate the judicial annuity, permanent disability benefits, CPP benefits, supernumerary status, and other benefits, such as life insurance, health, and dental coverage.
>
> The Judiciary accepts that the

judicial annuity should be taken into account. The parties agreed to value this at 34.1 percent of the judicial salary."

I will get back to that in a minute.

While we were urged by the Government to calculate the cost of self-employed lawyer replacing the judicial annuity, my point is more of 186:

> "Previous Commissions have looked at the combination of judicial salary and judicial annuity but have not engaged in a comparative total compensation exercise including other benefits.
>
> Given the lack of available data from which to assess the total compensation of those applicants in pools from which judges are drawn, it is difficult to go through a meaningful exercise in any comparison of total compensation.

As a result, the Commission declines to include such a comparison in our deliberations."

Now, what the Commission was saying here is that absent fulsome evidence on benefits awarded to judges on the one hand, benefits available to private-practice lawyers, we cannot carry out this comparative analysis.

So if I want to evaluate disability benefit on one side, we need to know on the other side the cost of replicating that benefit, such as purchasing insurance, which is readily available to any one of us, or other more complicated advantages, such as critical-illness insurance that one can purchase through corporations.

Now, of course, this is not into evidence, and that's exactly my point. You would need evidence on what those benefits are and what their value is in order to compare them, and that is why the Turcotte Commission and the Rémillard Commission declined to engage in such a comparative exercise.

Not -- and unless I've misunderstood what my friend said, but I thought I understood it as, now that we have the PLC data, we can include the disability benefit in the judicial annuity valuation. To the extent I misunderstood, [then we agree] (ph), but if that was the proposition, that is not at all supported by these excerpts.

I just pointed out to you that, before the last Commission, ultimately the parties agreed on a 34 percent valuation for the judicial annuity.

Another point where there is agreement with the Government, we agree on the central importance of a discounted rate for the valuation of the annuity, and we agreed on this counterintuitive but simple principle that when the interest rates go up, the valuation of the annuity goes down.

And I submitted to you yesterday that what was illogical is that the Government's expert increased the value of the annuity while the interest rates had also gone up.

So Eckler, the Government's experts,

uses an interest rate that is found in the OCA reports. It's found in the 2022 actual [indiscernible] report from the OCA. I'm going to read an excerpt to you from that report.

We couldn't -- both experts have referenced this report in their own reports, but it is not in the record at the moment. We can find copies. I believe they're actually hyperlinked in the expert reports themselves.

This is from the 2022 report that was used by Eckler for the valuation. The equivalent flat interest rate for the purpose of calculating the actuarial liability as at 31st March 2022 is 3.6 compared to a flat rate of 3.4 as at 31 March 2022, and we know that 3.6 is the value used by Eckler. And on the footnote to that paragraph, the OCA writes:

> "The equivalent flat rate to calculate the actuarial liability in March 2019 was 3 percent, as stated in the previous valuation report."

So I've stated yesterday that we

completely disagree with the method used. It does not follow what was used before prior Commissions. But just by looking at the interest rates itself and the simple principle that we agree on, that both parties agree on, you will see that the interest rate has increased. It's increased here .6 percent, and therefore, the Government's valuation should have gone down, not up, from 34 percent.

COMMISSIONER HODSON: Sorry, is there a page number from which you're referring to?

MR. BOUDREAU: Page 12. And also, if you would like to go back to the 2019 report, that interest rate, the 3 percent, is on page 28.

Now, I will reply quickly on the difficulty in recruiting outstanding candidates and the declining numbers of appointees from private practice.

Yesterday, we showed a table of declining numbers of appointees in private practice. It was at Tab 20 of our compendium. And it illustrates that, from the 1990s, numbers have

significantly gone down.

We also mentioned the fact that there was a vacancies crisis during the reference period for this Commission, to which the Government answered, well, the crisis has been resolved; there is no longer an issue.

And on that, I would like to ask two questions. The first one is, for how long? Because the numbers in the vacancies have been reduced. What this Commission should look at is the whole cycle and what was the status of those vacancies for the whole quadrennial period.

And one can ask, is it permanent? What if the crisis -- I mean, vacancies will arise, and these positions will have to be filled. So to simply assert "it is fixed now" does not mean that it is fixed forever.

And another important question is, at what cost? Because we have compiled data for the period after this table that we presented. We've compiled recent data at Tab 22 of our compendium, and so, for reference, let us remember that, from

1990, the percentage was roughly 73, declining progressively to 63 percent of appointees from private practice in 2024 in the table we just looked at.

Now, in the last year, that number has declined to 54, and so those vacancies were filled but with a significant decline in appointees from private practice.

On the prevailing economic conditions, I will be very brief. We've had comments from the Government that there were changes, changes in letters from the Department of Finance, changes in the deficit.

On that first point, it cannot be that a change in economic conditions from one report to another is a bar to increasing judicial salaries, but more broadly, the record before you does not support the view that there is evidence that the Government is pursuing deficit-reduction policies of general application. That is a fundamental condition of this criteria being a bar to increasing judicial salaries, and you have no

evidence of that.

Subject to any questions, those are my reply submissions.

COMMISSIONER GIARDINI: Thank you very much.

Just as far as process goes, with the consent of all Commissioners, I would suggest that we retire for a bit, you can get a coffee, and we can talk about whether we have any questions we want to raise while we have you all here and about the process for otherwise getting questions to you.

Is that satisfactory? All right. So if I could ask you to bear with us, we will be back to you shortly. Thank you.

(RECESS AT 11:06 A.M.)

(RESUMING AT 11:43 A.M.)

COMMISSIONER GIARDINI: Thank you. And thanks for giving us a little time to gather our thoughts as well.

As we've indicated, we expect to be able to provide to you next week a limited number of written questions that will lend themselves to specific responses, we hope.

But in addition -- this is a process question, not really a substantive or content question, recognizing the difficulty of answering that -- we are cognizant of the fact that we will be writing this report during a period of potential broad-sweeping economic change affecting Canada as a whole and other parts of the world.

And just as a process, if there were an economic or geopolitical change that could affect the salaries of judges, amongst others, how would you propose that we address that kind of a question? Do we reconvene? Do we have submissions? Do we leave it to our judgment in writing?

I welcome any thoughts you might have, recognizing it's a very tough issue to answer. As I say, we can't answer substantively, but simply from a question of process, and maybe we can start with you, Ms. Richards.

MS. RICHARDS: I hesitate to start because I'm not the veteran, and so I'll just give you my off-the-cuff thoughts.

We recognize that this is not a adversarial process, and the rules of evidence that might apply to a court proceeding do not apply to you, but procedural fairness rules do apply. So I think there is an ability for you to consider new information. I understand, in previous Commissions, there have been requests after the hearing for new information to be provided.

And so I think as we've said all along, we've had a very collegial working relationship. We're certainly happy to be of any assistance we can to the Commission if further questions arise, and I have every confidence that, as counsel, we could work together to come up with some kind of proposal for you if that were to arise on how to address it. That's my sort of off-the-cuff view.

MR. BIENVENU: Well, I agree with those comments. I think, you know, we would leave it to your judgment as to whether the events that are postulated in your question were to occur, and, you know, depending on the impact that they would have on your findings and conclusions, then you may wish

to invite the parties to comment on them.

I think my friend or my colleague, Mr. Boudreau, yesterday, made the overarching point that this is a quadrennial process, it happens every four years, and so far as federally appointed judges are concerned, it's the only game in town. There is no other way for the adequacy of their remuneration to be the subject of analysis and recommendation.

So it is an important point of fairness to not lose sight of the fact that allowing circumstances occurring around the data, your inquiry, to overwhelm your analysis and the recommendation, and, you know, allow that to influence recommendations that will be in force for four years is problematic because of the nature of the process. So it's a self-evident point, but I just repeat it.

Yeah, so I agree with my friend, and I think we're happy to leave it to your good judgment as to whether these circumstances should be the subject of further submissions by the parties,

informed by your concerns about their impact on your recommendations.

COMMISSIONER GIARDINI: Any other submissions on that matter?

MR. LOKAN: Nothing to add for the associate judges.

COMMISSIONER GIARDINI: We take that as a general agreement? Thank you.

All right. Well, as I say, there's more information to follow.

I know that my fellow Commissioner, Mr. Hodson, has a comment or two to make before we bring this matter to a close.

COMMISSIONER HODSON: Great. Thank you. Having spent my entire career on that side of the table, I just wanted to say thank you, on behalf of the panel, to counsel for excellent written submissions, excellent oral submissions.

This is a very important process. There's a lot of material there. Many of you have been doing this for many years. We certainly appreciate the effort. It's been very helpful to

us, despite the volume to actually get to the real issues and to have a good discussion about that.

And also, thank you to the members of the Judiciary who have been here, who have participated in the process. You're directly affected by this and so certainly appreciate your involvement. And, thank you.

COMMISSIONER GIARDINI: Thank you. You'll be hearing from us further.

-- Meeting adjourned at 11:49 a.m.