Judicial Compensation and Benefits Commission

Commission d'examen de la rémunération des juges

REPORT AND RECOMMENDATIONS

SUBMITTED TO

the Minister of Justice of Canada

July 11, 2025

Judicial Compensation and Benefits Commission

Commission d'examen de la rémunération des juges

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July 11, 2025

The Honourable Sean Fraser, PC, MP
Minister of Justice and Attorney General of Canada
284 Wellington Street
Ottawa, Ontario
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Dear Minister Fraser:

Pursuant to subsection 26(2) of the *Judges Act*, I am pleased to submit the report of the seventh Judicial Compensation and Benefits Commission.

Respectfully,

Anne Giardini, O.C., O.B.C., K.C.
Chair

Encl.

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CHAPTER 1 - INTRODUCTION

1. This is the Report of the Seventh Quadrennial Judicial Compensation and Benefits Commission ("**Quadrennial Commission**" or "**Commission**") established under section 26 of the *Judges Act*[1] to inquire into the adequacy of the salaries and other amounts payable to federally appointed judges and to Associate Judges of the Federal and Tax Courts, and into the adequacy of the judges' benefits generally. An inquiry pursuant to s. 26 of the *Judges Act* is held every four years. The first Quadrennial Commission was established in September 1999, with subsequent Commissions in 2003, 2007, 2011, 2016 and 2020. The Commission began its inquiry on October 11, 2024, the date the members of this Commission were appointed.

2. Quadrennial Commissions consist of three members appointed by Governor in Council.[2] One member is nominated by the Judiciary (**"Judiciary")**. In the case of this Commission, that member is Douglas Hodson, K.C. The second member is nominated by the Minister of Justice and Attorney General of Canada (**"Government"**). For this Commission, that member is Graham Flack. These two members together nominated Anne Giardini, O.C., O.B.C., K.C., to serve as Chair of the Commission.

3. Before turning to the positions of the Judiciary[3], the Associate Judges and the Government, we wish to acknowledge the many people and organizations who provided us with helpful information and perspectives, including, in addition to counsel for the Judiciary, the Government and the Associate Judges of the Federal Court, the Canadian Bar Association ("**CBA**"), the Barreau du Québec, prominent members of the Judiciary, and experts in compensation, accounting and taxation. We thank all of them for the high quality of their contributions and for their assistance to us in carrying out our work. The evidence and submissions shared without exception a demonstrated commitment to ensuring that our judicial system continues a long tradition of excellence, respect and independence.

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[1] *Judges Act*, R.S.C., 1985, c. J-1 (***Judges Act***), Joint Book of Documents ("**JBD")**, volume 1 at tab 3.
[2] Appointments to the Judicial Compensation and Benefits Commission, Department of Justice (**"DOJ")**, https://www.canada.ca/en/department-justice/news/2024/09/appointments-to-the-judicial-compensation-and-benefits-commission.html.
[3] Judiciary refers to Canada's federally appointed judges, represented before the Commission by the Canadian Superior Courts Judges Association and the Canadian Judicial Council.

4. In this Report, we have not made reference to all of the submissions made by the parties, or to all of the documentary evidence that was received and read. Rather, we refer in this Report to information that we consider necessary to mention in connection with our findings and the conclusions that flow from all that we have heard and read. In places in this Report where we make mention of submissions or evidence that we do not agree with, we have endeavoured to state the reasons for our conclusions. To the extent that information or views are not mentioned in this Report, we can assure all those who assisted us that the omission is not the result of not having attended to them. We have read all of the materials, listened to all of the submissions made in person, and reviewed the transcripts thoroughly. We have also elected in this, the Seventh Commission, not to review in-depth arguments and conclusions reflected in earlier Commission reports; rather, we state here where we are in agreement or have come to different conclusions.

5. We would like to thank the Commission's staff, Louise Meagher and Natalie Duranleau, for their support. Both provided exceptional organizational, administrative and editorial assistance as well as insights into the process and scope of our work. In addition, we would like to express our appreciation to counsel and to the members of the Judiciary who provided submissions and information including Me Pierre Bienvenu, Me Jean-Michel Boudreau, Me Étienne Morin Lévesque, Ms. Elizabeth Richards, Mr. Dylan Smith, Ms. Sarah-Dawn Norris, Mr. Christopher Rupar, Mr. Andrew Lokan, Ms. Sonia Patel, Ms. Roselle Wu, Ms. Julie Terrien, Chief Justice Paul Crampton of the Federal Court, and Chief Justice Geoffrey Morawetz of the Superior Court of Justice of Ontario.

A. Role of Superior Courts in Canada

6. Canada's system of government has three branches: the legislative branch, the executive branch and the judicial branch. Each branch has its own powers and responsibilities. The legislative branch passes laws. The executive branch implements the laws. The judicial branch interprets laws and administers justice, ensuring that disputes are settled and offences prosecuted fairly and in accordance with Canada's legal and constitutional provisions. Courts are not the only mechanism for settling differences. Disputes can be resolved in other ways, for example through mediation or arbitration or before administrative boards and tribunals, but Canada's courts are an essential component of our constitutional democracy.

7. While the provinces and territories are responsible for providing much of what the superior courts need in their day-to-day work, such as support staff, offices and courtrooms, the federal government appoints and pays these judges, as well as judges at the federal level, and is responsible for the administration of the Supreme Court of Canada and federally created courts.[4]

8. An important aspect of the rule of law in Canada is judicial independence. Judges should personally have nothing to lose or gain by properly exercising their authority. For this reason, judges are assured of security of tenure, financial security and administrative independence.

9. These assurances have been described as follows:[5]

(a) Security of tenure: Once appointed, a superior court judge is eligible to serve on the bench until retirement age 75. Judges can be removed by a joint address of Parliament only after an independent and impartial investigation shows that there is good reason.

(b) Financial security: Judges must be guaranteed sufficient compensation (including salary and pension) so they are not subject to pressure for financial considerations. In Canada, governments cannot change judges' salaries or benefits without first receiving the recommendations of an independent compensation commission.

(c) Institutional and administrative independence: No one can interfere with how courts manage the legal process and exercise their judicial functions. For example, only the chief justice can choose how cases are assigned to the judges of their court.

10. The manner in which superior court judges are appointed is governed by Part VII of the *Constitution Act, 1867* under the heading Judicature, and by the *Judges Act*. Institutions that support judicial independence include the Canadian Judicial Council, the Office of the Commissioner for Federal Judicial Affairs (**"FJA"**), the National Judicial Institute, and the Courts Administration Service. They help ensure that the government and the judiciary maintain separation in areas such as discipline, pay and benefits, and continuing education for judges.

[4]How Does Canada's Court System Work? (**"DOJ"**) https://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/01.html.
[5]Canada's Court System, the Judiciary (**"DOJ"**) https://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/05.html.

11. Section 100 of the *Constitution Act, 1867* authorizes Parliament to set compensation for the federally appointed judiciary. The Quadrennial Commission process was initiated by amendments to the *Judges Act* in 1998 after the decision of the Supreme Court of Canada *Re Remuneration of Judges of the Provincial Court of Prince Edward Island* ("***PEI Reference"***).[6] That case and subsequent jurisprudence emphasize that the constitutional guarantee of judicial independence is a cornerstone of our system of constitutional government. These cases affirm the importance of security of tenure, administrative independence and financial security, and also establish the requirement for a process to address the compensation of the judiciary that preserves the independence of courts and judges.

12. In each province, one or more independent Judicial Advisory Committees assess the qualifications of applicants for federal judicial appointments. Judicial Advisory Committees are broadly made up of members representing the bench, the bar and the general public. The Commissioner for FJA has overall responsibility for the administration of the judicial appointments process on behalf of the Government.[7]

13. When assessing a candidate's suitability, the Judicial Advisory Committee considers a broad range of critical characteristics. These include, with respect to each candidate, their professional competence and experience, such as their proficiency in the law, their intellectual abilities, and their analytical skills; their personal characteristics such as any demonstrated commitment to public service, their sensitivity to and understanding of gender, racial and Indigenous issues, and their appreciation of social issues; and any potential impediments to appointment, such as any debilitating physical or mental medical condition that may impair their ability to perform the duties of a judge, any past or current disciplinary actions or matters, any current or past civil or criminal actions, and any financial difficulties.

14. Extensive consultation in both the legal and wider communities is undertaken by the Judicial Advisory Committee with respect to each applicant. A decision is then made whether each

[6]*Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island* ("**PEI Reference**"), [1997] 3 SCR 3, https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1541/index.do.
[7]Appointments to Superior Courts, Guide for Candidates, https://www.fja.gc.ca/appointments-nominations/guideCandidates-eng.html.

is “Highly Recommended”, “Recommended” or “Unable to Recommend” for appointment to the bench.

15. The recommendations are delivered by way of a confidential report to the Minister of Justice.

16. The Minister of Justice considers the information in the confidential reports when recommending appointments to superior courts, the Federal Court of Appeal, the Federal Court and the Tax Court.

17. Judicial candidates for Supreme Court of Canada vacancies are assessed by the Independent Advisory Board for Supreme Court of Canada Judicial Appointments, an independent and non-partisan body whose mandate is to provide non-binding merit-based recommendations to the Prime Minister on Supreme Court of Canada appointments.[8]

B. Mandate of the Quadrennial Judicial Compensation and Benefits Commission

18. Pursuant to s. 26 (1.1) of the *Judges Act*, in conducting its inquiry in to the adequacy of judicial salary and benefits, the Commission is to 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 Commission considers relevant.

19. Pursuant to s. 26(2) of the *Judges Act*, the Commission shall submit a report containing its recommendations to the Minister of Justice of Canada within nine months after the date of commencement of its inquiry who, pursuant to s. 26 (7), is to respond to the report within four months of receiving it, and thereafter, where applicable and within a reasonable period, initiate any legislation to implement the response.

[8]The Independent Advisory Board for Supreme Court of Canada Judicial Appointments, FJA, https://www.fja-cmf.gc.ca/scc-csc/2023/establishment-creation-eng.html.

20. The Quadrennial Commission process has resulted in six previous Reports:[9]

(a) The Drouin Commission Report (2000) ("**Drouin Report**");

(b) The McLennan Commission Report (2004) ("**McLennan Report**");

(c) The Block Commission Report (2008) ("**Block Report**");

(d) The Levitt Commission Report (2012) ("**Levitt Report**");

(e) The Rémillard Commission Report (2016) ("**Rémillard Report**"); and

(f) The Turcotte Commission Report (2021) ("**Turcotte Report**").

21. Quadrennial Commission determinations apply to all federally appointed judges. These are the judges of the Supreme Court of Canada, the Federal Court of Appeal, the Federal Court of Canada, the Court Martial Appeal Court of Canada, the Tax Court of Canada, and the courts of appeal and the superior courts of each province and territory.

22. The compensation of associate judges (previously called prothonotaries) was added to the Quadrennial Commission's scope of review in 2014 by amendments to the *Judges Act* that extended the definition of "Judiciary" to include them. Associate judges are judicial officers of the Federal Court of Canada whose office attracts a constitutional guarantee of judicial independence. The Rémillard Commission was the first Commission to address the compensation of prothonotaries following the 2014 amendments to the *Judges Act*.

23. In 2022, the office of associate judge of the Tax Court of Canada was created.[10] The Commission's mandate includes issuing recommendations regarding the compensation and benefits of associate judges of the Tax Court.[11]

[9]All the Reports are available in JBD, volume 1, tabs 9 to 14 or at the Quadrennial Commission's site under the Archives tab.
[10]*Judges Act*, s. 2.1(1), *Budget Implementation Act, 2022, No.1* (SC 2022, c 10), ss. 333, 340, 368, 371.
[11]*Judges Act*, s. 11.1.

C. Commission's Proceedings

24. The process leading to this Report was delayed due to our late appointment. Pursuant to s. 26(2) of the *Judges Act*, the inquiry should have commenced on June 1, 2024. However, we were appointed on October 11, 2024, and, with the consent of the main parties, we commenced our inquiry on that date. Following consultation with the parties, we issued a Notice on November 19, 2024, setting out the schedule for the filing of submissions and the dates for public hearings. The Notice, along with all correspondence, submissions, supporting documentation and the transcript of the hearings held in Ottawa on February 20th and 21st are available on the Quadrennial Commission website. The Commission submitted its Report and Recommendations to the Minister of Justice on July 11, 2025, within nine months of the commencement of its inquiry as required by the *Judges Act.* It is not ideal for our recommendations to be delivered during the summer months when Parliament is not sitting and when they could affect judicial salaries that have already been in place for months. It is therefore our recommendation that diligent efforts be made so that future commissions are appointed by June 1 as provided for in the *Judges Act*.

RECOMMENDATION 1

Diligent efforts should be made so that future commissions are appointed by June 1 of the relevant year, as provided for in the *Judges Act*.

D. Report's Structure

25. This Report will address the issues before the Commission in the following order:

Chapter 2 – Judges' Salaries

Chapter 3 – Associate Judges' Salaries

Chapter 4 – Other Issues

Chapter 5 – Conclusion

Chapter 6 – List of Recommendations

CHAPTER 2 - JUDGES' SALARIES

A. Judges' Salaries

26. The salaries for federally appointed judges as of April 1, 2024 are set out below[12]:

Supreme Court of Canada:	
Chief Justice	$510,100
Puisne Judges	$472,400
Federal Courts and Tax Court:	
Chief Justices and Associate Chief Justices	$435,000
Puisne Judges	$396,700
Appeal, Superior, Supreme, King's Bench:	
Chief Justices and Associate Chief Justices	$435,000
Puisne Judges	$396,700

27. The salary for Associate Judges of the Federal Court is currently 80% of the salary of Federal Court judges.[13] The salary for Associate Judges of the Tax Court of Canada is currently 80% of the salary of Tax Court judges.[14]

28. Section 25 of the *Judges Act* provides for annual increases in judicial salaries based on the average increase in weekly wages and salaries in Canada (the "**Industrial Aggregate Index**" or "**IAI**"). The judicial salaries noted above were increased on April 1, 2025 by 4.6% to reflect the change in the Industrial Aggregate Index. Apart from annual adjustments to reflect changes to the Industrial Aggregate Index, there have been no adjustments to judicial compensation since the McLennan Commission in 2004.[15]

29. The Government's position is that the current salary and related benefits of federally appointed judges and Associate Judges are sufficient to "ensure that Canada's judiciary remains independent and enjoys financial security, and that outstanding candidates from all backgrounds

[12]Government Book of Documents (**"GBD"**), at tab 5 (Inclusive of the Aggregate Index Adjustment on April 1, 2024).
[13]*Judges Act*, s. 10.1.
[14]*Judges Act*, s. 11.1.
[15]From the Turcotte Report, para 210 "We are mindful … that there has been no salary adjustment, other than the IAI indexation, since 2004."

continue to be attracted to judicial office".[16] In addition, the Government requests the Industrial Aggregate Index be capped at a maximum four-year cumulative increase of 14% over the current quadrennial cycle.[17]

30. The Judiciary requests that the base salary of puisne judges be increased by $60,000, exclusive of the Industrial Aggregate Index adjustment, effective April 1, 2024 and that other judicial salaries payable to the Judiciary under the *Judges Act* be adjusted proportionately.[18] The Judiciary submits the current judicial salary is inadequate and the requested increase is needed in order to ensure that Canada is able to continue to attract outstanding candidates to the judiciary, including from the private sector.[19]

31. The Judiciary opposes the Government's request to cap the cumulative Industrial Aggregate Index adjustment at 14%.[20]

32. The Judiciary also raises concerns with the appropriateness of the Office of the Commissioner of Federal Judicial Affairs collecting pre-appointment income data from newly appointed judges,[21] as recommended by the Turcotte Commission. The Judiciary seeks a recommendation from the Commission to cease collecting this data.[22]

33. The Associate Judges request that the salary paid to Associate Judges be increased from 80% to 95% of the salary of a Federal Court judge, effective April 1, 2024.[23]

34. The Government's position is that the current Associate Judges' salary is adequate and that no increase is warranted.[24]

[16]Government Submission, para 2.
[17]Government Submission, para 4.
[18]Judiciary Submission, para 247.
[19]Judiciary Submission, para 240.
[20]Judiciary Reply Submission, para 43.
[21]Judiciary Submission at para 247.
[22]Judiciary Submission, para 269.
[23]Associate Judges Submission, para 98.
[24]Government Reply Submission, para 29.

35. At the hearing, counsel for the parties advised the Commission that Associate Judges of the Tax Court of Canada were not represented before the Commission. At the time of the hearing, only one Associate Judge had been appointed to the Tax Court. Since then, a second Associate Judge was appointed on March 3, 2025. The Commission asked the parties to make further representations regarding the salaries and benefits of the Associate Judges of the Tax Court of Canada.

36. On March 31, 2025, counsel for the Judiciary provided a letter to the Commission advising that, given the nearly identical statutory language governing Associate Judges of the Federal Court and Tax Court, the Judiciary and Government suggested the Commission's recommendations regarding the salary of the Associate Judges of the Federal Court apply equally to the Associate Judges of the Tax Court of Canada.[25]

37. The Commission agrees with this approach and its recommendation with respect to Associate Judges of the Federal Court will apply equally to the Associate Judges of the Tax Court of Canada.

38. The CBA and the Barreau du Québec took no position on the amounts of judicial compensation.

B. Analysis under section 26(1) of the *Judges Act*

39. In conducting its inquiry, this Commission has had the benefit of reading the reports of previous commissions. We have also carefully considered the submissions of the parties, including reports of their experts. We convened two days of hearings and benefited from further analysis provided by the parties in response to questions raised by the Commission.

40. The Commission arrived at its recommendations having considered the submissions and evidence in light of the criteria set out in s. 26(1.1) of the *Judges Act*. Our analysis is set out below.

[25]Judiciary letter dated March 31, 2025, with content of letter approved by the Government.

i. 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)

41. The first statutory criterion requires the Commission to assess "the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government".

42. We concur with the view of the McLennan Commission in that we "interpret this direction as obliging us to consider whether the state of economic affairs in Canada would or should inhibit or restrain us from making the recommendations we otherwise would consider appropriate… The consideration to be applied is whether economic conditions dictate restraint from expenditures out of the public purse".[26]

43. When the parties filed their initial written submissions late in 2024, economic forecasts for Canada were generally positive. The assessment provided to the parties by the Department of Finance noted an International Monetary Fund forecast for Canada that indicated growth of 2.6% in 2025 along with inflation declining to 2.1% by 2025 and a declining budget deficit over the planning horizon. According to the expert for the Judiciary, at that time it was "evident that economic conditions have largely coalesced around traditional longer-term trends".[27]

44. By the time of the oral hearings in February 2025, the increasing threat of US trade measures and other global events had altered the economic environment. Given the importance of the US as a trading partner and the size of Canada's trade-exposed economy, economic measures such as US tariffs may be expected to have negative effects on Canada's economic growth, inflation, unemployment and fiscal position in the short, medium and longer term.

45. Bank of Canada modelling of a permanent 25% US tariff on all Canadian goods with mirrored retaliatory tariffs by Canada in February showed GDP growth 2.5% lower than the baseline in the first year and 1.5% lower in the second year with a permanently lower level of GDP reflecting a decline in the long-run level of Canadian productivity due to the distortionary effects

[26]McLennan Report, page 9.
[27]Judiciary Submission, para 44.

of tariffs. In April, the International Monetary Fund downgraded its January economy forecast for Canada to 1.4% in 2025 and 1.6% in 2026.[28] More recently, in May 2025, the Bank of Canada issued this advisory:[29]

> In the medium to long term, a prolonged global trade war would have severe economic consequences. It would reduce economic growth and increase unemployment. Some households and businesses would be unable to continue making debt payments. If household and business credit defaults were to occur on a large scale, banks could see greater losses than they have provisioned for. This could lead them to pull back on lending, potentially exacerbating economic and financial stress.

46. A challenge facing the Commission is the uncertainty affecting economic conditions in Canada, depending on, among other factors, the level and permanence of trade measures threatened and ultimately adopted by the United States. Commission Chair Anne Giardini asked the parties how we should treat this uncertainty "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".[30]

47. Had it been clear that a negative economic scenario was becoming more likely in the immediate term, it may have been appropriate to give the parties the opportunity to make additional submissions on this criterion as they offered to do in response to this question. As at the date of this Report, predictions, forecasts and plans for the four years ahead remain challenging given that there has to date been no resolution to general levels of uncertainty.

48. The Commission must make its recommendations based on the evidence in front of us, not on an adverse scenario that could but has not yet crystallized. Taking into account the economic situation and forecasts as of the writing of this Report, the Commission concludes that there is not enough evidence to restrain us from making recommendations we think appropriate on salaries.

[28] https://www.imf.org/en/Publications/WEO/Issues/2025/04/22/world-economic-outlook-april-2025.
[29] https://www.bankofcanada.ca/2025/05/financial-stability-report-2025/.
[30] Transcript of February 21, 2025 hearings, page 263.

49. We recognize that it is possible that the situation could change materially between the time the Government receives this Report and the time it provides its reply. Should economic conditions change materially and if, for example, the Government were contemplating wage restraint for the broad public sector, then we believe it would be appropriate for the Government to refer the matter back to the Commission to allow the parties to make additional representations based on a materially changed situation. Such an approach was specifically contemplated by the Supreme Court of Canada in the *PEI Reference*.

Section 25 – Indexation of Judicial Salaries

50. Section 25 of the *Judges Act* provides for annual increases in judicial salaries based on the IAI. Given the economic uncertainty Canada is facing, the Government has proposed a cap on IAI adjustments to judicial salaries to a total maximum of 14% of the judicial salary over the four-year quadrennial cycle. The Government takes note of the fact that the Turcotte Commission rejected the Government's then proposal of a 10% cap but points out that the Turcotte Commission did so without providing reasons for rejecting the position and that it did not address the benefits of an upper limit to the IAI increase.

51. The Government pointed out that the IAI has risen faster than inflation over the last two decades. While this is true, the rise in the IAI appears to us to reflect a deliberate decision of Parliament to have judicial salary increases track wage settlements in the broader workforce rather than simply provide for cost-of-living adjustments, which would have been the case had it chosen to link annual increases to the consumer price index.

52. Section 25(2)(b) of the *Judges Act* has already explicitly set an upper limit to the effect of the Industrial Aggregate Index on judicial salaries by capping increases in any year at 7%. Were we to accept the Government's proposal of a maximum 14% increase over the four-year period, this would represent less than half of the 31.08% maximum compounded increase expressly provided for in the legislation.

53. In explicitly providing for a cap on the IAI adjustment in the legislation, we believe that Parliament has set out a complete code for how to deal with exceptional increases in the IAI. Parliament saw benefits in setting an upper limit to the IAI and turned its mind to what that upper

limit should be. It is not for the Commission to alter the clear intent of Parliament on this question by substituting a different cap on the impact of the IAI on judicial salaries.

54. This is not to say that there are no situations when the Commission may recommend an increase lower than the IAI. The *PEI Reference* dealt with a case in which governments chose to reduce salaries of judges as well as other public servants. Chief Justice Lamer found as follows:[31]

> First, 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 remunerated from public funds, or as part of a measure which is directed at provincial court judges as a class. However, any changes to or freezes in judicial remuneration require 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…

55. However no similar economic measures are currently proposed by the Government. The Commission does not believe that economic uncertainty alone is enough to disturb Parliament's clear intent on the operation of the IAI, so we respectfully reject the Government's proposal that we recommend a 14% cumulative cap.

ii. The role of financial security of the judiciary in ensuring judicial independence—s. 26(1.1)(b)

56. The second statutory criterion requires the Commission to consider "the role of financial security of the judiciary in ensuring judicial independence".

57. In the *PEI Reference*, the Supreme Court of Canada identified three components of financial security underlying judicial independence:

(a) The requirement of an independent, objective and effective commission to recommend levels of judicial remuneration;

(b) No negotiations over remuneration are permitted between the judiciary and the government; and

[31] *PEI Reference*, para 133.

(c) Judicial salaries cannot fall below a basic minimum level of remuneration which is required for the office of a judge.

58. The establishment of the Commission under the *Judges Act* satisfies the first two requirements.

59. As reflected in the positions of the Judiciary, the Associate Judges and the Government, none of the parties before the Commission submitted that judicial independence was at risk.

60. The Commission agrees. The Commission is of the view that its salary recommendations set out in this Report do not put at risk the financial security of judges, or their independence.

iii. The need to attract outstanding candidates to the judiciary—s. 26(1.1)(c)

61. The third statutory criterion requires the Commission to consider "the need to attract outstanding candidates to the judiciary".

62. This provision has been interpreted by previous commissions as requiring judicial salaries to be set at a level that will not deter or discourage the most outstanding candidates from seeking a judicial appointment.[32]

63. Previous commissions have confirmed it is important that the judiciary comprise judges with diverse professional experience and expertise; and that a significant number of candidates be lawyers from private practice.

64. The "most outstanding candidates" from private practice can often be found among senior members of the bar and among lawyers practicing in those specialized areas of law that are an important proportion of the court's caseload.

65. The McLennan Commission stated that the rationale for a private sector comparator is that it is in the public interest that senior members of the bar, among others, be attracted to the bench, and noted that, as a general rule, these lawyers are often among the highest earners in private

[32]Turcotte Report, para 174; Levitt Report, para 59; Rémillard Report, para 80.

practice. As the McLennan Commission observed, although not all "outstanding candidates" will be senior lawyers in higher earning brackets, "many will, and they should not be discouraged from applying to the bench because of inadequate compensation".[33]

a. Private sector comparator

66. The private sector comparator enables the Commission to compare the judicial salary and annuity with the salaries of those lawyers in the private sector who are outstanding candidates for judicial appointment.

67. Previous commissions determined the private sector comparator relying on data that was limited to the reported income of unincorporated self-employed lawyers. Historically, the Canada Revenue Agency ("**CRA**") has not provided or has not been able to provide comparable income data for self-employed lawyers who receive professional income through a professional legal corporation ("**PLC**").

68. Previous commissions expressed concern with the lack of this relevant data, given the growing number of self-employed lawyers who receive income through a PLC.

69. The Drouin Commission and McLennan Commission both noted that the data provided for self-employed lawyers excluded income from lawyers practising through professional corporations and commented that these lawyers are probably those with higher incomes.[34]

70. The Rémillard Commission observed that the failure of the CRA data to include self-employed lawyers practising through PLCs posed "certain problems".[35]

71. The Turcotte Commission expressed significant concerns with the absence of PLC data:

(a) The data showed there had been a decrease in the reported number of self-employed lawyers from 18,740 in 2015 to 15,510 by 2019.

[33]McLennan Report, page 32.
[34]Drouin Report, page 42; McLennan Report, page 42.
[35]Rémillard Report, para 58.

(b) There was a corresponding increase in the use of PLCs by practicing lawyers. In 2019, there were 17,871 such corporations, representing a three-fold increase in the use of professional corporations since 2010.

(c) In 2018, 27% of practising and insured law society members were receiving income through a personal corporation.

72. Efforts were made by the Turcotte Commission to obtain this information from the CRA but the Turcotte Commission was advised it would be a labour-intensive task and the CRA could not confirm it would be possible for it to provide the information. The Government and Judiciary concluded it was not possible to obtain more information on PLCs in time for that Commission to meet its statutory deadline.[36]

73. In its final report, the Turcotte Commission concluded:[37]

> [40] As a result, this Commission is left with a lack of complete data as to the professional income level of lawyers in private practice.
>
> [41] The implication, however, of the CRA data under-reporting the income of higher-earning private sector lawyers is inescapable.
>
> [42] As the Government observed, "if this trend continues, the CRA data may become less and less reflective of practicing lawyers' incomes."

74. To address this concern, the Turcotte Commission included a recommendation in its report requesting preparatory work be undertaken to provide this Commission with "adequate and appropriate additional data from which to work":[38]

> Recommendation 8
>
> 1. Data from the CRA as to levels of professional income reported through professional corporations on a gross and net professional income basis. Recognizing that this may require manual compilation, a statistically significant sample size within the current 17,871 such corporations should be undertaken in sufficient time to be of use to the Seventh Quadrennial Commission.

[36]Turcotte Report, paras 38-39.
[37]Turcotte Report, paras 40-42.
[38]Turcotte Report, chapter 5.

75. In response to this recommendation, the Government and the Judiciary jointly requested the CRA and Statistics Canada to assemble for this Commission the required data to provide information necessary to determine incomes reported by self-employed lawyers providing legal services through a PLC.

76. In a letter to Statistics Canada, the parties specified that "where the lawyer is a partner in a law partnership, the relevant measure of income is the partnership income going *into* the PLC, not what comes *out* as salary and dividends".[39]

77. The CRA and Statistics Canada provided the following data for the years 2019-2022:

(a) CRA provided data derived from the T2 corporate tax returns filed by PLCs across Canada, which included the net income reported by PLC's and dividends paid.

(b) Statistics Canada analyzed income tax data focusing on PLCs. It manually compiled and merged data from individual tax returns (T1), corporate tax returns (T2) and T5013 tax forms which report income from partnerships and provided the following:

(i) data derived from the T2 corporate tax returns filed by PLCs which included net income reported by PLCs.

(ii) partnership data detailing the partnership earnings received by lawyers practising in a partnership, including income received by partners practicing through a PLC.

78. The Judiciary and Government each retained experts to review the PLC data. The Judiciary engaged Ernst & Young and the Government engaged Eckler Ltd. ("Eckler"). Expert reports were included with the parties' submissions in December 2024, and response and reply expert reports were filed in January 2025. There was little consensus among the parties and their experts on the use that should be made by the Commission of the PLC data.

79. The Judiciary argued the Statistics Canada net partnership income data should be used by the Commission for the private sector comparator, saying:

[39]Judiciary Submission, para 182.

(a) It "is the only dataset that provides information on the income going *into* PLCs that are proper proxies for individual lawyers".[40]

(b) The data derived from T2 PLC tax returns "reflects only the net income of the PLC, not the gross income flowing into the corporation. This figure is thus of little relevance, as lawyers typically pay themselves a portion of the PLC's gross income as salary, thereby reducing the net income declared by the PLC on its T2".[41]

(c) "It is the gross income flowing into the PLC that reflects the value of the lawyer's work for that income, not the net amount flowing out of the PLC."[42]

80. The Judiciary relied on the expert report of Ernst & Young in support of its position. In its report, Ernst & Young set out its analysis of the data provided by both CRA and Statistics Canada and provided its opinion that the assessment of incorporated lawyers' net income should rely primarily on the Statistics Canada partnership data: [43]

> The StatsCan data provides robust information on partnership data. Partnership data is a true representation of the partnership income earned by the law professionals as the amount on the T5013 slip indicates their share of income directly from practicing legal activities. The T5013 slip is to a partner of a partnership what a T4 slip is to an employee of a corporation. Due to this, the net partnership income share is considered the best representation of the actual income of partners/lawyers.

81. The Government argued "a more realistic comparator" is the average income including dividends for "PLC owners", which can be derived from the T2 PLC tax returns. The Eckler Report provided an "approximate average income including dividends for PLC owners".[44]

82. In its January 24, 2025, reply report, Ernst & Young provided a response to the Eckler Report stating:[45]

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[40]Judiciary Submission, para 170.
[41]Judiciary Reply Submission, para 57(b).
[42]Judiciary Reply Submission, para 57(b).
[43]*Ernst & Young Report on Private Sector Compensation* (**"EY Compensation Report"**), page 12, Judiciary Book of Exhibits and Documents (**"JBED"**) at tab D.
[44]*Eckler Report*, page 41, GBD at tab 4.
[45]*Ernst & Young Review of the Eckler Report* (**"EY Reply Report")**, pages 4-5 and footnote 4; Judiciary Supplemental Book of Exhibits and Documents at tab C.

> 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 the *shareholders* of the PLCs, as opposed to the PLC itself. This is incorrect and therefore produces inaccurate analysis and conclusions.
>
> …
>
> …Thus, the data provided is the net income of the corporation, not the net income of the owner (shareholder)…
>
> …
>
> 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).

83. In its response report, Eckler noted the Judiciary's submission focussing on the partner income share as declared by the partnership and stated:[46]

> With regards to the incorporated data (PLC data), it was mentioned in paragraph 180 of the Judiciary's Submission that the focus was on the partner income share, as declared by the partnership. However, in our report we also calculated average income including dividends for PLC owners from 2018 to 2021. This is a key element of the incorporated lawyer compensation package that we believe was important to note in our total compensation analysis as the take home pay would be understated without explaining this compensation component.

84. The Commission agrees with the position of the Judiciary and its expert Ernst & Young. The partnership income flowing into a PLC is the best representation of the income earned by a self-employed lawyer practising through a PLC. The Statistics Canada net partnership income, as detailed in the Ernst &Young Report, is the appropriate data to be used to calculate the professional income earned by self-employed lawyers practicing through PLCs.

[46] *Eckler Response Report*, page 6, Government Supplemental Book of Authorities at tab 1.

85. The PLC income data is not a new comparator, as suggested by the Government.[47] Rather it is to be considered *together* with the data for unincorporated self-employed lawyers to arrive at the private sector comparator.

86. As in past years, the Government and the Judiciary asked the CRA to prepare a dataset of the 2019 to 2023 tax returns of individuals identified by the CRA as self-employed lawyers.

87. Both parties relied on this dataset in making submissions to the Commission on this component of the private sector comparator.

88. The Commission asked the parties to provide filtered data for 2019-2023 for "[a]ll lawyers practicing in the private sector (i.e., not just partners but also associates, in-house counsel, etc)…"[48]

89. In response, the parties advised that the requested data is not available to the parties and had not been provided to previous commissions.[49]

90. The Judiciary submitted that, even if such data were available, it would not be relevant for use in the private sector comparator, as a majority of employed lawyers in private practice are associates at law firms who typically do not meet the statutory requirement for judges of ten years at the Bar.[50]

91. We are of the view that this wider data is relevant. The private sector is not confined to those in private practice nor to those who choose to pursue the partner route. It includes, for example, in-house counsel in corporations whose work may be very similar to those in private practice and who also have the potential to be outstanding judges. We encourage the parties to work together to ensure that future commissions have access to the wider data set of lawyers working in the private sector in order to allow for a more complete private sector comparator.

[47]Government Submission, para 103.
[48]Commission letter dated February 26, 2025.
[49]Judiciary and Government letters dated March 31, 2025—The Government noted there were some data with respect to specific in-house counsel lawyers in the private sector.
[50]Judiciary letter dated March 31, 2025.

Filters

92. In order to determine the appropriate private sector comparator, previous commissions have applied filters to the private sector income data to ensure the private sector comparator is limited to the pool of appropriate candidates for judicial appointment. The data provided by CRA and Statistics Canada includes income reported by all self-employed lawyers in the subject years.

93. The filters are meant to ensure the judicial candidate pool is limited to only those lawyers who meet the legal requirements to be appointed (e.g. minimum ten years of practice) and are likely to be outstanding candidates for judicial appointment.

94. The Turcotte Commission applied the following filters to the self-employed lawyer income data:[51]

(a) Relying on previous commissions, it continued to use the 75th percentile filter.

(b) The low-income cut-off of $60,000 was adjusted for inflation since 2004 (using CPI) and increased to $80,000.

(c) It used an age-weighted approach rather than focusing on the 44-56 age group;

(d) It declined to move from the use of national income to top ten Census Metropolitan Areas ("**CMAs**") only.

95. The Judiciary argues that the filters to be used should be income greater than $90,000, 44-56 age group and 75th percentile. Although not proposing it be used as a filter, the Judiciary argued the higher income levels of self-employed lawyers in the top ten CMAs should be factored into the Commission's analysis and inform its recommendations.[52]

96. The Government's position is that it is inappropriate to apply any filters to the income data. However, if filters are to be used, the Government agreed the 75th percentile is appropriate[53] and

[51]Turcotte Report, para 182.
[52]Judiciary Submission, paras 119 and 185.
[53]Transcript of February 20, 2025 hearing, page 146.

age-weighting is preferable over wholly excluding age bands.[54] The Government argued there is no objective basis to apply any salary exclusion[55] and there should not be a CMA-related filter.[56]

97. The use of appropriate filters in determining a private sector comparator is a well-settled practice of prior commissions, and we elect to continue their use. We conclude as follows:

98. *Appropriate percentile*: The 75th percentile of private lawyer income has been consistently applied by previous commissions, and we will continue its use.

99. *Low-income exclusion*: The purpose of the low-income exclusion is to exclude lawyers who are unlikely to be in the pool of qualified candidates. Lawyers must, for example, have a minimum of ten years of practice at the bar to be qualified for a judicial appointment.

100. When the McLennan Commission set the low-income exclusion at $60,000 in 2004, it considered the salaries of articling students and first year lawyers in major centres, it being unlikely that lawyers who are required to have a minimum of 10 years at the Bar would have an income lower than this range.

101. In support of its submission to adjust the low-income exclusion for inflation, the Judiciary referenced published salary guides which reported salaries of first year associates in excess of $100,000 and higher in larger centres.[57]

102. The low-income exclusion of $80,000 adjusted for inflation measured by the change in CPI since 2019 is $90,711 for 2023.[58]

103. The Commission agrees the low-income exclusion should be increased to $90,000 per annum in line with changes in the CPI.

[54]Government Submission, para 85.
[55]Government Submission, para 89.
[56]Transcript of February 20, 2025 hearing, page 152.
[57]Judiciary Submission, para 123 and Judiciary letter dated March 31, 2025, page 7.
[58]EY Compensation Report, page 14.

104. *Age group*: The Turcotte Commission departed from earlier commissions and used an age weighted approach, rather than focusing on the 44-56 age group considered by previous commissions. The Judiciary argues the Turcotte Commission erred as a matter of process in reaching this conclusion, as there were not "valid reasons" to depart from the conclusions of previous commissions. The Judiciary argued there was not a "change in current circumstances or additional new evidence" to support the change. On this basis, the Judiciary submit the 44-56 age range filter used by previous commissions should be retained as the relevant filter.[59]

105. The Judiciary also argued the age-weighted approach adopted by the Turcotte Commission was flawed because the age-weighting was based on age groups, rather than on data for each individual age, and therefore gave too much weight to lower salaries at the outer ends of the distribution. Individual age data was not available in the data provided to the Turcotte Commission, nor is it available to this Commission.

106. Ernst & Young confirmed in its report that in general the age-weighted average approach is a statistically valid method and is often preferred over a straight average.[60]

107. The Government argued that age-weighting is preferable over wholly excluding age bands because private sector lawyers' incomes decline after the median age of judicial appointment. The data shows that self-employed lawyers' incomes decrease significantly after age 56. The Government argued that focusing on the age group 44-56 does not provide an accurate portrayal of the incomes that lawyers would be giving up in future years in accepting a judicial appointment. Judicial salaries, on the other hand, are constitutionally guaranteed and will not stagnate over time. Further, security of tenure guarantees judges remain in office until age 75 unless they choose to leave earlier.

108. The following table provides the demographics for judicial appointments between April 1, 2020, and March 31, 2024, based on age at the date of appointment:[61]

[59]Judiciary Submission, paras 131-133.
[60]EY Compensation Report, page 17.
[61]Judiciary Submission, Table 3.

Age Range	Appointees	Percentage
35-43	19	7.0%
44-56	185	68.5%
57-69	66	24.6%
Total	**270**	**100%**

109. There were 85 judicial appointments of lawyers outside the 44-56 age group.

110. The Commission agrees with the Turcotte Commission and the Government's submission that the age-weighted approach is preferable to limiting income data to the 44-56 age range. Although the age-weighting relies on age groups, rather than individual ages, this approach is preferable to an approach that excludes income levels of a significant number of lawyers in the qualified pool of judicial candidates.

111. The Commission concludes that the self-employed lawyer data should be filtered based on the relative number of judges appointed at each age.

112. *Top 10 CMAs*: The Commission agrees it is not appropriate to filter the income data on the basis of top 10 CMAs. Nor does the Commission think it appropriate to consider the top ten CMA data in its analysis. The Commission agrees with the Turcotte Commission that an "urban-only focus" would not be consistent with a national judiciary, appointed and sitting across the country.

113. The Commission concludes that applying a low-income cut-off of $90,000 per annum to age-weighted national figures at the 75th percentile is appropriate in determining the private sector comparator.

114. By way of post-hearing correspondence dated February 26, 2025, from the Commission to the parties, we asked the Government and the Judiciary for income data for 2019-2023 using a low-income cut-off of $90,000 per annum, age-weighted to the distribution of ages at appointment and at the 75th percentile. We asked that the income data be provided for unincorporated self-employed lawyers, incorporated lawyers, and combined unincorporated and incorporated lawyers.[62]

[62]Commission dated February 26, 2025.

115. The Judiciary provided the following requested data for each of the three groups in a letter dated March 31, 2025:

(a) For unincorporated self-employed lawyers, the Judiciary's age weighted comparators are based on income levels for each of the seven age groups used by CRA to provide income data and weighted based on the relative number of judges appointed in each age group between 2020 and 2024. The income data was provided for 2019-2023 and set out in Table 1 of the letter.[63]

(b) For incorporated lawyers, the Judiciary noted the income data for incorporated lawyers provided by CRA and Statistics Canada is not broken down by age group. The Judiciary derived age weighted data based on the relative increase between the income levels of unincorporated lawyers without an age filter and the income levels when applying the age-weighted approach. The income data was provided for 2019-2022 in Table 3 of the letter. The Judiciary confirmed that both the methodology to derive age-weighted figures for incorporated lawyers and the results provided in Table 3 were validated by Ernst & Young.[64]

(c) The Judiciary provided combined unincorporated and incorporated lawyer income data weighted based on the count of lawyers in each category. The Judiciary confirmed that both the methodology to arrive at a combined age-weighted comparator and the results in Table 4 of the letter were validated by Ernst & Young.[65]

116. The Government provided data for unincorporated self-employed lawyers using the same age-weighted approach as the Judiciary.[66] The Government noted the participants appear to agree on these numbers. The Government's comparator numbers were slightly higher than the income levels provided by the Judiciary. [67]

[63]Judiciary letter date March 31, 2025, Table 1.
[64]Judiciary letter dated March 31, 2025, footnote 3.
[65]Judiciary letter dated March 31, 2025, footnote 4.
[66]Government letter dated March 31, 2025, page 3.
[67]In its March 31, 2025 letter, the Judiciary noted the Eckler Report relied upon by the Government used numbers for the proportion of judges in each group that differed from those prepared jointly by the parties.

117. The Government responded that "[t]he challenges with the data available do not allow a detailed breakdown, in particular with respect to incorporated lawyers." The Government referenced the significant challenges previously addressed in its earlier submissions. [68]

118. The Commission has decided to use the income data provided by the Judiciary in its letter dated March 31, 2025, in determining the private sector comparator. The following table provides the salary levels for self-employed lawyers: [69]

	Unincorporated lawyers		**Incorporated lawyers**		**Combined**
Year	Income	Lawyer count	Income	Lawyer count	Income
2019	$486,983	9,370	$837,240	6,000	$623,713
2020	$546,904	8,950	$946,168	6,240	$710,920
2021	$576,664	9,180	$1,034,463	6,590	$767,970
2022	$544,969	8,530	$974,542	7,050	**$739,352**
2023	$566,688		N/A	N/A	N/A
Average	$544,441	9,008	$948,103	6,470	$710,489

Note: Based on the income data reported in this table, roughly 45% of self-employed lawyers earned professional income through a PLC in 2022, which is up from 39% in 2019.

Value of the Judicial Annuity

119. An important consideration of total compensation is the value of the judicial annuity, which can be considered from (at least) two perspectives, as a retirement benefit, but also as a permanent disability benefit because a judge who becomes permanently disabled may be eligible for the full annuity for life, with no minimum service requirement. We were not told how often a permanent disability annuity is provided, or what the cost of providing it is, or what the cost would be to replace this coverage with another form of disability coverage.

120. Both parties accepted that the judicial annuity should be taken into account in our consideration of the adequacy of the salaries and other amounts payable under the *Judges Act* and

[68] Government letter dated March 31, 2025.
[69] Judiciary letter dated March 31, 2025, Tables 1, 3 and 4.

into the adequacy of judges' benefits generally. During the Turcotte Commission, the parties agreed to value the judicial annuity at 34.1% of the judicial salary. At that time, the Government's expert valued the judicial annuity at 37.84% including a value ascribed to the disability benefit. The expert retained by the Judiciary valued the judicial annuity without the disability benefit, at 34.1% of the judicial salary, the value that was ultimately agreed to and used.

121. The parties did not come to an agreement on the appropriate value for the disability benefit. In addition, we did not hear sufficient arguments or expert opinions with respect to the proper valuation of the disability component of the annuity as a benefit of service to provide that aspect of the annuity with a value in this report. As did the Turcotte Commission, we therefore turn to a consideration of the value of the judicial annuity as a component of total compensation without consideration of the disability component.

122. The annuity is equal to two-thirds of the final year's earnings if the judge has met one of the three thresholds:

(a) Served at least fifteen years and have a sum of age and years of service of at least eighty.

(b) Served at least ten years and reached the mandatory age of retirement of seventy-five years old.

(c) Served on the Supreme Court of Canada for at least ten years.

123. A reduced lifetime annuity is available at retirement for judges who do not meet these thresholds.

124. The annuity is equal to two-thirds of the final year's earnings if a judge is permanently disabled while serving as a federally appointed judge.

125. The annuity is protected against inflation based on changes in the CPI in each year that it is payable.

126. In its report, Eckler presented the results of its review of the total compensation paid to those they considered to be in comparable jobs and the current compensation of federally

appointed judges and provided observations and recommendations to help guide our work, although Eckler was of the view that the total compensation package of federally appointed judges was difficult to compare to other jobs because of the judicial annuity. "Self-employed lawyers continue to be a key comparator, however they do not receive any additional pension benefits, since any pensions will be self-funded out of their own income."[70]

127. Eckler estimated the net total annuity (including disability and Canada Pension Plan ("**CPP**")) as valued at 44.1% of the judicial salary as an age-weighted average, with the net retirement benefit being 38.5% and the net disability benefit 5.6%. From the Submissions of the Government of Canada:

> 50. The net total annuity (including disability and Canada Pension Plan ("CPP")) is valued at 44.1% of the judicial salary as an age-weighted average, with the net retirement benefit being 38.5% and the net disability benefit 5.6%…

128. In its report, Ernst & Young estimated the average value of the judicial annuity. It applied the same methodology retained by the Turcotte Commission, which had valued the judicial annuity at 34.1% for the period of its report. It updated two assumptions. First, it adjusted the demographic assumptions based on the most recent 2022 report from the Office of the Chief Actuary of Canada on the pension plan for federally appointed judges. Second, it adjusted the discount rate from 5% (used by the Turcotte Commission) to 6%, reflecting what it believed was a reasonable expected rate of return for a balanced portfolio given the prevailing economic conditions during the reference period. Ernst and Young concluded that the annual average value of the judicial annuity during the relevant period was 28% of salary. It noted that "[a]s the Pension Plan is unfunded (i.e., pay-as-you-go plan), there are no legislative requirements to guide the development of the discount rate assumption."[71]

129. We prefer the approach of Eckler to the appropriate discount rate to that of Ernst & Young. The judges' plan differs significantly from most public sector pension plans as it is financed through Canada's Consolidated Revenue Fund on a pay-as-you-go basis. The Government's cost

[70]Eckler Report, page 3.
[71]Ernst and Young, Report on the Value of Judicial annuity (**"EY Annuity Report")**, December 20, 2024, p.13, JBED at tab C.

in any given year corresponds to the difference between the annuity benefits payable and the judges' contributions. Since benefits paid from the plan are paid from the Consolidated Revenue Fund and there are no invested assets, the actuarial liabilities and current service costs are valued using the Government's long-term cost of borrowing. A lower discount rate is appropriate because there are fewer risks associated with the payment of judicial annuities. As stated by Eckler:[72]

> Ms. Wong's discount rate assumption of 6% per annum presumes that significant investment risk would have to be assumed by the individual in order for them to obtain an annualized return of 6%. Once again, we consider this assumption unreasonable, as one of the primary advantages of being entitled to receive the judicial annuity is the fact that it's essentially risk free since the government is responsible for bearing all investment and longevity risk associated with its payment.

130. Eckler included the CPP in its estimate of the value of net total annuity, but did not provide us with a calculation of to the extent to which the CPP raised Eckler's determined value of the retirement benefit to 38.5%. (We note that the Judiciary included in their materials a list of materials that had been relied upon by Ernest & Young, including a report by JDM Actuarial dated March 25, 2021. In its 2021 report JDM Actuarial valued the CPP at "$3,166 as a benefit available to judges as part of total compensation.")[73] Having regard to the submissions as a whole, and the most recent agreed valuation of 34.1%, we have decided to value the judicial annuity at 34.1% of the judicial salary.

Comparison of private sector income and judicial compensation

131. The following table provides a comparison of the private sector comparator and judicial compensation for the years noted:

[72] *Eckler Response Report*, p.10, Government Supplemental Book of Authorities at tab 1.
[73] "Compensation Review of Federally Appointed Judges – Department of Justice regarding the 2020 Judicial Compensation and Benefits Commission" by JDM Actuarial, March 26, 2021 EY Annuity Report, Appendix C and JBED at tab 46.

Year	Private Sector Comparator	Puisne Judges' Salary	Judges' salary and annuity[74]	Difference between private sector comparator and judges' salary and annuity	% Difference
2019	$623,713	$329,900	$442,396	$181,317	41.0%
2020	$710,920	$338,800	$454,331	$256,589	56.5%
2021	$767,970	$361,100	$484,235	$283,735	58.6%
2022	**$739,352**	$372,200	**$499,120**	**$240,232**	**48.1%**

Note: The Judges' salary in each year is effective April 1 to March 31 of the following year. The private sector income is based on the calendar year.

132. The judicial compensation including annuity for April 1, 2022, to March 31, 2023, is $499,120. The private sector comparator for the 2022 calendar year is $739,352, which is $240,232 (48%) higher than judicial compensation.

b. Difficulty recruiting outstanding candidates from private practice to the judiciary

133. The issue for the Commission is to determine whether the current level of judicial salary and benefits is adequate and will continue to ensure outstanding candidates are attracted to the Judiciary. The Commission heard extensive submissions from the Government and the Judiciary on this issue.

134. The Government maintained the statistics collected by FJA show there is no shortage of "interested and highly qualified candidates" for judicial positions. From April 1, 2020, to March 31, 2024, there were 271 appointments. Of these, 169 individuals applied and were appointed during this time. Of these 169 appointments, 121 (71.6 %) were highly recommended and 47 (27.8%) were recommended.[75]

135. The Government also argued that most appointments continue to be drawn from private practice and "there is no evidence that there is any difficulty in attracting high quality candidates

[74]Judicial annuity valued at 34.1%.
[75]Government Submission, para 59.

from the private sector".[76] Between 2020 and 2024, of the 271 appointments, 50% were from private practice.[77]

136. The Government was of the view that an "increase in appointees from other sectors compared to the previous quadrennial cycle is not indicative of an inability to attract outstanding candidates from the private practice; rather, it reflects the growing diversity and expansion of the legal profession, and the type of roles and responsibilities members of the profession take on in their professional capacity".[78]

137. The Judiciary submitted that in the last number of years there has been a crisis of judicial vacancies caused, in part, by a shortage of qualified candidates. The Judiciary notes that, as of May 1, 2023, the number of vacancies among federally appointed courts had reached 9% (88 out of 995 full-time positions).[79]

138. The Judiciary also pointed to data from FJA, which the Judiciary says confirms the challenges of attracting outstanding candidates to the judiciary, particularly those from private practice.

139. The Judiciary submitted that lawyers from private practice are under-represented in the pool of applicants to the bench, with some provinces showing particularly low rates. From 2020 to 2024, 48% of applicants were from the private sector, with some provinces showing lower percentages.[80]

140. Referencing data published by FJA, the Judiciary noted the proportion of highly recommended and recommended candidates declined from 50% in 2020 to 37.2% in 2024.[81]

141. The Judiciary also cited historical statistics showing the proportion of appointees from private practice. In the 2004-2007 period, 78% of appointees were from private practice, dropping

[76]Government Submission, para 60.
[77]Government Submission, para 63.
[78]Government Submission, para 64.
[79]Judiciary Submission, para 84.
[80]Judiciary Submission, para 104, Saskatchewan 35% from private sector and Nova Scotia 33%.
[81]Judiciary Submission, para 106 and graph 1.

to 63% in the 2020-2024 period.[82]

142. The Judiciary argued that the "persistent, dramatic gap" between judicial compensation and private sector salaries "is a serious obstacle in ensuring that outstanding members of the Bar remain interested in considering a judicial appointment.[83]

143. A functioning independent judiciary must be sufficiently staffed to ensure that judges can carry out their work to the required standard. This means, among other things, that judges must be able to administer law in a fair, timely, reasoned and deliberative manner.

144. If judicial appointments do not keep up with retirements and the attrition of judges due to illness, death, other career choices and other reasons, court cases are less likely to be allocated speedily and fairly, judgments are less likely to be delivered in a timely way and to be underpinned by sufficient reasons, and judicial decisions are less likely to evidence the due deliberation that validates to the parties and the public that the courts are functioning as they should be.

145. Because of the substantial body of attributes, skills and experience they must bring to bear, federally appointed judges are drawn from a small section of the bar with the result that the pool of willing, skilled, able and suited potential judges is limited. Potential judges must themselves apply to be considered, often on their own initiative, and sometimes with encouragement from others.

146. The submissions of the Judiciary highlighted a number of causes and risks of judicial vacancies. The causes cited included a shortage of qualified and willing applicants, even with encouragement, and a shortage of skills in certain areas such as commercial litigation and family law.

147. In support of its position, the Judiciary referenced a letter dated May 3, 2023, from the Right Honourable Richard Wagner, Chief Justice of Canada and Chairperson of the Canadian Judicial Council to then Prime Minister Trudeau expressing concerns about judicial vacancies (the

[82]Judiciary Submission, para 110 and Table 1.
[83]Judiciary Submission, para 194.

"**Letter of Concern**"). The letter asked the Prime Minister to take action to fill a large number of vacant Superior Courts and Federal Courts judicial positions across Canada.[84]

148. The Judiciary argued that the high number of judicial vacancies is having severe consequences on the Canadian justice system, referencing the February 24, 2024, Federal Court decision in *Hameed v Canada (Prime Minister)*,[85] which reproduced the Letter of Concern at para 1, wherein the Chief Justice described the current level of judicial vacancies as "untenable" as well as the negative effects judicial vacancies were having on the entire justice system. He expressed significant concerns with the judicial vacancies at the time and the effects on the "administration of justice, the operations of our courts and the health of our judges."

149. A letter from the Chief Justice to the Prime Minister on the topic of judicial vacancies reflects the seriousness of the situation facing the courts. The Letter of Concern highlighted the many adverse impacts of judicial vacancies on the justice system and its effect on judges including chronic work overload, increased stress and increasing applications for medical leaves.

150. The Judiciary relied also on comments made publicly by two Ministers of Justice who recognized that the crisis of judicial vacancies was caused, at least in part, by a shortage of qualified candidates.[86] The Judiciary also referred us to the statement of Chief Justice Geoffrey Morawetz of the Superior Court of Justice of Ontario prepared for the Commission. Chief Justice Morawetz described in detail the challenging task of recruiting candidates for the judiciary from private practice.[87]

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[84]Judiciary Submission, para 85.

[85]2024 FC 242, JBED at tab 10.
The decision on appeal was released on June 18, 2025, 2025 FCA 118. The Federal Court of Appeal ruled that the lower court had not had jurisdiction "to review the advice-giving role of the Prime Minister and Minister of Justice with respect to judicial appointments to the Federal Courts and provincial superior courts.". On the issue of mootness because of the recent filling of judicial vacancies, the Federal Court of Appeal noted at paragraph 12 of its decision "Although it is true that the number of judicial vacancies has been materially reduced in the period between the application before the Federal Court and this appeal, it remains that the notice of application also sought either *mandamus* or declaratory relief, alleging a duty on the part of the Prime Minister and the Minister of Justice to appoint judges. The nature and existence of that duty remains a live controversy, meaning this appeal is not moot. Further, I am of the view that there is still an adversarial context with respect to the jurisdiction and constitutional issues raised by the Appellants. As these latter issues are, in and of themselves, elusive and seldom come before the Court, they are sufficiently important to warrant the expenditure of judicial resources, even if this case were found to be moot (*Borowski* at 358-362; *Société Radio-Canada v. Canada (Attorney General)*, 2023 FCA 131 at para. 40).

[86]Judiciary Submission, paras 87, 89, 90.

[87]Judiciary Submission, para 9 and S*tatement of Chief Justice Morawetz December 20, 2024*, JBED at tab A.

151. In his statement, Chief Justice Morawetz observed the significant rise in the complexity of cases that come before Canada's superior courts. Chief Justice Morawetz attested to the benefits of a bench composed of judges with diverse professional experiences, including judges with the specialized knowledge and practical experience gained in private practice.

152. In particular, he noted that judges appointed from private practice often bring "extensive experience in specialized areas of law that represent an important proportion of superior courts' caseload, such as commercial litigation and family law." Given the nature of cases before the Court, Chief Justice Morawetz testified it is "key for the superior court bench to include a strong contingent of private sector practitioners with expertise and experience to handle these cases efficiently."

153. Chief Justice Morawetz also noted the demand on judicial resources resulting from the 30-month trial deadline for criminal proceedings imposed by the Supreme Court in *R v Jordan.* He testified as to the "benefits provided by a superior court bench that can count on an important proportion of judges with the specialized expertise and experience found among lawyers from private practice."

154. Chief Justice Morawetz also addressed the difficulty in recruiting candidates from private practice:[88]

> 14. An increasing number of qualified private practitioners no longer view a judicial appointment, considering its attendant responsibilities and benefits, as attractive in light of the resulting significant reduction in income.
>
> …
>
> 18. What I can attest to is that, despite best efforts, I have often found myself unable to persuade qualified potential candidates to apply for judicial appointments. A routinely cited reason for this lack of interest is the combination of the heavy workload of superior court judges and the perceived lack of commensurate pay for that work.
>
> …
>
> 20. From exchanges within the Canadian Judicial Council, I know that this challenge exists in other areas of the country, particularly in urban centres.

[88] *ibid.*

> 21. In particular, many potential qualified candidates are aware of, and cite, the significant workload, travel demands, loss of autonomy, lack of administrative support, and increased public scrutiny imposed on federally appointed judges as reasons not to consider applying for judicial appointment. When these factors are considered alongside the significant resulting reduction in income, many candidates have expressed a lack of interest in seeking appointment.
>
> …
>
> 23. While it has always been the case that lawyers from private practice accept a reduction in income when appointed to the bench, this reduction has become more significant, as is clear from my discussions and similar discussions my colleagues at the Canadian Judicial Council have had with potential candidates.

155. The Judiciary also referenced the testimony of Chief Justice Martel Popescul of the Court of King's Bench for Saskatchewan provided to the Turcotte Commission on May 10, 2021:[89]

> I've observed, as have most of my colleagues on the CJC, a reduction in the pool of applicants from private practice, the traditional source of candidates for the Bench. Outstanding private practitioners, many of whom distinguish themselves as leaders of the profession, have previously seen a judicial appointment to one of Canada's Superior Courts as the crowning achievement of an outstanding career.
>
> However, many are increasingly uninterested in seeking appointment to the Bench. A large and growing number of leading practitioners no longer see a judicial appointment, with all its responsibilities and benefits, as being worthy of the increasing significant reduction in income.
>
> This is a concerning trend and one I respectfully submit which should be of concern to this Commission. To be clear, neither I nor my CJC colleagues are questioning the quality of recent appointments to the Bench, nor do we call into question the fact that outstanding candidates come from all types of legal careers and areas of practice. What I'm concerned about is the future and whether the current trend of a shrinking pool of outstanding candidates will translate into a chronic inability to attract outstanding candidates from private practice, including those practicing in metropolitan areas or in larger firms.

156. As of April 1, 2025, the high number of judicial vacancies referenced in the Letter of Concern had been reduced, with 987 federally appointed judges in office, plus 237 supernumerary

[89]Turcotte Commission, Transcript of May 10, 2021 hearings, pages 44 to 47. See transcript of May 10, 2021 at pages 44 to 47 at https://quadcom.gc.ca/wp-content/uploads/2024/05/Oral-Hearing-Transcript-of-May-10-2021.pdf.

judges, for a total of 1,224 judges, and 15 vacancies. This vacancy level compared very favourably with the situation as of May 1, 2023, when, we were told, the number of vacancies on superior courts had reached nine percent (88 of 995 full-time positions), with some vacancies having been open for as much as 18 months. The Government and the Judicial Advisory Committees are to be commended for having made such substantial progress in judicial appointments. It is critical that this low level of vacancy be maintained lest it deter qualified candidates from applying due to concern that they will face an unreasonable workload due to a shortage of judges.

157. We were not, however, provided with evidence that the crisis has been solved. Rather, we have concluded on all of the evidence that, while a shortage has been averted for now, the pressures of rising private sector incomes are such that the ability to maintain an adequate level of private sector appointments to fill judicial vacancies is of ongoing concern. We are persuaded that the effects of past shortages are continuing to rebound within the justice system,[90] that too few highly qualified private sector applicants are applying to serve, that there is a risk that the applicants as a whole will not adequately reflect the bar and society, and that there is a risk that the necessary scope of needed attributes and skills will not be available on the bench.

158. The Commission found the evidence of Chief Justice Morawetz on the importance of maintaining a bench with diverse experience to be very persuasive. Chief Justice Morawetz testified to the benefits of diverse experience, including having judges with the specialized knowledge and practical experience gained in private practice, particularly in specialized areas of law that represent an important proportion of the courts' caseload.

[90] As just one recent example of the effects of past shortages of appointments, in *R. v Martin and Doyle*, 2025 ONSC 2783, Justice Ellies stayed charges against two accused in part due to judicial vacancies that had occurred while the accused were waiting for a trial date.

> [105] To make matters worse, our region has experienced a disproportionate increase in criminal cases since the pandemic was declared in 2020. Between 2019 and 2020, there was a drop in the number of new criminal cases in the SCJ in the Northeast Region. However, between 2020 and 2023, the number of new criminal cases commenced in the SCJ in the Northeast region increased by approximately 46 percent: see our court's five-year report entitled *Ontario Superior Court of Justice: Modernizing The Justice System* (2019-2023 Report), online (pdf): https://www.ontariocourts.ca/scj/files/annualreport/2019-2023-EN.pdf, at p. 90.
>
> [106] The steady increase in crime in our region is not a discrete exceptional circumstance. To qualify as such, the circumstance must be *both* reasonably unforeseeable or unavoidable *and* not reasonably remediated: Jordan, at para. 69. As I stated earlier, the Crown is responsible for systemic delay. Therefore, the Crown bares (*sic*) responsibility for the failure to fill a much-needed judicial vacancy in a region suffering from a gradual, but alarming, increase in crime.

159. The Commission also found the evidence of Chief Justice Morawetz and Chief Justice Popescul regarding the ongoing difficulties in attracting outstanding candidates from private practice to the judiciary to be very persuasive. Both judges referenced the inadequacy of judicial salaries as the reason a large and growing number of leading lawyers from private practice are no longer seeking a judicial appointment.

160. An important factor in ensuring that sufficient qualified candidates apply for judicial appointment and make their way successfully through the discernment and appointment process is the adequacy of the salaries and other amounts payable and the adequacy of judges' benefits generally having regard to the need to attract outstanding candidates to the Judiciary.

161. We agree that factors to be considered in appointments should include those relating to diversity with respect to gender, language, and minority status, representation, and sexual orientation, areas of practice, areas of expertise and life experience, and that the Judiciary should include people who self-identify as Indigenous, racialized, a member of a specific ethnic or cultural group, a person with disability, or a member the 2SLGBTQI+ community. The data show that the number of diverse judges has increased since 2016, and that the bench is more reflective of Canadian society, while, at the same time, the percentage of judges drawn from private practice has diminished.

162. The critical measure to assess whether the government is attracting sufficient outstanding candidates is whether the pool of individuals applying who are rated as recommended or highly recommended is more than adequate to fill all the vacancies. The pool needs to be sufficiently large that geographic requirements are met and that the government is able to select a bench that broadly represents the diversity of Canadians, and maintains a bench composed of judges with diverse experience. Ideally, there would be a significant number of highly recommended candidates in the pool.

163. Based on the data provided by FJA for the period 2020-2024, there were 253 recommended and highly recommended individuals for the 169 appointments made of individuals who applied during that period. Seventy-two percent of the appointments made were individuals who were highly recommended. While this pool was enough to largely close the vacancy gap across the

country by the end of the period and make appointments that reflect Canadian's diversity, it is an uncomfortably small margin when all factors are taken into consideration.

164. Exceptional candidates can come from all sectors and it is important that applicants from all parts of the legal profession are attracted to apply. This includes candidates from the private sector who have historically made up the majority of judicial appointees. While it is true that the percentage of *applicants* from the private sector has declined since 2004-2007, in the most recent period of FJA data, 62.6% of the judges *appointed* for the period came from the private sector.[91] This would appear to indicate there remains a strong appeal for exceptional individuals from all sectors to apply to be judges.

165. That said, the testimony provided by Chief Justice Morawetz to the Commission highlights the risk that it is becoming harder to attract a sufficient pool of outstanding candidates to apply. In his testimony, Chief Justice Popescul expressed concern about the current trend of a shrinking pool of outstanding candidates translating into a chronic inability to attract outstanding candidates from private practice. Chief Justice Wagner highlighted how it is becoming particularly difficult to fill positions in jurisdictions like British Columbia. So while the pool of individuals in the last 4-year period was more than adequate to fill all the positions, we see clear warning signs that salaries are going to be a factor leading to highly qualified private sector lawyers electing not to apply to the judiciary.

166. In summary, and for the reasons stated, the Commission concludes the current judicial salary and benefits are inadequate, and this inadequacy is having an ongoing adverse effect on attracting outstanding candidates to the Judiciary. An increase to the judicial salary is required to ensure outstanding candidates continue to be attracted to the judiciary.

iv. Any other objective criteria that the Commission considers relevant – s. 26(1.1)(d)

167. The fourth factor the legislation directs the Commission to consider is "any other objective criteria that the Commission considers relevant".[92]

[91] 50.4% from private practice, 11.1% from sole practice and 1.1% from the "private sector", JBD at tab 22(d).
[92] *Judges Act*, R.S.C., 1985, s. 26(1.1)(d).

a. Public Service Benchmark

168. This factor includes a comparison with a public service benchmark, the salary of senior deputy ministers, specifically those at the DM-3 level.

169. The link between the salaries of judges and DM-3 federal employees predates the Commission process and was reflected in 1975 amendments to the *Judges Act*. The Guthrie Commission noted:[93]

> As a result of 1975 amendments to the *Judges Act*, the salary level of superior court puisne judges was made roughly equivalent to the mid-point of the salary range of the most senior level (DM-3) of federal deputy minister. This was not intended to suggest equivalence of factors to be considered in the salary determination process, for no other group shares with the Judiciary the necessities of maintaining independence and of attracting recruits from among the best qualified individuals in a generally well-paid profession. In 1975, judicial salary equivalence to senior deputy ministers was generally regarded, however, as satisfying all of the criteria to be considered in determining judicial salaries. At that salary level, a sufficient degree of financial security was assured and there were few financial impediments to recruiting well-qualified lawyers for appointment to the bench.

170. Every commission except the Scott Commission (which did not look at either public or private sector comparators) has used the DM comparator. The Crawford Commission effectively articulated the logic for using this benchmark:[94]

> We believe that an appropriate benchmark by which to gauge judicial salaries is rough equivalence with the mid-point of the salary range of the most senior level of federal public servant, the Deputy Minister 3, commonly referred to as DM-3. As the two immediately previous Triennial Commissions have also indicated, the DM-3 range and mid-point reflect what the marketplace expects to pay individuals of outstanding character and ability, which are attributes shared by deputy ministers and judges.
>
> There are presently only 20 DM-3s in the entire federal public service, and they hold positions which generally carry very onerous operational, policy, management and budgetary responsibilities. They are a group whose services are immensely valuable to the country as a whole, and to the extent that the value of their services might be quantified with accuracy on any objective scale, it would

[93] https://publications.gc.ca/collections/collection_2022/jus/J2-69-1987-eng.pdf at page 8 and JBED at tab 52.
[94] https://publications.gc.ca/site/archivee-archived.html?url=https://publications.gc.ca/collections/collection_2022/jus/J42-4-1993-eng.pdf, at page 11 and JBED at tab 54.

> appear that the same scale could quite fairly apply to superior court judges as well. We say this without any intention of comparing or equating judges to public servants for any purpose whatsoever except the stated purpose of determining an appropriate salary benchmark for judges that would reflect the role and esteem which judicial office deserves and, most important, ensure financial security and thereby contribute to judicial independence. Rough parity of this nature between judges and top-level public servants finds support in the comparative salary figures from a number of other common law industrial democracies.

171. The link between the salaries of senior public servants and judges was also made by the Supreme Court of Canada in the *PEI Reference* case that established the Commission process. The case considered salary cuts made to public servants and judges by a number of provincial governments. Far from differentiating the two groups, the Chief Justice concluded that cuts to judges' salaries made as an exercise impacting all public servants was both *prima facie* rational and helps to sustain the perception of judicial independence because judges were not treated differently:[95]

> 156. To explain how I arrive at this conclusion, I return to one of the goals of financial security—to ensure that the courts be free and appear to be free from political interference through economic manipulation. To be sure, a salary cut for superior court judges which is part of a measure affecting the salaries of all persons paid from the public purse helps to sustain the perception of judicial independence precisely because judges are not being singled out for differential treatment.
>
> …
>
> 158. …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…
>
> …
>
> 184. …Across-the-board measures which affect substantially every person who is paid from the public purse, in my opinion, are *prima facie* rational…

172. The linking of judicial salaries to the DM-3 level is not just a matter of historical precedent. It is rooted in the fact that judges, like senior public servants, are paid from the public purse. Public service is an honour and brings many rewards including the ability to work for the public good and

[95] *PEI Reference*, https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1541/index.do.

to serve one's fellow citizens. But it does not, at the most senior levels, provide financial rewards comparable to similar positions in the private sector. Notwithstanding this, Canada's public service and Judiciary have consistently attracted outstanding individuals to serve.

173. All commissions except the McLennan Commission[96] have used the same comparator—that there should be "rough equivalence" between judicial salaries the midpoint of the DM-3 salary range. The Block Commission specified that this should include the midpoint of potential performance pay.[97]

174. The Judiciary argues that we should deviate from this consistent position of past commissions with two arguments they made to previous commissions: that the DM-4 roles should be the comparator group and that average actual compensation should be used instead of the Block DM-3 comparator.

175. The DM-4 category has been in place for over 25 years and continues to represent a very small fraction of the DM community (with only 4 individuals in the most recent data provided by the judicial representatives). This number has not materially grown over time and none of the Commissions have chosen to use it as a comparator.[98] It is our view that it would be inappropriate to use a group this small as a comparator, nor is it representative of the larger group of individuals of outstanding character and ability occupying senior positions in the public service. For example, the Deputy Minister of Justice—who is responsible in effect for the largest law firm in the country—is a DM-2 or DM-3.

176. Nor do we agree that we should deviate from the consistent finding of past commissions that we should use the midpoint of the salary range plus the midpoint of potential performance pay. As the Block Commission noted, using the midpoint provides an objective and consistent

[96]The McLennan Commission considered a wider range of DM comparators including a simple average of all DMs (from DM-1 to DM-4), a weighted average of all DMs, a simple average of the DM-2 to DM-4 levels, a weighted average of the DM-2 to DM-4 levels, and Governor in Council appointments with quasi-judicial duties. All of these comparators resulted in salary levels at or below the DM-3 comparator.
[97]Block Report, para 111.
[98]The McLennan Commission included it in a broader average of DMs resulting in a lower average compensation than the DM-3 comparator.

basis on which to compare on an annual basis. It avoids comparisons with data that could be skewed by turnover in a relatively small positions or a few outliers on performance pay awards.[99]

177. In light of the clear continuity in the positions of past commissions on these points we consider the Block DM-3 comparator to be a settled point in the Commission process. We urge parties to avoid re-litigating this settled issue absent a demonstrated change in circumstances such as, for example, the DM system being restructured so that the DM-4 group became larger than the DM-3 group.

178. Past commissions have argued in favour of a "rough equivalence" between the salaries of judges and the Block DM-3 Comparator. A comparison of salaries in the period leading up to this Commission shows these salaries meet the rough equivalence test. As of April 1, 2025, judges were earning about 2.3% more than the DM-3 comparator—well within the 7.3% gap that the Levitt Commission said "tests the limits of rough equivalence".[100]

DM-3 (Block)	Judicial Salaries	DM-3 (Block)	Differential ($)	Differential (%)
April 1, 2021	$361,100	$357,772	$3,328	0.92
April 1, 2022	$372,200	$375,014	-$2,814	-0.76
April 1, 2023	$383,700	$388,295	-$4,595	-1.20
April 1, 2024	$396,700	$397,149	-$449	-0.11
April 1, 2025	$414,900	$405,129	$9,771	2.36

b. Other factors

179. There are factors, other than judicial compensation, that may attract or deter outstanding applicants from applying for judicial appointment. The benefits and hardships which come with a judicial appointment must be weighed and considered by individuals considering an application for appointment.

180. In addition to the annual salary and the judicial annuity, federally appointed judges are entitled to an array of insurance benefits and to continuing legal education programs. [101]

[99]Block Report, para 106.
[100]Levitt Report, para 52.
[101]FJA, *Guide for Candidates, Appointments to Superior Courts* at https://www.fja-cmf.gc.ca/appointments-nominations/guideCandidates-eng.html?pedisable=true.

181. Federally appointed judges other than Supreme Court Judges are eligible to select a period of supernumerary status if they have served at least fifteen years as a federally appointed judge and have a sum of age and years of service of at least eighty or are at least seventy years old with at least ten years of service as a federally appointed judge. Supernumerary status gives judges a reduced workload of approximately 50% while they continue to receive full compensation. Supernumerary status has a maximum of ten years or until the age of seventy-five, whichever comes first.

182. We have also considered the uniqueness of the judicial function, which imposes rigorous demands on members of the judiciary who must devote themselves exclusively to their judicial duties and who are constrained in their behaviours publicly and privately both during their term as judges and beyond.

183. FJA's Guide for Candidates for Appointments to Superior Courts, B.5 Ethical, Change of Lifestyle and Other Considerations, sets out the expectations in some detail.[102]

> Anyone considering a judicial appointment should have as much information as possible on what becoming a judge entails, and should enter upon the responsibilities of judicial office only if he or she is fully prepared to accept the substantial changes which it will bring, not just to the judge's own life, but to the lives of the members of his or her family. Among the factors to consider are moving from one city to another, buying and selling a house, career disruption of a spouse, children changing schools, and other inconveniences. The decision to seek and to accept a judicial appointment should be taken only after full consultation with all those who will be intimately affected by the changes it will bring. As well, while training programs are provided to new judges, and continuing education is available, judges are by and large on their own.
>
> A reasonably long-term commitment is also required from each judge: generally, judges cannot retire with a full pension, except on medical grounds, until they have served 15 years in office and the total of their age and years in office equals at least 80, or have completed at least 10 years in office and reached the age of retirement (75). Judges must remain on the Bench until the statutory requirements for retirement with a full pension are met, or leave with only a pro-rated pension or a return of contributions.

[102] https://www.fja-cmf.gc.ca/appointments-nominations/guideCandidates-eng.html.

> Anyone considering a judicial appointment should review the Assessment Criteria for candidates for federal judicial appointment, with particular attention to those topics listed under "Personal Characteristics" and "Potential Impediments to Appointment".

184. In addition to these considerations, there are many others. The independence of the Judiciary isolates judges from former associations to avoid the possibility of a real or perceived conflict of interests. It requires that judges devote themselves exclusively to the duties of the judicial office and not engage in any outside business. Judges are expected to comport themselves scrupulously. They may not engage in public and should avoid expressing personal opinions on social issues. In both their work and personal life, they may be subject to scrutiny by the Canadian Judicial Council. The Council has a statutory mandate to investigate all complaints and allegations of misconduct on the part of federally appointed judges and to recommend to the Minister of Justice whether there are grounds for removing a judge from office.

185. The Canadian Judicial Council 2021 publication *Ethical Principles for Judges* provides additional ethical guidance for federally appointed judges and associate judges.[103]

186. Even former judges are subject to rigorous rules, including restrictions on how and where they can practise. A former judge can act as an arbitrator, mediator or commissioner; however, former judges should not appear as counsel before a court or tribunal in Canada for an extended period of years. (This constraint may be subject to exceptions where a judge has left the judiciary after a very short period.)

187. We have also borne in mind that the role of judge brings with it respect and prestige in addition to obligations and constraints both during and after the term of service. As the Government put it, the allure of judicial appointments goes beyond the salary, citing in addition other factors that may make judicial office appealing, such as the desire to serve the public, security of tenure, and the quality of life associated with judicial office, as important incentives to seek a judicial appointment.

[103] https://cjc-ccm.ca/sites/default/files/documents/2021/CJC_20-301_Ethical-Principles_Bilingual%20FINAL.pdf.

188. We have considered these factors in our inquiry and analysis under s. 26(1.1) of the *Judges Act*.

C. Conclusion and Salary Recommendation

189. The Commission has concluded the current salary and benefits paid to judges are inadequate. This inadequacy is having an ongoing adverse effect on the attraction of outstanding candidates to the Judiciary. An appropriate increase to the current judges' salary is required to ensure that more outstanding candidates are not discouraged from seeking judicial appointment.

190. What is the appropriate increase to the judicial salary?

191. The Judiciary asks that the base salary "be correctively reset through an increase of $60,000, exclusive of IAI, to reduce the wide gap between judicial salaries and the income levels of self-employed lawyers". The Judiciary argues the requested increase "will hopefully go some distance" in mitigating the shortage of applicants and contribute to ensuring the attraction of outstanding candidates from all areas of practice.[104]

192. In asking for the $60,000 adjustment, the Judiciary has compared judicial salaries to two public service comparators, which it argues should be used by the Commission instead of the DM-3 Block comparator.[105] The "gap" between the judicial salary and these comparators are stated to be $57,854 and $62,305. The Judiciary also referenced the significant gap between the judicial salary and private sector salaries, in support of its request.

193. The Judiciary submits the requested increase would "begin to address the historical inadequacy of the data which informed the recommendations of past commissions" due to the unavailability of income data for self-employed lawyers receiving income through PLCs.[106] The Commission asked the Judiciary to advise what increase it believed would be necessary to fully address "the historical inadequacy of data".[107]

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[104]Judiciary Submission, paras 7 and 8.
[105]Judiciary Submission, para 243—the DM-3 comparator calculated using the total average compensation rather than the mid-point, and the DM-4 Block comparator.
[106]Judiciary Submission, para 242.
[107]Commission letter dated February 26, 2025.

194. In its response, the Judiciary stated the $60,000 increase "plainly does not bridge the gap, and it would be premature at this juncture to say what salary increase(s) would be necessary" to "fully address" the gap revealed by the new data. The Judiciary's position is that the Commission should not strive to make a salary recommendation that would fully address the gap by "a single corrective increase". Rather "corrections of this nature" should be gradual and determined by future commission based on the evidentiary record before them.[108]

195. The Government argues that no salary increase is necessary as the current judicial salary is more than sufficient to uphold judicial independence and "there is no evidence that there is difficulty in attracting high quality candidates from the private sector".[109] It also requests that the Industrial Aggregate Index be capped at a maximum four-year cumulative increase of 14% over the current quadrennial cycle.[110]

196. The Government characterized the $60,000 increase requested by the Judiciary as a "bonus" and argued it was "unprecedented and unjustified".[111]

197. In its submissions to the Commission, the CBA stated judicial compensation must be set at a level to attract and retain outstanding candidates, which tend to be senior practitioners or practitioners in mid-career who would otherwise be inclined to remain in their current situation, whether in private practice, in-house or government.

198. The CBA submitted that judicial compensation levels "should ensure that judges and their dependents do not experience significant economic disparity between pre and post appointment levels so that outstanding candidates are not deterred from applying".[112] The CBA did not take any position on the appropriate amount of any required increase to judge's salaries.

199. The Commission does not agree with the Government's characterization of the Judiciary's requested salary increase as a "bonus". In conducting its inquiry into the adequacy of judges'

[108]Judiciary letter dated March 31, 2025.
[109]Government Submission, para 59.
[110]Government Submission, para 4.
[111]Government Reply, paras 1-5.
[112]Transcript of February 20, 2025, page 167.

salaries, the Commission is mandated by s. 26(1.1)(c) of the *Judges Act* to consider "the need to attract outstanding candidates to the judiciary". The Commission has determined the current judicial salary is inadequate to attract a sufficiently large and diverse pool of outstanding candidates from the private sector. We have concluded that the salary increase recommended by the Commission is required as a measure to help ensure outstanding candidates in the private bar continue to be attracted to the judiciary.

200. The Commission agrees with the Judiciary that the significant gap between judicial salaries and the private sector comparator warrants an increase to the current judicial salary; however, we do not agree with the amount of the increase proposed by the Judiciary.

201. The Commission has determined the Block DM-3 Comparator continues to be the proper public sector comparator and therefore the Judiciary's comparisons to the DM-3 average and DM-4 comparators do not assist the Commission at arriving at an appropriate salary increase.

202. The Commission's statutory mandate is to recommend a salary level which is adequate to ensure outstanding candidates continue to be attracted to the judiciary for this quadrennial cycle. Our salary recommendation is intended to fully address the inadequacy of judges' salaries as determined by this Commission on the evidentiary record before us. It will be for future commissions to determine whether further increases are appropriate or required based on the evidentiary record before them.

203. In determining the appropriate increase, the Commission has followed the approach of previous commissions and considered the private sector comparator and the Block DM-3 comparator. Each comparator serves a different purpose.

204. The private sector comparator provides the Commission with the salary level of those lawyers in the private sector who are considered to be outstanding candidates for judicial appointment. The need to consider the relationship between private sector incomes and judicial salaries arises from the mandatory statutory requirement that we consider, as a criterion relevant

to the assessment of the adequacy of judicial salaries, "the need to attract outstanding candidates to the judiciary".[113]

205. To continue to attract outstanding candidates, judges' salaries must be set at a level that will not deter them from applying to the judiciary. The private sector comparator is a tool to assist the Commission in assessing this factor. The objective is not to seek to match judicial salaries to the highest earners[114], nor to seek an exact point in the comparators at which judges' salaries should be set. We agree with the following analysis of the Rémillard Commission:[115]

> 81. Comparators help us to assess this factor, but this is not a mathematical exercise. Financial factors are not and should not be the only factor –or even the major factor – attracting outstanding judicial candidates. The desire to serve the public is an important incentive for accepting an appointment to the judiciary.
>
> 82. We agree with past Commissions that have decided not to seek an exact point in the comparators at which judges' salaries should be set. We have sought to ensure that overall compensation levels do not deter outstanding candidates from applying.
>
> 83. In addition to compensation, including the value of the judicial annuity, other factors, such as the desire to serve the public, security of tenure, and the availability of supernumerary status attract candidates to the bench.

206. The DM-3 Comparator does not reference a pool of potential candidates for appointment to the judiciary. Rather, the DM-3 comparator is a public service benchmark which has been used as a reference point against which to test whether judges' salaries have been advancing appropriately in relation to other public sector salaries.[116]

207. The DM-3 comparator provides an objective benchmark to recognize that judges, like senior civil servants are paid from the public purse. The comparator seeks to maintain a relationship between judges' salaries and the remuneration of senior federal public servants whose attributes most closely parallel those of federally appointed judges.

[113]Drouin Report, page 35.
[114]Block Report, para 116.
[115]Rémillard Report, paras 81-83.
[116]Turcotte Report, para 131; Rémillard Report, para 47.

208. Previous commissions have suggested there should be "rough equivalence" between the DM-3 comparator and the judicial salary.

209. The Drouin Commission considered both the DM-3 comparator and private sector comparator should be included in its considerations of the adequacy of judicial salaries. However, the Drouin Commission cautioned that "a strictly formulaic approach to the determination of adequate salary level for judges was not desirable or appropriate" and concluded:[117]

> …While we agree that the DM-3 comparator should not be determinative of our recommendations concerning judicial salaries, in our view, its an appropriate and useful comparator at this time. More particularly, we have concluded that the important aspect of the DM-3 comparator, for the purposes of our inquiry, is the maintenance of a relationship between judges' salaries and the remuneration of those federal public servants whose skills, experience and levels of responsibilities most closely parallel those of the Judiciary…
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> …
>
> …it is clear that the salaries of judges are not to be set automatically based on the remuneration of public servants. To do so would be to treat judges, indirectly, as part of the executive branch of government. That does not mean, however, that the salaries of judges must be set without any regard to remuneration levels within the senior ranks of the Government, or that they should be permitted to lag materially behind the remuneration available to senior individuals within the Government…

210. At the time of the Block Commission, judges were paid 91% of the DM-3 comparator. The Block Commission recommended a salary increase to bring the salary of puisne judges to "rough equivalence" with the DM-3 comparator. The Government did not implement this recommendation.

211. The Levitt Commission followed the Drouin Commission and Block Commission, and concluded that a "rough equivalence" with the DM-3 salary range midpoint plus one-half eligible performance pay was a "useful tool in arriving at a judgment as to the adequacy of judicial remuneration, because this concept reflects the judgmental (rather than mathematical) and multi-faceted nature of the enquiry."[118]

[117]Drouin Report, pages 30, 32.
[118]Levitt Report, para 48.

212. At the time, the judicial salary was 7.3% lower than the DM-3 comparator and the Levitt Commission considered whether the two could be considered "roughly equivalent" or whether the judicial salary was "lagging materially" behind the DM-3 comparator. The Levitt Commission found the 7.3% gap "tests the limit of rough equivalence", but concluded no adjustment was required to maintain the adequacy of judicial compensation.

213. The Rémillard Commission dealt with the comparators as follows:[119]

> 47. We agree that the position of a highly ranked deputy minister is very different in a number of ways than the position of a judge, and the DM-3 comparator should not be used in a "formulaic benchmarking fashion". We do not read previous Commission reports as having done that, Rather the DM-3 comparator has been used as a reference point against which to test whether judges' salaries have been advancing appropriately in relation to public sector salaries. [emphasis added]
>
> …
>
> 52. In summary, we agree that a highly-ranked deputy minister's job is not similar to a judge's job and the DM-3 group is not a significant source of recruitment for judges. However, we believe the DM-3 comparator remains worthwhile for its long-term use, consistency and objectivity. It is not to be used – and has not been used in the past-formulaically, but as a useful reference point… [emphasis added]

214. The Turcotte Commission applied the rough equivalence standard to both comparators, but acknowledged previous commissions had only applied it to the DM-3 comparator.[120] The judicial salary was within 3.2% of the private sector comparator considered by the Turcotte Commission.

215. In our view, rough equivalence between judicial compensation and the private sector comparator is not required. As noted, the purpose of the private sector comparator is not to match judges' salaries to private sector salaries or to seek an exact point in the comparator to set judges' salaries.

216. With the inclusion of income of private sector lawyers practicing through PLCs, the private sector comparator is significantly higher than the private sector comparator considered by the

[119]Rémillard Report, paras 47 and 52.
[120]Turcotte Report, para 213.

Turcotte Commission and prior commissions. It is not possible to achieve rough equivalence with both comparators, nor in our view is it necessary.

217. The Commission agrees with previous commissions that there should be "rough equivalence" between judges' salaries and the DM-3 comparator. This reflects the fact that both are paid from the public purse and both involve rewards of service to Canadians that go beyond financial remuneration.

218. However, the application of this standard should not be done in a formulaic manner. Rather the "rough equivalence" comparator is to be used as a reference point in arriving at a judgmental rather than mathematical determination. The salaries of judges are not set automatically based on the DM-3 comparator.

219. The limits of "rough equivalence" are to be determined by each commission in the context of the evidentiary record and the issues before the Commission. Although reference to previous Commission findings are informative "[e]ach commission must make its own assessment in its own context".[121]

220. In arriving at its recommended salary increase, the Commission considered other factors in addition to the comparators.

221. We are the first commission to have the benefit of more complete data on the salary of private sector lawyers which now includes salary earned by lawyers practising through PLCs. In 2022, approximately 45% of self-employed lawyers earned professional income through PLCs. We are the first commission to consider a private sector comparator which is significantly higher than current judicial compensation. The private sector comparator based on the most recent data provided to the Commission is $739,352,[122] which is 39% higher than the April 1, 2024 judicial salary and annuity of $531,975.[123]

[121]Rémillard Report, para 23.
[122]The most recent data provided to the Commission is for 2022.
[123]April 1, 2024 salary of $396,700 plus judicial annuity valued at 34.1% ($135,275).

222. Previous commissions expressed concern about the lack of complete data available to them to make appropriate assessments of judicial salary. The new data on private sector lawyer income shows that since at least 2019, there has been a significant gap between judicial salaries and private sector incomes.

223. We have also considered that there has not been an increase to judicial salaries, other than the statutory mandated IAI adjustment, since 2004.

224. Our salary recommendation must be meaningful to the Judiciary and it must effectively address the concerns expressed with respect to judicial vacancies, judicial workload and the challenges in attracting outstanding candidates from all sectors. As noted by the SCC in the *PEI Reference* case, "the mandatory involvement of an independent commission serves as a substitute for negotiations, because it provides a forum in which members of the judiciary can raise concerns about the level of their remunerations that might otherwise have been advanced at the bargaining table".[124]

225. We agree with the following submission by the Associate Judges:[125]

> 52. It is not merely the level of compensation which attaches to the judicial office at the time of appointment that will attract qualified candidates; it is the legitimate expectation that compensation will be regularly, meaningfully, and effectively reviewed, and adjusted by government acting in good faith. Without this assurance, qualified applicants will not be attracted or, at best, a significantly reduced number of them will be attracted.

226. In making our salary recommendation, we have considered this statement by the McLennan Commission:[126]

> Our recommendations are for a level of compensation that will not deter the best and the brightest from seeking judicial office and that should ensure that the level of compensation provided to puisne judges is not so great that the office will be sought after for its monetary rewards alone. Rather, it should appeal to those highly qualified persons of maturity and judgment who seek to provide a valuable public service to their country. <u>In other words, we are of the view that "too much" would not be in the public interest just as "too little" is obviously not in the public interest.</u> [emphasis added]

[124] *PEI Reference*, para 189.
[125] Associate Judges Submission, para 52.
[126] McLennan Report, page 13.

227. Our recommendation is intended to be fair to the judiciary and to the taxpayer, to strike the right balance between the two, and to be in the public interest.

228. The Commission has concluded the judicial salary should be adjusted to take some account of the large differential that the new PLC data has disclosed between judicial salaries and the earnings of potential applicants from the private sector, while still retaining the "rough equivalence" of the Block DM-3 comparator as found by past commissions. Balancing all of the factors provided for in the *Judges Act*, the Commission recommends the salary of puisne judges be increased in the amount of $28,000 effective April 1, 2024. This market adjustment is in addition to the IAI adjustments as provided for in the *Judges Act*. The judicial salaries payable to remaining judges under the *Judges Act* should be adjusted proportionately.

RECOMMENDATION 2

Balancing all of the factors provided for in the *Judges Act*, the Commission recommends that the salary of puisne judges be increased in the amount of $28,000, to be applied after the April 1, 2024 IAI increase. This market adjustment would be proportionately applied to the base salary of the Chief Justice and puisne judges of the Supreme Court of Canada and of all other Chief Justices, Associate Chief Justices and Senior Associate Chief Justices. Accordingly, effective April 1, 2024, judges' salaries would be the following:

Supreme Court of Canada:

Chief Justice	**$546.100**
Puisne Judges	**$505,700**

Federal Court of Appeal, Federal Court, Tax Court and Court Martial Appeal Court:

Chief Justices	**$465,700**
Associate Chief Justices	**$465,700**
Puisne Judges	**$424,700**

Provincial and Territorial Courts of Appeal and Superior Courts:

Chief Justices	**$465,700**
Senior Associate Chief Justices	**$465,700**
Associate Chief Justices	**$465,700**
Puisne Judges	**$424,700**

CHAPTER 3 - ASSOCIATE JUDGES' SALARY—*JUDGES ACT* S.10.1

229. Associate Judges of the Federal Court (formerly known as Prothonotaries) are paid 80% of the yearly salaries of puisne judges of the Federal Court.[127] This salary percentage has been in effect since 2016 when the Rémillard Commission recommended an increase from 76% to 80% of a Federal Court judges' salary.

230. The Associate Judges seek a recommendation from the Commission to be paid a salary of 95% of the salary of a Federal Court judge, retroactive to April 1, 2024.

231. In support of its request, the Associate Judges set out a number of factors for consideration by the Commission, including the following submissions respecting their role, qualifications and powers:

(a) The role of Associate Judges has evolved as the case load of the Federal Court increases in size and complexity.[128]

(b) The qualifications for an appointment as an Associate Judge are essentially the same basic qualifications required of a superior court judge, with the added requirement that candidates have a thorough knowledge of the *Federal Court Rules*, SOR/98-106.[129]

(c) Associate Judges exercise many of the same powers and functions as a judge of the Federal Court.[130]

232. The Associate Judges made the following submissions with respect to the challenges in attracting outstanding candidates to apply for appointment as an Associate Judge:

(a) The salary for Associate Judges should be set at a level that encourages outstanding candidates, once appointed, to remain in the role so they can be as effective as

[127] *Judges Act*, section 10.1.
[128] Associate Judges Submission, paras 9, 62-66.
[129] Associate Judges Submission, para 16.
[130] Associate Judges Submission, paras 27-28.

possible. In recent years, the salary differential (20%) has resulted in several Associate Judges successfully seeking appointment as Federal Court judges. [131]

(b) In seeking to attract outstanding qualified applicants, the Federal Court must compete with other superior and provincial courts. Associate Judges have fallen behind their counterparts in British Columbia, Alberta and Manitoba, which are provinces that maintain roles similar to that of an Associate Judge.

(c) The substantial disparity between the salaries of Associate Judges and Federal Judges leads to a perception of second-class status for the office of Associate Judges, which contributes to the increasing difficulty in attracting the best candidates and ensuring Associate Judges remain in that role.

233. The Government responded that the statutory criteria do not support an increase to the Associate Judges' salary beyond the Industrial Aggregate Index adjustment capped at 14%. The Government argues "[t]he same reasons that underlie the Government's position on judicial salaries apply to associate judges' salary."[132] The Government made the following additional submissions:

> 141. "…[T]here is no evidence of difficulty attracting outstanding candidates to the position of associate judge that would justify increasing their salaries beyond 80% of judges' salaries."[133]
>
> …
>
> 143. "…[T]he role or responsibilities of associate judges remain largely the same as they were before the Rémillard Commission [and a]bsent evidence of a change of circumstances, there is no reason to increase the percentage…"[134]

[131]Associate Judges Submission, para 56.
[132]Government Submission, para 132.
[133]Government Submission, para 141.
[134]Government Submission, para143.

234. The Chief Justice of the Federal Court provided a written submission to the Commission supporting the position of the Associate Judges. Chief Justice Crampton also made an oral presentation to the Commission at the February 20-21, 2025 hearings.[135]

235. In his written statement, Chief Justice Crampton commented on the increasing role of Associate Judges:

> In brief, I write to provide my full support for the submissions of the Associate Judges of the Federal Court, in which they advance their proposal for an increase in their compensation. As the submissions of the Associate Judges explain, and as further described below, the workload of the Federal Court is far greater now than it has ever been, both in caseload volume and complexity. A disproportionately large part of this increased workload has been shouldered by the Associate Judges of the Court.
>
> …
>
> Beyond the substantial increase in the number of proceedings instituted at the Court, the average level of complexity of proceedings filed has also increased. In addition, the Court has placed a high priority on measures to increase access to justice, including greater use of case management and mediation, which are functions primarily performed by the Court's Associate Judges.

236. Chief Justice Crampton also provided testimony on the impact of the current salary level in attracting outstanding candidates to apply for appointment as an Associate Judge. He referenced the very small number of candidates that applied for appointment as an Associate Judge over the last decade, concluding that this unsatisfactory level of interest "is likely attributable, at least in part, to the current gap in compensation between judges and Associate Judges."

237. Chief Justice Crampton noted that in recent years four former Associate Judges had opted to leave the office to seek appointment as a judge of the Federal Court. He believed this was partially attributable to the "perceived increase rank of a judge relative to that of an Associate Judge as well as the broader jurisdiction of a judge…" He also expressed his view that the gap in compensation between Associate Judges and judges also played an important role.

[135] *Submission of the Chief Justice of the Federal Court Regarding Compensation for the Associate Judges of the Federal Court*, January 10, 2025 and transcript of the public hearing of February 20, 2025, p.88 to 97.

238. Chief Justice Crampton provided the following conclusions in his statement to the Commission:

> In my view, the Court's ongoing ability to attract excellent qualified applicants will continue to be compromised if the level of remuneration does not keep pace with the remuneration available at other superior and provincial courts across the country. The qualifications for appointment to similar positions in these courts mirror those of the office of Associate Judge of the Federal Court. As the gap in compensation widens between Associate Judges of the Federal Court and analogous judicial officers in other jurisdictions, such as Alberta, British Columbia and Manitoba, the prospects for attracting excellent candidates diminish.
>
> Associate Judges perform an indispensable role in the proper functioning of the Federal Court. The Federal Court has a strong interest in attracting the very best candidates to become and remain Associate Judges. This interest has only increased as the role played by the Associate Judges has become more important and, indeed, critical to the Court's ability to facilitate access to justice by reducing the time and costs associated with court proceedings through, among other things, case management and mediation.

Conclusion

239. The Commission agrees with the submissions of the Associate Judges that there has been a significant increase in their roles and responsibilities. This includes changes to monetary limits for trial jurisdiction, increased case management and a shift to front line dealing with self-represented litigants.

240. The Commission also agrees the disparity in the Associate Judges' salary with comparators from other superior and provincial courts and with the salaries of Federal Court judges is a deterrent in attracting outstanding candidates to apply to be Associate Judges.

241. The Commission found the evidence of Chief Justice Crampton on these issues to be very persuasive.

242. The Commission agrees that the salary of Associate Judges should be increased to 95% of the salary of a Federal Court Judge, retroactive to April 1, 2024.

RECOMMENDATION 3

a) The salary of Associate Judges of the Federal Court should be increased to 95% of the salary of a Federal Court judge, retroactive to April 1, 2024. Accordingly, effective April 1, 2024, the salary of an Associate Judge of the Federal Court would be $403,400.

b) The salary of Associate Judges of the Tax Court of Canada should be increased to 95% of the salary of a Tax Court judge, retroactive to April 1, 2024. Accordingly, effective April 1, 2024, the salary of an Associate Judge of the Tax Court of Canada would be $403,400.

CHAPTER 4 - OTHER ISSUES

A. Data on Compensation levels of judicial appointees immediately before appointment (PAI)

243. The parties before us disagreed on whether and in what way we should give effect to recommendation 8(5)(c) of the Turcotte Commission[136] by collecting data on compensation levels of judicial appointees immediately prior to appointment.

244. The Government argued that pre-appointment income data is crucial and that the Commission must compel the representatives of the Judiciary to cooperate fully in ensuring this information can be made available to future commissions.[137]

245. The Judiciary argued against the collection of this data, claiming it is not relevant since it would not provide information about individuals who did not apply for appointment, would generate incomplete data and is potentially self-serving. The Judiciary also argued that due process had been jeopardized because the recommendation was issued by the Turcotte Commission without soliciting the parties' views on it.[138]

246. This Commission is the first to have access to data provided by CRA and Statistics Canada that allows us to consider income for incorporated lawyers in our analysis. This information fills a gap consistently highlighted by previous commissions as having prevented them from having a better view of the income of private sector practitioners.

247. In the absence of reliable evidence of income from incorporated lawyers, pre-appointment data was sought as a second-best mechanism for analyzing gaps in the private sector data. Pre-appointment data could be useful in assessing what level of salary differential highly qualified private sector lawyers are willing to accept in accepting a judicial position. However, it does not allow for the assessment of the income levels of individuals who decided not to apply for financial reasons, considering the gap in pay between their current income and the remuneration paid to judges too large for them to give up practice for the Judiciary.

[136]Turcotte Report, chapter 5.
[137]Government Reply Submission, paras 16-17.
[138]Judiciary Submission, paras 263-264.

248. On balance, the Commission finds that the more complete data that was available to us obviates the need to require the collection of pre-appointment data at this time. That said, pre-appointment income could be useful in assessing what level of income differential a sufficient quantum of highly qualified private sector lawyers are willing to accept to serve on the judiciary. We would certainly not stand in the way of the collection of this data for future commissions and would encourage the parties to consider how this effectively might be done.

CHAPTER 5 - CONCLUSION

249. It has been an honour to serve as members of this Commission. As noted above, our work was substantially assisted by the submissions and information provided to us. We wish also to acknowledge our debt to the prior commissions, who have individually and collectively established a body of work that has served to inform and underpin our conclusions.

250. At a time when trust in public institutions cannot be taken for granted, even in a well-established democracy, our work has reminded us that judicial independence is one of the most fundamental guarantees. Canada's constitutional arrangements, including an independent judiciary, serve Canadians well and are a model to the world. We all benefit from the professionalism and robustness of our judicial system which serves to adjudicate and resolve issues of all kinds.

CHAPTER 6 - LIST OF RECOMMENDATIONS

RECOMMENDATION 1

Diligent efforts should be made so that future commissions are appointed by June 1 of the relevant year, as provided for in the *Judges Act*.

RECOMMENDATION 2

Balancing all of the factors provided for in the *Judges Act*, the Commission recommends that the salary of puisne judges be increased in the amount of $28,000, to be applied after the April 1, 2024 IAI increase. This market adjustment would be proportionately applied to the base salary of the Chief Justice and puisne judges of the Supreme Court of Canada and of all other Chief Justices, Associate Chief Justices and Senior Associate Chief Justices. Accordingly, effective April 1, 2024, judges' salaries would be the following:

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b) The salary of Associate Judges of the Tax Court of Canada should be increased to 95% of the salary of a Tax Court judge, retroactive to April 1, 2024. Accordingly, effective April 1, 2024, the salary of an Associate Judge of the Tax Court of Canada would be $403,400.