

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

**2011 JUDICIAL COMPENSATION
AND BENEFITS COMMISSION**

REPLY OF THE GOVERNMENT OF CANADA

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PART I - REPLY

A. INTRODUCTION

1. In these reply comments the Government only addresses matters raised by the submissions of the Association and Council (the "Joint Submissions") that were not already addressed in the Government's opening submissions.

2. While the Government respects the views of the Association and Council set out in their submissions, their materials do not provide an objective basis on which this Commission can simply adopt the recommendations of the Block Commission. The Government submits that when all of the *Judges Act* factors are considered, its proposal results in an adequate salary, is consistent with the constitutional guidance provided by the Supreme Court in the *PEI Judges Reference*¹ and should be recommended by this Commission.

B. BACKGROUND

3. The Government agrees with paragraphs 14 to 18 of the Joint Submissions regarding the importance of judicial independence and specifically of financial security of judges for the benefit of the public.

4. With respect to paragraphs 19 to 70 of the Joint Submissions, the Government takes seriously the perspective of the Association and Council on these issues and recognizes that the judiciary has limited opportunities to raise concerns about the Quadrennial Commission process.²

5. However, parts of this section of the Joint Submissions, as well as paragraph 168, which quantifies "the impact on federally appointed judges of the non-implementation of the Block Commission's salary recommendations," imply an entitlement to the implementation of a remuneration commission's recommendations. That is not the constitutional process established in the *PEI Judges Reference* and *Bodner*. Indeed, the Supreme Court has specifically recognized that the provincial legislatures and Parliament have "exclusive jurisdiction to allocate funds from

¹ *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island; Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3 (the "*PEI Judges Reference*").

² *Ibid.*, at para. 189. The *PEI Judges Reference* was included in the index of background documents previously provided to the Commission.

the public purse.”³ Under s. 100 of the *Constitution Act, 1867*, judicial salaries are set by Parliament, not by the Quadrennial Commissions.

6. A Government response that meets the constitutional requirements set out in the *PEI Judges Reference* and *Bodner*, but does not implement a remuneration commission’s recommendations, is not a failure of the process. So long as the Government is both preserving the independence of the judiciary, and appropriately discharging its role as steward of the public purse, the constitutional process for setting judicial remuneration is succeeding. The ultimate gauge of the success of the “public and open process of recommendation and response”⁴ in which this Commission participates is whether public confidence in the justice system has been maintained.

7. Furthermore, as set out in the Government’s opening submissions and Annex B to those submissions, the Supreme Court has made a government’s response to a judicial remuneration commission subject to “a limited form of judicial review by the superior courts.”⁵ It is not subject to review by later commissions.

C. THE COMMISSION’S MANDATE

8. The Government agrees with the Association and Council that this Commission must consider all of the factors set out in s. 26(1.1) of the *Judges Act* to determine the adequacy of judicial salaries, and that these factors may point to a judicial salary that exceeds the “minimum level of remuneration” that is constitutionally required to protect the financial security of judges.⁶ In other words, the mandate of this Commission is not to recommend the minimum salary that could constitutionally be paid to judges without breaching judicial independence; rather, the mandate of this Commission is to recommend salary levels for 2012-2016 that are “adequate” in

³ *Provincial Court Judges' Assn. of New Brunswick v. New Brunswick (Minister of Justice)*; *Ontario Judges' Assn. v. Ontario (Management Board)*; *Bodner v. Alberta*; *Conférence des juges du Québec v. Québec (Attorney General)*; *Minc v. Québec (Attorney General)*, 2005 SCC 44, [2005] 2 S.C.R. 286 (“*Bodner*”) at para. 42. *Bodner* was included in the index of background documents previously provided to the Commission.

⁴ *Ibid.* at para. 19.

⁵ *Bodner*, *supra* at para. 29.

⁶ Submission of the Association and Council, at paras. 71-72. See paragraphs 49(c) and 53 of the Government’s opening submission regarding the constitutional requirement of a salary that is not “such a low rate that [judges] could be perceived as susceptible to political pressure through economic manipulation, as is witnessed in many countries”: *PEI Judges Reference*, *supra* at para. 135.

view of all of the s. 26(1.1) factors. The Government submits that its salary proposal meets the statutory factors for adequacy.

D. PROCESS ISSUES

9. Regarding the first proposed recommendation of the Association and Council, the Government agrees that it is necessary to respect all aspects of the Commission process in order to preserve confidence in and maintain the effectiveness of the Commission process. No recommendation is needed in this regard, as all parties acknowledge the important constitutional and statutory role of this Commission.

10. Moreover, the constitutional process for setting judicial remuneration includes not only the recommendations of remuneration commissions, but also the response of the Government. The *PEI Judges Reference* and *Bodner* represent a careful balance between the need to preserve and respect judicial independence and the need to preserve and respect the fact that “decisions about the allocation of public resources are generally within the realm of the legislature, and through it, the executive.”⁷ If confidence in the process set out by the Supreme Court in the *PEI Judges Reference* and *Bodner* is to be maintained, it is necessary for all of the parties to respect all aspects of the entire process. The Commission, the Government and the judiciary are all “guardians of the Quadrennial Commission process” and must all “actively safeguard” the constitutional requirements.

11. While the Government takes issue with the characterization of its responses and those of previous governments at pages 9 to 23 of the Joint Submissions, it is of the view that public confidence in the process established in the *PEI Judges Reference* and *Bodner* is not enhanced by debating those issues before this Commission, which has no mandate to consider them. The Government’s determination that it should refrain from engaging in such a debate does not reflect agreement with the characterizations that have been advanced.

⁷ *PEI Judges Reference, supra* at para. 176.

E. SUBSTANTIVE ISSUES

1. Puisne Judges Salary

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

12. The Association and Council acknowledge a “world economic crisis that began in Fall 2008.”⁸ They also appropriately acknowledge that the *Expenditure Restraint Act* (“ERA”) “applied broadly within the public sector” and limited salary increases until the 2010-11 fiscal year.⁹

13. The Association and Council focus on the fact that “incremental and merit increases” were excluded from the ERA salary restraints.¹⁰ However, the amount of such increases was subject to the limits on increases to rates of pay established by the ERA.

14. In addition, if the Association and Council are referring to performance pay, such plans were also affected by the ERA.¹¹ The ERA froze the maximum performance pay amounts or rates eligible to be earned by deputy ministers from 2009, as well as the midpoint of that maximum (which the Block Commission found relevant). However, the average actually paid varies year to year, sometimes increasing, sometimes decreasing,¹² depending upon the performance of the individuals assessed, and in light of the limits on increases to rates of pay established by the ERA. Permitting individuals to receive performance pay based on merit, within frozen plan parameters, is an appropriate means of achieving the purposes of merit pay (which purposes are inapplicable to judicial salaries), while also maintaining fiscal restraint.

15. Accordingly, contrary to paragraph 165 of the Joint Submissions, it is not accurate to suggest that the Government and Stephenson Committee considered it appropriate to increase the compensation level of DM-3s in spite of challenging economic circumstances. All compensation

⁸ Submissions of the Association and Council, para. 86.

⁹ Submissions of the Association and Council, paras. 86-87.

¹⁰ Submissions of the Association and Council, para. 88.

¹¹ *Expenditure Restraint Act*, S.C. 2009, c. 2, s. 393 (“ERA”), ss. 10, 17-19, 16-38, 59-61, online: <http://laws.justice.gc.ca/eng/acts/E-15.5/page-14.html#h-9>.

¹² The Association and Council acknowledge that DM-3 performance pay decreased in 2010-11: Submissions of the Association and Council, para. 88. See also the chart at paragraph 134, showing that total average compensation of DM-3s decreased from \$331,866 in 2009-10 to \$331,557 in 2010-11.

levels were frozen, and average compensation only increased in some years because more DM-3s did well in their individual performance evaluations.

16. The Government agrees with the Association and Council that Canada has weathered the global recession better than most industrialized countries.¹³ But, like other countries, Canada faces a very uncertain global outlook and recovery from the worst economic crisis since the Great Depression. The global economy is facing serious economic risks, primarily from the uncontained European sovereign debt crisis and the uncertainties concerning the recovery of the United States' economy.

17. Paragraph 91 of the Joint Submissions understates this risk, suggesting that the Bank of Canada has stated that the euro-area crisis will be contained. In fact, the report cited by the Association and Council states that the Bank of Canada's "base-case scenario assumes that the crisis in the euro area will be contained, although this assumption is clearly subject to downside risks."¹⁴ The more recent Bank of Canada *Monetary Policy Report* for January 2012 warns:¹⁵

The outlook for the global economy has deteriorated and uncertainty has increased since October. The sovereign debt crisis in Europe has intensified, conditions in international financial markets have tightened and risk aversion has risen. The recession in Europe is now expected to be deeper and longer than the Bank had anticipated. The Bank continues to assume that European authorities will implement sufficient measures to contain the crisis, although this assumption is clearly subject to downside risks. In the United States, while the rebound in real GDP during the second half of 2011 was stronger than anticipated, the Bank expects the recovery will proceed at a more modest pace going forward, owing to ongoing household deleveraging, fiscal consolidation and the spillovers from Europe. Chinese growth is decelerating, as expected, toward a more sustainable pace. Commodity prices—with the exception of oil—are expected to be below the levels anticipated in October through 2013. [emphasis added]

18. The *Monetary Policy Report* also quotes from the Governor of the Bank of Canada (which is independent of the Government) as follows:¹⁶

¹³ Submissions of the Association and Council, para. 89.

¹⁴ Bank of Canada, *Monetary Policy Report* (October 2011), at p. 17, online: <http://www.bankofcanada.ca/wp-content/uploads/2011/10/mpr-october2011.pdf>.

¹⁵ Online: <http://www.bankofcanada.ca/wp-content/uploads/2012/01/mpr-january2012.pdf>, at p. 1.

¹⁶ *Ibid.*, quote dated 12 December 2011, Toronto, Ontario.

Today, our demographics have turned, our productivity growth has slowed and the world is undergoing a competitive deleveraging. We might appear to prosper for a while by consuming beyond our means. Markets may let us do so for longer than we should. But if we yield to this temptation, eventually we, too, will face painful adjustments. It is better to rebalance now from a position of strength; to build the competitiveness and prosperity worthy of our nation.

19. On January 24, 2012, the International Monetary Fund (“IMF”) issued a *World Economic Outlook Update*, concluding, “The global recovery is threatened by intensifying strains in the euro area and fragilities elsewhere. Financial conditions have deteriorated, growth prospects have dimmed, and downside risks have escalated.”¹⁷ The IMF has downgraded its global growth forecast to 3.25% in 2012, down from 4% in its September forecast.¹⁸ Should the situation in Europe worsen, the IMF has estimated that global growth could be reduced by another 2 percentage points in 2012, with a sharp contraction of 4 percent in the euro area.¹⁹ The IMF identifies the situation in Europe as the most pressing policy issue, with a need to support growth while sustaining fiscal adjustment, containing deleveraging, and providing more liquidity and monetary accommodation.²⁰ For other advanced economies, the IMF is recommending that policymakers address fiscal imbalances, and continue to repair and reform financial systems.²¹

20. The IMF’s projections for gross domestic product growth in Canada were revised down to 1.7% for 2012 (down from 1.9% in September 2011), and 2% for 2013 (down from 2.5% in September 2011).²² This is lower than the older Bank of Canada projections relied upon by the Association and Council at paragraph 91 of the Joint Submissions.

21. At paragraph 94 of the Joint Submissions, the Association and Council refer to the fact that the Government should reach a budgetary balance by 2015-16 if the savings targeted by the deficit reduction action plan are achieved. Achieving that plan will require the Government to implement significant spending cuts. Constraints on the Government’s ability to spend necessarily inform its approach to public sector wage increases.

¹⁷ Online: <http://www.imf.org/external/pubs/ft/weo/2012/update/01/pdf/0112.pdf>, at p. 1.

¹⁸ *Ibid.* at p. 1.

¹⁹ *Ibid.* at p. 5.

²⁰ *Ibid.* at pp. 6-7.

²¹ *Ibid.* at pp. 6-7.

²² *Ibid.* at p. 2.

22. In light of the foregoing, it is clearly, objectively not the case that current economic conditions “do not present an obstacle”²³ to the salary increase that the Association and Council have proposed. A projected deficit of \$31 billion²⁴ is an obstacle to the requested annual salary increases of 4.6% to 4.9%,²⁵ a cumulative increase of 21% for puisne judges.²⁶

23. The Supreme Court of Canada has held:²⁷

I want to emphasize that the guarantee of a minimum acceptable level of judicial remuneration is not a device to shield the courts from the effects of deficit reduction. Nothing would be more damaging to the reputation of the judiciary and the administration of justice than a perception that judges were not shouldering their share of the burden in difficult economic times. [emphasis added]

24. The objective facts relating to the economy and Canada’s fiscal circumstances and the Supreme Court’s guidance all indicate that this Commission’s recommendations should be more restrained than the recommendations that the Block Commission made at a time of budgetary surpluses and anticipated economic growth. The Association and Council argue that economic conditions have improved since the Government’s Response in February 2009.²⁸ As set out in the Government’s opening submission, the recession resulted in significantly larger, more persistent deficits than the Government expected in February 2009 (cumulatively, \$41.7 billion more than was anticipated at the time of the 2009 Response).²⁹ Section 26 of the *Judges Act* requires this Commission to consider “the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government.” It would be inconsistent with the statutory mandate of this Commission to simply adopt recommendations made under significantly different economic conditions, at a time which the Government was in a significantly different financial position.

²³ Submissions of the Association and Council, para. 97.

²⁴ See para. 44 of the Government’s opening submission.

²⁵ See the chart at para. 132 of the Government opening submissions regarding the percentage salary increases proposed.

²⁶ See the chart at paragraph 50 below.

²⁷ *PEI Judges Reference*, *supra* at para. 196.

²⁸ Submissions of the Association and Council, para. 163.

²⁹ See para. 39 of the Government’s opening submission.

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

25. The Government agrees with the principles of financial security set out at paragraphs 98 to 100 of the Joint Submissions.

26. With respect to paragraphs 101 to 102, the Association and Council appear to have assumed that the Government would ask this Commission to make recommendations based on the Government's economic and social priorities. That is not the basis for the Government's submission; the Government recognizes that the Commission's role is to make independent, objective recommendations. The Government's submission is that the objective evidence supports its salary proposal.

27. If the Joint Submissions are read to imply in paragraphs 101 and 102 that expenditures on judicial salaries are constitutionally paramount to other Government expenditures, that is not the law. For example, in the *PEI Judges Reference*, the Supreme Court held that the P.E.I. *Public Sector Pay Reduction Act*, which reduced judicial and other public salaries, "was enacted as part of a government policy to reduce the provincial deficit, and was therefore designed to further the public interest" and was thus "*prima facie* rational."³⁰ In *Bodner*, the Supreme Court noted that the reasons in an Ontario response rejecting pension recommendations of a remuneration commission included that "the Government's current fiscal responsibilities and competing demands for limited resources require a continued commitment to fiscal restraint to strengthen Ontario's economy."³¹ The Court held that this was not a political or discriminatory reason.³² If expenditures on judicial salaries were automatically paramount to all other Government spending obligations, the Supreme Court would have made remuneration commission recommendations binding. The Supreme Court rejected such an approach precisely because "decisions about the allocation of public resources belong to legislatures and to the executive."³³

³⁰ *PEI Judges Reference*, *supra* at para. 203.

³¹ *Bodner*, *supra* at para. 95.

³² *Ibid.* at para. 96.

³³ *Ibid.* at para. 20; see also *PEI Judges Reference*, *supra* at para. 176.

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

28. The Government acknowledges that compensation must be adequate to attract outstanding individuals. However, salary is only one of many reasons that outstanding individuals accept a judicial appointment. As set out in the Government's opening submissions, the judicial annuity and the opportunity to continue to earn significant compensation at an older age are both effective monetary incentives to accept an appointment.

29. Moreover, there are many non-monetary reasons to accept a public service position. The Association and Council quote the Strong Committee. With respect to CEOs of Crown corporations, for example, that Committee has found that "adequate compensation" "is unlikely to be fully competitive with the private sector, especially among the larger Crown corporations, due to the public policy component and the need for equity with the broader public service."³⁴ The Committee has found the appropriate benchmark to be the median (50th percentile) of private sector and broader public sector compensation for the lowest group of Crown corporation CEOs.³⁵ With respect to senior managers, the Committee has underlined the "significance of the nature of the work and the workplace as important factors in attracting and retaining talent."³⁶

30. In the judicial context, as noted by the Block Commission, surveys of judges conducted in Great Britain have cited many non-monetary reasons that outstanding lawyers seek judicial appointment.³⁷ Britain's Senior Salaries Review Body (SSRB) issues a report every two years making recommendations on compensation for the members of the British judiciary, as well as for some of the highest paid members of the civil service.³⁸ For purposes of its 2011 report, it conducted a survey in 2010 seeking the views of both recently appointed judges and experienced

³⁴ Advisory Committee on Senior Level Retention and Compensation, *Second Report* (March 2000), online: <http://www.tbs-sct.gc.ca/rp/adcm2-eng.asp>; see also *Seventh Report* (December 2004), online: <http://www.tbs-sct.gc.ca/rp/adcm7-eng.asp>.

³⁵ *Seventh Report, ibid.*

³⁶ Advisory Committee on Senior Level Retention and Compensation, *Third Report* (December 2000), online: <http://www.tbs-sct.gc.ca/rp/adcm3-eng.asp>.

³⁷ Block Commission Report, para. 69.

³⁸ Review Body on Senior Salaries, REPORT No. 77: *Thirty-Third Report on Senior Salaries 2011* (March 2011), online: http://www.ome.uk.com/SSRB_Reports.aspx.

barristers and advocates regarding incentives and disincentives to apply for judicial positions. Among recently appointed judges:³⁹

- (a) 71% stated that the nature of the work had been a strong incentive in applying;
- (b) 53% stated that the pension was a strong incentive; and
- (c) 45% cited work-life balance as a strong incentive.

31. Among Senior/Queen's Counsel, generally the most experienced barristers and advocates, 42% stated that they intended to apply for a judicial position,⁴⁰ even though in 2010 Senior/Queen's Counsel accepting an appointment to the High Court saw a median decrease in earnings of 57%, and a 68% decrease on appointment as a Circuit Judge.⁴¹ These results prompted the research centre that reported the survey results to conclude: "it is ... clear that factors other than salary play an important part in the decision to apply for a judicial post."⁴² As the Association and Council rightly acknowledge, "there is real value to be placed upon the opportunity for public service which is offered to members of the judiciary."⁴³

32. This is not to suggest that judges should be paid an inappropriately low salary by reason of the many other incentives for judicial appointment. However, an "adequate salary" in light of "the need to attract outstanding candidates to the judiciary" would take into account the lack of any current recruitment problem and the fact that many outstanding candidates do not require a salary higher than that of 75% of the highest-earning self-employed lawyers in their highest-earning years.

33. In comparing judicial salaries to those of private sector lawyers, the Association and Council ask this Commission to apply three filters, each of which biases the sample towards the

³⁹ National Centre for Social Research, *Surveys of Pre-appointment Earnings of Recently Appointed Judges and Earnings of Experienced Barristers Report* (July 2010), p. 23, online: http://www.ome.uk.com/Major_judicial_Review_2010.aspx.

⁴⁰ *Ibid.* at p. 25.

⁴¹ *Ibid.* at p. 6.

⁴² *Ibid.* at p. 26.

⁴³ Submissions of the Association and Council, para. 147.

highest-earning group of lawyers.⁴⁴ First, they ask this Commission to exclude the 26% of self-employed lawyers who earn less than \$60,000. Second, they look only to the incomes earned by lawyers aged 44-56, reducing the sample by a further 55%. Finally, they focus on lawyers living in the largest ten Census Metropolitan Areas, reducing the sample by another 22%. The result is that the Association and Council are asking this Commission to look at the 75th percentile income of a sample of the highest earning 26% of lawyers (that is, the top 25% of incomes of the highest-earning 26% of self-employed lawyers).⁴⁵

34. It is neither necessary nor appropriate to use this small sample of the highest incomes of the highest-earning lawyers in order to ensure that outstanding candidates are attracted to the Bench. The purpose of this Commission's inquiry is to identify an adequate salary, not to tie the salaries of publicly-paid judges to those of the most highly-paid private sector lawyers. No previous judicial remuneration commission has done so.

35. With respect to paragraph 153 of the Joint Submissions, there is no evidence that income-splitting is prevalent among self-employed lawyers. Indeed, as set out in the expert opinion of David Bilinsky dated January 26, 2012, the Canada Revenue Agency has established a number of rules that greatly diminish the number of legitimate ways that a high-income self-employed lawyer can split income with his or her spouse and/or children.⁴⁶ Moreover, certain techniques are not available in all provinces due to law society rules.⁴⁷ The remaining income-splitting techniques are complex and expensive to put into place and maintain, such that the impact of any income-splitting will be reduced by those costs.⁴⁸ In any event, no basis has been demonstrated for the \$60,000 amount cited by the Association and Council. When income-splitting is available, the greatest tax savings are on only \$30,000.⁴⁹

36. Regarding the 22.5% judicial annuity valuation used at paragraph 157 of the Joint Submissions, that is an outdated figure. The Block Commission made no error in using an

⁴⁴ Submissions of the Association and Council, paras. 150-52.

⁴⁵ Letter from Haripaul Pannu, dated January 25, 2012, Annex A to this Reply ("Reply Pannu Report").

⁴⁶ Letter from D. Bilinsky, dated January 26, 2012, Annex B to this Reply, at p. 3.

⁴⁷ *Ibid.* at pp. 13-19 and Appendix A.

⁴⁸ *Ibid.* at p. 4.

⁴⁹ *Ibid.*

updated valuation. As explained in the expert report of Haripaul Pannu, the value of the annuity depends on: a) the demographic profile of the entire national judicial complement, such as age at appointment and gender; b) the demographic assumptions that apply to that demographic profile, such as retirement ages and mortality rates (which affect how long the annuities will be paid); and c) the most current long-term economic view of Canada.⁵⁰ All of these factors change over time.⁵¹ This Commission should use the current valuation provided by the Government's expert, which is 27.2% for the retirement benefit of the judicial annuity, and 9.7% for the disability benefit.⁵²

d) Other objective criteria

37. With respect to paragraphs 73 and 107 to 109 of the Joint Submissions, the Government agrees that judges play a crucial role in modern Canadian society. However, that role has not changed significantly in recent years, as it did, for example, thirty years ago when the *Canadian Charter of Rights and Freedoms* was introduced. As noted at paragraph 107 of the Joint Submissions, the *Charter* and related developments were taken into account by the Drouin Commission (the first Quadrennial Commission). That Commission's salary recommendations were fully implemented by the Government. There is no evidence of comparable changes in recent years that are not already reflected in judicial salaries.

38. With respect to globalization and new technologies, these have also affected the work of judges' private and public sector comparators, and would thus be reflected in the comparator salaries. There is no evidence that globalization and new technologies have had a disproportionate impact on judges as compared to private sector lawyers, for example. As shown in the chart at paragraph 93 of the Government's opening submissions, judicial salaries have kept

⁵⁰ Reply Pannu Report at p. 2 (Annex A).

⁵¹ For example, the Office of the Chief Actuary of the Office of the Superintendent of Financial Institutions estimates the cost to Government of the judicial annuity (retirement and disability benefit) to be 32.7% of payroll in 2011, but projects that cost will increase to 40.3% in 2025. Office of the Chief Actuary, Office of the Superintendent of Financial Institutions, Actuarial Plan Pension Plan for Federally Appointed Judges as at March 31, 2010, dated October 29, 2010, at p. 10, online: http://www.osfi-bsif.gc.ca/app/DocRepository/1/eng/reports/oca/judges2010_e.pdf.

⁵² Haripaul Pannu, Report on the Earnings of Self-Employed Lawyers for the Department of Justice Canada in Preparation for the 2011 Judicial Compensation and Benefits Commission, dated December 13, 2011 ("Pannu Report"), at p. 13 (Annex E to the Government's Opening Submission).

pace with those of potential private sector appointees since the Drouin Commission's recommendations were implemented.

39. Regarding paragraphs 111 to 120 and 126 to 128 of the Joint Submissions, the suggestion that the DM-3 comparator "reflects a strong consensus in the reports of compensation commissions for nearly forty years" is not borne out by an examination of those reports. Indeed, even just a comparison of the report of the McLennan Commission (the second most recent Quadrennial Commission) with the Block Commission Report demonstrates the lack of consensus.⁵³ As is explained by the McLennan Commission, deputy minister compensation has consistently been considered by compensation commissions but has not consistently been found to be an appropriate comparator, and judicial salaries have historically been below the minimum of the DM-3 salary scale.⁵⁴ The McLennan Commission specifically rejected the Association and Council's proposal that "virtually equates the judicial salary of puisne judges with the current salary, including mid-point at-risk pay, of DM-3s."⁵⁵

40. With respect to paragraph 116 of the Joint Submissions, the midpoint of a salary range is more appropriate than the average. The average is sensitive to "outliers" in the distribution. For example, if there are five individuals and four receive performance pay of \$10,000, while one receives \$50,000, the average is \$18,000, which is almost double what 80% of individuals receive. Moreover, as discussed above, average compensation of DM-3s rises or falls from year to year depending on individual seniority and performance within a very small group at a particular point in time; whereas the midpoint remains the same so long as the compensation scheme stays the same. As the Block Commission correctly observed, a mid-point is "an objective, consistent measure"; whereas turnover or "a few very high performers or low performers" could significantly affect average compensation.⁵⁶

41. With respect to DM-4s, as the Block Commission noted, this position is "reserved for exceptional circumstances and positions of particularly large scope."⁵⁷ DM-4s were properly

⁵³ See Part D of the Government's opening submission.

⁵⁴ McLennan Commission Report, at p. 25.

⁵⁵ McLennan Commission Report at p. 26. See also p. 27.

⁵⁶ Block Commission Report, at para. 106.

⁵⁷ Block Commission Report, at para. 105.

rejected as a comparator. The Association and Council refer to the fact that the Strong Committee created the DM-4 category in part to attract and retain experienced and qualified staff. It did so in circumstances in which it found that “the senior level federal Public Service is facing a human capital crisis.”⁵⁸ In contrast, there is no evidence of difficulties recruiting judges.⁵⁹

42. The submission of the Association and Council at paragraph 124 that “[p]uisne judges do not proceed through a hierarchy of ever greater responsibility” is inconsistent with their request for an appellate differential.

43. Similarly, at paragraph 123, the Association and Council assert that the DM-3 comparator “relates judicial salaries to the highest level of salary in the executive branch (leaving aside the DM-4s, ...)” which “creates parity between the branches of Government.” They are clearly referring to the puisne trial judge salary, to which they are requesting a salary increase for appellate judges, then a further increase for Associate Chief Justices and Chief Justices of trial courts, a further increase for Associate Chief Justices and Chief Justices of appellate courts, a further increase for Supreme Court of Canada judges, and also a differential for the Chief Justice of Canada. Equating the lowest judicial salary to the highest executive branch salary is not parity.

44. With respect to the introduction of “at-risk” pay by the Strong Committee,⁶⁰ it did so because it found that “the Public Service is no longer able to attract the highest calibre of people.”⁶¹ There is no evidence of any current or impending crisis in the quality of the Bench.

45. With respect to the Joint Submissions regarding the “gap” between DM-3 and judicial salaries, the chart at paragraph 137 of the Joint Submissions demonstrates that it has been

⁵⁸ *Third Reports, supra.*

⁵⁹ See Part C of the Government’s opening submissions.

⁶⁰ Submissions of the Association and Council, at para. 129.

⁶¹ Advisory Committee on Senior Level Retention and Compensation, First Report (January 1998), online: <http://www.tbs-sct.gc.ca/rp/adcm1-eng.asp#preface>. See also the Committee’s Second Report (March 2000): “The Committee quickly concluded that, without immediate action, the government would face an inevitable loss of Public Service leadership over the next decade”; *Third Report* (December 2000): “the government faces a human capital crisis,” online: <http://www.tbs-sct.gc.ca/rp/adcm3-eng.asp>. See also the McLennan Commission Report at p. 27.

narrowing. If the Government's salary proposal is accepted, the "gap," which has not caused a problem in recruiting judges, can be expected to remain roughly consistent.

46. Accordingly, the Government respectfully submits that this Commission should recommend that the Government's salary proposal be implemented.

2. Salary Differentials

47. The Association and Council have not provided any evidence or reasons supporting a new differential between puisne appellate judges and puisne trial judges. Indeed, their only submission in this regard is that "[p]uisne judges do not proceed through a hierarchy of ever greater responsibility,"⁶² which is a strong reason not to grant any salary differential.

48. The Association and Council are apparently relying solely upon this Commission's notice of December 8, 2011, which indicated that the Commission had predetermined the issues that would be addressed before it and intends to endorse all of the Block Commission recommendations. For the reasons set out in the Government's opening submission and Annex B thereto, it was an error of law and of jurisdiction for the Commission to do so. This Commission must make its recommendations on an objective basis. The mere fact that a prior commission recommended a salary differential is insufficient. The Supreme Court has held: "Each commission must make its assessment ..."⁶³ There is no objective basis before this Commission on which it could assess and recommend an appellate differential. If the Commission intends to collect any information for such purposes, the Government requests notice and an opportunity to respond to that material.

49. The Government's salary proposal would maintain existing differentials for associate chief justices, chief justices, the puisne judges of the Supreme Court of Canada and the Chief Justice of Canada.

⁶² Submissions of the Association and Council, at para. 124 [emphasis added].

⁶³ *Bodner, supra* at para. 14.

50. In its December 8 notice, the Commission requested information regarding what the actual amounts of the Block Commission recommendations regarding the appellate differential would currently be. These amounts are:⁶⁴

		2011-12	2012-13	2013-14	2014-15	2015-16	N	Net Increase	
Supreme Court of Canada	Chief Justice	\$361,300	\$390,200	\$408,100	\$427,600	\$448,500	1	\$87,200	24%
	Puisne	\$334,500	\$361,200	\$377,800	\$395,900	\$415,200	8	\$80,700	24%
Appellate Courts	Chief/Assoc.	\$308,200	\$332,900	\$348,200	\$364,900	\$382,700	13	\$74,500	24%
	Puisne	\$281,100	\$303,600	\$317,500	\$332,700	\$349,000	148	\$67,900	24%
Trial Courts	Chief/Assoc.	\$308,200	\$323,300	\$338,100	\$354,300	\$371,600	24	\$63,400	21%
	Puisne	\$281,100	\$294,800	\$308,300	\$323,000	\$338,800	923	\$57,700	21%
Annual Increase			4.9%	4.6%	4.8%	4.9%			

3. Other Substantive Recommendations

51. This Commission must act in the public interest, and seek to preserve public confidence. For the Commission to now consider proposals for enhanced benefits that were prompted by an erroneous notice from the Commission that suggested a pre-determined outcome would clearly undermine public confidence in its independence, objectivity and effectiveness.

52. Prior to the Commission's December 8 notice, on November 15, 2011, the Association and Council expressly indicated that they would not be proposing any compensation enhancements other than salary increases. This earlier position was no doubt premised on a recognition of current economic and fiscal conditions. A reasonable and informed person would conclude that the Association and Council changed their position only after this Commission had issued its notice in which it signalled that it has already decided to recommend benefit enhancements.

53. Moreover, the Association and Council's expectation that the Commission will simply adopt the Block Commission recommendations has been underscored by the fact that they have not provided any objective material for this Commission to assess the Block Commission

⁶⁴ These figures are based on an increase of 4.9% inclusive of IAI in 2012-14; annual increases thereafter of 2% plus IAI (as forecast by the Office of the Superintendent of Financial Institutions); and an appellate differential of 3%.

recommendations with respect to benefits. For the same reasons set out above and in the Government's opening submission, the Commission cannot simply "endorse" the Block Commission's recommendations.⁶⁵

54. In its December 8 notice, the Commission requested information regarding what the actual amounts of the Block Commission recommendations regarding representational allowances would currently be. These amounts are:

Representational Allowances Increased by CPI*

		2011-12	2012-13
Supreme Court of Canada	Chief Justice	\$18,500	\$23,900
	Puisne	\$10,000	\$12,900
CJ of the FCA or a Province		\$12,500	\$16,100
Other CJ/Assoc./Senior Judge		\$10,000	\$12,900
Ontario Regional Senior Judge		\$5,000	\$5,800

* Indexed from 2004 for the Ontario Regional Senior Judge; otherwise from 2000.

These figures represent an increase of 2.9% per year.

4. Costs

55. The Government agrees with the Association and Council that their costs should be paid as set out in the *Judges Act*.

ALL OF WHICH is respectfully submitted.

DATED at Toronto, this 30th day of January, 2012.


Catherine Beagan Flood

Counsel for the Attorney General of Canada

⁶⁵ See paragraph 172 of the Submissions of the Association and Council.

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January 25, 2012

PRIVATE & CONFIDENTIAL

Ms. Adair Crosby
Senior Counsel and Deputy Director
Judicial Affairs, Courts & Tribunal Policy Section
Public Law Sector
Department of Justice Canada
284 Wellington Street
Ottawa, ON K1A 0H8

Via Email [adair.crosby@justice.gc.ca]

Dear Ms. Crosby:

Re: 2011 Judicial Compensation and Benefits Commission

As requested, I have reviewed the submission of the Canadian Superior Courts Judges Association (the "Association") and the Canadian Judicial Council (the "Council") to the Judicial Compensation and Benefit Commission. In particular, I have reviewed their submission with respect to self-employed lawyers' incomes and the judicial annuity percentage.

Self-Employed Lawyers' Incomes

In their submission to the Commission the Association and Council focused on self-employed lawyers who:

- had incomes greater than \$60,000;
- were between the ages of 44 to 56; and
- were from the ten largest CMA's.

A salary exclusion of \$60,000 was used. The impact of the exclusion is to reduce the sample size and it is an arbitrary amount that does not reflect actual tax deduction or other income exclusion measures that a self-employed lawyer may use. As indicated in my report of December 13, the use of a salary exclusion is not a common and accepted practice in compensation analysis. The second narrowing of the data was to focus on self-employed lawyers who were between the ages of 44 to 56. The reasoning for using this particular age band is that 74.4% of appointed lawyers were between the ages of 44 to 56 for the period January 1, 1997 to March 31, 2011. However, 25.6% of appointed lawyers were not in this age band. In fact, only 65% of appointed lawyer from April 1, 2007 to March 31, 2011 were from this age band and over one third were not. In addition, their submission suggested that 60.5% of appointees were from the ten largest Census Metropolitan Areas (CMA's) and that this data should be looked at. Again the Association and Council would ignore the other 39.5% of appointees.

Taking into account the various filters and exclusions used by the Association and Council would result in the following impact on the 2010 CRA data used:

	<u>Number of Lawyers</u>	<u>Percent Reduction</u>
Total	21,120	
With salary exclusion of \$60,000	15,650	26%
Between Ages of 44 to 56	7,080	55%
10 largest CMA's	5,554	22%

The total number of lawyers used in the analysis by the Association and Council would shrink to 26% of the total number of self-employed lawyers. This would result in 74% of the potential pool of self-employed lawyers data not being taken into account.

As judges are appointed to the bench at various ages and from urban and rural locations, it would be appropriate to factor this information into determining an appropriate benchmark income. A more appropriate analysis method is to include the entire range of information and use a weighted average that would give more emphasis to the ages and regions where the majority of judges are appointed and to not exclude information. In this way a more complete picture of the information can be obtained. I have provided this information on the following page.

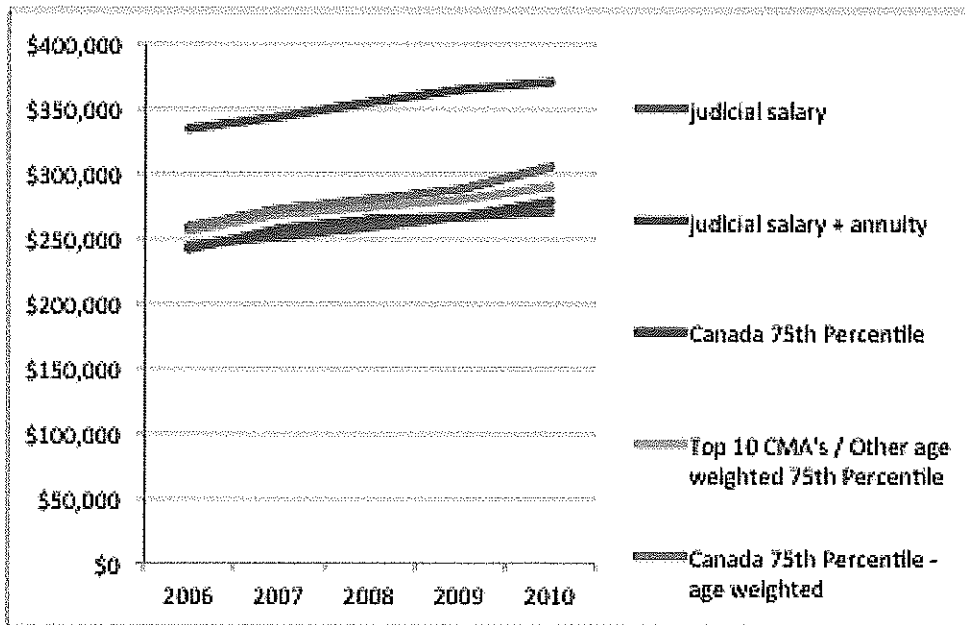
Judicial Annuity Percentage

In their submission to the Commission, the Association and Council stated a value of the judicial annuity as 22.5% of pay. This value was obtained from the 2004 McLennan Report. The use of this percentage value is outdated. The value of the judicial annuity is sensitive to the demographic profile of the judiciary, that is the age at appointment and gender of the judiciary. In addition, the value should take into account the most current long-term economic view of the country. Since 2004, there have been measurable changes in the economic assumptions used to determine the value of pension plans that has resulted in an increase in the value of pension plans. In addition, demographic assumptions, such as retirement ages and mortality rates have been revised to take into account the current judicial profile.

I have calculated a value of the judicial annuity to be 36.9% of pay (27.2% for the retirement benefit plus 9.7% for the disability benefit) based on judicial demographic information to 2010 and taking into account current economic assumptions. This information and the details of the calculations were outlined in my report of December 13, 2010.

Comparison of Judicial Salary with Self-Employed Lawyers

A comparison of the judicial salary with and without the judicial annuity with the 75th percentile self-employed lawyers income for Canada (age-weighted and non age-weighted) and age-weighted top ten CMA / non-CMA 75th percentile income are presented below for the years 2006 to 2010.



The above indicates that the judicial salary is almost identical to the self-employed lawyers 75th percentile income for Canada. In addition the judicial salary with the gross-up for the judicial annuity is larger than the age weighted top 10 CMA's / non-CMA's 75th percentile and the 75th percentile age-weighted income for Canada.

Please call if you have any questions or would like to discuss this further.

Yours sincerely,

Haripaul Pannu

David J. Bilinsky | Thoughtful Legal Management

Refer to: David J. Bilinsky
File: DoJ - Commission

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Department of Justice Canada
Judicial Affairs, Courts & Tribunal Policy Section
Public Law Sector
284 Wellington Street
Ottawa, ON
K1A 0H8

Jan. 26, 2012

Attention: Ms. Adair Crosby, Senior Counsel and Deputy Director

Dear Ms. Crosby:

Re: Quadrennial Commission

You have requested the writer's opinion on the Deloitte & Touche LLP letter of Jan. 25, 2008 in relation to the potential for income splitting among lawyers and their family members in Canada.

Bio:

By way of background, the writer is the Practice Management Consultant/Advisor and lawyer for the Law Society of British Columbia. By way of education, I have a BSc in math/computer science and a law degree from the University of Manitoba and an MBA from UBC. I am an adjunct professor at Simon Fraser

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University teaching a totally online, graduate level course in the Masters of Arts in Applied Legal Studies program. This MA program received the 2011 Award of Excellence from the Canadian Association for University Continuing Education. I am also presently designing a course for the University of Toronto Law School.

I am a Fellow and past Trustee of the College of Law Practice Management. It is composed of approximately 200 individuals worldwide. As stated on the CoLPM's website, "The College and its Fellows inspire excellence and innovation in law practice management by: Honoring extraordinary achievement; Developing, exchanging and disseminating knowledge; and Stimulating innovation in the delivery of legal services."

I am past Editor-in-Chief of ABA's Law Practice Magazine ("LPM") published by the American Bar Association. For many years I co-wrote the column "Profitability" in LPM with my colleague Laura Calloway of the Alabama State Bar. Ms. Calloway and I continue our collaboration by publishing the weekly "Practice Tips" feature as part of www.tips.slaw.ca, an associated blog to the award winning blog www.slaw.ca. These practice tips focus principally on law firm finance topics.

I write regularly for many publications in the USA and Canada including being a core contributor to: www.slaw.ca as well as my own blog: www.thoughtfullaw.com. My publications are in the areas of law firm finance, technology and management and many have been translated into several languages and republished by many organizations across the globe. A copy of my c.v. is attached.

Summary of Analysis:

In my opinion, the Deloitte & Touche letter (Veillette and Beauregard) of Jan. 25, 2008 fails to set forth certain qualifications and limitations with regard to income splitting among family members that reduces the availability and/or usefulness of this device.

Principally, the rules put into place by CRA [Canada Revenue Agency] over time to prevent income-splitting greatly diminish the number of legitimate ways that a high-income lawyer can split income with his or her spouse and children.

In my opinion it is inaccurate to imply that a high-income lawyer can split income with minor (under 18) children. Since 1999 income splitting with children has been limited to only adult children (those over 18) as noted in my report herein.

By way of example, Deloitte & Touche states: *"In the provinces that permit lawyers to incorporate, the entire income of the lawyer is held in the corporation, and the net income of the corporation can be distributed in various ways between the lawyer and his or her family members."*

Deloitte & Touche in their letter fails to set forth this qualification and limitation for children under 18.

The Deloitte & Touche letter predates legislative amendments designed to further restrict income splitting and is not entirely reflective of the current state of the law in Canada. Most, if not all, of the simple and straightforward ways to split income have been stopped or greatly restricted by CRA.

The remaining techniques that could be used to split income with spouses require such devices as corporations and in some cases trusts. They are complex and expensive to put into place and maintain. In some cases they do not provide immediate benefits but rather may result in potential tax savings over the longer term.

Principally, income-splitting devices with a spouse as detailed herein have their greatest degree of utility if a spouse is unemployed. However if the spouse of the lawyer is gainfully employed, then splitting income will only push this spouse to a higher tax bracket. Accordingly, any tax savings are impacted by the law of diminishing returns as the gap between the tax rate of the lawyer and the tax rate of the spouse narrow. The tax savings are also variable subject to the tax rates applicable in each province.

By way of greater detail: the greatest tax saving by splitting income with a spouse by way of dividends could result in a spouse receiving approximately \$30,000 in income without paying any tax. (A private corporation earning active business income pays tax at the rate of 15% on the first \$500,000 of income. Because of the system of integration, the dividend tax credit system credits the corporate tax paid against dividend income earned by the spouse). If the spouse is not otherwise employed this tax savings is achieved. If however, the spouse has other income, the utility of this device is diminished or eliminated.

Analysis:

My caveats to the Deloitte & Touche letter are as follows:

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1. Marital (Spouse or equivalent to spouse) Tax Credit

If a lawyer were to income-split with a spouse or equivalent, they would lose the marital tax credit on the higher-earner tax return, depending on the amount transferred.

If the spouse of the lawyer's income was less than \$10,527 the higher income earner can claim the spouse or equivalent to spouse deduction. However, if the spouse's income is \$10,527 or more, then the spouse or equivalent to spouse amount may not be claimed. (<http://www.cra-arc.gc.ca/tx/ndvdl/tpcs/ncm-tx/rtrn/cmpltng/ddctns/lns300-350/303/menu-eng.html>)

2. "Kiddie Tax"

The "kiddie tax" provisions were introduced in 1999 to prevent business-income splitting with minor children and these provisions continue to be in effect today. These provisions were certainly in place at the time of the Deloitte & Touche letter. The kiddie tax provisions have eliminated the ability to split income with a child under 18.

Specifically, these provisions apply to certain types of income received by a child who is under the age of 18 years throughout the year who has a parent that is resident in Canada at any time during the year.

When the 'kiddie tax' provisions apply, the child ends up paying income tax at the highest personal tax rate that would be otherwise applicable on the type of

income received. Moreover, the parents incur joint and several liability for the tax.

Prior to the 'kiddie tax' a common type of income-splitting plan involved creating a partnership where the child (or a trust of which the child is a beneficiary) would be a partner. The partnership would then receive income, which could be distributed among the partners (of which the minor child would be a beneficiary).

The partnership would have to provide some sort of management or administrative services to a corporation owned by their parent or parents in order to receive the income that would be split.

The 'kiddie tax' now taxes that income received by the child at the highest personal rate, thereby eliminating any income-splitting advantage of this plan.

Another common income-splitting plan involved 'dividend sprinkling'. In this situation, a private corporation would be created and a trust with a minor child as beneficiary or the child him or herself would own shares in the corporation. Income would be split by declaring dividends on the shares held by the trust or the minor child thereby distributing income to the trust or the child. This allowed the child to receive income sheltered by their personal tax credits and afterwards, tax would be incurred at lower rates by the child than would otherwise have been the case it was received by the higher-income parent.

Again, the 'kiddie tax' provisions now apply and tax this income received by the minor child at the highest personal rate.

I note that the Deloitte & Touche letter is dated Jan. 25, 2008. At the time that letter was written, one of the ways to distribute income that was not caught by the 'kiddie tax' involved related private corporations that in turn, recognized capital gains. This plan involved having certain shares of a private corporation being sold to a related private corporation. This sale would trigger a capital gain that would then be taxable in the hands of the minor child (at a lower rate of tax as compared to the higher income parent).

However, subsequent to the date of the Deloitte & Touche letter, the Federal Government introduced a legislative fix whereby, after March 22, 2011, such capital gains received by the minor child would now be subject to the 'kiddie tax'.

This legislative amendment greatly reduces the ability to use such a plan to income split by triggering such capital gains on shares of private corporations. (Other capital gains received from a publically traded portfolio of shares of a private corporation disposed of by an arm's length transaction continue to be not subject to the 'kiddie tax'. However, the arm's length requirement greatly restricts the use of such a device). It should be noted that these types of income splitting utilizing capital gains plans would have limited usefulness with regard to business or professional income of lawyers.

Accordingly, and in summary, the 'kiddie tax' provisions (and subsequent legislative amendments) eliminates the ability to income split to minor children to achieve any reductions in the overall tax paid by the family unit and in particular, by the higher-income earner lawyer/parent.

The one exception to income split with children is the ability to pay for school fees such as tuition as noted below for adult children only (ie those over 18).

3. The "Attribution Rules"

The "Attribution Rules" apply whenever a property is transferred or a loan is made at little or no interest to a family member. These rules significantly reduce income-splitting opportunities since the rules' effect is to attribute the income back to the transferring party. This is completely aside from the legal difficulties in having minors enter into such contracts that would be enforceable under provincial law.

Specifically the 'attribution rules' apply in the following circumstances (among others):

Between Spouses:

The Income Tax Act states that, where an individual has transferred or loaned property either directly or indirectly (by means of a trust or by any other means), for the benefit of the individual's spouse, or a person who has since become an individual's spouse or, as of 1993, a common-law spouse, any income or loss from the property and any capital gain or loss on the disposition of the property, will be attributed back to the individual.

This means that even though the lower-income spouse is now receiving the income, the individual (ie our higher-earner lawyer) pays the tax on it at his or her marginal tax rate as the income is attributed back to the high-income spouse.

In effect, the high-income spouse is no better off than if the transfer or loan had not been made.

Between a Parent and Minor Children:

Income on property transferred or loaned, directly or indirectly (ie by using a trust or by any other means), to a related minor child is attributed back to the transferor or lender (ie our higher earner parent).

The attribution rules only apply where the child is under 18 at the end of the year. It generally does not apply to capital gains or losses on disposition of the property by the child.

The attribution rules capture transactions in which the taxpayer and child are "not dealing at arms length". These generally include: the taxpayer's child, grandchild, great-grandchild, his/her spouse's child, his/her child's spouse, his/her brother, sister, brother-in-law, sister-in-law, etc., and, for the purposes of this rule include the taxpayer's niece or nephew.

Again the effect of these attribution rules is to create a situation where the high-income parent is no better off by transferring or loaning property to minor children.

Between a Parent and Children over 18:

The attribution rules can still apply to children over 18 (and other family members) if the rules are not followed properly. If an individual makes a loan to a child over 18, which the child uses to invest, and interest is charged on the

loan at a rate at least equal to Revenue Canada's prescribed interest rate at that time, the attribution rules will not apply. However, this really doesn't achieve any income splitting since the funds are still taxed in the hands of the loaning parent. What it can do is allow the child to invest these funds and receive the income from the investment in the child's hands (at presumably at a lower rate of tax than their parent), provided that the attribution rules were followed correctly. The high income parent must report the interest paid on this loan to their child, which increases their income, not decreases it.

Also, it should be noted that loans for non-investment purposes, such as paying tuition fees for children over 18, are not covered by the attribution rules because no income is earned on these loaned funds. This is one way that a high-income lawyer can effectively split income with a child over 18. You have to charge a market rate of interest on these loans. However, it is evident that the window of opportunity to use this income-splitting device is greatly limited.

4. General Anti-Avoidance Rules:

To ensure that the general attribution rules noted above cannot be circumvented, a series of more specific rules were included in the Income Tax Act.

These rules include the following:

Back-to-back loans and transfers

If a person loans or transfers property to a third person, who in turn, loans or transfers this property to that person's spouse or a minor child related to that person, then this situation will be treated as if that person had loaned or transferred the property directly - and the attribution rules will apply.

Guarantees

Guaranteeing a loan for a spouse or related minor child who has received the loan only on the strength of the person's guarantee will cause the loan to be treated as if that person had loaned the funds directly. Accordingly, the attribution rules will therefore apply.

Repayment of an existing loan

If a loan (on which the attribution rules applied) is paid off by a second loan from the same person, the attribution rules will apply to the second substituted loan as if it were the original loan.

Substituted property

If the original property on which the attribution rules applied is disposed of and another property substituted, the attribution rules will again apply to the substituted property as if it were the original property.

Transfers to trust

Indirect transfers to a trust for the benefit of a spouse or minor related child will result in the attribution rules being applied exactly as if the transfers had been made directly to the spouse or minor child.

Accordingly the general anti-avoidance rules in the Income Tax Act together with the attribution rules greatly curtail any ability to successfully income split with a spouse or equivalent to spouse or minor children. Any plan that is created with a spouse, spouse equivalent and/or minor child or children would, as a matter of necessity, have to be complicated. Aside from the kiddie tax provisions, there is the question as to whether any minor child could legally enter into such contracts, given the limited contractual powers of a minor under provincial laws. Furthermore, there would always be the threat of a challenge by CRA to such a plan under the general anti-avoidance rules.

5. Specific Income-Splitting Techniques Implied by Deloitte & Touche

In the January 25, 2008 letter of Deloitte & Touche, a number of techniques are implied as being ways to achieve income splitting by lawyers in private practice. Their letter does not go into detail and only vaguely describes how these techniques would be structured. Accordingly, my comments herein are based on my understanding of what they were inferring in their letter.

Splitting Partnership Income:

Deloitte and Touche states:

"For a number of years, we have in fact observed in Canadian law firms practising as partnerships, whether they are our clients or not, structures whose

objective is to split the partnership income with family members. The same phenomenon has also been noted among some of our lawyer clients who are members of partnerships that are not clients. As far as we know, the same situation prevails in a number of chartered accountancy firms."

Regarding partnerships and income splitting:

1. **Sharing Fees of a Partnership:** It is a matter of law that unless a person is a lawyer, they may not be a partner of a law partnership (with the limited exception of a multi-disciplinary partnership as discussed below) as they cannot carry on the practice of law. Accordingly a non-lawyer spouse cannot share in the partnership fees generated by the practice in this way. This has long been part of the law governing the legal profession across Canada, as exemplified by The Professional Conduct Handbook of the Law Society of British Columbia made pursuant to the regulatory powers incorporated into the Legal Profession Act of BC. Specifically:

SHARING FEES

6. Subject to Rule 6.1, a lawyer must not split, share or divide a client's fee with any person other than another lawyer.
[amended 05/1998; 03/2004; 12/2009, effective 07/010]

Accordingly, directly splitting income with a non-lawyer spouse by making them a member of the law partnership (subject to the discussion on multidisciplinary partnerships below) is simply not possible.

2. **Multidisciplinary Partnerships:** MDPs as they are known, allow lawyers and non-lawyers to form a partnership whose primary purpose is the provision of legal services. They are allowed only in Ontario and BC. Having a spouse as

a partner of a MDP is certainly possible, provided that the lawyer is willing to undergo the not-inconsiderable regulatory review and approval process that is involved together with the continuing reporting requirements. Consequentially, the uptake on forming MDPs has not been great. As noted, only Ontario and BC currently allow MDPs. Alberta briefly considered allowing MDPs and rejected the idea.

To the best of the writer's knowledge, no MDP has yet been fully approved in BC and there is only a handful in Ontario. MDPs are not available in the remaining jurisdictions in Canada. Where they are allowed, they have not achieved a level of uptake that would render them a widespread and viable way of splitting income between lawyers and non-lawyer spouses across Canada.

Corporations:

The Deloitte & Touche letter states:

Corporations

In the provinces that permit lawyers to incorporate, the entire income of the lawyer is held in the corporation, and the net income of the corporation can be distributed in various ways between the lawyer and his or her family members.

First off, it should be noted that the income splitting strategies raised by Deloitte in this paragraph do not generally work for investment or passive income earned by a private corporation.

Accordingly, we restrict our report to the ways that income splitting could occur on 'active business income' [the corporation is a SBC (small business corporation)]

where 90% of the assets are used to operate an active business in Canada i.e. the "90% provision"] of a law corporation:

1. Pay a spouse and children a salary: A law partnership or a law corporation could employ a lawyer's spouse and/or children. To survive any challenges by CRA, these persons would have to actually perform work or render services to the partnership or corporation at rates comparable to those payable to third parties for similar services. To document the actual work performed, a record should be kept of the dates, times and services performed. The law partnership or law corporation would have to make all government deductions and filings from these salaries. If the spouse and/or child is not otherwise employed, then would be paying tax starting at the lowest tax brackets. Needless to say, if the spouse and/or children earn any other income, then the effectiveness of this method is reduced, as the salary paid by the partnership or corporation to the spouse or child would only bump up this person to a higher tax bracket.

2. Pay a spouse a director's fee (version 1): This would only be possible where (a) the lawyer practices through a law corporation and (b) the spouse is able to legally be appointed a director of a law corporation under the various law provisions in each province. For example, s. 82(1) (e) of the Legal Profession Act of British Columbia states that the Executive Director of the Law Society of British Columbia will not issue a permit to a law corporation in BC unless all of the directors and the president of the law corporation are practising lawyers. The requirement to be a practising lawyer in order to be a director of a law or professional corporation is consistent across Canada except for the Province of Quebec [see Appendix A]. Unless the spouse of the high-income lawyer also happens to be a lawyer, this and similar provisions across Canada

greatly restricts the use of this method to split income with a spouse. There is also the not inconsequential aspect of opening this spouse to director's liabilities under various government statutes and regulations.

3. Pay a spouse a director's fee (version 2): In this scenario, the lawyer incorporates a corporation for the purposes of providing services to the law practice such as management services or to carry on work that does not, strictly speaking, require lawyers to perform. For example, the lawyer would incorporate a non-law corporation to maintain corporate records for clients or act as a holding company for the assets of the law practice. In this case the spouse should be shown to have actually rendered director's services including: attending directors' meetings, directing the management and affairs of the business, approving financial statements, declaring dividends, approving changes to share capital and electing officers of the company and the like. The amounts paid as director's fees would have to be reasonable in all the circumstances to survive scrutiny. Furthermore, the non-law corporation would have to actually carry on an active business or render services, as CRA would be expected to challenge any corporation created with the main purpose of reducing income and benefitting a spouse. Of course the director spouse would be potentially liable to directors liabilities as noted above.

4. Corporate Income Splitting (generally):
 - a. Loans to an Investment Corporation: If a high income lawyer makes a low-interest or interest-free loan or transfers any property to a corporation with the main purpose of reducing his or her income and benefitting their spouse or minor children, the corporate attribution

rules provide that this lawyer is deemed to receive interest on the loan or the value of the property transferred at the CRA's prescribed rate. This deemed interest arises even if no income is earned by the corporation and no dividends are paid to the spouse or children. Consequently, these penalty provisions ensure that this method is avoided.

These attribution rules don't apply where the corporation receiving the loan is a SBC (small business corporation) where 90% of the assets are used to operate an active business in Canada (the "90% provision").

The investment splitting strategies raised by Deloitte do not generally work for investment or passive income earned by a private corporation but Deloitte does not make this distinction clear in their letter.

- b. Loans to a Spouse: Loans to spouses can be an effective income splitting tool if a market rate of interest is charged. CRA accepts the Bank of Canada rate as an acceptable interest rate.

- c. Active Business Corporations: Since active income from a business is not subject to the attribution rules, (as opposed to passive income from property), a higher income spouse can provide interest-free financing to their spouse's business. The profits from the business can be invested by the spouse without any attribution. However, the spouse has to have a legitimate start-up business in order to use this device. The '90% provision' applies here as well.

- d. Children over 18: The 'kiddie tax' provisions tax any income redirected at minors or dividends received from a family business at the top federal personal rate. This greatly diminishes the income-splitting ability to minors under 18. Of course, if any children are over 18, the same provisions do not apply but one would have to also take into consideration any other income received by the child. Typically this restricts the use of this tax planning to direct income to children who are attending post-secondary education, before they have become part of the workforce.

- e. Pay a spouse a guarantee fee: This is a payment for pledging assets and/or guaranteeing support of a business loan. The amount paid has to be reasonable in all the circumstances including what would be paid to an arm's length party. For example, a lawyer can pay his or her spouse a fee for pledging their interest in the family home in support of a business loan for the law practice. However, the nature of such a loan would mean that the family home would now be subject to the claims of the creditors under the provisions of the business loan agreement. In these circumstances it is anticipated that the guaranteeing spouse may not be willing to place their family home into potential jeopardy for such an arrangement.

- f. Income Splitting via Dividends: If the corporation carries on an active business in Canada (the '90% provision') such as a law corporation, the greatest advantage to income split is where a spouse or adult (over 18) child holds non-voting shares in the law corporation with no other income. In this case the spouse or adult child can earn approximately \$30,000 a year in dividends and not pay any tax.

Because of our system of integration, the dividend tax credit system credits the corporate tax paid against dividend income earned. Accordingly if a spouse or adult child is not employed and not receiving any other income (and this is the major caveat in this situation) this method can be effective.

It should be noted that in Ontario, all shareholders of a professional (i.e. law) corporation must be lawyers who are entitled to practice law in Ontario or licensed paralegals entitled to practice legal services in Ontario

[<http://rc.lsuc.on.ca/jsp/membershipServices/professionalCorporations.jsp>]. Accordingly it is not possible to apply this device in Ontario [see appendix A].

7. Diminishing Returns: Even if a lawyer was to implement an income-splitting plan with his or her spouse, the law of diminishing returns starts to kick in. First, the costs of the planning, administration and maintenance eats away at any tax savings as there are 'transactional costs' to be incurred in keeping the plan going. Furthermore, to the extent that the spouse already has any other income, any transferred or split income from the higher-earner spouse will only push the lower-income spouse into a higher tax bracket. Accordingly the maximum benefits are realized where the spouse has no other income and start to diminish as the income of the spouse increases.

Accordingly and in summary, the rules put into place by CRA to prevent income-splitting greatly diminish the number of legitimate ways that a high-income lawyer can split income with his or her spouse and children.

The Deloitte & Touche letter predates some of these legislative amendments designed to further restrict income splitting and is not entirely reflective of the current state of the law in Canada. Most, if not all, of the simple and straightforward ways to split income have been stopped or greatly restricted by CRA.

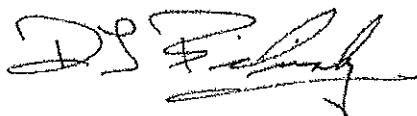
The remaining techniques that could be used to split income require such devices as corporations and in some cases trusts. They are complex and expensive to put into place and maintain. In some cases they do not provide immediate benefits but rather may result in potential tax savings over the longer term. If a spouse is unemployed then these methods do have a degree of utility. However, any tax savings are impacted by the law of diminishing returns and are variable subject to the tax rates applicable in each province.

I hope this letter meets your requirements.

I thank you again for referring this matter to me and I am available at your convenience to discuss the contents of this letter with you.

Best personal regards,

Thoughtful Legal Management

A handwritten signature in black ink, appearing to read 'DS Bilinsky', with a horizontal line underneath.

Per: Dave Bilinsky

/s/

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Appendix A	
Comparison of Law Corporations by Jurisdiction	Statutory and/or Regulatory Provision
	Permit non-voting Shares owned by non-lawyers:
BC	s. 82 Legal Profession Act: a relative of or resides with a practising lawyer who is a shareholder or who is a shareholder in a law corporation that is a shareholder...
Alberta	s 131 (3) (f) (ii) Legal Profession Act: active members who are voting shareholders, spouse of an active member, common-law partner of an active member, a child of an active member, a trust - all of the beneficiaries of which are minor children of the active member
Saskatchewan	s. 6(1) Professional Corporations Act: members of the association; (ii) spouses, children or parents of members of the association who own voting shares; (iii) a corporation incorporated pursuant to The Business Corporations Act, all of the shares of which are owned by individuals mentioned in subclause (i) or (ii); or (iv) a trust, all of the beneficiaries of which are individuals mentioned in subclause (i) or (ii);
Manitoba	s. 32(1)(d) Legal Profession Act: each other share in the capital stock of the corporation is legally and beneficially owned by (i) a person who is a voting shareholder of the corporation, (ii) a spouse, common-law partner or child, within the meaning of the Income Tax Act (Canada), of a voting shareholder of the corporation, or (iii) a corporation each share of the capital stock of which is legally and beneficially owned by a person referred to in subclause (i) or (ii);
Ontario	s 61.0.1 of the Law Society Act: All of the issued and outstanding shares of a professional corporation described in clause (1) (c) shall be legally and beneficially owned, directly or indirectly, by one or more persons who are licensed to practise law in Ontario or licensed to provide legal services in Ontario.

Quebec	<p>a limited liability partnership or joint-stock company and in multidisciplinary [pursuant to the Professional Code of Quebec]: A member is authorized to engage in his professional activities within a partnership or company if the following conditions are met : (1) at all times, more than 50 % of the voting rights attaching to the company shares or partnership units are held : (a) by members of the Barreau du Québec, by persons governed by the Professional Code or by persons contemplated in Schedule A ; (b) by legal persons, trusts or any other firm whose voting rights or voting partnership units are held entirely by one or more of the persons contemplated in subparagraph a ; or (c) at the same time by persons referred to in subparagraphs a and b ; (2) the majority of the directors sitting on the board of directors of the company or the majority of the partners or directors appointed by the partners, as the case may be, are persons contemplated in subparagraph a of paragraph 1 ; (3) the board of directors or the internal management board, as the case may be, is comprised, in the majority, of persons contemplated in subparagraph a of paragraph 1 and such persons, at all times, constitute the majority of the quorum on such board ; (4) the conditions set forth in paragraphs 1 to 3 are set forth in the articles or stipulated in the partnership agreement, as the case may be ; and (5) to his knowledge, no partner, director or officer of the partnership or company and no member or shareholder holding a voting right in the partnership or company has been the subject of : (a) a decision of a Canadian court, for which he has not obtained a pardon, finding him guilty of a criminal offence which, in the reasoned opinion of the Executive Committee of the Barreau, is related to the practice of the profession or jeopardizes the integrity of the circumstances in which the member engages in his professional activities ; or (b) a decision of a foreign court, for which he has not obtained a pardon, finding him guilty of a criminal offence which, had it been committed in Canada, could have made him guilty of</p>
New Brunswick	<p>s 37 (4) of the Law Society Act: A majority of the issued voting shares are legally and beneficially owned by one or more members or by one or more professional corporations, or both,(i) a member of the society, (ii) a law corporation that is a voting shareholder, (iii) any other person who is a relative of or resides with a member of the society who is a shareholder or who is a shareholder in the law corporation that is a shareholder, or</p>
PEI	<p>s. 36.2 Legal Profession Act: (b)all issued non-voting shares, if any, shall be legally and beneficially owned by one or more persons, each of whom is (i) a member of the society, (ii) a law corporation that is a voting shareholder, (iii) any other person who is a relative of or resides with a member of the society who is a shareholder or who is a shareholder in the law corporation that is a shareholder,</p>

Nova Scotia	s. 21 Legal Profession Act: (2) All issued non-voting shares, if any, of a law corporation must be legally and beneficially owned by prescribed persons or by a trust of which all the trustees and all the beneficiaries are prescribed persons [Regulations: 7.1.2 For the purpose of Sections 21 - 23 of the Act, "prescribed person" means any person.]
NFLD & Lab	s. 63.4 of the Law Society Act: (g) satisfies the executive director that the legal and beneficial ownership of all issued non-voting shares of the corporation is vested in one or more practicing members in good standing who are also voting shareholders, a professional law corporation holding a valid licence or a spouse or child of a practicing member who is also, directly or indirectly, a voting shareholder;
Yukon	s. 88 Legal Profession Act: (f) satisfies the executive that the legal and beneficial ownership of all the issued voting shares of the corporation is vested in one or more active members and that all of the directors of the corporation are active members; [no restrictions on non-voting shares]
NWT	voting shares of the corporation are legally and beneficially owned by (i) members of the designated profession, (ii) spouses, children, grandchildren or parents of members of the eligible profession who own voting shares, (iii) a corporation incorporated, or registered as an extra-territorial corporation, under the Business Corporations Act, all of the shares of which are owned by persons referred to in subparagraph (i) or (ii), or (iv) a trust, all of the beneficiaries of
Nunavut	s. 4 Professional Corporations Act: subject to subsection (2), all of the issued non-voting shares of the corporation are legally and beneficially owned by (i) members of the designated profession, (ii) spouses, children, grandchildren or parents of members of the eligible profession who own voting shares, (iii) a corporation incorporated, or registered as an extra-territorial corporation, under the Business Corporations Act, all of the shares of which are owned by persons referred to in subparagraph (i) or (ii), or (iv) a trust, all of the beneficiaries of which are persons referred to in subparagraph (i), (ii) or (iii); [s. 29 (1) Nunavut Act incorporating the laws of the NWT]

David J. Bilinsky



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Life Objective: To continue seek ways to empower and educate professionals to anticipate the changes, realize the opportunities, face the challenges and embrace the expanding possibilities of the application of practice management concepts to the practice of law in new and innovative ways that provide service excellence, while also being informative, fun and interesting.

Demonstrated personal values and attributes:

- Sees the big picture - a visionary/coach
- Looks for partnerships and alliances
- Creates an environment of mutual respect and trust
- Has effective written and oral communication and presentation skills
- Provides leadership and works well with others on a team
- Plans, prioritises and focuses on what is critical
- Is committed to lifelong learning, personal career planning and mentorship
- Recognizes the value of professional networking
- Flexible and positive in a time of continuing change.

Career Highlights:

Elected Trustee, College of Law Practice Management, September 2008-11 and Fellow 2004: "The College of Law Practice Management was formed in 1994 to honour and recognize distinguished law practice management professionals, to set standards of achievement for others in the profession, and to fund and assist projects that enhance the highest quality of law practice management."

Fellowship "shall be restricted by invitation to honour those individuals who have proven to their peers, their employer, and the bar, the bench, and the public through performance related to law practice management for not less than ten years that they:

- (a) Have the highest professional qualifications and ethical standards;
- (b) Provide exceptionally high-quality professional services to clients, their employer, the bar, the bench, or the public;
- (c) Are committed to fostering and furthering the objectives of the College;
- (d) Have significantly contributed to and enhanced law practice management, its literature, its procedures, and its philosophy through dedicated service, or through published writings, or through teaching and lecturing, or through demonstrated excellence in law practice management; and

(e) Have that high level of character, integrity, professional expertise and leadership that demonstrate the likelihood that they will continue to contribute to the enhancement of law practice management scholarship, continuing education, and the law practice management process. " (www.colpm.org)

Blog: Thoughtful Legal Management: Winner of four CLawBie (Canadian Legal Blog) Awards: 2007 - tied for Best New Legal Blog and tied for Best Law Practice Management Blog and 2008 and 2009 tied for Best Law Practice Management Blog, 2010 & 2011 CLawbie Finalist - www.thoughtfullaw.com.

Council Member, American Bar Association, Law Practice Management Section, 2008+: The Council is the governing body of the Law Practice Management Section of the ABA (in addition to the Section Executive). In 2007-08 the LPM Section sought an amendment to the Governance documents and policies of the American Bar Association to allow a non-US lawyer to be a full member of Council. Following that amendment, I was the first non-US lawyer appointed to be a full member of the LPM Section Council.

Editor-in-Chief, Law Practice Magazine, January 2007- Oct 2009.

Law Practice Magazine is dedicated to helping legal professionals master all aspects of the business of practicing law. From theory to practice, LPM brings readers experienced insight and fresh advice on marketing, management, technology and finance. Being named Editor in Chief as of January 2007 is the culmination of my relationship with this publication which began initially as a contributing author, then led to being named to the LPM Editorial Board and Finance Editor.

Founder and Chair, the Pacific Legal Technology Conference (PLTC).

The vision of a world-class Conference on legal technology held in Vancouver was an idea that I brought to the Law Society of BC in 1999. As a result of the four-way partnership that I developed with the Trial Lawyers Association of BC, the CBA, the ABA and the LSBC, the inaugural PLTC was held in 2002. The 2006 PLTC continued the successes of the prior conferences by combining local speakers with the best speakers from ABA TECHSHOW by jointly holding the PLTC with the American Bar Association's Law Practice Management Section's fall meeting. The latest PLTC was held in October, 2011 and has now expanded to include The Legal Marketing Association, Vancouver Chapter, the British Columbia Legal Management Association, the National General Practice, Solo and Small Firm Section of the Canadian Bar Association as well as the Society of Notaries Public of BC as conference sponsors.

PLTC is unique in that all past attendees have a hand in determining the final selection of conference sessions via a web survey of the short list of final topics. This conference has received many comments from attendees along the lines of: "Best CLE I have ever attended!"

Past Chair (1998, 1999) and "Top 10" speaker at ABA TECHSHOW 2003, 2004 and 2005 (I could not be present in 2006 due to the passing of my father a few days prior). The 'Top 10' ranking is determined solely by attendee evaluations and indicates the highest level of performance at this premier of legal technology conferences.

Education:

M.B.A. from the University of British Columbia, Vancouver, B.C., May 1991.

L.L.B. from the University of Manitoba, Winnipeg, Manitoba, May 1980.

B.Sc. from the University of Manitoba, Winnipeg, Manitoba, October 1977. Dean's Honour List, 1974-75, 1976-77, Bernard A. Noonan Memorial Prize (highest marks, 3rd year honours math)

Practice:

Actively engaged in the practice of law from 1981. In-house counsel with The Law Society of British Columbia with the position of Practice Management Consultant/Advisor and staff lawyer in the Practice Advice Department.

Legal Employment:

Simon Fraser University
Graduate Studies, Dept of Criminology
Sessional lecturer Sept 2010-
Course: Advanced Legal Studies ALS 630.

Taught as a totally online virtual course, this seminar course is the capstone in the Masters of Arts for Applied Legal Studies.

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As the principal behind TLM, Dave's mission in life is to empower lawyers to anticipate the changes, realize the opportunities, face the challenges and embrace the expanding possibilities of the application of practice management concepts to the practice of law in innovative ways that provide service excellence.

Dave's consulting services focus on enhancing law firm practice group profitability, strategic business planning and the application of technology to the practice of law. Dave has been called upon from Shanghai to New York City, from the Yukon to deep in the heart of Argentina by law firms and legal associations to address personal productivity, change management, technology implementation, career satisfaction and leadership development.

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Effective April 20, 1999: position: Practice Management Advisor. In this position, I focus on using technology and other tools to address law practice management concerns and in particular, strategic planning, productivity, and career satisfaction issues for lawyers. This position involves extensive writing, personal appearances, and presentations. Currently, my work is aimed at developing legal education programs and materials on practice management for conferences and for the Law Society of BC's website. This position also requires that I maintain active contact with other associated organizations such as the CBA, ABA, The Trial Lawyers Association of BC, NABRICO, LawPro, the Ontario Bar Association and the Washington State Bar Association and many others.

1991 - 1999: partner, Lakes Straith & Bilinsky, Barristers & Solicitors, North Vancouver, B.C., practising largely in the areas of Civil Litigation, international purchase and sales of real estate (Whistler) and Wills and Estates.

1982-91: I carried on a general litigation practice with an emphasis on personal injury and commercial litigation first as a sole proprietorship and latterly in a unique office arrangement between 2 lawyers and a psychologist. During this time I worked closely with the General Counsel to the North Shore Credit Union.

1980-82: the writer was an associate counsel in Vancouver carrying on a general practice with an emphasis on litigation, wills and estates and real estate.

Leadership and Conference Board Positions:

Chair, Solo and Small Firm Conference, The Continuing Legal Education Society of British Columbia, Vancouver, BC, March, 2011.

Organization Committee member, Vancouver ODR Conference on Business to Consumer Disputes (ODR and Consumers 2010 Forum), ICANN, Vancouver, November, 2010.

Chair, Solo and Small Firm Conference, The Continuing Legal Education Society of British Columbia, Vancouver, BC, Jan. 22, 2009.

Co-Chair, Technology Solutions to Improve Your Law Practice, Saskatchewan Trial Lawyers Association, Regina, Sask., Friday, Oct. 24, 2008.

Founder and Chair, The Pacific Legal Technology Conference, Vancouver, BC, Oct. 18, 2002, Nov. 7, 2003, Oct 14, 2005, Oct. 13, 2006, Oct 10, 2007, Oct 2, 2009 and Oct. 6, 2011.

Editor-in-Chief, Law Practice Magazine, The American Bar Association, Law Practice Management Section, Jan 1, 2007 - October 2009.

Chair, the inaugural Solo and Small Firm Conference 2007, The Continuing Legal Education Society of British Columbia, Vancouver, BC, Feb. 23, 2007.

Planning Committee, Technology for Lawyers (previously LegalTech Toronto), 2000, 2001, 2003, 2004.

Planning Committee, Law Practice Summit, ABA Law Practice Management Section, the Texas State Bar Association and Glasser LegalWorks, Austin Texas, May 2, 2003.

Co-Chair, ABA TECHSHOW 1999 and 1998, Chicago, Illinois.

ABA TECHSHOW Board member, 1996-1999, and various Techshow Extended and Advisory Board positions 1999-to date.

Planning Committee, Commonwealth Law Conference and CBA Annual Meeting, Vancouver, B.C., August 1996.

Teaching, Lecturing & Presentations:

2011:

Co-Faculty, Online Dispute Resolution (ODR) - This is the Future: Are You Prepared?, ADRIC 2011: Peak Performance in ADR, Vancouver, BC, Oct 27, 2011.

Co-Faculty, Social Media for Lawyers, Social Media Week, Vancouver, BC, Sept. 20, 2011.

Faculty, Advanced Legal Studies ALS 630, Simon Fraser University, Graduate Studies, Dept of Criminology, Sept - Dec 2011.

Co-Faculty, State of the Legal Market, University of Pittsburgh School of Law, Pittsburgh, PA, USA, Sept 13, 2011.

Faculty, Improving the Solo/Small Firm's Productivity and Effectiveness with a Systems Approach, including Document Assembly Strategies, Washington State Bar Association, Ocean Shores, WA, USA, July 16, 2011.

Co-Faculty, Over 25 Law Practice Management Tips in 90 Minutes, Washington State Bar Association, Ocean Shores, WA, USA, July 15, 2011.

Co-Faculty, Money Matters: What Lawyers and Law Firms Can Do to Improve Their Bottom Line, webinar, Ali-Aba and the American Bar Association, Chicago, IL, USA, April 21, 2011.

Faculty, 60 Practice Management Tips Blitz for Solo and Small Firm Lawyers, Manitoba Bar Association, Webinar, April 20, 2011.

Co-Faculty, Developing Documents Using Collaboration Tools, American Bar Association, Chicago, IL, USA, April 12, 2011.

Co-Faculty, 30 Time, Billing and Accounting Tips and Tricks, American Bar Association, Chicago, IL, USA, April 13, 2011.

Co-Faculty, Ethics 20/20- Globalization, Technology and the Future of Law Practice, McGeorge School of Law, Sacramento, California, April 8, 2011.

Faculty, Technology and Your Estates Practice: Paperless, Automated and Cost-Effective, Kelowna Wills and Trusts Section, Canadian Bar Association - BC Branch, Kelowna, BC, March 23, 2011.

Co-Faculty, Law Firm Management: How to Think Big, Continuing Legal Education Society of British Columbia, Vancouver, BC, March 11, 2011.

Faculty, 60 Practice Management Tips Blitz for Solo and Small Firm Lawyers, Victoria Wills and Trusts Section, Canadian Bar Association - BC Branch, Victoria, BC, March 2, 2011.

Faculty, Snakes in the Grass: Ethical Issues in the Information Age, for "The New Scales of Justice" program, Trial Lawyers Association of British Columbia, Vancouver, BC, Feb 18, 2011.

2010:

Co-Faculty, Advanced Legal Studies ALS 630, Simon Fraser University, Graduate Studies, Dept of Criminology, Sept - Dec 2010.

Co-Faculty, How can lawyers benefit from Social Media, Canadian Bar Association-BC Branch, Webinar, Dec 14, 2010.

Co-Faculty, 30 Tips in 30 Mins, LIANS, Halifax, NS, Nov 29, 2010.

Co-Faculty, The Business of the Practice and the Practice of the Business, LIANS, Halifax, NS, Nov 29, 2010.

Co-Faculty, Utilizing Social Networking Tools, South Asian Bar Association, Vancouver, BC, Nov. 20, 2010.

Co-Faculty, Making Smart Computing Purchases, Alaska Bar Association, Webinar, Nov 16, 2010.

Co-Faculty, ODR and Consumers 2010 Conference, Vancouver, BC, Nov. 9, 2010.

Co-Faculty, Introduction to Virtual and Cloud Computing, Alaska Bar Association, Webinar, Oct 27, 2010.

Faculty, Innovation! 2010 14th Annual Jerry Mirza Memorial Risk Management Conference, Collinsville, Bloomington, Oakbrook Terrace and Chicago, ISBA Mutual Insurance Company, Oct. 5-8, 2010.

Co-Faculty, A Virtual Day in Court: Online Dispute Resolution, Canadian Forum on Court Technology, Canadian Centre for Court Technology, Ottawa, Ontario, Sept 23, 2010.

Co-Faculty, Technology and the Modern Law Office, Alaska Bar Association, Anchorage, AK, Sept 9, 2010.

Faculty, Security and Technology Issues, Federation of Law Societies National Family Law Program, Victoria, BC, July 12, 2010.

Co-Faculty, Strategic Planning, LawPact, Toronto, Ontario, June 18, 2010.

Faculty, ODR Implementation, ODR 2010 BUENOS AIRES: "Peace Building in the Digital-Era", International Forum on Online Methods for Alternative Dispute Resolution, Buenos Aires, 2 June 2010.

Co-Faculty, Stump the Experts, Law Society of Upper Canada, Solo and Small Firm Conference, Toronto, Ontario, May 14, 2010.

Co-Faculty, Surviving and Marketing in Hard Times, Law Society of Upper Canada, Solo and Small Firm Conference, Toronto, Ontario, May 14, 2010.

Co-Faculty, Surviving in Tight Times, Law Society of Upper Canada, Solo and Small Firm Conference, Toronto, Ontario, May 14, 2010.

Co-Faculty, Windows on a Mac, ABA TECHSHOW 2010, Chicago, IL, March 25, 2010.

Co-Faculty, Introduction to Cloud Computing, ABA TECHSHOW 2010, Chicago, IL, March 25, 2010.

Faculty: Pulling it Together for the Future: Rebound, North Carolina Bar Association, Solo and Small Firm Conference, Carey, NC, Feb. 12, 2010.

Faculty: Innovations in Billing and Succession, North Carolina Bar Association, Solo and Small Firm Conference, Carey, NC, Feb. 12, 2010.

Faculty: Planning for the Money: Billing and Finance, North Carolina Bar Association, Solo and Small Firm Conference, Carey, NC, Feb. 12, 2010.

Faculty: Getting Innovative in Running the Firm - Strategic Planning, North Carolina Bar Association, Solo and Small Firm Conference, Carey, NC, Feb. 12, 2010.

Faculty: Overcoming the Issues, North Carolina Bar Association, Solo and Small Firm Conference, Carey, NC, Feb. 12, 2010.

Faculty: Marketing and Technology - Strategic Planning, North Carolina Bar Association, Solo and Small Firm Conference, Carey, NC, Feb. 12, 2010.

Faculty: Technology: An Essential Part of the Plan, North Carolina Bar Association, Solo and Small Firm Conference, Carey, NC, Feb. 12, 2010.

Faculty: Marketing and Client Communications: The Greatest Opportunity, North Carolina Bar Association, Solo and Small Firm Conference, Carey, NC, Feb. 12, 2010.

Faculty: Can You Get There From Here?, North Carolina Bar Association, Solo and Small Firm Conference, Cary, NC, Feb. 12, 2010.

Faculty: Marketing and Client Communications: The Greatest Opportunity, Collaborative Lawyers Association, Vancouver, BC, Feb. 10, 2010.

And a further 249 presentations earlier than 2010.

Publications and Papers:

Books:

Contributing Author to a book by Stephanie Kimbro on Unbundled Legal Services to be published in 2012. Contributed to the chapter on Online Dispute Resolution (ODR), for the American Bar Association, Law Practice Management Section.

Contributing Author, Smart Soloing: How to Build Your Practice, ABA Publishing, 2010.

Contributing Author, Flying Solo: A Survival Guide for the Solo Lawyer, 3rd and 4th Editions, ABA LPM Publishing 2004, 2001.

Contributing Author, chapter: Practice Structures, Barristers & Solicitors in Practice, Butterworths, 2002.

Contributing Author: Annual Review of Law & Practice, Continuing Legal Education Society of British Columbia, 2003, 2002, 2001, 2000, 1999, 1998.

Contributing Author, Law Office Procedures Manual for Solos and Small Firms, 2nd and 3rd Editions, Demetrios Dimitriou, Law Practice Management Section - American Bar Association publishing, November, 2000 and 2005.

Author, Amicus Attorney in One Hour for Lawyers, ABA Publishing, September 2000.

Editorial Board member and author for chapter: Strategic Planning, Managing Your Law Firm, original edition May 1996, and revised edition, Spring 2000, Continuing Legal Education Society of British Columbia.

Publications:

Author, Improving the Solo/Small Firm's Productivity and Effectiveness with a Systems Approach, including Document Assembly Strategies, Washington State Bar Association, Ocean Shores, WA, USA, July 16, 2011.

Co-Author, Over 25 Law Practice Management Tips in 90 Minutes, Washington State Bar Association, Ocean Shores, WA, USA, July 15, 2011.

Co-Author, Money Matters: What Lawyers and Law Firms Can Do to Improve Their Bottom Line, webinar, Ali-Aba and the American Bar Association, Chicago, IL, USA, April 21, 2011.

Co-Author, Developing Documents Using Collaboration Tools, American Bar Association, Chicago, IL, USA, April 12, 2011.

Co-Author, 30 Time, Billing and Accounting Tips and Tricks, American Bar Association, Chicago, IL, USA, April 13, 2011.

Co-Author, Law Firm Management: How to Think Big, Continuing Legal Education Society of British Columbia, Vancouver, BC, March 11, 2011.

Author, Snakes in the Grass: Ethical Issues in the Information Age, Trial Lawyers Association of British Columbia, Vancouver, BC, Feb 18, 2011.

Co-Author, 30 Tips in 30 Mins, LIANS, Halifax, NS, Nov 29, 2010.

Author, The Business of the Practice and the Practice of the Business, LIANS, Halifax, NS, Nov 29, 2010.

Co-Author, Making Smart Computing Purchases, Alaska Bar Association, Webinar, Nov 16, 2010.

Co-Author, Introduction to Virtual and Cloud Computing, Alaska Bar Association, Webinar, Oct 27, 2010.

Author, Innovation! 2010 14th Annual Jerry Mirza Memorial Risk Management Conference materials, Collinsville, Bloomington, Oakbrook Terrace and Chicago, ISBA Mutual Insurance Company, Oct. 5-8, 2010.

Co-Author, A Virtual Day in Court: Online Dispute Resolution, Canadian Forum on Court Technology, Canadian Centre for Court Technology, Ottawa, Ontario, Sept 23, 2010.

Co-Author, Technology and the Modern Law Office, Alaska Bar Association, Anchorage, AK, Sept 9, 2010.

Author, ODR Implementation, ODR 2010 BUENOS AIRES: "Peace Building in the Digital-Era" International Forum on Online Methods for Alternative Dispute Resolution, Buenos Aires 2 & 3 June 2010.

Co-Author, Surviving and Marketing in Hard Times, Law Society of Upper Canada, Solo and Small Firm Conference, Toronto, Ontario, May 14, 2010.

Co-Author, Surviving in Tight Times, Law Society of Upper Canada, Solo and Small Firm Conference, Toronto, Ontario, May 14, 2010.

Co-Author, Windows on a Mac, ABA TECHSHOW 2010, Chicago, IL, March 25, 2010.

Co-Author, Introduction to Cloud Computing, ABA TECHSHOW 2010, Chicago, IL, March 25, 2010.

Author: Pulling it Together for the Future: Rebound, North Carolina Bar Association, Solo and Small Firm Conference, Carey, NC, Feb. 12, 2010.

Author: Innovations in Billing and Succession, North Carolina Bar Association, Solo and Small Firm Conference, Carey, NC, Feb. 12, 2010.

Co-Author: Planning for the Money: Billing and Finance, North Carolina Bar Association, Solo and Small Firm Conference, Carey, NC, Feb. 12, 2010.

Author: Getting Innovative in Running the Firm - Strategic Planning, North Carolina Bar Association, Solo and Small Firm Conference, Carey, NC, Feb. 12, 2010.

Author: Overcoming the Issues, North Carolina Bar Association, Solo and Small Firm Conference, Carey, NC, Feb. 12, 2010.

Author: Marketing and Technology - Strategic Planning, North Carolina Bar Association, Solo and Small Firm Conference, Carey, NC, Feb. 12, 2010.

Co-Author: Technology: An Essential Part of the Plan, North Carolina Bar Association, Solo and Small Firm Conference, Carey, NC, Feb. 12, 2010.

Author: Marketing and Client Communications: The Greatest Opportunity, North Carolina Bar Association, Solo and Small Firm Conference, Carey, NC, Feb. 12, 2010.

Author: Can You Get There From Here?, North Carolina Bar Association, Solo and Small Firm Conference, Carey, NC, Feb. 12, 2010.

Author: Marketing and Client Communications: The Greatest Opportunity, Collaborative Lawyers Association, Vancouver, BC, Feb. 10, 2010.

And at least 375 additional papers and articles earlier than 2010.

Professional Organizations and Positions:

Section Council Member, American Bar Association - Law Practice Management Section, 2008+.

Member, BCLMA, Aug, 2007-

Member, Legal Marketing Association, Vancouver Chapter, 2007-.

Chair, Law Practice Magazine Editorial Board, American Bar Association, Aug 2006-Oct 2008.

Member-at-Large, National Law Practice Management and Technology Section, Canadian Bar Association, August 2006-.

Chair, Finance Core Group, American Bar Association, Law Practice Management Section, August 2002-04. Co-Chair, 2005.

Member, ABA Law Practice Management Nominating Committee, 2004-2006.

Member, ABA Law Practice Management Magazine Board, August 2002-2009.

Extended Council Member, ABA Law Practice Management Section, August 2002-2003.

Member, Law Technology News Advisory Board, American Lawyer Media, New York, NY, May 1999-2005.

Member, ABA LPM Chair's Executive Committee, July 1998-99.

Co-Chair, CBA. National Law Practice Management Section, 1996-7.

Member, American Bar Association Law Practice Management Publication Board, 1997-98, 2000-03.

Member, Association of Trial Lawyers of America, April 1997-99, member, Motor Vehicle Collision, Highway, and Premises Liability Section, April 1997-99.

Active member, American Bar Association: New Media and Internet Board, Production Group, Techshow Board 1998-1999.

Active member, American Bar Association, Newsletter Board and Law Practice Division and co-editor of Litigation Applications, 1996-7;

Active member, American Bar Association, Leadership Activities Board, Law Practice Management Section, 1995-1996.

Member of steering group, National Membership Committee, CBA, 1995-97.

Chairperson, Law Practice Management Section, CBA, B.C. Branch, 1993-1995. Member of the Executive 1993-95.

Member, Member Services Committee, CBA B.C. Branch, 1994-96

Chairperson, Law Practice Management Resource Committee, 1994-96, to the Member Services Committee, CBA, B.C. Branch.

Member, Canadian Society for the Advancement of Legal Technology, 1994-.

Associate Member, American Bar Association ("ABA"), 1994-, and active member of the Law Practice Management Section of the ABA 1994-.

Member, Gender Equality Implementation Committee, CBA B.C. Branch, 1993-4.

Chairperson, Ad-hoc Law Practice Management Resource Committee, 1993, to the Member Services Committee, C.B.A.. B.C. Branch.

Member CBA sections, B.C. Branch: Civil Litigation 1982-99, Construction Law (date of formation) 1984-98, Taxation Law 1987-95, Business Law 1984-95, Banking Law 1984-1990, Municipal Law 1984-1989, Succession, Trusts and Fiduciary Relationships 1984-99, Real Property 1984-99, Alternate Dispute Resolution, 1988-99, Gender Issues, 1994-99, Law Practice Management (BC Branch and National sections) (date of formation) 1990-. Member CBA National Sections 1994-99 for: Civil Litigation, Construction Law, Alternative Dispute Resolution, Real Property, Taxation, Succession, Trusts and Fiduciary Relationships, Gender Issues 1994-1999.

Member, Trial Lawyers Association of British Columbia, 1984-1987, 1992-99, 2002-.

Member North Shore Chamber of Commerce, 1982-99.

Member Canadian Bar Association ("CBA") 1980-, Vancouver Bar Association, 1980- North Shore Bar Association, 1982-86, 1991-99.

International Who's Who of Professionals.

Public Offices Held:

Steering group, Gifted Children's Association of British Columbia - North Vancouver, 2002.

Director, Presentation House Cultural Society, 1983-85.

Other charitable interests and activities.

Personal Interests:

Long distance competitive running (including Boston, Chicago, New York, Portland and Vancouver marathons, half-marathons, 10K's), downhill skiing and photography.

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