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**Re: Quadrennial Commission 2024**

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Please find below the Government of Canada's response to the Commission's questions, which were provided on February 26, 2025. We are pleased to provide any further clarification or submissions should it be helpful to the Commission.

**Question 1**

1. Using the Turcotte Commission filters (75th percentile, age weighted to distribution of ages at appointment), could both the Government and the Judiciary provide the data for 2019-2023 for:
  - a) Unincorporated self-employed lawyers with incomes over \$80,000 and incomes over \$90,000;
  - b) Incorporated lawyers with incomes over \$80,000 and incomes over \$90,000;
  - c) Unincorporated self-employed lawyers and incorporated lawyers (combined) with incomes over \$80,000 and incomes over \$90,000;
  - d) All lawyers practicing in the private sector (i.e., not just partners but also associates, in-house counsel, etc.) with incomes over \$80,000 and incomes over \$90,000.

**The Government of Canada's Response: The challenges with the data available do not allow a detailed breakdown, in particular with respect to incorporated lawyers**

The Professional Law Corporation (PLC) data, in particular, presents significant challenges which have already been addressed by the Government.



There are two sources of data concerning PLCs: one from Statistics Canada and the other from Canada Revenue Agency (CRA). The Participants agree that the CRA data does not provide necessary information and did not rely on it.<sup>1</sup> For example, the CRA could not provide a detailed sample of individuals who practice law through PLCs. It is important to stress, therefore, that the CRA data did not have elements that would directly inform individual lawyer or partner income.<sup>2</sup> As such the data did not provide the basis for a detailed sample of individual lawyers practicing law through a corporation.

As for the Statistics Canada data, two subsets of data were provided: one for incorporated partner income (2018-2022) and one for legal corporation income (2018-2021). The judiciary relies solely on the subset of incorporated partner income. It is not possible for the Commission to rely on the Turcotte Commission filters in analyzing this subset for 2019-2023. There is a dearth of information regarding the age of those for whom the information is collected because of data quality and privacy concerns. There is also only a \$90,000 cutoff applied to the Statistics Canada data because multiple low-income cutoffs for \$60,000, \$80,000, and \$90,000 would have resulted in excessive data suppressions due to their confidentiality procedures. For that reason, the Participants agreed to receiving only the \$90,000 low-income cutoff. Moreover, the incorporated partner income data for 2023 was not available due to the delay in Statistics Canada receiving data for each tax year, which means that relevant and reliable data for those below this cutoff is not available.

Due to these gaps in the datasets, as the Government previously submitted, it is difficult to make substantive conclusions based on that data.

The impossibility of such an analysis, and inability to provide the breakdown requested by the Commission, highlights the problems created by the judiciary relying too heavily on this data.

Specific responses are set out below for each sub question. The Government has utilized the evidence available and expert analysis already prepared in answering the Commission's questions in this regard. Should the judiciary file additional expert evidence on this question, the Government may seek leave to object to the production of additional evidence or request the opportunity to respond to any additional expert evidence, including by submitting further expert evidence in reply.

- a) *Unincorporated self-employed lawyers with incomes over \$80,000 and incomes over \$90,000*

The Participants received data by age groupings from ages 35 to 69. The chart below sets out the weighting of seven age ranges and was created pursuant to the formula utilized by the

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<sup>1</sup> Joint Submissions of the Canadian Superior Courts Judges Association and the Canadian Judicial Council to the Judicial Compensation and Benefits Commission at para 187 [**Joint Submissions of the Judiciary**]; Submissions of Government of Canada [**Main Government Submissions**] at para 104.

<sup>2</sup> Eckler Report, p 42, **Government's Book of Documents, Tab 4.**

Government’s expert, Eckler. The Participants appear to agree on these numbers for unincorporated self-employed lawyers.

<b>Age Weighted 75th Percentile Self-Employed Lawyer Salaries</b>					
	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
<b>All Salaries</b>	\$340,529	\$384,383	\$430,358	\$410,670	\$419,738
<b>Salaries Above <u>80K</u></b>	\$473,919	\$534,826	\$565,815	\$533,434	\$557,056
<b>Salaries Above <u>90K</u></b>	\$490,006	\$550,678	\$582,503	\$551,894	\$573,463

We note for the Commission that a more detailed age-weighted analysis would require data for all individual ages and would also require data outside the 35-69 age range. The CRA did not provide this data due to their privacy rules.

*b) Incorporated lawyers with incomes over \$80,000 and incomes over \$90,000*

The data provided does not allow for an age-weighted analysis. The Participants were not provided any information related to age for the Statistics Canada data subset for incorporated partners, which is the only data the Participants rely on. To the extent income data related to age was available, it referred to the age of each member of the corporation and placed it into one or all of only three age ranges. This could result in the double or triple counting of the PLC in question.

We note that Ernst and Young (EY) chose to use the Statistics Canada data on partnerships only and recognized that this data was not refined by age. EY calculated its own age ratio and income from a different data set related to unincorporated self-employed lawyers and applied it to this information.<sup>3</sup> There was no evidence before EY or this Commission regarding the comparison of ages in the incorporated versus unincorporated private practice group that would support such an approach. In addition, there was no available data for 2023 and 2024 and the information relied on by EY was created by them using their own “trends analysis”; no objective and reliable data was used. In the Government’s submission, this is not an appropriate or reliable way to assess and compare the data available to the Commission and would not be reliable for the purpose of making a recommendation on judicial salary.

An additional issue with the judiciary’s reliance on the PLC data is that it skews to lawyers practicing in Census Metropolitan Areas (CMAs), in particular Toronto.<sup>4</sup> Previous commissions have reiterated that a national approach was important, and that salaries should not be set so as to match the highest income earners in urban centers.<sup>5</sup> Finally, and as previously mentioned, there is

<sup>3</sup> Ernest and Young Report, p. 24 [EY Report], **Book of Exhibits and Documents of the Canadian Superior Courts Judges Association and the Canadian Judicial Council, Tab D.**

<sup>4</sup> Eckler Report at pp 34–40, **Government’s Book of Documents, Tab 4.**

<sup>5</sup> Report of the Sixth Quadrennial Judicial Compensation and Benefits Commission, dated August 30, 2021 [Turcotte Commission Report], p 27, paras 178–181, **Joint Book of Documents, Tab 14**; Report of the Fifth Quadrennial Judicial Compensation and Benefits Commission, dated June 30, 2016 [Rémillard Commission Report], p 20, paras 68 & 70, **Joint Book of Documents, Tab**

no available data for the \$80,000 cutoff or for the year 2023 in the Statistics Canada data.

- c) *Unincorporated self-employed lawyers and incorporated lawyers (combined) with incomes over \$80,000 and incomes over \$90,000*

As set out above, the data with respect to incorporated lawyers did not allow for an age-weighted analysis. It therefore cannot be combined with unincorporated self-employed lawyers.

Even though the data cannot be combined, it is the position of the Government of Canada that the Commission should consider information for both unincorporated and incorporated lawyers in private practice and not solely rely on the PLC data as the judiciary appears to advocate.

It is worth noting that, in 2022, the data provided to the Commission accounts for 12,760 self-employed lawyers<sup>6</sup> and 7,300 incorporated partners.<sup>7</sup> This means that only 36% of lawyers correspond to incorporated partners in 2022. This percentage is likely overestimating the number of lawyers practicing as a PLC because the incorporated partner income data does not contain information regarding age, whereas the self-employed lawyer data is limited to ages 35 to 69. If these same age filters were applied to the incorporated partner income data, then it could result in fewer incorporated partners.

- d) *All lawyers practicing in the private sector (i.e., not just partners but also associates, in-house counsel, etc.) with incomes over \$80,000 and incomes over \$90,000.*

We do not have access to data with the specific breakdown and age-weighting requested. This is information that was not before this Commission, nor has it had this information in the past. The expert reports prepared by Eckler and filed by the Government provided some data with respect to specific in-house lawyers practicing in the private sector, outside of self-employed lawyers and incorporated lawyers.<sup>8</sup>

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**13**; Report of the First Quadrennial Judicial Compensation and Benefits Commission, dated May 31, 2000 [**Drouin Commission Report**], p 46, **Joint Book of Documents, Tab 9**.

<sup>6</sup> CRA Self-Employed Lawyer Incomes All-60K-80K-90K, **Joint Book of Documents, Tab 17**.

<sup>7</sup> EY Report, pp 11–12, which relies on the updated counts in Statistics Canada PLC Data Tables 2018-2022, **Joint Book of Documents, Tab 19**. The excel spreadsheet (“partners\_cma\_2018\_2022\_NEW.xlsx”) that included updated partner counts for 2018-2022 was accidentally omitted from Tab 19, but has been provided to the Commission in the email accompanying the Government of Canada’s post-hearing written submissions.

<sup>8</sup> Eckler Report at pp. 46–47 and Appendix F: This is the data described as “Top Legal Role” data, who are described as being “Top Legal Executives” at the “highest level of a legal position in their respective companies.”

## **Question 2**

At paragraph 242 of its submission, the Judiciary seeks an increase of \$60,000 to “begin to address the historical inadequacy of the data...”. What increase does it believe would be necessary to fully address the “historical inadequacy of data”? What is the Government’s response to this.

### **The Government of Canada’s Response: There is no legitimate basis to award a \$60,000, or any, lump sum increase on top of Industrial Aggregate Index**

There is no credible foundation for this Commission to say that previous recommendations of other commissions would have been different, as the Judiciary seems to suggest.

There is no reason for this Commission to conclude that previous commissions felt that they had inadequate data to properly discharge their functions. For example, when considering the information available regarding the salary of lawyers in private practice the Drouin Commission observed: “In combination, this formed a sufficient data base to assist us in understanding the current relationship between judicial salaries and the incomes of lawyers in private practice.”<sup>9</sup> Similarly, the McLennan Commission found that the information available to it “constitutes a sufficient sampling to provide a credible image of net incomes of lawyers in private practice.”<sup>10</sup> Finally, while the Turcotte Commission commented on a lack of complete evidence on the higher end of compensation for private practice, it found that it was not the Commission’s mandate to “attempt to match judicial salaries to those levels, but rather to determine whether there is a failure to attract outstanding candidates to the judiciary because of too great a gap between judicial compensation and private practice compensation.”<sup>11</sup>

It is not the role of this Commission to increase salary based on submissions of historical inadequacy of data as the judiciary appear to suggest. It is outside of any Commission’s mandate to consider the legitimacy of recommendations from past commissions. Indeed, the data available to this Commission is limited to the 2020-2023 taxation years. Even if it were within this Commission’s mandate to conduct such a retroactive review, therefore, there is no evidence before this Commission regarding previous years considered by earlier commissions which would allow for consideration of the impact of alleged “historic inadequacy of data,” as suggested. Moreover, there is no merit to the judiciary’s claim that salary recommendations of previous commissions were based on inadequate data or that, as implied, the recommendations ought to have been different.

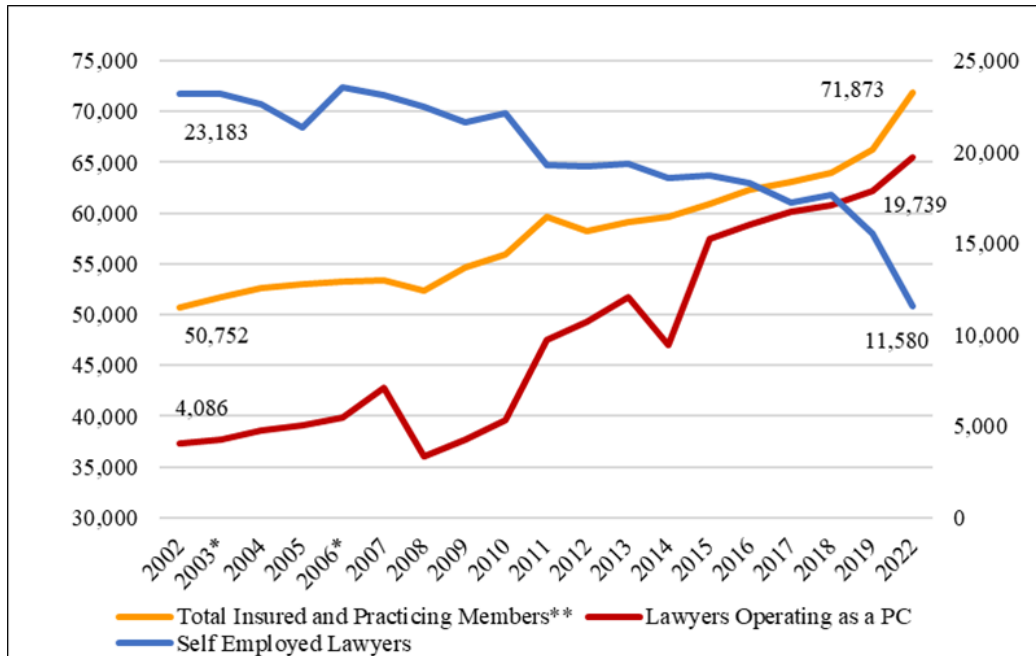
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<sup>9</sup> Drouin Commission Report, p 38, **Joint Book of Documents, Tab 9.**

<sup>10</sup> Report of the Second Quadrennial Judicial Compensation and Benefits Commission, dated May 31, 2004 [**McLennan Commission Report**], p 41, **Joint Book of Documents, Tab 10.**

<sup>11</sup> Turcotte Commission Report, p 32, para 215, **Joint Book of Documents, Tab 14.**

Moreover, the trend to PLCs is relatively new; it would be an overstatement to suggest that such data would have had a significant impact on previous commissions' analysis, since most lawyers in the 2000s and early 2010s did not operate in one:



**Figure 1: Number of Lawyers by Type<sup>12</sup>**

Previous commissions, up until the Turcotte Commission, did not voice concern over the lack of data with respect to PLCs. The Turcotte Commission suggested this data be collected in light of the evident trend to reporting as PLCs, not because of any concern that past commissions were missing data.<sup>13</sup> There is no basis, therefore, to “adjust” salaries in order to compensate for the fact that this data was not previously considered.

Although heavily relied on by the judiciary, the new information regarding PLCs informs only one of several criteria that this Commission is required to consider when making recommendations on adequate judicial compensation. It would be inappropriate to rely solely — or even largely — on data related to private practice practitioners who have chosen to structure their practice through PLCs in making those recommendations. Each previous commission has appropriately considered several comparators, including the Block Comparator. Given that almost half of the judges now come from the public sector, the public sector salaries presented to the Commission represent,

<sup>12</sup> Chart based on Federation of Law Societies of Canada, Federation Statistics Report (10 October 2023), **Joint Book of Documents, Tab 37** & Barreau du Québec, Rapport Annuel 2021-2022 (May 2022), **Joint Book of Documents, Tab 38**. \*Data for these years was not included due to missing QC data. \*\*Total insured and practicing members of the various Canadian law societies (excluding the Chambre des Notaires du Québec).

<sup>13</sup> Turcotte Commission Report, p 8, paras 47-48, **Joint Book of Documents, Tab 14**.

therefore, important evidence to consider and do not justify the lump sum increase which the judiciary seeks.

Furthermore, the goal of the quadrennial review process is not to achieve salary equivalency with other comparators. While previous commissions have recognized that it is appropriate to have a proportionate relationship between judicial salaries and comparator salaries, the goal must be to set a salary that will appeal to: “highly qualified persons of maturity and judgment who seek to provide a valuable public service to their country.”<sup>14</sup> Indeed, the McLennan Commission found that there was no mandate in the statute or in logic to maintain a rough equivalence with any comparator.<sup>15</sup> Similarly, the Turcotte Commission observed: “it could never be the role of judicial compensation in any realistic way to ‘match’ the compensation earned by the most financially successful private practitioners.”<sup>16</sup>

The justification put forward by the judiciary for a \$60,000 lump sum increase on top of statutory annual adjustments in accordance with the Industrial Aggregate Index (IAI) should not be accepted by the Commission and there can be no basis to support a larger, or indeed any such lump sum increase. Contrary to the submissions of the judiciary, judicial salaries currently match and are on track to exceed the Block Comparator for DM-3 salaries.<sup>17</sup> The judiciary’s reliance on their calculations for DM-3 and DM-4 salaries outside of the Block Comparator contradicts the long-standing practice of previous commissions and should be rejected as set out in the Government’s earlier submissions.<sup>18</sup> The current judicial salary taking into account total compensation, is also at almost the 87<sup>th</sup> percentile of self-employed private sector lawyers. As set out in the answer to question 1, it is difficult to conduct such a comparison for the PLCs because the data necessary to conduct the necessary age-weighting is not available.

Finally, the Commission should be mindful of the practical effects of the unprecedented lump sum increase sought. As set out in the Government’s reply submissions, the requested increase effective April 1, 2024, would have a compounding effect when the IAI is considered. For example, projections for salary plus IAI increase would see the judicial salary, without considering the annuity, rise by \$53,000 to \$436,700 by 2027. If the \$60,000 lump sum increase were awarded as of April 1, 2024, the salary would rise to \$502,700 by 2027, a \$119,000 increase.<sup>19</sup> If the total

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<sup>14</sup> McLennan Commission Report, p. 13, **Joint Book of Documents, Tab 10**; see also Report of the Third Quadrennial Judicial Compensation and Benefits Commission, dated May 30, 2008 [**Block Commission Report**], p 25, para 76, **Joint Book of Documents, Tab 11**.

<sup>15</sup> McLennan Commission Report, p 49, **Joint Book of Documents, Tab 10**.

<sup>16</sup> Turcotte Commission Report, p 15, para 102, **Joint Book of Documents, Tab 14**.

<sup>17</sup> Government’s Written Submissions at paras 40 & 129.

<sup>18</sup> Government’s Written Submissions at paras 116–129; Reply Submissions of the Government of Canada [**Government’s Reply Submissions**] at para 9.

<sup>19</sup> See Figure 1 at Government’s Reply Submissions at para 5.

compensation of judges is considered, the increase would be \$170,000 by 2027 and the inflationary effect of this \$60,000 lump sum increase would continue beyond the current cycle.

Ultimately, the question for this Commission is whether judicial compensation is sufficient to provide financial security to the judiciary to ensure judicial independence and attract outstanding candidates to the bench, all while considering the prevailing economic conditions in Canada, including the cost of living and the overall economic and current financial position of the Government. The evidence shows that outstanding candidates from both private and public practice continue to apply for judicial appointment; matching the judicial salary to the salary of the highest earners in private practice is neither necessary nor appropriate. Given this evidence, there is no support for any lump sum increase in addition to the IAI adjustment.

Sincerely,



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cc. Sarah-Dawn Norris & Dylan Smith, Counsel for the Government of Canada  
Pierre Bienvenu, Jean-Michel Boudreau & Étienne Morin-Levesque, Counsel for the  
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