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BY EMAIL

May 14, 2020

Our File Number: 500008446

Ms. Louise Meagher
Executive Director
Judicial Compensation and Benefits Commission
99 Metcalfe Street, 8th Floor
Ottawa, ON K1A 1E3

Dear Ms. Meagher:

Re: Undertakings - 2020 Judicial Compensation and Benefits Commission

At the conclusion of the hearings for the Judicial Compensation and Benefits Commission on May 11, 2021, the Commission asked that the principal participants respond to a series of requests and questions from the Commission.

Below, please find the participants' responses. Please note that certain information is still being collected. The participants will make best efforts to provide the remainder of the requested information no later than May 21, 2021.

1) What is the DM-3 salary range effective April 1, 2021? If it is not available, provide an explanation as to why and a date as to when salary increases are made for DM-3s.

The following is an excerpt from the answer provided by the Privy Council Office on May 13, 2021:

The current salaries for DMs can be found on the PCO website here:
<https://www.canada.ca/en/privy-council/programs/appointments/governor-council-appointments/compensation-terms-conditions-employment/salary-ranges-performance-pay.html>

The salary ranges currently in effect were approved for April 1, 2017. No salary updates have been approved since that time. There is no fixed schedule as to when salary adjustments for GICs are approved. It is at the discretion of the GIC. As an example, the most recent round of increases for GIC appointees were

approved on May 10, 2018 and they included adjustments for April 1, 2014; April 1, 2015; April 1, 2016 and April 1, 2017.

Pursuant to past practice, we expect rates for senior leadership will eventually increase in-line with the rest of the public service (the most recent agreements have provided for annual salary increases of 2.8% in 2018-2019, 2.2% in 2019-2020, and 1.35% plus 0.15% (1.5%) for 2020-2021). However, at this time no increases in rates have been approved.

2) In respect of data on Professional Corporations what was requested of the CRA and what was CRA's response.

The parties encountered various obstacles in obtaining reliable CRA data on lawyers' income earned through professional corporations.

As a test sample, CRA produced to the parties data for one year setting out the income of professional corporations associated with lawyers. The data was not approved for wider circulation and was provided for discussion purposes in order to assist the parties in arriving at a potential methodology for data collection. A first question raised by the Government was how it could be certain that lawyers were connected with these professional corporations. The T2 form for professional corporations does not contain the code that would show occupation (NAICS code). The business number (BN) on the T2 form allows CRA to go to the BN file and recover the NAICS code. So it's a 2-step process to ensure that a given professional corporation belongs to a lawyer.

The next issue was how to understand the gross-income figures in CRA's table. The table was broken down according to number of employees of the professional corporation: zero, one, more than one. A question that arose from this aspect of the data was how it could be determined whether a given employee was the lawyer who constituted the corporation, and when it was more than one employee, what the occupation was of the other employees. To identify an employee of a professional corporation, CRA would have to match the universal employee number and employment income in law corporations by manually merging T2 and T4 slips. CRA advised that this is a labour-intensive task and could not confirm that it would be possible for them to do.

Another question that arose from the gross-income figures was whether the figures were pre- or post-expenses. So this posed an obstacle to an accurate understanding of whatever data would be made available to the Parties.

In short, the CRA is not able to confirm that any data it could provide on professional corporations would be accurate and complete.

The Parties' considered view is that it is simply not possible at this juncture to hope to get anything more from CRA on professional corporations that could be extracted, processed, and the subject of appropriate submissions from the Parties in time for the Commission to meet its statutory deadline.

3) Legislative history (including any comments in the House or before Committee) regarding the 7% IAI limit and any amendments to that provision in the Act.

The Government has collected the legislative history for the 7% IAI limit. The material is voluminous. The parties will review this material and send it to the Commission on or before May 21, 2021.

4) Contact the Commissioner for Federal Judicial Affairs Canada to determine if there is a further breakdown of applicants for judicial office by region within each province.

Below please find the inquiry that was made of Philippe Lacasse, Executive Director, Judicial Appointments, and Senior Counsel, Office of the Commissioner for Federal Judicial Affairs Canada, Judicial Appointments Secretariat. The Office of the Commissioner for Federal Judicial Affairs is an independent body that administers Part I of the *Judges Act*.

As you are aware, we relayed your May 10 response to the Judicial Compensation and Benefits Commission on May 11, 2021 and received a further follow-up request from Commissioner Bloodworth. At your earliest convenience, could you please provide a response to this request, which we will then send to the Commission. We would appreciate receiving your response as soon as possible.

The Commission pressed the parties on the issue of how many of the applicants included in the attached CFJA chart come from the various regions of the provinces in Canada. In particular, Commissioner Bloodworth requested any information the CFJA could provide regarding:

- 1) the number of applicants from private practice vs. other sectors in each province and/or sub-region; and*
- 2) the number of applicants from the top 10 Census Metropolitan Areas (CMAs).*

CMAs are defined by Statistics Canada as set out here:

<https://www23.statcan.gc.ca/imdb/p3VD.pl?Function=getVD&TVD=314312&CVD=314313&CPV=A&CST=01012016&CLV=1&MLV=3>

For the purpose of the Commission's question, the Top 10 CMAs are:

- 1) **Calgary**
<https://www23.statcan.gc.ca/imdb/p3VD.pl?Function=getVD&TVD=314312&CVD=314314&CPV=825&CST=01012016&CLV=2&MLV=3&D=1>
- 2) **Edmonton**
<https://www23.statcan.gc.ca/imdb/p3VD.pl?Function=getVD&TVD=314312&CVD=314314&CPV=835&CST=01012016&CLV=2&MLV=3&D=1>
- 3) **Hamilton**
<https://www23.statcan.gc.ca/imdb/p3VD.pl?Function=getVD&TVD=314312&CVD=314314&CPV=537&CST=01012016&CLV=2&MLV=3&D=1>
- 4) **Kitchener-Cambridge-Waterloo**
<https://www23.statcan.gc.ca/imdb/p3VD.pl?Function=getVD&TVD=314312&CVD=314314&CPV=541&CST=01012016&CLV=2&MLV=3&D=1>
- 5) **Montréal**
<https://www23.statcan.gc.ca/imdb/p3VD.pl?Function=getVD&TVD=314312&CVD=314314&CPV=462&CST=01012016&CLV=2&MLV=3&D=1>
- 6) **Ottawa-Gatineau**
<https://www23.statcan.gc.ca/imdb/p3VD.pl?Function=getVD&TVD=314312&CVD=314314&CPV=505&CST=01012016&CLV=2&MLV=3&D=1>
- 7) **Québec**
<https://www23.statcan.gc.ca/imdb/p3VD.pl?Function=getVD&TVD=314312&CVD=314314&CPV=421&CST=01012016&CLV=2&MLV=3&D=1>
- 8) **Toronto**
<https://www23.statcan.gc.ca/imdb/p3VD.pl?Function=getVD&TVD=314312&CVD=314314&CPV=535&CST=01012016&CLV=2&MLV=3&D=1>
- 9) **Vancouver**
<https://www23.statcan.gc.ca/imdb/p3VD.pl?Function=getVD&TVD=314312&CVD=314314&CPV=933&CST=01012016&CLV=2&MLV=3&D=1>
- 10) **Winnipeg**
<https://www23.statcan.gc.ca/imdb/p3VD.pl?Function=getVD&TVD=314312&CVD=314314&CPV=602&CST=01012016&CLV=2&MLV=3&D=1>

The boundaries of these areas are set out in each of the links above.

Our understanding is that the Commission is requesting not only the raw number of applicants for each of the above (including private practice vs. other sectors) but also the number of applicants who received a “highly recommended”, “recommended” and “unable to recommend” evaluation in each of these groups. In addition to my comments above, by providing the applicants by city of residence, it is not possible to provide the results of the assessments.

We also understand from your earlier response that it may be possible for the CFJA to provide a breakdown of the number of applicants from each of the Judicial Advisory Committee (JAC) regions in Ontario and Quebec for the same period of time. The Commission, we understand, would like this information for the time period covered by the attached chart, including the

number of applicants who received a “highly recommended”, “recommended” and “unable to recommend” evaluation in each of these groups and, if possible, the number of applicants in each of these JAC regions who were applying from private practice vs. other sectors.

Could you please advise whether it is possible for the CFJA to provide this information to the Commission and, if so, what timeline would you propose for providing the information?

The following response was received from Mr. Lacasse on May 13, 2021.

I can advise that some of the information requested are not data fields included or captured by our system. That being said, we are currently reviewing what information is available, and more particularly what can be shared, keeping in mind privacy issues.

More specifically, the number of applicants from private practice vs other sectors and or sub region is not a data field included in the application form or our system. Once a judge is appointed FJA staff, review the application and note the last place of work indicated and enter the sector. It is only done once appointed, and not done for every applicant. As such this data does not exist. We are, however, looking at we can provide you with a list of the city of residence, per province, of every applicant within the timeframe. While this may be possible, providing the results of the assessments (highly recommended, recommended, or unable to recommend) will not.

Finally, we are also reviewing the previously provided chart to determine whether it can be updated to reflect the same data by Judicial Advisory Committee in Ontario and Quebec.

We will advise as soon as possible.

We will promptly forward to the Commission any additional information received from the Office of the Commissioner for Federal Judicial Affairs.

5) CRA data – how many of self-employed lawyers in the data make above \$200K and above \$300K?

The following was received from the CRA on May 13, 2021 in response to the Commission’s question:

	Number of Self-employed Lawyers	
Tax Year	Net Income > \$200,000	Net Income > \$300,000

2015	6,180	3,900
2016	6,060	3,630
2017	5,800	3,560
2018	6,090	3,880
2019	5,490	3,440

Sincerely,

Christopher Rupar
Counsel for the Government of Canada

cc: Pierre Bienvenu, Ad. E., Azim Hussain and Jean-Simon Schoenholz, counsel for
the CSCJA and the CJC
Andrew Lokan, counsel for the Federal Court Prothonotaries
Kirk Shannon, Samar Musallam, counsel for the Government of Canada